SESSION OF 2008

SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE BILL NO. 491

As Amended by House Committee of the Whole

Brief*

Sub. for SB 491 would enact the Prescription Monitoring Program Act and would create the Prescription Monitoring Program Advisory Committee, the Methamphetamine Precursor Scheduling Task Force, and the Veterinary Prescription Monitoring Program Task Force. The bill also would create the Methamphetamine Precursor Recording Act.

Prescription Monitoring Program. The State Board of Pharmacy would be required to establish and maintain a prescription monitoring program for scheduled substances and drugs of concern dispensed in Kansas or dispensed to an address in Kansas. "Scheduled substances" would be defined as those controlled substances included in Schedules II, III, or IV of the Federal Controlled Substances Act and the Kansas Uniform Controlled Substances Act. "Drugs of concern" would be defined as those drugs that demonstrate a potential for abuse and are designated as drugs of concern in rules and regulations to be promulgated by the Board of Pharmacy.

Each dispenser would be required to submit electronically to the Board of Pharmacy information for each prescription dispensed for a scheduled substance or a drug of concern. A "dispenser" would be defined as a practitioner or pharmacist who delivers a scheduled substance or drug of concern to an ultimate user and would not include the following: licensed hospital pharmacies that distribute such substances for the purpose of inpatient hospital care; medical care facilities as

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*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org

defined in KSA 65-425; practitioners or other authorized persons who administer such substances; registered wholesale distributors of such substances; veterinarians licensed by the Kansas Board of Veterinary Examiners who dispense or prescribe such substances; or practitioners exempted from the reporting requirements by the Board of Pharmacy.

The Prescription Monitoring Program database and any records maintained by the Board of Pharmacy, or any entity contracting with the Board, would be privileged and confidential; not subject to subpoena or discovery in civil proceedings; could be used only for investigatory or evidentiary purposes related to violations of state or federal law and regulatory activities; would not be a public record; and would not be subject to the Kansas Open Records Act. The Board would be required to maintain procedures to ensure the privacy and confidentiality of patients and to ensure information is disclosed only to authorized persons, including:

- Persons authorized to prescribe or dispense scheduled substances and drugs of concern for the purpose of providing medical or pharmaceutical care for their patients;

- Individuals who request their own prescription monitoring information;

- Designated representatives from the professional licensing, certification, or regulatory agencies charged with administrative oversight of those persons engaged in prescribing or dispensing scheduled substances and drugs of concern;

- Local, state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of the laws governing scheduled substances and drugs of concern;

- Designated representatives from the Kansas Health Policy Authority regarding authorized Medicaid program recipients;

- Persons authorized by a grand jury subpoena, inquisition subpoena, or court order in a criminal action;

- Personnel of the Prescription Monitoring Program Advisory Committee for the purpose of operating the Program;

- Personnel of the Board of Pharmacy for the purposes of administration and enforcement of the Prescription Monitoring Program Act and the Uniform Controlled Substances Act; and

- Public or private entities for statistical, research, or educational purposes.

The Board of Pharmacy would be required to promulgate rules and regulations specifying the nationally recognized telecommunications format to be used for the submission of information and the transmission methods and frequency of dispenser submissions. The Board could issue waivers for dispensers unable to submit prescription information by electronic means, allowing them to submit information in paper form or by other means. The Board of Pharmacy would be prohibited from imposing any charge for the establishment or maintenance of the Prescription Monitoring Program database on registered wholesale distributors, pharmacists, dispensers, or other persons authorized to prescribe or dispense scheduled substances and drugs of concern. The Board also would be prohibited from charging fees for the transmission of information from the database except for individuals who request their prescription monitoring information.

Persons violating the following provisions of the Prescription Monitoring Program Act would be guilty of a severity level 10, nonperson felony:

- Dispensers who knowingly fail to submit prescription monitoring information or who knowingly submit incorrect information;

- Persons authorized to have prescription monitoring information who knowingly disclose such information in violation of the Act; and

- Persons authorized to have prescription monitoring information who knowingly use such information in violation of the Act.

Practitioners and dispensers would not be in violation of the Act if they disclosed or used information solely in the course of care of the patient who is the subject of the information. Additionally, persons authorized to prescribe or dispense scheduled substances or drugs of concern would not be required to obtain information about a patient from the Prescription Monitoring Program prior to prescribing or dispensing scheduled substances and drugs of concern. The practitioners and dispensers also would not be liable to any person in a civil action because they did, or did not, seek or obtain information from the Prescription Monitoring Program prior to prescribing or dispensing scheduled substances or drugs of concern to a patient.

Finally, in consultation with and upon recommendation of the Prescription Monitoring Program Advisory Committee, the Board of Pharmacy would be required to review the effectiveness of the Prescription Monitoring Program and submit an annual report to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services.

Prescription Monitoring Program Advisory Committee. The bill would create a Prescription Monitoring Program Advisory Committee, subject to Board of Pharmacy oversight, to be responsible for the operation of the Prescription Monitoring Program. The Advisory Committee would consist of at least the following nine members appointed by the Board of Pharmacy for three-year terms:

- Two licensed physicians, one nominated by the Kansas Medical Society and one nominated by the Kansas Association of Osteopathic Medicine;

- Two licensed pharmacists nominated by the Kansas Pharmacists Association;

- One person representing the Kansas Bureau of Investigation nominated by the Attorney General;

- One person representing the University of Kansas School of Medicine nominated by the Dean of the School of Medicine;

- One person representing the University of Kansas School of Pharmacy nominated by the Dean of the School of Pharmacy;

- One licensed dentist nominated by the Kansas Dental Association; and

- One person representing the Kansas Hospital Association nominated by the Hospital Association.

The Board of Pharmacy could appoint other persons authorized to prescribe or dispense scheduled substances and drugs of concern, recognized experts, and representatives from law enforcement. Members of the Advisory Committee would serve without compensation.

The Advisory Committee would be required to work with each entity charged with administrative oversight of persons engaged in prescribing or dispensing scheduled substances and drugs of concern to develop a continuing education program about the purposes and uses of the Prescription Monitoring Program. It also would be required to work with the Kansas Bar Association and the Kansas Bureau of Investigation to develop continuing education programs for attorneys and law enforcement officers.

Methamphetamine Precursor Scheduling Task Force. The Methamphetamine Precursor Scheduling Task Force would be established to study the possibility and practicability of making methamphetamine precursors Schedule III or IV drugs and the impact of that change on consumer access and cost. The Task Force would consist of the following nine members:

- The Attorney General, or the Attorney General's designee;
- One member appointed by the Kansas Health Policy Authority;
- One member appointed by the Director of the Kansas Bureau of Investigation;
- One member appointed by the State Board of Pharmacy; and
- One member appointed by the Board of Healing Arts.

The four remaining members would be appointed by the Board of Pharmacy as follows:

- One member nominated by the Kansas Medical Society;
- One member nominated by the Kansas Association of Osteopathic Medicine;
- One member nominated by the Kansas Pharmacists' Association; and
- One member appointed by the Kansas Task Force of the Pharmaceutical Research and Manufacturing Association representing the pharmaceutical industry.

The nominations and appointments to the Methamphetamine Precursor Scheduling Task Force would be required to be made within 30 days after the effective date of

the bill, publication in the statute book. The Board of Pharmacy would be required to convene the initial meeting of the Task Force within 60 days of the effective date. All Task Force members would serve without compensation. The Task Force would be required to report its findings and conclusions to the Legislature on or before January 12, 2009, and the Task Force would sunset on January 13, 2009.

Veterinary Prescription Monitoring Program Task Force. The Veterinary Prescription Monitoring Program Task Force would be established to study and determine whether to require licensed veterinarians to report to the Prescription Monitoring Program established by the bill. The study would be required to include appropriate methods and procedures of reporting by veterinarians and necessary database field information. The Task Force would consist of the following three members:

- One member appointed by the Prescription Monitoring Program Advisory Committee;

- One member appointed by the Kansas Board of Veterinary Examiners; and

- One member nominated by the Kansas Veterinary Medical Association and appointed by the Kansas Board of Veterinary Examiners.

Appointments to the Task Force would be required within 120 days after the effective date of the bill and the initial meeting of the Task Force would be required to convene within 180 days after the effective date. All Task Force members would serve without compensation. The Task Force would report its findings and progress to the Prescription Monitoring Program Advisory Committee at least annually or when requested by the Advisory Committee and the Task Force also would be required to report its progress to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services, if requested. The

Task Force would report its conclusions and recommendations to the two legislative committees within five years after the effective date of the bill. Based on the recommendation of the Task Force, the Prescription Monitoring Program Act would be amended to include veterinarians as practitioners.

Methamphetamine Precursor Recording Act. The Methamphetamine Precursor Recording Act would require each pharmacy to maintain an electronic log which would document the sale of methamphetamine precursors. The Board of Pharmacy would be required to develop rules and regulations specifying standard format reporting of: (1) the name, address, and signature of the person purchasing, receiving, or otherwise acquiring the methamphetamine precursor; (2) the name of the product and the quantity purchased; (3) the date and time of the purchase; and (4) the name, or initials, of the licensed pharmacist or registered pharmacy technician who sold the product. Each pharmacy must submit the information from the log at the point of sale in real time.

If a pharmacy is unable to submit log information by electronic means, the Board of Pharmacy could issue a waiver permitting the pharmacy to submit log information by paper, or other means, so long as all required information is submitted in the alternative form. No pharmacy, or pharmacy employee, would be liable for damages or relief stemming from the sale of a methamphetamine precursor at another pharmacy.

The Board of Pharmacy would not be able to charge fees for data transmission to the program database, for receipt or information from the database, or any other charge to establish or maintain the electronic log program.

Additionally, the log information would be confidential, and not a public record. The Board could provide information obtained through the log for: (1) any person authorized to prescribe or dispense products containing pseudoephedrine, ephedrine, or phenylpropanolamine, for the purpose of providing medical or pharmaceutical care for their patients; (2) local, state, and federal law enforcement or prosecutorial

officials; and (3) local, state, and federal officials who request access for the purpose of facilitating a product recall necessary for the protection of public health and safety. The Board of Pharmacy could provide data to public or private organizations for statistical, research, or educational purposes after removing information that could be used to identify individual patients or persons who received methamphetamine precursors from pharmacies. The bill would require the Board to keep and maintain all information collected for the monitoring program database for five years, and would authorize the Board to contract for the implementation and operation of the methamphetamine precursor recording log. This would include authorization to contract for a 12-month pilot program in coordination with the Kansas Bureau of Investigation and the Southeast Kansas Drug Enforcement Task Force.

The bill would require the Board of Pharmacy to create, develop and implement an education program for pharmacies and pharmacy employees about the program for the recording of purchases of methamphetamine precursors. The Board would be required to review the effectiveness of the program and to submit an annual report to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services.

Background

The 2007 Legislature enacted SB 302 which established a Controlled Substance Monitoring Task Force to develop a plan for the creation and implementation of a controlled substance prescription monitoring program and an electronic purchase log capable, in real time, of checking compliance with all state, federal and local laws concerning the sale of ephedrine and pseudoephedrine. The Task Force was required to report its findings and conclusions to the Legislature on or before January 14, 2008. SB 491 encompasses, in part, the work of the Controlled Substance Monitoring Task Force.

The Senate Committee on Public Health and Welfare recommended the introduction of a substitute bill. Proponents appearing before the Committee or providing written testimony on the original bill included Senator Vicki Schmidt and representatives of the Kansas Board of Pharmacy, State Board of Healing Arts, Kansas Association of Osteopathic Medicine, Kansas Academy of Physician Assistants, Kansas Bureau of Investigation, Cypress Recovery, Inc., and the parent of a prescription drug addicted child. Proponents supporting the bill but requesting amendments included the Kansas Board of Veterinary Examiners, Kansas Veterinary Medical Association, Kansas Medical Society, National Association of Chain Drug Stores, Kansas Pharmacy Coalition, and a practicing veterinarian. One representative of the Kansas Veterinary Medical Association was neutral on the bill but requested an amendment.

There were no opponents to the bill.

The House Committee on Health and Human Services made amendments to clarify that members of the Prescription Monitoring Advisory Committee would serve without compensation, to clarify that persons nominated by private entities to serve on a task force created by the bill are subject to appointment by a state agency, and to clarify that the Methamphetamine Precursor Scheduling Task Force would be subject to sunset in January 2009. The Committee also made technical amendments.

The House Committee of the Whole amended the bill to include the contents of SB 503 (the Methamphetamine Precursor Recording Act) in its entirety.

The fiscal note prepared by the Division of the Budget for the original version of the bill states that the Board of Pharmacy estimates passage of the bill would require between $350,000 and $500,000 in start-up costs. The Board of Pharmacy also indicated that it would apply for a one-year grant from the United States Department of Justice. Expenses of the Board are financed from the Board of Pharmacy Fee Fund. Any fiscal

effect resulting from enactment of the bill is not included in *The FY 2009 Governor's Budget Report*.

The fiscal note prepared by the Division of the Budget for SB 503 indicates that Oklahoma, currently the only state with real-time electronic logbook capabilities for drug purchases, spent $223,000 on software applications and hardware. High-speed internet connections would cost approximately $17,000 per year, and technical support for the program is estimated at $70,000 to $75,000 per year. In addition, the Board would need to hire at least 1.0 FTE to manage the program, which would necessitate additional office space for the Board. No information on the cost of expanded office space was available.