

SESSION OF 2009

**CONFERENCE COMMITTEE REPORT BRIEF  
SENATE BILL NO. 33**

As Agreed to April 30, 2009

**Brief\***

SB 33 would enact new law and amend the Pharmacy Act and the laws governing the State Board of Pharmacy as follows:

- Establish the Statewide Electronic Logging System for Sale of Methamphetamine Precursor Act;
- Repeal duplicative statutory language concerning the sale of durable medical equipment;
- Provide the Board of Pharmacy with new authority to require fingerprinting;
- Amend existing law concerning regulation of pharmacy technicians; and
- Amend the Board of Pharmacy membership.

***Methamphetamine Precursor Act.*** The bill would enact new law to be cited as the Statewide Electronic Logging System for Sale of Methamphetamine Precursor Act and would amend existing law concerning the sale of methamphetamine precursors. The bill would define a "methamphetamine precursor" to be any compound, mixture or preparation containing pseudoephedrine, ephedrine or

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phenylpropanolamine. The sale of methamphetamine precursors which are prescribed would be excluded from the requirements of any logging system.

The bill would require the Board of Pharmacy to establish and maintain a statewide electronic logging system documenting the sale of methamphetamine precursors. The Board would be required to promulgate rules and regulations that specify a standardized format for the electronic log and the information each pharmacy would be required to submit to the Board. Information required to be submitted would include:

- The name and address of the person purchasing, receiving or otherwise acquiring the methamphetamine precursor;
- The name of the product and quantity purchased;
- The date and time of the purchase; and
- The name, or initials, of the licensed pharmacist, registered pharmacy technician or pharmacy intern or clerk supervised by a licensed pharmacist who sold the product.

Each pharmacy would be required to maintain the purchaser's signature as set out in current law (KSA 65-1643(k)) which requires that any person purchasing, receiving or otherwise acquiring a controlled substance must produce a photo identification that shows the date of birth of the person and the person must sign a log.

The bill would require each pharmacy that has the capability to submit the information from the electronic log in real time by transmission methods specified in rules and regulations. The Board would be allowed to issue a waiver exempting a pharmacy from compliance with the requirement to submit the methamphetamine precursor sales log electronically if the pharmacy can show good cause. The definition of "good cause" would include, but not be limited to,

a mechanical or electronic failure or a financial, technological or other undue burden on the pharmacy. If granted a waiver, a pharmacy would be permitted to submit the required log information in paper form or by other means.

Additionally, the bill would include the following provisions:

- That no pharmacy, or pharmacy employee, be liable to any person in a civil action for damages or other relief arising from a sale of a methamphetamine precursor that occurs at another pharmacy;
- That the cost of establishing and maintaining the statewide electronic logging system would be borne by the state, other non-state units of government, private entities, or others;
- That the Board would be authorized to receive and expend or supervise the expenditure of any donation, gift, grant or bequest made to the Board for any phase of the statewide electronic logging system;
- That pharmacies would not be required to bear any costs, including additional charges, associated with establishing and maintaining the electronic logging system or for transmitting data to the electronic logging system database or receiving information from the database;
- That, in the event that funding for a statewide program is not available, the Board would be allowed to implement the program on a regional, county-wide or other basis. Any non-statewide programs would be required to comply with the requirements applicable to a statewide program and would not be allowed to utilize different vendors;
- That the Board would be allowed to contract with another state agency or private vendor to ensure the effective implementation and operation of the electronic logging system. The state agency or vendor would be required to have the technological capability to receive electronic log data and to send, in real time, notification to law

enforcement officials and to bridge with existing and future operational systems used by pharmacies;

- That all information collected for the program database and any records maintained by the Board, or any entity contracting with the Board, would be retained for five years unless a written request has been submitted by a law enforcement entity; and
- That the Board would be required to review the effectiveness of the program for recording the sale of methamphetamine precursors and submit an annual report to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services.

Further, the electronic log information submitted to the Board would not be subject to the Kansas Open Records Act. The Board would be authorized to provide data in the electronic log to specified persons, including:

- Any person authorized to prescribe or dispense products containing pseudoephedrine, ephedrine, or phenylpropanolamine, for the purpose of complying with the provisions of this Act; and
- Local, state and federal law enforcement or prosecutorial officials.

The Board would be allowed to provide data to public or private entities for statistical, research or educational purposes after removing information that could be used to identify individual patients or persons.

Any pharmacy or person who knowingly violates provisions of the bill would be guilty of a severity level 10, nonperson felony. The Board of Pharmacy would be required to adopt rules and regulations necessary to carry out the provisions of the Act within six months of the effective date of the bill.

***Durable Medical Equipment.*** The bill would repeal duplicative law (KSA 2008 Supp. 65-1643b) concerning the unlawful sale, lease or offer for sale or lease of durable medical equipment without first obtaining a registration from the Board of Pharmacy and would insert the amended provisions into KSA 2008 Supp. 65-1643. The amendment results from a section of law being amended twice during the 2007 Legislative Session.

***Fingerprinting Authority.*** The bill would allow the Board of Pharmacy to require a person to be fingerprinted and submit to a state and national criminal history record check as part of an original application for, or reinstatement of, any license, registration, permit or certificate. The Board also would be allowed, in connection with any investigation, to require a holder of a license, registration, permit or certificate to be fingerprinted and submit to a state and national criminal history record check.

Additionally, the bill would authorize the Board to:

- Submit the fingerprints and the criminal history record check to both the Kansas Bureau of Investigation and the Federal Bureau of Investigation;
- Use the obtained information in the verification of the identity of a person and in the official determination of qualifications and fitness of a person; and
- Fix and collect a fee in an amount equal to the cost of the fingerprinting and criminal history record check.

The bill would establish funds in the State Treasury to be used by the Board for the remittance of fees and for paying for the cost of fingerprinting and criminal history record checks.

The bill would require local and state law enforcement officers and agencies to assist the Board in taking and processing fingerprints, and to release all records of adult

convictions and nonconvictions and adult convictions or adjudications of another state or country.

***Pharmacy Technicians.*** The bill would amend existing law concerning the Board of Pharmacy by requiring all pharmacy technicians to display a registration card in that part of the place of business in which they engage in pharmacy technician activities. The pharmacy would no longer be required to post the names of the pharmacy technicians who are currently on duty.

***Board Membership.*** The bill would increase the number of members for the Board of Pharmacy from six to seven, of which six would be licensed pharmacists. Also, effective July 1, 2009, the term of office of each Board member would be extended by one year and Board members appointed on and after July 1, 2009, would serve for terms of four years.

#### **Conference Committee Action**

The Conference Committee agreed to the House Committee of the Whole amendments to SB 33 with the following change:

- Reinserted the language concerning the authority of the State Board of Pharmacy to require fingerprinting and state and national criminal history record checks.

The Conference Committee further agreed to amend SB 33 as follows:

- Inserted the language of SB 248 concerning the creation of a statewide electronic logging system for the sale of methamphetamine precursors as amended by the House Committee on Corrections and Juvenile Justice; and
- Added language to further clarify that pharmacies shall not be required to bear the cost of establishing and maintaining the statewide electronic logging system through any additional charges from the entities responsible for funding the system, including the State Board of Pharmacy.

## Background

**SB 33** was introduced by the Committee on Public Health and Welfare at the request of the State Board of Pharmacy. Proponents of the bill included the Executive Director, Kansas State Board of Pharmacy and the Executive Director, Kansas Pharmacists Association. The Executive Director of the Board of Pharmacy requested an additional amendment that would increase the maximum allowable fee for pharmacy technicians from \$50 to \$100 to accommodate the \$49 cost for fingerprinting and a background check should it be required.

Written testimony in support of the bill was provided from the Legislative Counsel, Kansas Pharmacy Coalition, and the Vice President, Kansas Hospital Association.

There were no opponents of the bill.

The Senate Committee of the Whole amended the language of SB 222 concerning the Board of Emergency Medical Services and fingerprinting and criminal history record checks into SB 33. Additionally, language concerning the remittance to the State Treasurer of fees collected by the Board of Pharmacy for fingerprinting and criminal history record checks was added to the bill.

The House Committee on Health and Human Services made several amendments to the bill. The amendments:

- Replace the term “licensure” with “certificate.” The Emergency Medical Services Board currently issues certificates to its applicants.
- Make technical amendments to the references to the Emergency Medical Services Board.
- Clarify the fee that may be charged by the Emergency Medical Services Board and the Board of Pharmacy must be equal to the cost of fingerprinting and the criminal history record check.

- Restore the existing registration fee for pharmacy technician applicants (\$50).
- Clarify a Board of Pharmacy membership provision for members appointed on and after July 1, 2009.

The House Committee of the Whole amended the bill to delete the fingerprinting and related state and national criminal history record check provisions that would have applied to certain licensees and registrants of the Emergency Medical Services Board and the State Board of Pharmacy. The subject matter of the bill is limited by the amendment to the display of registration cards by pharmacy technicians and the membership of the State Board of Pharmacy.

For the fiscal note prepared by the Division of the Budget on the original version of SB 33, the Board of Pharmacy indicated that the increase in the number of Board members would create additional costs for the Board. The cost of fingerprinting and criminal history record checks would be the responsibility of the individual undergoing the fingerprinting and criminal history check and would be paid to the Board. The Kansas Bureau of Investigation indicated that any additional funding the Bureau may need would be obtained from the fees paid by the Board of Pharmacy.

No fiscal note was available for SB 222.

**SB 248** was introduced by the Senate Committee on Ways and Means. The Senate Public Health and Welfare Committee heard testimony on the bill. Proponents of the bill in the Senate Committee included the Executive Secretary of the Kansas State Board of Pharmacy, an Administrative Special Agent in Charge from the Kansas Bureau of Investigation, a Crawford County Sheriff representing the Kansas Sheriff's Association and the Southeast Kansas Drug Enforcement Task Force, a representative from Methshield, a representative of the Kansas Independent Pharmacy Service Corporation, and a private citizen. Written testimony in support of the bill was provided by



a representative of the Kansas Association of Police Chiefs and the Kansas Peace Officers Association.

Proponents noted that currently, under federal and state law, each pharmacy must keep a bound hard copy or an electronic methamphetamine precursor logbook and that a problem with the hard bound copy is that it is labor intensive for both the pharmacy and law enforcement. Also, under the current state law that requires a hard bound logbook, individuals can purchase pseudoephedrine in excess of the 3.6 grams per day or nine grams per month limit by shopping pharmacy-to-pharmacy.

Opponents of the bill included a representative of Medco Health Solutions Inc., a representative from the Kansas Pharmacy Coalition and a representative of Express Scripts.

Opponents noted that while they supported the general concept of the bill, they had concerns that the electronic logbook would be repetitive and expensive for pharmacy benefit managers who only dispense with a prescription and by mail and who would have no way to track an electronic signature from a consumer. Other concerns included the real time requirement of the bill, the potential costs to the pharmacy, who would have access to the reported information, and the possibility that pharmacists would have to stop sales to customers, including some who might be violent.

Amendments made by the Senate Public Health and Welfare Committee reflect the compromise reached by the proponents and opponents of the bill.

A technical amendment to the bill was made by the Senate Committee of the Whole.

Proponents of the bill who testified in the House Committee on Corrections and Juvenile Justice were Senator Vicki Schmidt; Sheriff Sandy Horton, Crawford County; Doug Mays, Methshield; Steve Willholf, Kansas Attorney General's Office and the Kansas Bureau of Investigation; Debra Billingsley, Kansas Board of Pharmacy; Ron Gaches, Kansas Independent

Pharmacy Service Corp.; Ed Klumpp, Kansas Association of Chiefs of Police and the Kansas Peace Officers Association; and Ron Hein, Kansas Pharmacy Coalition.

There were no opponents of the bill who testified in the House Committee on Corrections and Juvenile Justice.

The House Committee amended the bill to:

- Require the Board to adopt rules and regulations within six months of the effective date of the Act;
- Authorize the Board to disclose data in the electronic log to any person authorized to prescribe or dispense products containing pseudoephedrine, ephedrine, or phenylpropanolamine, for the purpose of complying with the provisions of this Act; and
- Strike the provision regarding 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 original fiscal note for SB 248 as prepared by the Division of the Budget stated that the Board of Pharmacy indicated the bill would have no fiscal effect on the agency. The revised fiscal note states that the bill would increase expenditures from the Board of Pharmacy's fee fund by approximately \$350,000 in FY 2010 to implement the electronic logging system and approximately \$350,000 in each subsequent year to maintain the system. The fiscal effect associated with SB 248 is not included in *The FY 2010 Governor's Budget Report*.

state board of pharmacy; statewide electronic logging system for sale of meth precursors; fingerprinting