

SESSION OF 2017

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 51**

As Amended by House Committee of the Whole

**Brief\***

House Sub. for SB 51 would amend the definition of a controlled substance analog and marijuana as defined in KSA 2016 Supp. 21-5701 and 65-4101, expand the authority of the State Board of Pharmacy (Board) to allow greater flexibility in the emergency scheduling of controlled substance analogs and new drugs, and amend the duration of temporary scheduling by the Board. The bill would also add several drugs and modify drug classes to the schedules of controlled substances under the Uniform Controlled Substances Act (Act). Specifically, the bill would make the following changes to the Act: add several synthetic opioids to Schedule I; update existing synthetic cannabinoid class definitions; add thiafentanil to Schedule II; add cannabidiol, when comprising the sole active ingredient of a drug product approved by the federal Food and Drug Administration (FDA), to Schedule IV; and add brivaracetam to Schedule V.

***Definitions***

The bill would clarify the definition of a “controlled substance analog” as defined in KSA 2016 Supp. 21-5701 and 65-4101 to mean a substance that is intended for human consumption and at least one of the following:

- The chemical structure of the substance is substantially similar to the chemical structure of a controlled substance listed in or added to the

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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>

schedules designated in KSA 2016 Supp. 65-4105 or 65-4107, and amendments thereto;

- The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in KSA 2016 Supp. 65-4105 or 65-4107, and amendments thereto; or
- With respect to a particular individual, such individual represents or intends the substance to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in KSA 2016 Supp. 65-4105 or 65-4107, and amendments thereto.

The bill would also clarify that the definition of “marijuana” as defined in KSA 2016 Supp. 21-5701 and 65-4101 would not include any substance listed in Schedules II through V of the Act.

### ***Reports***

In addition to the current required report on substances proposed by the Board for scheduling, rescheduling, or deletion by the Legislature, the bill would also require the Board to submit to the Speaker of the House of Representatives and the President of the Senate a report of any substances scheduled on an emergency basis during the preceding year, along with the reasons for the proposal and the scheduling.

### ***Emergency Scheduling Authority***

The bill would expand the Board's authority to allow the initiation of scheduling of controlled substance analogs on an emergency basis upon the Board's finding of an imminent hazard to the public safety. The bill would also allow the Board to schedule, on an emergency basis, new drugs, the language of which is incorporated in the bill to replace the statutory citation to the Kansas Food, Drug and Cosmetic Act, as follows:

- Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or
- Any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

A new drug, as defined with regard to emergency scheduling, would not include amygdalin (laetrile).

The bill would change the expiration of the temporary emergency scheduling of a substance from one year to July 1 of the following calendar year after the adoption of the scheduling rule, and would clarify a rule and regulation adopted with regard to emergency scheduling would expire on July 1 of the calendar year following the year of its adoption.

### ***Technical Amendments***

The bill would make various technical amendments.

### ***Effective Date***

The bill would be in effect upon publication in the *Kansas Register*.

### **Background**

House Sub. for SB 51 contains SB 51, as amended by the House Committee on Health and Human Services, and SB 52, as amended by the Senate Committee on Public Health and Welfare. The House Committee of the Whole amended House Sub. for SB 51 to add cannabidiol, when comprising the sole active ingredient of a drug product approved by the FDA, to the list of Schedule IV controlled substances; clarify the definition of “marijuana” as defined in KSA 2016 Supp. 21-5701 and 65-4101; and make technical amendments. The background information on both bills is provided below.

### ***SB 51***

The bill was introduced by the Senate Committee on Public Health and Welfare at the request of the Kansas Bureau of Investigation (KBI). In the Senate Committee hearing, representatives of the Board, KBI, and Kansas County and District Attorneys Association testified in favor of the bill. The proponents stated the proposed changes were critical to the public safety of Kansas citizens and the scope of the Board’s authority would not be expanded more than necessary. In addition, regarding the proposed change to the definition of “controlled substance analog,” proponents noted current law has been interpreted to require the first criterion and either the second or third criterion must be present to meet the definition. Proponents stated the addition of the

phrase “at least one of the following” would clarify the definition. The Kansas Association of Chiefs of Police, Kansas Sheriffs’ Association, Kansas Peace Officers Association, and the Kansas Independent Pharmacy Service Corporation provided written-only proponent testimony.

No opponent or neutral testimony was provided.

In the House Committee on Health and Human Services hearing, representatives of the Board and the KBI testified in favor of the bill. The proponents stated the changes are critical to the public safety of Kansans and needed to clarify that only one of the three criteria in the definition of a controlled substance analog must be present. The Kansas Association of Chiefs of Police, Kansas Sheriffs’ Association, Kansas Peace Officers Association, and Kansas Independent Pharmacy Service Corporation provided written-only proponent testimony.

No opponent or neutral testimony was provided.

The House Committee created a substitute bill by amending the language of SB 51 and also inserting the contents of SB 52, as amended by the Senate Committee, into SB 51. SB 51 was amended by the House Committee to require the Board to submit to the Speaker of the House of Representatives and the President of the Senate an annual report of the substances scheduled on an emergency basis during the preceding calendar year and the reasons for the proposal and the scheduling; clarify the date of expiration for a rule and regulation adopted under the bill relating to emergency scheduling of controlled substance analogs and new drugs; insert the definition of a “new drug” as defined in the Kansas Food, Drug and Cosmetic Act to replace a statutory reference to the definition; and make technical amendments.

The House Committee of the Whole amended House Sub. for SB 51 to add cannabidiol, when comprising the sole active ingredient of a drug product approved by the FDA, to

the list of Schedule IV controlled substances; clarify the definition of “marijuana” in KSA 2016 Supp. 21-5701 and 65-4101 would not include any substance listed in Schedules II through V of the Act; and make technical amendments.

According to the fiscal note prepared by the Division of the Budget on SB 51, as introduced, enactment of the bill would have no fiscal effect for the Board.

### **SB 52**

The bill was introduced by the Senate Committee on Public Health and Welfare at the request of the KBI. In the Senate Committee hearing, representatives of the Board, KBI, and Kansas County and District Attorneys Association testified in favor of the bill. The proponents stated the majority of the proposed changes have been permanently added to the federal schedules. The Kansas Association of Chiefs of Police, Kansas Sheriffs’ Association, and Kansas Peace Officers Association provided written-only proponent testimony. A private citizen provided opponent testimony. No neutral testimony was provided.

The Senate Committee amended the bill to make it effective upon publication in the *Kansas Register*.

In the House Committee on Health and Human Services hearing, representatives of the Board and KBI testified in favor of the bill. The proponents generally stated the amendments would help address increasing trends in the use of “designer drugs,” or those synthesized with the specific intent of circumventing existing drug laws by slightly altering the molecular structure of a currently controlled substance, and to update the Kansas drug schedules to reflect recent modifications to the federal drug schedules. Written-only proponent testimony was provided by a representative of the Kansas Association of Chiefs of Police, Kansas Sheriffs’ Association, and Kansas Peace Officers Association. A

private citizen provided opponent testimony. No neutral testimony was provided.

The House Committee inserted the contents of SB 52, as amended by the Senate Committee, into SB 51, as amended by the House Committee, to create a substitute bill.

According to the fiscal note prepared by the Division of the Budget on SB 52, as introduced, enactment of the bill would have no fiscal effect on the Board.