

As Amended by House Committee

As Amended by Senate Committee

Session of 2007

SENATE BILL No. 270

By Senators V. Schmidt and D. Schmidt

2-5

12 AN ACT concerning controlled substances; relating to ephedrine and
13 pseudoephedrine; amending K.S.A. 2006 Supp. 65-1643, 65-4113, ~~65-~~
14 ~~4166~~ and 65-7006 and repealing the existing sections.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 ~~New Section 1. The attorney general shall adopt rules and regula-~~
18 ~~tions establishing criteria for self-certifications pursuant to K.S.A. 65-~~
19 ~~1643, and amendments thereto. The criteria shall provide that a separate~~
20 ~~certification is required for each place of business at which a licensed~~
21 ~~pharmacist, registered pharmacy technician or pharmacy intern or clerk~~
22 ~~supervised by a licensed pharmacist sells a controlled substance desig-~~
23 ~~nated in subsection (c) or (f) of K.S.A. 65-4113, and amendments thereto.~~
24 ~~The attorney general shall establish a program regarding such certifica-~~
25 ~~tions and training through an internet site of the office of the attorney~~
26 ~~general. Promptly after receiving a certification, the attorney general shall~~
27 ~~make available a copy of the certification to the Kansas bureau of inves-~~
28 ~~tigation and local law enforcement officials.~~

29 ~~—Sec. 2: **Section 1.** K.S.A. 2006 Supp. 65-1643 is hereby amended to~~
30 ~~read as follows: 65-1643. It shall be unlawful:~~

31 (a) For any person to operate, maintain, open or establish any phar-
32 macy within this state without first having obtained a registration from
33 the board. Each application for registration of a pharmacy shall indicate
34 the person or persons desiring the registration, including the pharmacist
35 in charge, as well as the location, including the street name and number,
36 and such other information as may be required by the board to establish
37 the identity and exact location of the pharmacy. The issuance of a regis-
38 tration for any pharmacy shall also have the effect of permitting such
39 pharmacy to operate as a retail dealer without requiring such pharmacy
40 to obtain a retail dealer's permit. On evidence satisfactory to the board:
41 (1) That the pharmacy for which the registration is sought will be con-
42 ducted in full compliance with the law and the rules and regulations of
43 the board; (2) that the location and appointments of the pharmacy are

1 such that it can be operated and maintained without endangering the
2 public health or safety; (3) that the pharmacy will be under the supervision
3 of a pharmacist, a registration shall be issued to such persons as the board
4 shall deem qualified to conduct such a pharmacy.

5 (b) For any person to manufacture within this state any drugs except
6 under the personal and immediate supervision of a pharmacist or such
7 other person or persons as may be approved by the board after an inves-
8 tigation and a determination by the board that such person or persons is
9 qualified by scientific or technical training or experience to perform such
10 duties of supervision as may be necessary to protect the public health and
11 safety; and no person shall manufacture any such drugs without first ob-
12 taining a registration so to do from the board. Such registration shall be
13 subject to such rules and regulations with respect to requirements, sani-
14 tation and equipment, as the board may from time to time adopt for the
15 protection of public health and safety.

16 (c) For any person to distribute at wholesale any drugs without first
17 obtaining a registration so to do from the board.

18 (d) For any person to sell or offer for sale at public auction or private
19 sale in a place where public auctions are conducted, any drugs without
20 first having obtained a registration from the board so to do, and it shall
21 be necessary to obtain the permission of the board in every instance where
22 any of the products covered by this section are to be sold or offered for
23 sale.

24 (e) For any person to in any manner distribute or dispense samples
25 of any drugs without first having obtained a permit from the board so to
26 do, and it shall be necessary to obtain permission from the board in every
27 instance where the samples are to be distributed or dispensed. Nothing
28 in this subsection shall be held to regulate or in any manner interfere
29 with the furnishing of samples of drugs to duly licensed practitioners, to
30 mid-level practitioners, to pharmacists or to medical care facilities.

31 (f) Except as otherwise provided in this subsection (f), for any person
32 operating a store or place of business to sell, offer for sale or distribute
33 any drugs to the public without first having obtained a registration or
34 permit from the board authorizing such person so to do. No retail dealer
35 who sells 12 or fewer different nonprescription drug products shall be
36 required to obtain a retail dealer's permit under the pharmacy act of the
37 state of Kansas or to pay a retail dealer new permit or permit renewal fee
38 under such act. It shall be lawful for a retail dealer who is the holder of
39 a valid retail dealer's permit issued by the board or for a retail dealer who
40 sells 12 or fewer different nonprescription drug products to sell and dis-
41 tribute nonprescription drugs which are prepackaged, fully prepared by
42 the manufacturer or distributor for use by the consumer and labeled in
43 accordance with the requirements of the state and federal food, drug and

1 cosmetic acts. Such nonprescription drugs shall not include: (1) A con-
2 trolled substance; (2) a prescription-only drug; or (3) a drug product in-
3 tended for human use by hypodermic injection; but such a retail dealer
4 shall not be authorized to display any of the words listed in subsection
5 (u) of K.S.A. 65-1626 and amendments thereto, for the designation of a
6 pharmacy or drugstore.

7 (g) For any person to sell any drugs manufactured and sold only in
8 the state of Kansas, unless the label and directions on such drugs shall
9 first have been approved by the board.

10 (h) For any person to operate an institutional drug room without first
11 having obtained a registration to do so from the board. Such registration
12 shall be subject to the provisions of K.S.A. 65-1637a and amendments
13 thereto and any rules and regulations adopted pursuant thereto.

14 (i) For any person to be a pharmacy student without first obtaining
15 a registration to do so from the board, in accordance with rules and reg-
16 ulations adopted by the board, and paying a pharmacy student registration
17 fee of \$25 to the board.

18 (j) For any person to operate a veterinary medical teaching hospital
19 pharmacy without first having obtained a registration to do so from the
20 board. Such registration shall be subject to the provisions of K.S.A. 65-
21 1662 and amendments thereto and any rules and regulations adopted
22 pursuant thereto.

23 (k) For any person to sell or distribute in a pharmacy a controlled
24 substance designated in subsection (e) or (f) of K.S.A. 65-4113, and
25 amendments thereto, unless:

26 (1) (A) Such controlled substance is sold or distributed by a licensed
27 pharmacist, a registered pharmacy technician or a pharmacy intern or
28 clerk supervised by a licensed pharmacist; ~~and~~

29 (B) any person purchasing, receiving or otherwise acquiring any such
30 controlled substance produces a photo identification showing the date of
31 birth of the person and signs a log *and enters in the log*, **or allows the**
32 **seller to enter in the log**, *such person's address and the date and time*
33 *of sale*. The log or database required by the board shall be available for
34 inspection during regular business hours to the board of pharmacy and
35 any law enforcement officer; ~~or~~

36 (C) *the seller determines that the name entered in the log corresponds*
37 *to the name provided on such identification and that the date and time*
38 *entered are correct; and*

39 (D) *the seller enters in the log the name of the controlled substance*
40 *and the quantity sold; or*

41 (2) there is a lawful prescription; ~~or~~.

42 ~~(3) the pharmacy has submitted to the attorney general a self-certi-~~
43 ~~fication that any licensed pharmacist, registered pharmacy technician or~~

1 ~~pharmacy intern or clerk supervised by a licensed pharmacist, employed~~
 2 ~~by such pharmacy has undergone training provided by the seller to ensure~~
 3 ~~that such individuals understand the requirements that apply under this~~
 4 ~~subsection and in accordance with criteria established by the attorney~~
 5 ~~general. The pharmacy shall maintain a copy of such certification and~~
 6 ~~records demonstrating such individuals have undergone the training.~~

7 ~~—(l) For any person to sell or distribute in a pharmacy four or more~~
 8 ~~packages or containers of any controlled substance designated in subsec-~~
 9 ~~tion (e) or (f) of K.S.A. 65-4113, and amendments thereto, (1) to a specific~~
 10 ~~customer within any seven-day period, in an amount which exceeds a daily~~
 11 ~~amount of 3.6 grams, without regard to the number of transactions, or~~
 12 ~~(2) unless such controlled substance is packaged in blister packs, each~~
 13 ~~blister containing not more than two dosage units, or where the use of~~
 14 ~~blister packs is technically infeasible, the product is packaged in unit dose~~
 15 ~~packets or pouches.~~

16 ~~—(m) (l) For any pharmacy to allow customers to have direct access to~~
 17 ~~any controlled substance designated in subsection (e) or (f) of K.S.A. 65-~~
 18 ~~4113, and amendments there. Such controlled substance shall be placed~~
 19 ~~behind the counter or stored in a locked cabinet that is located in an area~~
 20 ~~of the pharmacy to which customers do not have direct access.~~

21 ~~(m) A seller who in good faith releases information in a log pursuant~~
 22 ~~to subsection (k) to any law enforcement officer is immune from civil~~
 23 ~~liability for such release unless the release constitutes gross negligence or~~
 24 ~~intentional, wanton or willful misconduct.~~

25 ~~Sec. 2. K.S.A. 2006 Supp. 65-4113 is hereby amended to read as~~
 26 ~~follows: 65-4113. (a) The controlled substances or drugs, by whatever~~
 27 ~~official name, common or usual name, chemical name or brand name~~
 28 ~~designated, listed in this section are included in schedule V.~~

29 ~~(b) Unless specifically excepted or unless listed in another schedule,~~
 30 ~~any material, compound, mixture or preparation containing the following~~
 31 ~~narcotic drug or its salts:~~

32 ~~Buprenorphine 9064~~

33 ~~(c) Any compound, mixture or preparation containing limited quan-~~
 34 ~~tities of any of the following narcotic drugs which also contains one or~~
 35 ~~more nonnarcotic active medicinal ingredients in sufficient proportion to~~
 36 ~~confer upon the compound, mixture or preparation valuable medicinal~~
 37 ~~qualities other than those possessed by the narcotic drug alone:~~

38 ~~(1) Not more than 200 milligrams of codeine or any of its salts per~~
 39 ~~100 milliliters or per 100 grams.~~

40 ~~(2) Not more than 100 milligrams of dihydrocodeine or any of its salts~~
 41 ~~per 100 milliliters or per 100 grams.~~

42 ~~(3) Not more than 100 milligrams of ethylmorphine or any of its salts~~
 43 ~~per 100 milliliters or per 100 grams.~~

- 1 (4) Not more than 2.5 milligrams of diphenoxylate and not less than
- 2 25 micrograms of atropine sulfate per dosage unit.
- 3 (5) Not more than 100 milligrams of opium per 100 milliliters or per
- 4 100 grams.
- 5 (6) Not more than .5 milligram of difenoxin (9168) and not less than
- 6 25 micrograms of atropine sulfate per dosage unit.
- 7 (d) Unless specifically excepted or unless listed in another schedule,
- 8 any material, compound, mixture or preparation which contains any quan-
- 9 tity of the following substances having a stimulant effect on the central
- 10 nervous system, including its salts, isomers (whether optical, position or
- 11 geometric) and salts of such isomers whenever the existence of such salts,
- 12 isomers and salts of isomers is possible within the specific chemical des-
- 13 ignation:
- 14 (1) Propylhexedrine (except when part of a compound used for nasal
- 15 decongestion which is authorized to be sold lawfully over the
- 16 counter without a prescription under the federal food, drug
- 17 and cosmetic act, so long as it is used only for such
- 18 purpose)..... 8161
- 19 (2) Pyrovalerone..... 1485
- 20 (e) ~~Except as provided in subsection (g),~~ Any compound, mixture or
- 21 preparation containing any detectable quantity of ephedrine, its salts or
- 22 optical isomers, or salts of optical isomers.
- 23 (f) ~~Except as provided in subsection (g),~~ Any compound, mixture or
- 24 preparation containing any detectable quantity of pseudoephedrine, its
- 25 salts or optical isomers, or salts of optical isomers.
- 26 (g) ~~The scheduling of the substances in subsections (e) and (f) shall~~
- 27 ~~not apply to any compounds, mixtures or preparations of ephedrine or~~
- 28 ~~pseudoephedrine which are in liquid, liquid capsule or gel capsule form.~~
- 29 ~~Sec. 4. K.S.A. 2006 Supp. 65-4166 is hereby amended to read as~~
- 30 ~~follows: 65-4166. The provisions of this act K.S.A. 21-2501a, 65-1643, 65-~~
- 31 ~~4113, 65-4152, 65-4159, 65-7001 and 65-7006, and amendments thereto,~~
- 32 ~~and K.S.A. 2006 Supp. 75-722, and amendments thereto, and any rules~~
- 33 ~~and regulations promulgated thereunder shall be applicable and uniform~~
- 34 ~~throughout this state and in all cities and counties therein. No A city or~~
- 35 ~~county shall may enact or enforce any law, ordinance, rule, regulation or~~
- 36 ~~resolution in conflict with, in addition to, or supplemental to, the provi-~~
- 37 ~~sions of this act unless expressly authorized by law to do so. more stringent~~
- 38 ~~than such provisions. In such cases the more stringent local regulation~~
- 39 ~~shall control to the extent of any inconsistency between such regulation~~
- 40 ~~and such provisions.~~
- 41 **Sec. 5-3.** K.S.A. 2006 Supp. 65-7006 is hereby amended to read as
- 42 follows: 65-7006. (a) It shall be unlawful for any person to possess ephed-
- 43 rine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, io-

1 dine, anhydrous ammonia, pressurized ammonia or phenylpropanolam-
 2 ine, or their salts, isomers or salts of isomers with intent to use the product
 3 to manufacture a controlled substance.

4 (b) It shall be unlawful for any person to market, sell, distribute, ad-
 5 vertise, or label any drug product containing ephedrine, pseudoephed-
 6 rine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous
 7 ammonia, pressurized ammonia or phenylpropanolamine, or their salts,
 8 isomers or salts of isomers if the person knows or reasonably should know
 9 that the purchaser will use the product to manufacture a controlled sub-
 10 stance.

11 (c) It shall be unlawful for any person to market, sell, distribute, ad-
 12 vertise or label any drug product containing ephedrine, pseudoephedrine,
 13 or phenylpropanolamine, or their salts, isomers or salts of isomers for
 14 indication of stimulation, mental alertness, weight loss, appetite control,
 15 energy or other indications not approved pursuant to the pertinent federal
 16 over-the-counter drug final monograph or tentative final monograph or
 17 approved new drug application.

18 (d) *It shall be unlawful for any person to purchase, receive or oth-*
 19 *erwise acquire at retail* **any compound, mixture or preparation con-**
 20 **taining more than 3.6 grams of pseudoephedrine base or ephedrine**
 21 **base in any single transaction or any compound, mixture or prep-**
 22 **aration containing more than nine grams of pseudoephedrine base**
 23 **or ephedrine base** *or by means of shipping through any private or*
 24 *commercial carrier or the postal service 7.5 grams within any thirty-*
 25 *day period of any controlled substance designated in subsection (e) or*
 26 *(f) of K.S.A. 65-4113, and amendments thereto, within any thirty-day*
 27 *period.*

28 (e) For persons arrested and charged under this section, bail shall be
 29 at least \$50,000 cash or surety, unless the court determines on the record
 30 that the defendant is not likely to re-offend, the court imposes pretrial
 31 supervision or the defendant agrees to participate in a licensed or certified
 32 drug treatment program.

33 ~~(e)~~ (f) A violation of ~~this section~~ *subsection (a), (b) or (c)* shall be a
 34 drug severity level 2 felony. *A violation of subsection (d) shall be a class*
 35 *A nonperson misdemeanor*

36 Sec. ~~6-4~~ **4.** K.S.A. 2006 Supp. 65-1643, 65-4113, ~~65-4166~~ and 65-7006
 37 are hereby repealed.

38 Sec. ~~7-5~~ **5.** This act shall take effect and be in force from and after its
 39 publication in the statute book.