

SESSION OF 2005

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 27**

As Agreed to March 30, 2005

Brief *

SB 27 would enact the Sheriff Matt Samuels Chemical Control Act which would make a number of changes in the law to address the problem of the unlawful manufacturing of methamphetamine as follows:

- The Uniform Controlled Substances Act would be amended to make salts or optical isomers of ephedrine and pseudoephedrine a Schedule V drug. Excluded from Schedule V are liquid, liquid capsule, or gel capsule forms of ephedrine and pseudoephedrine. This action would place a number of over-the-counter cold or allergy drugs behind the pharmacy counter and prohibit their sale in grocery stores, convenience stores, and other places which do not have a pharmacy.
- Pseudoephedrine and ephedrine could only be sold or distributed in a pharmacy by a pharmacist or pharmacy technician. A pharmacy intern or pharmacy student could sell pseudoephedrine and ephedrine if they are supervised by a pharmacist or pharmacy technician. Any person buying or receiving these products must produce a photo identification showing the date of birth of the person and must sign a written log or receipt showing transaction date, person's name, and the amount of the controlled substance purchased.
- It would be unlawful for any pharmacy to sell, receive or otherwise acquire more than three packages of any controlled substance within any seven day period.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. The conference committee summary report may be accessed on the Internet at <http://www.kslegislature.org>

- The bill would require the State Board of Pharmacy to do the following:
 - Require the Kansas Bureau of Investigation (KBI) to consult with the State Board of Pharmacy and other law enforcement agencies to gather information and detect trends with regard to the types of drug paraphernalia and evidence found at crime scenes. The KBI shall take into consideration this information and trends in this regard in developing its recommendations as provided below; and
 - Develop recommendations concerning the most appropriate controls for liquids, capsules, and gel capsules of ephedrine or pseudoephedrine. Recommendations shall be submitted to the Senate standing Committee on Judiciary and the House standing Committee on Corrections and Juvenile Justice.

- Cities and counties would be preempted from enacting or enforcing any law, ordinance, rule, regulation, or resolution in conflict with, in addition to, or supplemental to, the provisions of this act unless expressly authorized by law to do so.

- A minimum bail amount of at least \$50,000 cash or surety would be set for persons arrested and charged with a violation of the following crimes: the manufacture or sale of ingredients used to manufacture a controlled substance; the unlawful manufacture of a controlled substance; and a violation of a provision of the drug paraphernalia law prohibiting anhydrous ammonia or pressurized ammonia to be placed in containers not approved by the Kansas Department of Agriculture. A court would be allowed to set bail at a lesser amount if the court determines, on the record, the defendant is not likely to reoffend, the court imposes pretrial supervision, or the defendant agrees to participate in a drug treatment program.

- Any sheriff, police department or countywide law enforcement agency would be required to report, on forms approved by the Attorney General, any methamphetamine laboratory seizures and dump sites and any theft or attempted theft of anhydrous ammonia that occurs in the agency's jurisdiction within 30 days of the incident.

The bill is effective upon publication in the *Kansas Register* except provisions of the bill (sections 1 and 2) making pseudoephedrine and ephedrine a Schedule V drug and restricting sales to an individual of three packages will take effect on June 1, 2005.

Conference Committee Action

The Conference Committee agreed to the delayed effective date of June 1, 2005, for Sections 1 and 2 of the bill, made it unlawful for a pharmacy to sell (rather a person to buy) more than three packages of pseudoephedrine or ephedrine within a seven day period and made technical amendments.

Background

The bill was supported in person or by written testimony by the following: the Kansas Attorney General, the Kansas Bureau of Investigation, the Kansas Department of Social and Rehabilitation Services, the Kansas Peace Officers Association, the Kansas Sheriff's Association, the Kansas Association of Chiefs of Police, the Kansas Methamphetamine Prevention Project, the Olathe Police Chief, the Brown County Sheriff, the Kansas Agribusiness Retailers Association, the Kansas Farm Bureau, Kansans For Addiction Prevention, the Wichita Police Department, the Kansas Cooperative Council, the Pratt County Sheriff, the Kansas Medical Society, and others.

Proponents said the manufacture of methamphetamine is the number one public safety problem in Kansas. The State of Oklahoma passed a methamphetamine law similar to SB 27 making pseudoephedrine tablets a Schedule V drug in 2004 and the Oklahoma Bureau of Narcotics reported methamphetamine lab seizures have been down 80 percent since last April. Nearly half of the states are considering bills such as SB 27 this year.

Concerns were expressed about some aspects of SB 27 by the Kansas Pharmacists Association, the Kansas Food Dealers Association, Representative Scott Schwab, a pharmacist, the Kansas Pharmacists Coalition, and others. Concerns included the availability of these drugs which are now available over the counter in most grocery stores, drug stores, and convenience stores.

The Senate Judiciary Committee appointed a subcommittee to address concerns raised by various individuals and groups. The Senate Committee amendments were intended to address some of these concerns. The Subcommittee held four meetings, heard additional testimony on the bill, and consulted with the Director of the Kansas State Board of Pharmacy on details of the bill.

Sheriff Matt Samuels of Greenwood County was shot to death in January 2005 while serving warrants at a suspected methamphetamine lab located at a rural home near Virgil, Kansas.

The Senate Committee added the minimum bail requirements, the State Board of Pharmacy annual report requirements, and made other changes.

The Senate Committee of the Whole added the provision naming the law the Sheriff Matt Samuels Chemical Control Act and made an amendment to allow the sale of three packages during a single retail sale.

The House Committee amended the bill to do the following:

- Deleted the provision that would have prohibited retailers from selling four or more packages or containers of pseudoephedrine or ephedrine during a single retail transaction. The penalty for such a violation would be an unclassified misdemeanor with a minimum fine of \$200.
- Added language that would strike pharmacy "clerk" from the provision detailing who could sell controlled substances, and in its place, inserted pharmacy "intern" or "student."
- Added changes that are clarifying and technical in nature.

The fiscal note states the bill would have no fiscal effect on the state.