65-4102. Board of pharmacy to administer act; rules and regulations; authority to control; report to speaker of house and president of senate on substances proposed for scheduling, rescheduling or deletion; scheduling of the controlled substance analog or new drug. (a) The board shall administer this act and may adopt rules and regulations relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this state. All rules and regulations of the board shall be adopted in conformance with article 4 of chapter 77 of the Kansas Statutes Annotated, and amendments thereto, and the procedures prescribed by this act.

(b) Annually, the board shall submit to the speaker of the house of representatives and the president of the senate a report on substances proposed by the board for scheduling, rescheduling or deletion by the legislature with respect to any one of the schedules as set forth in this act and a report of the substances scheduled during the preceding calendar year under subsection (e), if any, along with the reasons for the proposal and the scheduling. In making a determination regarding the proposal to schedule, reschedule or delete a substance, the board shall consider the following:

(1) The actual or relative potential for abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the substance;

(4) the history and current pattern of abuse;

(5) the scope, duration and significance of abuse;

(6) the risk to the public health;

(7) the potential of the substance to produce psychological or physiological dependence liability; and

(8) whether the substance is an immediate precursor of a substance already controlled under this article.

(c) The board shall not include any nonnarcotic substance within a schedule if such substance may be lawfully sold over the counter without a prescription under the federal food, drug and cosmetic act.

(d) Authority to control under this section does not extend to distilled spirits, wine, malt beverages or tobacco.

(e) (1) Upon receipt of notice under K.S.A. 2018 Supp. 21-5715, and amendments thereto, or upon the board's finding of an imminent hazard to the public safety, the board shall initiate scheduling of the controlled substance analog or a new drug, as defined in this subsection, on an emergency basis pursuant to this subsection. The scheduling of a substance under this subsection expires on July 1 of the following calendar year after the adoption of the scheduling rule and regulation.

(2) With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors set forth in subsections (b)(4), (5) and (6), and may also consider clandestine importation, manufacture or distribution, and if available, information concerning the other factors set forth in subsection (b).

(3) A rule and regulation may not be adopted under this subsection until the board initiates a rulemaking proceeding under subsection (a) with respect to the substance. A rule and regulation adopted under this subsection shall expire on July 1 of the calendar year following the year of its adoption.

(4) As used in this subsection, "new drug" means: (A) 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 (B) 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 that has not, other than in such investigations, been used to a material extent or for a material time under such conditions. The term "new drug" shall not include amygdalin (laetrile).

History: L. 1972, ch. 234, § 2; L. 1974, ch. 258, § 2; L. 1982, ch. 269, § 1; L. 1994, ch. 160, § 2; L. 2009, ch. 32, § 54; L. 2017, ch. 57, § 3; May 4.