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By GRANT SCHULTE, Associated Press

LINCOLN, Neb. (AP) — A German pharmaceutical manufacturer whose drugs ended up in Nebraska's lethal injection supply never intended for state officials to obtain them and tried unsuccessfully to get the corrections department to return them, a company spokesman said Thursday.

Nebraska's corrections department was only able to buy potassium chloride in 2015 because one of its U.S. distributors made a mistake, said Fresenius Kabi spokesman Matt Kuhn.

His comments came after The Associated Press asked whether company officials were aware that the Nebraska Department of Correctional Services had bought their product for use as a lethal injection drug. The AP identified the manufacturer through an open records request, but a bill slated for debate in the Legislature would allow the state to hide the identities of its suppliers.

"This was a case in 2015 where human error by the distributor resulted in the Department of Corrections receiving our product," said Kuhn, who is based in Illinois. "We expressed our concerns and the distributor requested the (corrections department) return the product, which did not occur."

Kuhn said the company discovered the sale through an internal audit. While the company takes no formal position on capital punishment, it requires distributors to sign an agreement promising not to sell certain drugs to state corrections departments. "Our products are developed and approved solely for patient care, and we expressly restrict the sale of our products for use in lethal injection," he said.

Fresenius Kabi and another pharmaceutical company on Thursday asked a federal judge to prevent Arkansas from using its drugs in the planned execution of seven death row inmates later this month. The German company said the state may have improperly acquired potassium chloride.

A Nebraska Department of Correctional Services spokeswoman did not respond to a phone call or follow-up questions sent by email after the records request.

Potassium chloride was the only lethal injection drug Nebraska prison officials possessed before Republican Gov. Pete Ricketts approved a new protocol in January. The new rules give state corrections director Scott Frakes broad authority to decide which drugs to purchase, so he is no longer bound to use potassium chloride.

Death penalty opponents said the company's statement shows the importance of requiring the state to disclose its suppliers. The American Civil Liberties Union of Nebraska, a leading critic of capital punishment, called on lawmakers to reject the push for secrecy and launch an investigation.

"These shocking allegations are just the latest illustration of how Nebraska's death penalty is broken beyond repair," said Danielle Conrad, the group's executive director. The company's statement "underscores the need to honor Nebraska's strong tradition of open government and the need to ensure transparency in the death penalty process."

Death penalty supporters said companies shouldn't dictate how their products are used

once they're sold and blamed anti-death penalty activists for pressuring companies to stop selling drugs with legitimate medical purposes.

"Once you sell something to someone, it becomes their property," said Sen. John Kuehn of Heartwell. "Can you sell your car to someone and say, 'You can have this car just as long as you never sell it to a teenager?'"

Kuehn, a veterinarian, said he has lost access to some of the best drugs to treat animals because death penalty opposition has made them scarce. Kuehn has introduced a bill that would let the department conceal the names of its suppliers, saying it's critical for the state to proceed with executions. Debate on the measure is slated to begin next Wednesday.

Voters signaled their support for the death penalty last year when they overturned the Legislature's 2015 decision to abolish capital punishment. The issue was placed on the ballot through a referendum partially financed by Ricketts, who supports capital punishment.

Nebraska's original three-drug protocol called for sodium thiopental to induce unconsciousness, pancuronium bromide to paralyze an inmate's breathing and muscles, and potassium chloride to stop the heart. The state's potassium chloride supply from Fresenius Kabi expired in January, according to labels obtained through the records request.

In February, Frakes told a legislative committee it would be "very difficult" to acquire lethal injection drugs if the department was forced to identify its suppliers. Of the 31 states with the death penalty, 15 have enacted similar shield laws.

Robert Dunham, executive director of the Death Penalty Information Center, said shield laws make it easier for corrections departments to mislead distributors about how they

will use the drugs and helps distributors violate their contractual agreements not to sell drugs to prisons.

"It's difficult for companies to track, because there are legitimate sales to departments of corrections for medicinal purposes," said Dunham, whose group takes no stance on the death penalty but is critical of how it's administered.

Dunham said many pharmaceutical companies are worried about negative publicity and economic consequences in addition to moral concerns about the death penalty. In 2015, the Dutch public employees' pension fund sold off 25 million euros worth of Mylan shares after fund managers learned the Virginia Department of Corrections had obtained one of the pharmaceutical company's drugs for executions.

Nebraska had a similar run-in with a drug manufacturer in 2012 when Naari AG, a Swiss pharmaceutical company, issued a voluntary recall for sodium thiopental held by state officials.

Naari AG said at the time that the drug had been "illegally diverted from the company's supply chain," but state officials refused to return them and the U.S. Food and Drug Administration said it wouldn't enforce the voluntary recall. The Swiss company said the sodium thiopental Nebraska purchased through an India-based middleman was a sample intended to be used as an anesthetic in Zambia. Corrections officials under a previous administration insisted they had purchased the drug in a legitimate matter.