

HOUSE BILL No. 2358

By Representative Decker

2-12

AN ACT concerning crimes, punishment and criminal procedure; relating to a controlled substance; amending K.S.A. 65-4160 and 65-4162 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. Following arrest for a violation of K.S.A. 65-4160 or 65-4162, and amendments thereto, the law enforcement officer shall request a person to submit to a test or tests if the officer has probable cause to believe the person ingested a controlled substance. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the arrest. Such tests shall comply with the provisions of K.S.A. 8-1001, and amendments thereto. If the person refuses, the person's refusal shall be admissible in evidence against the person at any trial on a charge of K.S.A. 65-4160 or 65-4162, and amendments thereto.

Sec. 2. K.S.A. 65-4160 is hereby amended to read as follows: 65-4160. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to possess or have under such person's control any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments thereto. Except as provided in subsections (b) and (c), any person who violates this subsection shall be guilty of a drug severity level 4 felony.

(b) If any person who violates this section has one prior conviction under this section or a conviction for a substantially similar offense from another jurisdiction, then that person shall be guilty of a drug severity level 2 felony.

(c) If any person who violates this section has two or more prior convictions under this section or substantially similar offenses under the laws of another jurisdiction, then such person shall be guilty of a drug severity level 1 felony.

(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

(e) For purposes of the uniform controlled substances act, the pro-

1 prohibitions contained in this section shall apply to controlled substance an-
2 alogos as defined in subsection (bb) of K.S.A. 65-4101 and amendments
3 thereto.

4 (f) *For the purposes of this section, possess or have under such per-*
5 *son's control shall include internal possession.*

6 (g) The provisions of this section shall be part of and supplemental
7 to the uniform controlled substances act.

8 Sec. 3. K.S.A. 65-4162 is hereby amended to read as follows: 65-
9 4162. (a) Except as authorized by the uniform controlled substances act,
10 it shall be unlawful for any person to possess or have under such person's
11 control:

12 (1) Any depressant designated in subsection (e) of K.S.A. 65-4105,
13 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
14 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

15 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
16 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
17 65-4109, and amendments thereto;

18 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
19 4105 and amendments thereto or designated in subsection (g) of K.S.A.
20 65-4107 and amendments thereto or designated in subsection (g) of
21 K.S.A. 65-4109 and amendments thereto;

22 (4) any substance designated in subsection (g) of K.S.A. 65-4105, and
23 amendments thereto, and designated in subsection (c), (d), (e), (f) or (g)
24 of K.S.A. 65-4111 and amendments thereto; or

25 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
26 4109, and amendments thereto.

27 Except as otherwise provided, any person who violates this subsection
28 shall be guilty of a class A nonperson misdemeanor. If any person has a
29 prior conviction under this section, a conviction for a substantially similar
30 offense from another jurisdiction or a conviction of a violation of an or-
31 dinance of any city or resolution of any county for a substantially similar
32 offense if the substance involved was marijuana or tetrahydrocannabinol
33 as designated in subsection (d) of K.S.A. 65-4105 and amendments
34 thereto, then such person shall be guilty of a drug severity level 4 felony.

35 (b) It shall not be a defense to charges arising under this section that
36 the defendant was acting in an agency relationship on behalf of any other
37 party in a transaction involving a controlled substance.

38 (c) For purposes of the uniform controlled substances act, the pro-
39 hibitions contained in this section shall apply to controlled substance an-
40 alogos as defined in subsection (bb) of K.S.A. 65-4101 and amendments
41 thereto.

42 (d) *For purposes of this section, possess or have under such person's*
43 *control shall include internal possession.*

1 (e) The provisions of this section shall be part of and supplemental
2 to the uniform controlled substances act.

3 Sec. 4. K.S.A. 65-4160 and 65-4162 are hereby repealed.

4 Sec. 5. This act shall take effect and be in force from and after its
5 publication in the statute book.

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