

Substitute for HOUSE BILL No. 2777

By Committee on Corrections and Juvenile Justice

2-24

9 AN ACT concerning controlled substances; relating to manufacturing;
10 amending K.S.A. 65-4161 and 65-4163 and repealing the existing
11 sections.

12
13 WHEREAS, The Kansas Supreme Court in *State v. McAdam*, no.
14 88,139, filed January 30, 2004, has noted a conflict and ambiguity in the
15 relationship of statutes, legislative intent and criminal acts covered by
16 K.S.A. 65-4159 and 65-4161; and

17 WHEREAS, The Legislature finds that additional clarification will be
18 helpful to the courts and improve public safety: Now, therefore,

19
20 *Be it enacted by the Legislature of the State of Kansas:*

21 Section 1. K.S.A. 65-4161 is hereby amended to read as follows: 65-
22 4161. (a) Except as authorized by the uniform controlled substances act,
23 it shall be unlawful for any person to sell, offer for sale or have in such
24 person's possession with intent to sell, deliver or distribute; prescribe;
25 administer; deliver; distribute; *or dispense or compound* any opiates,
26 opium or narcotic drugs, or any stimulant designated in subsection (d)(1),
27 (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments thereto. Except as
28 provided in subsections (b), (c) and (d), any person who violates this
29 subsection shall be guilty of a drug severity level 3 felony.

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

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

38 (d) Notwithstanding any other provision of law, upon conviction of
39 any person for a first offense pursuant to subsection (a), such person shall
40 be guilty of a drug severity level 2 felony if such person is 18 or more
41 years of age and the substances involved were possessed with intent to
42 sell, deliver or distribute; sold or offered for sale in or on, or within 1,000
43 feet of any school property upon which is located a structure used by a

1 unified school district or an accredited nonpublic school for student in-
2 struction or attendance or extracurricular activities of pupils enrolled in
3 kindergarten or any of the grades one through 12.

4 Nothing in this subsection shall be construed as requiring that school
5 be in session or that classes are actually being held at the time of the
6 offense or that children must be present within the structure or on the
7 property during the time of any alleged criminal act. If the structure or
8 property meets the description above, the actual use of that structure or
9 property at the time alleged shall not be a defense to the crime charged
10 or the sentence imposed.

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

14 (f) For purposes of the uniform controlled substances act, the pro-
15 hibitions contained in this section shall apply to controlled substance an-
16 alogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments
17 thereto.

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

20 Sec. 2. K.S.A. 65-4163 is hereby amended to read as follows: 65-
21 4163. (a) Except as authorized by the uniform controlled substances act,
22 it shall be unlawful for any person to sell, offer for sale or have in such
23 person's possession with the intent to sell, deliver or distribute; cultivate;
24 prescribe; administer; deliver; distribute; ~~or dispense or compound.~~

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

28 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
29 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
30 65-4109, and amendments thereto;

31 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
32 4105, and amendments thereto or designated in subsection (g) of K.S.A.
33 65-4107 and amendments thereto or designated in subsection (g) of
34 K.S.A. 65-4109 and amendments thereto;

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

38 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
39 4109, and amendments thereto.

40 Except as provided in subsection (b), any person who violates this sub-
41 section shall be guilty of a drug severity level 3 felony.

42 (b) Notwithstanding any other provision of law, upon conviction of
43 any person pursuant to subsection (a) for an offense in which the sub-

1 stances involved were possessed with intent to sell, sold or offered for
2 sale in or on, or within 1,000 feet of any school property upon which is
3 located a structure used by a unified school district or an accredited non-
4 public school for student instruction or attendance or extracurricular ac-
5 tivities of pupils enrolled in kindergarten or any of the grades one through
6 12 and such person is 18 or more years of age, such person shall be guilty
7 of a drug severity level 2 felony.

8 Nothing in this subsection shall be construed as requiring that school
9 be in session or that classes are actually being held at the time of the
10 offense or that children must be present within the structure or on the
11 property during the time of any alleged criminal act. If the structure or
12 property meets the description above, the actual use of that structure or
13 property at the time alleged shall not be a defense to the crime charged
14 or the sentence imposed.

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

18 (d) For purposes of the uniform controlled substances act, the pro-
19 hibitions contained in this section shall apply to controlled substance an-
20 alogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments
21 thereto.

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

24 New Sec. 3. On or before the effective date of this act, any person
25 violating the provisions of K.S.A. 65-4159, and amendments thereto, upon
26 conviction, is guilty of a drug severity level 1 felony. Such sentence shall
27 not be reduced to violating the provisions of K.S.A. 65-4161 or 65-4163,
28 and amendments thereto, because prior to this act, such statutes prohib-
29 ited the identical conduct.

30 New Sec. 4. If any provisions of this act or the application thereof to
31 any person or circumstances is held invalid, the invalidity shall not affect
32 other provisions or applications of the act which can be given effect with-
33 out the invalid provisions or application and, to this end, the provisions
34 of this act are severable.

35 Sec. 5. K.S.A. 65-4161 and 65-4163 are hereby repealed.

36 Sec. 6. This act shall take effect and be in force from and after its
37 publication in the Kansas register.