

AN ACT concerning crimes and punishments; relating to crimes involving controlled substances; amending K.S.A. 2012 Supp. 21-5701 and 21-5708 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 21-5701 is hereby amended to read as follows: 21-5701. As used in K.S.A. 2012 Supp. 21-5701 through 21-5717, and amendments thereto: (a) (1) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(2) "Controlled substance" does not include marijuana possessed or cultivated by a person if such person's practitioner has recommended that use of marijuana may benefit such person's medical condition.

(b) (1) "Controlled substance analog" means a substance that is intended for human consumption, and:

(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;

(B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

(C) with respect to a particular individual, which the individual represents or intends to

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have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

(2) "Controlled substance analog" does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application; or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act (21 U.S.C. § 355) to the extent conduct with respect to the substance is permitted by the exemption.

(c) "Cultivate" means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

(d) "Distribute" means the actual, constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship. "Distribute" includes, but is not limited to, sale, offer for sale or any act that causes some item to be transferred from one person to another. "Distribute" does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act or otherwise authorized by law.

(e) "Drug" means:

(1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;

(2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;

(3) substances, other than food, intended to affect the structure or any function of the body of man or animals; and

(4) substances intended for use as a component of any article specified in paragraph (1), (2) or (3). It does not include devices or their components, parts or accessories.

(f) "Drug paraphernalia" means all equipment and materials of any kind which are used, or primarily intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance and in violation of this act.

"Drug paraphernalia" does not include equipment or materials used or primarily intended or designed for use by a person using marijuana if such person's practitioner has recommended that use of marijuana may benefit such person's medical condition. "Drug paraphernalia" shall include, but is not limited to:

(1) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(3) isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;

(4) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) scales and balances used or intended for use in weighing or measuring controlled substances;

(6) diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;

(7) separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;

(9) capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;

(10) containers and other objects used or intended for use in storing or concealing controlled substances;

(11) hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;

(12) objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;

(C) carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation;

(D) smoking and carburetion masks;

(E) roach clips, objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(F) miniature cocaine spoons and cocaine vials;

(G) chamber smoking pipes;

(H) carburetor smoking pipes;

(I) electric smoking pipes;

(J) air-driven smoking pipes;

(K) chillums;

(L) bongs;

(M) ice pipes or chillers;

(N) any smoking pipe manufactured to disguise its intended purpose;

(O) wired cigarette papers; or

(P) cocaine freebase kits.

"Drug paraphernalia" shall not include any products, chemicals or materials described in subsection (a) of K.S.A. 2012 Supp. 21-5709, and amendments thereto.

(g) "Immediate precursor" means a substance which the board of pharmacy has found

to be and by rules and regulations designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(h) "Isomer" means all enantiomers and diastereomers.

(i) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. "Manufacture" does not include:

(1) The preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:

(A) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(B) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance; or

(2) the addition of diluents or adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose or lactose, which are intended for use in cutting a controlled substance.

(j) "Marijuana" means all parts of all varieties of the plant Cannabis whether growing or

not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(k) "Minor" means a person under 18 years of age.

(l) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(m) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming

or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under K.S.A. 65-4102, and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). "Opiate" does include its racemic and levorotatory forms.

(n) "Opium poppy" means the plant of the species *Papaver somniferum* L. except its seeds.

(o) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

(p) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(q) "Possession" means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

(r) "School property" means property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12. This definition shall not be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the above definition, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

(s) "Simulated controlled substance" means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its



label or accompanying promotional material that the product simulates the effect of a controlled substance.

Sec. 2. K.S.A. 2012 Supp. 21-5708 is hereby amended to read as follows: 21-5708. (a)

Unlawfully ~~obtaining or possessing~~ a prescription-only drug is:

(1) Making, altering or signing ~~of~~ a prescription order by a person other than a practitioner or a mid-level practitioner;

(2) ~~distribution of~~ distributing a prescription order, knowing it to have been made, altered or signed by a person other than a practitioner or a mid-level practitioner;

(3) ~~possession of~~ possessing a prescription order with intent to distribute it and knowing it to have been made, altered or signed by a person other than a practitioner or a mid-level practitioner;

(4) ~~possession of~~ possessing a prescription-only drug knowing it to have been obtained pursuant to a prescription order made, altered or signed by a person other than a practitioner or a mid-level practitioner; ~~or~~

(5) providing false information, with the intent to deceive, to a practitioner or mid-level practitioner for the purpose of obtaining a prescription-only drug; or

(6) knowingly possessing a prescription-only drug by a person other than the holder of a valid prescription order.

(b) Unlawfully selling a prescription-only drug is unlawfully obtaining or possessing a prescription-only drug, as defined in subsection (a), and:

(1) Selling the prescription-only drug ~~so obtained~~;

(2) offering for sale the prescription-only drug ~~so obtained~~; or

(3) possessing with intent to sell the prescription-only drug ~~so obtained~~.

(c) (1) Unlawfully obtaining or possessing a prescription-only drug is a:

(A) Class A nonperson misdemeanor, except as provided in subsection (c)(1)(B); and

(B) nondrug severity level 9, nonperson felony if that person has a prior conviction of under this section, K.S.A. 2010 Supp. 21-36a08, prior to its transfer, or K.S.A. 21-4214, prior to its repeal.

(2) Unlawfully selling a prescription-only drug is a nondrug severity level 6, nonperson felony.

(d) As used in this section:

(1) "Holder of a valid prescription order" means: (A) A person to whom a valid prescription order is issued for the purpose of obtaining a prescription-only drug; and (B) such holder's implicitly or explicitly authorized agent for the purpose of facilitating delivery of such prescription-only drug to such holder.

~~(1)~~ (2) "Pharmacist," "practitioner," "mid-level practitioner" and "prescription-only drug" shall have the same meanings ascribed thereto by as defined in K.S.A. 65-1626, and amendments thereto.

~~(2)~~ (3) "Prescription order" means an order transmitted in writing, orally, telephonically or by other means of communication for a prescription-only drug to be filled by a pharmacist. "Prescription order" does not mean a drug dispensed pursuant to such an order.

(e) The provisions of this section shall not be applicable to prosecutions involving prescription-only drugs which could be brought under K.S.A. 2012 Supp. 21-5705 or 21-5706, and amendments thereto.

Sec. 3. K.S.A. 2012 Supp. 21-5701 and 21-5708 are hereby repealed.

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

