

As Amended by House Committee

Session of 2023

HOUSE BILL No. 2215

By Committee on Judiciary

1-30

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to crimes involving controlled substances; creating the crime of
3 utilizing a drug-masking product; providing criminal penalties therefor;
4 amending K.S.A. 2022 Supp. 21-5701 and repealing the existing
5 section; also repealing K.S.A. 2022 Supp. 21-5701b.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) Utilizing a drug-masking product means
9 possessing, distributing, delivering or selling a drug-masking product.

10 (b) Utilizing a drug-masking product is a class A nonperson
11 misdemeanor.

12 (c) This section shall be a part of and supplemental to article 57 of
13 chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

14 Sec. 2. K.S.A. 2022 Supp. 21-5701 is hereby amended to read as
15 follows: 21-5701. As used in ~~K.S.A. 2022 Supp. 21-5701 through 21-5717~~
16 *article 57 of chapter 21 of the Kansas Statutes Annotated*, and
17 amendments thereto:

18 (a) "Controlled substance" means any drug, substance or immediate
19 precursor included in any of the schedules designated in K.S.A. 65-4105,
20 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

21 (b) (1) "Controlled substance analog" means a substance that is
22 intended for human consumption, and at least one of the following:

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

27 (B) the substance has a stimulant, depressant or hallucinogenic effect
28 on the central nervous system substantially similar to the stimulant,
29 depressant or hallucinogenic effect on the central nervous system of a
30 controlled substance included in the schedules designated in K.S.A. 65-
31 4105 or 65-4107, and amendments thereto; or

32 (C) with respect to a particular individual, such individual represents
33 or intends the substance to have a stimulant, depressant or hallucinogenic
34 effect on the central nervous system substantially similar to the stimulant,
35 depressant or hallucinogenic effect on the central nervous system of a
36 controlled substance included in the schedules designated in K.S.A. 65-

1 4105 or 65-4107, and amendments thereto.

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

3 (A) A controlled substance;

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

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

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

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

20 (e) (1) "Drug" means:

21 (A) Substances recognized as drugs in the official United States
22 pharmacopeia, official homeopathic pharmacopoeia of the United States or
23 official national formulary or any supplement to any of them;

24 (B) substances intended for use in the diagnosis, cure, mitigation,
25 treatment or prevention of disease in humans or animals;

26 (C) substances, other than food, intended to affect the structure or any
27 function of the body of humans or animals; and

28 (D) substances intended for use as a component of any article
29 specified in subparagraph (A), (B) or (C).

30 (2) "Drug" does not include devices or their components, parts or
31 accessories.

32 (f) ~~"Drug-masking product" means synthetic urine, human urine, a~~
33 ~~substance designed to be added to human urine or a substance designed to~~
34 ~~be added to or used on human hair or oral fluid that is used, or primarily~~
35 ~~intended or designed for use, for the purpose of defrauding an alcohol or~~
36 ~~drug screening test:~~

37 **(1) Synthetic urine or a substance designed to be added to human**
38 **urine, hair or oral fluid that was designed for use and is used to**
39 **defraud an alcohol or drug screening test; or**

40 **(2) human urine of another person that is used for the purpose of**
41 **defrauding an alcohol or drug screening test.**

42 (g) "Drug paraphernalia" means all equipment and materials of any
43 kind that are used, or primarily intended or designed for use in planting,

1 propagating, cultivating, growing, harvesting, manufacturing,
2 compounding, converting, producing, processing, preparing, testing,
3 analyzing, packaging, repackaging, storing, containing, concealing,
4 injecting, ingesting, inhaling or otherwise introducing into the human body
5 a controlled substance and in violation of this act. "Drug paraphernalia"
6 shall include, but is not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (D) smoking and carburetion masks;
- 2 (E) roach clips, objects used to hold burning material, such as a
- 3 marijuana cigarette, that has become too small or too short to be held in
- 4 the hand;
- 5 (F) miniature cocaine spoons and cocaine vials;
- 6 (G) chamber smoking pipes;
- 7 (H) carburetor smoking pipes;
- 8 (I) electric smoking pipes;
- 9 (J) air-driven smoking pipes;
- 10 (K) chillums;
- 11 (L) bongos;
- 12 (M) ice pipes or chillers;
- 13 (N) any smoking pipe manufactured to disguise its intended purpose;
- 14 (O) wired cigarette papers; or
- 15 (P) cocaine freebase kits.

16 "Drug paraphernalia" ~~shall~~ *does* not include any products, chemicals or
17 materials described in K.S.A. 2022 Supp. 21-5709(a), and amendments
18 thereto.

19 ~~(g)~~(h) "Immediate precursor" means a substance that the state board
20 of pharmacy has found to be and by rules and regulations designates as
21 being the principal compound commonly used or produced primarily for
22 use and that is an immediate chemical intermediary used or likely to be
23 used in the manufacture of a controlled substance, the control of which is
24 necessary to prevent, curtail or limit manufacture.

25 ~~(h)~~(i) "Isomer" means all enantiomers and diastereomers.

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

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

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

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

42 (2) the addition of diluents or adulterants, including, but not limited to,
43 to, quinine hydrochloride, mannitol, mannite, dextrose or lactose that are

1 intended for use in cutting a controlled substance.

2 ~~(j)~~(k) "Marijuana" means all parts of all varieties of the plant
3 Cannabis whether growing or not, the seeds thereof, the resin extracted
4 from any part of the plant and every compound, manufacture, salt,
5 derivative, mixture or preparation of the plant, its seeds or resin.
6 "Marijuana" does not include:

7 (1) The mature stalks of the plant, fiber produced from the stalks, oil
8 or cake made from the seeds of the plant, any other compound,
9 manufacture, salt, derivative, mixture or preparation of the mature stalks,
10 except the resin extracted therefrom, fiber, oil or cake or the sterilized seed
11 of the plant that is incapable of germination;

12 (2) any substance listed in schedules II through V of the uniform
13 controlled substances act;

14 (3) drug products approved by the United States food and drug
15 administration as of the effective date of this act;

16 (4) cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-
17 2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol); or

18 (5) industrial hemp as defined in K.S.A. 2-3901, and amendments
19 thereto, when cultivated, produced, possessed or used for activities
20 authorized by the commercial industrial hemp act.

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

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

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

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

31 (3) opium poppy and poppy straw;

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

37 ~~(m)~~(n) "Opiate" means any substance having an addiction-forming or
38 addiction-sustaining liability similar to morphine or being capable of
39 conversion into a drug having addiction-forming or addiction-sustaining
40 liability. "Opiate" does not include, unless specifically designated as
41 controlled under K.S.A. 65-4102, and amendments thereto, the
42 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
43 (dextromethorphan). "Opiate" does include its racemic and levorotatory

1 forms.

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

4 ~~(n)(p)~~ "Person" means an individual, corporation, government or
5 governmental subdivision or agency, business trust, estate, trust,
6 partnership, association or any other legal entity.

7 ~~(n)(q)~~ "Poppy straw" means all parts, except the seeds, of the opium
8 poppy, after mowing.

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

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

24 (s) "Simulated controlled substance" means any product that
25 identifies itself by a common name or slang term associated with a
26 controlled substance and that indicates on its label or accompanying
27 promotional material that the product simulates the effect of a controlled
28 substance.

29 (t) *"Synthetic urine" means a substance that is designed to simulate*
30 *the composition, chemical properties, physical appearance or physical*
31 *properties of human urine.*

32 Sec. 3. K.S.A. 2022 Supp. 21-5701 and 21-5701b are hereby
33 repealed.

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