AN ACT concerning crimes, punishment and criminal procedure; enacting the legalized homegrown psilocybin mushroom act of 2022; relating to unlawful cultivation or distribution of controlled substances; possession of controlled substances; psilocyn and psilocybin; reducing criminal penalties therefor; amending K.S.A. 2021 Supp. 21-5705 and 21-5706 and repealing the existing sections.

WHEREAS, The provisions of this act shall be known as the legalized homegrown psilocybin mushroom act of 2022.

Now, therefore:

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

Section 1. K.S.A. 2021 Supp. 21-5705 is hereby amended to read as follows: 21-5705. (a) It shall be unlawful for any person to distribute or possess with the intent to distribute any of the following controlled substances or controlled substance analogs thereof:

1. Opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107(d)(1), (d)(3) or (f)(1), and amendments thereto;

2. any depressant designated in subsection (e) of K.S.A. 65-4105(e), subsection (e) of K.S.A. 65-4107(e), subsection (b) or (e) of K.S.A. 65-4109(b) or (c) or subsection (b) of K.S.A. 65-4111(b), and amendments thereto;

3. any stimulant designated in subsection (f) of K.S.A. 65-4105(f), subsection (d)(2), (d)(4), (d)(5) or (f)(2) of K.S.A. 65-4107(d)(2), (d)(4), (d)(5) or (f)(2) or subsection (e) of K.S.A. 65-4109(e), and amendments thereto;

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

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

6. any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109(f), and amendments thereto; or

7. any substance designated in subsection (h) of K.S.A. 65-4105(h), and amendments thereto.
(b) It shall be unlawful for any person to distribute or possess with
the intent to distribute a controlled substance or a controlled substance
analog designated in K.S.A. 65-4113, and amendments thereto.
(c) It shall be unlawful for any person to cultivate any controlled
substance or controlled substance analog listed in subsection (a).
(d) (1) Except as provided further, violation of subsection (a) is a:
   (A) Drug severity level 4 felony if the quantity of the material was
   less than 3.5 grams;
   (B) drug severity level 3 felony if the quantity of the material was at
   least 3.5 grams but less than 100 grams;
   (C) drug severity level 2 felony if the quantity of the material was at
   least 100 grams but less than 1 kilogram; and
   (D) drug severity level 1 felony if the quantity of the material was 1
   kilogram or more.
   (2) Violation of subsection (a) with respect to material containing any
   quantity of marijuana, or an analog thereof, is a:
   (A) Drug severity level 4 felony if the quantity of the material was
   less than 25 grams;
   (B) drug severity level 3 felony if the quantity of the material was at
   least 25 grams but less than 450 grams;
   (C) drug severity level 2 felony if the quantity of the material was at
   least 450 grams but less than 30 kilograms; and
   (D) drug severity level 1 felony if the quantity of the material was 30
   kilograms or more.
   (3) Violation of subsection (a) with respect to material containing any
   quantity of heroin, as defined by subsection (c)(1) of K.S.A. 65-4105(c)
   (1), and amendments thereto, or methamphetamine, as defined by
   subsection (d)(3) or (f)(1) of K.S.A. 65-4107(d)(3) or (f)(1), and
   amendments thereto, or an analog thereof, is a:
   (A) Drug severity level 4 felony if the quantity of the material was
   less than 1 gram;
   (B) drug severity level 3 felony if the quantity of the material was at
   least 1 gram but less than 3.5 grams;
   (C) drug severity level 2 felony if the quantity of the material was at
   least 3.5 grams but less than 100 grams; and
   (D) drug severity level 1 felony if the quantity of the material was
   100 grams or more.
   (4) Violation of subsection (a) with respect to material containing any
   quantity of a controlled substance designated in K.S.A. 65-4105, 65-4107,
   65-4109 or 65-4111, and amendments thereto, or an analog thereof,
distributed by dosage unit, is a:
   (A) Drug severity level 4 felony if the number of dosage units was
   fewer than 10;
(B) drug severity level 3 felony if the number of dosage units was at least 10 but less than 100;
(C) drug severity level 2 felony if the number of dosage units was at least 100 but less than 1,000; and
(D) drug severity level 1 felony if the number of dosage units was 1,000 or more.

(5) Violation of subsection (a) with respect to material that is psilocyn or psilocybin, as designated in K.S.A. 65-4105(d), and amendments thereto, is a:
(A) Class B nonperson misdemeanor if the quantity of psilocyn or psilocybin is 100 grams or more;
(B) class A nonperson misdemeanor if the quantity of psilocyn or psilocybin is 100 grams or more on a second or subsequent conviction; and
(C) a civil penalty with a fine not to exceed $250 if the quantity of psilocyn or psilocybin is less than 100 grams.

(6) For any violation of subsection (a), the severity level of the offense shall be increased one level if the controlled substance or controlled substance analog was distributed or possessed with the intent to distribute on or within 1,000 feet of any school property.

(7) Violation of subsection (b) is a:
(A) Class A person misdemeanor, except as provided in subsection (d)(6)(B); and
(B) nondrug severity level 7, person felony if the substance was distributed to or possessed with the intent to distribute to a minor.

(8)(A) Except as provided in subparagraph (B), violation of subsection (c) is a:
(A)(i) Drug severity level 3 felony if the number of plants cultivated was more than 4 but fewer than 50;
(B)(ii) drug severity level 2 felony if the number of plants cultivated was at least 50 but fewer than 100; and
(C)(iii) drug severity level 1 felony if the number of plants cultivated was 100 or more.

(B) It shall not be a violation of subsection (c) to cultivate psilocyn or psilocybin, as designated in K.S.A. 65-4105(d), and amendments thereto.

(e) In any prosecution under this section, there shall be a rebuttable presumption of an intent to distribute if any person possesses the following quantities of controlled substances or analogs thereof:
(1) 450 grams or more of marijuana;
(2) 3.5 grams or more of heroin or methamphetamine;
(3) 100 dosage units or more containing a controlled substance; or
(4) 100 grams or more of any other controlled substance.

(f) It shall not be a defense to charges arising under this section that...
the defendant:
(1) Was acting in an agency relationship on behalf of any other party
in a transaction involving a controlled substance or controlled substance
analog;
(2) did not know the quantity of the controlled substance or
controlled substance analog; or
(3) did not know the specific controlled substance or controlled
substance analog contained in the material that was distributed or
possessed with the intent to distribute.

(g) It shall be a defense to charges arising under this section that the
defendant was gifted the controlled substance if the substance involved is
psilocyn or psilocybin, as designated in K.S.A. 65-4105(d), and
amendments thereto.

(h) As used in this section:
(1) "Material" means the total amount of any substance, including a
compound or a mixture, which contains any quantity of a controlled
substance or controlled substance analog.
(2) "Dosage unit" means a controlled substance or controlled
substance analog distributed or possessed with the intent to distribute as a
discrete unit, including but not limited to, one pill, one capsule or one
microdot, and not distributed by weight.
(A) For steroids, or controlled substances in liquid solution legally
manufactured for prescription use, or an analog thereof, "dosage unit"
means the smallest medically approved dosage unit, as determined by the
label, materials provided by the manufacturer, a prescribing authority,
licensed health care professional or other qualified health authority.
(B) For illegally manufactured controlled substances in liquid
solution, or controlled substances in liquid products not intended for
ingestion by human beings, or an analog thereof, "dosage unit" means 10
milligrams, including the liquid carrier medium, except as provided in
subsection (g)(2)(C).
(C) For lysergic acid diethylamide (LSD) in liquid form, or an analog
thereof, a dosage unit is defined as 0.4 milligrams, including the liquid
medium.

Sec. 2. K.S.A. 2021 Supp. 21-5706 is hereby amended to read as
follows: 21-5706. (a) It shall be unlawful for any person to possess any
opiates, opium or narcotic drugs, or any stimulant designated in K.S.A. 65-
4107(d)(1), (d)(3) or (f)(1), and amendments thereto, or a controlled
substance analog thereof.
(b) It shall be unlawful for any person to possess any of the following
controlled substances or controlled substance analogs thereof:
(1) Any depressant designated in K.S.A. 65-4105(e), 65-4107(e), 65-
4109(b) or (c) or 65-4111(b), and amendments thereto;
(2) any stimulant designated in K.S.A. 65-4105(f), 65-4107(d)(2), (d)
   (4), (d)(5) or (f)(2) or 65-4109(e), and amendments thereto;
(3) any hallucinogenic drug designated in K.S.A. 65-4105(d), 65-
   4107(g) or 65-4109(g), and amendments thereto;
(4) any substance designated in K.S.A. 65-4105(g) and 65-4111(c),
   (d), (e), (f) or (g), and amendments thereto;
(5) any anabolic steroids as defined in K.S.A. 65-4109(f), and
   amendments thereto;
(6) any substance designated in K.S.A. 65-4113, and amendments
   thereto; or
(7) any substance designated in K.S.A. 65-4105(h), and amendments
   thereto.
(c) (1) Violation of subsection (a) is a drug severity level 5 felony.
   (2) Except as provided in subsection (c)(3) or (c)(4):
      (A) Violation of subsection (b) is a class A nonperson misdemeanor,
         except as provided in subparagraph (B); and
         (B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug
         severity level 5 felony if that person has a prior conviction under such
         subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially
         similar offense from another jurisdiction, or under any city ordinance or
         county resolution for a substantially similar offense if the substance
         involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana
         as designated in K.S.A. 65-4105(d), and amendments thereto, or any
         substance designated in K.S.A. 65-4105(h), and amendments thereto, or an
         analog thereof.
   (3) If the substance involved is marijuana, as designated in K.S.A.
       65-4105(d), and amendments thereto, or tetrahydrocannabinols, as
       designated in K.S.A. 65-4105(h), and amendments thereto, violation of
       subsection (b) is a:
          (A) Class B nonperson misdemeanor, except as provided in
              subparagraphs (B) and (C);
          (B) class A nonperson misdemeanor if that person has a prior
              conviction under such subsection, under K.S.A. 65-4162, prior to its
              repeal, under a substantially similar offense from another jurisdiction, or
              under any city ordinance or county resolution for a substantially similar
              offense; and
          (C) drug severity level 5 felony if that person has two or more prior
              convictions under such subsection, under K.S.A. 65-4162, prior to its
              repeal, under a substantially similar offense from another jurisdiction, or
              under any city ordinance or county resolution for a substantially similar
              offense.
   (4) (A) If the substance involved is psilocyin or psilocybin, as
       designated in K.S.A. 65-4105(d), and amendments thereto, violation of
subsection (b) is a:

(i) Class C nonperson misdemeanor if the amount involved is over 100 grams; and

(ii) civil penalty of an amount not to exceed $250 if the amount involved is more than 50 grams but less than 100 grams.

(B) It shall not be a violation of this section if a person possesses less than 50 grams of psilocyn or psilocybin, as designated in K.S.A. 65-4105(d), and amendments thereto.

(d) It shall be an affirmative defense to prosecution under this section arising out of a person's possession of any cannabidiol treatment preparation if the person:

(1) Has a debilitating medical condition, as defined in K.S.A. 2021 Supp. 65-6235, and amendments thereto, or is the parent or guardian of a minor child who has such debilitating medical condition;

(2) is possessing a cannabidiol treatment preparation, as defined in K.S.A. 2021 Supp. 65-6235, and amendments thereto, that is being used to treat such debilitating medical condition; and

(3) has possession of a letter, at all times while the person has possession of the cannabidiol treatment preparation, that:

(A) Shall be shown to a law enforcement officer on such officer's request;

(B) is dated within the preceding 15 months and signed by the physician licensed to practice medicine and surgery in Kansas who diagnosed the debilitating medical condition;

(C) is on such physician's letterhead; and

(D) identifies the person or the person's minor child as such physician's patient and identifies the patient's debilitating medical condition.

(e) 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 or controlled substance analog.

Sec. 3. K.S.A. 2021 Supp. 21-5705 and 21-5706 are hereby repealed.

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