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

Section 1. K.S.A. 2010 Supp. 21-36a01 is hereby amended to read as follows: 21-36a01. As used in K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto:

(a) "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.

(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 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" 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.
(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 and includes any packaging or
repackaging of the substance or labeling or relabeling of its container.
"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:

(1A) 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

(1B) 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;

(2) the addition of dilutents or adulterants, including, but not limited
to, quinine hydrochloride, manitol, mannite, extrose 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. 2010 Supp. 21-36a05 is hereby amended to read as follows: 21-36a05. (a) It shall be unlawful for any person to *cultivate*,
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, and amendments
thereof;
(2) any depressant designated in subsection (e) of K.S.A. 65-4105,
subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
or subsection (b) of K.S.A. 65-4111, and amendments thereto;
(3) any stimulant designated in subsection (f) of K.S.A. 65-4105,
subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of
K.S.A. 65-4109, and amendments thereto;
(4) any hallucinogenic drug designated in subsection (d) of K.S.A.
65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A.
65-4109, and amendments thereto;
(5) any substance designated in subsection (g) of K.S.A. 65-4105
and subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments
thereof; or
(6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
4109, 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.
(vi) Violation of subsection (a) is a drug severity level 3 felony,
except that:
(A) Violation of subsection (a) is a drug severity level 2 felony if the
trier of fact makes a finding that the offender is 18 or more years of age
and the substance was distributed to or possessed with intent to distribute
to a minor or the violation occurs on or within 1,000 feet of any school
property;
(B) violation of subsection (a)(1) is a drug severity level 2 felony if
that person has one prior conviction under subsection (a)(1), under
K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense
from another jurisdiction; and
(C) violation of subsection (a)(1) is a drug severity level 1 felony if
that person has two prior convictions under subsection (a)(1), under
K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense
from another jurisdiction.
(2) Violation of subsection (b) is a class A nonperson misdemeanor,
except that, violation of subsection (b) is a drug severity level 4 felony if
the substance was distributed to or possessed with the intent to distribute
to a child under 18 years of age.
(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.

(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; or
(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; or
(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 or methamphetamine, 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; or
(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, 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; or
(D) drug severity level 1 felony if the number of dosage units was
1,000 or more.
(5) 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.
(6) Violation of subsection (b) is a class A person misdemeanor
except as provided in subsection (d)(7).
(7) Violation of subsection (b) is a severity level 7, person felony if
the substance was distributed to or possessed with the intent to distribute
to a minor.
(8) Violation of subsection (c) is a:
(A) Drug severity level 3 felony if the number of plants cultivated
was more than 4 but fewer than 50;
(B) drug severity level 2 felony if the number of plants cultivated
was at least 50 but fewer than 100; or
(C) drug severity level 1 felony if the number of plants cultivated
was 100 or more.
(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;
(2) did not know the quantity of the controlled substance; or
(3) did not know the specific controlled substance contained in the
material that was distributed or possessed with the intent to distribute.
(g) 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.
(2) “Dosage unit” means a controlled substance 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, “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, “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, a dosage
unit is defined as 0.4 milligrams, including the liquid medium.

Sec. 3. K.S.A. 2010 Supp. 21-36a09 is hereby amended to read as
follows: 21-36a09. (a) It shall be unlawful for any person to possess
ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium-
metal, iodine, anhydrous ammonia, pressurized ammonia or
phenylpropanolamine, or their salts, isomers or salts of isomers with an
intent to use the product to manufacture a controlled substance:

(b) It shall be unlawful for any person to use or possess with intent
to use any drug paraphernalia to:

(1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or
distribute a controlled substance;

(2) store, contain, conceal, inject, ingest, inhale or otherwise—
introduce a controlled substance into the human body.

(e) It shall be unlawful for any person to use or possess with intent
to use anhydrous ammonia or pressurized ammonia in a container not
approved for that chemical by the Kansas department of agriculture.

(d) It shall be unlawful for any person to purchase, receive or
otherwise acquire at retail any compound, mixture or preparation
containing more than 3.6 grams of pseudoephedrine base or ephedrine-
base in any single transaction or any compound, mixture or preparation
containing more than nine grams of pseudoephedrine base or ephedrine-
base within any 30-day period:

(e)(1) Violation of subsection (a) is a drug severity level 2 felony;
(2) violation of subsection (b)(1) is a drug severity level 4 felony,
except that violation of subsection (b)(1) is a class A nonperson-
misdemeanor if the drug paraphernalia was used to cultivate fewer than
five marijuana plants;

(3) violation of subsection (b)(2) is a class A noneperson-
misdemeanor;

(4) violation of subsection (c) is a drug severity level 4 felony;
(5) violation of subsection (d) is a class A nonperson misdemeanor.

(f) For persons arrested and charged under subsection (a) or (e), bail
shall be at least $50,000 cash or surety, unless the court determines, on
the record, that the defendant is not likely to reoffend; the court imposes


pretrial supervision or the defendant agrees to participate in a licensed or
certified drug treatment program.

(a) Possession of ephedrine, pseudoephedrine, red phosphorus,
lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized
ammonia or phenylpropanolamine, or their salts, isomers or salts of
isomers with intent to use the product to manufacture a controlled
substance or controlled substance analog is an attempted violation of
subsection (a) of K.S.A. 2010 Supp. 21-36a03, and amendments thereto.

(b) Possession of drug paraphernalia with the intent to manufacture
a controlled substance or controlled substance analog is an attempted
violation of subsection (a) of K.S.A. 2010 Supp. 21-36a03, and
amendments thereto.

(c) Possession of any drug paraphernalia with the intent to:

(1) Distribute or cultivate a controlled substance designated in
subsection (a) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto,
or a controlled substance analog thereof, is an attempted violation of
subsection (a) of K.S.A. 2010 Supp. 21-36a05, and amendments thereto;
or

(2) distribute a controlled substance or controlled substance analog
designated in K.S.A. 65-4113, and amendments thereto, is an attempted
violation of subsection (b) of K.S.A. 2010 Supp. 21-36a05, and
amendments thereto.

(d) Possession of any drug paraphernalia with the intent to possess
or have under one’s control, any controlled substance designated in:

(1) Subsection (a) of K.S.A. 2010 Supp. 21-36a06, and amendments
thereto, or a controlled substance analog thereof, is an attempted
violation of subsection (a) of K.S.A. 2010 Supp. 21-36a06, and
amendments thereto; or

(2) subsection (b) of K.S.A. 2010 Supp. 21-36a06, and amendments
thereto, or a controlled substance analog thereof, is an attempted
violation of subsection (b) of K.S.A. 2010 Supp. 21-36a06, and
amendments thereto.

(e) This section does not preclude a person from being prosecuted
for; convicted of and punished for an attempted violation of K.S.A. 2010
Supp. 21-36a03, 21-36a05 or 21-36a06, and amendments thereto, based
upon overt acts other than those described in this section.

Sec. 4. K.S.A. 2010 Supp. 21-36a10 is hereby amended to read as
follows: 21-36a10. (a) It shall be unlawful for any person to advertise,
market, label, distribute or possess with the intent to distribute:

(1) Any product containing ephedrine, pseudoephedrine, red
phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia,
pressurized ammonia or phenylpropanolamine or their salts, isomers or
salts of isomers if the person knows or reasonably should know that the
purchaser will use the product to manufacture a controlled substance; or
(2) any product containing ephedrine, pseudoephedrine or
phenylpropanolamine, or their salts, isomers or salts of isomers for
indication of stimulation, mental alertness, weight loss, appetite control,
energy or other indications not approved pursuant to the pertinent federal
over-the-counter drug final monograph or tentative final monograph or
approved new drug application.

(b) It shall be unlawful for any person to distribute, possess with the
intent to distribute or manufacture with intent to distribute any drug
paraphernalia, knowing or under circumstances where one reasonably
should know that it will be used to manufacture or distribute a controlled
substance in violation of K.S.A. 2010 Supp. 21-36a01 through 21-36a17,
and amendments thereto.

(c) It shall be unlawful for any person to distribute, possess with
intent to distribute or manufacture with intent to distribute any drug
paraphernalia, knowing or under circumstances where one reasonably
should know, that it will be used as such in violation of K.S.A. 2010
Supp. 21-36a01 through 21-36a17, and amendments thereto, except
subsection (b) of K.S.A. 2010 Supp. 21-36a06, and amendments thereto.

(d) It shall be unlawful for any person to distribute, possess with
intent to distribute or manufacture with intent to distribute any drug
paraphernalia, knowing, or under circumstances where one reasonably
should know, that it will be used as such in violation of subsection (b) of

(e) (1) Violation of subsection (a) is a drug severity level 2 felony;
(2) Violation of subsection (b) is a drug severity level 4 felony,
except that as provided in subsection (e)(3).
(3) Violation of subsection (b) is a drug severity level 3 felony if the
trier of fact makes a finding that the offender is 18 or more years of age
and the offender distributed or caused drug paraphernalia to be distributed
to a minor or on or within 1,000 feet of any school property;
(4) (4) Violation of subsection (c) is a severity level 9, nonperson
felony, except that as provided in subsection (e)(5).
(5) Violation of subsection (c) is a drug severity level 4 felony if the
trier of fact makes a finding that the offender is 18 or more years of age
and the offender distributed or caused drug paraphernalia to be distributed
to a minor or on or within 1,000 feet of any school property;
(6) (6) Violation of subsection (d) is a class A nonperson
misdemeanor, except that as provided in subsection (e)(7).
(7) Violation of subsection (d) is a severity level 9, nonperson felony
if the trier of fact makes a finding that the offender is 18 or more years of
age and the offender distributed or caused drug paraphernalia to be
distributed to a minor or on or within 1,000 feet of any school property.
(f) For persons arrested and charged under subsection (a), bail shall be at least $50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

(g) As used in this section, "or under circumstances where one reasonably should know" that an item will be used in violation of this section, shall include, but not be limited to, the following:

(1) Actual knowledge from prior experience or statements by customers;
(2) inappropriate or impractical design for alleged legitimate use;
(3) receipt of packaging material, advertising information or other manufacturer supplied information regarding the item's use as drug paraphernalia; or
(4) receipt of a written warning from a law enforcement or prosecutorial agency having jurisdiction that the item has been previously determined to have been designed specifically for use as drug paraphernalia.

Sec. 5. K.S.A. 2010 Supp. 21-36a13 is hereby amended to read as follows: 21-36a13. (a) It shall be unlawful for any person to distribute, possess with the intent to distribute, or manufacture with the intent to distribute any simulated controlled substance.

(b) It shall be unlawful for any person to use or possess with intent to use any simulated controlled substance.

(c) (1) Violation of subsection (a) is a nondrug severity level 9, nonperson felony, except as provided in subsection (c)(2).

(2) Violation of subsection (a) is a nondrug severity level 7, nonperson felony, if the trier of fact makes a finding that the offender is 18 or more years of age and the violation occurred on or within 1,000 feet of any school property; and

(3) Violation of subsection (b) is a class A nonperson misdemeanor.

Sec. 6. K.S.A. 2010 Supp. 21-36a14 is hereby amended to read as follows: 21-36a14. (a) It shall be unlawful for any person to distribute or possess with the intent to distribute any substance which is not a controlled substance:

(1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or

(2) under circumstances which would give a reasonable person reason to believe that the substance is a controlled substance.

(b)(l) Violation of subsection (a) is a class A nonperson
misdemeanor, except as provided in subsection (b)(2).

(2) Violation of subsection (a) is a nondrug severity level 9, nonperson felony, if the distributor is 18 or more years of age, distributing to a person under 18 years of age minor and at least three years older than the person under 18 years of age minor to whom the distribution is made.

(c) If any one of the following factors is established, there shall be a presumption that distribution of a substance was under circumstances which would give a reasonable person reason to believe that a substance is a controlled substance:

(1) The substance was packaged in a manner normally used for the illegal distribution of controlled substances;

(2) the distribution of the substance included an exchange of or demand for money or other consideration for distribution of the substance and the amount of the consideration was substantially in excess of the reasonable value of the substance; or

(3) the physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled substance.

(d) A person who commits a violation of subsection (a) also may be prosecuted for, convicted of and punished for theft by deception.

Sec. 7. K.S.A. 2010 Supp. 21-36a01, 21-36a05, 21-36a09, 21-36a10, 21-36a13 and 21-36a14 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.