

HOUSE BILL No. 2317

By Committee on Corrections and Juvenile Justice

2-12

AN ACT concerning controlled substances; amending K.S.A. 65-4150, 65-4159, 65-4160, 65-4161 and 65-7006 and repealing the existing sections.

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

Section 1. K.S.A. 65-4150 is hereby amended to read as follows: 65-4150. As used in this act:

(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) "Deliver" or "delivery" means actual, constructive or attempted transfer from one person to another, whether or not there is an agency relationship.

(c) "Drug paraphernalia" means all equipment, products and materials of any kind which are used or intended 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 in violation of the uniform controlled substances act. *"Drug paraphernalia" shall not include any drug 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 or any product containing the same.*

"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 meas-

1 uring controlled substances.

2 (6) Diluents and adulterants, such as quinine hydrochloride, manni-
3 tol, mannite, dextrose and lactose, which are used or intended for use in
4 cutting controlled substances.

5 (7) Separation gins and sifters used or intended for use in removing
6 twigs and seeds from or otherwise cleaning or refining marihuana.

7 (8) Blenders, bowls, containers, spoons and mixing devices used or
8 intended for use in compounding controlled substances.

9 (9) Capsules, balloons, envelopes and other containers used or in-
10 tended for use in packaging small quantities of controlled substances.

11 (10) Containers and other objects used or intended for use in storing
12 or concealing controlled substances.

13 (11) Hypodermic syringes, needles and other objects used or in-
14 tended for use in parenterally injecting controlled substances into the
15 human body.

16 (12) Objects used or intended for use in ingesting, inhaling or oth-
17 erwise introducing marihuana, cocaine, hashish, or hashish oil into the
18 human body, such as:

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

22 (B) water pipes;

23 (C) carburetion tubes and devices;

24 (D) smoking and carburetion masks;

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

28 (F) miniature cocaine spoons and cocaine vials;

29 (G) chamber pipes;

30 (H) carburetor pipes;

31 (I) electric pipes;

32 (J) air-driven pipes;

33 (K) chillums;

34 (L) bongs; and

35 (M) ice pipes or chillers.

36 (d) "Person" means any individual, corporation, government or gov-
37 ernmental subdivision or agency, business trust, estate, trust, partnership,
38 association or other legal entity.

39 (e) "Simulated controlled substance" means any product which iden-
40 tifies itself by a common name or slang term associated with a controlled
41 substance and which indicates on its label or accompanying promotional
42 material that the product simulates the effect of a controlled substance.

43 Sec. 2. K.S.A. 65-4159 is hereby amended to read as follows: 65-

1 4159. (a) Except as authorized by the uniform controlled substances act,
2 it shall be unlawful for any person to manufacture *or attempt to manu-*
3 *facture* any controlled substance or controlled substance analog.

4 (b) Any person violating the provisions of this section with respect to
5 the unlawful manufacturing or attempting to unlawfully manufacture any
6 controlled substance or controlled substance analog, upon conviction, is
7 guilty of a drug severity level 1 felony and the sentence for which shall
8 not be subject to statutory provisions for suspended sentence, community
9 work service, or probation.

10 (c) The provisions of subsection (d) of K.S.A. 21-3301, and amend-
11 ments thereto, shall not apply to a violation of attempting to unlawfully
12 manufacture any controlled substance pursuant to this section.

13 Sec. 3. K.S.A. 65-4160 is hereby amended to read as follows: 65-
14 4160. (a) Except as authorized by the uniform controlled substances act,
15 it shall be unlawful for any person to possess or have under such person's
16 control any opiates, opium or narcotic drugs, or any stimulant designated
17 in subsection (d)(1); *or* (d)(3) ~~or (f)(1)~~ of K.S.A. 65-4107 and amendments
18 thereto. Except as provided in subsections (b) and (c), any person who
19 violates this subsection shall be guilty of a drug severity level 4 felony.

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

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

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

31 (e) For purposes of the uniform controlled substances act, the pro-
32 hibitions contained in this section shall apply to controlled substance an-
33 alogos as defined in subsection (bb) of K.S.A. 65-4101 and amendments
34 thereto.

35 (f) The provisions of this section shall be part of and supplemental to
36 the uniform controlled substances act.

37 Sec. 4. K.S.A. 65-4161 is hereby amended to read as follows: 65-
38 4161. (a) Except as authorized by the uniform controlled substances act,
39 it shall be unlawful for any person to sell, offer for sale or have in such
40 person's possession with intent to sell, deliver or distribute; prescribe;
41 administer; deliver; distribute; dispense or compound any opiates, opium
42 or narcotic drugs, or any stimulant designated in subsection (d)(1); *or*
43 (d)(3) ~~or (f)(1)~~ of K.S.A. 65-4107 and amendments thereto. Except as

1 provided in subsections (b), (c) and (d), any person who violates this
2 subsection shall be guilty of a drug severity level 3 felony.

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

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

11 (d) Notwithstanding any other provision of law, upon conviction of
12 any person for a first offense pursuant to subsection (a), such person shall
13 be guilty of a drug severity level 2 felony if such person is 18 or more
14 years of age and the substances involved were possessed with intent to
15 sell, deliver or distribute; sold or offered for sale in or on, or within 1,000
16 feet of any school property upon which is located a structure used by a
17 unified school district or an accredited nonpublic school for student in-
18 struction or attendance or extracurricular activities of pupils enrolled in
19 kindergarten or any of the grades one through 12.

20 Nothing in this subsection shall be construed as requiring that school
21 be in session or that classes are actually being held at the time of the
22 offense or that children must be present within the structure or on the
23 property during the time of any alleged criminal act. If the structure or
24 property meets the description above, the actual use of that structure or
25 property at the time alleged shall not be a defense to the crime charged
26 or the sentence imposed.

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

30 (f) For purposes of the uniform controlled substances act, the pro-
31 hibitions contained in this section shall apply to controlled substance an-
32 alogos as defined in subsection (bb) of K.S.A. 65-4101 and amendments
33 thereto.

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

36 Sec. 5. K.S.A. 65-7006 is hereby amended to read as follows: 65-
37 7006. (a) It shall be unlawful for any person to possess ephedrine, pseu-
38 doephedrine, red phosphorus, lithium metal, sodium metal, iodine, an-
39 hydrous ammonia, pressurized ammonia or phenylpropanolamine, or
40 their salts, isomers or salts of isomers with intent to use the ~~product~~ *same*
41 to manufacture a controlled substance.

42 (b) It shall be unlawful for any person to market, sell, distribute, ad-
43 vertise, or label any drug product containing ephedrine, pseudoephed-

1 rine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous
2 ammonia, pressurized ammonia or phenylpropanolamine, or their salts,
3 isomers or salts ~~or~~ of isomers if the person knows or reasonably should
4 know that the purchaser will use the ~~product~~ *same* to manufacture a
5 controlled substance.

6 (c) It shall be unlawful for any person to market, sell, distribute, ad-
7 vertise or label any drug product containing ephedrine, pseudoephedrine,
8 or phenylpropanolamine, or their salts, isomers or salts of isomers for
9 indication of stimulation, mental alertness, weight loss, appetite control,
10 energy or other indications not approved pursuant to the pertinent federal
11 over-the-counter drug final monograph or tentative final monograph or
12 approved new drug application.

13 (d) A violation of this section shall be a drug severity level 1 felony.

14 Sec. 6. K.S.A. 65-4150, 65-4159, 65-4160, 65-4161 and 65-7006 are
15 hereby repealed.

16 Sec. 7. This act shall take effect and be in force from and after its
17 publication in the statute book.

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