

SENATE BILL No. 27

AN ACT concerning controlled substances; relating to schedule V substances; unlawful acts; amending K.S.A. 21-2501a, 65-1643, 65-4113, 65-4152, 65-4159, 65-7001 and 65-7006 and repealing the existing sections.

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

Section 1. On and after June 1, 2005, K.S.A. 65-1643 is hereby amended to read as follows: 65-1643. It shall be unlawful:

(a) For any person to operate, maintain, open or establish any pharmacy within this state without first having obtained a registration from the board. Each application for registration of a pharmacy shall indicate the person or persons desiring the registration, including the pharmacist in charge, as well as the location, including the street name and number, and such other information as may be required by the board to establish the identity and exact location of the pharmacy. The issuance of a registration for any pharmacy shall also have the effect of permitting such pharmacy to operate as a retail dealer without requiring such pharmacy to obtain a retail dealer's permit. On evidence satisfactory to the board: (1) That the pharmacy for which the registration is sought will be conducted in full compliance with the law and the rules and regulations of the board; (2) that the location and appointments of the pharmacy are such that it can be operated and maintained without endangering the public health or safety; (3) that the pharmacy will be under the supervision of a pharmacist, a registration shall be issued to such persons as the board shall deem qualified to conduct such a pharmacy.

(b) For any person to manufacture within this state any drugs except under the personal and immediate supervision of a pharmacist or such other person or persons as may be approved by the board after an investigation and a determination by the board that such person or persons is qualified by scientific or technical training or experience to perform such duties of supervision as may be necessary to protect the public health and safety; and no person shall manufacture any such drugs without first obtaining a registration so to do from the board. Such registration shall be subject to such rules and regulations with respect to requirements, sanitation and equipment, as the board may from time to time adopt for the protection of public health and safety.

(c) For any person to distribute at wholesale any drugs without first obtaining a registration so to do from the board.

(d) For any person to sell or offer for sale at public auction or private sale in a place where public auctions are conducted, any drugs without first having obtained a registration from the board so to do, and it shall be necessary to obtain the permission of the board in every instance where any of the products covered by this section are to be sold or offered for sale.

(e) For any person to in any manner distribute or dispense samples of any drugs without first having obtained a permit from the board so to do, and it shall be necessary to obtain permission from the board in every instance where the samples are to be distributed or dispensed. Nothing in this subsection shall be held to regulate or in any manner interfere with the furnishing of samples of drugs to duly licensed practitioners, to mid-level practitioners, to pharmacists or to medical care facilities.

(f) Except as otherwise provided in this subsection (f), for any person operating a store or place of business to sell, offer for sale or distribute any drugs to the public without first having obtained a registration or permit from the board authorizing such person so to do. No retail dealer who sells 12 or fewer different nonprescription drug products shall be required to obtain a retail dealer's permit under the pharmacy act of the state of Kansas or to pay a retail dealer new permit or permit renewal fee under such act. It shall be lawful for a retail dealer who is the holder of a valid retail dealer's permit issued by the board or for a retail dealer who sells 12 or fewer different nonprescription drug products to sell and distribute nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug product intended for human use by hypodermic injection; but such a retail dealer shall not be authorized to display any of the words listed in subsection (u) of K.S.A. 65-1626 and amendments thereto, for the designation of a pharmacy or drugstore.

(g) For any person to sell any drugs manufactured and sold only in the state of Kansas, unless the label and directions on such drugs shall first have been approved by the board.

(h) For any person to operate an institutional drug room without first having obtained a registration to do so from the board. Such registration shall be subject to the provisions of K.S.A. 65-1637a and amendments thereto and any rules and regulations adopted pursuant thereto.

(i) For any person to be a pharmacy student without first obtaining a registration to do so from the board, in accordance with rules and regulations adopted by the board, and paying a pharmacy student registration fee of \$25 to the board.

(j) For any person to operate a veterinary medical teaching hospital pharmacy without first having obtained a registration to do so from the board. Such registration shall be subject to the provisions of K.S.A. 65-1662 and amendments thereto and any rules and regulations adopted pursuant thereto.

(k) *For any person to sell or distribute in a pharmacy a controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, unless:*

(1) (A) *Such controlled substance is sold or distributed by a licensed pharmacist, a registered pharmacy technician or a pharmacy intern or clerk supervised by a licensed pharmacist; and*

(B) *any person purchasing, receiving or otherwise acquiring any such controlled substance produces a photo identification showing the date of birth of the person and signs a log. The log or database required by the board shall be available for inspection during regular business hours to the board of pharmacy and any law enforcement officer; or*

(2) *there is a lawful prescription.*

(l) *For any person to sell or distribute in a pharmacy four or more packages or containers of any controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, to a specific customer within any seven-day period.*

Sec. 2. On and after June 1, 2005, K.S.A. 65-4113 is hereby amended to read as follows: 65-4113. (a) The controlled substances or drugs, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section are included in schedule V.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing the following narcotic drug or its salts:

Buprenorphine 9064

(c) Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than .5 milligram of difenoxin (9168) and not less than 25 micrograms of atropine sulfate per dosage unit.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Propylhexedrine (except when part of a compound used for nasal decongestion which is authorized to be sold lawfully over the counter without a prescription under the federal food, drug and cosmetic act, so long as it is used only for such purpose) 8161
- (2) Pyrovalerone 1485

(e) ~~Unless specifically excepted or unless listed in another schedule, any product containing as its single ingredient the substance Ephedrine. Except as provided in subsection (g), any compound, mixture or preparation containing any detectable quantity of ephedrine, its salts or optical isomers, or salts of optical isomers.~~

(f) *Except as provided in subsection (g), any compound, mixture or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers.*

(g) *The scheduling of the substances in subsections (e) and (f) shall not apply to any compounds, mixtures or preparations of ephedrine or pseudoephedrine which are in liquid, liquid capsule or gel capsule form.*

Sec. 3. K.S.A. 65-7006 is hereby amended to read as follows: 65-7006. (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 intent to use the product to manufacture a controlled substance.

(b) It shall be unlawful for any person to market, sell, distribute, advertise, or label 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 ~~or~~ of isomers if the person knows or reasonably should know that the purchaser will use the product to manufacture a controlled substance.

(c) It shall be unlawful for any person to market, sell, distribute, advertise or label any drug 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.

(d) *For persons arrested and charged under this section, 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.*

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

New Sec. 4. (a) It shall be the policy of the state of Kansas to restrict access to ephedrine and pseudoephedrine for the purpose of impeding the unlawful manufacture of methamphetamine. In furtherance of this policy, the Kansas bureau of investigation shall:

(1) Consult with the other law enforcement agencies to gather information and detect trends with regard to the types of drug paraphernalia and evidence found at crime scenes. The bureau shall take into consideration such information and trends in developing the recommendations required by paragraph (2); and

(2) consult with the state board of pharmacy to develop recommendations concerning the most appropriate controls for liquid, capsule and gel capsule form of ephedrine and pseudoephedrine.

(b) Such recommendations shall be submitted on or before February 1 each year to the standing committee on judiciary in the senate and the standing committee on corrections and juvenile justice in the house of representatives.

Sec. 5. K.S.A. 65-4152 is hereby amended to read as follows: 65-4152. (a) No person shall use or possess with intent to use:

- (1) Any simulated controlled substance;
- (2) any drug paraphernalia to use, store, contain, conceal, inject, in-

gest, inhale or otherwise introduce into the human body a controlled substance in violation of the uniform controlled substances act;

(3) any drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, sell or distribute a controlled substance in violation of the uniform controlled substances act; or

(4) anhydrous ammonia or pressurized ammonia in a container not approved for that chemical by the Kansas department of agriculture.

(b) Violation of subsection (a)(1) or (a)(2) is a class A nonperson misdemeanor.

(c) Violation of subsection (a)(3), other than as described in paragraph (d), or subsection (a)(4) is a drug severity level 4 felony.

(d) Violation of subsection (a)(3) which involves the possession of drug paraphernalia for the planting, propagation, growing or harvesting of less than five marijuana plants is a class A nonperson misdemeanor.

(e) *For persons arrested and charged under paragraph (a)(4), 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.*

Sec. 6. K.S.A. 65-4159 is hereby amended to read as follows: 65-4159. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to manufacture any controlled substance or controlled substance analog.

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

(c) *For persons arrested and charged under this section, 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.*

~~(e)~~ (d) The provisions of subsection (d) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to unlawfully manufacture any controlled substance pursuant to this section.

New Sec. 7. The provisions of this act, and any rules and regulations promulgated thereunder shall be applicable and uniform throughout this state and in all cities and counties therein. No city or county shall enact or enforce any law, ordinance, rule, regulation or resolution in conflict with, in addition to, or supplemental to, the provisions of this act unless expressly authorized by law to do so.

Sec. 8. K.S.A. 65-7001 is hereby amended to read as follows: 65-7001. K.S.A. 65-7001 through 65-7015 and amendments thereto shall be known and may be cited as the ~~Kansas~~ *sheriff Matt Samuels* chemical control act.

Sec. 9. K.S.A. 21-2501a is hereby amended to read as follows: 21-2501a. (a) All law enforcement agencies having responsibility for law enforcement in any political subdivision of this state, on forms approved by the attorney general, shall maintain a permanent record of all felony and misdemeanor offenses reported or known to have been committed within their respective jurisdictions.

(b) All law enforcement agencies having the responsibility of maintaining a permanent record of offenses shall file with the Kansas bureau of investigation, on a form approved by the attorney general, a report on each offense for which a permanent record is required within 72 hours after such offense is reported or known to have been committed.

(c) *It is hereby made the duty of every sheriff, police department or countywide law enforcement agency in the state to report within 30 days,*

on forms approved by the attorney general, any methamphetamine laboratory seizures or dump sites and any theft or attempted theft of anhydrous ammonia that occurs in such agency's jurisdiction.

Sec. 10. K.S.A. 21-2501a, 65-4152, 65-4159, 65-7001 and 65-7006 are hereby repealed.

Sec. 11. On and after June 1, 2005, K.S.A. 65-1643 and 65-4113 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.