

HOUSE BILL No. 2828

By Committee on Health and Human Services

2-6

9 AN ACT concerning controlled substances; relating to sale or distribu-
10 tion near licensed day care, public parks, playgrounds or in presence
11 of a person under 18 years of age; amending K.S.A. 2005 Supp. 65-
12 4161 and 65-4163 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 2005 Supp. 65-4161 is hereby amended to read as
16 follows: 65-4161. (a) Except as authorized by the uniform controlled sub-
17 stances act, it shall be unlawful for any person to sell, offer for sale or
18 have in such person's possession with intent to sell, deliver or distribute;
19 prescribe; administer; deliver; distribute; or dispense any opiates, opium
20 or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3)
21 or (f)(1) of K.S.A. 65-4107 and amendments thereto. Except as provided
22 in subsections (b), (c) and (d), any person who violates this subsection
23 shall be guilty of a drug severity level 3 felony.

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

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

32 (d) Notwithstanding any other provision of law, upon conviction of
33 any person for a first offense pursuant to subsection (a), such person shall
34 be guilty of a drug severity level 2 felony if such person is 18 or more
35 years of age and the substances involved were possessed with intent to
36 sell, deliver or distribute; sold or offered for sale in or on, or within 1,000
37 feet of any *licensed day care, public park, playground or school property*
38 *or other property* upon which is located a structure used by a unified
39 school district or an accredited nonpublic school for student instruction
40 or attendance or extracurricular activities of pupils enrolled in kindergar-
41 ten or any of the grades one through 12, *or in the presence of a person*
42 *under 18 years of age.*

43 Nothing in this subsection shall be construed as requiring that school

1 be in session or that classes are actually being held at the time of the
2 offense or that children must be present within the structure or on the
3 property during the time of any alleged criminal act. If the structure or
4 property meets the description above, the actual use of that structure or
5 property at the time alleged shall not be a defense to the crime charged
6 or the sentence imposed.

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

10 (f) For purposes of the uniform controlled substances act, the pro-
11 hibitions contained in this section shall apply to controlled substance an-
12 alogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments
13 thereto.

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

16 Sec. 2. K.S.A. 2005 Supp. 65-4163 is hereby amended to read as
17 follows: 65-4163. (a) Except as authorized by the uniform controlled sub-
18 stances act, it shall be unlawful for any person to sell, offer for sale or
19 have in such person's possession with the intent to sell, deliver or distrib-
20 ute; cultivate; prescribe; administer; deliver; distribute; or dispense:

21 (1) Any depressant designated in subsection (e) of K.S.A. 65-4105,
22 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109
23 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

24 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
25 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
26 65-4109, and amendments thereto;

27 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
28 4105, and amendments thereto or designated in subsection (g) of K.S.A.
29 65-4107 and amendments thereto or designated in subsection (g) of
30 K.S.A. 65-4109 and amendments thereto;

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

34 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
35 4109, and amendments thereto.

36 Except as provided in subsection (b), any person who violates this sub-
37 section shall be guilty of a drug severity level 3 felony.

38 (b) Notwithstanding any other provision of law, upon conviction of
39 any person pursuant to subsection (a) for an offense in which the sub-
40 stances involved were possessed with intent to sell, sold or offered for
41 sale in or on, or within 1,000 feet of any *licensed day care, public park,*
42 *playground or school property or other property* upon which is located a
43 structure used by a unified school district or an accredited nonpublic

1 school for student instruction or attendance or extracurricular activities
2 of pupils enrolled in kindergarten or any of the grades one through 12,
3 *or in the presence of a person under 18 years of age* and such person is
4 18 or more years of age, such person shall be guilty of a drug severity
5 level 2 felony.

6 Nothing in this subsection shall be construed as requiring that school
7 be in session or that classes are actually being held at the time of the
8 offense or that children must be present within the structure or on the
9 property during the time of any alleged criminal act. If the structure or
10 property meets the description above, the actual use of that structure or
11 property at the time alleged shall not be a defense to the crime charged
12 or the sentence imposed.

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

16 (d) For purposes of the uniform controlled substances act, the pro-
17 hibitions contained in this section shall apply to controlled substance an-
18 alogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments
19 thereto.

20 (e) The provisions of this section shall be part of and supplemental
21 to the uniform controlled substances act.

22 Sec. 3. K.S.A. 2005 Supp. 65-4161 and 65-4163 are hereby repealed.

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