

HOUSE BILL No. 2465

By Representative Coleman

1-5

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

7
8 WHEREAS, The provisions of this act shall be known as the legalized
9 homegrown psilocybin mushroom act of 2022.

10 Now, therefore:

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

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

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

19 (2) any depressant designated in ~~subsection (e) of K.S.A. 65-4105(e),~~
20 ~~subsection (e) of K.S.A. 65-4107(e), subsection (b) or (e) of K.S.A. 65-~~
21 ~~4109(b) or (c) or subsection (b) of K.S.A. 65-4111(b),~~ and amendments
22 thereto;

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

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

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

33 (6) any anabolic steroids as defined in ~~subsection (f) of K.S.A. 65-~~
34 ~~4109(f),~~ and amendments thereto; or

35 (7) any substance designated in ~~subsection (h) of K.S.A. 65-4105(h),~~
36 and amendments thereto.

1 (b) It shall be unlawful for any person to distribute or possess with
2 the intent to distribute a controlled substance or a controlled substance
3 analog designated in K.S.A. 65-4113, and amendments thereto.

4 (c) It shall be unlawful for any person to cultivate any controlled
5 substance or controlled substance analog listed in subsection (a).

6 (d) (1) Except as provided further, violation of subsection (a) is a:

7 (A) Drug severity level 4 felony if the quantity of the material was
8 less than 3.5 grams;

9 (B) drug severity level 3 felony if the quantity of the material was at
10 least 3.5 grams but less than 100 grams;

11 (C) drug severity level 2 felony if the quantity of the material was at
12 least 100 grams but less than 1 kilogram; and

13 (D) drug severity level 1 felony if the quantity of the material was 1
14 kilogram or more.

15 (2) Violation of subsection (a) with respect to material containing any
16 quantity of marijuana, or an analog thereof, is a:

17 (A) Drug severity level 4 felony if the quantity of the material was
18 less than 25 grams;

19 (B) drug severity level 3 felony if the quantity of the material was at
20 least 25 grams but less than 450 grams;

21 (C) drug severity level 2 felony if the quantity of the material was at
22 least 450 grams but less than 30 kilograms; and

23 (D) drug severity level 1 felony if the quantity of the material was 30
24 kilograms or more.

25 (3) Violation of subsection (a) with respect to material containing any
26 quantity of heroin, as defined by ~~subsection (c)(1) of~~ K.S.A. 65-4105(c)
27 (1), and amendments thereto, or methamphetamine, as defined by
28 ~~subsection (d)(3) or (f)(1) of~~ K.S.A. 65-4107(d)(3) or (f)(1), and
29 amendments thereto, or an analog thereof, is a:

30 (A) Drug severity level 4 felony if the quantity of the material was
31 less than 1 gram;

32 (B) drug severity level 3 felony if the quantity of the material was at
33 least 1 gram but less than 3.5 grams;

34 (C) drug severity level 2 felony if the quantity of the material was at
35 least 3.5 grams but less than 100 grams; and

36 (D) drug severity level 1 felony if the quantity of the material was
37 100 grams or more.

38 (4) Violation of subsection (a) with respect to material containing any
39 quantity of a controlled substance designated in K.S.A. 65-4105, 65-4107,
40 65-4109 or 65-4111, and amendments thereto, or an analog thereof,
41 distributed by dosage unit, is a:

42 (A) Drug severity level 4 felony if the number of dosage units was
43 fewer than 10;

1 (B) drug severity level 3 felony if the number of dosage units was at
2 least 10 but less than 100;

3 (C) drug severity level 2 felony if the number of dosage units was at
4 least 100 but less than 1,000; and

5 (D) drug severity level 1 felony if the number of dosage units was
6 1,000 or more.

7 (5) *Violation of subsection (a) with respect to material that is*
8 *psilocyn or psilocybin, as designated in K.S.A. 65-4105(d), and*
9 *amendments thereto, is a:*

10 (A) *Class B nonperson misdemeanor if the quantity of psilocyn or*
11 *psilocybin is 100 grams or more;*

12 (B) *class A nonperson misdemeanor if the quantity of psilocyn or*
13 *psilocybin is 100 grams or more on a second or subsequent conviction;*
14 *and*

15 (C) *a civil penalty with a fine not to exceed \$250 if the quantity of*
16 *psilocyn or psilocybin is less than 100 grams.*

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

21 ~~(6)~~(7) Violation of subsection (b) is a:

22 (A) Class A person misdemeanor, except as provided in subsection
23 (d)(6)(B); and

24 (B) nondrug severity level 7, person felony if the substance was
25 distributed to or possessed with the intent to distribute to a minor.

26 ~~(7)~~(8) (A) *Except as provided in subparagraph (B), violation of*
27 *subsection (c) is a:*

28 ~~(A)~~(i) Drug severity level 3 felony if the number of plants cultivated
29 was more than 4 but fewer than 50;

30 ~~(B)~~(ii) drug severity level 2 felony if the number of plants cultivated
31 was at least 50 but fewer than 100; and

32 ~~(C)~~(iii) drug severity level 1 felony if the number of plants cultivated
33 was 100 or more.

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

36 (e) In any prosecution under this section, there shall be a rebuttable
37 presumption of an intent to distribute if any person possesses the following
38 quantities of controlled substances or analogs thereof:

39 (1) 450 grams or more of marijuana;

40 (2) 3.5 grams or more of heroin or methamphetamine;

41 (3) 100 dosage units or more containing a controlled substance; or

42 (4) 100 grams or more of any other controlled substance.

43 (f) It shall not be a defense to charges arising under this section that

1 the defendant:

2 (1) Was acting in an agency relationship on behalf of any other party
3 in a transaction involving a controlled substance or controlled substance
4 analog;

5 (2) did not know the quantity of the controlled substance or
6 controlled substance analog; or

7 (3) did not know the specific controlled substance or controlled
8 substance analog contained in the material that was distributed or
9 possessed with the intent to distribute.

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

14 ~~(g)~~(h) As used in this section:

15 (1) "Material" means the total amount of any substance, including a
16 compound or a mixture, which contains any quantity of a controlled
17 substance or controlled substance analog.

18 (2) "Dosage unit" means a controlled substance or controlled
19 substance analog distributed or possessed with the intent to distribute as a
20 discrete unit, including but not limited to, one pill, one capsule or one
21 microdot, and not distributed by weight.

22 (A) For steroids, or controlled substances in liquid solution legally
23 manufactured for prescription use, or an analog thereof, "dosage unit"
24 means the smallest medically approved dosage unit, as determined by the
25 label, materials provided by the manufacturer, a prescribing authority,
26 licensed health care professional or other qualified health authority.

27 (B) For illegally manufactured controlled substances in liquid
28 solution, or controlled substances in liquid products not intended for
29 ingestion by human beings, or an analog thereof, "dosage unit" means 10
30 milligrams, including the liquid carrier medium, except as provided in
31 subsection (g)(2)(C).

32 (C) For lysergic acid diethylamide (LSD) in liquid form, or an analog
33 thereof, a dosage unit is defined as 0.4 milligrams, including the liquid
34 medium.

35 Sec. 2. K.S.A. 2021 Supp. 21-5706 is hereby amended to read as
36 follows: 21-5706. (a) It shall be unlawful for any person to possess any
37 opiates, opium or narcotic drugs, or any stimulant designated in K.S.A. 65-
38 4107(d)(1), (d)(3) or (f)(1), and amendments thereto, or a controlled
39 substance analog thereof.

40 (b) It shall be unlawful for any person to possess any of the following
41 controlled substances or controlled substance analogs thereof:

42 (1) Any depressant designated in K.S.A. 65-4105(e), 65-4107(e), 65-
43 4109(b) or (c) or 65-4111(b), and amendments thereto;

- 1 (2) any stimulant designated in K.S.A. 65-4105(f), 65-4107(d)(2), (d)
- 2 (4), (d)(5) or (f)(2) or 65-4109(e), and amendments thereto;
- 3 (3) any hallucinogenic drug designated in K.S.A. 65-4105(d), 65-
- 4 4107(g) or 65-4109(g), and amendments thereto;
- 5 (4) any substance designated in K.S.A. 65-4105(g) and 65-4111(c),
- 6 (d), (e), (f) or (g), and amendments thereto;
- 7 (5) any anabolic steroids as defined in K.S.A. 65-4109(f), and
- 8 amendments thereto;
- 9 (6) any substance designated in K.S.A. 65-4113, and amendments
- 10 thereto; or
- 11 (7) any substance designated in K.S.A. 65-4105(h), and amendments
- 12 thereto.
- 13 (c) (1) Violation of subsection (a) is a drug severity level 5 felony.
- 14 (2) Except as provided in subsection (c)(3) *or* (c)(4):
- 15 (A) Violation of subsection (b) is a class A nonperson misdemeanor,
- 16 except as provided in subparagraph (B); and
- 17 (B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug
- 18 severity level 5 felony if that person has a prior conviction under such
- 19 subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially
- 20 similar offense from another jurisdiction, or under any city ordinance or
- 21 county resolution for a substantially similar offense if the substance
- 22 involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana
- 23 as designated in K.S.A. 65-4105(d), and amendments thereto, or any
- 24 substance designated in K.S.A. 65-4105(h), and amendments thereto, or an
- 25 analog thereof.
- 26 (3) If the substance involved is marijuana, as designated in K.S.A.
- 27 65-4105(d), and amendments thereto, or tetrahydrocannabinols, as
- 28 designated in K.S.A. 65-4105(h), and amendments thereto, violation of
- 29 subsection (b) is a:
- 30 (A) Class B nonperson misdemeanor, except as provided in
- 31 subparagraphs (B) and (C);
- 32 (B) class A nonperson misdemeanor if that person has a prior
- 33 conviction under such subsection, under K.S.A. 65-4162, prior to its
- 34 repeal, under a substantially similar offense from another jurisdiction, or
- 35 under any city ordinance or county resolution for a substantially similar
- 36 offense; and
- 37 (C) drug severity level 5 felony if that person has two or more prior
- 38 convictions under such subsection, under K.S.A. 65-4162, prior to its
- 39 repeal, under a substantially similar offense from another jurisdiction, or
- 40 under any city ordinance or county resolution for a substantially similar
- 41 offense.
- 42 (4) (A) *If the substance involved is psilocyn or psilocybin, as*
- 43 *designated in K.S.A. 65-4105(d), and amendments thereto, violation of*

1 subsection (b) is a:

2 (i) Class C nonperson misdemeanor if the amount involved is over
3 100 grams; and

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

6 (B) It shall not be a violation of this section if a person possesses less
7 than 50 grams of psilocyn or psilocybin, as designated in K.S.A. 65-
8 4105(d), and amendments thereto.

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

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

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

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

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

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

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

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

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

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

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