

**HOUSE BILL No. 2318**

By Committee on Corrections and Juvenile Justice

2-11

1 AN ACT concerning crimes and punishment; relating to controlled  
2 substances; amending K.S.A. 2010 Supp. 21-36a01, 21-36a05, 21-  
3 36a09, 21-36a10, 21-36a13 and 21-36a14 and repealing the existing  
4 sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2010 Supp. 21-36a01 is hereby amended to read  
8 as follows: 21-36a01. As used in K.S.A. 2010 Supp. 21-36a01 through  
9 21-36a17, and amendments thereto:

10 (a) "Controlled substance" means any drug, substance or immediate  
11 precursor included in any of the schedules designated in K.S.A. 65-4105,  
12 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

13 (b) (1) "Controlled substance analog" means a substance that is  
14 intended for human consumption, and:

15 (A) The chemical structure of which is substantially similar to the  
16 chemical structure of a controlled substance listed in or added to the  
17 schedules designated in K.S.A. 65-4105 or 65-4107, and amendments  
18 thereto;

19 (B) which has a stimulant, depressant or hallucinogenic effect on the  
20 central nervous system substantially similar to the stimulant, depressant  
21 or hallucinogenic effect on the central nervous system of a controlled  
22 substance included in the schedules designated in K.S.A. 65-4105 or 65-  
23 4107, and amendments thereto; or

24 (C) with respect to a particular individual, which the individual  
25 represents or intends to have a stimulant, depressant or hallucinogenic  
26 effect on the central nervous system substantially similar to the stimulant,  
27 depressant or hallucinogenic effect on the central nervous system of a  
28 controlled substance included in the schedules designated in K.S.A. 65-  
29 4105 or 65-4107, and amendments thereto.

30 (2) "Controlled substance analog" does not include:

31 (A) A controlled substance;

32 (B) a substance for which there is an approved new drug application;  
33 or

34 (C) a substance with respect to which an exemption is in effect for  
35 investigational use by a particular person under section 505 of the federal  
36 food, drug, and cosmetic act (21 U.S.C. § 355) to the extent conduct with

1 respect to the substance is permitted by the exemption.

2 (c) "Cultivate" means the planting or promotion of growth of five or  
3 more plants which contain or can produce controlled substances.

4 (d) "Distribute" means the actual, constructive or attempted transfer  
5 from one person to another of some item whether or not there is an  
6 agency relationship. "Distribute" includes, but is not limited to, sale, offer  
7 for sale or any act that causes some item to be transferred from one  
8 person to another. "Distribute" does not include acts of administering,  
9 dispensing or prescribing a controlled substance as authorized by the  
10 pharmacy act of the state of Kansas, the uniform controlled substances  
11 act, or otherwise authorized by law.

12 (e) "Drug" means:

13 (1) Substances recognized as drugs in the official United States  
14 pharmacopoeia, official homeopathic pharmacopoeia of the United States  
15 or official national formulary or any supplement to any of them;

16 (2) substances intended for use in the diagnosis, cure, mitigation,  
17 treatment or prevention of disease in man or animals;

18 (3) substances, other than food, intended to affect the structure or  
19 any function of the body of man or animals; and

20 (4) substances intended for use as a component of any article  
21 specified in paragraph (1), (2) or (3). It does not include devices or their  
22 components, parts or accessories.

23 (f) "Drug paraphernalia" means all equipment and materials of any  
24 kind which are used, or primarily intended or designed for use in  
25 planting, propagating, cultivating, growing, harvesting, manufacturing,  
26 compounding, converting, producing, processing, preparing, testing,  
27 analyzing, packaging, repackaging, storing, containing, concealing,  
28 injecting, ingesting, inhaling or otherwise introducing into the human  
29 body a controlled substance and in violation of this act. "Drug  
30 paraphernalia" shall include, but is not limited to:

31 (1) Kits used or intended for use in planting, propagating,  
32 cultivating, growing or harvesting any species of plant which is a  
33 controlled substance or from which a controlled substance can be derived;

34 (2) kits used or intended for use in manufacturing, compounding,  
35 converting, producing, processing or preparing controlled substances;

36 (3) isomerization devices used or intended for use in increasing the  
37 potency of any species of plant which is a controlled substance;

38 (4) testing equipment used or intended for use in identifying or in  
39 analyzing the strength, effectiveness or purity of controlled substances;

40 (5) scales and balances used or intended for use in weighing or  
41 measuring controlled substances;

42 (6) diluents and adulterants, including, but not limited to, quinine  
43 hydrochloride, mannitol, mannite, dextrose and lactose, which are used or

- 1 intended for use in cutting controlled substances;
- 2 (7) separation gins and sifters used or intended for use in removing  
3 twigs and seeds from or otherwise cleaning or refining marijuana;
- 4 (8) blenders, bowls, containers, spoons and mixing devices used or  
5 intended for use in compounding controlled substances;
- 6 (9) capsules, balloons, envelopes, bags and other containers used or  
7 intended for use in packaging small quantities of controlled substances;
- 8 (10) containers and other objects used or intended for use in storing  
9 or concealing controlled substances;
- 10 (11) hypodermic syringes, needles and other objects used or  
11 intended for use in parenterally injecting controlled substances into the  
12 human body;
- 13 (12) objects used or primarily intended or designed for use in  
14 ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish,  
15 hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into  
16 the human body, such as:
- 17 (A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes  
18 with or without screens, permanent screens, hashish heads or punctured  
19 metal bowls;
- 20 (B) water pipes, bongs or smoking pipes designed to draw smoke  
21 through water or another cooling device;
- 22 (C) carburetion pipes, glass or other heat resistant tubes or any other  
23 device used or intended to be used, designed to be used to cause  
24 vaporization of a controlled substance for inhalation;
- 25 (D) smoking and carburetion masks;
- 26 (E) roach clips, objects used to hold burning material, such as a  
27 marijuana cigarette, that has become too small or too short to be held in  
28 the hand;
- 29 (F) miniature cocaine spoons and cocaine vials;
- 30 (G) chamber smoking pipes;
- 31 (H) carburetor smoking pipes;
- 32 (I) electric smoking pipes;
- 33 (J) air-driven smoking pipes;
- 34 (K) chillums;
- 35 (L) bongs;
- 36 (M) ice pipes or chillers;
- 37 (N) any smoking pipe manufactured to disguise its intended  
38 purpose;
- 39 (O) wired cigarette papers; or
- 40 (P) cocaine freebase kits.
- 41 (g) "Immediate precursor" means a substance which the board of  
42 pharmacy has found to be and by rules and regulations designates as  
43 being the principal compound commonly used or produced primarily for

1 use and which is an immediate chemical intermediary used or likely to be  
2 used in the manufacture of a controlled substance, the control of which is  
3 necessary to prevent, curtail or limit manufacture.

4 (h) "Isomer" means all enantiomers and diastereomers.

5 (i) "Manufacture" means the production, preparation, propagation,  
6 compounding, conversion or processing of a controlled substance either  
7 directly or indirectly or by extraction from substances of natural origin or  
8 independently by means of chemical synthesis or by a combination of  
9 extraction and chemical synthesis ~~and includes any packaging or~~  
10 ~~repackaging of the substance or labeling or relabeling of its container.~~  
11 "Manufacture" does not include:

12 (1) The preparation or compounding of a controlled substance by an  
13 individual for the individual's own lawful use or the preparation,  
14 compounding, packaging or labeling of a controlled substance:

15 (1) (A) By a practitioner or the practitioner's agent pursuant to a  
16 lawful order of a practitioner as an incident to the practitioner's  
17 administering or dispensing of a controlled substance in the course of the  
18 practitioner's professional practice; or

19 (2) (B) by a practitioner or by the practitioner's authorized agent  
20 under such practitioner's supervision for the purpose of or as an incident  
21 to research, teaching or chemical analysis or by a pharmacist or medical  
22 care facility as an incident to dispensing of a controlled substance; ; or

23 (2) *the addition of dilutents or adulterants, including, but not limited*  
24 *to, quinine hydrochloride, manitol, mannite, extrose or lactose, which are*  
25 *intended for use in cutting a controlled substance.*

26 (j) "Marijuana" means all parts of all varieties of the plant cannabis  
27 whether growing or not, the seeds thereof, the resin extracted from any  
28 part of the plant and every compound, manufacture, salt, derivative,  
29 mixture or preparation of the plant, its seeds or resin. "Marijuana" does  
30 not include the mature stalks of the plant, fiber produced from the stalks,  
31 oil or cake made from the seeds of the plant, any other compound,  
32 manufacture, salt, derivative, mixture or preparation of the mature stalks,  
33 except the resin extracted therefrom, fiber, oil or cake or the sterilized  
34 seed of the plant which is incapable of germination.

35 (k) "Minor" means a person under 18 years of age.

36 (l) "Narcotic drug" means any of the following whether produced  
37 directly or indirectly by extraction from substances of vegetable origin or  
38 independently by means of chemical synthesis or by a combination of  
39 extraction and chemical synthesis:

40 (1) Opium and opiate and any salt, compound, derivative or  
41 preparation of opium or opiate;

42 (2) any salt, compound, isomer, derivative or preparation thereof  
43 which is chemically equivalent or identical with any of the substances

1 referred to in paragraph (1) but not including the isoquinoline alkaloids of  
2 opium;

3 (3) opium poppy and poppy straw;

4 (4) coca leaves and any salt, compound, derivative or preparation of  
5 coca leaves and any salt, compound, isomer, derivative or preparation  
6 thereof which is chemically equivalent or identical with any of these  
7 substances, but not including decocainized coca leaves or extractions of  
8 coca leaves which do not contain cocaine or ecgonine.

9 (m) "Opiate" means any substance having an addiction-forming or  
10 addiction-sustaining liability similar to morphine or being capable of  
11 conversion into a drug having addiction-forming or addiction-sustaining  
12 liability. "Opiate" does not include, unless specifically designated as  
13 controlled under K.S.A. 65-4102, and amendments thereto, the  
14 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts  
15 (dextromethorphan). "Opiate" does include its racemic and levorotatory  
16 forms.

17 (n) "Opium poppy" means the plant of the species *Papaver*  
18 *somniferum* L. except its seeds.

19 (o) "Person" means individual, corporation, government or  
20 governmental subdivision or agency, business trust, estate, trust,  
21 partnership, association or any other legal entity.

22 (p) "Poppy straw" means all parts, except the seeds, of the opium  
23 poppy, after mowing.

24 (q) "Possession" means having joint or exclusive control over an  
25 item with knowledge of and intent to have such control or knowingly  
26 keeping some item in a place where the person has some measure of  
27 access and right of control.

28 (r) "School property" means property upon which is located a  
29 structure used by a unified school district or an accredited nonpublic  
30 school for student instruction or attendance or extracurricular activities of  
31 pupils enrolled in kindergarten or any of the grades one through 12. This  
32 definition shall not be construed as requiring that school be in session or  
33 that classes are actually being held at the time of the offense or that  
34 children must be present within the structure or on the property during the  
35 time of any alleged criminal act. If the structure or property meets the  
36 above definition, the actual use of that structure or property at the time  
37 alleged shall not be a defense to the crime charged or the sentence  
38 imposed.

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

1       Sec. 2. K.S.A. 2010 Supp. 21-36a05 is hereby amended to read as  
2 follows: 21-36a05. (a) It shall be unlawful for any person to cultivate,  
3 distribute or possess with the intent to distribute any of the following  
4 controlled substances or controlled substance analogs thereof:

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

8       (2) any depressant designated in subsection (e) of K.S.A. 65-4105,  
9 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109  
10 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

11       (3) any stimulant designated in subsection (f) of K.S.A. 65-4105,  
12 subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of  
13 K.S.A. 65-4109, and amendments thereto;

14       (4) any hallucinogenic drug designated in subsection (d) of K.S.A.  
15 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A.  
16 65-4109, and amendments thereto;

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

20       (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-  
21 4109, and amendments thereto.

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

25       ~~(e) (1) Violation of subsection (a) is a drug severity level 3 felony,~~  
26 ~~except that:~~

27       ~~(A) Violation of subsection (a) is a drug severity level 2 felony if the~~  
28 ~~trier of fact makes a finding that the offender is 18 or more years of age~~  
29 ~~and the substance was distributed to or possessed with intent to distribute~~  
30 ~~to a minor or the violation occurs on or within 1,000 feet of any school~~  
31 ~~property;~~

32       ~~(B) violation of subsection (a)(1) is a drug severity level 2 felony if~~  
33 ~~that person has one prior conviction under subsection (a)(1), under~~  
34 ~~K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense~~  
35 ~~from another jurisdiction; and~~

36       ~~(C) violation of subsection (a)(1) is a drug severity level 1 felony if~~  
37 ~~that person has two prior convictions under subsection (a)(1), under~~  
38 ~~K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense~~  
39 ~~from another jurisdiction;~~

40       (2) Violation of subsection (b) is a class A nonperson misdemeanor,  
41 except that, violation of subsection (b) is a drug severity level 4 felony if  
42 the substance was distributed to or possessed with the intent to distribute  
43 to a child under 18 years of age.

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

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; or*

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*  
16 *any 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; or*

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*  
26 *any quantity of heroin or methamphetamine, or an analog thereof, is a:*

27       (A) *Drug severity level 4 felony if the quantity of the material was*  
28 *less than 1 gram;*

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

31       (C) *drug severity level 2 felony if the quantity of the material was at*  
32 *least 3.5 grams but less than 100 grams; or*

33       (D) *drug severity level 1 felony if the quantity of the material was*  
34 *100 grams or more.*

35       (4) *Violation of subsection (a) with respect to material containing*  
36 *any quantity of a controlled substance designated in K.S.A. 65-4105, 65-*  
37 *4107, 65-4109 or 65-4111, and amendments thereto, distributed by*  
38 *dosage unit, is a:*

39       (A) *Drug severity level 4 felony if the number of dosage units was*  
40 *fewer than 10;*

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

43       (C) *drug severity level 2 felony if the number of dosage units was at*

1 least 100 but less than 1,000; or

2 (D) drug severity level 1 felony if the number of dosage units was  
3 1,000 or more.

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

8 (6) Violation of subsection (b) is a class A person misdemeanor  
9 except as provided in subsection (d)(7).

10 (7) Violation of subsection (b) is a severity level 7, person felony if  
11 the substance was distributed to or possessed with the intent to distribute  
12 to a minor.

13 (8) Violation of subsection (c) is a:

14 (A) Drug severity level 3 felony if the number of plants cultivated  
15 was more than 4 but fewer than 50;

16 (B) drug severity level 2 felony if the number of plants cultivated  
17 was at least 50 but fewer than 100; or

18 (C) drug severity level 1 felony if the number of plants cultivated  
19 was 100 or more.

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

23 (1) 450 grams or more of marijuana;

24 (2) 3.5 grams or more of heroin or methamphetamine;

25 (3) 100 dosage units or more containing a controlled substance; or

26 (4) 100 grams or more of any other controlled substance.

27 (f) It shall not be a defense to charges arising under this section that  
28 the defendant:

29 (1) Was acting in an agency relationship on behalf of any other  
30 party in a transaction involving a controlled substance;

31 (2) did not know the quantity of the controlled substance; or

32 (3) did not know the specific controlled substance contained in the  
33 material that was distributed or possessed with the intent to distribute.

34 (g) As used in this section:

35 (1) "Material" means the total amount of any substance, including  
36 a compound or a mixture, which contains any quantity of a controlled  
37 substance.

38 (2) "Dosage unit" means a controlled substance distributed or  
39 possessed with the intent to distribute as a discrete unit, including but not  
40 limited to, one pill, one capsule or one microdot, and not distributed by  
41 weight.

42 (A) For steroids, or controlled substances in liquid solution legally  
43 manufactured for prescription use, "dosage unit" means the smallest



1 medically-approved dosage unit, as determined by the label, materials  
2 provided by the manufacturer, a prescribing authority, licensed  
3 health care professional or other qualified health authority.

4 (B) For illegally manufactured controlled substances in liquid  
5 solution, or controlled substances in liquid products not intended for  
6 ingestion by human beings, "dosage unit" means 10 milligrams,  
7 including the liquid carrier medium, except as provided in subsection (g)  
8 (2)(C).

9 (C) For lysergic acid diethylamide (LSD) in liquid form, a dosage  
10 unit is defined as 0.4 milligrams, including the liquid medium.

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

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

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

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

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

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

32 ~~(e) (1) Violation of subsection (a) is a drug severity level 2 felony;~~

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

37 ~~(3) violation of subsection (b)(2) is a class A nonperson~~  
38 ~~misdemeanor;~~

39 ~~(4) violation of subsection (c) is a drug severity level 4 felony;~~

40 ~~(5) violation of subsection (d) is a class A nonperson misdemeanor.~~

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

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

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

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

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

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

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

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

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

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

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

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

40 (1) Any product containing ephedrine, pseudoephedrine, red  
41 phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia,  
42 pressurized ammonia or phenylpropanolamine or their salts, isomers or  
43 salts of isomers if the person knows or reasonably should know that the

1 purchaser will use the product to manufacture a controlled substance; or

2 (2) any product containing ephedrine, pseudoephedrine or  
3 phenylpropanolamine, or their salts, isomers or salts of isomers for  
4 indication of stimulation, mental alertness, weight loss, appetite control,  
5 energy or other indications not approved pursuant to the pertinent federal  
6 over-the-counter drug final monograph or tentative final monograph or  
7 approved new drug application.

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

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

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

25 (e) (1) Violation of subsection (a) is a drug severity level 2 felony;

26 (2) Violation of subsection (b) is a drug severity level 4 felony,  
27 except ~~that~~ *as provided in subsection (e)(3)*.

28 (3) Violation of subsection (b) is a drug severity level 3 felony if the  
29 trier of fact makes a finding that ~~the offender is 18 or more years of age~~  
30 ~~and~~ the offender distributed or caused drug paraphernalia to be distributed  
31 to a minor or on or within 1,000 feet of any school property;

32 ~~(3)~~ (4) Violation of subsection (c) is a severity level 9, nonperson  
33 felony, except ~~that~~ *as provided in subsection (e)(5)*.

34 (5) Violation of subsection (c) is a drug severity level 4 felony if the  
35 trier of fact makes a finding that ~~the offender is 18 or more years of age~~  
36 ~~and~~ the offender distributed or caused drug paraphernalia to be distributed  
37 to a minor or on or within 1,000 feet of any school property;

38 ~~(4)~~ (6) Violation of subsection (d) is a class A nonperson  
39 misdemeanor, except ~~that~~ *as provided in subsection (e)(7)*.

40 (7) Violation of subsection (d) is a severity level 9, nonperson felony  
41 if the trier of fact makes a finding that ~~the offender is 18 or more years of~~  
42 ~~age~~ ~~and~~ the offender distributed or caused drug paraphernalia to be  
43 distributed to a minor or on or within 1,000 feet of any school property.

1 (f) For persons arrested and charged under subsection (a), bail shall  
2 be at least \$50,000 cash or surety, unless the court determines, on the  
3 record, that the defendant is not likely to re-offend, the court imposes  
4 pretrial supervision or the defendant agrees to participate in a licensed or  
5 certified drug treatment program.

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

9 (1) Actual knowledge from prior experience or statements by  
10 customers;

11 (2) inappropriate or impractical design for alleged legitimate use;

12 (3) receipt of packaging material, advertising information or other  
13 manufacturer supplied information regarding the item's use as drug  
14 paraphernalia; or

15 (4) receipt of a written warning from a law enforcement or  
16 prosecutorial agency having jurisdiction that the item has been previously  
17 determined to have been designed specifically for use as drug  
18 paraphernalia.

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

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

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

27 (2) Violation of subsection (a) is a nondrug severity level 7,  
28 nonperson felony, if the trier of fact makes a finding that ~~the offender is~~  
29 ~~18 or more years of age and~~ the violation occurred on or within 1,000 feet  
30 of any school property; ~~and~~.

31 ~~(2)~~ (3) Violation of subsection (b) is a class A nonperson  
32 misdemeanor.

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

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

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

43 (b)(1) Violation of subsection (a) is a class A nonperson

1 misdemeanor, except ~~that~~ *as provided in subsection (b)(2).*

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

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

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

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

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

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

21 Sec. 7. K.S.A. 2010 Supp. 21-36a01, 21-36a05, 21-36a09, 21-36a10,  
22 21-36a13 and 21-36a14 are hereby repealed.

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

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