

HB2031
01-25-23
Nick Reinecker
Opponent

House Corrections and Juvenile Justice
Chair. Rep. Stephen Owens

Mr. Chairman and Committee

I am an opponent to this bill because the definition of a "violent felony" in subsection (z) includes the possession of cannabis ("marijuana",) the natural plant. I am against this definition and believe an amendment should be added that would exclude any defined felonious possession of said botanical from this bill under subsection (z)(3)(N) on page 11 lines 12-13.

I support the incapacitation of individuals who use a firearm to commit physical force intended to hurt, damage, or kill someone. This would also include harsher penalties and even minimum mandatory sentences, however it is unwarranted, as it pertains to K.S.A. 21-5706, to include cannabis ("marijuana") possession in a violent felony list, regardless of simultaneous firearm possession and/or previous felon status.

Thank You,
Nick Reinecker

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K.S.A. 21-5706. Unlawful possession of controlled substances. (a) It shall be unlawful for any person to possess any opiates, opium or narcotic drugs, or any stimulant designated in K.S.A. 65-4107(d)(1), (d)(3) or (f)(1), and amendments thereto, or a controlled substance analog thereof.

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

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

(2) any stimulant designated in K.S.A. 65-4105(f), 65-4107(d)(2), (d)(4), (d)(5) or (f)(2) or 65-4109(e), and amendments thereto;

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

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

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

(6) any substance designated in K.S.A. 65-4113, and amendments thereto; or

(7) any substance designated in K.S.A. 65-4105(h), and amendments thereto.

(c) (1) Violation of subsection (a) is a drug severity level 5 felony.

(2) Except as provided in subsection (c)(3):

(A) Violation of subsection (b) is a class A nonperson misdemeanor, except as provided in subparagraph (B); and

(B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug severity level 5 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana as designated in K.S.A. 65-4105(d), and amendments thereto, or any substance designated in K.S.A. 65-4105(h), and amendments thereto, or an analog thereof.

(3) If the substance involved is marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto, or tetrahydrocannabinols, as designated in K.S.A. 65-4105(h) [K.S.A. 65-4105(h) Any of the following cannabinoids, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

Tetrahydrocannabinols

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(1) Meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure

and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.), except tetrahydrocannabinols in any of the following:

(A) Industrial hemp, as defined in K.S.A. 2-3901, and amendments thereto;

(B) solid waste, as defined in K.S.A. 65-3402, and amendments thereto, and hazardous waste, as defined in K.S.A. 65-3430, and amendments thereto, if such waste is the result of the cultivation, production or processing of industrial hemp, as defined in K.S.A. 2-3901, and amendments thereto, and such waste contains a delta-9 tetrahydrocannabinol concentration of not more than 0.3%; or

(C) hemp products, as defined in K.S.A. 2-3901, and amendments thereto, unless otherwise deemed unlawful pursuant to K.S.A. 2-3908, and amendments thereto.]

, and amendments thereto, violation of subsection (b) is a:

(A) Class B nonperson misdemeanor, except as provided in subparagraphs (B) and (C);

(B) class A nonperson misdemeanor if that person has a prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense; and

(C) drug severity level 5 felony if that person has two or more prior convictions under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense.

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

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

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

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

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

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

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

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

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

History: L. 2009, ch. 32, § 6; L. 2010, ch. 74, § 3; L. 2011, ch. 83, § 2; L. 2012, ch. 150, § 10; L. 2016, ch. 90, § 1; L. 2018, ch. 112, § 6; L. 2019, ch. 67, § 2; July 1