

SENATE BILL No. 413

By Committee on Judiciary

1-29

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to controlled substances; specifying penalties for unlawful distribution
3 of controlled substances with respect to material containing any
4 quantity of a fentanyl-related controlled substance when distributed by
5 weight or dosage unit; amending K.S.A. 21-5705 and repealing the
6 existing section.
7

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

9 Section 1. K.S.A. 21-5705 is hereby amended to read as follows: 21-
10 5705. (a) It shall be unlawful for any person to distribute or possess with
11 the intent to distribute any of the following controlled substances or
12 controlled substance analogs thereof:

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

16 (2) any depressant designated in ~~subsection (e) of K.S.A. 65-4105(e),~~
17 ~~subsection (e) of K.S.A. 65-4107(e), subsection (b) or (c) of K.S.A. 65-~~
18 ~~4109(b) or (c) or subsection (b) of K.S.A. 65-4111(b),~~ and amendments
19 thereto;

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

24 (4) any hallucinogenic drug designated in ~~subsection (d) of K.S.A.~~
25 ~~65-4105(d), subsection (g) of K.S.A. 65-4107(g) or subsection (g) of~~
26 ~~K.S.A. 65-4109(g),~~ and amendments thereto;

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

30 (6) any anabolic steroids as defined in ~~subsection (f) of K.S.A. 65-~~
31 ~~4109(f),~~ and amendments thereto; or

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

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

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

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

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

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

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

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

12 (2) *Except as provided further*, violation of subsection (a) with respect
13 to material containing any quantity of marijuana, or an analog thereof, is a:

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

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

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

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

22 (3) *Except as provided further*, violation of subsection (a) with respect
23 to material containing any quantity of a *fentanyl-related controlled*
24 *substance*, heroin; as defined by ~~subsection (e)(1) of K.S.A. 65-4105(c)~~
25 *(12)*, and amendments thereto, or methamphetamine; as defined by
26 ~~subsection (d)(3) or (f)(1) of K.S.A. 65-4107(d)(3) or (f)(1)~~, and
27 amendments thereto, or an analog thereof, is a:

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

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

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

34 (D) drug severity level 1 felony if the quantity of the material was
35 100 grams or more.

36 (4) *Except as provided further*, violation of subsection (a) with respect
37 to material containing any quantity of a controlled substance designated in
38 K.S.A. 65-4105, 65-4107, 65-4109 or 65-4111, and amendments thereto,
39 or an analog thereof, distributed by dosage unit, is a:

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

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

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

3 (D) drug severity level 1 felony if the number of dosage units was
4 1,000 or more.

5 (5) *Violation of subsection (a) with respect to material containing any*
6 *quantity of a fentanyl-related controlled substance, distributed by dosage*
7 *unit, is a:*

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

10 (B) *drug severity level 3 felony if the number of dosage units was at*
11 *least 10 but less than 50;*

12 (C) *drug severity level 2 felony if the number of dosage units was at*
13 *least 50 but less than 250; and*

14 (D) *drug severity level 1 felony if the number of dosage units was 250*
15 *or more.*

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

20 ~~(6)~~(7) Violation of subsection (b) is a:

21 (A) Class A person misdemeanor, except as provided in subsection
22 ~~(d)~~~~(6)~~(B) (d)(7)(B); and

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

25 ~~(7)~~(8) Violation of subsection (c) is a:

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

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

30 (C) drug severity level 1 felony if the number of plants cultivated was
31 100 or more.

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

35 (1) 450 grams or more of *material containing any quantity of*
36 *marijuana;*

37 (2) 3.5 grams or more of *material containing any quantity of a*
38 *fentanyl-related controlled substance, heroin or methamphetamine;*

39 (3) *50 dosage units or more containing any quantity of a fentanyl-*
40 *related controlled substance;*

41 (4) 100 dosage units or more containing—~~a~~ *any other* controlled
42 substance; or

43 ~~(4)~~(5) 100 grams or more of *material containing any other* controlled

1 substance.

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

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

7 (2) did not know the quantity of the controlled substance or
8 controlled substance analog; or

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

12 (g) As used in this section:

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

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

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

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

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

33 Sec. 2. K.S.A. 21-5705 is hereby repealed.

34 Sec. 3. This act shall take effect and be in force from and after its
35 publication in the statute book.