

2023 Kansas Statutes

21-5701. Definitions. As used in K.S.A. 21-5701 through 21-5717, and amendments thereto:

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

(b) (1) "Controlled substance analog" means a substance that is intended for human consumption, and at least one of the following:

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

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

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

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

(A) A controlled substance;

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

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

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

(d) "Distribute" means the actual, constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship.

"Distribute" includes, but is not limited to, sale, offer for sale or any act that causes some item to be transferred from one person to another. "Distribute" does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act or otherwise authorized by law.

(e) (1) "Drug" means:

(A) Substances recognized as drugs in the official United States pharmacopeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;

(B) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals;

(C) substances, other than food, intended to affect the structure or any function of the body of humans or animals; and

(D) substances intended for use as a component of any article specified in subparagraph (A), (B) or (C).

(2) "Drug" does not include devices or their components, parts or accessories.

(f) (1) "Drug paraphernalia" means all equipment and materials of any kind that are used, or primarily intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance and in violation of this act.

(2) "Drug paraphernalia" includes, but is not limited to:

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

(B) kits used or intended for use in manufacturing, compounding, converting,

producing, processing or preparing controlled substances;

(C) isomerization devices used or intended for use in increasing the potency of any species of plant that is a controlled substance;

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

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

(F) diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose that are used or intended for use in cutting controlled substances;

(G) separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;

(H) blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;

(I) capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;

(J) containers and other objects used or intended for use in storing or concealing controlled substances;

(K) hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;

(L) objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

- (i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
- (ii) water pipes, bongos or smoking pipes designed to draw smoke through water or another cooling device;
- (iii) carburetion pipes, glass or other heat-resistant tubes or any other device used, intended to be used or designed to be used to cause vaporization of a controlled substance for inhalation;
- (iv) smoking and carburetion masks;
- (v) roach clips, objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
- (vi) miniature cocaine spoons and cocaine vials;
- (vii) chamber smoking pipes;
- (viii) carburetor smoking pipes;
- (ix) electric smoking pipes;
- (x) air-driven smoking pipes;
- (xi) chillums;
- (xii) bongos;
- (xiii) ice pipes or chillers;
- (xiv) any smoking pipe manufactured to disguise its intended purpose;
- (xv) wired cigarette papers; or
- (xvi) cocaine freebase kits.

(3) "Drug paraphernalia" does not include:

- (A) Any products, chemicals or materials described in K.S.A. 21-5709(a), and amendments thereto; or
- (B) any materials used or intended for use to test a substance for the presence of fentanyl, a fentanyl analog, ketamine or gamma hydroxybutyric acid.

(g) "Fentanyl-related controlled substance" means any substance designated in K.S.A. 65-4105(b)(1), (b)(2), (b)(4), (b)(10), (b)(11), (b)(14), (b)(15), (b)(16), (b)(20), (b)(22), (b)(23), (b)(24), (b)(37), (b)(41), (b)(45), (b)(46), (b)(47), (b)(49), (b)(57), (b)(58), (b)(59), (b)(60), (b)(61), (b)(62), (b)(73), (b)(74), (b)(78), (g)(1) or (g)(2) or 65-4107(c)(1), (c)(6), (c)(9), (c)(26), (c)(28), (c)(30), (f)(3)(A) or (f)(3)(B), and amendments thereto, or any analog thereof.

(h) "Immediate precursor" means a substance that the state board of pharmacy has found to be and by rules and regulations designates as being the principal compound commonly used or produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

- (i) "Isomer" means all enantiomers and diastereomers.
- (j) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of or placing into pill or capsule form a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. "Manufacture" does not include:
- (1) The preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:
 - (A) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or
 - (B) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance; or
 - (2) the addition of diluents or adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose or lactose that are intended for use in cutting a controlled substance.
- (k) "Marijuana" means all parts of all varieties of the plant Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. "Marijuana" does not include:
- (1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant that is incapable of germination;
 - (2) any substance listed in schedules II through V of the uniform controlled substances act;
 - (3) drug products approved by the United States food and drug administration as of the effective date of this act;
 - (4) cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol); or
 - (5) industrial hemp as defined in K.S.A. 2-3901, and amendments thereto, when cultivated, produced, possessed or used for activities authorized by the commercial industrial hemp act.
- (l) "Minor" means a person under 18 years of age.
- (m) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:
- (1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;
 - (2) any salt, compound, isomer, derivative or preparation thereof that is chemically equivalent or identical with any of the substances referred to in paragraph (1) but not including the isoquinoline alkaloids of opium;
 - (3) opium poppy and poppy straw;
 - (4) coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative or preparation thereof that is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine.
- (n) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under K.S.A. 65-4102, and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). "Opiate" does include its racemic and levorotatory forms.
- (o) "Opium poppy" means the plant of the species Papaver somniferum L. except its seeds.
- (p) "Person" means an individual, corporation, government or governmental

subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

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

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

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

History: L. 2009, ch. 32, § 1; L. 2010, ch. 109, § 13; L. 2012, ch. 150, § 7; L. 2017, ch. 57, § 1; L. 2018, ch. 101, § 4; L. 2019, ch. 37, § 10; L. 2022, ch. 99, § 1; L. 2023, ch. 94, § 2; July 1.