

CHAPTER 45

(HB 121)

AN ACT relating to crimes and punishments and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of trafficking in naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone when he or she knowingly and unlawfully traffics in naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone.*
- (2) *Trafficking in naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone is a Class A misdemeanor.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of possession of naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone when he or she knowingly and unlawfully possesses naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone.*
- (2) *Possession of naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone is a Class B misdemeanor, except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of manufacturing naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone when he or she knowingly and unlawfully manufactures naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone.*
- (2) *Unlawfully manufacturing naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxyethylcathinone, or 4-methylmethcathinone is a Class A misdemeanor.*

➔Section 4. KRS 218A.050 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Health and Family Services, the controlled substances listed in this section are included in Schedule I:

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, or salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxadine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacymorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide; Trimeperidine.
- (2) Any material, compound, mixture, or preparation which contains any quantity of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphanol; Methylmorphine; Methylhydromorphanol; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.
- (3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, or salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-

methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4, 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline; *naphthylprovalerone*; *3,4-methylenedioxyprovalerone*; *3,4-methylenedioxyethylcathinone*; *4-methylmethcathinone*; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including but not limited to Methcathinone, Cat, and Ephedrone); synthetic cannabinoid agonists or piperazines; salvia.

- (4) Any material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: gamma hydroxybutyric acid.

➔Section 5. KRS 217.065 is amended to read as follows:

Except for violations of KRS 218A.350, a drug or device shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If in package form unless it bears a label containing:
 - (a) The name and place of business of the manufacturer, packer, or distributor, except that, in the case of a prescription drug, it shall bear the name and place of business of the manufacturer, and the name and place of business of the packer, or distributor, if other than the manufacturer; and
 - (b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the secretary;
- (3) If any word, statement, or other information required by or under authority of KRS 217.005 to 217.215 to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, *naphthylprovalerone*, *3,4-methylenedioxyprovalerone*, *3,4-methylenedioxyethylcathinone*, *4-methylmethcathinone*, synthetic cannabinoid agonists or piperazines, salvia, morphine, opium, paraldehyde, peyote, or sulfonmethane, or any chemical derivative of such substance, which derivative has been by the secretary after investigation, found to be, and by regulations under KRS 217.005 to 217.215 designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning -- May be habit-forming";
- (5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:
 - (a) The common or usual name of the drug, if such there be; and
 - (b) In case it is fabricated from two (2) or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including whether active or not the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided that to the extent that compliance with this subsection is impracticable, exemptions shall be established by regulations promulgated by the secretary;
- (6) Unless its labeling bears:
 - (a) Adequate directions for use; and
 - (b) Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided that where any requirement of subsection (a) of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirements;

- (7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided that the method of packing may be modified with a consent of the cabinet. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia;
- (8) If it has been found by the cabinet to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the secretary shall by *administrative* regulations require as necessary for the protection of public health. No such *administrative* regulation shall be established for any drug recognized in an official compendium until the secretary shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements;
- (9) (a) If it is a drug and its container is so made, formed, or filled as to be misleading; or
 (b) If it is an imitation of another drug; or
 (c) If it is offered for sale under the name of another drug;
- (10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;
- (11) If:
- (a) It is a drug intended for use by man which is a habit forming drug to which subsection (4) of this section applies; or because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner, and is not dispensed upon a prescription unless prior to dispensing its label bears the statement "Caution: Federal law prohibits dispensing without prescription"; or
- (b) It is a drug or device and its label (as originally packed) directs that it is to be dispensed or sold only on prescription, unless it is dispensed or sold on a prescription of an authorized practitioner and its label (as dispensed) bears the name and place of business of the dispenser or seller, the serial number and date of such prescription, and the name of such licensed practitioner. Such prescriptions shall not be refilled except on the specific authorization of the prescribing practitioner; provided that where any requirement of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirement;
- (12) A drug sold on a prescription of a practitioner (except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail) shall be exempt from the requirements of this section if:
- (a) Such practitioner is licensed by law to administer such drug; and
- (b) Such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of such practitioner.
- (13) It is not the intention of subsection (2)(a) of this section as amended herein to require the name and place of business of the wholesaler to appear upon the label of the package unless otherwise required by this section.

➔Section 6. KRS 218A.1401 is amended to read as follows:

- (1) A person is guilty of selling controlled substances to a minor when he *or she*, being eighteen (18) years of age or older, knowingly and unlawfully sells or transfers any quantity of a controlled substance other than *naphthylprovalerone*, *3,4-methylenedioxyprovalerone*, *3,4-methylenedioxymethylcathinone*, *4-methylmethcathinone*, synthetic cannabinoid agonists, ~~or~~ piperazines, or salvia to any person under eighteen (18) years of age.
- (2) Selling controlled substances to a minor is a Class C felony for a first offense, and a Class B felony for each subsequent offense, unless a more severe penalty for trafficking in controlled substances is applicable, in which case the higher penalty shall apply.

➔Section 7. KRS 218A.141 is amended to read as follows:

Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance, *other than* trafficking in *naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone*, synthetic cannabinoid agonists, ~~or~~ piperazines, ~~or~~ salvia, or trafficking in marijuana shall, in addition to any other penalty authorized by law, be sentenced to:

- (1) Pay the costs of disposal of the controlled substances;
- (2) Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;
- (3) Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking offenses; and
- (4) Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.

➔Section 8. KRS 218A.1411 is amended to read as follows:

- (1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) ~~feet~~^{yards} of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.
- (2) The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to *naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone*, synthetic cannabinoid agonists, ~~or~~ piperazines, or salvia.

➔Section 9. KRS 218A.1413 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the second degree when:
 - (a) He *or she* knowingly and unlawfully traffics in a controlled substance classified in Schedules I and II which is not a narcotic drug; or specified in KRS 218A.1412; or a controlled substance classified in Schedule III; but not lysergic acid diethylamide, *naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone*, phencyclidine, synthetic cannabinoid agonists or piperazines, salvia, or marijuana; or
 - (b) He *or she* knowingly and unlawfully prescribes, orders, distributes, supplies, or sells an anabolic steroid for:
 1. Enhancing performance in an exercise, sport, or game; or
 2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity.

- (2) Any person who violates the provisions of subsection (1) of this section shall:

- (a) For the first offense be guilty of a Class D felony.
- (b) For a second or subsequent offense be guilty of a Class C felony.

➔Section 10. KRS 218A.1416 is amended to read as follows:

- (1) A person is guilty of possession of a controlled substance in the second degree when he *or she* knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a controlled substance classified in Schedule III; but not lysergic acid diethylamide, *naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone*, phencyclidine, synthetic cannabinoid agonists, ~~or~~ piperazines, salvia, or marijuana.
- (2) Possession of a controlled substance in the second degree is:
 - (a) For a first offense a Class A misdemeanor.
 - (b) For a second or subsequent offense a Class D felony.

➔Section 11. KRS 218A.276 is amended to read as follows:

- (1) Any person found guilty of possession of marijuana pursuant to KRS 218A.1422, *naphthylprovalerone*, *3,4-methylenedioxyprovalerone*, *3,4-methylenedioxymethylcathinone*, or *4-methylmethcathinone* pursuant to *Section 2 of this Act*, ~~or possession of~~ synthetic cannabinoid agonists or piperazines pursuant to KRS 218A.1427, or salvia pursuant to KRS 218A.1451 may be ordered to a facility designated by the secretary of the Cabinet for Health and Family Services where a program of education, treatment, and rehabilitation not to exceed ninety (90) days in duration may be prescribed. The person ordered to the designated facility shall present himself *or herself* for registration and initiation of a treatment program within five (5) days of the date of sentencing. If without good cause, the person fails to appear at the designated facility within the specified time, or if any time during the program of treatment prescribed, the authorized clinical director of the facility finds that the person is unwilling to participate in his *or her* treatment and rehabilitation, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment and rehabilitation, or may order confinement in the county jail for not more than ninety (90) days or a fine of not more than two hundred fifty dollars (\$250), or both. Upon discharge of the person from the facility by the secretary of the Cabinet for Health and Family Services, or his *or her* designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his *or her* designee, shall notify the sentencing court of the date of such discharge from the facility.
- (2) The secretary of the Cabinet for Health and Family Services, or his *or her* designee, shall inform each court of the identity and location of the facility to which a person sentenced by that court under this chapter shall be initially ordered.
- (3) In the case of a person ordered to a facility for treatment and rehabilitation pursuant to this chapter, transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself *or herself* to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated facility of the sentence and its effective date.
- (5) The secretary of the Cabinet for Health and Family Services, or his *or her* designee, may authorize transfer of the person from the initially designated facility to another facility for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating facility.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the facility shall arrange otherwise.
- (7) None of the provisions of this chapter shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.
- (8) In the case of any person who has been convicted of possession of marijuana, *naphthylprovalerone*, *3,4-methylenedioxyprovalerone*, *3,4-methylenedioxymethylcathinone*, *4-methylmethcathinone*, ~~or possession of~~ synthetic cannabinoid agonists, ~~or~~ piperazines, or salvia, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

➔Section 12. KRS 218A.410 is amended to read as follows:

- (1) The following are subject to forfeiture:
 - (a) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state;
 - (b) Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state;
 - (c) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily destroyed or forfeited to the state. The failure, upon demand by the law enforcement agency or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being

stored, to produce an appropriate registration, or proof that he *or she* is the holder thereof, constitutes authority for the seizure and forfeiture of the plants;

- (d) All substances, machinery, or devices used for the manufacture, packaging, repackaging, or marking, and books, papers, and records, and all vehicles owned and used by the seller or distributor for the manufacture, distribution, sale, or transfer of substances in violation of KRS 218A.350 shall be seized and forfeited to the state. Substances manufactured, held, or distributed in violation of KRS 218A.350 shall be deemed contraband;
- (e) All controlled substances which have been manufactured, distributed, dispensed, possessed, being held, or acquired in violation of this chapter;
- (f) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;
- (g) All property which is used, or intended for use, as a container for property described in paragraph (e) or (f) of this subsection;
- (h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:
 1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it is proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
 2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his *or her* knowledge or consent;
 3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he *or she* neither had knowledge of nor consented to the act or omission; and
 4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana, *naphthylprovalerone*, *3,4-methylenedioxyprovalerone*, *3,4-methylenedioxymethylcathinone*, *4-methylmethcathinone*,~~{or}~~ synthetic cannabinoid agonists,~~{or}~~ piperazines, or salvia;
- (i) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;
- (j) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him *or her* to have been committed or omitted without his *or her* knowledge or consent. It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence. The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is forfeitable under this paragraph; and
- (k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this chapter excluding any misdemeanor offense relating to marijuana, *naphthylprovalerone*, *3,4-methylenedioxyprovalerone*, *3,4-methylenedioxymethylcathinone*, *4-methylmethcathinone*,~~{or}~~ synthetic cannabinoid agonists,~~{or}~~ piperazines, or salvia, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.

- (2) Title to all property, including all interests in the property, forfeit under this section vests in the Commonwealth on the commission of the act or omission giving rise to forfeiture under this section together with the proceeds of the property after the time. Any property or proceeds subsequently transferred to any person shall be subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in the forfeiture proceeding that he *or she* is a subsequent bona fide purchaser for value without actual or constructive notice of the act or omission giving rise to the forfeiture.
- (3) If any of the property described in this section cannot be located; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or, has been commingled with any property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this section.

➔Section 13. KRS 218A.992 is amended to read as follows:

- (1) Other provisions of law notwithstanding, any person who is convicted of any violation of this chapter who, at the time of the commission of the offense and in furtherance of the offense, was in possession of a firearm, shall:
- (a) Be penalized one (1) class more severely than provided in the penalty provision pertaining to that offense if it is a felony; or
- (b) Be penalized as a Class D felon if the offense would otherwise be a misdemeanor.
- (2) The provisions of this section shall not apply to a violation of KRS 218A.210, 218A.1426, 218A.1427, 218A.1428, 218A.1450, 218A.1451, ~~or~~ 218A.1452, *Section 1, 2, or 3 of this Act*.

➔Section 14. KRS 530.064 is amended to read as follows:

- (1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:
- (a) Illegal sexual activity; or
- (b) Illegal controlled substances activity other than activity involving marijuana, *naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone*, synthetic cannabinoid agonists or piperazines, or salvia as defined in KRS 218A.010;

Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100 where that offense involves commercial sexual activity.

- (2) Unlawful transaction with a minor in the first degree is a:
- (a) Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
- (b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
- (c) Class A felony if the minor so used incurs physical injury thereby.

➔Section 15. KRS 218A.010 is amended to read as follows:

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
- (a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or
- (b) The patient or research subject at the direction and in the presence of the practitioner;
- (2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids;
- (3) "Cabinet" means the Cabinet for Health and Family Services;
- (4) "Child" means any person under the age of majority as specified in KRS 2.015;

- (5) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue;
- (6) (a) "Controlled substance analogue," except as provided in subparagraph (b) of this subsection, means a substance:
1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
 2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
 3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.
- (b) Such term does not include:
1. Any substance for which there is an approved new drug application;
 2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or
 3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance;
- (7) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance;
- (8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
- (9) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user;
- (10) "Distribute" means to deliver other than by administering or dispensing a controlled substance;
- (11) "Drug" means:
- (a) Substances recognized as drugs in the official United States Pharmacopoeia, 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, care, mitigation, treatment, or prevention of disease in man or animals;
 - (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
 - (d) Substances intended for use as a component of any article specified in this subsection.
- It does not include devices or their components, parts, or accessories;
- (12) "Good faith prior examination," as used in KRS Chapter 218A and for criminal prosecution only, means an in-person medical examination of the patient conducted by the prescribing practitioner or other health-care professional routinely relied upon in the ordinary course of his or her practice, at which time the patient is physically examined and a medical history of the patient is obtained. "In-person" includes telehealth examinations. This subsection shall not be applicable to hospice providers licensed pursuant to KRS Chapter 216B;
- (13) "Hazardous chemical substance" includes any chemical substance used or intended for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:

- (a) Poses an explosion hazard;
 - (b) Poses a fire hazard; or
 - (c) Is poisonous or injurious if handled, swallowed, or inhaled;
- (14) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance or methamphetamine, the control of which is necessary to prevent, curtail, or limit manufacture;
- (15) "Intent to manufacture" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes but is not limited to statements and a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine;
- (16) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer;
- (17) "Manufacture," except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:
- (a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice;
 - (b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
 - (c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice;
- (18) "Marijuana" means all parts of the plant *Cannabis* sp., 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 or any compound, mixture, or preparation which contains any quantity of these substances;
- (19) "Medical history," as used in KRS Chapter 218A and for criminal prosecution only, means an accounting of a patient's medical background, including but not limited to prior medical conditions, prescriptions, and family background;
- (20) "Medical order," as used in KRS Chapter 218A and for criminal prosecution only, means a lawful order of a specifically identified practitioner for a specifically identified patient for the patient's health-care needs. "Medical order" may or may not include a prescription drug order;
- (21) "Medical record," as used in KRS Chapter 218A and for criminal prosecution only, means a record, other than for financial or billing purposes, relating to a patient, kept by a practitioner as a result of the practitioner-patient relationship;
- (22) "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers;
- (23) "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:
- (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
 - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;
 - (c) Opium poppy and poppy straw;

- (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
 - (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection;
- (24) "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. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;
- (25) "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds;
- (26) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (27) "Physical injury" has the same meaning it has in KRS 500.080;
- (28) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- (29) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (30) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, advanced practice registered nurse as authorized under KRS 314.011, or other person licensed, registered, or otherwise permitted by state or federal law to acquire, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist, veterinarian, or advanced practice registered nurse authorized under KRS 314.011 who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;
- (31) "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal prosecution only, means a medical relationship that exists between a patient and a practitioner or the practitioner's designee, after the practitioner or his designee has conducted at least one (1) good faith prior examination;
- (32) "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, optometric practitioner, or advanced practice registered nurse, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (33) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216;
- (34) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;
- (35) "Salvia" means *Salvia divinorum* or Salvinorin A and includes all parts of the plant presently classified botanically as *Salvia divinorum*, whether growing or not, the seeds thereof, any extract from any part of that plant, and every compound, manufacture, derivative, mixture, or preparation of that plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation of that plant, its seeds, or extracts. The term shall not include any other species in the genus *salvia*;
- (36) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter;

- (37) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;
- (38) "Serious physical injury" has the same meaning it has in KRS 500.080;
- (39) "Synthetic cannabinoid agonists or piperazines" means any chemical compound that contains Benzylpiperazine; Trifluoromethylphenylpiperazine; 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol; 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexanabinol; *(1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-ylmethanone (JWH-200)*; *1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250)*; or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol). The term shall not include synthetic cannabinoids that require a prescription, are approved by the United States Food and Drug Administration, and are dispensed in accordance with state and federal law;
- (40) "Telehealth" has the same meaning it has in KRS 311.550;
- (41) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
 2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
 3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;
- (42) "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance;
- (43) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and
- (44) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

➔Section 16. Whereas, the substances specified in Sections 1 to 15 of this Act are dangerous substances that are currently legal to sell and possess in this state, and whereas it is necessary to prohibit the sale or possession of this substance immediately in an effort to prevent stockpiling of them by individuals for future use, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 16, 2011.