

Drug Statute Amendments 2018 SB263, SB282, HB2458

[Link to the SB282](#)

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Effective May 24, 2018

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Effective July 1, 2018

[Link to the SB263](#)

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Effective May 3, 2018

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Drug Schedule Updates (SB282, sections 1, 2, & 3) Effective May 24, 2018

KSA 65-4105, Schedule I Drugs, is amended by adding 12 forms of synthetic opioid fentanyl and MT-45 an opioid analgesic. Also adds several cannabinoid classes to cover several new synthetics.

KSA 65-4107, Schedule II Drugs, is amended by adding a fentanyl precursor. Dronabinol, a synthetic THC compound, is also moved here from Schedule IV to mirror a federal change.

KSA 65-4109, Schedule III Drugs, is amended by updating the list of anabolic steroids.

Marijuana Definition and Cannabidiols (SB282, sections 4 & 5) Effective May 24, 2018

The Marijuana definition was amended in both KSA 21-5701 subsection (j) and KSA 65-4101 subsection (aa) to exclude cannabidiols. This was to allow the sale and possession (not manufacturing) of certain cannabidiols marketed as a health aid commonly sold in health food stores and convenience stores. This definition does not exclude all cannabinoids from the definition and is designed to be very narrow for the marketed products. The change in definition does not allow those products to contain any amount of THC or other controlled substance, they must be THC free to be legal since THC is still a scheduled drug.

Drug Treatment for Drug SL4 Felons (HB2458, section 8) Effective July 1, 2018

KSA 21-6824 is amended to allow the nonprison sanction of placement in a certified drug abuse treatment program, commonly referred to as the SB123 program, to include offenders convicted of a severity level 4 offense with a criminal history of E or lower (no prior person felony convictions) who do not have any felony conviction of drug manufacturing, drug cultivation or distribution, or unlawful acts involving proceeds derived from drug violations. The amendment is intended to allow drug treatment for defendants in distribution of small quantities provided they have no prior distribution convictions.

Offenders are not eligible if they: (A) Are residents of, and returning to, another state pursuant to the interstate corrections compact or the interstate compact for adult offender supervision; (B) are not lawfully present in the United States and being detained for deportation; or (C) do not meet certain risk assessment levels.

THC Possession Penalties (HB2458 section 6) Effective July 1, 2018

KSA 21-5706 is amended to make the penalties for possession of THC the same as they are for marijuana: First offense is a class B nonperson misdemeanor; second offense is a class A nonperson misdemeanor; and a third or subsequent offense is a drug severity level 5 felony.

Industrial or Agricultural Hemp (SB263, sections 4 & 5) Effective May 3, 2018

The legislature approved the "Alternative Crop Research Act" legalizing industrial or agricultural hemp, however it is limited to what is allowed under federal law for promoting the research and development of industrial hemp. This requires it to be well regulated under the Kansas Department of Agriculture (KDA). KDA is authorized to establish a pilot program in Russell County, and other counties determined by the KDA, for economic development, research,

cultivation, market analysis, manufacturing, and transportation of industrial hemp and industrial hemp products. [New Section 2]

Definitions are in new section 1 and include:

- “Industrial hemp” means all parts and varieties of the plant *cannabis sativa* L., cultivated or possessed by a state educational institution or the department, whether growing or not, that contain a delta-9 tetrahydrocannabinol concentration of no more than 0.3% on a dry weight basis.
- “Certified seed” means industrial hemp seed that has been certified by a certifying agency, as defined by K.S.A. 2-1415, and amendments thereto, as having a delta-9 tetrahydrocannabinol concentration of no more than 0.3% on a dry weight basis.
- “Hemp products” means all products made from industrial hemp, including, but not limited to, cloth, cordage, fiber, food, fuel, paint, paper, particleboard, plastics, seed, seed meal and seed oil for consumption and certified seed for cultivation, if the seeds originate from industrial hemp varieties.

The KDA can operate the program with coordination through either a state university or an advisory board. They are already forming the advisory board and it will include a law enforcement representative. [New section 1]

Participants must be licensed which requires a fingerprint based criminal history check. Persons with a felony drug conviction are ineligible for licensure. [New section 2 subsection (d)]

KDA must develop rules and regulations to administer the program by the end of 2018. [New section 2 subsection (e)]

Participants will be required to keep their license in their possession at all times they are engaged in cultivation, growth, research, oversight, study, analysis, transportation, processing, or distribution of certified seed or industrial hemp pursuant to the Act. This was implemented at the request of law enforcement to assist us in differentiating between legal hemp operations and cannabis related criminal activity. [New section 2 subsection (e)]

The definition of marijuana is amended in KSA 21-5701 subsection (j) and KSA 65-4101 subsection (aa) to exclude hemp as authorized in the Act. [Sections 4 & 6]

KSA 65-4105, the schedule I drug statute, is amended in subsection (h)(1) to exclude THC obtained from industrial hemp but only “when cultivated, possessed or used for activities authorized by the alternative crop research act.” Any other THC possession, extraction, or distribution is still criminal, even if conducted by a person licensed under the Act. [Section 7]

While the bill became effective when published in the Kansas Register on May 3, 2018, the program cannot become active until after the Kansas Department of Agriculture creates the regulations and issues licenses. We probably will not see hemp being grown under the Act in Kansas until spring of 2019 at the earliest.

The author of this document is not an attorney and this is not legal advice. It is a summary of legislation passed in the 2018 Kansas legislative session and is based on explanations, observations, and studies of the bill and related documents.

Always follows your agency policies and utilize your agency protocol to refer to your local prosecutors and agency attorneys for legal interpretations.