

SENATE BILL No. 366

An Act concerning crimes, punishment and criminal procedure; relating to justified use of force; departure sentencing; criminal street gangs; loss of value of the crime; controlled substances; warrantless searches; amending K.S.A. 16-305, 19-3519, 21-3211, 21-3212, 21-3720, 21-3729, 21-3734, 21-3902, 21-3904, 21-3905, 21-4111, 39-717, 40-247, 40-2,118, as amended by section 1 of 2006 House Substitute for Senate Bill No. 207, 44-5,125, and 65-4150 and K.S.A. 2005 Supp. 21-3437, 21-3763, 21-3846, 21-4716, 22-3901, 32-1005, 40-5013, 47-1827 and 65-7006 and repealing the existing sections; also repealing K.S.A. 22-2501.

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

New Section 1. (a) A person who is not engaged in an unlawful activity and who is attacked in a place where such person has a right to be has no duty to retreat and has the right to stand such person's ground and meet force with force.

(b) This section shall be part of and supplemental to the Kansas criminal code.

New Sec. 2. (a) A person who uses force which, subject to the provisions of K.S.A. 21-3214, and amendments thereto, is justified pursuant to K.S.A. 21-3211, 21-3212 or 21-3213, and amendments thereto, is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer who was acting in the performance of such officer's official duties and the officer identified the officer's self in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, "criminal prosecution" includes arrest, detention in custody and charging or prosecution of the defendant.

(b) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (a), but the agency shall not arrest the person for using force unless it determines that there is probable cause for the arrest.

Sec. 3. K.S.A. 21-3211 is hereby amended to read as follows: 21-3211. (a) A person is justified in the use of force against ~~an aggressor~~ another when and to the extent it appears to ~~him and he~~ such person and such person reasonably believes that such ~~conduct~~ force is necessary to defend ~~himself or another~~ such person or a third person against such ~~aggressor's~~ other's imminent use of unlawful force.

(b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person.

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person or a third person.

Sec. 4. K.S.A. 21-3212 is hereby amended to read as follows: 21-3212. (a) A person is justified in the use of force against another when and to the extent that it appears to ~~him and he~~ such person and such person reasonably believes that such ~~conduct~~ force is necessary to prevent or terminate such other's unlawful entry into or attack upon ~~his~~ such person's dwelling or occupied vehicle.

(b) A person is justified in the use of deadly force to prevent or terminate unlawful entry into or attack upon any dwelling or occupied vehicle if such person reasonably believes deadly force is necessary to prevent imminent death or great bodily harm to such person or another.

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person's dwelling or occupied vehicle.

New Sec. 5. Sections 5 through 9, and amendments thereto, shall be known and may be cited as the criminal street gang prevention act.

New Sec. 6. As used in sections 5 through 9, and amendments thereto:

(a) "Criminal street gang" means any organization, association or group, whether formal or informal:

- (1) Consisting of three or more persons;
 - (2) having as one of its primary activities the commission of one or more person felonies, person misdemeanors, felony violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amendments thereto, or the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors;
 - (3) which has a common name or common identifying sign or symbol;
- and

(4) whose members, individually or collectively, engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies, person misdemeanors, felony violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amendments thereto, the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors or any substantially similar offense from another jurisdiction.

(b) “Criminal street gang member” is a person who:

(1) Admits to criminal street gang membership; or

(2) meets three or more of the following criteria:

(A) Is identified as a criminal street gang member by a parent or guardian.

(B) Is identified as a criminal street gang member by a state, county or city law enforcement officer or correctional officer or documented reliable informant.

(C) Is identified as a criminal street gang member by an informant of previously untested reliability and such identification is corroborated by independent information.

(D) Resides in or frequents a particular criminal street gang’s area and adopts such gang’s style of dress, color, use of hand signs or tattoos, and associates with known criminal street gang members.

(E) Has been arrested more than once in the company of identified criminal street gang members for offenses which are consistent with usual criminal street gang activity.

(F) Is identified as a criminal street gang member by physical evidence including, but not limited to, photographs or other documentation.

(G) Has been stopped in the company of known criminal street gang members two or more times.

(H) Has participated in or undergone activities self-identified or identified by a reliable informant as a criminal street gang initiation ritual.

(c) “Criminal street gang activity” means the commission or attempted commission of, or solicitation or conspiracy to commit, one or more person felonies, person misdemeanors, felony violations of the uniform controlled substances act, K.S.A. 65-4101, *et seq.*, and amendments thereto, or the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors on separate occasions.

(d) “Criminal street gang associate” means a person who:

(1) Admits to criminal street gang association; or

(2) meets two or more defining criteria for criminal street gang membership described in subsection (b)(2).

(e) For purposes of law enforcement identification and tracking only “gang-related incident” means an incident that, upon investigation, meets any of the following conditions:

(1) The participants are identified as criminal street gang members or criminal street gang associates, acting, individually or collectively, to further any criminal purpose of the gang;

(2) a state, county or city law enforcement officer or correctional officer or reliable informant identifies an incident as criminal street gang activity; or

(3) an informant of previously untested reliability identifies an incident as criminal street gang activity and it is corroborated by independent information.

New Sec. 7. (a) Recruiting criminal street gang membership is causing, encouraging, soliciting or recruiting another person to join a criminal street gang that requires, as a condition of membership or continued membership, the commission of any crime or membership initiation by submission to a sexual or physical assault that is criminal in nature, or would be criminal absent consent by the initiated.

(b) Recruiting criminal street gang membership is a severity level 6, person felony.

New Sec. 8. (a) Criminal street gang intimidation is the communication, directly or indirectly with another, any threat of personal injury or actual personal injury to another or any threat of damage or actual damage to property of another with the intent to:

(1) Deter such person from assisting a criminal street gang member or associate to withdraw from such criminal street gang; or

(2) punish or retaliate against such person for having withdrawn from a criminal street gang.

(b) Criminal street gang intimidation is a severity level 5, person felony.

New Sec. 9. When a criminal street gang member, as defined in section 6, and amendments thereto, is arrested for a person felony, bail shall be at least \$50,000 cash or surety, unless the court determines on the record that the defendant is not likely to reoffend, an appropriate intensive pre-trial supervision program is available and the defendant agrees to comply with the mandate of such pre-trial supervision.

New Sec. 10. Sections 5 through 9, and amendments thereto, shall be a part of and supplemental to the Kansas criminal code.

Sec. 11. K.S.A. 2005 Supp. 22-3901 is hereby amended to read as follows: 22-3901. The following unlawful activities and the use of real or personal property in maintaining and carrying on such activities are hereby declared to be common nuisances:

(a) Commercial gambling;

(b) dealing in gambling devices;

(c) possession of gambling devices;

(d) promoting obscenity;

(e) promoting prostitution;

(f) habitually promoting prostitution;

(g) violations of any law regulating controlled substances;

(h) habitual violations of any law regulating the sale or exchange of alcoholic liquor or cereal malt beverages, by any person not licensed pursuant to chapter 41 of the Kansas Statutes Annotated;

(i) habitual violations of any law regulating the sale or exchange of cigarettes or tobacco products, by any person not licensed pursuant to article 33 of chapter 79 of the Kansas Statutes Annotated;

(j) any felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members. As used in this subsection, “criminal street gang” means any organization, association or group ~~of three or more persons~~, whether formal or informal;

(1) *Consisting of three or more persons;*

(2) having as one of its primary activities the commission of one or more person felonies ~~or~~, *person misdemeanors*, felony violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amendments thereto, *or the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors;*

(3) which has a common name or common identifying sign or symbol; *and*

(4) whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies ~~or~~, *person misdemeanors*, felony violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and amendments thereto, *or the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors*, or any substantially similar offense from another jurisdiction; or

(k) use of pyrotechnics, pyrotechnic devices or pyrotechnic materials in violation of K.S.A. 2005 Supp. 31-170, and amendments thereto.

Any real property used as a place where any such activities are carried on or permitted to be carried on and any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property designed for and used on such premises in connection with such unlawful activities are subject to the provisions of K.S.A. 22-3902, 22-3903 and 22-3904, and amendments thereto.

New Sec. 12. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 13. K.S.A. 2005 Supp. 21-4716 is hereby amended to read as follows: 21-4716. (a) Except as provided in subsection (b), the sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines for crimes committed on or after July 1, 1993, unless the judge finds substantial and compelling reasons to impose a departure. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

(b) Subject to the provisions of subsection (b) of K.S.A. 21-4718, and amendments thereto, any fact that would increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be submitted to a jury and proved beyond a reasonable doubt.

(c) (1) Subject to the provisions of ~~subsection (b)(3)~~ subsections (c)(3) and (e), the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.

(B) The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor is not sufficient as a complete defense.

(C) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor.

(D) The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(E) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

(2) Subject to the provisions of subsection ~~(b)(3)~~ (c)(3), the following nonexclusive list of aggravating factors may be considered in determining whether substantial and compelling reasons for departure exist:

(A) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity which was known or should have been known to the offender.

(B) The defendant's conduct during the commission of the current offense manifested excessive brutality to the victim in a manner not normally present in that offense.

(C) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim or the offense was motivated by the defendant's belief or perception, entirely or in part, of the race, color, religion, ethnicity, national origin or sexual orientation of the victim whether or not the defendant's belief or perception was correct.

(D) The offense involved a fiduciary relationship which existed between the defendant and the victim.

(E) The defendant, 18 or more years of age, employed, hired, used, persuaded, induced, enticed or coerced any individual under 16 years of age to commit or assist in avoiding detection or apprehension for commission of any person felony or any attempt, conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto to commit any person felony regardless of whether the defendant knew the age of the individual under 16 years of age.

(F) The defendant's current crime of conviction is a crime of extreme sexual violence and the defendant is a predatory sex offender. As used in this subsection:

(i) "Crime of extreme sexual violence" is a felony limited to the following:

(a) A crime involving a nonconsensual act of sexual intercourse or sodomy with any person;

(b) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is 14 or more years of age but less than 16 years of age and with whom a relationship has been established or promoted for the primary purpose of victimization; or

(c) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is less than 14 years of age.

(ii) "Predatory sex offender" is an offender who has been convicted

of a crime of extreme sexual violence as the current crime of conviction and who:

(a) Has one or more prior convictions of any crimes of extreme sexual violence. Any prior conviction used to establish the defendant as a predatory sex offender pursuant to this subsection shall also be counted in determining the criminal history category; or

(b) suffers from a mental condition or personality disorder which makes the offender likely to engage in additional acts constituting crimes of extreme sexual violence.

(iii) “Mental condition or personality disorder” means an emotional, mental or physical illness, disease, abnormality, disorder, pathology or condition which motivates the person, affects the predisposition or desires of the person, or interferes with the capacity of the person to control impulses to commit crimes of extreme sexual violence.

(G) The defendant was incarcerated during the commission of the offense.

(H) *The crime involved two or more participants in the criminal conduct, and the defendant played a major role in the crime as the organizer, leader, recruiter, manager or supervisor.*

In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

(3) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the crime severity scale, that aspect of the current crime of conviction may be used as an aggravating or mitigating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

(~~e~~) (d) In determining aggravating or mitigating circumstances, the court shall consider:

- (1) Any evidence received during the proceeding;
- (2) the presentence report;
- (3) written briefs and oral arguments of either the state or counsel for the defendant; and
- (4) any other evidence relevant to such aggravating or mitigating circumstances that the court finds trustworthy and reliable.

(e) *Upon motion of the prosecutor stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who is alleged to have committed an offense, the court may consider such mitigation in determining whether substantial and compelling reasons for a departure exist. In considering this mitigating factor, the court may consider the following:*

- (i) *The court’s evaluation of the significance and usefulness of the defendant’s assistance, taking into consideration the prosecutor’s evaluation of the assistance rendered;*
- (ii) *the truthfulness, completeness and reliability of any information or testimony provided by the defendant;*
- (iii) *the nature and extent of the defendant’s assistance;*
- (iv) *any injury suffered, or any danger or risk of injury to the defendant or the defendant’s family resulting from such assistance; and*
- (v) *the timeliness of the defendant’s assistance.*

Sec. 14. K.S.A. 16-305 is hereby amended to read as follows: 16-305. Every person who violates any provision of this act: (a) Other than by misappropriating funds in violation of an agreement shall be guilty of a misdemeanor, and, upon conviction shall be fined not less than \$100 nor more than \$500, or shall be imprisoned for not less than 10 days nor more than 90 days, or both; and (b) by misappropriating funds in violation of an agreement in an amount:

- (1) Of \$25,000 or more shall be guilty of a severity level 7, nonperson felony;
- (2) of at least ~~\$500~~ \$1,000 but less than \$25,000 shall be guilty of a severity level 9, nonperson felony; or
- (3) of less than ~~\$500~~ \$1,000 shall be guilty of a class A nonperson misdemeanor.

Sec. 15. K.S.A. 19-3519 is hereby amended to read as follows: 19-3519. (a) All claims, accounts and necessary expenses of the water district lawfully incurred and approved shall be paid from appropriate available funds in bank accounts of the water district by voucher check supported

by an appropriate purchase order or statement of service. All such claims shall be presented in writing with a full account of the items and may be the usual statement of account of the vendor or party rendering a service or other written statement showing the required information.

(b) (1) Any person who obtains money from the district by intentionally making a fraudulent claim for a sum of less than ~~\$500~~ \$1,000 is guilty of a class A nonperson misdemeanor.

(2) Any person who obtains money from the district by intentionally making a fraudulent claim for at least ~~\$500~~ \$1,000 but less than \$25,000 is guilty of a severity level 9, nonperson felony.

(3) Any person who obtains money from the district by intentionally making a fraudulent claim for \$25,000 or more is guilty of a severity level 7, nonperson felony.

(c) The water district board shall see that there is kept a correct record of all voucher checks issued showing the number, date and amount thereof and the name of the person or persons to whom such checks are made payable and with appropriate reference to the applicable purchase order or other claim, account or expense record, including payroll records. Any employee or officer authorized to sign or countersign voucher checks shall be covered by a surety bond in the form and amount as determined by the board.

Sec. 16. K.S.A. 2005 Supp. 21-3437 is hereby amended to read as follows: 21-3437. (a) Mistreatment of a dependent adult is knowingly and intentionally committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or cruel punishment upon a dependent adult;

(2) taking unfair advantage of a dependent adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person; or

(3) omitting or depriving treatment, goods or services by a caretaker or another person which are necessary to maintain physical or mental health of a dependent adult.

(b) No dependent adult is considered to be mistreated for the sole reason that such dependent adult relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult is a member or adherent.

(c) For purposes of this section: "Dependent adult" means an individual 18 years of age or older who is unable to protect their own interest. Such term shall include:

(1) Any resident of an adult care home including but not limited to those facilities defined by K.S.A. 39-923 and amendments thereto;

(2) any adult cared for in a private residence;

(3) any individual kept, cared for, treated, boarded or otherwise accommodated in a medical care facility;

(4) any individual with mental retardation or a developmental disability receiving services through a community mental retardation facility or residential facility licensed under K.S.A. 75-3307b and amendments thereto;

(5) any individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or

(6) any individual kept, cared for, treated, boarded or otherwise accommodated in a state psychiatric hospital or state institution for the mentally retarded.

(d) (1) Mistreatment of a dependent adult as defined in subsection (a)(1) is a severity level 6, person felony.

(2) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 7, person felony if the aggregate amount of the value of the resources is \$25,000 or more.

(3) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 9, person felony if the aggregate amount of the value of the resources is at least ~~\$500~~ \$1,000 but less than \$25,000.

(4) Mistreatment of a dependent adult as defined in subsection (a)(2)

is a class A person misdemeanor if the aggregate amount of the value of the resources is less than ~~\$500~~ \$1,000.

(5) Mistreatment of a dependent adult as defined in subsection (a)(3) is a class A person misdemeanor.

(6) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 9, person felony if the aggregate amount of the value of the resources is less than ~~\$500~~ \$1,000 and committed by a person who has, within five years immediately preceding commission of the crime, been convicted of mistreatment of a dependent adult two or more times.

Sec. 17. K.S.A. 21-3720 is hereby amended to read as follows: 21-3720. (a) Criminal damage to property is by means other than by fire or explosive:

(1) Intentionally injuring, damaging, mutilating, defacing, destroying, or substantially impairing the use of any property in which another has an interest without the consent of such other person; or

(2) injuring, damaging, mutilating, defacing, destroying, or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder.

(b) (1) Criminal damage to property is a severity level 7, nonperson felony if the property is damaged to the extent of \$25,000 or more.

(2) Criminal damage to property is a severity level 9, nonperson felony if the property is damaged to the extent of at least ~~\$500~~ \$1,000 but less than \$25,000.

(3) Criminal damage to property is a class B nonperson misdemeanor if the property damaged is of the value of less than ~~\$500~~ \$1,000 or is of the value of ~~\$500~~ \$1,000 or more and is damaged to the extent of less than ~~\$500~~ \$1,000.

Sec. 18. K.S.A. 21-3729 is hereby amended to read as follows: 21-3729. (a) Criminal use of a financial card is any of the following acts done with intent to defraud and for the purpose of obtaining money, goods, property, services or communication services:

(1) Using a financial card without the consent of the cardholder; or

(2) knowingly using a financial card, or the number or description thereof, which has been revoked or canceled; or

(3) using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.

(b) For the purposes of this section:

(1) “Financial card” means an identification card, plate, instrument, device or number issued by a business organization authorizing the cardholder to purchase, lease or otherwise obtain money, goods, property, services or communication services or to conduct other financial transactions.

(2) “Cardholder” means the person or entity to whom or for whose benefit a financial card is issued.

(c) For the purposes of subsection (a)(2), a financial card shall be deemed canceled or revoked when notice in writing thereof has been received by the named holder thereof as shown on such financial card or by the records of the company.

(d) (1) Criminal use of a financial card is a severity level 7, nonperson felony if the money, goods, property, services or communication services obtained within any seven-day period are of the value of \$25,000 or more.

(2) Criminal use of a financial card is a severity level 9, nonperson felony if the money, goods, property, services or communication services obtained within any seven-day period are of the value of at least ~~\$500~~ \$1,000 but less than \$25,000.

(3) Criminal use of a financial card is a class A nonperson misdemeanor if the money, goods, property, services or communication services obtained within a seven-day period are of the value of less than ~~\$500~~ \$1,000.

Sec. 19. K.S.A. 21-3734 is hereby amended to read as follows: 21-3734. (a) Impairing a security interest is:

(1) Damaging, destroying or concealing any personal property subject to a security interest with intent to defraud the secured party;

(2) selling, exchanging or otherwise disposing of any personal property subject to a security interest without the written consent of the secured party, where such sale, exchange or other disposition is not au-

thorized by the secured party under the terms of the security agreement; or

(3) failure to account to the secured party for the proceeds of the sale, exchange or other disposition of any personal property subject to a security interest, where such sale, exchange or other disposition is authorized and such accounting for proceeds is required by the secured party under the terms of the security agreement or otherwise.

(b) (1) Impairing a security interest is a severity level 7, nonperson felony when the personal property subject to the security interest is of the value of \$25,000 or more and is subject to a security interest of \$25,000 or more.

(2) Impairing a security interest is a severity level 9, nonperson felony when the personal property subject to the security interest is of the value of at least ~~\$500~~ \$1,000 and is subject to a security interest of at least ~~\$500~~ \$1,000 and either the value of the property or the security interest is less than \$25,000.

(3) Impairing a security interest is a class A nonperson misdemeanor when the personal property subject to the security interest is of the value of less than ~~\$500~~ \$1,000, or of the value of ~~\$500~~ \$1,000 or more but subject to a security interest of less than ~~\$500~~ \$1,000.

Sec. 20. K.S.A. 2005 Supp. 21-3763 is hereby amended to read as follows: 21-3763. (a) Counterfeiting is intentionally manufacturing, using, displaying, advertising, distributing, offering for sale, selling or possessing with intent to sell or distribute any item or services bearing or identified by a counterfeit mark.

(b) A person having possession, custody or control of more than 25 items bearing a counterfeit mark shall be presumed to possess such items with intent to sell or distribute.

(c) Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

(d) As used in this section:

(1) “Counterfeit mark” means:

(A) Any unauthorized reproduction or copy of intellectual property; or

(B) intellectual property affixed to any item knowingly sold, offered for sale, manufactured or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property.

(2) “Intellectual property” means any trademark, service mark or trade name as such terms are defined in K.S.A. 2005 Supp. 81-202, and amendments thereto.

(3) “Retail value” means the counterfeiter’s regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter’s regular selling price of the finished product on or in which the component would be utilized.

(4) The quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses.

(e) (1) Counterfeiting of the retail value of less than ~~\$500~~ \$1,000 is a class A nonperson misdemeanor.

(2) Counterfeiting of the retail value of at least ~~\$500~~ \$1,000 but less than \$25,000; that involves more than 100 but less than 1,000 items bearing a counterfeit mark; or on a second violation is a severity level 9, nonperson felony.

(3) Counterfeiting of the retail value of \$25,000 or more; that involves 1,000 or more items bearing a counterfeit mark; or on a third or subsequent violation is a severity level 7, nonperson felony.

(f) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 21. K.S.A. 2005 Supp. 21-3846 is hereby amended to read as follows: 21-3846. (a) Making a false claim, statement, or representation to the medicaid program is, knowingly and with intent to defraud, engaging in a pattern of making, presenting, submitting, offering or causing to be made, presented, submitted or offered:

(1) Any false or fraudulent claim for payment for any goods, service,

item, facility, accommodation for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(2) any false or fraudulent statement or representation for use in determining payments which may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(3) any false or fraudulent report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation, for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(4) any false or fraudulent statement or representation made in connection with any report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(5) any statement or representation for use by another in obtaining any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, knowing the statement or representation to be false, in whole or in part, by commission or omission, whether or not the claim is allowed or allowable;

(6) any claim for payment, for any goods, service, item, facility, or accommodation, which is not medically necessary in accordance with professionally recognized parameters or as otherwise required by law, for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable; or

(7) any wholly or partially false or fraudulent book, record, document, data or instrument, which is required to be kept or which is kept as documentation for any goods, service, item, facility or accommodation or of any cost or expense claimed for reimbursement for any goods, service, item, facility or accommodation for which payment is, has been, or can be sought, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable.

(8) Any wholly or partially false or fraudulent book, record, document, data or instrument to any properly identified law enforcement officer, any properly identified employee or authorized representative of the attorney general, or to any properly identified employee or agent of the department of social and rehabilitation services, or its fiscal agent, in connection with any audit or investigation involving any claim for payment or rate of payment for any goods, service, item, facility or accommodation payable, in whole or in part, under the medicaid program.

(9) Any false or fraudulent statement or representation made, with the intent to influence any acts or decision of any official, employee or agent of a state or federal agency having regulatory or administrative authority over the Kansas medicaid program.

(b) (1) As defined by subsection (a)(1) through (a)(7), making a false claim, statement or representation to the medicaid program where the aggregate amount of payments illegally claimed is \$25,000 or more is a severity level 7, nonperson felony.

(2) As defined by subsection (a)(1) through (a)(7), making a false claim, statement or representation to the medicaid program where the aggregate amount of payments illegally claimed is at least ~~\$500~~ \$1,000 but less than \$25,000 is a severity level 9, nonperson felony.

(3) As defined by subsection (a)(1) through (a)(7), making a false claim, statement or representation to the medicaid program where the aggregate amount of payments illegally claimed is less than ~~\$500~~ \$1,000 is a class A misdemeanor.

(4) As defined by subsections (a)(8) and (a)(9), making a false claim, statement or representation to the medicaid program is a severity level 9, nonperson felony.

(c) In determining what is medically necessary pursuant to subsection (a)(6) of this section the attorney general may contract with or consult with qualified health care providers and other qualified individuals to identify professionally recognized parameters for the diagnosis or treatment of the recipient's condition, illness or injury.

Sec. 22. K.S.A. 21-3902 is hereby amended to read as follows: 21-3902. (a) Official misconduct is any of the following acts committed by a public officer or employee in the officer or employee's public capacity or under color of the officer or employee's office or employment:

(1) Using or authorizing the use of any aircraft, as defined by K.S.A. 3-201, and amendments thereto, vehicle, as defined by K.S.A. 8-1485, and amendments thereto, or vessel, as defined by K.S.A. 32-1102, and amendments thereto, under the officer's or employee's control or direction, or in the officer's or employee's custody, exclusively for the private benefit or gain of the officer or employee or another.

(2) Knowingly and willfully failing to serve civil process when required by law.

(3) Using confidential information acquired in the course of and related to the officer's or employee's office or employment for the private benefit or gain of the officer or employee or another or to maliciously cause harm to another. As used in this section, "confidential" means any information that is not subject to mandatory disclosure pursuant to K.S.A. 45-221, and amendments thereto.

(4) Except as authorized by law, knowingly, willfully and with the intent to reduce or eliminate competition among bidders or prospective bidders on any contract or proposed contract: (A) Disclosing confidential information regarding proposals or communications from bidders or prospective bidders on any contract or proposed contract; (B) accepting any bid or proposal on a contract or proposed contract after the deadline for acceptance of such bid or proposal; or (C) altering any bid or proposal submitted by a bidder on a contract or proposed contract.

(5) Except as authorized by law, knowingly destroying, tampering with or concealing evidence of a crime.

(6) Knowingly and willfully submitting to a governmental entity a claim for expenses which is false or duplicates expenses for which a claim is submitted to such governmental entity, another governmental or private entity.

(b) The provisions of subsection (a)(1) shall not apply to any use of persons or property which:

(1) At the time of the use, is authorized by law or by formal written policy of the governmental entity; or

(2) constitutes misuse of public funds, as defined in K.S.A. 21-3910 and amendments thereto.

(c) (1) Official misconduct as defined in subsections (a)(1) through (a)(4) is a class A nonperson misdemeanor.

(2) Official misconduct as defined in subsection (a)(5) is: (A) A severity level 8, nonperson felony if the evidence is evidence of a crime which is a felony; and (B) a class A nonperson misdemeanor if the evidence is evidence of a crime which is a misdemeanor.

(3) Official misconduct as defined in subsection (a)(6) is: (A) A severity level 7, nonperson felony if the claim is for \$25,000 or more; (B) a severity level 9, nonperson felony if the claim is for at least ~~\$500~~ \$1,000 but less than \$25,000; and (C) a class A nonperson misdemeanor for a claim of less than ~~\$500~~ \$1,000.

(4) Upon conviction of official misconduct a public officer or employee shall forfeit such officer or employee's office or employment.

Sec. 23. K.S.A. 21-3904 is hereby amended to read as follows: 21-3904. (a) Presenting a false claim is knowingly and with intent to defraud presenting a claim or demand which is false in whole or in part, to a public officer or body authorized to audit, allow or pay such claim.

(b) (1) Presenting a false claim for \$25,000 or more is a severity level 7, nonperson felony.

(2) Presenting a false claim for at least ~~\$500~~ \$1,000 but less than \$25,000 is a severity level 9, nonperson felony.

(3) Presenting a false claim for less than ~~\$500~~ \$1,000 is a class A nonperson misdemeanor.

Sec. 24. K.S.A. 21-3905 is hereby amended to read as follows: 21-3905. (a) Permitting a false claim is the auditing, allowing, or paying of any claim or demand made upon the state or any subdivision thereof or other governmental instrumentality within the state by a public officer or public employee who knows such claim or demand is false or fraudulent in whole or in part.

(b) (1) Permitting a false claim for \$25,000 or more is a severity level 7, nonperson felony.

(2) Permitting a false claim for at least ~~\$500~~ \$1,000 but less than \$25,000 is a severity level 9, nonperson felony.

(3) Permitting a false claim for less than ~~\$500~~ \$1,000 is a class A nonperson misdemeanor.

(4) Upon conviction of permitting a false claim, a public officer or public employee shall forfeit the officer or employee's office or employment.

Sec. 25. K.S.A. 21-4111 is hereby amended to read as follows: 21-4111. (a) Criminal desecration is:

(1) Obtaining or attempting to obtain unauthorized control of a dead body or remains of any human being or the coffin, urn or other article containing a dead body or remains of any human being;

(2) by means other than by fire or explosive:

(A) Damaging, defacing or destroying the flag, ensign or other symbol of the United States or this state in which another has a property interest without the consent of such other person;

(B) damaging, defacing or destroying any public monument or structure;

(C) damaging, defacing or destroying any tomb, monument, memorial, marker, grave, vault, crypt gate, tree, shrub, plant or any other property in a cemetery; or

(D) damaging, defacing or destroying any place of worship.

(b) (1) Criminal desecration as described in subsections (a)(2)(B), (a)(2)(C) and (a)(2)(D) is:

(A) A severity level 7, nonperson felony if the property is damaged to the extent of \$25,000 or more;

(B) a severity level 9, nonperson felony if the property is damaged to the extent of at least ~~\$500~~ \$1,000 but less than \$25,000; and

(C) a class A nonperson misdemeanor if the property is damaged to the extent of less than ~~\$500~~ \$1,000.

(2) Criminal desecration as described in subsections (a)(1) and (a)(2)(A) is a class A nonperson misdemeanor.

Sec. 26. K.S.A. 2005 Supp. 32-1005 is hereby amended to read as follows: 32-1005. (a) Commercialization of wildlife is knowingly committing any of the following, except as permitted by statute or rules and regulations:

(1) Capturing, killing or possessing, for profit or commercial purposes, all or any part of any wildlife protected by this section;

(2) selling, bartering, purchasing or offering to sell, barter or purchase, for profit or commercial purposes, all or any part of any wildlife protected by this section;

(3) shipping, exporting, importing, transporting or carrying; causing to be shipped, exported, imported, transported or carried; or delivering or receiving for shipping, exporting, importing, transporting or carrying all or any part of any wildlife protected by this section, for profit or commercial purposes; or

(4) purchasing, for personal use or consumption, all or any part of any wildlife protected by this section.

(b) The wildlife protected by this section and the minimum value thereof are as follows:

(1) Eagles, ~~\$500~~ \$1,000;

(2) deer or antelope, \$400;

(3) elk or buffalo, \$600;

(4) furbearing animals, \$25;

(5) wild turkey, \$75;

(6) owls, hawks, falcons, kites, harriers or ospreys, \$200;

(7) game birds, migratory game birds, resident and migratory non-game birds, game animals and nongame animals, \$20 unless a higher amount is specified above;

(8) fish and mussels, the value for which shall be no less than the value listed for the appropriate fish or mussels species in the monetary values of freshwater fish or mussels and fish kill counting guidelines of the American fisheries society, special publication number 30;

(9) turtles, \$10 each for unprocessed turtles or \$8 per pound or fraction of a pound for processed turtle parts;

- (10) bullfrogs, \$2, whether dressed or not dressed;
 - (11) any wildlife classified as threatened or endangered, \$200 unless a higher amount is specified above; and
 - (12) any other wildlife not listed above, \$10.
- (c) Possession of wildlife, in whole or in part, captured or killed in violation of law and having an aggregate value of ~~\$500~~ \$1,000 or more, as specified in subsection (b), is prima facie evidence of possession for profit or commercial purposes.
- (d) Commercialization of wildlife having an aggregate value of ~~\$500~~ \$1,000 or more, as specified in subsection (b), is a severity level 10, nonperson felony. Commercialization of wildlife having an aggregate value of less than ~~\$500~~ \$1,000, as specified in subsection (b), is a class A nonperson misdemeanor.
- (e) In addition to any other penalty provided by law, a court convicting a person of the crime of commercialization of wildlife may:
- (1) Confiscate all equipment used in the commission of the crime and may revoke for a period of up to 10 years all licenses and permits issued to the convicted person by the Kansas department of wildlife and parks; and
 - (2) order restitution to be paid to the Kansas department of wildlife and parks for the wildlife taken, which restitution shall be in an amount not less than the aggregate value of the wildlife, as specified in subsection (b).
- (f) The provisions of this section shall apply only to wildlife illegally harvested and possessed by any person having actual knowledge that such wildlife was illegally harvested.

Sec. 27. K.S.A. 39-717 is hereby amended to read as follows: 39-717.

- (a) Assistance granted under the provisions of this act shall not:
- (1) Be sold or otherwise disposed of to others by the client or by anyone else except under the rules and regulations of the secretary of social and rehabilitation services; or
 - (2) knowingly be purchased, acquired or possessed by anyone unless the purchase, acquisition or possession is authorized by the rules and regulations of the secretary of social and rehabilitation services or the laws under which the assistance was granted.
- (b) (1) Any person convicted of violating the provisions of this section shall be guilty of a class A nonperson misdemeanor if the value of the assistance sold or otherwise disposed of, purchased, acquired or possessed was less than ~~\$500~~ \$1,000.
- (2) Any person convicted of violating the provisions of this section shall be guilty of a severity level 9, nonperson felony if the value of the assistance sold or otherwise disposed of, purchased, acquired or possessed was at least ~~\$500~~ \$1,000 but less than \$25,000.
- (3) Any person convicted of violating the provisions of this section shall be guilty of a severity level 7, nonperson felony if the value of the assistance sold or otherwise disposed of, purchased, acquired or possessed was \$25,000 or more.
- (c) None of the money paid, payable, or to be paid, or any tangible assistance received under this act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Sec. 28. K.S.A. 40-247 is hereby amended to read as follows: 40-247.

- (a) An insurance agent or broker who acts in negotiating or renewing or continuing a contract of insurance including any type of annuity by an insurance company lawfully doing business in this state, and who receives any money or substitute for money as a premium for such a contract from the insured, whether such agent or broker shall be entitled to an interest in same or otherwise, shall be deemed to hold such premium in trust for the company making the contract. If such agent or broker fails to pay the same over to the company after written demand made upon such agent or broker, less such agent's or broker's commission and any deductions, to which by the written consent of the company such agent or broker may be entitled, such failure shall be prima facie evidence that such agent or broker has used or applied the premium for a purpose other than paying the same over to the company.
- (b) (1) An agent or broker who violates the provisions of this section shall be guilty of a:

(A) Severity level 7, nonperson felony if the value of the insurance premium is \$25,000 or more;

(B) severity level 9, nonperson felony if the value of the insurance premium is at least ~~\$500~~ \$1,000 but less than \$25,000; or

(C) class A nonperson misdemeanor if the value of the insurance premium is less than ~~\$500~~ \$1,000.

(2) If the value of the insurance premium is less than ~~\$500~~ \$1,000 and such agent or broker has, within five years immediately preceding commission of the crime, been convicted of violating this section two or more times shall be guilty of a severity level 9, nonperson felony.

Sec. 29. K.S.A. 40-2,118, as amended by section 1 of 2006 House Substitute for Senate Bill No. 207, is hereby amended to read as follows: 40-2,118. (a) For purposes of this act a “fraudulent insurance act” means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

(b) An insurer that has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed shall provide to the commissioner, on a form prescribed by the commissioner, any and all information and such additional information relating to such fraudulent insurance act as the commissioner may require.

(c) Any other person that has knowledge or a good faith belief that a fraudulent insurance act is being or has been committed may provide to the commissioner, on a form prescribed by the commissioner, any and all information and such additional information relating to such fraudulent insurance act as the commissioner may request.

(d) (1) Each insurer shall have antifraud initiatives reasonably calculated to detect fraudulent insurance acts. Antifraud initiatives may include: fraud investigators, who may be insurer employees or independent contractors; or an antifraud plan submitted to the commissioner no later than July 1, 2007. Each insurer that submits an antifraud plan shall notify the commissioner of any material change in the information contained in the antifraud plan within 30 days after such change occurs. Such insurer shall submit to the commissioner in writing the amended antifraud plan.

The requirement for submitting any antifraud plan, or any amendment thereof, to the commissioner shall expire on the date specified in paragraph (2) of this subsection unless the legislature reviews and reenacts the provisions of paragraph (2) pursuant to K.S.A. 45-229 and amendments thereto.

(2) Any antifraud plan, or any amendment thereof, submitted to the commissioner for informational purposes only shall be confidential and not be a public record and shall not be subject to discovery or subpoena in a civil action unless following an in camera review, the court determines that the antifraud plan is relevant and otherwise admissible under the rules of evidence set forth in article 4, chapter 60 of the Kansas Statutes Annotated, and amendments thereto. The provisions of this paragraph shall expire on July 1, 2011, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2011.

(e) Except as otherwise specifically provided in K.S.A. 21-3718 and amendments thereto and K.S.A. 44-5,125 and amendments thereto, a fraudulent insurance act shall constitute a severity level 6, nonperson felony if the amount involved is \$25,000 or more; a severity level 7, nonperson felony if the amount is at least \$5,000 but less than \$25,000; a severity level 8, nonperson felony if the amount is at least \$1,000 but less than \$5,000; a severity level 9, nonperson felony if the amount is at least ~~\$500~~ but less than \$1,000; and a class C nonperson misdemeanor if the amount is less than ~~\$500~~ \$1,000.

(f) In addition to any other penalty, a person who violates this statute shall be ordered to make restitution to the insurer or any other person

or entity for any financial loss sustained as a result of such violation. An insurer shall not be required to provide coverage or pay any claim involving a fraudulent insurance act.

(g) This act shall apply to all insurance applications, ratings, claims and other benefits made pursuant to any insurance policy.

Sec. 30. K.S.A. 2005 Supp. 40-5013 is hereby amended to read as follows: 40-5013. (a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged or is engaging in any act or practice constituting a violation of any provision of this act, the Kansas insurance statutes or any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, unless the person knew or reasonably should have known such person was in violation of this act, the Kansas insurance statutes or any rule and regulation or order thereunder, in which case the penalty shall be not more than \$2,000 for each and every act or violation;

(2) suspension or revocation of the person's license or certificate if such person knew or reasonably should have known that such person was in violation of this act, the Kansas insurance statutes or any rule and regulation or order thereunder; or

(3) that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the commissioner will carry out the purposes of the violated or potentially violated provision.

(b) If any person fails to file any report or other information with the commissioner as required by statute or fails to respond to any proper inquiry of the commissioner, the commissioner, after notice and opportunity for hearing, may impose a penalty of up to \$500 for each violation or act, along with an additional penalty of up to \$100 for each week thereafter that such report or other information is not provided to the commissioner.

(c) If the commissioner makes written findings of fact that there is a situation involving an immediate danger to the public health, safety or welfare or the public interest will be irreparably harmed by delay in issuing an order under paragraph (3) of subsection (a), the commissioner may issue an emergency temporary cease and desist order. Such order, even when not an order within the meaning of K.S.A. 77-502, and amendments thereto, shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto. Upon the entry of such an order, the commissioner shall promptly notify the person subject to the order that: (1) It has been entered; (2) the reasons therefor; and (3) that upon written request within 15 days after service of the order the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to the person subject to the order, by written findings of fact and conclusions of law, shall vacate, modify or make permanent the order.

(d) (1) Any person who violates the provisions of this act shall be guilty of a:

(A) Severity level 7, nonperson felony if the value of the viatical settlement contract is \$25,000 or more;

(B) severity level 9, nonperson felony if the value of the viatical settlement contract is at least ~~\$500~~ \$1,000 but less than \$25,000; or

(C) class A nonperson misdemeanor if the value of the viatical settlement contract is less than ~~\$500~~ \$1,000.

(2) If the value of the insurance premium is less than ~~\$500~~ \$1,000 and such agent or broker has, within five years immediately preceding commission of the crime, been convicted of violating this section two or more times shall be guilty of a severity level 9, nonperson felony.

(e) Restitution may be ordered in addition to, but not in lieu of, any other penalty imposed under this act.

Sec. 31. K.S.A. 44-5,125 is hereby amended to read as follows: 44-5,125. (a) (1) Any person who obtains or attempts to obtain workers compensation benefits for such person or another, or who denies or attempts

to deny the obligation to make any payment of workers compensation benefits by knowingly or intentionally: (A) Making a false or misleading statement, (B) misrepresenting or concealing a material fact, (C) fabricating, altering, concealing or destroying a document; (D) receiving temporary total disability benefits or permanent total disability benefits to which they are not entitled, while employed, or (E) conspiring with another person to commit any act described by paragraph (1) of this subsection (a), shall be guilty of:

(i) A class A nonperson misdemeanor, if the amount received as a benefit or other payment under the workers compensation act as a result of such act or the amount that the person otherwise benefited monetarily as a result of a violation of this subsection (a) is ~~\$500~~ \$1,000 or less;

(ii) a severity level 9, nonperson felony, if such amount is more than ~~\$500~~ \$1,000 but less than \$25,000;

(iii) a severity level 7, nonperson felony, if the amount is more than \$25,000, but less than \$50,000;

(iv) a severity level 6, nonperson felony if the amount is more than \$50,000, but less than \$100,000; or

(v) a severity level 5, nonperson felony if the amount is more than \$100,000.

(b) Any person who knowingly and intentionally presents a false certificate of insurance that purports that the presenter is insured under the workers compensation act, shall be guilty of a level 8, nonperson felony.

(c) A health care provider under the workers compensation act who knowingly and intentionally submits a charge for health care that was not furnished, shall be guilty of a level 9, nonperson felony.

(d) Any person who obtains or attempts to obtain a more favorable workers compensation insurance premium rate than that to which the person is entitled, who prevents, reduces, avoids or attempts to prevent, reduce or avoid the payment of any compensation under the workers compensation act, or who fails to communicate a settlement offer or similar information to a claimant under the workers compensation act, by, in any such case knowingly or intentionally: (1) Making a false or misleading statement; (2) misrepresenting or concealing a material fact; (3) fabricating, concealing or destroying a document; or (4) conspiring with another person or persons to commit the acts described in clause (1), (2) or (3) of this subsection shall be guilty of a level 9, nonperson felony.

(e) Any person who has received any amount of money as a benefit or other payment under the workers compensation act as a result of a violation of subsection (a) or (c) and any person who has otherwise benefited monetarily as a result of a violation of subsection (a) or (c) shall be liable to repay an amount equal to the amount so received by such person or the amount by which such person has benefited monetarily, with interest thereon. Any such amount, plus any accrued interest thereon, shall bear interest at the current rate of interest prescribed by law for judgments under subsection (e)(1) of K.S.A. 16-204 and amendments thereto per month or fraction of a month until repayment of such amount, plus any accrued interest thereon. The interest shall accrue from the date of overpayment or erroneous payment of any such amount or the date such person benefited monetarily.

(f) Any person aggrieved by a violation of subsection (a), (b), (c) or (d) shall have a cause of action against any other person to recover any amounts of money erroneously paid as benefits or any other amounts of money paid under the workers compensation act, and to seek relief for other monetary damages, for which liability has accrued under this section against such other person. Relief under this subsection is to be predicated upon exhaustion of administrative remedies available in K.S.A. 44-5,120 and amendments thereto.

(g) Nothing in this section shall prohibit an employer from exercising a right to reimbursement under K.S.A. 44-534a, 44-556 or 44-569a and amendments thereto.

(h) Prosecution for any crime under this section shall be commenced within five years subject to the time period set forth in subsection (8) of K.S.A. 21-3106 and amendments thereto.

Sec. 32. K.S.A. 2005 Supp. 47-1827 is hereby amended to read as follows: 47-1827. (a) No person shall, without the effective consent of the owner and with the intent to damage the enterprise conducted at the

animal facility, damage or destroy an animal facility or any animal or property in or on an animal facility.

(b) No person shall, without the effective consent of the owner, acquire or otherwise exercise control over an animal facility, an animal from an animal facility or other property from an animal facility, with the intent to deprive the owner of such facility, animal or property and to damage the enterprise conducted at the animal facility.

(c) No person shall, without the effective consent of the owner and with the intent to damage the enterprise conducted at the animal facility:

(1) Enter an animal facility, not then open to the public, with intent to commit an act prohibited by this section;

(2) remain concealed, with intent to commit an act prohibited by this section, in an animal facility;

(3) enter an animal facility and commit or attempt to commit an act prohibited by this section; or

(4) enter an animal facility to take pictures by photograph, video camera or by any other means.

(d) (1) No person shall, without the effective consent of the owner and with the intent to damage the enterprise conducted at the animal facility, enter or remain on an animal facility if the person:

(A) Had notice that the entry was forbidden; or

(B) received notice to depart but failed to do so.

(2) For purposes of this subsection (d), “notice” means:

(A) Oral or written communication by the owner or someone with apparent authority to act for the owner;

(B) fencing or other enclosure obviously designed to exclude intruders or to contain animals; or

(C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.

(e) No person shall, without the effective consent of the owner and with the intent to damage or destroy the field crop product, damage or destroy any field crop product that is grown in the context of a product development program in conjunction or coordination with a private research facility or a university or any federal, state or local governmental agency.

(f) No person shall, without the effective consent of the owner and with the intent to damage or destroy the field crop product, enter any property, with the intent to damage or destroy any field crop product that is grown in the context of a product development program in conjunction or coordination with a private research facility or a university or any federal, state or local governmental agency.

(g) (1) Violation of subsection (a) or (e) is a severity level 7, nonperson felony if the facility, animals, field crop product or property is damaged or destroyed to the extent of \$25,000 or more. Violation of subsection (a) or (e) is a severity level 9, nonperson felony if the facility, animals, field crop product or property is damaged or destroyed to the extent of at least ~~\$500~~ \$1,000 but less than \$25,000. Violation of subsection (a) or (e) is a class A nonperson misdemeanor if the facility, animals, field crop product or property damaged or destroyed is of the value of less than ~~\$500~~ \$1,000 or is of the value of ~~\$500~~ \$1,000 or more and is damaged to the extent of less than ~~\$500~~ \$1,000.

(2) Violation of subsection (b) is a severity level 10, nonperson felony.

(3) Violation of subsection (c) is a class A, nonperson misdemeanor.

(4) Violation of subsection (d) or (f) is a class B nonperson misdemeanor.

(h) The provisions of this section shall not apply to lawful activities of any governmental agency or employees or agents thereof carrying out their duties under law.

Sec. 33. K.S.A. 65-4150 is hereby amended to read as follows: 65-4150. As used in this act:

(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) “Deliver” or “delivery” means actual, constructive or attempted transfer from one person to another, whether or not there is an agency relationship.

(c) “Drug paraphernalia” means all equipment, ~~products~~ and materials of any kind which are used or intended 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 in violation of the uniform controlled substances act. “Drug paraphernalia” shall include, but is not limited to:

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

(2) Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.

(3) Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance.

(4) Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.

(5) Scales and balances used or intended for use in weighing or measuring controlled substances.

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances.

(7) Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marihuana.

(8) Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances.

(9) Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled substances.

(10) Containers and other objects used or intended for use in storing or concealing controlled substances.

(11) Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body.

(12) Objects used or intended for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) water pipes;

(C) carburetion tubes and devices;

(D) smoking and carburetion masks;

(E) roach clips (objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand);

(F) miniature cocaine spoons and cocaine vials;

(G) chamber pipes;

(H) carburetor pipes;

(I) electric pipes;

(J) air-driven pipes;

(K) chillums;

(L) bongs; and

(M) ice pipes or chillers.

(d) “Person” means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or other legal entity.

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

Sec. 34. K.S.A. 2005 Supp. 65-7006 is hereby amended to read as follows: 65-7006. (a) It shall be unlawful for any person to possess ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance.

(b) It shall be unlawful for any person to market, sell, distribute, ad-

vertise, or label any drug product containing ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers if the person knows or reasonably should know that the purchaser will use the product to manufacture a controlled substance.

(c) It shall be unlawful for any person to market, sell, distribute, advertise or label any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers or salts of isomers for indication of stimulation, mental alertness, weight loss, appetite control, energy or other indications not approved pursuant to the pertinent federal over-the-counter drug final monograph or tentative final monograph or approved new drug application.

(d) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or surety, unless the court determines on the record that the defendant is not likely to re-offend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

(e) A violation of this section shall be a drug severity level \pm 2 felony.

Sec. 35. K.S.A. 16-305, 19-3519, 21-3211, 21-3212, 21-3720, 21-3729, 21-3734, 21-3902, 21-3904, 21-3905, 21-4111, 22-2501, 39-717, 40-247, 40-2,118, as amended by section 1 of 2006 House Substitute for Senate Bill No. 207, 44-5,125, and 65-4150 and K.S.A. 2005 Supp. 21-3437, 21-3763, 21-3846, 21-4716, 22-3901, 32-1005, 40-5013, 47-1827 and 65-7006 are hereby repealed.

Sec. 36. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.