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MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 6, 2024
Subject: Bill Brief for SB 413

Senate Bill 413 specifies criminal penalties for unlawful distribution of fentanyl-related controlled substances when distributed by weight or dosage unit.

The bill amends K.S.A. 21-5705, the criminal code statute that makes it unlawful for any person to distribute, possess with the intent to distribute, or cultivate certain controlled substances. Current law in subsection (d)(3) provides that a violation of subsection (a) – distribution or possession with intent to distribute – with respect to material containing any quantity of heroin or methamphetamine is punished at a higher severity level than violations involving other controlled substances: (1) A drug severity level 4 felony if the quantity of the material was less than 1 gram; (2) a drug severity level 3 felony if the quantity of the material was at least 1 gram but less than 3.5 grams; (3) a drug severity level 2 felony if the quantity of the material was at least 3.5 grams but less than 100 grams; and (4) a drug severity level 1 felony if the quantity of the material was 100 grams or more. The bill adds violation of subsection (a) with respect to material containing any quantity of a fentanyl-related controlled substance to these higher penalties.

Current law in subsection (d)(4) provides that violation of subsection (a) with respect to material containing any quantity of certain controlled substances distributed by dosage unit, is a: (1) Drug severity level 4 felony if the number of dosage units was fewer than 10; (2) drug severity level 3 felony if the number of dosage units was at least 10 but less than 100; (3) drug severity level 2 felony if the number of dosage units was at least 100 but less than 1,000; and (4) drug severity level 1 felony if the number of dosage units was 1,000 or more. The bill adds subsection (d)(5) to provide increased penalties for violation of subsection (a) with respect to material containing any quantity of a fentanyl-related controlled substance distributed by dosage unit: (1) A drug severity level 4 felony if the number of dosage units was fewer than 10; (2) a drug severity

level 3 felony if the number of dosage units was at least 10 but less than 50; (3) a drug severity level 2 felony if the number of dosage units was at least 50 but less than 250; and (4) a drug severity level 1 felony if the number of dosage units was 250 or more.

Finally, current law in subsection (e) provides that in any prosecution under this section, there shall be a rebuttable presumption of an intent to distribute if any person possesses certain quantities of controlled substances or analogs thereof. The bill adds that possession of 3.5 grams or more of material containing any quantity of a fentanyl-related controlled substance creates the rebuttable presumption, the same rule that applies to heroin or methamphetamine under current law, and that possession of 50 dosage units or more containing any quantity of a fentanyl-related controlled substance creates the rebuttable presumption, lower than the 100 dosage units or more containing any controlled substance required under current law.

The bill would take effect from and after publication in the statute book, July 1, 2024.