

AMENDMENTS TO LB 844

Introduced by Judiciary.

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 28-101, Revised Statutes Supplement,
4 2007, is amended to read:

5 28-101 Sections 28-101 to 28-1350 and sections 5 and 6 of
6 this act shall be known and may be cited as the Nebraska Criminal
7 Code.

8 Sec. 2. Section 28-416, Revised Statutes Cumulative
9 Supplement, 2006, is amended to read:

10 28-416 (1) Except as authorized by the Uniform Controlled
11 Substances Act, it shall be unlawful for any person knowingly or
12 intentionally: (a) To manufacture, distribute, deliver, dispense,
13 or possess with intent to manufacture, distribute, deliver, or
14 dispense a controlled substance; or (b) to create, distribute,
15 or possess with intent to distribute a counterfeit controlled
16 substance.

17 (2) Except as provided in subsections (4), (5), (7), (8),
18 (9), and (10) of this section, any person who violates subsection
19 (1) of this section with respect to: (a) A controlled substance
20 classified in Schedule I, II, or III of section 28-405 which is an
21 exceptionally hazardous drug shall be guilty of a Class II felony;
22 (b) any other controlled substance classified in Schedule I, II, or
23 III of section 28-405 shall be guilty of a Class III felony; or (c)

1 a controlled substance classified in Schedule IV or V of section
2 28-405 shall be guilty of a Class IIIA felony.

3 (3) A person knowingly or intentionally possessing a
4 controlled substance, except marijuana, unless such substance was
5 obtained directly or pursuant to a medical order issued by a
6 practitioner authorized to prescribe while acting in the course of
7 his or her professional practice, or except as otherwise authorized
8 by the act, shall be guilty of a Class IV felony.

9 (4) (a) Except as authorized by the Uniform Controlled
10 Substances Act, any person eighteen years of age or older who
11 knowingly or intentionally manufactures, distributes, delivers,
12 dispenses, or possesses with intent to manufacture, distribute,
13 deliver, or dispense a controlled substance or a counterfeit
14 controlled substance (i) to a person under the age of eighteen
15 years, (ii) in, on, or within one thousand feet of the real
16 property comprising a public or private elementary, vocational, or
17 secondary school, a community college, a public or private college,
18 junior college, or university, or a playground, or (iii) within one
19 hundred feet of a public or private youth center, public swimming
20 pool, or video arcade facility shall be punished by the next higher
21 penalty classification than the penalty prescribed in subsection
22 (2), (7), (8), (9), or (10) of this section, depending upon the
23 controlled substance involved, for the first violation and for a
24 second or subsequent violation shall be punished by the next higher
25 penalty classification than that prescribed for a first violation
26 of this subsection, but in no event shall such person be punished
27 by a penalty greater than a Class IB felony.

1 (b) For purposes of this subsection:

2 (i) Playground shall mean any outdoor facility, including
3 any parking lot appurtenant to the facility, intended for
4 recreation, open to the public, and with any portion containing
5 three or more apparatus intended for the recreation of children,
6 including sliding boards, swingsets, and teeterboards;

7 (ii) Video arcade facility shall mean any facility
8 legally accessible to persons under eighteen years of age, intended
9 primarily for the use of pinball and video machines for amusement,
10 and containing a minimum of ten pinball or video machines; and

11 (iii) Youth center shall mean any recreational facility
12 or gymnasium, including any parking lot appurtenant to the facility
13 or gymnasium, intended primarily for use by persons under eighteen
14 years of age which regularly provides athletic, civic, or cultural
15 activities.

16 (5) (a) Except as authorized by the Uniform Controlled
17 Substances Act, it shall be unlawful for any person eighteen
18 years of age or older to knowingly and intentionally employ, hire,
19 use, cause, persuade, coax, induce, entice, seduce, or coerce any
20 person under the age of eighteen years to manufacture, transport,
21 distribute, carry, deliver, dispense, prepare for delivery, offer
22 for delivery, or possess with intent to do the same a controlled
23 substance or a counterfeit controlled substance.

24 (b) Except as authorized by the Uniform Controlled
25 Substances Act, it shall be unlawful for any person eighteen years
26 of age or older to knowingly and intentionally employ, hire, use,
27 cause, persuade, coax, induce, entice, seduce, or coerce any person

1 under the age of eighteen years to aid and abet any person in
2 the manufacture, transportation, distribution, carrying, delivery,
3 dispensing, preparation for delivery, offering for delivery, or
4 possession with intent to do the same of a controlled substance or
5 a counterfeit controlled substance.

6 (c) Any person who violates subdivision (a) or (b) of
7 this subsection shall be punished by the next higher penalty
8 classification than the penalty prescribed in subsection (2), (7),
9 (8), (9), or (10) of this section, depending upon the controlled
10 substance involved, for the first violation and for a second or
11 subsequent violation shall be punished by the next higher penalty
12 classification than that prescribed for a first violation of this
13 subsection, but in no event shall such person be punished by a
14 penalty greater than a Class IB felony.

15 (6) It shall not be a defense to prosecution for
16 violation of subsection (4) or (5) of this section that the
17 defendant did not know the age of the person through whom the
18 defendant violated such subsection.

19 (7) Any person who violates subsection (1) of this
20 section with respect to cocaine or any mixture or substance
21 containing a detectable amount of cocaine in a quantity of:

22 (a) One hundred forty grams or more shall be guilty of a
23 Class IB felony;

24 (b) At least twenty-eight grams but less than one hundred
25 forty grams shall be guilty of a Class IC felony; or

26 (c) At least ten grams but less than twenty-eight grams
27 shall be guilty of a Class ID felony.

1 (8) Any person who violates subsection (1) of this
2 section with respect to base cocaine (crack) or any mixture or
3 substance containing a detectable amount of base cocaine in a
4 quantity of:

5 (a) One hundred forty grams or more shall be guilty of a
6 Class IB felony;

7 (b) At least twenty-eight grams but less than one hundred
8 forty grams shall be guilty of a Class IC felony; or

9 (c) At least ten grams but less than twenty-eight grams
10 shall be guilty of a Class ID felony.

11 (9) Any person who violates subsection (1) of this
12 section with respect to heroin or any mixture or substance
13 containing a detectable amount of heroin in a quantity of:

14 (a) One hundred forty grams or more shall be guilty of a
15 Class IB felony;

16 (b) At least twenty-eight grams but less than one hundred
17 forty grams shall be guilty of a Class IC felony; or

18 (c) At least ten grams but less than twenty-eight grams
19 shall be guilty of a Class ID felony.

20 (10) Any person who violates subsection (1) of this
21 section with respect to amphetamine, its salts, optical isomers,
22 and salts of its isomers, or with respect to methamphetamine, its
23 salts, optical isomers, and salts of its isomers, in a quantity of:

24 (a) One hundred forty grams or more shall be guilty of a
25 Class IB felony;

26 (b) At least twenty-eight grams but less than one hundred
27 forty grams shall be guilty of a Class IC felony; or

1 (c) At least ten grams but less than twenty-eight grams
2 shall be guilty of a Class ID felony.

3 (11) Any person knowingly or intentionally possessing
4 marijuana weighing more than one ounce but not more than one pound
5 shall be guilty of a Class ~~IIIA~~ III misdemeanor.

6 (12) Any person knowingly or intentionally possessing
7 marijuana weighing more than one pound shall be guilty of a Class
8 IV felony.

9 (13) Any person knowingly or intentionally possessing
10 marijuana weighing one ounce or less shall:

11 (a) For the first offense, be guilty of an infraction,
12 receive a citation, be fined ~~one~~ three hundred dollars, and be
13 assigned to attend a course as prescribed in section 29-433; ~~if the~~
14 ~~judge determines that attending such course is in the best interest~~
15 ~~of the individual defendant;~~

16 (b) For the second offense, be guilty of a Class IV
17 misdemeanor, receive a citation, and be fined ~~two~~ four hundred
18 dollars and may be imprisoned not to exceed five days; and

19 (c) For the third and all subsequent offenses, be guilty
20 of a Class IIIA misdemeanor, receive a citation, be fined ~~three~~
21 five hundred dollars, and be imprisoned not to exceed seven days.

22 (14) Any person convicted of violating this section,
23 if placed on probation, shall, as a condition of probation,
24 satisfactorily attend and complete appropriate treatment and
25 counseling on drug abuse provided by a program authorized under
26 the Nebraska Behavioral Health Services Act or other licensed drug
27 treatment facility.

1 (15) Any person convicted of violating this section, if
2 sentenced to the Department of Correctional Services, shall attend
3 appropriate treatment and counseling on drug abuse.

4 (16) Any person knowingly or intentionally possessing a
5 firearm while in violation of subsection (1) of this section shall
6 be punished by the next higher penalty classification than the
7 penalty prescribed in subsection (2), (7), (8), (9), or (10) of
8 this section, but in no event shall such person be punished by a
9 penalty greater than a Class IB felony.

10 (17) A person knowingly or intentionally in possession
11 of money used or intended to be used to facilitate a violation
12 of subsection (1) of this section shall be guilty of a Class IV
13 felony.

14 Sec. 3. Section 28-441, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 28-441 (1) It shall be unlawful for any person to use, or
17 to possess with intent to use, drug paraphernalia to manufacture,
18 inject, ingest, inhale, or otherwise introduce into the human body
19 a controlled substance in violation of sections ~~28-101~~, 28-431, and
20 28-439 to 28-444.

21 (2) Any person who violates this section shall be guilty
22 of an infraction and fined one hundred dollars.

23 Sec. 4. Section 29-431, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 29-431 As used in sections ~~28-416~~, 29-422, 29-424,
26 29-425, and 29-431, and 29-432, ~~to 29-434~~, unless the context
27 otherwise requires, infraction shall mean the violation of any law,

1 ordinance, order, rule, or regulation, not including those related
2 to traffic, which is not otherwise declared to be a misdemeanor or
3 a felony. Infraction shall include violations of section 60-6,267.

4 Sec. 5. Section 29-433, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 ~~29-433~~ A person cited for an infraction pursuant to
7 section 28-416 or convicted of a misdemeanor pursuant to sections
8 53-180.01 to 53-180.03 shall be assigned to attend a course of
9 instruction relating to the effects of the misuse of drugs,
10 including alcohol and controlled substances if a judge determines
11 that attending such a course is in the best interest of the
12 individual defendant. Such instruction shall include counseling on
13 the legal, medical, psychological, and social effects of drug use
14 and abuse. Such course shall consist of a minimum of five hours
15 and a maximum of ten hours of instruction and counseling. Upon
16 completion of the assigned course, the instructor shall notify the
17 court in writing of such completion and the notification shall be
18 made a part of the record of the citation. Any person failing to
19 complete such course within thirty days after the assignment shall
20 be guilty of an infraction.

21 Sec. 6. Section 29-434, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

23 ~~29-434~~ All drug treatment centers shall provide the
24 necessary facilities and programs to carry out the provisions of
25 section 29-433.

26 Sec. 7. Section 53-180.05, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 53-180.05 (1) Any person violating section 53-180 shall
2 be guilty of a Class I misdemeanor. Any person violating any of
3 the provisions of sections 53-180.01 to 53-180.03 shall be guilty
4 of a Class III misdemeanor and be assigned to attend a course as
5 prescribed in section 29-433.

6 (2) Any person who knowingly manufactures, creates, or
7 alters any form of identification for the purpose of sale or
8 delivery of such form of identification to a person under the age
9 of twenty-one years shall be guilty of a Class I misdemeanor. For
10 purposes of this subsection, form of identification means any card,
11 paper, or legal document that may be used to establish the age of
12 the person named thereon for the purpose of purchasing alcoholic
13 liquor.

14 (3) When a minor is arrested for a violation of sections
15 53-180 to 53-180.02 or subsection (2) of this section, the law
16 enforcement agency employing the arresting peace officer shall make
17 a reasonable attempt to notify such minor's parent or guardian of
18 the arrest.

19 Sec. 8. Original sections 28-441, 29-431, 29-433, and
20 53-180.05, Reissue Revised Statutes of Nebraska, sections 28-416
21 and 29-434, Revised Statutes Cumulative Supplement, 2006, and
22 section 28-101, Revised Statutes Supplement, 2007, are repealed.