

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 15

Introduced By: Mines, 18;
Read first time: January 4, 2007
Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Uniform Controlled Substances Act; to
2 amend section 28-416, Revised Statutes Cumulative
3 Supplement, 2006; to include public parks as a prohibited
4 area for controlled substances as prescribed; and to repeal
5 the original section.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-416, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 28-416. (1) Except as authorized by the Uniform Controlled
4 Substances Act, it shall be unlawful for any person knowingly or
5 intentionally: (a) To manufacture, distribute, deliver, dispense, or
6 possess with intent to manufacture, distribute, deliver, or dispense a
7 controlled substance; or (b) to create, distribute, or possess with
8 intent to distribute a counterfeit controlled substance.

9 (2) Except as provided in subsections (4), (5), (7), (8),
10 (9), and (10) of this section, any person who violates subsection (1)
11 of this section with respect to: (a) A controlled substance classified
12 in Schedule I, II, or III of section 28-405 which is an exceptionally
13 hazardous drug shall be guilty of a Class II felony; (b) any other
14 controlled substance classified in Schedule I, II, or III of section
15 28-405 shall be guilty of a Class III felony; or (c) a controlled
16 substance classified in Schedule IV or V of section 28-405 shall be
17 guilty of a Class IIIA felony.

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

24 (4)(a) Except as authorized by the Uniform Controlled
25 Substances Act, any person eighteen years of age or older who
26 knowingly or intentionally manufactures, distributes, delivers,
27 dispenses, or possesses with intent to manufacture, distribute,

1 deliver, or dispense a controlled substance or a counterfeit
2 controlled substance (i) to a person under the age of eighteen years,
3 (ii) in, on, or within one thousand feet of the real property
4 comprising a public or private elementary, vocational, or secondary
5 school, a community college, a public or private college, junior
6 college, or university, a public park, or a playground, or (iii)
7 within one hundred feet of a public or private youth center, public
8 swimming pool, or video arcade facility shall be punished by the next
9 higher penalty classification than the penalty prescribed in
10 subsection (2), (7), (8), (9), or (10) of this section, depending upon
11 the controlled substance involved, for the first violation and for a
12 second or subsequent violation shall be punished by the next higher
13 penalty classification than that prescribed for a first violation of
14 this subsection, but in no event shall such person be punished by a
15 penalty greater than a Class IB felony.

16 (b) For purposes of this subsection:

17 (i) Playground shall mean any outdoor facility, including
18 any parking lot appurtenant to the facility, intended for recreation,
19 open to the public, and with any portion containing three or more
20 apparatus intended for the recreation of children, including sliding
21 boards, swingsets, and teeterboards;

22 (ii) Public park shall mean any publicly owned open space
23 provided for recreational use;

24 ~~(ii)~~ (iii) Video arcade facility shall mean any facility
25 legally accessible to persons under eighteen years of age, intended
26 primarily for the use of pinball and video machines for amusement, and
27 containing a minimum of ten pinball or video machines; and

1 ~~(iii)~~ (iv) Youth center shall mean any recreational
2 facility or gymnasium, including any parking lot appurtenant to the
3 facility or gymnasium, intended primarily for use by persons under
4 eighteen years of age which regularly provides athletic, civic, or
5 cultural activities.

6 (5)(a) Except as authorized by the Uniform Controlled
7 Substances Act, it shall be unlawful for any person eighteen years of
8 age or older to knowingly and intentionally employ, hire, use, cause,
9 persuade, coax, induce, entice, seduce, or coerce any person under the
10 age of eighteen years to manufacture, transport, distribute, carry,
11 deliver, dispense, prepare for delivery, offer for delivery, or
12 possess with intent to do the same a controlled substance or a
13 counterfeit controlled substance.

14 (b) Except as authorized by the Uniform Controlled
15 Substances Act, it shall be unlawful for any person eighteen years of
16 age or older to knowingly and intentionally employ, hire, use, cause,
17 persuade, coax, induce, entice, seduce, or coerce any person under the
18 age of eighteen years to aid and abet any person in the manufacture,
19 transportation, distribution, carrying, delivery, dispensing,
20 preparation for delivery, offering for delivery, or possession with
21 intent to do the same of a controlled substance or a counterfeit
22 controlled substance.

23 (c) Any person who violates subdivision (a) or (b) of this
24 subsection shall be punished by the next higher penalty classification
25 than the penalty prescribed in subsection (2), (7), (8), (9), or (10)
26 of this section, depending upon the controlled substance involved, for
27 the first violation and for a second or subsequent violation shall be

1 punished by the next higher penalty classification than that
2 prescribed for a first violation of this subsection, but in no event
3 shall such person be punished by a penalty greater than a Class IB
4 felony.

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

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

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

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

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

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

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

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

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

27 (9) Any person who violates subsection (1) of this section

1 with respect to heroin or any mixture or substance containing a
2 detectable amount of heroin in a quantity of:

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

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

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

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

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

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

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

19 (11) Any person knowingly or intentionally possessing
20 marijuana weighing more than one ounce but not more than one pound
21 shall be guilty of a Class IIIA misdemeanor.

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

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

27 (a) For the first offense, be guilty of an infraction,

1 receive a citation, be fined one hundred dollars, and be assigned to
2 attend a course as prescribed in section 29-433 if the judge
3 determines that attending such course is in the best interest of the
4 individual defendant;

5 (b) For the second offense, be guilty of a Class IV
6 misdemeanor, receive a citation, and be fined two hundred dollars and
7 may be imprisoned not to exceed five days; and

8 (c) For the third and all subsequent offenses, be guilty of
9 a Class IIIA misdemeanor, receive a citation, be fined three hundred
10 dollars, and be imprisoned not to exceed seven days.

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

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

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

26 (17) A person knowingly or intentionally in possession of
27 money used or intended to be used to facilitate a violation of

1 subsection (1) of this section shall be guilty of a Class IV felony.

2 Sec. 2. Original section 28-416, Revised Statutes Cumulative

3 Supplement, 2006, is repealed.