

AMENDMENTS TO LB 258

(Amendments to E & R amendments, ER8164)

Introduced by Karpisek, 32.

1 1. Insert the following new section:

2 Section 1. Section 28-416, Reissue Revised Statutes of
3 Nebraska, is amended to read:

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

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

20 (3) A person knowingly or intentionally possessing a
21 controlled substance, except marijuana, unless such substance was
22 obtained directly or pursuant to a medical order issued by a

1 practitioner authorized to prescribe while acting in the course of
2 his or her professional practice, or except as otherwise authorized
3 by the act, shall be guilty of a Class IV felony.

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

23 (b) For purposes of this subsection:

24 (i) Playground shall mean any outdoor facility, including
25 any parking lot appurtenant to the facility, intended for
26 recreation, open to the public, and with any portion containing
27 three or more apparatus intended for the recreation of children,

1 including sliding boards, swingsets, and teeterboards;

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

6 (iii) Youth center shall mean any recreational facility
7 or gymnasium, including any parking lot appurtenant to the facility
8 or gymnasium, intended primarily for use by persons under eighteen
9 years of age which regularly provides athletic, civic, or cultural
10 activities.

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

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

1 (c) Any person who violates subdivision (a) or (b) of
2 this subsection shall be punished by the next higher penalty
3 classification than the penalty prescribed in subsection (2), (7),
4 (8), (9), or (10) of this section, depending upon the controlled
5 substance involved, for the first violation and for a second or
6 subsequent violation shall be punished by the next higher penalty
7 classification than that prescribed for a first violation of this
8 subsection, but in no event shall such person be punished by a
9 penalty greater than a Class IB felony.

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

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

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

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

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

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

27 (a) One hundred forty grams or more shall be guilty of a

1 Class IB felony;

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

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

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

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

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

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

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

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

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

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

25 (11) Any person knowingly or intentionally possessing
26 marijuana weighing more than one ounce but not more than one pound
27 shall be guilty of a Class III misdemeanor.

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

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

6 (a) For the first offense, be guilty of an infraction,
7 receive a citation, be fined three hundred dollars, and be assigned
8 to attend a course as prescribed in section 29-433 if the judge
9 determines that attending such course is in the best interest of
10 the individual defendant;

11 (b) For the second offense, be guilty of a Class IV
12 misdemeanor, receive a citation, and be fined four hundred dollars
13 and may be imprisoned not to exceed five days; and

14 (c) For the third and all subsequent offenses, be guilty
15 of a Class IIIA misdemeanor, receive a citation, be fined five
16 hundred dollars, and be imprisoned not to exceed seven days.

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

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

26 (16) Any person knowingly or intentionally possessing a
27 firearm while in violation of subsection (1) of this section shall

1 be punished by the next higher penalty classification than the
2 penalty prescribed in subsection (2), (7), (8), (9), or (10) of
3 this section, but in no event shall such person be punished by a
4 penalty greater than a Class IB felony.

5 (17) A person knowingly or intentionally in possession
6 of money used or intended to be used to facilitate a violation
7 of subsection (1) of this section shall be guilty of a Class IV
8 felony.

9 (18) In addition to the penalties provided in this
10 section:

11 (a) If the person convicted or adjudicated of violating
12 this section is younger than twenty-one years of age and has one or
13 more licenses or permits issued under the Motor Vehicle Operator's
14 License Act:

15 (i) For the first offense, the court may, as a part
16 of the judgment of conviction or adjudication, impound any such
17 licenses or permits for thirty days and require such person to
18 attend a drug education class;

19 (ii) For a second offense, the court, as a part of the
20 judgment of conviction or adjudication, may (A) impound any such
21 licenses or permits for ninety days and (B) require such person
22 to complete no fewer than twenty and no more than forty hours of
23 community service and to attend a drug education class; and

24 (iii) For a third or subsequent offense, the court, as a
25 part of the judgment of conviction or adjudication, may (A) impound
26 any such licenses or permits for twelve months and (B) require
27 such person to complete no fewer than sixty hours of community

1 service, to attend a drug education class, and to submit to a drug
2 assessment by a licensed alcohol and drug counselor; and

3 (b) If the person convicted or adjudicated of violating
4 such section is younger than twenty-one years of age and does not
5 have a permit or license issued under the Motor Vehicle Operator's
6 License Act:

7 (i) For the first offense, the court, as part of the
8 judgment of conviction or adjudication, may (A) prohibit such
9 person from obtaining any permit or any license pursuant to the act
10 for which such person would otherwise be eligible until thirty days
11 after the date of such order and (B) require such person to attend
12 a drug education class;

13 (ii) For a second offense, the court, as part of the
14 judgment of conviction or adjudication, may (A) prohibit such
15 person from obtaining any permit or any license pursuant to the
16 act for which such person would otherwise be eligible until ninety
17 days after the date of such order and (B) require such person to
18 complete no fewer than twenty hours and no more than forty hours of
19 community service and to attend a drug education class; and

20 (iii) For a third or subsequent offense, the court,
21 as part of the judgment of conviction or adjudication, may (A)
22 prohibit such person from obtaining any permit or any license
23 pursuant to the act for which such person would otherwise be
24 eligible until twelve months after the date of such order and
25 (B) require such person to complete no fewer than sixty hours of
26 community service, to attend a drug education class, and to submit
27 to a drug assessment by a licensed alcohol and drug counselor.

1 A copy of an abstract of the court's conviction or
2 adjudication shall be transmitted to the Director of Motor Vehicles
3 pursuant to sections 60-497.01 to 60-497.04.

4 2. Renumber the remaining sections, amend the repealer,
5 and correct internal references accordingly.