

AMENDMENTS TO LB 800

(Amendments to E & R amendments, ER8201)

Introduced by Karpisek, 32.

1           1. Insert the following new section:

2           Sec. 4. 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 of  
16 the judgment of conviction or adjudication, (A) impound any such  
17 licenses or permits for thirty days and (B) require such person to  
18 attend a drug education class;

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

1 community service, to attend a drug education class, and to submit  
2 to a drug 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 may, as part of the  
8 judgment of conviction or adjudication, (A) prohibit such person  
9 from obtaining any permit or any license pursuant to the act for  
10 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 may, as part of the  
14 judgment of conviction or adjudication, (A) prohibit such person  
15 from obtaining any permit or any license pursuant to the act for  
16 which such person would otherwise be eligible until ninety days  
17 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 may,  
21 as part of the judgment of conviction or adjudication, (A) prohibit  
22 such person from obtaining any permit or any license pursuant  
23 to the act for which such person would otherwise be eligible  
24 until twelve months after the date of such order and (B) require  
25 such person to complete no fewer than sixty hours of community  
26 service, to attend a drug education class, and to submit to a drug  
27 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.