

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 980

Introduced by Morfeld, 46.

Read first time January 14, 2016

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Uniform Controlled Substances Act; to
2 amend section 28-441, Reissue Revised Statutes of Nebraska, and
3 sections 28-101, 28-401.01, and 28-416, Revised Statutes Supplement,
4 2015; to change penalty provisions for certain violations relating
5 to or committed by persons experiencing or witnessing a drug
6 overdose; to provide protection from civil and criminal liability as
7 prescribed; to harmonize provisions; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Supplement, 2015, is
2 amended to read:

3 28-101 Sections 28-101 to ~~28-468, 28-470~~ to 28-1357, 28-1418.01, and
4 28-1429.03 and section 5 of this act shall be known and may be cited as
5 the Nebraska Criminal Code.

6 Sec. 2. Section 28-401.01, Revised Statutes Supplement, 2015, is
7 amended to read:

8 28-401.01 Sections 28-401 to 28-456.01 and 28-458 to ~~28-468,~~ and
9 28-470 and section 5 of this act shall be known and may be cited as the
10 Uniform Controlled Substances Act.

11 Sec. 3. Section 28-416, Revised Statutes Supplement, 2015, is
12 amended to read:

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

19 (2) Except as provided in subsections (4), (5), (7), (8), (9), and
20 (10) of this section, any person who violates subsection (1) of this
21 section with respect to: (a) A controlled substance classified in
22 Schedule I, II, or III of section 28-405 which is an exceptionally
23 hazardous drug shall be guilty of a Class II felony; (b) any other
24 controlled substance classified in Schedule I, II, or III of section
25 28-405 shall be guilty of a Class IIA felony; or (c) a controlled
26 substance classified in Schedule IV or V of section 28-405 shall be
27 guilty of a Class IIIA felony.

28 (3) A person knowingly or intentionally possessing a controlled
29 substance, except marijuana or any substance containing a quantifiable
30 amount of the substances, chemicals, or compounds described, defined, or
31 delineated in subdivision (c)(25) of Schedule I of section 28-405, unless

1 such substance was obtained directly or pursuant to a medical order
2 issued by a practitioner authorized to prescribe while acting in the
3 course of his or her professional practice, or except as otherwise
4 authorized by the act, shall be guilty of a Class IV felony. A person
5 shall not be in violation of this subsection if section 5 of this act
6 applies.

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

25 (b) For purposes of this subsection:

26 (i) Playground shall mean any outdoor facility, including any
27 parking lot appurtenant to the facility, intended for recreation, open to
28 the public, and with any portion containing three or more apparatus
29 intended for the recreation of children, including sliding boards,
30 swingsets, and teeterboards;

31 (ii) Video arcade facility shall mean any facility legally

1 accessible to persons under eighteen years of age, intended primarily for
2 the use of pinball and video machines for amusement, and containing a
3 minimum of ten pinball or video machines; and

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

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

15 (b) Except as authorized by the Uniform Controlled Substances Act,
16 it shall be unlawful for any person eighteen years of age or older to
17 knowingly and intentionally employ, hire, use, cause, persuade, coax,
18 induce, entice, seduce, or coerce any person under the age of eighteen
19 years to aid and abet any person in the manufacture, transportation,
20 distribution, carrying, delivery, dispensing, preparation for delivery,
21 offering for delivery, or possession with intent to do the same of a
22 controlled substance or a counterfeit 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) of
26 this section, depending upon the controlled substance involved, for the
27 first violation and for a second or subsequent violation shall be
28 punished by the next higher penalty classification than that prescribed
29 for a first violation of this subsection, but in no event shall such
30 person be punished by a penalty greater than a Class IB felony.

31 (6) It shall not be a defense to prosecution for violation of

1 subsection (4) or (5) of this section that the defendant did not know the
2 age of the person through whom the defendant violated such subsection.

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

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

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

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

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

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

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

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

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

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

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

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

30 (10) Any person who violates subsection (1) of this section with
31 respect to amphetamine, its salts, optical isomers, and salts of its

1 isomers, or with respect to methamphetamine, its salts, optical isomers,
2 and salts of its isomers, in a quantity of:

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

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

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

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

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

14 (13) Any person knowingly or intentionally possessing marijuana
15 weighing one ounce or less or any substance containing a quantifiable
16 amount of the substances, chemicals, or compounds described, defined, or
17 delineated in subdivision (c)(25) of Schedule I of section 28-405 shall:

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

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

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

29 (14) Any person convicted of violating this section, if placed on
30 probation, shall, as a condition of probation, satisfactorily attend and
31 complete appropriate treatment and counseling on drug abuse provided by a

1 program authorized under the Nebraska Behavioral Health Services Act or
2 other licensed drug treatment facility.

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

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

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

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

16 (a) If the person convicted or adjudicated of violating this section
17 is eighteen years of age or younger and has one or more licenses or
18 permits issued under the Motor Vehicle Operator's License Act:

19 (i) For the first offense, the court may, as a part of the judgment
20 of conviction or adjudication, (A) impound any such licenses or permits
21 for thirty days and (B) require such person to attend a drug education
22 class;

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

28 (iii) For a third or subsequent offense, the court may, as a part of
29 the judgment of conviction or adjudication, (A) impound any such licenses
30 or permits for twelve months and (B) require such person to complete no
31 fewer than sixty hours of community service, to attend a drug education

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

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

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

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

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

25 A copy of an abstract of the court's conviction or adjudication
26 shall be transmitted to the Director of Motor Vehicles pursuant to
27 sections 60-497.01 to 60-497.04 if a license or permit is impounded or a
28 juvenile is prohibited from obtaining a license or permit under this
29 subsection.

30 Sec. 4. Section 28-441, Reissue Revised Statutes of Nebraska, is
31 amended to read:

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

5 (2) Any person who violates this section shall be guilty of an
6 infraction.

7 (3) A person shall not be in violation of this section if section 5
8 of this act applies.

9 Sec. 5. (1) Any person who experiences a drug-related overdose
10 himself or herself or witnesses a drug-related overdose of another person
11 and, as a result of such drug-related overdose, he or she or another
12 person is in need of medical assistance or reasonably believes he, she,
13 or another is in need of medical assistance, shall not be guilty of a
14 violation of subsection (3) of section 28-416 or section 28-441 if the
15 evidence for the violation of subsection (3) of section 28-416 or section
16 28-441 was gained as a result of the overdose and the need for medical
17 assistance and if the person:

18 (a) Requested emergency medical assistance in response to the
19 possible controlled substance overdose of himself or herself or another
20 person as soon as the emergency situation was reasonably apparent;

21 (b) Was the first person to make a request for medical assistance as
22 soon as the emergency situation was apparent; and

23 (c) When emergency medical assistance was requested for the possible
24 controlled substance overdose of another person:

25 (i) Remained on the scene until the medical assistance arrived; and

26 (ii) Cooperated with medical assistance and law enforcement
27 personnel.

28 (2) No person shall initiate or maintain an action against a peace
29 officer or the officer's employing state agency or political subdivision
30 based on the officer's compliance with subsection (1) of this section.

31 (3) Nothing in this section is intended to interfere with or prevent

1 the investigation, arrest, or prosecution of any person for a violation
2 of subsection (3) of section 28-416 or section 28-441, for drug-induced
3 homicide, or for any other crime.

4 (4) Any first responder administering an opiate antagonist in a
5 manner consistent with addressing opiate overdose shall not be liable for
6 any civil damages as a result of any act or omission in rendering such
7 care or services or as a result of any act or failure to act to provide
8 or arrange for further medical treatment or care for the person involved
9 in the emergency, unless the damage or injury was caused by willful or
10 wanton misconduct or gross negligence.

11 Sec. 6. Original section 28-441, Reissue Revised Statutes of
12 Nebraska, and sections 28-101, 28-401.01, and 28-416, Revised Statutes
13 Supplement, 2015, are repealed.