

AMENDMENTS TO LB971

Introduced by Judiciary.

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

3 Section 1. Section 28-416, Revised Statutes Supplement, 2017, is
4 amended to read:

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

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

20 (3)(a) ~~(3)~~ A person knowingly or intentionally possessing a
21 controlled substance, except marijuana or any substance containing a
22 quantifiable amount of the substances, chemicals, or compounds described,
23 defined, or delineated in subdivision (c)(25) of Schedule I of section
24 28-405, unless such substance was obtained directly or pursuant to a
25 medical order issued by a practitioner authorized to prescribe while
26 acting in the course of his or her professional practice, or except as
27 otherwise authorized by the act, is subject to the following penalties:

1 ~~shall be guilty of a Class IV felony.~~

2 (i) If the controlled substance is an amount constituting only
3 residue, such person is guilty of a Class I misdemeanor; or

4 (ii) If the controlled substance is an amount constituting more than
5 residue, such person is guilty of a Class IV felony.

6 (b) For purposes of this subsection, residue means:

7 (i) For a controlled substance customarily sold by weight, amounts
8 of one-tenth of a gram or less;

9 (ii) For a controlled substance not customarily sold by weight,
10 amounts of less than one dosage unit; or

11 (iii) The ashes, resin, or other actual physical remains of a
12 controlled substance that has already been consumed and is not a usable
13 amount.

14 (c) A person shall not be in violation of this subsection if section
15 28-472 applies.

16 (4)(a) Except as authorized by the Uniform Controlled Substances
17 Act, any person eighteen years of age or older who knowingly or
18 intentionally manufactures, distributes, delivers, dispenses, or
19 possesses with intent to manufacture, distribute, deliver, or dispense a
20 controlled substance or a counterfeit controlled substance (i) to a
21 person under the age of eighteen years, (ii) in, on, or within one
22 thousand feet of the real property comprising a public or private
23 elementary, vocational, or secondary school, a community college, a
24 public or private college, junior college, or university, or a
25 playground, or (iii) within one hundred feet of a public or private youth
26 center, public swimming pool, or video arcade facility shall be punished
27 by the next higher penalty classification than the penalty prescribed in
28 subsection (2), (7), (8), (9), or (10) of this section, depending upon
29 the controlled substance involved, for the first violation and for a
30 second or subsequent violation shall be punished by the next higher
31 penalty classification than that prescribed for a first violation of this

1 subsection, but in no event shall such person be punished by a penalty
2 greater than a Class IB felony.

3 (b) For purposes of this subsection:

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

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

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

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

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

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

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

12 (7) Any person who violates subsection (1) of this section with
13 respect to cocaine or any mixture or substance containing a detectable
14 amount of 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 (8) Any person who violates subsection (1) of this section with
22 respect to base cocaine (crack) or any mixture or substance containing a
23 detectable amount of base cocaine 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 (9) Any person who violates subsection (1) of this section with
31 respect to heroin or any mixture or substance containing a detectable

1 amount of heroin in a quantity of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (18) In addition to the existing penalties available for a violation
25 of subsection (1) of this section, including any criminal attempt or
26 conspiracy to violate subsection (1) of this section, a sentencing court
27 may order that any money, securities, negotiable instruments, firearms,
28 conveyances, or electronic communication devices as defined in section
29 28-833 or any equipment, components, peripherals, software, hardware, or
30 accessories related to electronic communication devices be forfeited as a
31 part of the sentence imposed if it finds by clear and convincing evidence

1 adduced at a separate hearing in the same prosecution, following
2 conviction for a violation of subsection (1) of this section, and
3 conducted pursuant to section 28-1601, that any or all such property was
4 derived from, used, or intended to be used to facilitate a violation of
5 subsection (1) of this section.

6 (19) In addition to the penalties provided in this section:

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

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

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

19 (iii) For a third or subsequent offense, the court may, as a part of
20 the judgment of conviction or adjudication, (A) impound any such licenses
21 or permits for twelve months and (B) require such person to complete no
22 fewer than sixty hours of community service, to attend a drug education
23 class, and to submit to a drug assessment by a licensed alcohol and drug
24 counselor; and

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

28 (i) For the first offense, the court may, as part of the judgment of
29 conviction or adjudication, (A) prohibit such person from obtaining any
30 permit or any license pursuant to the act for which such person would
31 otherwise be eligible until thirty days after the date of such order and

1 (B) require such person to attend a drug education class;

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

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

16 A copy of an abstract of the court's conviction or adjudication
17 shall be transmitted to the Director of Motor Vehicles pursuant to
18 sections 60-497.01 to 60-497.04 if a license or permit is impounded or a
19 juvenile is prohibited from obtaining a license or permit under this
20 subsection.

21 Sec. 2. Original section 28-416, Revised Statutes Supplement, 2017,
22 is repealed.