

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 457

Introduced by Lathrop, 12.

Read first time January 18, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Uniform Controlled Substances Act; to
- 2 amend section 28-401, Revised Statutes Cumulative Supplement, 2018;
- 3 to define and redefine terms relating to industrial hemp; to
- 4 harmonize provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-401, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 28-401 As used in the Uniform Controlled Substances Act, unless the
4 context otherwise requires:

5 (1) Administer means to directly apply a controlled substance by
6 injection, inhalation, ingestion, or any other means to the body of a
7 patient or research subject;

8 (2) Agent means an authorized person who acts on behalf of or at the
9 direction of another person but does not include a common or contract
10 carrier, public warehouse keeper, or employee of a carrier or warehouse
11 keeper;

12 (3) Administration means the Drug Enforcement Administration of the
13 United States Department of Justice;

14 (4) Controlled substance means a drug, biological, substance, or
15 immediate precursor in Schedules I through V of section 28-405.
16 Controlled substance does not include distilled spirits, wine, malt
17 beverages, tobacco, or any nonnarcotic substance if such substance may,
18 under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as
19 such act existed on January 1, 2014, and the law of this state, be
20 lawfully sold over the counter without a prescription, or industrial
21 hemp;

22 (5) Counterfeit substance means a controlled substance which, or the
23 container or labeling of which, without authorization, bears the
24 trademark, trade name, or other identifying mark, imprint, number, or
25 device, or any likeness thereof, of a manufacturer, distributor, or
26 dispenser other than the person or persons who in fact manufactured,
27 distributed, or dispensed such substance and which thereby falsely
28 purports or is represented to be the product of, or to have been
29 distributed by, such other manufacturer, distributor, or dispenser;

30 (6) Department means the Department of Health and Human Services;

31 (7) Division of Drug Control means the personnel of the Nebraska

1 State Patrol who are assigned to enforce the Uniform Controlled
2 Substances Act;

3 (8) Dispense means to deliver a controlled substance to an ultimate
4 user or a research subject pursuant to a medical order issued by a
5 practitioner authorized to prescribe, including the packaging, labeling,
6 or compounding necessary to prepare the controlled substance for such
7 delivery;

8 (9) Distribute means to deliver other than by administering or
9 dispensing a controlled substance;

10 (10) Prescribe means to issue a medical order;

11 (11) Drug means (a) articles recognized in the official United
12 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United
13 States, official National Formulary, or any supplement to any of them,
14 (b) substances intended for use in the diagnosis, cure, mitigation,
15 treatment, or prevention of disease in human beings or animals, and (c)
16 substances intended for use as a component of any article specified in
17 subdivision (a) or (b) of this subdivision, but does not include devices
18 or their components, parts, or accessories;

19 (12) Deliver or delivery means the actual, constructive, or
20 attempted transfer from one person to another of a controlled substance,
21 whether or not there is an agency relationship;

22 (13) Industrial hemp means the plant Cannabis sativa L. and any part
23 of such plant, including the viable seeds of such plant and all
24 derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of
25 isomers, whether growing or not, with a delta-9 tetrahydrocannabinol
26 concentration of not more than three-tenths percent on a dry weight
27 basis. Industrial hemp includes industrial hemp commodities and products
28 and topical or ingestible animal and consumer products derived from the
29 plant Cannabis sativa L. with a delta-9 tetrahydrocannabinol
30 concentration of not more than three-tenths percent on a dry weight
31 basis;

1 (14)(a) ~~(13)~~ Marijuana means all parts of the plant of the genus
2 cannabis, whether growing or not, the seeds thereof, and every compound,
3 manufacture, salt, derivative, mixture, or preparation of such plant or
4 its seeds.

5 (b) Marijuana ~~, but~~ does not include the mature stalks of such
6 plant, hashish, tetrahydrocannabinols extracted or isolated from the
7 plant, fiber produced from such stalks, oil or cake made from the seeds
8 of such plant, any other compound, manufacture, salt, derivative,
9 mixture, or preparation of such mature stalks, the sterilized seed of
10 such plant which is incapable of germination, or cannabidiol contained in
11 a drug product approved by the federal Food and Drug Administration or
12 obtained pursuant to sections 28-463 to 28-468.

13 (c) Marijuana does not include industrial hemp.

14 (d) When the weight of marijuana is referred to in the Uniform
15 Controlled Substances Act, it means its weight at or about the time it is
16 seized or otherwise comes into the possession of law enforcement
17 authorities, whether cured or uncured at that time. ~~When industrial hemp~~
18 ~~as defined in section 2-5701 is in the possession of a person as~~
19 ~~authorized under section 2-5701, it is not considered marijuana for~~
20 ~~purposes of the Uniform Controlled Substances Act;~~

21 (15) ~~(14)~~ Manufacture means the production, preparation,
22 propagation, conversion, or processing of a controlled substance, either
23 directly or indirectly, by extraction from substances of natural origin,
24 independently by means of chemical synthesis, or by a combination of
25 extraction and chemical synthesis, and includes any packaging or
26 repackaging of the substance or labeling or relabeling of its container.
27 Manufacture does not include the preparation or compounding of a
28 controlled substance by an individual for his or her own use, except for
29 the preparation or compounding of components or ingredients used for or
30 intended to be used for the manufacture of methamphetamine, or the
31 preparation, compounding, conversion, packaging, or labeling of a

1 controlled substance: (a) By a practitioner as an incident to his or her
2 prescribing, administering, or dispensing of a controlled substance in
3 the course of his or her professional practice; or (b) by a practitioner,
4 or by his or her authorized agent under his or her supervision, for the
5 purpose of, or as an incident to, research, teaching, or chemical
6 analysis and not for sale;

7 (16) ~~(15)~~ Narcotic drug means any of the following, whether produced
8 directly or indirectly by extraction from substances of vegetable origin,
9 independently by means of chemical synthesis, or by a combination of
10 extraction and chemical synthesis: (a) Opium, opium poppy and poppy
11 straw, coca leaves, and opiates; (b) a compound, manufacture, salt,
12 derivative, or preparation of opium, coca leaves, or opiates; or (c) a
13 substance and any compound, manufacture, salt, derivative, or preparation
14 thereof which is chemically equivalent to or identical with any of the
15 substances referred to in subdivisions (a) and (b) of this subdivision,
16 except that the words narcotic drug as used in the Uniform Controlled
17 Substances Act does not include decocainized coca leaves or extracts of
18 coca leaves, which extracts do not contain cocaine or ecgonine, or
19 isoquinoline alkaloids of opium;

20 (17) ~~(16)~~ Opiate means any substance having an addiction-forming or
21 addiction-sustaining liability similar to morphine or being capable of
22 conversion into a drug having such addiction-forming or addiction-
23 sustaining liability. Opiate does not include the dextrorotatory isomer
24 of 3-methoxy-n methylmorphinan and its salts. Opiate includes its racemic
25 and levorotatory forms;

26 (18) ~~(17)~~ Opium poppy means the plant of the species *Papaver*
27 *somniferum* L., except the seeds thereof;

28 (19) ~~(18)~~ Poppy straw means all parts, except the seeds, of the
29 opium poppy after mowing;

30 (20) ~~(19)~~ Person means any corporation, association, partnership,
31 limited liability company, or one or more persons;

1 ~~(21)~~ (21) Practitioner means a physician, a physician assistant, a
2 dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a
3 certified nurse midwife, a certified registered nurse anesthetist, a
4 nurse practitioner, a scientific investigator, a pharmacy, a hospital, or
5 any other person licensed, registered, or otherwise permitted to
6 distribute, dispense, prescribe, conduct research with respect to, or
7 administer a controlled substance in the course of practice or research
8 in this state, including an emergency medical service as defined in
9 section 38-1207;

10 ~~(22)~~ (22) Production includes the manufacture, planting,
11 cultivation, or harvesting of a controlled substance;

12 ~~(23)~~ (23) Immediate precursor means a substance which is the
13 principal compound commonly used or produced primarily for use and which
14 is an immediate chemical intermediary used or likely to be used in the
15 manufacture of a controlled substance, the control of which is necessary
16 to prevent, curtail, or limit such manufacture;

17 ~~(24)~~ (24) State means the State of Nebraska;

18 ~~(25)~~ (25) Ultimate user means a person who lawfully possesses a
19 controlled substance for his or her own use, for the use of a member of
20 his or her household, or for administration to an animal owned by him or
21 her or by a member of his or her household;

22 ~~(26)~~ (26) Hospital has the same meaning as in section 71-419;

23 ~~(27)~~ (27) Cooperating individual means any person, other than a
24 commissioned law enforcement officer, who acts on behalf of, at the
25 request of, or as agent for a law enforcement agency for the purpose of
26 gathering or obtaining evidence of offenses punishable under the Uniform
27 Controlled Substances Act;

28 ~~(28)~~ (28) Hashish or concentrated cannabis means (a) the separated
29 resin, whether crude or purified, obtained from a plant of the genus
30 cannabis or (b) any material, preparation, mixture, compound, or other
31 substance which contains ten percent or more by weight of

1 tetrahydrocannabinols. Resins ~~When resins~~ extracted from industrial hemp
2 ~~as defined in section 2-5701~~ are in the possession of a person as
3 ~~authorized under section 2-5701,~~ they are not considered hashish or
4 concentrated cannabis for purposes of the Uniform Controlled Substances
5 Act;

6 (29) ~~(28)~~ Exceptionally hazardous drug means (a) a narcotic drug,
7 (b) thiophene analog of phencyclidine, (c) phencyclidine, (d)
8 amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h)
9 methamphetamine;

10 (30) ~~(29)~~ Imitation controlled substance means a substance which is
11 not a controlled substance or controlled substance analogue but which, by
12 way of express or implied representations and consideration of other
13 relevant factors including those specified in section 28-445, would lead
14 a reasonable person to believe the substance is a controlled substance or
15 controlled substance analogue. A placebo or registered investigational
16 drug manufactured, distributed, possessed, or delivered in the ordinary
17 course of practice or research by a health care professional shall not be
18 deemed to be an imitation controlled substance;

19 (31)(a) ~~(30)(a)~~ Controlled substance analogue means a substance (i)
20 the chemical structure of which is substantially similar to the chemical
21 structure of a Schedule I or Schedule II controlled substance as provided
22 in section 28-405 or (ii) which has a stimulant, depressant, analgesic,
23 or hallucinogenic effect on the central nervous system that is
24 substantially similar to or greater than the stimulant, depressant,
25 analgesic, or hallucinogenic effect on the central nervous system of a
26 Schedule I or Schedule II controlled substance as provided in section
27 28-405. A controlled substance analogue shall, to the extent intended for
28 human consumption, be treated as a controlled substance under Schedule I
29 of section 28-405 for purposes of the Uniform Controlled Substances Act;
30 and

31 (b) Controlled substance analogue does not include (i) a controlled

1 substance, (ii) any substance generally recognized as safe and effective
2 within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.
3 301 et seq., as such act existed on January 1, 2014, (iii) any substance
4 for which there is an approved new drug application, or (iv) with respect
5 to a particular person, any substance if an exemption is in effect for
6 investigational use for that person, under section 505 of the Federal
7 Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on
8 January 1, 2014, to the extent conduct with respect to such substance is
9 pursuant to such exemption;

10 (32) ~~(31)~~ Anabolic steroid means any drug or hormonal substance,
11 chemically and pharmacologically related to testosterone (other than
12 estrogens, progestins, and corticosteroids), that promotes muscle growth
13 and includes any controlled substance in Schedule III(d) of section
14 28-405. Anabolic steroid does not include any anabolic steroid which is
15 expressly intended for administration through implants to cattle or other
16 nonhuman species and has been approved by the Secretary of Health and
17 Human Services for such administration, but if any person prescribes,
18 dispenses, or distributes such a steroid for human use, such person shall
19 be considered to have prescribed, dispensed, or distributed an anabolic
20 steroid within the meaning of this subdivision;

21 (33) ~~(32)~~ Chart order means an order for a controlled substance
22 issued by a practitioner for a patient who is in the hospital where the
23 chart is stored or for a patient receiving detoxification treatment or
24 maintenance treatment pursuant to section 28-412. Chart order does not
25 include a prescription;

26 (34) ~~(33)~~ Medical order means a prescription, a chart order, or an
27 order for pharmaceutical care issued by a practitioner;

28 (35) ~~(34)~~ Prescription means an order for a controlled substance
29 issued by a practitioner. Prescription does not include a chart order;

30 (36) ~~(35)~~ Registrant means any person who has a controlled
31 substances registration issued by the state or the Drug Enforcement

1 Administration of the United States Department of Justice;

2 (37) ~~(36)~~ Reverse distributor means a person whose primary function
3 is to act as an agent for a pharmacy, wholesaler, manufacturer, or other
4 entity by receiving, inventorying, and managing the disposition of
5 outdated, expired, or otherwise nonsaleable controlled substances;

6 (38) ~~(37)~~ Signature means the name, word, or mark of a person
7 written in his or her own hand with the intent to authenticate a writing
8 or other form of communication or a digital signature which complies with
9 section 86-611 or an electronic signature;

10 (39) ~~(38)~~ Facsimile means a copy generated by a system that encodes
11 a document or photograph into electrical signals, transmits those signals
12 over telecommunications lines, and reconstructs the signals to create an
13 exact duplicate of the original document at the receiving end;

14 (40) ~~(39)~~ Electronic signature has the definition found in section
15 86-621;

16 (41) ~~(40)~~ Electronic transmission means transmission of information
17 in electronic form. Electronic transmission includes computer-to-computer
18 transmission or computer-to-facsimile transmission;

19 (42) ~~(41)~~ Long-term care facility means an intermediate care
20 facility, an intermediate care facility for persons with developmental
21 disabilities, a long-term care hospital, a mental health substance use
22 treatment center, a nursing facility, or a skilled nursing facility, as
23 such terms are defined in the Health Care Facility Licensure Act;

24 (43) ~~(42)~~ Compounding has the same meaning as in section 38-2811;

25 (44) ~~(43)~~ Cannabinoid receptor agonist shall mean any chemical
26 compound or substance that, according to scientific or medical research,
27 study, testing, or analysis, demonstrates the presence of binding
28 activity at one or more of the CB1 or CB2 cell membrane receptors located
29 within the human body; and

30 (45) ~~(44)~~ Lookalike substance means a product or substance, not
31 specifically designated as a controlled substance in section 28-405, that

1 is either portrayed in such a manner by a person to lead another person
2 to reasonably believe that it produces effects on the human body that
3 replicate, mimic, or are intended to simulate the effects produced by a
4 controlled substance or that possesses one or more of the following
5 indicia or characteristics:

6 (a) The packaging or labeling of the product or substance suggests
7 that the user will achieve euphoria, hallucination, mood enhancement,
8 stimulation, or another effect on the human body that replicates or
9 mimics those produced by a controlled substance;

10 (b) The name or packaging of the product or substance uses images or
11 labels suggesting that it is a controlled substance or produces effects
12 on the human body that replicate or mimic those produced by a controlled
13 substance;

14 (c) The product or substance is marketed or advertised for a
15 particular use or purpose and the cost of the product or substance is
16 disproportionately higher than other products or substances marketed or
17 advertised for the same or similar use or purpose;

18 (d) The packaging or label on the product or substance contains
19 words or markings that state or suggest that the product or substance is
20 in compliance with state and federal laws regulating controlled
21 substances;

22 (e) The owner or person in control of the product or substance uses
23 evasive tactics or actions to avoid detection or inspection of the
24 product or substance by law enforcement authorities;

25 (f) The owner or person in control of the product or substance makes
26 a verbal or written statement suggesting or implying that the product or
27 substance is a synthetic drug or that consumption of the product or
28 substance will replicate or mimic effects on the human body to those
29 effects commonly produced through use or consumption of a controlled
30 substance;

31 (g) The owner or person in control of the product or substance makes

1 a verbal or written statement to a prospective customer, buyer, or
2 recipient of the product or substance implying that the product or
3 substance may be resold for profit; or

4 (h) The product or substance contains a chemical or chemical
5 compound that does not have a legitimate relationship to the use or
6 purpose claimed by the seller, distributor, packer, or manufacturer of
7 the product or substance or indicated by the product name, appearing on
8 the product's packaging or label or depicted in advertisement of the
9 product or substance.

10 Sec. 2. Original section 28-401, Revised Statutes Cumulative
11 Supplement, 2018, is repealed.