

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 89**

Introduced by Wayne, 13.

Read first time January 10, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Uniform Controlled Substances Act; to
- 2 amend sections 28-416 and 28-1354, Revised Statutes Cumulative
- 3 Supplement, 2018; to change certain marijuana penalties; to
- 4 harmonize provisions; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-416, Revised Statutes Cumulative Supplement,  
2 2018, is amended to read:

3 28-416 (1) Except as authorized by the Uniform Controlled Substances  
4 Act, it shall be unlawful for any person knowingly or intentionally: (a)  
5 To manufacture, distribute, deliver, dispense, or possess with intent to  
6 manufacture, distribute, deliver, or dispense a controlled substance; or  
7 (b) to create, distribute, or possess with intent to distribute a  
8 counterfeit controlled substance.

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

18 (3) A person knowingly or intentionally possessing a controlled  
19 substance, except marijuana or any substance containing a quantifiable  
20 amount of the substances, chemicals, or compounds described, defined, or  
21 delineated in subdivision (c)(25) of Schedule I of section 28-405, unless  
22 such substance was obtained directly or pursuant to a medical order  
23 issued by a practitioner authorized to prescribe while acting in the  
24 course of his or her professional practice, or except as otherwise  
25 authorized by the act, shall be guilty of a Class IV felony. A person  
26 shall not be in violation of this subsection if section 28-472 applies.

27 (4)(a) Except as authorized by the Uniform Controlled Substances  
28 Act, any person eighteen years of age or older who knowingly or  
29 intentionally manufactures, distributes, delivers, dispenses, or  
30 possesses with intent to manufacture, distribute, deliver, or dispense a  
31 controlled substance or a counterfeit controlled substance (i) to a

1 person under the age of eighteen years, (ii) in, on, or within one  
2 thousand feet of the real property comprising a public or private  
3 elementary, vocational, or secondary school, a community college, a  
4 public or private college, junior college, or university, or a  
5 playground, or (iii) within one hundred feet of a public or private youth  
6 center, public swimming pool, or video arcade facility shall be punished  
7 by the next higher penalty classification than the penalty prescribed in  
8 subsection (2), (7), (8), (9), ~~or (10)~~, or (11) of this section,  
9 depending upon the controlled substance involved, for the first violation  
10 and for a second or subsequent violation shall be punished by the next  
11 higher penalty classification than that prescribed for a first violation  
12 of this subsection, but in no event shall such person be punished by a  
13 penalty greater than a Class IB felony.

14 (b) For purposes of this subsection:

15 (i) Playground means any outdoor facility, including any parking lot  
16 appurtenant to the facility, intended for recreation, open to the public,  
17 and with any portion containing three or more apparatus intended for the  
18 recreation of children, including sliding boards, swingsets, and  
19 teeterboards;

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

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

28 (5)(a) Except as authorized by the Uniform Controlled Substances  
29 Act, it shall be unlawful for any person eighteen years of age or older  
30 to knowingly and intentionally employ, hire, use, cause, persuade, coax,  
31 induce, entice, seduce, or coerce any person under the age of eighteen

1 years to manufacture, transport, distribute, carry, deliver, dispense,  
2 prepare for delivery, offer for delivery, or possess with intent to do  
3 the same a controlled substance or a counterfeit controlled substance.

4 (b) Except as authorized by the Uniform Controlled Substances Act,  
5 it shall be unlawful for any person eighteen years of age or older to  
6 knowingly and intentionally employ, hire, use, cause, persuade, coax,  
7 induce, entice, seduce, or coerce any person under the age of eighteen  
8 years to aid and abet any person in the manufacture, transportation,  
9 distribution, carrying, delivery, dispensing, preparation for delivery,  
10 offering for delivery, or possession with intent to do the same of a  
11 controlled substance or a counterfeit controlled substance.

12 (c) Any person who violates subdivision (a) or (b) of this  
13 subsection shall be punished by the next higher penalty classification  
14 than the penalty prescribed in subsection (2), (7), (8), (9), ~~or (10)~~, or  
15 (11) of this section, depending upon the controlled substance involved,  
16 for the first violation and for a second or subsequent violation shall be  
17 punished by the next higher penalty classification than that prescribed  
18 for a first violation of this subsection, but in no event shall such  
19 person be punished by a penalty greater than a Class IB felony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (11) Any person who violates subsection (1) of this section with  
30 respect to marijuana in a quantity of:

31 (a) Five pounds or less shall be guilty of a Class IV felony; and

1           (b) More than five pounds shall be guilty of a Class IIA felony.

2           ~~(12) (11)~~ Any person knowingly or intentionally possessing marijuana  
3 weighing more than three ounces ~~one ounce~~ but not more than one pound  
4 shall be guilty of a Class III misdemeanor.

5           ~~(13)~~ Any person knowingly or intentionally possessing marijuana  
6 weighing more than one pound but not more than five pounds shall be  
7 guilty of a Class I misdemeanor.

8           ~~(14) (12)~~ Any person knowingly or intentionally possessing marijuana  
9 weighing more than five pounds ~~one pound~~ shall be guilty of a Class IV  
10 felony.

11           ~~(15) (13)~~ Any person knowingly or intentionally possessing marijuana  
12 weighing one ounce or less or any substance containing a quantifiable  
13 amount of the substances, chemicals, or compounds described, defined, or  
14 delineated in subdivision (c)(25) of Schedule I of section 28-405 shall:

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

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

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

26           ~~(16) (14)~~ Any person convicted of violating this section, if placed  
27 on probation, shall, as a condition of probation, satisfactorily attend  
28 and complete appropriate treatment and counseling on drug abuse provided  
29 by a program authorized under the Nebraska Behavioral Health Services Act  
30 or other licensed drug treatment facility.

31           ~~(17) (15)~~ Any person convicted of violating this section, if

1 sentenced to the Department of Correctional Services, shall attend  
2 appropriate treatment and counseling on drug abuse.

3 (18) ~~(16)~~ Any person knowingly or intentionally possessing a firearm  
4 while in violation of subsection (1) of this section shall be punished by  
5 the next higher penalty classification than the penalty prescribed in  
6 subsection (2), (7), (8), (9), ~~or (10)~~, or (11) of this section, but in  
7 no event shall such person be punished by a penalty greater than a Class  
8 IB felony.

9 (19) ~~(17)~~ A person knowingly or intentionally in possession of money  
10 used or intended to be used to facilitate a violation of subsection (1)  
11 of this section shall be guilty of a Class IV felony.

12 (20) ~~(18)~~ In addition to the existing penalties available for a  
13 violation of subsection (1) of this section, including any criminal  
14 attempt or conspiracy to violate subsection (1) of this section, a  
15 sentencing court may order that any money, securities, negotiable  
16 instruments, firearms, conveyances, or electronic communication devices  
17 as defined in section 28-833 or any equipment, components, peripherals,  
18 software, hardware, or accessories related to electronic communication  
19 devices be forfeited as a part of the sentence imposed if it finds by  
20 clear and convincing evidence adduced at a separate hearing in the same  
21 prosecution, following conviction for a violation of subsection (1) of  
22 this section, and conducted pursuant to section 28-1601, that any or all  
23 such property was derived from, used, or intended to be used to  
24 facilitate a violation of subsection (1) of this section.

25 (21) ~~(19)~~ In addition to the penalties provided in this section:

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

29 (i) For the first offense, the court may, as a part of the judgment  
30 of conviction or adjudication, (A) impound any such licenses or permits  
31 for thirty days and (B) require such person to attend a drug education

1 class;

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

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

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

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

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

28 (iii) For a third or subsequent offense, the court may, as part of  
29 the judgment of conviction or adjudication, (A) prohibit such person from  
30 obtaining any permit or any license pursuant to the act for which such  
31 person would otherwise be eligible until twelve months after the date of



1 such order and (B) require such person to complete no fewer than sixty  
2 hours of community service, to attend a drug education class, and to  
3 submit to a drug assessment by a licensed alcohol and drug counselor.

4 A copy of an abstract of the court's conviction or adjudication  
5 shall be transmitted to the Director of Motor Vehicles pursuant to  
6 sections 60-497.01 to 60-497.04 if a license or permit is impounded or a  
7 juvenile is prohibited from obtaining a license or permit under this  
8 subsection.

9 Sec. 2. Section 28-1354, Revised Statutes Cumulative Supplement,  
10 2018, is amended to read:

11 28-1354 For purposes of the Public Protection Act:

12 (1) Enterprise means any individual, sole proprietorship,  
13 partnership, corporation, trust, association, or any legal entity, union,  
14 or group of individuals associated in fact although not a legal entity,  
15 and shall include illicit as well as licit enterprises as well as other  
16 entities;

17 (2) Pattern of racketeering activity means a cumulative loss for one  
18 or more victims or gains for the enterprise of not less than one thousand  
19 five hundred dollars resulting from at least two acts of racketeering  
20 activity, one of which occurred after August 30, 2009, and the last of  
21 which occurred within ten years, excluding any period of imprisonment,  
22 after the commission of a prior act of racketeering activity;

23 (3) Until January 1, 2017, person means any individual or entity, as  
24 defined in section 21-2014, holding or capable of holding a legal,  
25 equitable, or beneficial interest in property. Beginning January 1, 2017,  
26 person means any individual or entity, as defined in section 21-214,  
27 holding or capable of holding a legal, equitable, or beneficial interest  
28 in property;

29 (4) Prosecutor includes the Attorney General of the State of  
30 Nebraska, the deputy attorney general, assistant attorneys general, a  
31 county attorney, a deputy county attorney, or any person so designated by

1 the Attorney General, a county attorney, or a court of the state to carry  
2 out the powers conferred by the act;

3 (5) Racketeering activity includes the commission of, criminal  
4 attempt to commit, conspiracy to commit, aiding and abetting in the  
5 commission of, aiding in the consummation of, acting as an accessory to  
6 the commission of, or the solicitation, coercion, or intimidation of  
7 another to commit or aid in the commission of any of the following:

8 (a) Offenses against the person which include: Murder in the first  
9 degree under section 28-303; murder in the second degree under section  
10 28-304; manslaughter under section 28-305; assault in the first degree  
11 under section 28-308; assault in the second degree under section 28-309;  
12 assault in the third degree under section 28-310; terroristic threats  
13 under section 28-311.01; kidnapping under section 28-313; false  
14 imprisonment in the first degree under section 28-314; false imprisonment  
15 in the second degree under section 28-315; sexual assault in the first  
16 degree under section 28-319; and robbery under section 28-324;

17 (b) Offenses relating to controlled substances which include: To  
18 unlawfully manufacture, distribute, deliver, dispense, or possess with  
19 intent to manufacture, distribute, deliver, or dispense a controlled  
20 substance under subsection (1) of section 28-416; possession of marijuana  
21 weighing more than five pounds ~~one pound~~ under subsection (14) ~~(12)~~ of  
22 section 28-416; possession of money used or intended to be used to  
23 facilitate a violation of subsection (1) of section 28-416 prohibited  
24 under subsection (19) ~~(17)~~ of section 28-416; any violation of section  
25 28-418; to unlawfully manufacture, distribute, deliver, or possess with  
26 intent to distribute or deliver an imitation controlled substance under  
27 section 28-445; possession of anhydrous ammonia with the intent to  
28 manufacture methamphetamine under section 28-451; and possession of  
29 ephedrine, pseudoephedrine, or phenylpropanolamine with the intent to  
30 manufacture methamphetamine under section 28-452;

31 (c) Offenses against property which include: Arson in the first

1 degree under section 28-502; arson in the second degree under section  
2 28-503; arson in the third degree under section 28-504; burglary under  
3 section 28-507; theft by unlawful taking or disposition under section  
4 28-511; theft by shoplifting under section 28-511.01; theft by deception  
5 under section 28-512; theft by extortion under section 28-513; theft of  
6 services under section 28-515; theft by receiving stolen property under  
7 section 28-517; criminal mischief under section 28-519; and unlawfully  
8 depriving or obtaining property or services using a computer under  
9 section 28-1344;

10 (d) Offenses involving fraud which include: Burning to defraud an  
11 insurer under section 28-505; forgery in the first degree under section  
12 28-602; forgery in the second degree under section 28-603; criminal  
13 possession of a forged instrument under section 28-604; criminal  
14 possession of written instrument forgery devices under section 28-605;  
15 criminal impersonation under section 28-638; identity theft under section  
16 28-639; identity fraud under section 28-640; false statement or book  
17 entry under section 28-612; tampering with a publicly exhibited contest  
18 under section 28-614; issuing a false financial statement for purposes of  
19 obtaining a financial transaction device under section 28-619;  
20 unauthorized use of a financial transaction device under section 28-620;  
21 criminal possession of a financial transaction device under section  
22 28-621; unlawful circulation of a financial transaction device in the  
23 first degree under section 28-622; unlawful circulation of a financial  
24 transaction device in the second degree under section 28-623; criminal  
25 possession of a blank financial transaction device under section 28-624;  
26 criminal sale of a blank financial transaction device under section  
27 28-625; criminal possession of a financial transaction forgery device  
28 under section 28-626; unlawful manufacture of a financial transaction  
29 device under section 28-627; laundering of sales forms under section  
30 28-628; unlawful acquisition of sales form processing services under  
31 section 28-629; unlawful factoring of a financial transaction device

1 under section 28-630; and fraudulent insurance acts under section 28-631;  
2 (e) Offenses involving governmental operations which include: Abuse  
3 of public records under section 28-911; perjury or subornation of perjury  
4 under section 28-915; bribery under section 28-917; bribery of a witness  
5 under section 28-918; tampering with a witness or informant or jury  
6 tampering under section 28-919; bribery of a juror under section 28-920;  
7 assault on an officer, an emergency responder, a state correctional  
8 employee, a Department of Health and Human Services employee, or a health  
9 care professional in the first degree under section 28-929; assault on an  
10 officer, an emergency responder, a state correctional employee, a  
11 Department of Health and Human Services employee, or a health care  
12 professional in the second degree under section 28-930; assault on an  
13 officer, an emergency responder, a state correctional employee, a  
14 Department of Health and Human Services employee, or a health care  
15 professional in the third degree under section 28-931; and assault on an  
16 officer, an emergency responder, a state correctional employee, a  
17 Department of Health and Human Services employee, or a health care  
18 professional using a motor vehicle under section 28-931.01;

19 (f) Offenses involving gambling which include: Promoting gambling in  
20 the first degree under section 28-1102; possession of gambling records  
21 under section 28-1105; gambling debt collection under section 28-1105.01;  
22 and possession of a gambling device under section 28-1107;

23 (g) Offenses relating to firearms, weapons, and explosives which  
24 include: Carrying a concealed weapon under section 28-1202;  
25 transportation or possession of machine guns, short rifles, or short  
26 shotguns under section 28-1203; unlawful possession of a handgun under  
27 section 28-1204; unlawful transfer of a firearm to a juvenile under  
28 section 28-1204.01; possession of a firearm by a prohibited juvenile  
29 offender under section 28-1204.05; using a deadly weapon to commit a  
30 felony or possession of a deadly weapon during the commission of a felony  
31 under section 28-1205; possession of a deadly weapon by a prohibited

1 person under section 28-1206; possession of a defaced firearm under  
2 section 28-1207; defacing a firearm under section 28-1208; unlawful  
3 discharge of a firearm under section 28-1212.02; possession, receipt,  
4 retention, or disposition of a stolen firearm under section 28-1212.03;  
5 unlawful possession of explosive materials in the first degree under  
6 section 28-1215; unlawful possession of explosive materials in the second  
7 degree under section 28-1216; unlawful sale of explosives under section  
8 28-1217; use of explosives without a permit under section 28-1218;  
9 obtaining an explosives permit through false representations under  
10 section 28-1219; possession of a destructive device under section  
11 28-1220; threatening the use of explosives or placing a false bomb under  
12 section 28-1221; using explosives to commit a felony under section  
13 28-1222; using explosives to damage or destroy property under section  
14 28-1223; and using explosives to kill or injure any person under section  
15 28-1224;

16 (h) Any violation of the Securities Act of Nebraska pursuant to  
17 section 8-1117;

18 (i) Any violation of the Nebraska Revenue Act of 1967 pursuant to  
19 section 77-2713;

20 (j) Offenses relating to public health and morals which include:  
21 Prostitution under section 28-801; pandering under section 28-802;  
22 keeping a place of prostitution under section 28-804; labor trafficking,  
23 sex trafficking, labor trafficking of a minor, or sex trafficking of a  
24 minor under section 28-831; a violation of section 28-1005; and any act  
25 relating to the visual depiction of sexually explicit conduct prohibited  
26 in the Child Pornography Prevention Act; and

27 (k) A violation of the Computer Crimes Act;

28 (6) State means the State of Nebraska or any political subdivision  
29 or any department, agency, or instrumentality thereof; and

30 (7) Unlawful debt means a debt of at least one thousand five hundred  
31 dollars:

1           (a) Incurred or contracted in gambling activity which was in  
2 violation of federal law or the law of the state or which is  
3 unenforceable under state or federal law in whole or in part as to  
4 principal or interest because of the laws relating to usury; or

5           (b) Which was incurred in connection with the business of gambling  
6 in violation of federal law or the law of the state or the business of  
7 lending money or a thing of value at a rate usurious under state law if  
8 the usurious rate is at least twice the enforceable rate.

9           Sec. 3. Original sections 28-416 and 28-1354, Revised Statutes  
10 Cumulative Supplement, 2018, are repealed.