

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 137

Introduced by Geist, 25.

Read first time January 06, 2023

Committee:

- 1 A BILL FOR AN ACT relating to the Uniform Controlled Substances Act; to
- 2 amend section 28-416, Revised Statutes Cumulative Supplement, 2022;
- 3 to provide for a penalty enhancement for a controlled substances
- 4 violation resulting in serious bodily injury or death; to harmonize
- 5 provisions; and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-416, Revised Statutes Cumulative Supplement,
2 2022, 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 (16)~~ 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)(26) 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 or 28-1701
27 applies.

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

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

15 (b) For purposes of this subsection:

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

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

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

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

1 induce, entice, seduce, or coerce any person under the age of eighteen
2 years to manufacture, transport, distribute, carry, deliver, dispense,
3 prepare for delivery, offer for delivery, or possess with intent to do
4 the same a controlled substance or a counterfeit controlled substance.

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

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

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

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

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

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

31 (c) At least ten grams but less than twenty-eight grams shall be

1 guilty of a Class ID felony.

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

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

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

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

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

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

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

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

20 (10) Any person who violates subsection (1) of this section with
21 respect to amphetamine, its salts, optical isomers, and salts of its
22 isomers, or with respect to methamphetamine, its salts, optical isomers,
23 and salts of its isomers, 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 (11) Any person knowingly or intentionally possessing marijuana
31 weighing more than one ounce but not more than one pound shall be guilty

1 of a Class III misdemeanor.

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

4 (13) Except as provided in section 28-1701, any person knowingly or
5 intentionally possessing marijuana weighing one ounce or less or any
6 substance containing a quantifiable amount of the substances, chemicals,
7 or compounds described, defined, or delineated in subdivision (c)(26) of
8 Schedule I of section 28-405 shall:

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

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

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

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

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

28 (16)(a) Any person convicted of a violation of subsection (1) of
29 this section shall be punished by the next higher penalty classification
30 than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of
31 this section if:

1 (i) The ~~(16)~~ Any person knowingly or intentionally possessed
2 possessing a firearm while in violation of subsection (1) of this
3 section; or

4 (ii) The use of any controlled substance connected with such
5 violation resulted in serious bodily injury to, or the death of, another
6 person.

7 (b) A penalty enhanced under this subsection shall in no event
8 result in shall be punished by the next higher penalty classification
9 than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of
10 this section, but in no event shall such person be punished by a penalty
11 greater than a Class IB 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 existing penalties available for a violation
16 of subsection (1) of this section, including any criminal attempt or
17 conspiracy to violate subsection (1) of this section, a sentencing court
18 may order that any money, securities, negotiable instruments, firearms,
19 conveyances, or electronic communication devices as defined in section
20 28-833 or any equipment, components, peripherals, software, hardware, or
21 accessories related to electronic communication devices be forfeited as a
22 part of the sentence imposed if it finds by clear and convincing evidence
23 adduced at a separate hearing in the same prosecution, following
24 conviction for a violation of subsection (1) of this section, and
25 conducted pursuant to section 28-1601, that any or all such property was
26 derived from, used, or intended to be used to facilitate a violation of
27 subsection (1) of this section.

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

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

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

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

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

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

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

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

31 (iii) For a third or subsequent offense, the court may, as part of

1 the judgment of conviction or adjudication, (A) prohibit such person from
2 obtaining any permit or any license pursuant to the act for which such
3 person would otherwise be eligible until twelve months after the date of
4 such order and (B) require such person to complete no fewer than sixty
5 hours of community service, to attend a drug education class, and to
6 submit to a drug assessment by a licensed alcohol and drug counselor.

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

12 Sec. 2. Original section 28-416, Revised Statutes Cumulative
13 Supplement, 2022, is repealed.