

E AND R AMENDMENTS TO LB 844

Introduced by Enrollment and Review Committee: McGill, 26,  
Chairperson

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

3           Section 1. Section 28-416, Revised Statutes Cumulative  
4 Supplement, 2006, is amended to read:

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

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

21           (3) A person knowingly or intentionally possessing a  
22 controlled substance, except marijuana, unless such substance was  
23 obtained directly or pursuant to a medical order issued by a

1 practitioner authorized to prescribe while acting in the course of  
2 his or her professional practice, or except as otherwise authorized  
3 by the act, shall be guilty of a Class IV felony.

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

23 (b) For purposes of this subsection:

24 (i) Playground shall mean any outdoor facility, including  
25 any parking lot appurtenant to the facility, intended for  
26 recreation, open to the public, and with any portion containing  
27 three or more apparatus intended for the recreation of children,

1 including sliding boards, swingsets, and teeterboards;

2 (ii) Video arcade facility shall mean any facility  
3 legally accessible to persons under eighteen years of age, intended  
4 primarily for the use of pinball and video machines for amusement,  
5 and containing a minimum of ten pinball or video machines; and

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

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

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

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

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

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

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

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

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

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

27           (a) One hundred forty grams or more shall be guilty of a

1 Class IB felony;

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

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

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

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

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

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

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

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

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

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

25 (11) Any person knowingly or intentionally possessing  
26 marijuana weighing more than one ounce but not more than one pound  
27 shall be guilty of a Class ~~IIIA~~ III misdemeanor.

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

4           (13) Any person knowingly or intentionally possessing  
5 marijuana weighing one ounce or less shall:

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

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

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

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

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

26           (16) Any person knowingly or intentionally possessing a  
27 firearm while in violation of subsection (1) of this section shall

1 be punished by the next higher penalty classification than the  
2 penalty prescribed in subsection (2), (7), (8), (9), or (10) of  
3 this section, but in no event shall such person be punished by a  
4 penalty greater than a Class IB felony.

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

9 Sec. 2. Section 29-433, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 29-433 A person cited for an infraction pursuant to  
12 section 28-416 or convicted of a misdemeanor pursuant to sections  
13 53-180.01 to 53-180.03 shall be assigned to attend a course of  
14 instruction relating to the effects of the misuse of drugs,  
15 including alcohol and controlled substances. Such instruction shall  
16 include counseling on the legal, medical, psychological, and social  
17 effects of drug use and abuse. Such course shall consist of a  
18 minimum of five hours and a maximum of ten hours of instruction and  
19 counseling. Upon completion of the assigned course, the instructor  
20 shall notify the court in writing of such completion and the  
21 notification shall be made a part of the record of the citation.  
22 Any person failing to complete such course within thirty days after  
23 the assignment shall be guilty of an infraction.

24 Sec. 3. Original section 29-433, Reissue Revised Statutes  
25 of Nebraska, and section 28-416, Revised Statutes Cumulative  
26 Supplement, 2006, are repealed.

27 2. On page 1, strike beginning with "sections" in line 1

1 through line 7 and insert "section 29-433, Reissue Revised Statutes  
2 of Nebraska, and section 28-416, Revised Statutes Cumulative  
3 Supplement, 2006; to change penalty provisions for marijuana  
4 possession; to require a course of instruction for violating  
5 certain provisions relating to minors in possession of alcohol; and  
6 to repeal the original sections."