

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1102

Introduced by Crawford, 45; Chambers, 11; Davis, 43; Garrett, 3;
Wallman, 30.

Read first time January 22, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Uniform Controlled Substances Act; to
2 amend section 28-401.01, Revised Statutes Cumulative
3 Supplement, 2012, and section 28-401, Revised Statutes
4 Supplement, 2013; to adopt Will's Law; to redefine
5 marijuana and authorize the medical use of hemp oil
6 extract which contains no more than three-tenths of one
7 percent tetrahydrocannabinols; to harmonize provisions;
8 and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-401, Revised Statutes Supplement,
2 2013, is amended to read:

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

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

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

12 (3) Administration shall mean the Drug Enforcement
13 Administration, United States Department of Justice;

14 (4) Controlled substance shall mean a drug, biological,
15 substance, or immediate precursor in Schedules I to V of section
16 28-405. Controlled substance shall not include distilled spirits,
17 wine, malt beverages, tobacco, or any nonnarcotic substance if such
18 substance may, under the Federal Food, Drug, and Cosmetic Act, 21
19 U.S.C. 301 et seq., as such act existed on January 1, 2009, and the
20 law of this state, be lawfully sold over the counter without a
21 prescription;

22 (5) Counterfeit substance shall mean a controlled
23 substance which, or the container or labeling of which, without
24 authorization, bears the trademark, trade name, or other identifying
25 mark, imprint, number, or device, or any likeness thereof, of a

1 manufacturer, distributor, or dispenser other than the person or
2 persons who in fact manufactured, distributed, or dispensed such
3 substance and which thereby falsely purports or is represented to be
4 the product of, or to have been distributed by, such other
5 manufacturer, distributor, or dispenser;

6 (6) Department shall mean the Department of Health and
7 Human Services;

8 (7) Division of Drug Control shall mean the personnel of
9 the Nebraska State Patrol who are assigned to enforce the Uniform
10 Controlled Substances Act;

11 (8) Dispense shall mean to deliver a controlled substance
12 to an ultimate user or a research subject pursuant to a medical order
13 issued by a practitioner authorized to prescribe, including the
14 packaging, labeling, or compounding necessary to prepare the
15 controlled substance for such delivery;

16 (9) Distribute shall mean to deliver other than by
17 administering or dispensing a controlled substance;

18 (10) Prescribe shall mean to issue a medical order;

19 (11) Drug shall mean (a) articles recognized in the
20 official United States Pharmacopoeia, official Homeopathic
21 Pharmacopoeia of the United States, official National Formulary, or
22 any supplement to any of them, (b) substances intended for use in the
23 diagnosis, cure, mitigation, treatment, or prevention of disease in
24 human beings or animals, and (c) substances intended for use as a
25 component of any article specified in subdivision (a) or (b) of this

1 subdivision, but shall not include devices or their components,
2 parts, or accessories;

3 (12) Deliver or delivery shall mean the actual,
4 constructive, or attempted transfer from one person to another of a
5 controlled substance, whether or not there is an agency relationship;

6 (13) Marijuana shall mean all parts of the plant of the
7 genus cannabis, whether growing or not, the seeds thereof, and every
8 compound, manufacture, salt, derivative, mixture, or preparation of
9 such plant or its seeds, but shall not include the mature stalks of
10 such plant, hashish, tetrahydrocannabinols extracted or isolated from
11 the plant, fiber produced from such stalks, oil or cake made from the
12 seeds of such plant, any other compound, manufacture, salt,
13 derivative, mixture, or preparation of such mature stalks, ~~or~~ the
14 sterilized seed of such plant which is incapable of germination, or
15 any hemp oil extract used or possessed pursuant to section 2 of this
16 act. When the weight of marijuana is referred to in the Uniform
17 Controlled Substances Act, it shall mean its weight at or about the
18 time it is seized or otherwise comes into the possession of law
19 enforcement authorities, whether cured or uncured at that time;

20 (14) Manufacture shall mean the production, preparation,
21 propagation, conversion, or processing of a controlled substance,
22 either directly or indirectly, by extraction from substances of
23 natural origin, independently by means of chemical synthesis, or by a
24 combination of extraction and chemical synthesis, and shall include
25 any packaging or repackaging of the substance or labeling or

1 relabeling of its container. Manufacture shall not include the
2 preparation or compounding of a controlled substance by an individual
3 for his or her own use, except for the preparation or compounding of
4 components or ingredients used for or intended to be used for the
5 manufacture of methamphetamine, or the preparation, compounding,
6 conversion, packaging, or labeling of a controlled substance: (a) By
7 a practitioner as an incident to his or her prescribing,
8 administering, or dispensing of a controlled substance in the course
9 of his or her professional practice; or (b) by a practitioner, or by
10 his or her authorized agent under his or her supervision, for the
11 purpose of, or as an incident to, research, teaching, or chemical
12 analysis and not for sale;

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

1 isoquinoline alkaloids of opium;

2 (16) Opiate shall mean any substance having an addiction-
3 forming or addiction-sustaining liability similar to morphine or
4 being capable of conversion into a drug having such addiction-forming
5 or addiction-sustaining liability. Opiate shall not include the
6 dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts.
7 Opiate shall include its racemic and levorotatory forms;

8 (17) Opium poppy shall mean the plant of the species
9 *Papaver somniferum* L., except the seeds thereof;

10 (18) Poppy straw shall mean all parts, except the seeds,
11 of the opium poppy after mowing;

12 (19) Person shall mean any corporation, association,
13 partnership, limited liability company, or one or more individuals;

14 (20) Practitioner shall mean a physician, a physician
15 assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an
16 optometrist, a certified nurse midwife, a certified registered nurse
17 anesthetist, a nurse practitioner, a scientific investigator, a
18 pharmacy, a hospital, or any other person licensed, registered, or
19 otherwise permitted to distribute, dispense, prescribe, conduct
20 research with respect to, or administer a controlled substance in the
21 course of practice or research in this state, including an emergency
22 medical service as defined in section 38-1207;

23 (21) Production shall include the manufacture, planting,
24 cultivation, or harvesting of a controlled substance;

25 (22) Immediate precursor shall mean a substance which is

1 the principal compound commonly used or produced primarily for use
2 and which is an immediate chemical intermediary used or likely to be
3 used in the manufacture of a controlled substance, the control of
4 which is necessary to prevent, curtail, or limit such manufacture;

5 (23) State shall mean the State of Nebraska;

6 (24) Ultimate user shall mean a person who lawfully
7 possesses a controlled substance for his or her own use, for the use
8 of a member of his or her household, or for administration to an
9 animal owned by him or her or by a member of his or her household;

10 (25) Hospital shall have the same meaning as in section
11 71-419;

12 (26) Cooperating individual shall mean any person, other
13 than a commissioned law enforcement officer, who acts on behalf of,
14 at the request of, or as agent for a law enforcement agency for the
15 purpose of gathering or obtaining evidence of offenses punishable
16 under the Uniform Controlled Substances Act;

17 (27) Hashish or concentrated cannabis shall mean: (a) The
18 separated resin, whether crude or purified, obtained from a plant of
19 the genus cannabis; or (b) any material, preparation, mixture,
20 compound, or other substance which contains ten percent or more by
21 weight of tetrahydrocannabinols;

22 (28) Exceptionally hazardous drug shall mean (a) a
23 narcotic drug, (b) thiophene analog of phencyclidine, (c)
24 phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital,
25 (g) amphetamine, or (h) methamphetamine;

1 (29) Imitation controlled substance shall mean a
2 substance which is not a controlled substance but which, by way of
3 express or implied representations and consideration of other
4 relevant factors including those specified in section 28-445, would
5 lead a reasonable person to believe the substance is a controlled
6 substance. A placebo or registered investigational drug manufactured,
7 distributed, possessed, or delivered in the ordinary course of
8 practice or research by a health care professional shall not be
9 deemed to be an imitation controlled substance;

10 (30)(a) Controlled substance analogue shall mean a
11 substance (i) the chemical structure of which is substantially
12 similar to the chemical structure of a Schedule I or Schedule II
13 controlled substance as provided in section 28-405 or (ii) which has
14 a stimulant, depressant, analgesic, or hallucinogenic effect on the
15 central nervous system that is substantially similar to or greater
16 than the stimulant, depressant, analgesic, or hallucinogenic effect
17 on the central nervous system of a Schedule I or Schedule II
18 controlled substance as provided in section 28-405. A controlled
19 substance analogue shall, to the extent intended for human
20 consumption, be treated as a controlled substance under Schedule I of
21 section 28-405 for purposes of the Uniform Controlled Substances Act;
22 and

23 (b) Controlled substance analogue shall not include (i) a
24 controlled substance, (ii) any substance generally recognized as safe
25 and effective within the meaning of the Federal Food, Drug, and

1 Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January
2 1, 2009, (iii) any substance for which there is an approved new drug
3 application, or (iv) with respect to a particular person, any
4 substance if an exemption is in effect for investigational use for
5 that person, under section 505 of the Federal Food, Drug, and
6 Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1,
7 2009, to the extent conduct with respect to such substance is
8 pursuant to such exemption;

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

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

1 (33) Medical order shall mean a prescription, a chart
2 order, or an order for pharmaceutical care issued by a practitioner;

3 (34) Prescription shall mean an order for a controlled
4 substance issued by a practitioner. Prescription shall not include a
5 chart order;

6 (35) Registrant shall mean any person who has a
7 controlled substances registration issued by the state or the
8 administration;

9 (36) Reverse distributor shall mean a person whose
10 primary function is to act as an agent for a pharmacy, wholesaler,
11 manufacturer, or other entity by receiving, inventorying, and
12 managing the disposition of outdated, expired, or otherwise
13 nonsaleable controlled substances;

14 (37) Signature shall mean the name, word, or mark of a
15 person written in his or her own hand with the intent to authenticate
16 a writing or other form of communication or a digital signature which
17 complies with section 86-611 or an electronic signature;

18 (38) Facsimile shall mean a copy generated by a system
19 that encodes a document or photograph into electrical signals,
20 transmits those signals over telecommunications lines, and
21 reconstructs the signals to create an exact duplicate of the original
22 document at the receiving end;

23 (39) Electronic signature shall have the definition found
24 in section 86-621;

25 (40) Electronic transmission shall mean transmission of

1 information in electronic form. Electronic transmission may include
2 computer-to-computer transmission or computer-to-facsimile
3 transmission; and

4 (41) Long-term care facility shall mean an intermediate
5 care facility, an intermediate care facility for persons with
6 developmental disabilities, a long-term care hospital, a mental
7 health center, a nursing facility, or a skilled nursing facility, as
8 such terms are defined in the Health Care Facility Licensure Act.

9 Sec. 2. Section 28-401.01, Revised Statutes Cumulative
10 Supplement, 2012, is amended to read:

11 28-401.01 Sections 28-401 to 28-456.01 and 28-458 to
12 28-462 and section 3 of this act shall be known and may be cited as
13 the Uniform Controlled Substances Act.

14 Sec. 3. (1) This section shall be known and may be cited
15 as Will's Law.

16 (2) For purposes of Will's Law:

17 (a) Bona fide physician-patient relationship means a
18 relationship in which a physician who specializes in the treatment of
19 epilepsy and has ongoing responsibility for the assessment, care, and
20 treatment of a patient's medical condition;

21 (b) Debilitating medical condition means a chronic or
22 debilitating disease or medical condition that is not adequately
23 treated by traditional medical therapies or the treatment of a
24 chronic or debilitating disease or medical condition that produces
25 one or more of the following, as documented by a physician with whom

1 the patient has a bona fide physician-patient relationship:

2 (i) Seizures; or

3 (ii) Severe or persistent muscle spasms; and

4 (c) Hemp oil extract means an oil extracted from any part
5 of a plant of the genus cannabis, whether growing or not, or the
6 seeds thereof, which oil contains a maximum of three-tenths of one
7 percent tetrahydrocannabinols by volume.

8 (3) It shall not be a violation of the Uniform Controlled
9 Substances Act if the defendant used or possessed, or the defendant's
10 parent or guardian possessed for the purpose of caring for the
11 defendant, hemp oil extract because the defendant or his or her child
12 or ward has a debilitating medical condition that has been diagnosed
13 by a physician with whom the defendant or his or her child or ward
14 has a bona fide physician-patient relationship and the hemp oil
15 extract is likely to provide the defendant or his or her child or
16 ward with therapeutic or palliative relief from the debilitating
17 medical condition.

18 Sec. 4. Original section 28-401.01, Revised Statutes
19 Cumulative Supplement, 2012, and section 28-401, Revised Statutes
20 Supplement, 2013, are repealed.