

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1102

Introduced by Aguilar, 35; Dickey, 18; Redfield, 12; Schmitt, 41

Read first time January 10, 2000

Committee: Judiciary

A BILL

1 FOR AN ACT relating to drug paraphernalia; to amend sections
2 28-439, 28-440, 28-441, 28-442, 28-443, and 28-444,
3 Reissue Revised Statutes of Nebraska, and section 28-101,
4 Revised Statutes Supplement, 1999; to state intent; to
5 define and redefine terms; to provide and change
6 provisions relating to criminal offenses and penalties;
7 to harmonize provisions; to repeal the original sections;
8 and to declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Supplement,
2 1999, is amended to read:

3 28-101. Sections 28-101 to 28-1348 and section 2 of this
4 act shall be known and may be cited as the Nebraska Criminal Code.

5 Sec. 2. (1) The Legislature finds and declares (a) that
6 the possession, sale, manufacture, delivery, or advertisement of
7 drug paraphernalia results in the legitimization and encouragement
8 of the illegal use of controlled substances by making the drug
9 culture more visible and enticing and (b) that the ready
10 availability of drug paraphernalia tends to promote, suggest, or
11 increase public acceptance of the illegal use of controlled
12 substances.

13 (2) The purposes of sections 28-439 to 28-444 are: (a) To
14 protect and promote the public peace, health, safety, and welfare
15 by prohibiting the possession, sale, manufacture, delivery, and
16 advertisement of drug paraphernalia; and (b) to deter the use of
17 controlled substances by controlling the drug paraphernalia
18 associated with their use.

19 Sec. 3. Section 28-439, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 28-439. ~~As used in~~ For purposes of sections 28-101,
22 28-431, and 28-439 to 28-444 and section 2 of this act, unless the
23 context otherwise requires, drug paraphernalia ~~shall mean~~ means all
24 equipment, products, and materials of any kind which are used,
25 intended for use, or designed for use, in manufacturing, injecting,
26 ingesting, inhaling, or otherwise introducing into the human body a
27 controlled substance in violation of sections 28-101, 28-431, and
28 28-439 to 28-444 and section 2 of this act or the Uniform

1 Controlled Substances Act. ~~It shall include, but not be Drug~~
2 paraphernalia includes, but is not limited to, the following:

3 (1) Diluents and adulterants, such as quinine
4 hydrochloride, mannitol, mannite, dextrose, and lactose, used,
5 intended for use, or designed for use in cutting controlled
6 substances;

7 (2) Testing equipment used, intended for use, or designed
8 for use in identifying or in analyzing the strength, effectiveness,
9 or purity of controlled substances in violation of such sections or
10 act;

11 (3) Scales and balances used, intended for use, or
12 designed for use in weighing or measuring controlled substances;

13 (4) Separation gins and sifters used, intended for use,
14 or designed for use in removing twigs and seeds from, or in
15 otherwise cleaning or refining, marijuana;

16 (5) Blenders, bowls, containers, spoons, and mixing
17 devices used, intended for use, or designed for use in compounding
18 controlled substances;

19 (6) Capsules, balloons, envelopes, and other containers
20 used, intended for use, or designed for use in packaging small
21 quantities of controlled substances;

22 (7) ~~(3)~~ Hypodermic syringes, needles, and other objects
23 used, intended for use, and designed for use in parenterally
24 injecting controlled substances into the human body; ~~and~~

25 (8) Containers and other objects used, intended for use,
26 or designed for use in storing or concealing controlled substances;
27 and

28 (9) ~~(4)~~ Objects used, intended for use, or designed for

1 use in ingesting, inhaling, or otherwise introducing marijuana,
2 cocaine, hashish, or hashish oil into the human body, which ~~shall~~
3 include but ~~not be~~ are not limited to the following:

4 (a) Metal, wooden, acrylic, glass, stone, plastic, or
5 ceramic pipes with or without screens, permanent screens, hashish
6 heads, or punctured metal bowls;

7 (b) Water pipes;

8 (c) Carburetion tubes and devices;

9 (d) Smoking and carburetion masks;

10 (e) Roach clips, meaning objects used to hold burning
11 material, such as a marijuana cigarette, which has become too small
12 or too short to be held in the hand;

13 (f) Miniature cocaine spoons, and cocaine vials;

14 (g) Chamber pipes;

15 (h) Carburetor pipes;

16 (i) Electric pipes;

17 (j) Air-driven pipes;

18 (k) Chillums;

19 (l) Bonges; and

20 (m) Ice pipes or chillers.

21 Sec. 4. Section 28-440, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 28-440. In determining whether an object is drug
24 paraphernalia, a court or other authority shall consider, in
25 addition to all other logically relevant factors, the following:

26 (1) Statements by an owner or by anyone in control of the
27 object concerning its use;

28 (2) Prior convictions, if any, of an owner, or of anyone

1 in control of the object, under any state or federal law relating
2 to any controlled substance;

3 (3) The proximity of the object, in time and space, to a
4 direct violation of sections 28-101, 28-431, and 28-439 to 28-444
5 and section 2 of this act;

6 (4) The proximity of the object to any controlled
7 substance;

8 (5) The existence of any residue of a controlled
9 substance on the object;

10 (6) Direct or circumstantial evidence of the intent of an
11 owner, or of anyone in control of the object, to deliver it ~~to any~~
12 person or evidence that such person reasonably should know that it
13 will be delivered to persons whom he or she knows, or should
14 reasonably know, ~~intends to~~ could use the object to facilitate a
15 violation of sections 28-101, 28-431, and 28-439 to 28-444 and
16 section 2 of this act. The innocence of an owner, or of anyone in
17 control of the object, as to a direct violation of sections 28-101,
18 28-431, and 28-439 to 28-444 and section 2 of this act shall not
19 prevent a finding that the object is intended for use, or designed
20 for use as drug paraphernalia;

21 (7) Instructions, oral or written, provided with the
22 object concerning its use;

23 (8) Descriptive materials accompanying the object which
24 explain or depict its use;

25 (9) National and local advertising concerning its use;

26 (10) The manner in which the object is displayed for
27 sale;

28 (11) Whether the owner, or anyone in control of the

1 object, is a legitimate supplier of like or related items to the
2 community for legal purposes, such as a licensed distributor or
3 dealer of tobacco products;

4 (12) Direct or circumstantial evidence of the ratio of
5 sales of the object or objects to the total sales of the business
6 enterprise;

7 (13) The existence and scope of any legitimate use for
8 the object in the community; and

9 (14) Expert testimony concerning its use.

10 Sec. 5. Section 28-441, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 28-441. (1) ~~It shall be unlawful for any person to use,~~
13 ~~or to possess with intent to use, drug paraphernalia~~ A person
14 commits possession of drug paraphernalia if he or she possesses
15 drug paraphernalia and knows or reasonably should know that the
16 drug paraphernalia could be used to manufacture, inject, ingest,
17 inhale, or otherwise introduce into the human body a controlled
18 substance in violation of sections 28-101, 28-431, and 28-439 to
19 28-444 and section 2 of this act.

20 (2) It is unlawful for any person to use or to possess
21 with intent to use any drug paraphernalia to plant, propagate,
22 cultivate, grow, harvest, manufacture, compound, convert, produce,
23 process, prepare, test, analyze, pack, repack, store, contain,
24 conceal, inject, ingest, inhale, or otherwise introduce into the
25 human body a controlled substance in violation of sections 28-101,
26 28-431, and 28-439 to 28-444 and section 2 of this act.

27 (3) Any person who violates this section shall be guilty
28 of ~~an infraction~~ a Class I misdemeanor.

1 Sec. 6. Section 28-442, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-442. (1) ~~It shall be unlawful for any person to~~
4 ~~deliver, possess with intent to deliver, or manufacture with intent~~
5 ~~to deliver, drug paraphernalia, knowing, or under circumstances~~
6 ~~where one reasonably should know, that it will be used to~~
7 ~~manufacture, inject, ingest, inhale, or otherwise be used to~~
8 ~~introduce into the human body a controlled substance~~ It is unlawful
9 for any person, knowingly or under circumstances when one
10 reasonably should know, to sell, lend, rent, lease, give, exchange,
11 or otherwise distribute any drug paraphernalia to any person.

12 (2) It is unlawful for any person, knowingly or under
13 circumstances when one reasonably should know, to exhibit or
14 display for sale any drug paraphernalia or possess with the intent
15 to distribute any drug paraphernalia in violation of sections
16 28-101, 28-431, and 28-439 to 28-444 and section 2 of this act.

17 (3) ~~(2)~~ Any person who violates this section shall be
18 guilty of a Class II misdemeanor.

19 Sec. 7. Section 28-443, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 28-443. Any person eighteen years of age or older who
22 violates section 28-442 by delivering drug paraphernalia to a
23 person under eighteen years of age who is at least three years his
24 or her junior shall be guilty of (1) No person shall sell, lend,
25 rent, lease, give, exchange, exhibit, display, or otherwise
26 distribute any drug paraphernalia in violation of section 28-442 to
27 any person under the age of eighteen years.

28 (2) The intentional sale, loan, rental, lease, gift,

1 exchange, exhibition, display, or distribution of drug
2 paraphernalia to any person under the age of eighteen years at any
3 newsstand, record store, tape store, or any other commercial
4 establishment which is open to persons under the age of eighteen
5 years is unlawful.

6 (3) No person shall invite or permit any person under the
7 age of eighteen years to be in any commercial establishment that
8 exhibits or displays any drug paraphernalia.

9 (4) Lack of knowledge of age does not constitute a
10 defense to prosecution for violation of this section unless the
11 defendant shows that he or she had reasonable cause to believe that
12 the person involved was eighteen years of age or older and that he
13 or she exhibited to the defendant a Selective Service registration
14 card, motor vehicle operator's license, birth certificate, or other
15 official or apparently official document purporting to establish
16 that such person was eighteen years of age or older.

17 (5) Any person who violates this section commits a Class
18 I misdemeanor.

19 Sec. 8. Section 28-444, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 28-444. (1) It ~~shall be~~ is unlawful for any person,
22 knowingly or under circumstances when he or she reasonably should
23 know, to place in any newspaper, magazine, handbill, or other
24 publication any advertisement, knowing, or under circumstances
25 where one reasonably should know, that the purpose of the
26 advertisement, in whole or in part, is to display for sale or to
27 promote the sale of objects designed or intended for use as drug
28 paraphernalia.

1 (2) Any person who violates this section shall be guilty
2 of a Class III misdemeanor.

3 Sec. 9. Original sections 28-439, 28-440, 28-441,
4 28-442, 28-443, and 28-444, Reissue Revised Statutes of Nebraska,
5 and section 28-101, Revised Statutes Supplement, 1999, are
6 repealed.

7 Sec. 10. Since an emergency exists, this act takes
8 effect when passed and approved according to law.