

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 390

Introduced by Crawford, 45; Bloomfield, 17; Chambers, 11; Coash, 27;
Davis, 43; Garrett, 3; Howard, 9; Pansing Brooks, 28;
Scheer, 19; Watermeier, 1.

Read first time January 16, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to marijuana; to amend sections 28-101,
2 28-401, and 28-401.01, Revised Statutes Cumulative Supplement, 2014;
3 to provide for the medical use of cannabidiol as prescribed; to
4 create the Medical Cannabidiol Pilot Study; to provide powers and
5 duties for the Department of Health and Human Services and the
6 University of Nebraska Medical Center; to define and redefine terms;
7 to change provisions of the Uniform Controlled Substances Act; to
8 harmonize provisions; to provide a termination date; and to repeal
9 the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 28-101 Sections 28-101 to 28-1357, 28-1418.01, and 28-1429.03 and
4 sections 4 to 11 of this act shall be known and may be cited as the
5 Nebraska Criminal Code.

6 Sec. 2. Section 28-401, Revised Statutes Cumulative Supplement,
7 2014, is amended to read:

8 28-401 As used in the Uniform Controlled Substances Act, unless the
9 context otherwise requires:

10 (1) Administer means to directly apply a controlled substance by
11 injection, inhalation, ingestion, or any other means to the body of a
12 patient or research subject;

13 (2) Agent means an authorized person who acts on behalf of or at the
14 direction of another person but does not include a common or contract
15 carrier, public warehouse keeper, or employee of a carrier or warehouse
16 keeper;

17 (3) Administration means the Drug Enforcement Administration of the
18 United States Department of Justice;

19 (4) Cannabidiol means processed cannabis plant extract, oil, or
20 resin that contains more than ten percent cannabidiol by weight, but not
21 more than three-tenths of one percent tetrahydrocannabinols by weight,
22 and delivered in the form of (a) a liquid, including, but not limited to,
23 oil, or (b) a pill;

24 (5 4) Controlled substance means a drug, biological, substance, or
25 immediate precursor in Schedules I to V of section 28-405. Controlled
26 substance does not include distilled spirits, wine, malt beverages,
27 tobacco, or any nonnarcotic substance if such substance may, under the
28 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act
29 existed on January 1, 2014, and the law of this state, be lawfully sold
30 over the counter without a prescription;

31 (6 5) Counterfeit substance means a controlled substance which, or

1 the container or labeling of which, without authorization, bears the
2 trademark, trade name, or other identifying mark, imprint, number, or
3 device, or any likeness thereof, of a manufacturer, distributor, or
4 dispenser other than the person or persons who in fact manufactured,
5 distributed, or dispensed such substance and which thereby falsely
6 purports or is represented to be the product of, or to have been
7 distributed by, such other manufacturer, distributor, or dispenser;

8 (~~7~~ 6) Department means the Department of Health and Human Services;

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

12 (~~9~~ 8) Dispense means to deliver a controlled substance to an
13 ultimate user or a research subject pursuant to a medical order issued by
14 a practitioner authorized to prescribe, including the packaging,
15 labeling, or compounding necessary to prepare the controlled substance
16 for such delivery;

17 (~~10~~ 9) Distribute means to deliver other than by administering or
18 dispensing a controlled substance;

19 (~~11~~ 10) Prescribe means to issue a medical order;

20 (~~12~~ 11) Drug means (a) articles recognized in the official United
21 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United
22 States, official National Formulary, or any supplement to any of them,
23 (b) substances intended for use in the diagnosis, cure, mitigation,
24 treatment, or prevention of disease in human beings or animals, and (c)
25 substances intended for use as a component of any article specified in
26 subdivision (a) or (b) of this subdivision, but does not include devices
27 or their components, parts, or accessories;

28 (~~13~~ 12) Deliver or delivery means the actual, constructive, or
29 attempted transfer from one person to another of a controlled substance,
30 whether or not there is an agency relationship;

31 (~~14~~ 13) Marijuana means all parts of the plant of the genus

1 cannabis, whether growing or not, the seeds thereof, and every compound,
2 manufacture, salt, derivative, mixture, or preparation of such plant or
3 its seeds, but does not include the mature stalks of such plant, hashish,
4 tetrahydrocannabinols extracted or isolated from the plant, fiber
5 produced from such stalks, oil or cake made from the seeds of such plant,
6 any other compound, manufacture, salt, derivative, mixture, or
7 preparation of such mature stalks, ~~or~~ the sterilized seed of such plant
8 which is incapable of germination, or cannabidiol obtained pursuant to
9 sections 4 to 11 of this act. When the weight of marijuana is referred to
10 in the Uniform Controlled Substances Act, it means its weight at or about
11 the time it is seized or otherwise comes into the possession of law
12 enforcement authorities, whether cured or uncured at that time. When
13 industrial hemp as defined in section 2-5701 is in the possession of a
14 person as authorized under section 2-5701, it is not considered marijuana
15 for purposes of the Uniform Controlled Substances Act;

16 (15 14) Manufacture means the production, preparation, propagation,
17 conversion, or processing of a controlled substance, either directly or
18 indirectly, by extraction from substances of natural origin,
19 independently by means of chemical synthesis, or by a combination of
20 extraction and chemical synthesis, and includes any packaging or
21 repackaging of the substance or labeling or relabeling of its container.
22 Manufacture does not include the preparation or compounding of a
23 controlled substance by an individual for his or her own use, except for
24 the preparation or compounding of components or ingredients used for or
25 intended to be used for the manufacture of methamphetamine, or the
26 preparation, compounding, conversion, packaging, or labeling of a
27 controlled substance: (a) By a practitioner as an incident to his or her
28 prescribing, administering, or dispensing of a controlled substance in
29 the course of his or her professional practice; or (b) by a practitioner,
30 or by his or her authorized agent under his or her supervision, for the
31 purpose of, or as an incident to, research, teaching, or chemical

1 analysis and not for sale;

2 (16 15) Narcotic drug means any of the following, whether produced
3 directly or indirectly by extraction from substances of vegetable origin,
4 independently by means of chemical synthesis, or by a combination of
5 extraction and chemical synthesis: (a) Opium, opium poppy and poppy
6 straw, coca leaves, and opiates; (b) a compound, manufacture, salt,
7 derivative, or preparation of opium, coca leaves, or opiates; or (c) a
8 substance and any compound, manufacture, salt, derivative, or preparation
9 thereof which is chemically equivalent to or identical with any of the
10 substances referred to in subdivisions (a) and (b) of this subdivision,
11 except that the words narcotic drug as used in the Uniform Controlled
12 Substances Act does not include decocainized coca leaves or extracts of
13 coca leaves, which extracts do not contain cocaine or ecgonine, or
14 isoquinoline alkaloids of opium;

15 (17 16) Opiate means any substance having an addiction-forming or
16 addiction-sustaining liability similar to morphine or being capable of
17 conversion into a drug having such addiction-forming or addiction-
18 sustaining liability. Opiate does not include the dextrorotatory isomer
19 of 3-methoxy-n methylmorphinan and its salts. Opiate includes its racemic
20 and levorotatory forms;

21 (18 17) Opium poppy means the plant of the species *Papaver*
22 *somniferum* L., except the seeds thereof;

23 (19 18) Poppy straw means all parts, except the seeds, of the opium
24 poppy after mowing;

25 (20 19) Person means any corporation, association, partnership,
26 limited liability company, or one or more persons;

27 (21 20) Practitioner means a physician, a physician assistant, a
28 dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a
29 certified nurse midwife, a certified registered nurse anesthetist, a
30 nurse practitioner, a scientific investigator, a pharmacy, a hospital, or
31 any other person licensed, registered, or otherwise permitted to

1 distribute, dispense, prescribe, conduct research with respect to, or
2 administer a controlled substance in the course of practice or research
3 in this state, including an emergency medical service as defined in
4 section 38-1207;

5 (22 ~~21~~) Production includes the manufacture, planting, cultivation,
6 or harvesting of a controlled substance;

7 (23 ~~22~~) Immediate precursor means a substance which is the principal
8 compound commonly used or produced primarily for use and which is an
9 immediate chemical intermediary used or likely to be used in the
10 manufacture of a controlled substance, the control of which is necessary
11 to prevent, curtail, or limit such manufacture;

12 (24 ~~23~~) State means the State of Nebraska;

13 (25 ~~24~~) Ultimate user means a person who lawfully possesses a
14 controlled substance for his or her own use, for the use of a member of
15 his or her household, or for administration to an animal owned by him or
16 her or by a member of his or her household;

17 (26 ~~25~~) Hospital has the same meaning as in section 71-419;

18 (27 ~~26~~) Cooperating individual means any person, other than a
19 commissioned law enforcement officer, who acts on behalf of, at the
20 request of, or as agent for a law enforcement agency for the purpose of
21 gathering or obtaining evidence of offenses punishable under the Uniform
22 Controlled Substances Act;

23 (28 ~~27~~) Hashish or concentrated cannabis means (a) the separated
24 resin, whether crude or purified, obtained from a plant of the genus
25 cannabis or (b) any material, preparation, mixture, compound, or other
26 substance which contains ten percent or more by weight of
27 tetrahydrocannabinols. When resins extracted from industrial hemp as
28 defined in section 2-5701 are in the possession of a person as authorized
29 under section 2-5701, they are not considered hashish or concentrated
30 cannabis for purposes of the Uniform Controlled Substances Act;

31 (29 ~~28~~) Exceptionally hazardous drug means (a) a narcotic drug, (b)

1 thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital,
2 (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h)
3 methamphetamine;

4 (30 29) Imitation controlled substance means a substance which is
5 not a controlled substance or controlled substance analogue but which, by
6 way of express or implied representations and consideration of other
7 relevant factors including those specified in section 28-445, would lead
8 a reasonable person to believe the substance is a controlled substance or
9 controlled substance analogue. A placebo or registered investigational
10 drug manufactured, distributed, possessed, or delivered in the ordinary
11 course of practice or research by a health care professional shall not be
12 deemed to be an imitation controlled substance;

13 (31 30)(a) Controlled substance analogue means a substance (i) the
14 chemical structure of which is substantially similar to the chemical
15 structure of a Schedule I or Schedule II controlled substance as provided
16 in section 28-405 or (ii) which has a stimulant, depressant, analgesic,
17 or hallucinogenic effect on the central nervous system that is
18 substantially similar to or greater than the stimulant, depressant,
19 analgesic, or hallucinogenic effect on the central nervous system of a
20 Schedule I or Schedule II controlled substance as provided in section
21 28-405. A controlled substance analogue shall, to the extent intended for
22 human consumption, be treated as a controlled substance under Schedule I
23 of section 28-405 for purposes of the Uniform Controlled Substances Act;
24 and

25 (b) Controlled substance analogue does not include (i) a controlled
26 substance, (ii) any substance generally recognized as safe and effective
27 within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.
28 301 et seq., as such act existed on January 1, 2014, (iii) any substance
29 for which there is an approved new drug application, or (iv) with respect
30 to a particular person, any substance if an exemption is in effect for
31 investigational use for that person, under section 505 of the Federal

1 Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on
2 January 1, 2014, to the extent conduct with respect to such substance is
3 pursuant to such exemption;

4 (32 31) Anabolic steroid means any drug or hormonal substance,
5 chemically and pharmacologically related to testosterone (other than
6 estrogens, progestins, and corticosteroids), that promotes muscle growth
7 and includes any controlled substance in Schedule III(d) of section
8 28-405. Anabolic steroid does not include any anabolic steroid which is
9 expressly intended for administration through implants to cattle or other
10 nonhuman species and has been approved by the Secretary of Health and
11 Human Services for such administration, but if any person prescribes,
12 dispenses, or distributes such a steroid for human use, such person shall
13 be considered to have prescribed, dispensed, or distributed an anabolic
14 steroid within the meaning of this subdivision;

15 (33 32) Chart order means an order for a controlled substance issued
16 by a practitioner for a patient who is in the hospital where the chart is
17 stored or for a patient receiving detoxification treatment or maintenance
18 treatment pursuant to section 28-412. Chart order does not include a
19 prescription;

20 (34 33) Medical order means a prescription, a chart order, or an
21 order for pharmaceutical care issued by a practitioner;

22 (35 34) Prescription means an order for a controlled substance
23 issued by a practitioner. Prescription does not include a chart order;

24 (36 35) Registrant means any person who has a controlled substances
25 registration issued by the state or the administration;

26 (37 36) Reverse distributor means a person whose primary function is
27 to act as an agent for a pharmacy, wholesaler, manufacturer, or other
28 entity by receiving, inventorying, and managing the disposition of
29 outdated, expired, or otherwise nonsaleable controlled substances;

30 (38 37) Signature means the name, word, or mark of a person written
31 in his or her own hand with the intent to authenticate a writing or other

1 form of communication or a digital signature which complies with section
2 86-611 or an electronic signature;

3 (39 38) Facsimile means a copy generated by a system that encodes a
4 document or photograph into electrical signals, transmits those signals
5 over telecommunications lines, and reconstructs the signals to create an
6 exact duplicate of the original document at the receiving end;

7 (40 39) Electronic signature has the definition found in section
8 86-621;

9 (41 40) Electronic transmission means transmission of information in
10 electronic form. Electronic transmission includes computer-to-computer
11 transmission or computer-to-facsimile transmission;

12 (42 41) Long-term care facility means an intermediate care facility,
13 an intermediate care facility for persons with developmental
14 disabilities, a long-term care hospital, a mental health center, a
15 nursing facility, or a skilled nursing facility, as such terms are
16 defined in the Health Care Facility Licensure Act;

17 (43 42) Compounding has the same meaning as in section 38-2811; and

18 (44 43) Cannabinoid receptor agonist shall mean any chemical
19 compound or substance that, according to scientific or medical research,
20 study, testing, or analysis, demonstrates the presence of binding
21 activity at one or more of the CB1 or CB2 cell membrane receptors located
22 within the human body.

23 Sec. 3. Section 28-401.01, Revised Statutes Cumulative Supplement,
24 2014, is amended to read:

25 28-401.01 Sections 28-401 to 28-456.01 and 28-458 to 28-462 and
26 sections 4 to 11 of this act shall be known and may be cited as the
27 Uniform Controlled Substances Act.

28 Sec. 4. (1) For purposes of sections 4 to 9 of this act:

29 (a) Intractable seizures means intractable, catastrophic genetic, or
30 metabolic epilepsies; Lennox-Gastaut Syndrome; epilepsies consisting of
31 drop seizures at risk for significant bodily injury; or cluster seizures

1 that result in significant life-threatening apnea after the trial and
2 failure of at least three antiepileptic pharmacotherapies that directly
3 address the epilepsy in question; and

4 (b) Treatment resistant seizures means epileptic disorders, other
5 than those listed in subdivision (1)(a) of this section, which are
6 resistant to treatment. For purposes of this subdivision, resistant to
7 treatment means a trial and failure of at least three antiepileptic
8 therapies, such as neurostimulation or epilepsy surgery.

9 (2) The Legislature finds:

10 (a) There are individuals in Nebraska who suffer from intractable
11 seizures and treatment resistant seizures for which currently available
12 treatment options have been ineffective. Cannabidiol shows promise in
13 treating individuals with intractable seizures and treatment resistant
14 seizures; and

15 (b) Additional study of cannabidiol for the treatment of intractable
16 seizures and treatment resistant seizures should be undertaken.

17 (3) The purpose of sections 4 to 10 of this act is to permit medical
18 professionals to conduct limited-scope, evidence-based studies exploring
19 the safety and efficacy of treating intractable seizures and treatment
20 resistant seizures using cannabidiol.

21 Sec. 5. (1) The University of Nebraska and Nebraska Medicine shall
22 be the only entity in this state authorized to produce or possess
23 cannabidiol for research.

24 (2) Cannabidiol shall be obtained from or tested at the University
25 of Nebraska Medical Center and dispensed by the Nebraska Medicine
26 Research Pharmacy.

27 (3) Cannabidiol may only be obtained by patients with intractable
28 seizures and treatment resistant seizures and on the order of a
29 neurologist who is licensed to practice medicine and surgery in Nebraska
30 and designated as a medical provider under section 6 of this act and
31 administered to a patient by or under the direction or supervision of

1 such medical provider participating in the Medical Cannabidiol Pilot
2 Study.

3 Sec. 6. (1) The University of Nebraska Medical Center shall create
4 the Medical Cannabidiol Pilot Study. The pilot study shall designate at
5 least two medical providers to conduct research on the efficacy of
6 cannabidiol to treat patients with intractable seizures and treatment
7 resistant seizures. The medical providers shall be neurologists licensed
8 to practice medicine and surgery in Nebraska, and at least one shall be a
9 pediatric neurologist. The medical providers shall adhere to the rules
10 and regulations established by the University of Nebraska Medical Center
11 for the study.

12 (2) A neurologist designated as a medical provider or a licensed
13 pharmacist participating in the pilot study shall not be subject to
14 arrest or prosecution, penalized or disciplined in any manner, or denied
15 any right or privilege for approving or recommending the use of
16 cannabidiol under the Medical Cannabidiol Pilot Study.

17 (3)(a) A neurologist designated as a medical provider conducting
18 research under the Medical Cannabidiol Pilot Study shall:

19 (i) Determine eligibility for participation in the study;

20 (ii) Keep a record of the evaluation and observation of a patient
21 under the neurologist's care, including the patient's response to
22 cannabidiol treatment; and

23 (iii) Transmit the record described in subdivision (a)(i) of this
24 subsection to the department upon request.

25 (b) All medical records received or maintained by the department
26 pursuant to this section are confidential and may not be disclosed to the
27 public.

28 (4) The University of Nebraska Medical Center shall create a risks
29 and benefits form to be signed by the medical provider conducting the
30 cannabidiol trial and by the patient who is to be administered
31 cannabidiol or a parent or legal guardian of the patient if the patient

1 is under nineteen years of age. The risks and benefits form shall
2 document their discussion of the risks and benefits of invasive
3 therapies, including, but not limited to, neurostimulation such as vagus
4 nerve stimulation and responsive neurostimulation and epilepsy surgery,
5 including corpus callosotomy, if indicated. The form shall also include a
6 hold-harmless provision that releases from liability the state and any
7 division, agency, institution, or employee thereof involved in the
8 research, ordering, dispensing, or administration of cannabidiol,
9 including its cultivation and processing. This form shall be completed
10 and on file with the University of Nebraska Medical Center before the
11 patient begins the cannabidiol trial.

12 (5) The University of Nebraska Medical Center shall provide a
13 document to patients who are to be administered cannabidiol or a parent
14 or legal guardian of such patients confirming participation in the
15 Medical Cannabidiol Pilot Study. The document shall include, at a
16 minimum, the patient's name, date of birth, and address, as well as the
17 name and contact information of the patient's medical provider. If the
18 patient is under nineteen years of age, the document shall also include
19 the name, date of birth, and address of the parent or legal guardian of
20 the patient. The document shall be accessible to law enforcement agencies
21 in order to verify participation in the Medical Cannabidiol Pilot Study.

22 Sec. 7. (1) The University of Nebraska Medical Center, when using
23 cannabidiol for research, shall comply with the Uniform Controlled
24 Substances Act regarding possession of controlled substances, record-
25 keeping requirements relative to the dispensing, use, or administration
26 of controlled substances, and inventory requirements, as applicable.

27 (2) The University of Nebraska Medical Center College of Pharmacy
28 and the University of Nebraska are authorized to pursue any federal
29 permits or waivers necessary to conduct the activities authorized under
30 sections 4 to 11 of this act.

31 Sec. 8. (1) In a prosecution for the unlawful possession of

1 marijuana under the Uniform Controlled Substances Act, it is an
2 affirmative and complete defense to prosecution that:

3 (a) The defendant suffered from intractable seizures or treatment
4 resistant seizures and the use or possession of cannabidiol was pursuant
5 to the order of a neurologist designated as a medical provider under
6 section 6 of this act; or

7 (b) The defendant is the parent or legal guardian of an individual
8 who suffers from intractable seizures or treatment resistant seizures and
9 the use or possession of cannabidiol was pursuant to the order of a
10 neurologist designated as a medical provider under section 6 of this act.

11 (2) An agency of this state or a political subdivision thereof,
12 including any law enforcement agency, may not initiate proceedings to
13 remove a child from a home based solely upon the possession or use of
14 cannabidiol by the child or possession of cannabidiol by a parent or
15 legal guardian for use by the child as authorized under sections 4 to 11
16 of this act.

17 (3) An employee of the state or any division, agency, or institution
18 thereof involved in the research, ordering, dispensing, and
19 administration of cannabidiol under sections 4 to 11 of this act,
20 including its cultivation and processing, shall not be subject to
21 prosecution for unlawful possession, use, distribution, or dispensing of
22 marijuana under the Uniform Controlled Substances Act for activities
23 arising from or related to the use of cannabidiol in the treatment of
24 individuals diagnosed with intractable seizures or treatment resistant
25 seizures.

26 Sec. 9. The University of Nebraska Medical Center shall submit a
27 report electronically to the Judiciary Committee of the Legislature and
28 the Health and Human Services Committee of the Legislature on or before
29 September 15, 2016, and each September 15 thereafter, containing the
30 following performance measures:

31 (1) The number of patients enrolled in the pilot study, including

1 the number of patients under nineteen years of age;

2 (2) The number of patients previously enrolled in the pilot study
3 and no longer receiving treatment under the pilot study;

4 (3) Any changes in intractable seizure or treatment resistant
5 seizure frequency and severity;

6 (4) Any adverse health outcomes for patients; and

7 (5) A summary of findings concerning appropriate dosing.

8 Sec. 10. It is the intent of the Legislature to appropriate two
9 hundred fifty thousand dollars for each fiscal year for FY2015-16 and
10 FY2016-17 from the General Fund for the Medical Cannabidiol Pilot Study.

11 Sec. 11. Sections 4 to 11 of this act terminate on October 1, 2019.

12 Sec. 12. Original sections 28-101, 28-401, and 28-401.01, Revised
13 Statutes Cumulative Supplement, 2014, are repealed.