LEGISLATION OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 487

Introduced by Morfeld, 46.
Read first time January 17, 2017
Committee: Judiciary

A BILL FOR AN ACT relating to the Uniform Controlled Substances Act; to
amend sections 28-101, 28-401.01, 28-416, 28-441, and 28-470,
Reissue Revised Statutes of Nebraska; to provide an exception from
criminal liability for certain violations relating to or committed
by persons experiencing or witnessing a controlled substance
overdose; to provide protection from civil liability for emergency
responders and peace officers administering naloxone as prescribed;
to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 28-101, Reissue Revised Statutes of Nebraska, is amended to read: 28-101 Sections 28-101 to 28-1357, 28-1418.01, 28-1429.03, and 28-1601 to 28-1603 and section 5 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. Section 28-401.01, Reissue Revised Statutes of Nebraska, is amended to read: 28-401.01 Sections 28-401 to 28-456.01, and 28-458 to 28-471, and section 5 of this act shall be known and may be cited as the Uniform Controlled Substances Act.

Sec. 3. Section 28-416, Reissue Revised Statutes of Nebraska, is amended to read: 28-416 (1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

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

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(25) of Schedule I of section 28-405, unless
such substance was obtained directly or pursuant to a medical order
issued by a practitioner authorized to prescribe while acting in the
course of his or her professional practice, or except as otherwise
authorized by the act, shall be guilty of a Class IV felony. A person
shall not be in violation of this subsection if section 5 of this act
applies.

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

(b) For purposes of this subsection:

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

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

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

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

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

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

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

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

(a) One hundred forty grams or more shall be guilty of a Class IB felony;
(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or
(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

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

(a) One hundred forty grams or more shall be guilty of a Class IB felony;
(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or
(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

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

(a) One hundred forty grams or more shall be guilty of a Class IB felony;
(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or
(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

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

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

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

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

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

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

(13) Any person knowingly or intentionally possessing marijuana weighing one ounce or less or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(25) of Schedule I of section 28-405 shall:

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

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

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

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

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

(16) Any person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, but in no event shall such person be punished by a penalty greater than a Class IB felony.

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

(18) In addition to the existing penalties available for a violation of subsection (1) of this section, including any criminal attempt or conspiracy to violate subsection (1) of this section, a sentencing court may order that any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devices as defined in section 28-833 or any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices be forfeited as a part of the sentence imposed if it finds by clear and convincing evidence adduced at a separate hearing in the same prosecution, following conviction for a violation of subsection (1) of this section, and conducted pursuant to section 28-1601, that any or all such property was derived from, used, or intended to be used to facilitate a violation of subsection (1) of this section.

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

(a) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and has one or more licenses or permits issued under the Motor Vehicle Operator's License Act:
For the first offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for thirty days and (B) require such person to attend a drug education class;

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

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

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

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

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

(iii) For a third or subsequent offense, the court may, as part of
the judgment of conviction or adjudication, (A) prohibit such person from
obtaining any permit or any license pursuant to the act for which such
person would otherwise be eligible until twelve months after the date of
such order and (B) require such person to complete no fewer than sixty
hours of community service, to attend a drug education class, and to
submit to a drug assessment by a licensed alcohol and drug counselor.
A copy of an abstract of the court's conviction or adjudication
shall be transmitted to the Director of Motor Vehicles pursuant to
sections 60-497.01 to 60-497.04 if a license or permit is impounded or a
juvenile is prohibited from obtaining a license or permit under this
subsection.

Sec. 4. Section 28-441, Reissue Revised Statutes of Nebraska, is
amended to read:
28-441 (1) It shall be unlawful for any person to use, or to possess
with intent to use, drug paraphernalia to manufacture, inject, ingest,
inhaler, or otherwise introduce into the human body a controlled substance
(2) Any person who violates this section shall be guilty of an
infraction.
(3) A person shall not be in violation of this section if section 5
of this act applies.

Sec. 5. (1) A person shall not be in violation of section 28-441 or
subsection (3) of section 28-416 if:
(a) Such person made a good faith request for emergency medical
assistance in response to a drug overdose of himself, herself, or
another;
(b) Such person was the first person to make a request for medical
assistance as soon as the drug overdose was apparent;
(c) The evidence for the violation of section 28-441 or subsection
(3) of section 28-416 was obtained as a result of the drug overdose and
the request for medical assistance; and
(d) When emergency medical assistance was requested for the drug overdose of another person:

(i) Such requesting person remained on the scene until medical assistance or law enforcement personnel arrived; and

(ii) Such requesting person cooperated with medical assistance and law enforcement personnel.

(2) A person shall not be in violation of section 28-441 or subsection (3) of section 28-416 if such person was experiencing a drug overdose and the evidence for such violation was obtained as a result of the drug overdose and a request for medical assistance by another person made in compliance with subsection (1) of this section.

(3) A person shall not initiate or maintain an action against a peace officer or the state agency or political subdivision employing such officer based on the officer's compliance with subsection (1) or (2) of this section.

(4) Nothing in this section shall be interpreted to interfere with or prohibit the investigation, arrest, or prosecution of any person for, or affect the admissibility or use of evidence in cases involving:

(a) Drug-induced homicide;

(b) Except as provided in subsections (1) and (2) of this section, violations of section 28-441 or subsection (3) of section 28-416; or

(c) Any other criminal offense.

(5) As used in this section, drug overdose means an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of a controlled substance or the consumption or use of another substance with which a controlled substance was combined and which condition a layperson would reasonably believe requires emergency medical assistance.

Sec. 6. Section 28-470, Reissue Revised Statutes of Nebraska, is amended to read:

28-470 (1) A health professional who is authorized to prescribe or
dispense naloxone, if acting with reasonable care, may prescribe, administer, or dispense naloxone to any of the following persons without being subject to administrative action or criminal prosecution:

(a) A person who is apparently experiencing or who is likely to experience an opioid-related overdose; or

(b) A family member, friend, or other person in a position to assist a person who is apparently experiencing or who is likely to experience an opioid-related overdose.

(2) A family member, friend, or other person who is in a position to assist a person who is apparently experiencing or who is likely to experience an opioid-related overdose, other than an emergency responder or peace officer, is not subject to actions under the Uniform Credentialing Act, administrative action, or criminal prosecution if the person, acting in good faith, obtains naloxone from a health professional or a prescription for naloxone from a health professional and administers the naloxone obtained from the health professional or acquired pursuant to the prescription to a person who is apparently experiencing an opioid-related overdose.

(3) An emergency responder who is not subject to administrative action or criminal prosecution if the emergency responder, acting in good faith, obtains naloxone from the emergency responder's emergency medical service organization and administers the naloxone to a person who is apparently experiencing an opioid-related overdose shall not be:

(a) Subject to administrative action or criminal prosecution; or

(b) Liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering such care or services or arising out of his or her failure to act to provide or arrange for further medical treatment or care for the person who is apparently experiencing an opioid-related overdose, unless the emergency responder caused damage or injury by his or her willful, wanton, or grossly negligent act of
commission or omission.

(4) A peace officer who is not subject to administrative action or criminal prosecution if the peace officer, acting in good faith, obtains naloxone from the peace officer's law enforcement agency and administers the naloxone to a person who is apparently experiencing an opioid-related overdose shall not be:

(a) Subject to administrative action or criminal prosecution; or

(b) Liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering such care or services or arising out of his or her failure to act to provide or arrange for further medical treatment or care for the person who is apparently experiencing an opioid-related overdose, unless the peace officer caused damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

(5) For purposes of this section:

(a) Administer has the same meaning as in section 38-2806;

(b) Dispense has the same meaning as in section 38-2817;

(c) Emergency responder means an emergency medical first responder, an emergency medical technician, an advanced emergency medical technician, technician-intermediate, or a paramedic emergency medical technician-paramedic licensed under the Emergency Medical Services Practice Act;

(d) Health professional means a physician, physician assistant, nurse practitioner, or pharmacist licensed under the Uniform Credentialing Act;

(e) Law enforcement agency means a police department, a town marshal, the office of sheriff, or the Nebraska State Patrol;

(f) Naloxone means naloxone hydrochloride; and

(g) Peace officer has the same meaning as in section 49-801.

Sec. 7. Original sections 28-101, 28-401.01, 28-416, 28-441, and 28-470, Reissue Revised Statutes of Nebraska, are repealed.