

E AND R AMENDMENTS TO LB 137

Introduced by Ballard, 21, Chairman Enrollment and Review

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

3           Section 1. Section 28-416, Revised Statutes Supplement, 2023, is  
4 amended to read:

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

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

20           (3) A person knowingly or intentionally possessing a controlled  
21 substance, except marijuana or any substance containing a quantifiable  
22 amount of the substances, chemicals, or compounds described, defined, or  
23 delineated in subdivision (c)(27) of Schedule I of section 28-405, unless  
24 such substance was obtained directly or pursuant to a medical order  
25 issued by a practitioner authorized to prescribe while acting in the  
26 course of his or her professional practice, or except as otherwise  
27 authorized by the act, shall be guilty of a Class IV felony. A person

1 shall not be in violation of this subsection if section 28-472 or 28-1701  
2 applies.

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

21 (b) For purposes of this subsection:

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

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

31 (iii) Youth center means any recreational facility or gymnasium,

1 including any parking lot appurtenant to the facility or gymnasium,  
2 intended primarily for use by persons under eighteen years of age which  
3 regularly provides athletic, civic, or cultural activities.

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

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

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

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

30 (7) Any person who violates subsection (1) of this section with  
31 respect to cocaine or any mixture or substance containing a detectable

1 amount of cocaine in a quantity of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (13) Except as provided in section 28-1701, any person knowingly or  
11 intentionally possessing marijuana weighing one ounce or less or any  
12 substance containing a quantifiable amount of the substances, chemicals,  
13 or compounds described, defined, or delineated in subdivision (c)(27) of  
14 Schedule I of section 28-405 shall:

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

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

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

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

31 (15) Any person convicted of violating this section, if sentenced to

1 the Department of Correctional Services, shall attend appropriate  
2 treatment and counseling on drug abuse.

3 (16)(a) Any person convicted of a violation of subsection (1) of  
4 this section shall be punished by the next higher penalty classification  
5 than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of  
6 this section if:

7 (i) The ~~(16)~~ Any person knowingly or intentionally possessed  
8 possessing a firearm while in violation of subsection (1) of this  
9 section; or

10 (ii) Such violation resulted in the use of the controlled substance  
11 and directly and proximately caused the death of, or serious bodily  
12 injury to, another person.

13 (b) A penalty enhanced under this subsection shall in no event  
14 result in shall be punished by the next higher penalty classification  
15 than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of  
16 this section, but in no event shall such person be punished by a penalty  
17 greater than a Class IC ~~IB~~ felony.

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

21 (18) In addition to the existing penalties available for a violation  
22 of subsection (1) of this section, including any criminal attempt or  
23 conspiracy to violate subsection (1) of this section, a sentencing court  
24 may order that any money, securities, negotiable instruments, firearms,  
25 conveyances, or electronic communication devices as defined in section  
26 28-833 or any equipment, components, peripherals, software, hardware, or  
27 accessories related to electronic communication devices be forfeited as a  
28 part of the sentence imposed if it finds by clear and convincing evidence  
29 adduced at a separate hearing in the same prosecution, following  
30 conviction for a violation of subsection (1) of this section, and  
31 conducted pursuant to section 28-1601, that any or all such property was

1 derived from, used, or intended to be used to facilitate a violation of  
2 subsection (1) of this section.

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

4 (a) If the person convicted or adjudicated of violating this section  
5 is eighteen years of age or younger and has one or more licenses or  
6 permits issued under the Motor Vehicle Operator's License Act:

7 (i) For the first offense, the court may, as a part of the judgment  
8 of conviction or adjudication, (A) impound any such licenses or permits  
9 for thirty days and (B) require such person to attend a drug education  
10 class;

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

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

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

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

30 (ii) For a second offense, the court may, as part of the judgment of  
31 conviction or adjudication, (A) prohibit such person from obtaining any

1 permit or any license pursuant to the act for which such person would  
2 otherwise be eligible until ninety days after the date of such order and  
3 (B) require such person to complete no fewer than twenty hours and no  
4 more than forty hours of community service and to attend a drug education  
5 class; and

6 (iii) For a third or subsequent offense, the court may, as part of  
7 the judgment of conviction or adjudication, (A) prohibit such person from  
8 obtaining any permit or any license pursuant to the act for which such  
9 person would otherwise be eligible until twelve months after the date of  
10 such order and (B) require such person to complete no fewer than sixty  
11 hours of community service, to attend a drug education class, and to  
12 submit to a drug assessment by a licensed alcohol and drug counselor.

13 A copy of an abstract of the court's conviction or adjudication  
14 shall be transmitted to the Director of Motor Vehicles pursuant to  
15 sections 60-497.01 to 60-497.04 if a license or permit is impounded or a  
16 juvenile is prohibited from obtaining a license or permit under this  
17 subsection.

18 Sec. 2. Original section 28-416, Revised Statutes Supplement, 2023,  
19 is repealed.

20 2. On page 1, line 2, strike "Cumulative Supplement, 2022" and  
21 insert "Supplement, 2023"; and in line 4 after the semicolon insert "to  
22 change provisions relating to penalty enhancement for certain  
23 violations;".