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STATE OF NEBRASKA

STATUTES RELATING TO UNIFORM CONTROLLED SUBSTANCES ACT

NEBRASKA
Good Life. Great Mission.
DEPT. OF HEALTH AND HUMAN SERVICES

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Division of Public Health
Licensure Unit

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INDEX

UNIFORM CONTROLLED SUBSTANCES ACT

STATUTES PERTAINING TO UNIFORM CONTROLLED SUBSTANCE ACT

28-401. Terms, defined.

As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

(10) Prescribe means to issue a medical order;

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

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

(13) Hemp has the same meaning as in section 2-503;

(14)(a) Marijuana means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds.

(b) Marijuana does not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, the sterilized seed of such plant which is incapable of germination, or cannabidiol contained in a drug product approved by the federal Food and Drug Administration.

(c) Marijuana does not include hemp.

(d) When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it means its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time.

(e) When industrial hemp as defined in section 2-5701 is in the possession of a person as authorized under section 2-5701, it is not considered marijuana for purposes of the Uniform Controlled Substances Act;

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

(16) Narcotic drug means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;
(17) Opiate means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate does not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate includes its racemic and levorotatory forms;
(18) Opium poppy means the plant of the species Papaver somniferum L., except the seeds thereof;
(19) Poppy straw means all parts, except the seeds, of the opium poppy after mowing;
(20) Person means any corporation, association, partnership, limited liability company, or one or more persons;
(21) Practitioner means a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, a nurse practitioner, a scientific investigator, a pharmacy, a hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 38-1207;
(22) Production includes the manufacture, planting, cultivation, or harvesting of a controlled substance;
(23) Immediate precursor means a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;
(24) State means the State of Nebraska;
(25) Ultimate user means a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;
(26) Hospital has the same meaning as in section 71-419;
(27) Cooperating individual means any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;
(28)(a) Hashish or concentrated cannabis means (i) the separated resin, whether crude or purified, obtained from a plant of the genus cannabis or (ii) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols.
(b) When resins extracted from (i) industrial hemp as defined in section 2-5701 are in the possession of a person as authorized under section 2-5701 or (ii) hemp as defined in section 2-503 are in the possession of a person as authorized under the Nebraska Hemp Farming Act, they are not considered hashish or concentrated cannabis for purposes of the Uniform Controlled Substances Act.
(c) Hashish or concentrated cannabis does not include cannabidiol contained in a drug product approved by the federal Food and Drug Administration;
(29) Exceptionally hazardous drug means (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) methamphetamine;
(30) Imitation controlled substance means a substance which is not a controlled substance or controlled substance analogue but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance or controlled substance analogue. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;
(31)(a) Controlled substance analogue means a substance (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled Substances Act; and
(b) Controlled substance analogue does not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, (iii) any substance for which there is an approved new drug

application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2014, to the extent conduct with respect to such substance is pursuant to such exemption;
(32) Anabolic steroid means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid does not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;
(33) Chart order means an order for a controlled substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;
(34) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;
(35) Prescription means an order for a controlled substance issued by a practitioner. Prescription does not include a chart order;
(36) Registrant means any person who has a controlled substances registration issued by the state or the Drug Enforcement Administration of the United States Department of Justice;
(37) Reverse distributor means a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances;
(38) Signature means the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;
(39) Facsimile means a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;
(40) Electronic signature has the definition found in section 86-621;
(41) Electronic transmission means transmission of information in electronic form. Electronic transmission includes computer-to-computer transmission or computer-to-facsimile transmission;
(42) Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health substance use treatment center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;
(43) Compounding has the same meaning as in section 38-2811;
(44) Cannabinoid receptor agonist means any chemical compound or substance that, according to scientific or medical research, study, testing, or analysis, demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors located within the human body. Cannabinoid receptor agonist does not include cannabidiol contained in a drug product approved by the federal Food and Drug Administration; and
(45) Lookalike substance means a product or substance, not specifically designated as a controlled substance in section 28-405, that is either portrayed in such a manner by a person to lead another person to reasonably believe that it produces effects on the human body that replicate, mimic, or are intended to simulate the effects produced by a controlled substance or that possesses one or more of the following indicia or characteristics:
(a) The packaging or labeling of the product or substance suggests that the user will achieve euphoria, hallucination, mood enhancement, stimulation, or another effect on the human body that replicates or mimics those produced by a controlled substance;
(b) The name or packaging of the product or substance uses images or labels suggesting that it is a controlled substance or produces effects on the human body that replicate or mimic those produced by a controlled substance;
(c) The product or substance is marketed or advertised for a particular use or purpose and the cost of the product or substance is disproportionately higher than other products or substances marketed or advertised for the same or similar use or purpose;
(d) The packaging or label on the product or substance contains words or markings that state or suggest that the product or substance is in compliance with state and federal laws regulating controlled substances;
(e) The owner or person in control of the product or substance uses evasive tactics or actions to avoid detection or inspection of the product or substance by law enforcement authorities;
(f) The owner or person in control of the product or substance makes a verbal or written statement suggesting or implying that the product or substance is a synthetic drug or that consumption of the product or substance will

replicate or mimic effects on the human body to those effects commonly produced through use or consumption of a controlled substance;
(g) The owner or person in control of the product or substance makes a verbal or written statement to a prospective customer, buyer, or recipient of the product or substance implying that the product or substance may be resold for profit; or
(h) The product or substance contains a chemical or chemical compound that does not have a legitimate relationship to the use or purpose claimed by the seller, distributor, packer, or manufacturer of the product or substance or indicated by the product name, appearing on the product's packaging or label or depicted in advertisement of the product or substance.
Source: Laws 1977, LB 38, § 61; Laws 1978, LB 276, § 1; Laws 1980, LB 696, § 1; Laws 1985, LB 323, § 1; Laws 1985, LB 406, § 2; Laws 1988, LB 273, § 3; Laws 1988, LB 537, § 1; Laws 1992, LB 1019, § 30; Laws 1993, LB 121, § 175; Laws 1996, LB 1044, § 68; Laws 1996, LB 1108, § 1; Laws 1997, LB 307, § 3; Laws 1999, LB 379, § 1; Laws 2001, LB 398, § 1; Laws 2002, LB 1105, § 428; Laws 2003, LB 200, § 1; Laws 2005, LB 117, § 1; Laws 2005, LB 256, § 16; Laws 2005, LB 382, § 1; Laws 2007, LB247, § 1; Laws 2007, LB296, § 35; Laws 2007, LB463, § 1119; Laws 2009, LB195, § 1; Laws 2013, LB23, § 4; Laws 2014, LB811, § 2; Laws 2014, LB1001, § 2; Laws 2015, LB390, § 2; Laws 2016, LB1009, § 2; Laws 2017, LB487, § 3; Laws 2018, LB1034, § 1; Laws 2019, LB657, § 22; Laws 2021, LB236, § 1.
Effective Date: August 28, 2021
Cross References

- **Health Care Facility Licensure Act,** see section 71-401.
- **Nebraska Hemp Farming Act,** see section 2-501.

Annotations

- The "personal use exception" in subsection (14) of this section applies to only "preparation" and "compounding" of a controlled substance, but does not apply to the "production" of a controlled substance. State v. Bossow, 274 Neb. 836, 744 N.W.2d 43 (2008).
- Under subsection (22) of this section, the term manufacture includes cultivating marijuana. State v. Havlat, 222 Neb. 554, 385 N.W.2d 436 (1986).
- A jury instruction as to the technical definition of marijuana need not be given where the defendant is charged with delivery of marijuana, when the evidence at trial presents no factual issue as to whether the substance involved was anything but marijuana. State v. Taylor, 221 Neb. 114, 375 N.W.2d 610 (1985).
- The Criminal Code which became effective on January 1, 1979, is not applicable to offenses committed prior to its effective date. State v. Fuller, 203 Neb. 233, 278 N.W.2d 756 (1979).
- Aiding and abetting possession is a lesser-included offense of aiding and abetting distribution. State v. McKimmey, 10 Neb. App. 595, 634 N.W.2d 817 (2001).

28-401.01. Act, how cited.
Sections 28-401 to 28-456.01 and 28-458 to 28-476 shall be known and may be cited as the Uniform Controlled Substances Act.
Source: Laws 1977, LB 38, § 98; R.S.1943, (1995), § 28-438; Laws 2001, LB 113, § 17; Laws 2001, LB 398, § 2; Laws 2005, LB 117, § 2; Laws 2007, LB463, § 1120; Laws 2011, LB20, § 2; Laws 2014, LB811, § 3; Laws 2015, LB390, § 3; Laws 2016, LB1009, § 3; Laws 2017, LB487, § 4; Laws 2018, LB931, § 2; Laws 2020, LB1152, § 15.

28-401.02. Act; how construed.
Nothing in the Uniform Controlled Substances Act shall be construed as authority for a practitioner to perform an act for which he or she is not authorized by the laws of this state.
Source: Laws 2001, LB 398, § 3.

28-402. Repealed. Laws **2001, LB 398, § 97.**

28-403. Administering secret medicine; penalty.
If any physician or other person shall prescribe any drug or medicine to another person, the true nature and composition of which he does not, if inquired of, truly make known, but avow the same to be a secret medicine or composition, thereby endangering the life of such other person, he shall be guilty of a Class III misdemeanor.
Source: Laws 1977, LB 38, § 63.

28-404. Controlled substances; declaration.
All drugs and substances or immediate precursors listed in section 28-405 are hereby declared to be controlled

substances, whether listed by official name, generic, common, or usual name, chemical name, brand, or trade name.
Source: Laws 1977, LB 38, § 64; Laws 1990, LB 571, § 3; Laws 1992, LB 1019, § 31.
Annotations

- Under this section and section 28-405(c)(10) and (c)(15), marijuana is a Schedule I controlled substance, and thus is a "drug." State v. Finnegan, 232 Neb. 75, 439 N.W.2d 496 (1989).

28-405. Controlled substances; schedules; enumerated.
The following are the schedules of controlled substances referred to in the Uniform Controlled Substances Act, unless specifically contained on the list of exempted products of the Drug Enforcement Administration of the United States Department of Justice as the list existed on January 31, 2021:
Schedule I
(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:
(1) Acetylmethadol;
(2) Allylprodine;
(3) Alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
(4) Alphameprodine;
(5) Alphamethadol;
(6) Benzethidine;
(7) Betacetylmethadol;
(8) Betameprodine;
(9) Betamethadol;
(10) Betaprodine;
(11) Clonitazene;
(12) Dextromoramide;
(13) Difenoxin;
(14) Diampromide;
(15) Diethylthiambutene;
(16) Dimenoxadol;
(17) Dimepheptanol;
(18) Dimethylthiambutene;
(19) Dioxaphetyl butyrate;
(20) Dipipanone;
(21) Ethylmethylthiambutene;
(22) Etonitazene;
(23) Etoxeridine;
(24) Furethidine;
(25) Hydroxypethidine;
(26) Ketobemidone;
(27) Levomoramide;
(28) Levophenacylmorphan;
(29) Morpheridine;
(30) Noracymethadol;
(31) Norlevorphanol;
(32) Normethadone;
(33) Norpipanone;
(34) Phenadoxone;
(35) Phenampromide;
(36) Phenomorphan;
(37) Phenoperidine;
(38) Piritramide;
(39) Proheptazine;
(40) Properidine;
(41) Propiram;
(42) Racemoramide;
(43) Trimeperidine;

(44) Alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl) propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine;
(45) Tilidine;
(46) 3-Methylfentanyl, N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;
(47) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers;
(48) PEPAP, 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine, its optical isomers, salts, and salts of isomers;
(49) Acetyl-alpha-methylfentanyl, N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide, its optical isomers, salts, and salts of isomers;
(50) Alpha-methylthiofentanyl, N-(1-methyl-2-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;
(51) Benzylfentanyl, N-(1-benzyl-4-piperidyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;
(52) Beta-hydroxyfentanyl, N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;
(53) Beta-hydroxy-3-methylfentanyl, (other name: N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;
(54) 3-methylthiofentanyl, N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;
(55) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers;
(56) Thiofentanyl, N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidinyl)-propanamide, its optical isomers, salts, and salts of isomers;
(57) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide, its optical isomers, salts, and salts of isomers;
(58) U-47700, 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide;
(59) 4-Fluoroisobutyryl Fentanyl;
(60) Acetyl Fentanyl;
(61) Acyrloylfentanyl;
(62) AH-7921; 3, 4-dichloro-N-[(1-dimethylamino) cyclohexylmethyl] benzamide;
(63) Butyryl fentanyl;
(64) Cyclopentyl fentanyl;
(65) Cyclopropyl fentanyl;
(66) Furanyl fentanyl;
(67) Isobutyryl fentanyl;
(68) Isotonitazene;
(69) Methoxyacetyl fentanyl;
(70) MT-45; 1-cycloxhenxyl-4-(1,2-diphenylethyl) piperazine;
(71) Tetrahydrofuranyl fentanyl;
(72) 2-fluorofentanyl; N-(2-fluorohenyl)-N-(1-phenethylpiperidin-4-yl) propionamide;
(73) Ocfentanil;
(74) Ortho-Fluorofentanyl;
(75) Para-chloroisobutyryl fentanyl;
(76) Para-Fluorobutyryl Fentanyl; and
(77) Valeryl fentanyl.
(b) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine, except hydrochloride salt;
(11) Heroin;

(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophine;
(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Pholcodine; and
(23) Thebacon.
(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers:
(1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; and mappine;
(2) 4-bromo-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; and 4-bromo-2,5-DMA;
(3) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-alpha-methylphenethylamine; and paramethoxyamphetamine, PMA;
(4) 4-methyl-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM; and STP;
(5) Ibogaine. Trade and other names shall include, but are not limited to: 7-Ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; and Tabernanthe iboga;
(6) Lysergic acid diethylamide;
(7) Marijuana;
(8) Mescaline;
(9) Peyote. Peyote shall mean all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant or its seeds or extracts;
(10) Psilocybin;
(11) Psilocyn;
(12) Tetrahydrocannabinols, including, but not limited to, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol and their optical isomers, excluding dronabinol in a drug product approved by the federal Food and Drug Administration; Delta 6 cis or trans tetrahydrocannabinol and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers. Since nomenclature of these substances is not internationally standardized, compounds of these structures shall be included regardless of the numerical designation of atomic positions covered. Tetrahydrocannabinols does not include cannabidiol contained in a drug product approved by the federal Food and Drug Administration;
(13) N-ethyl-3-piperidyl benzilate;
(14) N-methyl-3-piperidyl benzilate;
(15) Thiophene analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; and TCP;
(16) Hashish or concentrated cannabis;
(17) Parahexyl. Trade and other names shall include, but are not limited to: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran; and Synhexyl;
(18) Ethylamine analog of phencyclidine. Trade and other names shall include, but are not limited to: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;
(19) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP;
(20) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;
(21) 2,5-dimethoxy-4-ethylamphet-amine; and DOET;

(22) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;
(23) Alpha-methyltryptamine, which is also known as AMT;
(24) Salvia divinorum or Salvinorin A. Salvia divinorum or Salvinorin A includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, derivative, mixture, or preparation of such plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;
(25) Any material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids as listed in subdivisions (A) through (L) of this subdivision, including their salts, isomers, salts of isomers, and nitrogen, oxygen, or sulfur-heterocyclic analogs, unless specifically excepted elsewhere in this section. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or compounds of these structures shall be included under this subdivision, regardless of their specific numerical designation of atomic positions covered, so long as it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:
(A) Tetrahydrocannabinols: Meaning tetrahydrocannabinols naturally contained in a plant of the genus cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers. This subdivision does not include cannabidiol contained in a drug product approved by the federal Food and Drug Administration;
(B) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;
(C) Naphthylmethylindoles: Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;
(D) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;
(E) Naphthylideneindenes: Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;
(F) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;
(G) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not substituted in or on any of the listed ring systems to any extent;
(H) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;
(I) Adamantoylindoles: Any compound containing a 3-adamantoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl,

cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;
(J) Tetramethylcyclopropanoylindoles: Any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;
(K) Indole carboxamides: Any compound containing a 1-indole-3-carboxamide structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxamide group by an alkyl, methoxy, benzyl, propionaldehyde, adamantyl, 1-naphthyl, phenyl, aminooxoalkyl group, or quinolinyl group, whether or not further substituted in or on any of the listed ring systems to any extent or to the adamantyl, 1-mapthyl, phenyl, aminooxoalkyl, benzyl, or propionaldehyde groups to any extent;
(L) Indole carboxylates: Any compound containing a 1-indole-3-carboxylate structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxylate group by an alkyl, methoxy, benzyl, propionaldehyde, adamantyl, 1-naphthyl, phenyl, aminooxoalkyl group, or quinolinyl group, whether or not further substituted in or on any of the listed ring systems to any extent or to the adamantyl, 1-mapthyl, phenyl, aminooxoalkyl, benzyl, or propionaldehyde groups to any extent; and
(M) Any nonnaturally occurring substance, chemical compound, mixture, or preparation, not specifically listed elsewhere in these schedules and which is not approved for human consumption by the federal Food and Drug Administration, containing or constituting a cannabinoid receptor agonist as defined in section 28-401;
(26) Any material, compound, mixture, or preparation containing any quantity of a substituted phenethylamine as listed in subdivisions (A) through (C) of this subdivision, unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from phenylethan-2-amine by substitution on the phenyl ring with a fused methylenedioxy ring, fused furan ring, or a fused tetrahydrofuran ring; by substitution with two alkoxy groups; by substitution with one alkoxy and either one fused furan, tetrahydrofuran, or tetrahydropyran ring system; or by substitution with two fused ring systems from any combination of the furan, tetrahydrofuran, or tetrahydropyran ring systems, whether or not the compound is further modified in any of the following ways:
(A) Substitution of the phenyl ring by any halo, hydroxyl, alkyl, trifluoromethyl, alkoxy, or alkylthio groups; (B) substitution at the 2-position by any alkyl groups; or (C) substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, hydroxybenzyl or methoxybenzyl groups, and including, but not limited to:
(i) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-C or 2,5-Dimethoxy-4-chlorophenethylamine;
(ii) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine, which is also known as 2C-D or 2,5-Dimethoxy-4-methylphenethylamine;
(iii) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine, which is also known as 2C-E or 2,5-Dimethoxy-4-ethylphenethylamine;
(iv) 2-(2,5-Dimethoxyphenyl)ethanamine, which is also known as 2C-H or 2,5-Dimethoxyphenethylamine;
(v) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-I or 2,5-Dimethoxy-4-iodophenethylamine;
(vi) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine, which is also known as 2C-N or 2,5-Dimethoxy-4-nitrophenethylamine;
(vii) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine, which is also known as 2C-P or 2,5-Dimethoxy-4-propylphenethylamine;
(viii) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-2 or 2,5-Dimethoxy-4-ethylthiophenethylamine;
(ix) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-4 or 2,5-Dimethoxy-4-isopropylthiophenethylamine;
(x) 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-B or 2,5-Dimethoxy-4-bromophenethylamine;
(xi) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine, which is also known as 2C-T or 4-methylthio-2,5-dimethoxyphenethylamine;
(xii) 1-(2,5-dimethoxy-4-iodophenyl)-propan-2-amine, which is also known as DOI or 2,5-Dimethoxy-4-iodoamphetamine;

(xiii) 1-(4-Bromo-2,5-dimethoxyphenyl)-2-aminopropane, which is also known as DOB or 2,5-Dimethoxy-4-bromoamphetamine;
(xiv) 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine, which is also known as DOC or 2,5-Dimethoxy-4-chloroamphetamine;
(xv) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-B-NBOMe; 25B-NBOMe or 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine;
(xvi) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-I-NBOMe; 25I-NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine;
(xvii) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine, which is also known as Mescaline-NBOMe or 3,4,5-trimethoxy-N-(2-methoxybenzyl)phenethylamine;
(xviii) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-C-NBOMe; or 25C-NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine;
(xix) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine, which is also known as 2CB-5-hemiFLY;
(xx) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine, which is also known as 2C-B-FLY;
(xxi) 2-(10-Bromo-2,3,4,7,8,9-hexahydropyrano[2,3-g]chromen-5-yl)ethanamine, which is also known as 2C-B-butterFLY;
(xxii) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7- tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane, which is also known as 2C-B-FLY-NBOMe;
(xxiii) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine, which is also known as bromo-benzodifuranylisopropylamine or bromo-dragonFLY;
(xxiv) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine, which is also known as 2C-INBOH or 25I-NBOH;
(xxv) 5-(2-Aminopropyl)benzofuran, which is also known as 5-APB;
(xxvi) 6-(2-Aminopropyl)benzofuran, which is also known as 6-APB;
(xxvii) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 5-APDB;
(xxviii) 6-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 6-APDB;
(xxix) 2,5-dimethoxy-amphetamine, which is also known as 2, 5-dimethoxy-a-methylphenethylamine; 2, 5-DMA;
(xxx) 2,5-dimethoxy-4-ethylamphetamine, which is also known as DOET;
(xxxi) 2,5-dimethoxy-4-(n)-propylthiophenethylamine, which is also known as 2C-T-7;
(xxxii) 5-methoxy-3,4-methylenedioxy-amphetamine;
(xxxiii) 4-methyl-2,5-dimethoxy-amphetamine, which is also known as 4-methyl-2,5-dimethoxy-amethylphenethylamine; DOM and STP;
(xxxiv) 3,4-methylenedioxy amphetamine, which is also known as MDA;
(xxxv) 3,4-methylenedioxymethamphetamine, which is also known as MDMA;
(xxxvi) 3,4-methylenedioxy-N-ethylamphetamine, which is also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, MDE, MDEA;
(xxxvii) 3,4,5-trimethoxy amphetamine; and
(xxxviii) n-hydroxy-3,4-Methlenedioxyamphetamine, which is also known as N-hydroxyMDA;
(27) Any material, compound, mixture, or preparation containing any quantity of a substituted tryptamine unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from 2-(1H-indol-3-yl)ethanamine, which is also known as tryptamine, by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure whether or not the compound is further substituted at the alpha position with an alkyl group or whether or not further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, and including, but not limited to:
(A) 5-methoxy-N,N-diallyltryptamine, which is also known as 5-MeO-DALT;
(B) 4-acetoxy-N,N-dimethyltryptamine, which is also known as 4-AcO-DMT or OAcetylpsilocin;
(C) 4-hydroxy-N-methyl-N-ethyltryptamine, which is also known as 4-HO-MET;
(D) 4-hydroxy-N,N-diisopropyltryptamine, which is also known as 4-HO-DIPT;
(E) 5-methoxy-N-methyl-N-isopropyltryptamine, which is also known as 5-MeOMiPT;
(F) 5-Methoxy-N,N-Dimethyltryptamine, which is also known as 5-MeO-DMT;
(G) 5-methoxy-N,N-diisopropyltryptamine, which is also known as 5-MeO-DiPT;
(H) Diethyltryptamine, which is also known as N,N-Diethyltryptamine, DET; and
(I) Dimethyltryptamine, which is also known as DMT; and
(28)(A) Any substance containing any quantity of the following materials, compounds, mixtures, or structures:
(i) 3,4-methylenedioxymethcathinone, or bk-MDMA, or methylone;
(ii) 3,4-methylenedioxypyrovalerone, or MDPV;
(iii) 4-methylmethcathinone, or 4-MMC, or mephedrone;
(iv) 4-methoxymethcathinone, or bk-PMMA, or PMMC, or methedrone;

(v) Fluoromethcathinone, or FMC;
(vi) Naphthylpyrovalerone, or naphyrone; or
(vii) Beta-keto-N-methylbenzodioxolylpropylamine or bk-MBDB or butylone; or
(B) Unless listed in another schedule, any substance which contains any quantity of any material, compound, mixture, or structure, other than bupropion, that is structurally derived by any means from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:
(i) Substitution in the ring system to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
(ii) Substitution at the 3-position with an acyclic alkyl substituent; or
(iii) Substitution at the 2-amino nitrogen atom with alkyl or dialkyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.
(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Mecloqualone;
(2) Methaqualone; and
(3) Gamma-Hydroxybutyric Acid. Some other names include: GHB; Gamma-hydroxybutyrate; 4-Hydroxybutyrate; 4-Hydroxybutanoic Acid; Sodium Oxybate; and Sodium Oxybutyrate.
(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
(1) Fenethylline;
(2) N-ethylamphetamine;
(3) Aminorex; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;
(4) Cathinone; 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone;
(5) Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; methylcathinone; monomethylpropion; ephedrone; N-methylcathinone; AL-464; AL-422; AL-463; UR1432; and 4-MEC;
(6) (+/-)cis-4-methylaminorex; and (+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine;
(7) N,N-dimethylamphetamine; N,N-alpha-trimethyl-benzeneethanamine; and N,N-alpha-trimethylphenethylamine; and
(8) Benzylpiperazine, 1-benzylpiperazine.
(f) Any controlled substance analogue to the extent intended for human consumption.
Schedule II
(a) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:
(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, buprenorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their salts, but including the following:
(A) Raw opium;
(B) Opium extracts;
(C) Opium fluid;
(D) Powdered opium;
(E) Granulated opium;
(F) Tincture of opium;
(G) Codeine;
(H) Ethylmorphine;
(I) Etorphine hydrochloride;
(J) Hydrocodone;
(K) Hydromorphone;
(L) Metopon;
(M) Morphine;
(N) Oxycodone;
(O) Oxymorphone;

(P) Oripavine;
(Q) Thebaine; and
(R) Dihydroetorphine;
(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium;
(3) Opium poppy and poppy straw;
(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine or ecgonine and its salts, optical isomers, and salts of optical isomers, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and
(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.
(b) Unless specifically excepted or unless in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:
(1) Alphaprodine;
(2) Anileridine;
(3) Bezitramide;
(4) Diphenoxylate;
(5) Fentanyl;
(6) Isomethadone;
(7) Levomethorphan;
(8) Levorphanol;
(9) Metazocine;
(10) Methadone;
(11) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
(12) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;
(13) Norfentanyl (N-phenyl-N-peperidin-4-yl) propionamide;
(14) Oliceridine;
(15) Pethidine or meperidine;
(16) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(17) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
(18) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(19) Phenazocine;
(20) Piminodine;
(21) Racemethorphan;
(22) Racemorphan;
(23) Dihydrocodeine;
(24) Bulk Propoxyphene in nondosage forms;
(25) Sufentanil;
(26) Alfentanil;
(27) Levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
(28) Carfentanil;
(29) Remifentanil;
(30) Tapentadol; and
(31) Thiafentanil.
(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
(2) Phenmetrazine and its salts;
(3) Methamphetamine, its salts, isomers, and salts of its isomers;
(4) Methylphenidate; and
(5) Lisdexamfetamine, its salts, isomers, and salts of its isomers.
(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their

salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designations:
(1) Amobarbital;
(2) Secobarbital;
(3) Pentobarbital;
(4) Phencyclidine; and
(5) Glutethimide.
(e) Hallucinogenic substances known as:
(1) Nabilone. Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)- 6,6a,7,8,10,10a-Hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one; and
(2) Dronabinol in an oral solution in a drug product approved by the federal Food and Drug Administration.
(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:
(1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Trade and other names shall include, but are not limited to: Phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone;
(2) Immediate precursors to phencyclidine, PCP:
(A) 1-phenylcyclohexylamine; or
(B) 1-piperidinocyclohexanecarbonitrile, PCC; or
(3) Immediate precursor to fentanyl; 4-anilino-N-phenethylpiperidine (ANPP).
Schedule III
(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Benzphetamine;
(2) Chlorphentermine;
(3) Clortermine; and
(4) Phendimetrazine.
(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:
(1) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules of this section;
(2) Aprobarbital;
(3) Butabarbital;
(4) Butalbital;
(5) Butethal;
(6) Butobarbital;
(7) Chlorhexadol;
(8) Embutramide;
(9) Lysergic acid;
(10) Lysergic acid amide;
(11) Methyprylon;
(12) Perampanel;
(13) Secbutabarbital;
(14) Sulfondiethylmethane;
(15) Sulfonethylmethane;
(16) Sulfonmethane;
(17) Nalorphine;
(18) Talbutal;
(19) Thiamylal;
(20) Thiopental;
(21) Vinbarbital;
(22) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;
(23) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing only as a suppository;
(24) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2014;

(25) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone; and
(26) Tiletamine and zolazepam or any salt thereof. Trade or other names for a tiletamine-zolazepam combination product shall include, but are not limited to: telazol. Trade or other names for tiletamine shall include, but are not limited to: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam shall include, but are not limited to: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-diazepin-7(1H)-one, and flupyrazapon.
(c) Unless specifically excepted or unless listed in another schedule:
(1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
(A) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
(B) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
(C) Not more than one and eight-tenths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
(D) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
(E) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and
(F) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and
(2) Any material, compound, mixture, or preparation containing any of the following narcotic drug or its salts, as set forth below:
(A) Buprenorphine.
(d) Unless contained on the list of exempt anabolic steroids of the Drug Enforcement Administration of the United States Department of Justice as the list existed on January 31, 2021, any anabolic steroid, which shall include any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:
(1) 3-beta,17-dihydroxy-5a-androstane;
(2) 3-alpha,17-beta-dihydroxy-5a-androstane;
(3) 5-alpha-androstan-3,17-dione;
(4) 1-androstenediol (3-beta,17-beta-dihydroxy-5-alpha-androst-1-ene);
(5) 1-androstenediol (3-alpha,17-beta-dihydroxy-5-alpha-androst-1-ene);
(6) 4-androstenediol (3-beta,17-beta-dihydroxy-androst-5-ene);
(7) 5-androstenediol (3-beta,17-beta-dihydroxy-androst-5-ene);
(8) 1-androstenedione ([5-alpha]-androst-1-en-3,17-dione);
(9) 4-androstenedione (androst-4-en-3,17-dione);
(10) 5-androstenedione (androst-5-en-3,17-dione);
(11) Bolasterone (7-alpha,17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);
(12) Boldenone (17-beta-hydroxyandrost-1,4-diene-3-one);
(13) Boldione (androsta-1,4-diene-3,17-3-one);
(14) Calusterone (7-beta,17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);
(15) Clostebol (4-chloro-17-beta-hydroxyandrost-4-en-3-one);
(16) Dehydrochloromethyltestosterone (4-chloro-17-beta-hydroxy-17-alpha-methyl-androst-1,4-dien-3-one);
(17) Desoxymethyltestosterone (17-alpha-methyl-5-alpha-androst-2-en-17-beta-ol) (a.k.a. 'madol');
(18) Delta-1-Dihydrotestosterone (a.k.a. '1-testosterone')(17-beta-hydroxy-5-alpha-androst-1-en-3-one);
(19) 4-Dihydrotestosterone (17-beta-hydroxy-androstan-3-one);
(20) Drostanolone (17-beta-hydroxy-2-alpha-methyl-5-alpha-androstan-3-one);
(21) Ethylestrenol (17-alpha-ethyl-17-beta-hydroxyestr-4-ene);
(22) Fluoxymesterone (9-fluoro-17-alpha-methyl-11-beta,17-beta-dihydroxyandrost-4-en-3-one);
(23) Formebulone (formebolone); (2-formyl-17-alpha-methyl-11-alpha,17-beta-dihydroxyandrost-1,4-dien-3-one);
(24) Furazabol (17-alpha-methyl-17-beta-hydroxyandrostano[2,3-c]-furazan);
(25) 13-beta-ethyl-17-beta-hydroxygon-4-en-3-one;
(26) 4-hydroxytestosterone (4,17-beta-dihydroxy-androst-4-en-3-one);
(27) 4-hydroxy-19-nortestosterone (4,17-beta-dihydroxy-estr-4-en-3-one);

(28) Mestanolone (17-alpha-methyl-17-beta-hydroxy-5-androstan-3-one);
(29) Mesterolone (17-alpha-methyl-17-beta-hydroxy-5-androstan-3-one);
(30) Methandienone (17-alpha-methyl-17-beta-hydroxyandrost-1,4-dien-3-one);
(31) Methandriol (17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-5-ene);
(32) Methasterone (2-alpha,17-alpha-dimethyl-5-alpha-androstan-17-beta-ol-3-one);
(33) Methenolone (1-methyl-17-beta-hydroxy-5-alpha-androst-1-en-3-one);
(34) 17-alpha-methyl-3-beta,17-beta-dihydroxy-5a-androstane;
(35) 17-alpha-methyl-3-alpha,17-beta-dihydroxy-5a-androstane;
(36) 17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-4-ene;
(37) 17-alpha-methyl-4-hydroxynandrolone (17-alpha-methyl-4-hydroxy-17-beta-hydroxyestr-4-en-3-one);
(38) Methyldienolone (17-alpha-methyl-17-beta-hydroxyestra-4,9(10)-dien-3-one);
(39) Methyltrienolone (17-alpha-methyl-17-beta-hydroxyestra-4,9,11-trien-3-one);
(40) Methyltestosterone (17-alpha-methyl-17-beta-hydroxyandrost-4-en-3-one);
(41) Mibolerone (7-alpha,17-alpha-dimethyl-17-beta-hydroxyestr-4-en-3-one);
(42) 17-alpha-methyl-delta-1-dihydrotestosterone (17-beta-hydroxy-17-alpha-methyl-5-alpha-androst-1-en-3-one) (a.k.a. '17-alpha-methyl-1-testosterone');
(43) Nandrolone (17-beta-hydroxyestr-4-en-3-one);
(44) 19-nor-4-androstenediol (3-beta, 17-beta-dihydroxyestr-4-ene);
(45) 19-nor-4-androstenediol (3-alpha, 17-beta-dihydroxyestr-4-ene);
(46) 19-nor-5-androstenediol (3-beta, 17-beta-dihydroxyestr-5-ene);
(47) 19-nor-5-androstenediol (3-alpha, 17-beta-dihydroxyestr-5-ene);
(48) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);
(49) 19-nor-4-androstenedione (estr-4-en-3,17-dione);
(50) 19-nor-5-androstenedione (estr-5-en-3,17-dione);
(51) Norbolethone (13-beta, 17-alpha-diethyl-17-beta-hydroxygon-4-en-3-one);
(52) Norclostebol (4-chloro-17-beta-hydroxyestr-4-en-3-one);
(53) Norethandrolone (17-alpha-ethyl-17-beta-hydroxyestr-4-en-3-one);
(54) Normethandrolone (17-alpha-methyl-17-beta-hydroxyestr-4-en-3-one);
(55) Oxandrolone (17-alpha-methyl-17-beta-hydroxy-2-oxa-[5-alpha]-androstan-3-one);
(56) Oxymesterone (17-alpha-methyl-4,17-beta-dihydroxyandrost-4-en-3-one);
(57) Oxymetholone (17-alpha-methyl-2-hydroxymethylene-17-beta-hydroxy-[5-alpha]-androstan-3-one);
(58) Prostanozol (17-beta-hydroxy-5-alpha-androstano[3,2-c]pyrazole);
(59) Stanozolol (17-alpha-methyl-17-beta-hydroxy-[5-alpha]-androst-2-eno[3,2-c]-pyrazole);
(60) Stenbolone (17-beta-hydroxy-2-methyl-[5-alpha]-androst-1-en-3-one);
(61) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
(62) Testosterone (17-beta-hydroxyandrost-4-en-3-one);
(63) Tetrahydrogestrinone (13-beta, 17-alpha-diethyl-17-beta-hydroxygon-4,9,11-trien-3-one);
(64) Trenbolone (17-beta-hydroxyestr-4,9,11-trien-3-one);
(65) [3,2-c]-furazan-5 alpha-androstane-17 beta-ol;
(66) [3,2-c]pyrazole-androst-4-en-17 beta-ol;
(67) 17 alpha-methyl-androst-ene-3,17 beta-diol;
(68) 17 alpha-methyl-androsta-1,4-diene-3,17 beta-diol;
(69) 17 alpha-methyl-androstan-3-hydroxyimine-17 beta-ol;
(70) 17 beta-hydroxy-androstano[2,3-d]isoxazole;
(71) 17 beta-hydroxy-androstano[3,2-c]isoxazole;
(72) 18a-homo-3-hydroxy-estra-2,5(10)-dien-17-one;
(73) 2 alpha, 3 alpha-epithio-17 alpha-methyl-5 alpha-androstan-17 beta-ol;
(74) 4-chloro-17 alpha-methyl-17 beta-hydroxy-androst-4-en-3-one;
(75) 4-chloro-17 alpha-methyl-17 beta-hydroxy-androst-4-en-3,11-dione;
(76) 4-chloro-17 alpha-methyl-androst-4-ene-3 beta,17 beta-diol;
(77) 4-chloro-17 alpha-methyl-androsta-1,4,diene-3,17 beta-diol;
(78) 4-hydroxy-androst-4-ene-3,17-dione;
(79) 5 alpha-Androstan-3,6,17-trione;
(80) 6-bromo-androst-1,4-diene-3,17-dione;
(81) 6-bromo-androstan-3,17-dione;
(82) 6 alpha-methyl-androst-4-ene-3,17-dione;
(83) Delta 1-dihydrotestosterone;
(84) Estra-4,9,11-triene-3,17-dione; and

(85) Any salt, ester, or ether of a drug or substance described or listed in this subdivision if the salt, ester, or ether promotes muscle growth.
(e) Hallucinogenic substances known as:
(1) Dronabinol, synthetic, in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration. Some other names for dronabinol are (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo (b,d)pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.
Schedule IV
(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Barbital;
(2) Chloral betaine;
(3) Chloral hydrate;
(4) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);
(5) Clonazepam;
(6) Clorazepate;
(7) Diazepam;
(8) Ethchlorvynol;
(9) Ethinamate;
(10) Flurazepam;
(11) Mebutamate;
(12) Meprobamate;
(13) Methohexital;
(14) Methylphenobarbital;
(15) Oxazepam;
(16) Paraldehyde;
(17) Petrichloral;
(18) Phenobarbital;
(19) Prazepam;
(20) Alprazolam;
(21) Bromazepam;
(22) Camazepam;
(23) Clobazam;
(24) Clotiazepam;
(25) Cloxazolam;
(26) Delorazepam;
(27) Estazolam;
(28) Ethyl loflazepate;
(29) Fludiazepam;
(30) Flunitrazepam;
(31) Halazepam;
(32) Haloxazolam;
(33) Ketazolam;
(34) Loprazolam;
(35) Lorazepam;
(36) Lormetazepam;
(37) Medazepam;
(38) Nimetazepam;
(39) Nitrazepam;
(40) Nordiazepam;
(41) Oxazolam;
(42) Pinazepam;
(43) Temazepam;
(44) Tetrazepam;
(45) Triazolam;
(46) Midazolam;
(47) Quazepam;
(48) Zolpidem;

(49) Dichloralphenazone;
(50) Zaleplon;
(51) Zopiclone;
(52) Fospropofol;
(53) Alfaxalone;
(54) Suvorexant;
(55) Carisoprodol;
(56) Brexanolone; 3 alpha-hydroxy-5 alpha-pregnan-20-one;
(57) Lemborexant;
(58) Solriamfetol; 2-amino-3-phenylpropyl carbamate; and
(59) Remimazolam.
(b) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.
(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Diethylpropion;
(2) Phentermine;
(3) Pemoline, including organometallic complexes and chelates thereof;
(4) Mazindol;
(5) Pipradrol;
(6) SPA, ((-)-1-dimethylamino- 1,2-diphenylethane);
(7) Cathine. Another name for cathine is ((+)-norpseudoephedrine);
(8) Fencamfamin;
(9) Fenproporex;
(10) Mefenorex;
(11) Modafinil; and
(12) Sibutramine.
(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following narcotic drugs, or their salts or isomers calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
(1) Propoxyphene in manufactured dosage forms;
(2) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit; and
(3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers, and salts of these isomers to include: Tramadol.
(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts:
(1) Pentazocine; and
(2) Butorphanol (including its optical isomers).
(f) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Lorcaserin.
(g)(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.
(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers, are excepted from subdivision (g)(1) of Schedule IV if they (A) are stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product; (B) are sold by a person, eighteen years of age or older, in the course of his or her employment to a customer eighteen years of age or older with the following restrictions: No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of ephedrine base during a twenty-four-hour period; no customer shall purchase, receive, or otherwise acquire more than nine grams of ephedrine base during a thirty-day period; and the customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; (C) are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final

Monograph; (D) are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and (E) are not marketed, advertised, or represented in any manner for the indication of stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance, or increased muscle mass:
(i) Primatene Tablets; and
(ii) Bronkaid Dual Action Caplets.
Schedule V
(a) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts calculated as the free anhydrous base or alkaloid, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:
(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;
(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;
(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;
(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit;
(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and
(6) Not more than five-tenths milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.
(b) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.
(c) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:
(1) Ezogabine (N-(2-amino-4-(4-fluorobenzylamino)-phenyl)-carbamic acid ethyl ester);
(2) Lacosamide ((R)-2-acetoamido-N-benzyl-3-methoxy-propionamide);
(3) Pregabalin ((S)-3-(aminomethyl)-5-methylhexanoic acid);
(4) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB-34714; Briviact), including its salts;
(5) Cenobamate; and
(6) Lasmiditan.
Source: Laws 1977, LB 38, § 65; Laws 1978, LB 748, § 50; Laws 1980, LB 696, § 2; Laws 1985, LB 323, § 2; Laws 1985, LB 406, § 3; Laws 1986, LB 1160, § 1; Laws 1987, LB 473, § 1; Laws 1990, LB 571, § 6; Laws 1992, LB 1019, § 32; Laws 1994, LB 1210, § 3; Laws 1995, LB 406, § 5; Laws 1996, LB 1213, § 4; Laws 1998, LB 1073, § 8; Laws 1999, LB 594, § 1; Laws 2000, LB 1115, § 2; Laws 2001, LB 113, § 10; Laws 2002, LB 500, § 1; Laws 2003, LB 245, § 1; Laws 2005, LB 382, § 2; Laws 2007, LB247, § 2; Laws 2008, LB902, § 1; Laws 2009, LB123, § 1; Laws 2009, LB151, § 1; Laws 2010, LB792, § 1; Laws 2011, LB19, § 1; Laws 2012, LB670, § 1; Laws 2013, LB298, § 1; Laws 2014, LB811, § 4; Laws 2015, LB390, § 4; Laws 2017, LB487, § 5; Laws 2018, LB906, § 1; Laws 2021, LB236, § 2.
Effective Date: August 28, 2021
Annotations

- An information containing the descriptive language from this section is not deficient if it contains an incorrect trade name description, since the use of said language is unnecessary to constitute a proper charge and is mere surplusage. State v. Spiegel, 239 Neb. 233, 474 N.W.2d 873 (1991).
- Under subsections (c)(10) and (c)(15) of this section and section 28-404, marijuana is a Schedule I controlled substance, and thus is a "drug." State v. Finnegan, 232 Neb. 75, 439 N.W.2d 496 (1989).

28-406. Registration; fees.
(1) The department shall issue registrations and reregistrations to manufacture, distribute, prescribe, or dispense controlled substances within this state on a biennial basis.
(2) The various fees to be paid by applicants for registrations and reregistrations, as required under the Uniform Controlled Substances Act, shall be as follows:
(a) Registration or reregistration to manufacture controlled substances, not less than one hundred dollars and not more than three hundred dollars;
(b) Registration or reregistration to distribute controlled substances, not less than one hundred dollars and not more than three hundred dollars;

(c) Registration or reregistration to prescribe, administer, or dispense controlled substances, not less than twenty dollars and not more than one hundred fifty dollars;
(d) Registration or reregistration to engage in research on the use and effects of controlled substances, not less than fifty dollars and not more than two hundred dollars;
(e) Registration or reregistration to engage in laboratory and analytical analysis of controlled substances, not less than fifty dollars and not more than two hundred dollars; and
(f) Registration or reregistration to provide detoxification treatment or maintenance treatment, not less than twenty dollars and not more than one hundred fifty dollars.
(3) The department shall remit the fees to the State Treasurer for credit to the Professional and Occupational Credentialing Cash Fund.
(4) All registrations and reregistrations shall expire on August 31 of each odd-numbered year. Registration shall be automatically denied without a hearing for nonpayment of fees. Any registration or reregistration not renewed by payment of renewal fees by October 1 of odd-numbered years shall be automatically denied and canceled on October 2 of odd-numbered years without a hearing.
(5) The department is authorized to adopt and promulgate rules and regulations necessary to implement this section.
Source: Laws 1977, LB 38, § 66; Laws 1985, LB 323, § 3; Laws 1992, LB 1019, § 33; Laws 1997, LB 307, § 4; Laws 1997, LB 550, § 1; Laws 1999, LB 594, § 2; Laws 2001, LB 398, § 4; Laws 2003, LB 242, § 2.

28-407. Registration required; exceptions.
(1) Except as otherwise provided in this section, every person who manufactures, prescribes, distributes, administers, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, prescribing, administering, distribution, or dispensing of any controlled substance within this state shall obtain a registration issued by the department, except that on and after January 1, 2000, health care providers credentialed by the department and facilities licensed by the department shall not be required to obtain a separate Nebraska controlled substances registration upon providing proof of a Federal Controlled Substances Registration to the department. Federal Controlled Substances Registration numbers obtained under this section shall not be public information but may be shared by the department for investigative and regulatory purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to such information.
(2) The following persons shall not be required to register and may lawfully possess controlled substances under the provisions of the Uniform Controlled Substances Act:
(a) An agent, or an employee thereof, of any practitioner, registered manufacturer, distributor, or dispenser of any controlled substance if such agent is acting in the usual course of his or her business or employment;
(b) A common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of his or her business or employment; and
(c) An ultimate user or a person in possession of any controlled substance pursuant to a medical order issued by a practitioner authorized to prescribe.
(3) A separate registration shall be required at each principal place of business of professional practice where the applicant manufactures, distributes, or dispenses controlled substances, except that no registration shall be required in connection with the placement of an emergency box within a long-term care facility pursuant to the provisions of the Emergency Box Drug Act.
(4) The department is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated.
Source: Laws 1977, LB 38, § 67; Laws 1994, LB 1210, § 4; Laws 1997, LB 307, § 5; Laws 1997, LB 550, § 2; Laws 1999, LB 828, § 1; Laws 2001, LB 398, § 5; Laws 2009, LB195, § 2.
Cross References

- **Emergency Box Drug Act,** see section 71-2410.

28-408. Registration to manufacture or distribute controlled substances; factors considered.
(1) The department shall register an applicant to manufacture or distribute controlled substances included in Schedules I to V of section 28-405 unless the department determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest the department shall consider the following factors:
(a) Maintenance of effective controls against diversion of particular controlled substances and any Schedule I or II substance compounded therefrom into other than legitimate medical, scientific, or industrial channels;
(b) Compliance with applicable state and local law;
(c) Whether the applicant has been convicted of a felony under any law of the United States or of any state or has been convicted of a violation relating to any substance defined in the Uniform Controlled Substances Act as a

controlled substance under any law of the United States or any state, except that such fact in itself shall not be an automatic bar to registration;
(d) Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion; and
(e) Such other factors as may be relevant to and consistent with the public health and safety.
(2) Registration granted under subsection (1) of this section shall not entitle a registrant to manufacture or distribute controlled substances in Schedule I or II of section 28-405 other than those specified in the registration.
(3) Except as otherwise provided in this section and section 28-409, practitioners shall be registered to prescribe, administer, or dispense substances in Schedules II to V of section 28-405 if they are authorized to prescribe, administer, or dispense under the laws of this state. A registration application by a practitioner who wishes to conduct research with Schedule I substances shall be referred to the department for approval or disapproval. Registration to prescribe, administer, or dispense substances in Schedules II to V of section 28-405 or registration for the purpose of bona fide research with Schedule I substances by a practitioner may be denied only on a ground specified in subsection (1) of section 28-409 or if there are reasonable grounds to believe that the applicant will abuse or unlawfully transfer such substances or fail to safeguard adequately his or her supply of such substances against diversion from legitimate medical or scientific use.
(4) Compliance by manufacturers and distributors with the Controlled Substances Act, 21 U.S.C. 801 et seq., as such act existed on May 1, 2001, respecting registration, excluding fees, shall be deemed compliance with this section.
Source: Laws 1977, LB 38, § 68; Laws 1985, LB 323, § 4; Laws 1997, LB 307, § 6; Laws 2001, LB 398, § 6.

28-409. Registrant; disciplinary action; grounds; procedure.
(1) A registration pursuant to section 28-408 to prescribe, administer, manufacture, distribute, or dispense a controlled substance may be denied, suspended, revoked, or renewal refused by the department upon a finding that the applicant or registrant:
(a) Has falsified any application filed pursuant to the Uniform Controlled Substances Act or required by the act;
(b) Has been convicted of a felony subsequent to being granted a registration pursuant to section 28-408 under any law of the United States or of any state or has been convicted of a violation relating to any substance defined in the act as a controlled substance subsequent to being granted a registration pursuant to section 28-408 under any law of the United States or of any state;
(c) Has had his or her federal registration suspended or revoked by competent federal authority and is no longer authorized by federal law to engage in the prescribing, manufacturing, distribution, or dispensing of controlled substances;
(d) Is guilty of any of the acts or offenses listed in section 38-178 for which disciplinary measures may be taken against his or her license, certificate, or registration to practice and which have a rational connection with his or her fitness to prescribe, administer, or dispense a controlled substance. The department may automatically revoke or suspend the registration of a practitioner who has had his or her license, certificate, or registration to practice revoked or suspended and is no longer authorized to prescribe, administer, or dispense under the laws of this state or who has had his or her license, certificate, or registration to practice limited or restricted and is no longer authorized to prescribe, administer, or dispense controlled substances under the laws of this state;
(e) Is habitually intoxicated or is dependent upon or actively addicted to alcohol or any controlled substance or narcotic drug; or
(f) Has violated the Uniform Controlled Substances Act or any rules or regulations adopted and promulgated pursuant to the act.
(2) The department may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.
(3) A person whose registration or renewal has been denied, revoked, or suspended shall be afforded an opportunity for a hearing in accordance with the Administrative Procedure Act. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the Uniform Controlled Substances Act or any law of the state, except that such proceedings may be consolidated with proceedings under the Uniform Credentialing Act. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing, except in cases when the department finds that there is an imminent danger to the public health or safety.
(4) The department may suspend any registration simultaneously with the institution of proceedings under this section or when renewal of registration is refused in cases when the department finds that there is an imminent danger to the public health or safety. Such suspension shall continue in effect until the conclusion of such proceedings, including judicial review thereof, unless sooner withdrawn by the department or dissolved by a court of competent jurisdiction.

(5) In the event the department suspends or revokes a registration granted under section 28-408, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may in the discretion of the department be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances may be forfeited to the state.
(6) The administration shall be promptly notified of all orders limiting, suspending, or revoking registration.
Source: Laws 1977, LB 38, § 69; Laws 1985, LB 323, § 5; Laws 1991, LB 456, § 1; Laws 1994, LB 1210, § 5; Laws 2001, LB 398, § 7; Laws 2007, LB463, § 1121.
Cross References

- **Administrative Procedure Act,** see section 84-920.
- **Uniform Credentialing Act,** see section 38-101.

28-410. Records of registrants; inventory; violation; penalty; storage.
(1) Each registrant manufacturing, distributing, or dispensing controlled substances in Schedule I, II, III, IV, or V of section 28-405 shall keep and maintain a complete and accurate record of all stocks of such controlled substances on hand. Such records shall be maintained for five years.
(2) Each registrant manufacturing, distributing, storing, or dispensing such controlled substances shall prepare an annual inventory of each controlled substance in his or her possession. Such inventory shall (a) be taken within one year after the previous annual inventory date, (b) contain such information as shall be required by the Board of Pharmacy, (c) be copied and such copy forwarded to the department within thirty days after completion, (d) be maintained at the location listed on the registration for a period of five years, (e) contain the name, address, and Drug Enforcement Administration number of the registrant, the date and time of day the inventory was completed, and the signature of the person responsible for taking the inventory, (f) list the exact count or measure of all controlled substances listed in Schedules I, II, III, IV, and V of section 28-405, and (g) be maintained in permanent, read-only format separating the inventory for controlled substances listed in Schedules I and II of section 28-405 from the inventory for controlled substances listed in Schedules III, IV, and V of section 28-405. A registrant whose inventory fails to comply with this subsection shall be guilty of a Class IV misdemeanor.
(3) This section shall not apply to practitioners who prescribe or administer, as a part of their practice, controlled substances listed in Schedule II, III, IV, or V of section 28-405 unless such practitioner regularly engages in dispensing any such drug or drugs to his or her patients.
(4) Controlled substances shall be stored in accordance with the following:
(a) All controlled substances listed in Schedule I of section 28-405 must be stored in a locked cabinet; and
(b) All controlled substances listed in Schedule II, III, IV, or V of section 28-405 must be stored in a locked cabinet or distributed throughout the inventory of noncontrolled substances in a manner which will obstruct theft or diversion of the controlled substances or both.
(5) Each pharmacy which is registered with the administration and in which controlled substances are stored or dispensed shall complete a controlled-substances inventory when there is a change in the pharmacist-in-charge. The inventory shall contain the information required in the annual inventory, and the original copy shall be maintained in the pharmacy for five years after the date it is completed.
Source: Laws 1977, LB 38, § 70; Laws 1996, LB 1108, § 2; Laws 1997, LB 307, § 7; Laws 1997, LB 550, § 3; Laws 2001, LB 398, § 8; Laws 2003, LB 242, § 3; Laws 2008, LB902, § 2; Laws 2017, LB166, § 1.

28-411. Controlled substances; records; by whom kept; contents; compound controlled substances; duties.
(1) Every practitioner who is authorized to administer or professionally use controlled substances shall keep a record of such controlled substances received by him or her and a record of all such controlled substances administered or professionally used by him or her, other than by medical order issued by a practitioner authorized to prescribe, in accordance with subsection (4) of this section.
(2) Manufacturers, wholesalers, distributors, and reverse distributors shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared and of all controlled substances received and disposed of by them, in accordance with subsection (4) of this section.
(3) Pharmacies shall keep records of all controlled substances received and disposed of by them, in accordance with subsection (4) of this section.
(4)(a) The record of controlled substances received shall in every case show (i) the date of receipt, (ii) the name, address, and Drug Enforcement Administration number of the person receiving the controlled substances, (iii) the name, address, and Drug Enforcement Administration number of the person from whom received, (iv) the kind and quantity of controlled substances received, (v) the kind and quantity of controlled substances produced or

removed from process of manufacture, and (vi) the date of such production or removal from process of manufacture.
(b) The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use or the owner and species of animal for which the controlled substances were sold, administered, or dispensed, and the kind and quantity of controlled substances. For any lost, destroyed, or stolen controlled substances, the record shall list the kind and quantity of such controlled substances and the discovery date of such loss, destruction, or theft.
(c) Every such record shall be kept for a period of five years from the date of the transaction recorded.
(5) Any person authorized to compound controlled substances shall comply with section 38-2867.01.
Source: Laws 1977, LB 38, § 71; Laws 1988, LB 273, § 4; Laws 1995, LB 406, § 6; Laws 1996, LB 1044, § 69; Laws 2001, LB 398, § 9; Laws 2015, LB37, § 28; Laws 2017, LB166, § 2.

28-412. Narcotic drugs; administration to narcotic-dependent person; violation; penalty.
(1) It is unlawful to prescribe any narcotic drug listed in section 28-405, except buprenorphine, for the purpose of detoxification treatment or maintenance treatment except as provided in this section.
(2) A narcotic drug may be administered or dispensed to a narcotic-dependent person for detoxification treatment or maintenance treatment by a practitioner who is registered to provide detoxification treatment or maintenance treatment pursuant to section 28-406.
(3) A narcotic drug may be administered or dispensed to a narcotic-dependent person when necessary to relieve acute withdrawal symptoms pending the referral of such person for detoxification treatment or maintenance treatment by a physician who is not registered to provide detoxification treatment or maintenance treatment under section 28-406. Not more than one day's supply of narcotic drugs shall be administered or dispensed for such person's use at one time. Such treatment shall not be continued for more than three successive calendar days and may not be renewed or extended.
(4) A narcotic drug may be administered or dispensed in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment conditions other than dependence.
(5) Any person who violates this section is guilty of a Class IV felony.
(6) For purposes of this section:
(a) Detoxification treatment means the administering or dispensing of a narcotic drug in decreasing doses to a person for a specified period of time to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and to bring such person to a narcotic drug-free state within such period of time. Detoxification treatment includes short-term detoxification treatment and long-term detoxification treatment;
(b) Long-term detoxification treatment means detoxification treatment for a period of more than thirty days but not more than one hundred eighty days;
(c) Maintenance treatment means the administering or dispensing of a narcotic drug in the treatment of a narcotic-dependent person for a period of more than twenty-one days; and
(d) Short-term detoxification treatment means detoxification treatment for a period of not more than thirty days.
Source: Laws 1977, LB 38, § 72; Laws 1996, LB 1044, § 70; Laws 1996, LB 1108, § 3; Laws 1999, LB 379, § 2; Laws 1999, LB 594, § 3; Laws 2001, LB 398, § 10; Laws 2007, LB247, § 3.

28-413. Distribution to another registrant; manner.
Controlled substances listed in Schedules I and II of section 28-405 shall be distributed by a registrant to another registrant pursuant to an order form or the electronic controlled substance ordering system of the administration. Compliance with the provisions of the Controlled Substances Act, 21 U.S.C. 801 et seq., as such act existed on January 1, 2014, respecting order forms shall be deemed compliance with this section.
Source: Laws 1977, LB 38, § 73; Laws 2001, LB 398, § 11; Laws 2014, LB811, § 5.

28-414. Controlled substance; Schedule II; prescription; requirements; contents.
(1) Except as otherwise provided in this section or section 28-412 or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule II of section 28-405 shall not be dispensed without a prescription from a practitioner authorized to prescribe. Beginning January 1, 2022, all such prescriptions shall be subject to section 38-1,146, except that all such prescriptions issued by a practitioner who is a dentist shall be subject to section 38-1,146 beginning January 1, 2024. No prescription for a controlled substance listed in Schedule II of section 28-405 shall be filled more than six months from the date of issuance. A prescription for a controlled substance listed in Schedule II of section 28-405 shall not be refilled.

(2) A prescription for controlled substances listed in Schedule II of section 28-405 must contain the following information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, if applicable, (d) dosage form of the drug or biological, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) prescribing practitioner's name and address, and (i) Drug Enforcement Administration number of the prescribing practitioner. If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (i) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of the Controlled Substances Act, 21 U.S.C. 801 et seq., as it existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.
(3)(a) In emergency situations, a controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to an oral prescription reduced to writing in accordance with subsection (2) of this section, except for the prescribing practitioner's signature, and bearing the word "emergency".
(b) For purposes of this section, emergency situation means a situation in which a prescribing practitioner determines that (i) immediate administration of the controlled substance is necessary for proper treatment of the patient, (ii) no appropriate alternative treatment is available, including administration of a drug which is not a controlled substance listed in Schedule II of section 28-405, and (iii) it is not reasonably possible for the prescribing practitioner to provide a signed, written or electronic prescription to be presented to the person dispensing the controlled substance prior to dispensing.
(4)(a) In nonemergency situations:
(i) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription if the original written, signed paper prescription is presented to the pharmacist for review before the controlled substance is dispensed, except as provided in subdivision (a)(ii) or (iii) of this subsection;
(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription (A) to be compounded for direct parenteral administration to a patient for the purpose of home infusion therapy or (B) for administration to a patient enrolled in a hospice care program and bearing the words "hospice patient"; and
(iii) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription for administration to a resident of a long-term care facility.
(b) For purposes of subdivisions (a)(ii) and (iii) of this subsection, a facsimile of a written, signed paper prescription shall serve as the original written prescription and shall be maintained in accordance with subsection (1) of section 28-414.03.
(5)(a) A prescription for a controlled substance listed in Schedule II of section 28-405 may be partially filled if the pharmacist does not supply the full quantity prescribed and he or she makes a notation of the quantity supplied on the face of the prescription or in the electronic record. The remaining portion of the prescription may be filled no later than thirty days after the date on which the prescription is written. The pharmacist shall notify the prescribing practitioner if the remaining portion of the prescription is not or cannot be filled within such period. No further quantity may be supplied after such period without a new written, signed paper prescription or electronic prescription.
(b) A prescription for a controlled substance listed in Schedule II of section 28-405 written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be partially filled. Such prescription shall bear the words "terminally ill" or "long-term care facility patient" on its face or in the electronic record. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate record, uniformly maintained and readily retrievable, the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of controlled substances listed in Schedule II which is dispensed in all partial fillings shall not exceed the total quantity prescribed. A prescription for a Schedule II controlled substance for a patient in a long-term care facility or a patient with a medical diagnosis documenting a terminal illness is valid for sixty days from the date of issuance or until discontinuance of the prescription, whichever occurs first.
Source: Laws 1977, LB 38, § 74; Laws 1988, LB 273, § 5; Laws 1995, LB 406, § 7; Laws 1996, LB 1108, § 4; Laws 1997, LB 307, § 8; Laws 1999, LB 594, § 4; Laws 2000, LB 819, § 65; Laws 2001, LB 398, § 12; Laws 2004, LB 1005, § 2; Laws 2005, LB 382, § 3; Laws 2007, LB463, § 1122; Laws 2009, LB195, § 3; Laws 2011, LB179, § 1; Laws 2014, LB811, § 6; Laws 2017, LB166, § 3; Laws 2021, LB583, § 1.
Operative Date: January 1, 2022

Annotations

- The State did not violate the defendant's due process privacy rights through its warrantless, investigatory access to her prescription records; the reporting and monitoring of prescription records was a rational exercise of the State's broad police powers. State v. Wiedeman, 286 Neb. 193, 835 N.W.2d 698 (2013).

28-414.01. Controlled substance; Schedule III, IV, or V; medical order, required; prescription; requirements; contents; pharmacist; authority to adapt prescription; duties.

(1) Except as otherwise provided in this section or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule III, IV, or V of section 28-405 shall not be dispensed without a written, oral, or electronic medical order. Such medical order is valid for six months after the date of issuance. Original prescription information for any controlled substance listed in Schedule III, IV, or V of section 28-405 may be transferred between pharmacies for purposes of refill dispensing pursuant to section 38-2871.

(2) A prescription for controlled substances listed in Schedule III, IV, or V of section 28-405 must contain the following information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, if applicable, (d) dosage form of the drug or biological, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) number of refills, including pro re nata or PRN refills, not to exceed five refills within six months after the date of issuance, (i) prescribing practitioner's name and address, and (j) Drug Enforcement Administration number of the prescribing practitioner. Beginning January 1, 2022, all such prescriptions shall be subject to section 38-1,146, except that all such prescriptions issued by a practitioner who is a dentist shall be subject to section 38-1,146 beginning January 1, 2024. If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (j) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of 21 C.F.R. 1311, as the regulation existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3)(a) A pharmacist who is exercising reasonable care and who has obtained patient consent may do the following:

(i) Change the quantity of a drug prescribed if:

(A) The prescribed quantity or package size is not commercially available; or

(B) The change in quantity is related to a change in dosage form;

(ii) Change the dosage form of the prescription if it is in the best interest of the patient and if the directions for use are also modified to equate to an equivalent amount of drug dispensed as prescribed;

(iii) Dispense multiple months' supply of a drug if a prescription is written with sufficient refills; and

(iv) Substitute any chemically equivalent drug product for a prescribed drug to comply with a drug formulary which is covered by the patient's health insurance plan unless the prescribing practitioner specifies "no substitution", "dispense as written", or "D.A.W." to indicate that substitution is not permitted. If a pharmacist substitutes any chemically equivalent drug product as permitted under this subdivision, the pharmacist shall provide notice to the prescribing practitioner or the prescribing practitioner's designee. If drug product selection occurs involving a generic substitution, the drug product selection shall comply with section 38-28,111.

(b) A pharmacist who adapts a prescription in accordance with this subsection shall document the adaptation in the patient's pharmacy record.

(4) A controlled substance listed in Schedule III, IV, or V of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription. The facsimile of a written, signed paper prescription shall serve as the original written prescription for purposes of this subsection and shall be maintained in accordance with subsection (2) of section 28-414.03.

(5) A prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405 may be partially filled if (a) each partial filling is recorded in the same manner as a refilling, (b) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed, and (c) each partial filling is dispensed within six months after the prescription was issued.

Source: Laws 2014, LB811, § 7; Laws 2017, LB166, § 4; Laws 2020, LB1052, § 1; Laws 2021, LB583, § 2.
Operative Date: January 1, 2022

28-414.02. Prescription created, signed, transmitted, and received electronically; records.

(1) If a prescription is created, signed, transmitted, and received electronically, all records related to that prescription must be retained electronically.

(2) Electronic records must be maintained electronically for five years after the date of their creation or receipt.

(3) Records regarding controlled substances must be readily retrievable from all other records. Electronic records must be easily readable or easily rendered into a format that a person can read.

(4) Records of electronic prescriptions for controlled substances shall be maintained in an application that meets the requirements of 21 C.F.R. 1311, as the regulation existed on January 1, 2014. The computers on which the records are maintained may be located at another location, but the records must be readily retrievable at the registered location if requested by an agent of the department or the administration or other law enforcement agent. The electronic application must be capable of printing out or transferring the records in a format that is readily understandable to an agent of the department or the administration or other law enforcement agent at the registered location.
Source: Laws 2014, LB811, § 8.

28-414.03. Controlled substances; maintenance of records; label.
(1) Paper prescriptions for all controlled substances listed in Schedule II of section 28-405 shall be kept in a separate file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.
(2) Prescriptions for all controlled substances listed in Schedule III, IV, or V of section 28-405 shall be maintained either separately from other prescriptions or in a form in which the information required is readily retrievable from ordinary business records of the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such records readily available to the department, the administration, and law enforcement for inspection without a search warrant.
(3) Before dispensing any controlled substance listed in Schedule II, III, IV, or V of section 28-405, the dispensing practitioner shall affix a label to the container in which the controlled substance is dispensed. Such label shall bear the name and address of the pharmacy or dispensing practitioner, the name of the patient, the date of filling, the serial number of the prescription under which it is recorded in the practitioner's prescription records, the name of the prescribing practitioner, and the directions for use of the controlled substance. Unless the prescribing practitioner writes "do not label" or words of similar import on the original paper prescription or so designates in an electronic prescription or an oral prescription, such label shall also bear the name of the controlled substance.
(4) For multidrug containers, more than one drug, device, or biological may be dispensed in the same container when (a) such container is prepackaged by the manufacturer, packager, or distributor and shipped directly to the pharmacy in this manner or (b) the container does not accommodate greater than a thirty-one-day supply of compatible dosage units and is labeled to identify each drug or biological in the container in addition to all other information required by law.
(5) If a pharmacy fills prescriptions for controlled substances on behalf of another pharmacy under contractual agreement or common ownership, the prescription label shall contain the Drug Enforcement Administration number of the pharmacy at which the prescriptions are filled.
Source: Laws 2014, LB811, § 9; Laws 2017, LB166, § 5.

28-414.04. Controlled substance; transfer.
A registrant who is the owner of a controlled substance may transfer:
(1) Any controlled substance listed in Schedule I or II of section 28-405 to another registrant as provided by law or by rule and regulation of the department; and
(2) Any controlled substance listed in Schedule III, IV, or V of section 28-405 to another registrant if such owner complies with subsection (4) of section 28-411.
Source: Laws 2014, LB811, § 10.

28-414.05. Controlled substance; destruction; records.
(1) The owner of any stock of controlled substances may cause such controlled substances to be destroyed pursuant to this section when the need for such substances ceases. Complete records of the destruction of controlled substances pursuant to this section shall be maintained by the registrant for five years after the date of destruction.
(2) If the owner is a registrant:
(a) Controlled substances listed in Schedule II, III, IV, or V of section 28-405 may be destroyed by a pharmacy inspector, by a reverse distributor, or by the administration. Upon destruction, any forms required by the administration to document such destruction shall be completed;
(b) Liquid controlled substances in opened containers which originally contained fifty milliliters or less or compounded liquid controlled substances within the facility where they were compounded may be destroyed if witnessed by two individuals credentialed under the Uniform Credentialing Act and designated by the facility and recorded in accordance with subsection (4) of section 28-411; or
(c) Solid controlled substances in opened unit-dose containers or which have been adulterated within a hospital where they were to be administered to patients in such hospital may be destroyed if witnessed by two individuals

credentialed under the Uniform Credentialing Act and designated by the hospital and recorded in accordance with subsection (4) of section 28-411.
(3) If the owner is a resident of a long-term care facility or hospital, a controlled substance listed in Schedule II, III, IV, or V of section 28-405 shall be destroyed by two individuals credentialed under the Uniform Credentialing Act and designated by the facility or hospital.
Source: Laws 2014, LB811, § 11.
Cross References

- **Uniform Credentialing Act,** see section 38-101.

28-414.06. Controlled substance; practitioner; provide information; limit on liability or penalty.
(1) Any practitioner who gives information to a law enforcement officer or professional board appointed pursuant to the Uniform Credentialing Act shall not be subject to any civil, criminal, or administrative liability or penalty for giving such information.
(2) As used in this section, unless the context otherwise requires:
(a) Information means information regarding unlawfully obtaining or attempting to obtain from a practitioner (i) a controlled substance, (ii) a written or oral prescription for a controlled substance, or (iii) the administration of a controlled substance; and
(b) Law enforcement officer has the definition found in section 81-1401.
Source: Laws 1988, LB 273, § 2; R.S.1943, (2008), § 28-1438.01; Laws 2014, LB811, § 12.
Cross References

- **Uniform Credentialing Act,** see section 38-101.

28-414.07. Controlled substances; chemical analysis; admissible as evidence in preliminary hearing.
Whenever matter is submitted to the criminalistics laboratory of the Nebraska State Patrol for chemical analysis to determine if the matter is, or contains, a controlled substance, the report of that analysis shall be admissible in any preliminary hearing in any court in Nebraska as prima facie evidence of the identity, nature, and quantity of the matter analyzed. Nothing in this section is intended to require the use of a laboratory report in a preliminary hearing or to prohibit the use of other evidence, including circumstantial evidence, in the preliminary hearing to establish the identity, nature, and quantity of a controlled substance.
Source: Laws 1976, LB 487, § 1; R.R.S.1943, § 28-4,135.01, (1975); Laws 1984, LB 403, § 3; R.S.1943, (2008), § 28-1439; Laws 2014, LB811, § 13.

28-415. Narcotic drugs; label; requirements.
(1) A manufacturer, distributor, or packager who sells or dispenses a narcotic drug or a wholesaler who sells or dispenses a narcotic drug in a package prepared by him or her shall securely affix a label to each package in which such drug is contained showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except a pharmacy for the purpose of filling a medical order under the Uniform Controlled Substances Act, shall alter, deface, or remove any label so affixed.
(2) A pharmacy that sells or dispenses any narcotic drug on a prescription issued by a practitioner shall affix a label to the container in which such drug is sold or dispensed pursuant to subsection (3) of section 28-414.03. No person shall alter, deface, or remove any label so affixed.
Source: Laws 1977, LB 38, § 75; Laws 1988, LB 273, § 6; Laws 1995, LB 406, § 8; Laws 1999, LB 379, § 3; Laws 1999, LB 594, § 5; Laws 2001, LB 398, § 13; Laws 2014, LB811, § 14.

28-416. Prohibited acts; violations; penalties.
(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 28-472 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 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 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 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:
(i) 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.
Source: Laws 1977, LB 38, § 76; Laws 1978, LB 808, § 2; Laws 1980, LB 696, § 3; Laws 1985, LB 406, § 4; Laws 1986, LB 504, § 1; Laws 1989, LB 592, § 2; Laws 1991, LB 742, § 1; Laws 1993, LB 117, § 2; Laws 1995, LB 371, § 6; Laws 1997, LB 364, § 8; Laws 1999, LB 299, § 1; Laws 2001, LB 398, § 14; Laws 2003, LB 46, § 1; Laws 2004, LB 1083, § 86; Laws 2005, LB 117, § 3; Laws 2008, LB844, § 1; Laws 2010, LB800, § 4; Laws 2011, LB19, § 2; Laws 2011, LB463, § 1; Laws 2013, LB298, § 2; Laws 2015, LB605, § 26; Laws 2016, LB1106, § 5; Laws 2017, LB487, § 6.

Cross References

- **Motor Vehicle Operator's License Act,** see section 60-462.
- **Nebraska Behavioral Health Services Act,** see section 71-801.

Annotations

1. Elements
2. Evidence
3. Generally
4. Jury instruction
5. Plain view doctrine
6. Possession
7. Possession with intent to deliver
8. Sentencing

1. Elements

- Subsection (5)(a) of this section requires the State to prove that the defendant is someone (1) who is 18 years of age or older and (2) who knowingly and intentionally (a) used a person under 18 years of age in one of the ways listed (b) to perform one of the listed acts related to drug distribution. State v. Reinhart, 283 Neb. 710, 811 N.W.2d 258 (2012).
- Unless a statute specifically provides otherwise, the quantity possessed of a controlled substance is not an essential element of the crime. State v. Thompson, 244 Neb. 189, 505 N.W.2d 673 (1993).
- The weight or amount of marijuana possessed is not an element of the substantive offense of possession of marijuana, and the weight or amount of marijuana only determines the grade of the offense and relates to the punishment which may be imposed on conviction for the offense of simple possession. Simple possession of marijuana is a lesser-included offense of possession of marijuana with intent to distribute. State v. Malone, 4 Neb. App. 904, 552 N.W.2d 772 (1996).

2. Evidence

- A passenger's mere presence in a vehicle with contraband is insufficient to support a finding of joint possession. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).
- Generally, a passenger's joint possession of a controlled substance found in a vehicle can be established by evidence that (1) supports an inference that the driver was involved in drug trafficking, as distinguished from possessing illegal drugs for personal use; (2) shows the passenger acted suspiciously during a traffic stop; and (3) shows the passenger was not a casual occupant but someone who had been traveling a considerable distance with the driver. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).
- Evidence which was seized during a search based solely on an illegal wiretap must be suppressed and a conviction based on that evidence reversed, where it was agreed that the defendant had waived his rights under the Fourth Amendment to the U.S. Constitution, but had not waived his rights under section 86-701 et seq. (recodified in 2002 as section 86-271 et seq.). State v. Aulrich, 209 Neb. 546, 308 N.W.2d 739 (1981).

3. Generally

- A juror may reasonably infer that a driver with a possessory interest in a vehicle who is transporting a large quantity of illegal drugs would not invite someone into his or her vehicle who had no knowledge of the driver's drug activities. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).
- Subsection (6) of this section and section 77-4301(2) address different types of misconduct and are not inconsistent. State v. Garza, 242 Neb. 573, 496 N.W.2d 448 (1993).
- A party claiming that the sale of a controlled substance was exempt has the burden of proof that an exemption was applicable. State v. Taylor, 221 Neb. 114, 375 N.W.2d 610 (1985).
- Subsection (6)(a) merely authorizes the issuance of a citation for certain violations; it does not prohibit an arrest for the same violation when otherwise authorized by law. State v. Watts, 209 Neb. 371, 307 N.W.2d 816 (1981).

4. Jury instruction

- The statutory elements neither solely control nor exclusively dictate whether a lesser-included offense instruction for simple possession is required along with an instruction on possession of a controlled substance with intent to deliver. State v. Massa, 242 Neb. 70, 493 N.W.2d 175 (1992).

5. Plain view doctrine

- Plain view doctrine circumvents need for a search warrant when contraband is inadvertently found while arresting officer is legally present at physical examination of accused. State v. Brockman, 231 Neb. 982, 439 N.W.2d 84 (1989).

6. Possession

- Constructive possession of an illegal substance may be proved by direct or circumstantial evidence. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).
- Possession of a controlled substance is a lesser-included offense of distribution of the controlled substance. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).
- Possession of an illegal substance can be inferred from a vehicle passenger's proximity to the substance or other circumstantial evidence that affirmatively links the passenger to the substance. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).
- Under subsection (1) of this section, a defendant possesses a controlled substance when the defendant knows of the nature or character of the substance and its presence and has dominion or control over the substance. State v. Lonnecker, 237 Neb. 207, 465 N.W.2d 737 (1991).
- Under subsection (1) of this section, a defendant's control or dominion over premises where a controlled substance is located may establish the defendant's constructive possession of the controlled substance. State v. Lonnecker, 237 Neb. 207, 465 N.W.2d 737 (1991).
- Pursuant to subsection (3) of this section, there is sufficient evidence to convict the defendant of knowingly or intentionally possessing a controlled substance when he approaches an undercover officer, asks to buy drugs, physically examines the drugs, and then hands over money to pay for the drugs. State v. Clark, 236 Neb. 475, 461 N.W.2d 576 (1990).

7. Possession with intent to deliver

- Circumstantial evidence may support a finding that a defendant intended to distribute, deliver, or dispense a controlled substance. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).
- Circumstantial evidence to establish possession of a controlled substance with intent to distribute or deliver may consist of several factors: the quantity of the substance, the equipment and supplies found with it, the place it was found, the manner of packaging, and the testimony of witnesses experienced and knowledgeable in the field. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

- Evidence of the quantity of a controlled substance possessed combined with expert testimony that such quantity indicates an intent to deliver can be sufficient for a jury to infer an intent to deliver. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).
- When a defendant did not dispute the State's evidence on the separate element of intent to deliver, he was not entitled to an instruction on the lesser-included offense of simple possession. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).
- Conviction of possession with intent to deliver a controlled substance affirmed in case where police officers noticed defendant in bar making a furtive gesture by pulling both hands from underneath bar; the officers subsequently found a bag with 11 snow seals behind the carpet under the bar within arm's distance from defendant; and defendant could not adequately account for the money he had in his possession. State v. Alcorn, 240 Neb. 400, 481 N.W.2d 921 (1992).
- Possession with intent to deliver a controlled substance is not a victimless crime. State v. Rodgers, 237 Neb. 506, 466 N.W.2d 537 (1991).

8. Sentencing

- Sentence of 3 to 5 years' imprisonment was not excessive for conviction under subsection (1)(a) of this statute. State v. Hodge and Carpenter, 225 Neb. 94, 402 N.W.2d 867 (1987).

28-417. Unlawful acts; violations; penalty.
(1) It shall be unlawful for any person:
(a) To omit, remove, alter, or obliterate a symbol required by the federal Controlled Substances Act, 21 U.S.C. 801 et seq., as the act existed on September 1, 2001, or required by the laws of this state;
(b) To alter, deface, or remove any label affixed to a package of narcotic drugs;
(c) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under the Uniform Controlled Substances Act;
(d) To refuse any entry into any premises for inspection authorized by the act;
(e) To keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or place whatever which such person knows or should know is resorted to by persons using controlled substances in violation of the Uniform Controlled Substances Act for the purpose of using such substances or which is used for the keeping or selling of the same in violation of the act;
(f) To whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner or the owner of any animal for which any such substance has been prescribed, sold, or dispensed by a veterinarian to possess it in a container other than which it was delivered to him or her by the practitioner; or
(g) To be under the influence of any controlled substance for a purpose other than the treatment of a sickness or injury as prescribed or administered by a practitioner. In a prosecution under this subdivision, it shall not be necessary for the state to prove that the accused was under the influence of any specific controlled substance, but it shall be sufficient for a conviction under this subdivision for the state to prove that the accused was under the influence of some controlled substance by proving that the accused did manifest physical and physiological symptoms or reactions caused by the use of any controlled substance.
(2) Any person who violates this section shall be guilty of a Class III misdemeanor.
Source: Laws 1977, LB 38, § 77; Laws 1978, LB 920, § 1; Laws 1988, LB 273, § 7; Laws 2001, LB 113, § 11; Laws 2001, LB 398, § 15.

28-418. Intentional violations; penalty.
(1) It shall be unlawful for any person knowingly or intentionally:
(a) Who is a registrant to distribute a controlled substance classified in Schedule I or II of section 28-405 in the course of his or her legitimate business except in compliance with section 28-413;
(b) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;
(c) To acquire or obtain or to attempt to acquire or obtain possession of a controlled substance by theft, misrepresentation, fraud, forgery, deception, or subterfuge;
(d) To furnish false or fraudulent material information in or omit any material information from any application, report, or other document required to be kept or filed under the Uniform Controlled Substances Act or any record required to be kept by the act;
(e) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of

any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;
(f) Who is subject to sections 28-406 to 28-414.05 to distribute or dispense a controlled substance in violation of sections 28-414 to 28-414.05;
(g) Who is a registrant to manufacture a controlled substance not authorized by his or her registration or to distribute or dispense a controlled substance not authorized by his or her registration to another registrant or authorized person;
(h) To possess a false or forged medical order for a controlled substance issued by a practitioner authorized to prescribe, except that this subdivision shall not apply to law enforcement officials, practitioners, or attorneys in the performance of their official lawful duties; or
(i) To communicate information to a practitioner in an effort to unlawfully procure a controlled substance, the administration of a controlled substance, or a medical order for a controlled substance issued by a practitioner authorized to prescribe.
(2) Any person who violates this section shall be guilty of a Class IV felony.
Source: Laws 1977, LB 38, § 78; Laws 1988, LB 273, § 8; Laws 2001, LB 113, § 12; Laws 2001, LB 398, § 16; Laws 2014, LB811, § 15.

28-419. Inhaling or drinking certain intoxicating substances; unlawful.
No person shall breathe, inhale, or drink any compound, liquid, or chemical containing acetate, acetone, benzene, butyl alcohol, cyclohexanone, ethyl acetate, ethyl alcohol, ethylene dichloride, ethylene trichloride, hexane, isopropanol, isopropyl alcohol, methyl alcohol, methyl cellosolve acetate, methyl ethyl ketone, methyl isobutyl ketone, pentachlorophenol, petroleum ether, toluene, toluol, trichloroathane, trichloroethylene, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, inebriation, excitement, or irrational behavior, or in any manner changing, distorting, or disturbing the auditory, visual, mental, or nervous processes. For the purposes of sections 28-419 to 28-424, any such condition so induced shall be deemed an intoxicated condition.
Source: Laws 1977, LB 38, § 79; Laws 2007, LB424, § 1.

28-420. Selling or offering for sale certain compounds; use; knowledge of seller; unlawful.
No person shall knowingly sell or offer for sale, deliver or give to any person any compound, liquid or chemical or any other substance which will induce an intoxicated condition as defined in section 28-419, when the seller, offerer or deliverer knows or has reason to know that such compound is intended for use to induce such condition.
Source: Laws 1977, LB 38, § 80.

28-421. Act, exceptions.
The provisions of sections 28-419 to 28-424 shall not apply to the use or sale of such substances, as defined in sections 28-419 and 28-420, when such use or sale is administered or prescribed for medical or dental purposes, nor shall the provisions of sections 28-419 to 28-424 apply to the use or sale of alcoholic liquors as defined by section 53-103.02.
Source: Laws 1977, LB 38, § 81; Laws 2010, LB861, § 5.

28-422. Selling or offering for sale certain compounds; register; maintain for one year.
Every person selling or offering for sale at retail any of the substances as defined in section 28-419, shall maintain a register in which are recorded the date of each sale, the quantity sold, and the name and address of the purchaser. The record of each sale shall be available for inspection by any peace officer for at least one year.
Source: Laws 1977, LB 38, § 82.

28-423. Inducing or enticing; violation.
No person shall induce or entice any person to violate the provisions of section 28-419, 28-420, or 28-422.
Source: Laws 1977, LB 38, § 83.

28-424. Violations; penalty.
Any person who violates any provision of section 28-419, 28-420, 28-422, or 28-423 shall be guilty of a Class III misdemeanor.
Source: Laws 1977, LB 38, § 84.

28-425. Transferred to section 71-2510.01.

28-426. Repealed. Laws **1978, LB 748, § 61.**

28-427. Additional penalties.
Any penalty imposed for violation of the Uniform Controlled Substances Act shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law. A conviction or acquittal under federal law or the law of another state having a substantially similar law shall be a bar to prosecution in this state for the same act. If any person is convicted for violation of the Uniform Controlled Substances Act, in addition to any penalty imposed by the court, the court may order that such person make restitution to any law enforcement agency for reasonable expenditures made in the purchase of any controlled substances from such person or his or her agent as part of the investigation leading to such conviction.
Source: Laws 1977, LB 38, § 87; Laws 2001, LB 113, § 13.
Annotations

- The plain and ordinary meaning of the words "as part of the investigation leading to such conviction" limits the amount of restitution ordered to the reasonable law enforcement expenses incurred in connection with the purchase of the controlled substance for the sale of which the defendant was convicted. State v. Rios, 237 Neb. 232, 465 N.W.2d 611 (1991).
- An order of restitution under this section can be made at the time of sentencing, but there is no statutory requirement that it be made at that time. State v. Holmes, 221 Neb. 629, 379 N.W.2d 765 (1986).
- Restitution imposed under this section is not a criminal penalty to be imposed as punishment for the crime, but is in the nature of a civil or administrative penalty or sanction. State v. Holmes, 221 Neb. 629, 379 N.W.2d 765 (1986).
- Restitution imposed under this section is not a part of the sentence; therefore, the trial court had jurisdiction to make an order of restitution after sentencing. State v. Holmes, 221 Neb. 629, 379 N.W.2d 765 (1986).
- The heading, or catchline, is supplied in the compilation of the statutes and does not constitute any part of the law. State v. Holmes, 221 Neb. 629, 379 N.W.2d 765 (1986).
- A defendant may be ordered to make restitution for law enforcement expenses incurred during controlled buys that were part of the investigation leading to a conviction arising from a subsequent controlled buy. State v. Thomas, 6 Neb. App. 510, 574 N.W.2d 542 (1998).

28-428. Controlled premises, defined; inspection; procedure.
(1) Administrative inspections of controlled premises are authorized in accordance with the following provisions:
(a) For purposes of the Uniform Controlled Substances Act only, controlled premises shall mean: (i) Places where persons registered or exempted from registration requirements under the act are required to keep records; and (ii) places including factories, warehouses, establishments, and conveyances where persons registered or exempted from registration requirements under the act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance;
(b) When so authorized by an administrative inspection or an officer of the Division of Drug Control or an authorized agent of the department, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, shall have the right to enter controlled premises for the purpose of conducting an administrative inspection;
(c) When so authorized by an administrative inspection warrant, an officer of the Division of Drug Control or an authorized agent of the department shall have the right: (i) To inspect and copy records required by the act to be kept; (ii) to inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers, and labeling found therein, and, except as otherwise provided in subdivision (1)(e)(ii) of this section, all other things therein, including records, files, papers, processes, controls, and facilities, bearing on any violation of the act; and (iii) to inventory any stock of any controlled substance therein and obtain samples of any such substance;
(d) This section shall not be construed to prevent entries and administrative inspections including seizures of property without a warrant: (i) With the consent of the owner, operator, or agent in charge of the controlled premises; (ii) in situations presenting imminent danger to health or safety; (iii) in situations involving inspection of any conveyance when there is reasonable cause to believe that such conveyance contains substances possessed or carried in violation of the act; (iv) in any other exceptional or emergency circumstance when time or opportunity to apply for a warrant is lacking; and (v) in all other situations when a warrant is not constitutionally required; and

(e) Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to (i) financial data; (ii) sales data other than shipment data; or (iii) pricing data.
(2) For the purpose of the execution of administrative inspection warrants, an authorized agent of the department shall be deemed to be a peace officer.
(3) Issuance and execution of administrative inspection warrants for controlled premises shall be in accordance with the provisions of sections 29-830 to 29-835, except that inspection warrants for the purpose of the act shall be issued not only upon a showing that consent to entry for inspection purposes has been refused, but also in all cases when the judge of a court of record has been given reason to believe that consent would be refused if requested.
Source: Laws 1977, LB 38, § 88; Laws 1997, LB 307, § 9.

28-429. Division of Drug Control; established; personnel; powers and duties; Nebraska State Patrol Drug Control and Education Cash Fund; created; use; investment; report; contents.
(1) There is hereby established in the Nebraska State Patrol a Division of Drug Control. The division shall consist of such personnel as may be designated by the Superintendent of Law Enforcement and Public Safety. It shall be the duty of the division to enforce all of the provisions of the Uniform Controlled Substances Act and any other provisions of the law dealing with controlled substances and to conduct drug education activities as directed by the superintendent. The Nebraska State Patrol shall cooperate with federal agencies, the department, other state agencies, elementary and secondary schools, and County Drug Law Enforcement and Education Fund Boards in discharging their responsibilities concerning traffic in controlled substances, in suppressing the abuse of controlled substances, and in conducting drug education activities. To this end the division is authorized to: (a) Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances; (b) coordinate and cooperate in training programs on controlled substance law enforcement and education at the local and state levels; (c) establish a centralized unit which will accept, catalog, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make such information available for federal, state, and local law enforcement purposes on request; (d) cooperate in locating, eradicating, and destroying wild or illicit growth of plant species from which controlled substances may be extracted, and for these purposes a peace officer is hereby authorized to enter onto property upon which there are no buildings or upon which there are only uninhabited buildings without first obtaining a search warrant or consent; (e) develop a priority program so as to focus the bulk of its efforts on the reduction and elimination of the most damaging drugs including narcotic drugs, depressant and stimulant drugs, and hallucinogenic drugs; and (f) develop and conduct drug education activities in cooperation with elementary and secondary schools in Nebraska and with County Drug Law Enforcement and Education Fund Boards.
(2) There is hereby created the Nebraska State Patrol Drug Control and Education Cash Fund which shall be used for the purposes of (a) obtaining evidence for enforcement of any state law relating to the control of drug abuse and (b) drug education activities conducted pursuant to subsection (1) of this section, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska State Patrol Drug Control and Education Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.
(3) For the purpose of establishing and maintaining legislative oversight and accountability, the Appropriations Committee of the Legislature shall formulate record-keeping procedures to be adhered to by the Nebraska State Patrol for all expenditures, disbursements, and transfers of cash from the Nebraska State Patrol Drug Control and Education Cash Fund. Based on these record-keeping procedures, the Nebraska State Patrol shall prepare and electronically deliver to the Clerk of the Legislature at the commencement of each succeeding session a detailed report which shall contain, but not be limited to: (a) Current total in the cash fund; (b) total amount of expenditures; (c) purpose of the expenditures to include: (i) Salaries and any expenses of all agents and informants; (ii) front money for drug purchases; (iii) names of drugs and quantity of purchases; (iv) amount of front money recovered; and (v) drug education activities; (d) total number of informers on payroll; (e) amounts delivered to patrol supervisors for distribution to agents and informants and the method of accounting for such transactions and the results procured through such transactions; and (f) a description of the drug education activities conducted since the date of the previous report. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the superintendent.
(4) The superintendent shall adopt and promulgate rules and regulations to carry out this section.
Source: Laws 1977, LB 38, § 89; Laws 1979, LB 322, § 8; Laws 1991, LB 773, § 1; Laws 1994, LB 1066, § 19; Laws 2001, LB 398, § 17; Laws 2009, First Spec. Sess., LB3, § 13; Laws 2012, LB782, § 31.
Cross References

- **Nebraska Capital Expansion Act,** see section 72-1269.
- **Nebraska State Funds Investment Act,** see section 72-1260.

Annotations

- This section permits law enforcement officers to enter onto property without a search warrant or consent for the purpose of locating and eradicating wild or illicit weeds from which a controlled substance could be extracted. State v. Havlat, 222 Neb. 554, 385 N.W.2d 436 (1986).

28-430. Department; enforce act; powers.

The department shall enforce the Uniform Controlled Substances Act and shall cooperate with federal agencies, the Division of Drug Control, and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it is authorized to: (1) Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances; (2) cooperate with the Drug Enforcement Administration and the Federal Bureau of Investigation; (3) do drug accountability audits of all registered practitioners in accordance with the act; (4) provide laboratory analysis; (5) provide drug abuse education to schools, courts, and persons requesting it; and (6) rely on results, information, and evidence received from the Drug Enforcement Administration and the Federal Bureau of Investigation relating to the regulatory functions of the act, including results of inspections conducted by that agency, which may be acted upon by the department and the Division of Drug Control in the performance of their regulatory functions under the act.

Source: Laws 1977, LB 38, § 90; Laws 1984, LB 403, § 1; Laws 1997, LB 307, § 10.

28-431. Seized without warrant; subject to forfeitures; disposition; manner; when; accepted as evidence; court costs and expenses; report to Auditor of Public Accounts; contents.

(1) The following shall be seized with or without a warrant by an officer of the Division of Drug Control or by any peace officer and the same shall be subject to forfeiture: (a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of the Uniform Controlled Substances Act; (b) all raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, administering, delivering, importing, or exporting any controlled substance in violation of the act; (c) all lookalike substances; (d) all property which is used, or is intended for use, as a container for property described in subdivisions (a) and (b) of this subsection; (e) all drug paraphernalia defined in section 28-439; (f) all books, records, and research, including, but not limited to, formulas, microfilm, tapes, and data, which are used, or intended for use, in violation of the act; (g) all conveyances including, but not limited to, aircraft, vehicles, or vessels which are used, or intended for use, in transporting any controlled substance with intent to manufacture, distribute, deliver, dispense, export, or import such controlled substance in violation of the act; and (h) all money used, or intended to be used, to facilitate a violation of the act.

(2) Any property described in subdivision (1)(g) of this section which is used, or intended for use, to transport any property described in subdivision (1)(a) or (b) of this section is hereby declared to be a common nuisance, and any peace officer having probable cause to believe that such property is so used, or intended for such use, shall make a search thereof with or without a warrant.

(3) All money that a law enforcement agency proves was furnished by such agency shall be returned to the agency. All property seized without a search warrant shall not be subject to a replevin action and: (a) All property described in subdivisions (1)(a) through (1)(f) of this section shall be kept by the property division of the law enforcement agency which employs the officer who seized such property for so long as it is needed as evidence in any trial; and (b) when no longer required as evidence, all property described in subdivision (1)(f) of this section shall be disposed of on order of a court of record of this state in such manner as the court in its sound discretion shall direct, and all property described in subdivisions (1)(a), (b), (c), (d), and (e) of this section, that has been used or is intended to be used in violation of the act, when no longer needed as evidence shall be destroyed by the law enforcement agency holding the same or turned over to the department for custody or destruction, except that a law enforcement agency may keep a small quantity of the property described in subdivisions (1)(a), (b), (c), (d), and (e) of this section for training purposes or use in investigations. Any large quantity of property described in subdivisions (1)(a), (b), (c), (d), and (e) of this section, whether seized under a search warrant or validly seized without a warrant, may be disposed of on order of a court of record of this state in such manner as the court in its sound discretion shall direct. Such an order may be given only after a proper laboratory examination and report of such property has been completed and after a hearing has been held by the court after notice to the defendant of the proposed disposition of the property. The findings in such court order as to the nature, kind, and quantity of the property so disposed of may be accepted as evidence at subsequent court proceedings in lieu of the property ordered destroyed by the court order.

(4) When any property described in subdivision (1)(g) or (h) of this section is seized, the person seizing the same shall cause to be filed, within ten days thereafter, in the district court of the county in which seizure was made,

petition for disposition of such property. The proceedings shall be brought in the name of the state by the county attorney of the county in which such property was seized. The petition shall describe the property, state the name of the owner if known, allege the essential elements of the violation which is claimed to exist, and conclude with a prayer for disposition. The county attorney shall have a copy of the petition served upon the owner of or any person having an interest in the property, if known, in person or by registered or certified mail at his or her last-known address. If the owner is unknown or there is a reasonable probability that there are unknown persons with interests in the property, the county attorney shall provide notice of the seizure and petition for disposition by publication once a week for four consecutive weeks in a newspaper of general circulation in the county of the seizure. At least five days shall elapse between each publication of notice.

(5) At any time after seizure and prior to court disposition, the owner of record of such property may petition the district court of the county in which seizure was made to release such property, and the court shall order the release of the property upon a showing by the owner that he or she had no actual knowledge that such property was being used in violation of the Uniform Controlled Substances Act.

(6) Any person having an interest in the property proceeded against or any person against whom civil or criminal liability would exist if such property is in violation of the act may, within thirty days after seizure, appear and file an answer or demurrer to the petition. The answer or demurrer shall allege the claimant's interest in or liability involving such property. At least thirty but not more than ninety days after seizure, there shall be a hearing before the court. If the claimant proves by a preponderance of the evidence that he or she (a) has not used or intended to use the property to facilitate an offense in violation of the act, (b) has an interest in such property as owner or lienor or otherwise, acquired by him or her in good faith, and (c) at no time had any actual knowledge that such property was being or would be used in, or to facilitate, the violation of the act, the court shall order that such property or the value of the claimant's interest in such property be returned to the claimant. If there are no claims, if all claims are denied, or if the value of the property exceeds all claims granted and it is shown by clear and convincing evidence that such property was used in violation of the act, the court shall order disposition of such property at such time as the property is no longer required as evidence in any criminal proceeding. The court may order that property described in subdivision (1)(g) of this section be sold or put to official use by the confiscating agency for a period of not more than one year and that when such property is no longer necessary for official use or at the end of two years, whichever comes first, such property shall be sold. Proceeds from the sale of the property and any money described in subdivision (1)(h) of this section shall be distributed pursuant to section 28-1439.02. Official use shall mean use directly in connection with enforcement of the act.

(7) Any court costs and fees and storage and other proper expenses shall be charged against any person intervening as claimant or owner of the property unless such person shall establish his or her claim. If a sale is ordered, the officer holding the sale shall make a return to the court showing to whom the property was sold and for what price. This return together with the court order shall authorize the county clerk to issue a title to the purchaser of the property if such title is required under the laws of this state.

(8)(a) For all money, securities, negotiable instruments, firearms, conveyances, or real estate seized pursuant to this section, the Division of Drug Control, any peace officer, or, as provided in subdivision (d) of this subsection, the prosecuting attorney shall provide a written report of the seizure to the Auditor of Public Accounts. The report shall include:

(i) The date of the seizure;

(ii) The type of property seized, such as a vehicle or currency;

(iii) A description of the property seized, including, if applicable, the make, model, year, and serial number of the property seized;

(iv) The street name and traffic direction where the seizure occurred, such as eastbound, westbound, southbound, or northbound;

(v) The crime for which the suspect was charged;

(vi) The disposition of the property seized through the forfeiture process, such as the property was returned to the suspect, returned to a third-party owner, sold, destroyed, or retained by law enforcement;

(vii) The basis for disposition of the seized property, such as the suspect was found not guilty, agreement for disposition, criminal forfeiture, or civil forfeiture;

(viii) The value of the property forfeited;

(ix) If the seizure resulted from a motor vehicle stop, (A) whether a warning or citation was issued, an arrest was made, or a search was conducted and (B) the characteristics of the race or ethnicity of the suspect. The identification of such characteristics shall be based on the observation and perception of the law enforcement officer responsible for reporting the motor vehicle stop. The information shall not be required to be provided by the suspect; and

(x) Any additional information the Division of Drug Control or peace officer deems appropriate.

(b) Reports shall be made on an annual basis in a manner prescribed by the Auditor of Public Accounts. The Auditor of Public Accounts shall submit a report to the Legislature on the nature and extent of such seizures on an annual basis. Such report shall be submitted electronically.
(c) For seizures resulting from the activities of multijurisdictional law enforcement entities, a law enforcement entity other than a Nebraska law enforcement entity shall, on its own initiative, report the information required by this subsection.
(d) The prosecuting attorney is not required to report information required by this subsection unless he or she has been notified by the Auditor of Public Accounts that the Division of Drug Control or any peace officer has not reported the information required by this subsection.
Source: Laws 1977, LB 38, § 91; Laws 1980, LB 991, § 7; Laws 1985, LB 247, § 1; Laws 1997, LB 307, § 11; Laws 2016, LB1009, § 5; Laws 2016, LB1106, § 6.
Annotations
1. Double jeopardy
2. Miscellaneous

1. Double jeopardy

- Forfeiture actions pursuant to this section are criminal in character and double jeopardy principles apply. State v. Spotts, 257 Neb. 44, 595 N.W.2d 259 (1999).
- Forfeiture proceedings brought pursuant to this section are not in rem proceedings, but are criminal proceedings entitled to double jeopardy protection. State v. Franco, 257 Neb. 15, 594 N.W.2d 633 (1999).
- This section is criminal in character; therefore, double jeopardy principles apply. State v. One 1987 Toyota Pickup, 233 Neb. 670, 447 N.W.2d 243 (1989).

2. Miscellaneous

- Subsection (4) of this section sets forth two avenues by which a purported owner or claimant may prevent forfeiture and recover his or her property. First, the forfeiture statute allows the owner of record of such property, at any time after seizure and prior to court disposition, to petition the district court of the county in which seizure was made to release such property. Second, subsection (4) provides that any person having an interest in the property proceeded against or any person against whom civil or criminal liability would exist if such property is in violation of the Uniform Controlled Substances Act may, within 30 days after seizure, appear and file an answer or demurrer to the petition. Obad v. State, 277 Neb. 866, 766 N.W.2d 89 (2009).
- The alleged owner of cash cannot be an owner of record under subsection (4) of this section. Obad v. State, 277 Neb. 866, 766 N.W.2d 89 (2009).
- Pursuant to subsection (4) of this section, the time limitations of this section are directory rather than mandatory, and the State's failure to strictly conform to them is not fatal to a forfeiture action. State v. $1,947 in U.S. Currency, 255 Neb. 290, 583 N.W.2d 611 (1998).
- Appellate review concerning the sufficiency of the evidence to forfeit a motor vehicle to the State under this section should not be treated differently than review of the sufficiency of evidence in a criminal case. State v. One 1985 Mercedes 190D Automobile, 247 Neb. 335, 526 N.W.2d 657 (1995).
- Subsection (4) of this section requires the State to prove beyond a reasonable doubt that seized property was used in violation of Chapter 28, article 4. State v. 1987 Jeep Wagoneer, 241 Neb. 397, 488 N.W.2d 546 (1992).
- Failure to claim some legal or equitable interest in the money seized pursuant to a search warrant is fatal to some real interest in the subject matter in controversy. State v. $15,518 in U.S. Currency, 239 Neb. 100, 474 N.W.2d 659 (1991).
- Forfeitures of property under this section are considered punitive and criminal in nature because property forfeited under this section is not contraband per se, but rather ordinary, legal items used to facilitate illegal drug transactions. Appellate review of the sufficiency of the evidence to support a forfeiture of a motor vehicle under this section is to be treated the same as the review of the sufficiency of the evidence in the appeal of a criminal case. State v. $3,067.65 in U.S. Currency, 4 Neb. App. 443, 545 N.W.2d 129 (1996).

- The State's ability to appeal a forfeiture action which is criminal and punitive is limited to the terms of sections 29-2315.01 to 29-2316. State v. One 1986 Toyota 4-Runner, 1 Neb. App. 1138, 510 N.W.2d 556 (1993).
- Provision for civil forfeiture of drug paraphernalia is constitutional. Provision authorizing civil forfeiture of drug paraphernalia with strict time limit for filing of complaint for condemnation by law enforcement personnel when "conveyances" are seized allows forfeiture provision to satisfy procedural due process, and procedural due process is not violated by provisions for seizure of drug paraphernalia without opportunity for prior hearing. Casbah, Inc. v. Thone, 651 F.2d 551 (8th Cir. 1981).

28-432. Complaint, pleading, or proceeding; burden of proof.
(1) It shall not be necessary for the state to negate any exemption or exception set forth in the Uniform Controlled Substances Act in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under the provisions of the act, and the burden of proof of any such exemption or exception shall be upon the person claiming its benefit.
(2) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under the Uniform Controlled Substances Act, the person shall be presumed not to be the holder of such registration or form, and the burden of proof shall be upon him or her to rebut such presumption.
Source: Laws 1977, LB 38, § 92; Laws 2001, LB 113, § 14.
Annotations
- A party claiming that the sale of a controlled substance was exempt has the burden of proof that an exemption was applicable. State v. Taylor, 221 Neb. 114, 375 N.W.2d 610 (1985).

28-433. Appeal; procedure.
All final determinations, findings, and conclusions of the department under the Uniform Controlled Substances Act shall be final and conclusive decisions of the matters involved, except that any person aggrieved by such decision may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.
Source: Laws 1977, LB 38, § 93; Laws 1988, LB 352, § 27; Laws 2001, LB 113, § 15.
Cross References
- **Administrative Procedure Act,** see section 84-920.

28-434. Education and research.
(1) The department and the Division of Drug Control shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with such programs they may: (a) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations; (b) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances; (c) consult with interested groups and organizations to aid them in solving administrative and organizational problems; (d) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances; (e) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and (f) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.
(2) The department may encourage research on misuse and abuse of controlled substances. In connection with such research and in furtherance of the enforcement of the Uniform Controlled Substances Act, it may: (a) Establish methods to assess accurately the effects of controlled substances and to identify and characterize controlled substances with potential for abuse; (b) make studies and undertake programs of research to (i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of the act, (ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof, and (iii) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and (c) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.
(3) The department may enter into contracts for educational and research activities without performance bonds.
(4) The department shall cooperate with the Division of Drug Control providing technical advice and information, including all evidence of violations of the act disclosed by drug accountability inspections. The criminalistics laboratory of the Nebraska State Patrol shall provide laboratory analysis for the Division of Drug Control and other peace officers of this state when requested for the effective administration and enforcement of the act.

(5) The department may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of persons who are subjects of such research. Persons who obtain such authorization may not be compelled in any state, civil, criminal, administrative, legislative, or other proceeding to identify the subjects of research for which such authorization was obtained.
(6) The department may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization shall be exempt from state prosecution for possession and distribution of controlled substances to the extent authorized by the department.
Source: Laws 1977, LB 38, § 94; Laws 1984, LB 403, § 2; Laws 1997, LB 307, § 12.

28-435. Licensee; reporting and investigation duties.
Every licensee subject to the Uniform Controlled Substances Act shall be subject to and comply with sections 38-1,124 to 38-1,126 relating to reporting and investigations.
Source: Laws 2007, LB463, § 1123.

28-435.01. Health care facility; peer review organization or professional association; report required; contents; confidentiality; immunity; failure to report; civil penalty; disposition.
(1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association relating to a profession regulated under the Uniform Controlled Substances Act shall report to the department, on a form and in the manner specified by the department, any facts known to the facility, organization, or association, including, but not limited to, the identity of the credential holder and consumer, when the facility, organization, or association:
(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, including settlements made prior to suit, arising out of the acts or omissions of the licensee; or
(b) Takes action adversely affecting the privileges or membership of a licensee in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.
The report shall be made within thirty days after the date of the action or event.
(2) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Nothing in this subsection shall be construed to require production of records protected by the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.
(3) Any health care facility, peer review organization, or professional association that fails or neglects to make a report or provide information as required under this section is subject to a civil penalty of five hundred dollars for the first offense and a civil penalty of up to one thousand dollars for a subsequent offense. Any civil penalty collected under this subsection shall be remitted to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.
(4) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as the act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department.
Source: Laws 2007, LB463, § 1124; Laws 2011, LB431, § 11.
Cross References
- **Health Care Facility Licensure Act,** see section 71-401.
- **Health Care Quality Improvement Act,** see section 71-7904.
- **Nebraska Hospital-Medical Liability Act,** see section 44-2855.
- **Patient Safety Improvement Act,** see section 71-8701.

28-435.02. Insurer; duty to report violations.
(1) Unless such knowledge or information is based on confidential medical records protected by the confidentiality provisions of the federal Public Health Services Act, 42 U.S.C. 290dd-2, and federal administrative rules and regulations, as such act and rules and regulations existed on January 1, 2007:
(a) Any insurer having knowledge of any violation of any provision of the Uniform Controlled Substances Act governing the profession of the person being reported whether or not such person is licensed shall report the facts of such violation as known to such insurer to the department; and
(b) All insurers shall cooperate with the department and provide such information as requested by the department concerning any possible violations by any person required to be licensed whether or not such person is licensed.

(2) Such reporting shall be done on a form and in the manner specified pursuant to sections 38-1,130 and 38-1,131. Such reports shall be subject to sections 38-1,132 to 38-1,136.
Source: Laws 2007, LB463, § 1125.

28-435.03. Clerk of county or district court; report convictions and judgments; Attorney General or city or county prosecutor; provide information.
The clerk of any county or district court in this state shall report to the department the conviction of any person licensed by the department under the Uniform Controlled Substances Act of any felony or of any misdemeanor involving the use, sale, distribution, administration, or dispensing of a controlled substance, alcohol or chemical impairment, or substance abuse and shall also report a judgment against any such licensee arising out of a claim of professional liability. The Attorney General or city or county prosecutor prosecuting any such criminal action and plaintiff in any such civil action shall provide the court with information concerning the license of the defendant or party. Notice to the department shall be filed within thirty days after the date of conviction or judgment in a manner agreed to by the Director of Public Health of the Division of Public Health and the State Court Administrator.
Source: Laws 2007, LB463, § 1126.

28-436. Repealed. Laws **1993, LB 627, § 26.**

28-437. Uniformity of interpretation.
The Uniform Controlled Substances Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of the act among those states which enact it.
Source: Laws 1977, LB 38, § 97; Laws 2001, LB 113, § 16.

28-438. Transferred to section 28-401.01.

28-439. Drug paraphernalia, defined; enumerated.
As used in sections 28-101, 28-431, and 28-439 to 28-444, unless the context otherwise requires, drug paraphernalia shall mean all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of sections 28-101, 28-431, and 28-439 to 28-444 or the Uniform Controlled Substances Act. It shall include, but not be limited to, the following:
(1) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;
(2) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
(3) Hypodermic syringes, needles, and other objects used, intended for use, and designed for use in parenterally injecting controlled substances into the human body; and
(4) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, which shall include but not be limited to the following:
(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
(b) Water pipes;
(c) Carburetion tubes and devices;
(d) Smoking and carburetion masks;
(e) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, which has become too small or too short to be held in the hand;
(f) Miniature cocaine spoons, and cocaine vials;
(g) Chamber pipes;
(h) Carburetor pipes;
(i) Electric pipes;
(j) Air-driven pipes;
(k) Chillums;
(l) Bongs; and
(m) Ice pipes or chillers.
Source: Laws 1980, LB 991, § 1.
Annotations

- Neither Fourth Amendment rights nor privacy rights are implicated in "drug paraphernalia" statutes, and thus, strict scrutiny standard of review is inapplicable to constitutional challenge. Casbah, Inc. v. Thone, 651 F.2d 551 (8th Cir. 1981).
- Use of term "designed" does not refer to physical attributes of object but to intent of person charged with violation, and thus does not render statute unconstitutionally vague. List of items exemplary of drug paraphernalia is not vague and overbroad on ground that it includes numerous innocent items, where no item is drug paraphernalia absent requisite intent to use it with controlled substances. Casbah, Inc. v. Thone, 651 F.2d 551 (8th Cir. 1981).

28-440. Drug paraphernalia; determination; factors considered.
In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:
(1) Statements by an owner or by anyone in control of the object concerning its use;
(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
(3) The proximity of the object, in time and space, to a direct violation of this act;
(4) The proximity of the object to any controlled substance;
(5) The existence of any residue of a controlled substance on the object;
(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to any person whom he or she knows, or should reasonably know, intends to use the object to facilitate a violation of sections 28-101, 28-431, and 28-439 to 28-444. The innocence of an owner, or of anyone in control of the object, as to a direct violation of sections 28-101, 28-431, and 28-439 to 28-444 shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
(7) Instructions, oral or written, provided with the object concerning its use;
(8) Descriptive materials accompanying the object which explain or depict its use;
(9) National and local advertising concerning its use;
(10) The manner in which the object is displayed for sale;
(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
(12) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
(13) The existence and scope of any legitimate use for the object in the community; and
(14) Expert testimony concerning its use.
Source: Laws 1980, LB 991, § 2.
Annotations

- The factors listed in this section are used to determine if the objects are actually drug paraphernalia, not whether officer had probable cause to believe they were drug paraphernalia. The list in this section is illustrative, not exclusive. State v. Sassen, 240 Neb. 773, 484 N.W.2d 469 (1992).
- List of items exemplary of drug paraphernalia is not unconstitutional on ground that several factors would permit conviction based on transferred intent and guilt by association where, although actions of third parties are relevant in determining paraphernalia, evidence regarding third-party actions is but one step in prosecutorial scheme, and if third-party actions tend to indicate the item is drug paraphernalia, focus of inquiry must necessarily shift to intent of individual involved. Casbah, Inc. v. Thone, 651 F.2d 551 (8th Cir. 1981).
- Reference to "other authority" is not unconstitutionally vague since "other authority" certainly refers to law enforcement personnel, and fact that statute attempts to guide such personnel in their enforcement duties lessens, rather than increases, danger of arbitrary enforcement. Casbah, Inc. v. Thone, 651 F.2d 551 (8th Cir. 1981).

28-441. Drug paraphernalia; use or possession; unlawful; penalty.
(1) It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to manufacture, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of sections 28-101, 28-431, and 28-439 to 28-444.
(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 28-472 applies.
Source: Laws 1980, LB 991, § 3; Laws 2017, LB487, § 7.
Annotations

- Evidence that defendant invited police to her motel room and let them in, wherein police found two syringes, cigarette papers, and a small plastic spoon in close proximity to cocaine and marijuana, was sufficient to sustain convictions for possession of drug paraphernalia. State v. Garza, 239 Neb. 98, 474 N.W.2d 246 (1991).
- Possession of drug paraphernalia is an infraction. State v. Petersen, 12 Neb. App. 445, 676 N.W.2d 65 (2004).
- Where statute includes requirement of intent in definition of drug paraphernalia and enumerates factors which officer has to consider in determining whether object is drug paraphernalia, statute does not alter requirement that searches and seizures be based on probable cause and is thus not violative of Fourth Amendment. Casbah, Inc. v. Thone, 651 F.2d 551 (8th Cir. 1981).

28-442. Drug paraphernalia; deliver or manufacture; unlawful; exception; penalty.
(1) It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale or otherwise be used to introduce into the human body a controlled substance in violation of sections 28-101, 28-431, and 28-439 to 28-444.
(2) This section shall not apply to pharmacists, pharmacist interns, pharmacy technicians, and pharmacy clerks who sell hypodermic syringes or needles for the prevention of the spread of infectious diseases.
(3) Any person who violates this section shall be guilty of a Class II misdemeanor.
Source: Laws 1980, LB 991, § 4; Laws 2001, LB 398, § 18; Laws 2017, LB166, § 6.
Annotations

- Sections of drug paraphernalia statute making it unlawful to deliver, possess with intent to deliver, manufacture with intent to deliver, or advertise drug paraphernalia in circumstances where one knows or "reasonably should know" that items will be used with drugs or that purpose of advertisement is to promote sale of drug paraphernalia are not unconstitutional on ground that they would permit conviction under impermissibly vague negligence standard and would leave innocent sellers in untenable posture of trying to divine intentions of their buyers where, under sections, seller has to already have intended that item be sold for drug use before his knowledge of its use by a buyer came into play. Casbah, Inc. v. Thone, 651 F.2d 551 (8th Cir. 1981).
- Where statute includes requirement of intent in definition of drug paraphernalia and enumerates factors which officer has to consider in determining whether object is drug paraphernalia, statute does not alter requirement that searches and seizures be based on probable cause and is thus not violative of Fourth Amendment. Casbah, Inc. v. Thone, 651 F.2d 551 (8th Cir. 1981).

28-443. Delivery of drug paraphernalia to a minor; penalty.
Any person eighteen years of age or older who violates section 28-442 by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his or her junior shall be guilty of a Class I misdemeanor.
Source: Laws 1980, LB 991, § 5.

28-444. Advertisement of drug paraphernalia; unlawful; penalty.
(1) It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.
(2) Any person who violates this section shall be guilty of a Class III misdemeanor.
Source: Laws 1980, LB 991, § 6.
Annotations

- Sections of drug paraphernalia statute making it unlawful to deliver, possess with intent to deliver, manufacture with intent to deliver, or advertise drug paraphernalia in circumstances where one knows or "reasonably should know" that items will be used with drugs or that purpose of advertisement is to promote sale of drug paraphernalia are not unconstitutional on ground that they would permit conviction under impermissibly vague negligence standard and would leave innocent sellers in untenable posture of trying to divine intentions of their buyers where, under sections, seller has to already have intended that item be sold for drug use before his knowledge of its use by a buyer came into play. Casbah, Inc. v. Thone, 651 F.2d 551 (8th Cir. 1981).

- The prohibition of advertising that promotes, in whole or in part, sale of objects designed or intended for use as drug paraphernalia regulates commercial speech in its narrowest sense, i.e., speech which proposes a commercial transaction and which is entitled to lesser protection than other constitutionally guaranteed expression where statute facially does not reach speech which merely glorifies drug culture without direct invitation to purchase specific items. Advertising promoting sale of drug paraphernalia encourages activities which are otherwise crimes under Nebraska law and is thus analogous to advertisements promoting sale of narcotics or soliciting prostitution and can constitutionally be prohibited. Although this statute prohibits advertisements that "only in part" have purpose of promoting sale of drug paraphernalia, court of appeals is obliged to presume legislative intent to act within constitutional bounds, and thus, under statute, where drug paraphernalia is advertised along with innocent items, statute forbids only that part of the advertisement relating to drug paraphernalia and remainder of advertisement is not condemned. Casbah, Inc. v. Thone, 651 F.2d 551 (8th Cir. 1981).

28-445. Imitation controlled substance; prohibited acts; determination; penalties; seizure.
(1) Any person who knowingly and intentionally manufactures, distributes, delivers, or possesses with intent to distribute or deliver an imitation controlled substance shall;
(a) For the first offense, be guilty of a Class III misdemeanor; and
(b) For the second and all subsequent offenses, be guilty of a Class II misdemeanor.
(2) In determining whether a substance is an imitation controlled substance the court or other authority concerned shall consider all relevant factors, including, but not limited to, the following:
(a) Whether the substance is represented as having an effect similar to or the same as an illicit controlled substance;
(b) Whether the substance is represented by way of terminology which is deceptively similar to or the same as that describing a particular controlled substance;
(c) Whether the dosage unit price substantially exceeds the reasonable price of a similar dosage unit of like chemical composition sold over the counter;
(d) Whether the substance was approved by the federal Food and Drug Administration for over-the-counter sales and contained the packaging and labeling information approved by the federal Food and Drug Administration;
(e) Whether the substance is packaged in a manner and quantity similar to or the same as that commonly used for illicit controlled substances;
(f) Whether the dosage unit appearance of the substance is deceptively similar to that of a particular controlled substance;
(g) Whether the substance is distributed to persons who represent it as a controlled substance or controlled substance analogue, under circumstances which indicate the distributor knows, intends, or should know that his or her distributee is making or will make such representations; and
(h) Whether the person in possession or control of the substance utilized deception, fraud, or evasive tactics or actions to prevent the seizure, discovery, or detection of the substance by law enforcement.
(3) Any substance possessed, distributed, or delivered in violation of this section shall be subject to seizure and forfeiture as provided in section 28-431.
Source: Laws 1985, LB 406, § 5; Laws 2014, LB811, § 16.

28-446. Repealed. Laws **1992, LB 1019, § 130.**

28-447. Repealed. Laws **1992, LB 1019, § 130.**

28-448. Repealed. Laws **2009, LB 151, § 5.**

28-449. Crystalline iodine; sale; requirements.
Any person who sells crystalline iodine to another person shall require photo identification of the purchaser and shall maintain a written record for a period of five years after the sale, including the date of the sale, the name, address, and date of birth of the purchaser, and the quantity purchased.
Source: Laws 2001, LB 113, § 2.

28-450. Ephedrine, pseudoephedrine, or phenylpropanolamine; immediate precursor; prohibited acts; violation; penalty.
No person shall sell, distribute, or otherwise transfer any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the person knows that the transferee will use the drug product as an immediate precursor to any controlled substance. No person shall unlawfully sell,

distribute, or otherwise transfer such a product with reckless disregard as to how the drug product will be used. Any person who violates this section is guilty of a Class III misdemeanor.
Source: Laws 2001, LB 113, § 3; Laws 2005, LB 117, § 4.

28-451. Anhydrous ammonia; possession; penalty.
No person shall possess anhydrous ammonia with the intent to manufacture methamphetamine. Any person who violates this section is guilty of a Class IV felony.
Source: Laws 2001, LB 113, § 4.

28-452. Ephedrine, pseudoephedrine, or phenylpropanolamine; possession; penalty.
No person shall possess ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to manufacture methamphetamine. Any person who violates this section is guilty of a Class IV felony.
Source: Laws 2001, LB 113, § 5.

28-453. Methamphetamine; retailer education program.
The Nebraska State Patrol may develop and maintain a program to inform retailers about illicit methamphetamine production, distribution, and use in Nebraska and devise procedures and forms for retailers to use in reporting to the patrol suspicious purchases, thefts, or other transactions involving any products under the retailers' control which contain ephedrine, pseudoephedrine, phenylpropanolamine, or ephedra. Reporting under this section shall be voluntary. Retailers reporting information to the patrol in good faith shall be immune from civil liability.
Source: Laws 2001, LB 113, § 6.

28-454. Repealed. Laws **2009, LB 151, § 5.**

28-455. Methamphetamine Awareness and Education Fund; created; use; investment.
The Methamphetamine Awareness and Education Fund is created. The Nebraska Commission on Law Enforcement and Criminal Justice shall use the fund to support projects relating to educating retailers and the public on the dangers of methamphetamine. The commission may accept contributions, gifts, grants, and bequests for such purposes and remit them to the State Treasurer for credit to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.
Source: Laws 2001, LB 113, § 8.
Cross References
- **Nebraska Capital Expansion Act,** see section 72-1269.
- **Nebraska State Funds Investment Act,** see section 72-1260.

28-456. Phenylpropanolamine or pseudoephedrine; sold without a prescription; requirements; enforcement.
(1) Any drug products containing phenylpropanolamine, pseudoephedrine, or their salts, optical isomers, or salts of such optical isomers may be sold without a prescription only if they are:
(a) Labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph;
(b) Manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse;
(c) Packaged as follows:
(i) Except for liquids, sold in package sizes of not more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base, in blister packs, each blister containing not more than two dosage units, or if the use of blister packs is technically infeasible, in unit dose packets or pouches; and
(ii) For liquids, sold in package sizes of not more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base;
(d) Sold by a person, eighteen years of age or older, in the course of his or her employment to a customer, eighteen years of age or older, with the following restrictions:
(i) No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base during a twenty-four-hour period;
(ii) No customer shall purchase, receive, or otherwise acquire more than nine grams of pseudoephedrine base or nine grams of phenylpropanolamine base during a thirty-day period; and
(iii) The customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; and

(e) Stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product.
(2) Any person who sells drug products in violation of this section may be subject to a civil penalty of fifty dollars per day, and for a second or any subsequent violation, the penalty may be one hundred dollars per day. Any such drug products shall be seized and destroyed upon the finding of a violation of this section. The department, in conjunction with the Attorney General, the Nebraska State Patrol, and local law enforcement agencies, shall have authority to make inspections and investigations to enforce this section. In addition, the department may seek injunctive relief for suspected violations of this section.
Source: Laws 2001, LB 113, § 9; Laws 2005, LB 117, § 5; Laws 2007, LB218, § 1; Laws 2007, LB296, § 36; Laws 2009, LB151, § 2.

28-456.01. Pseudoephedrine or phenylpropanolamine; limitation on acquisition; violation; penalty.
(1) No person shall purchase, receive, or otherwise acquire, other than wholesale acquisition by a retail business in the normal course of its trade or business, any drug product containing more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base during a twenty-four-hour period unless purchased pursuant to a medical order. Any person who violates this section shall be guilty of a Class IV misdemeanor for the first offense and a Class III misdemeanor for each subsequent offense.
(2) No person shall purchase, receive, or otherwise acquire, other than wholesale acquisition by a retail business in the normal course of its trade or business, any drug product containing more than nine grams of pseudoephedrine base or nine grams of phenylpropanolamine base during a thirty-day period unless purchased pursuant to a medical order. Any person who violates this section shall be guilty of a Class IV misdemeanor for the first offense and a Class III misdemeanor for each subsequent offense.
Source: Laws 2005, LB 117, § 6; Laws 2009, LB151, § 3; Laws 2011, LB20, § 8.

28-458. Methamphetamine precursor; terms, defined.
For purposes of sections 28-458 to 28-462:
(1) Exchange means the National Precursor Log Exchange administered by the National Association of Drug Diversion Investigators;
(2) Methamphetamine precursor means any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine that is required to be documented pursuant to the logbook requirements of 21 U.S.C. 830;
(3) Seller means any person who lawfully sells a methamphetamine precursor pursuant to subdivision (1)(d) of section 28-456 or his or her employer; and
(4) Stop-sale alert means a notification sent to a seller indicating that the completion of a methamphetamine precursor sale would result in a violation of subdivision (1)(d)(i) or (ii) of section 28-456.
Source: Laws 2011, LB20, § 3.

28-459. Methamphetamine precursor; seller; duties; waiver authorized.
(1) Beginning January 1, 2012, each seller shall, before completing a sale of a methamphetamine precursor, electronically submit required information to the exchange, if the exchange is available to sellers. Required information shall include, but not be limited to:
(a) The name, age, and address of the person purchasing, receiving, or otherwise acquiring the methamphetamine precursor;
(b) The name of the product and quantity of product purchased;
(c) The date and time of the purchase;
(d) The name or initials of the seller who sold the product; and
(e) The type of identification presented by the customer, the governmental entity that issued the identification, and the number on the identification.
(2) If a seller experiences mechanical or electronic failure of the electronic logging equipment on the sales end of the transaction or a failure of the exchange and is unable to comply with subsection (1) of this section, the seller shall maintain a written log or an alternative electronic recordkeeping mechanism or may refrain from selling any methamphetamine precursor until such time as the seller is able to comply with subsection (1) of this section.
(3) The Attorney General may grant a waiver exempting a seller from compliance with subsection (1) of this section upon a showing of good cause by the seller that he or she is otherwise unable to submit log information by electronic means, including, but not limited to, any financial, technological, or other reason which would place an undue burden on the seller, as established by the Attorney General.
(4) Whenever the exchange generates a stop-sale alert, the seller shall not complete the sale unless the seller has a reasonable fear of imminent bodily harm if he or she does not complete the sale. The exchange shall contain an override function to the stop-sale alert for the seller to use in a situation in which a reasonable fear of imminent bodily harm is present.

(5) This section does not apply if a lawful prescription for the methamphetamine precursor is presented to a pharmacist licensed under the Uniform Credentialing Act.
Source: Laws 2011, LB20, § 4.
Cross References

- **Uniform Credentialing Act,** see section 38-101.

28-460. Methamphetamine precursor; access to exchange to law enforcement.
As a condition of use in Nebraska, the National Association of Drug Diversion Investigators shall provide real-time access to the exchange through its online portal to law enforcement in this state as authorized by the Attorney General and no fee or charge shall be imposed on a seller for the use of the exchange.
Source: Laws 2011, LB20, § 5.

28-461. Methamphetamine precursor; seller; immunity.
A seller utilizing in good faith sections 28-458 to 28-462 shall be immune from any civil cause of action based upon an act or omission in carrying out such sections.
Source: Laws 2011, LB20, § 6.

28-462. Methamphetamine precursor; prohibited acts; penalty.
Beginning January 1, 2013, a seller that knowingly fails to submit methamphetamine precursor information to the exchange as required by sections 28-458 to 28-462 or knowingly submits incorrect information to the exchange shall be guilty of a Class IV misdemeanor.
Source: Laws 2011, LB20, § 7.

28-463. Cannabidiol; terms, defined; legislative findings.
(1) For purposes of sections 28-463 to 28-468:
(a) Cannabidiol means processed cannabis plant extract, oil, or resin that contains more than ten percent cannabidiol by weight, but not more than three-tenths of one percent tetrahydrocannabinols by weight, and delivered in the form of a liquid or solid dosage form; and
(b) Intractable seizures means intractable, catastrophic genetic, or metabolic epilepsies; Lennox-Gastaut Syndrome; epilepsies consisting of drop seizures at risk for significant bodily injury; or cluster seizures that result in significant life-threatening apnea after the trial and failure of at least three antiepileptic therapies that directly address the epilepsy in question.
(2) The Legislature finds:
(a) There are individuals in Nebraska who suffer from intractable seizures and treatment resistant seizures for which currently available treatment options have been ineffective. Cannabidiol shows promise in treating individuals with intractable seizures and treatment resistant seizures; and
(b) Additional study of cannabidiol for the treatment of intractable seizures and treatment resistant seizures should be undertaken.
(3) The purpose of sections 28-463 to 28-468 is to permit medical professionals to conduct limited-scope, evidence-based studies exploring the safety and efficacy of treating intractable seizures and treatment resistant seizures using cannabidiol.
Source: Laws 2015, LB390, § 5.

28-464. Medical Cannabidiol Pilot Study; University of Nebraska and Nebraska Medicine; authority to produce or possess cannabidiol; patient; eligibility.
(1) The University of Nebraska and Nebraska Medicine shall be the only entities in this state authorized to produce or possess cannabidiol for research for purposes of the Medical Cannabidiol Pilot Study.
(2) Cannabidiol shall be obtained from or tested at the University of Nebraska Medical Center and dispensed by the Nebraska Medicine Research Pharmacy.
(3) Cannabidiol may only be obtained by patients with intractable seizures and treatment resistant seizures and on the order of a physician who is licensed to practice medicine and surgery in Nebraska and designated as a medical provider under section 28-465 and administered to a patient by or under the direction or supervision of such medical provider participating in the Medical Cannabidiol Pilot Study.
Source: Laws 2015, LB390, § 6.

28-465. Medical Cannabidiol Pilot Study; created; physician or pharmacist; duties; risks and benefits form; use; participant; document; contents.
(1) The University of Nebraska Medical Center shall create the Medical Cannabidiol Pilot Study. The pilot study shall designate at least two medical providers to conduct research on the safety and preliminary effectiveness of

cannabidiol to treat patients with intractable seizures and treatment resistant seizures. The medical providers shall be physicians licensed to practice medicine and surgery in Nebraska, and at least one shall be a pediatric neurologist. The medical providers shall adhere to the policies and procedures established by the University of Nebraska Medical Center for the pilot study.
(2) A physician designated as a medical provider or a licensed pharmacist participating in the Medical Cannabidiol Pilot Study shall not be subject to arrest or prosecution, penalized or disciplined in any manner, or denied any right or privilege for approving or recommending the use of cannabidiol under the pilot study.
(3)(a) A physician designated as a medical provider conducting research under the Medical Cannabidiol Pilot Study shall:
(i) Determine eligibility for participation in the pilot study;
(ii) Keep a record of the evaluation and observation of a patient under the physician's care, including the patient's response to cannabidiol treatment; and
(iii) Transmit the record described in subdivision (a)(ii) of this subsection to the department upon request.
(b) All medical records received or maintained by the department pursuant to this section are confidential and may not be disclosed to the public.
(4) The University of Nebraska Medical Center shall create a risks and benefits form to be signed by the medical provider conducting the cannabidiol trial and by the patient who is to be administered cannabidiol or a parent or legal guardian of the patient if the patient is under nineteen years of age. The risks and benefits form shall document their discussion of the risks and benefits of invasive therapies, including, but not limited to, neurostimulation such as vagus nerve stimulation and responsive neurostimulation and epilepsy surgery, including corpus callosotomy, if indicated. This form shall be completed and on file with the University of Nebraska Medical Center before the patient begins the cannabidiol trial.
(5) The University of Nebraska Medical Center shall provide a document to patients who are to be administered cannabidiol or a parent or legal guardian of such patients confirming participation in the Medical Cannabidiol Pilot Study. The document shall include, at a minimum, the patient's name, date of birth, and address, as well as the name and contact information of the patient's medical provider. If the patient is under nineteen years of age, the document shall also include the name, date of birth, and address of the parent or legal guardian of the patient. The document may be provided by the patient to law enforcement agencies in order to verify participation in the pilot study.
Source: Laws 2015, LB390, § 7.

28-466. University of Nebraska Medical Center and Nebraska Medicine; duties; powers.
(1) The University of Nebraska Medical Center and Nebraska Medicine, when using cannabidiol for research, shall comply with the Uniform Controlled Substances Act regarding possession of controlled substances, record-keeping requirements relative to the dispensing, use, or administration of controlled substances, and inventory requirements, as applicable.
(2) The University of Nebraska Medical Center and Nebraska Medicine are authorized to pursue any federal permits or waivers necessary to conduct the activities authorized under sections 28-463 to 28-468.
Source: Laws 2015, LB390, § 8.

28-467. Prosecution for unlawful possession of marijuana; defense; restrictions on certain actions.
(1) In a prosecution for the unlawful possession of marijuana under the Uniform Controlled Substances Act, it is an affirmative and complete defense to prosecution that:
(a) The defendant suffered from intractable seizures and the use or possession of cannabidiol was pursuant to the order of a physician designated as a medical provider under section 28-465; or
(b) The defendant is the parent or legal guardian of an individual who suffers from intractable seizures and the use or possession of cannabidiol was pursuant to the order of a physician designated as a medical provider under section 28-465.
(2) An agency of this state or a political subdivision thereof, including any law enforcement agency, may not initiate proceedings to remove a child from a home based solely upon the possession or use of cannabidiol by the child or possession of cannabidiol by a parent or legal guardian for use by the child as authorized under sections 28-463 to 28-468.
(3) An employee of the state or any division, agency, or institution thereof or any employee of Nebraska Medicine involved in the research, ordering, dispensing, and administration of cannabidiol under sections 28-463 to 28-468, including its cultivation and processing, shall not be subject to prosecution for unlawful possession, use, distribution, or dispensing of marijuana under the Uniform Controlled Substances Act for activities arising from or related to the use of cannabidiol in the treatment of individuals diagnosed with intractable seizures or treatment resistant seizures.
Source: Laws 2015, LB390, § 9.

28-468. Report; contents.
The University of Nebraska Medical Center shall submit a report electronically to the chairperson of the Judiciary Committee of the Legislature, the chairperson of the Health and Human Services Committee of the Legislature, and the Clerk of the Legislature on or before September 15, 2016, and each September 15 thereafter, containing the following performance measures:
(1) The number of patients enrolled in the Medical Cannabidiol Pilot Study, including the number of patients under nineteen years of age;
(2) The number of patients previously enrolled in the pilot study and no longer receiving treatment under the pilot study;
(3) Any changes in intractable seizure or treatment resistant seizure frequency and severity;
(4) Any relevant or related adverse health outcomes for patients; and
(5) A summary of findings concerning appropriate dosing.
Source: Laws 2015, LB390, § 10.

28-469. Termination.
Sections 28-463 to 28-468 terminate on October 1, 2019.
Source: Laws 2015, LB390, § 13.

28-470. Naloxone; authorized activities; immunity from administrative action, criminal prosecution, or civil liability.
(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, 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) Personally 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. This subdivision shall not affect the liability of such emergency medical service organization for the emergency responder's acts of commission or omission.
(4) A peace officer or law enforcement employee who, acting in good faith, obtains naloxone from the peace officer's or employee'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) Personally 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 or employee caused damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission. This subdivision shall not affect the liability of such law enforcement agency for the peace officer's or employee's acts 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 responder, an emergency medical technician, an advanced emergency medical technician, or a paramedic licensed under the Emergency Medical Services Practice Act or practicing pursuant to the EMS Personnel Licensure Interstate Compact;

(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) Law enforcement employee means an employee of a law enforcement agency, a contractor of a law enforcement agency, or an employee of such contractor who regularly, as part of his or her duties, handles, processes, or is likely to come into contact with any evidence or property which may include or contain opioids;
(g) Naloxone means naloxone hydrochloride; and
(h) Peace officer has the same meaning as in section 49-801.
Source: Laws 2015, LB390, § 11; Laws 2017, LB487, § 9; Laws 2018, LB923, § 1; Laws 2018, LB1034, § 2.
Cross References

- **Emergency Medical Services Practice Act,** see section 38-1201.
- **EMS Personnel Licensure Interstate Compact,** see section 38-3801.
- **Uniform Credentialing Act,** see section 38-101.

28-471. Lookalike substance; prohibited acts; penalty.
(1) A person shall not offer, display, market, advertise for sale, or sell a lookalike substance. A violation of this section shall be deemed to have occurred if a person knowingly offers, displays, markets, advertises for sale, or sells a lookalike substance and the packaging containing such substance bears a label or marking which:
(a) Is false, misleading, or incomplete;
(b) Does not specifically identify all chemicals or chemical compounds contained on or in the substance or product inside the packaging; or
(c) Does not specifically identify the name and place of business of the manufacturer, packer, or distributor of the product or substance contained inside the packaging.
(2) Any person who violates this section is guilty of a Class IV felony. The penalty for a violation of this section shall be in addition to any other applicable criminal offenses or penalties or civil remedies or penalties.
(3) This section shall not apply to lookalike substances intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs if the drug is plainly labeled for investigational use only and the investigational use is authorized by state or federal law.
Source: Laws 2016, LB1009, § 4.

28-472. Drug overdose; exception from criminal liability; conditions.
(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 made 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) The exception from criminal liability provided in subsection (1) of this section applies to any person who makes a request for emergency medical assistance and complies with the requirements of subsection (1) of this section.
(3) 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.
(4) 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 subsections (1) through (3) of this section.
(5) 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) through (3) of this section, violations of section 28-441 or subsection (3) of section 28-416; or
(c) Any other criminal offense.
(6) 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.
Source: Laws 2017, LB487, § 8.

28-473. Transferred to section 38-1,144.

28-474. Transferred to section 38-1,145.

28-475. Opiates; receipt; identification required.
(1) Unless the individual taking receipt of dispensed opiates listed in Schedule II, III, or IV of section 28-405 is personally and positively known to the pharmacist or dispensing practitioner, the individual shall display a valid driver's or operator's license, a state identification card, a military identification card, an alien registration card, or a passport as proof of identification.
(2) This section does not apply to a patient who is a resident of a health care facility licensed pursuant to the Health Care Facility Licensure Act.
Source: Laws 2018, LB931, § 5.
Cross References
- **Health Care Facility Licensure Act,** see section 71-401.

28-476. Hemp; carry or transport; requirements; peace officer; powers; violation; penalty.
(1) Any person other than the Department of Agriculture, a cultivator, a processor-handler, or an approved testing facility who is transporting hemp shall carry with such hemp being transported (a) a bill of lading indicating the owner of the hemp, the point of origin of the hemp, and the destination of the hemp and (b) either a copy of the test results pertaining to such hemp or other documentation affirming that the hemp was produced in compliance with the federal Agriculture Improvement Act of 2018.
(2)(a) No person shall carry or transport hemp in this state unless such hemp is:
(i) Produced in compliance with:
(A) For hemp originating in this state, the requirements of the federal Agriculture Improvement Act of 2018 under the Nebraska Hemp Farming Act and any rules and regulations adopted and promulgated thereunder, a tribal hemp production plan approved by the United States Secretary of Agriculture, or the United States Department of Agriculture Domestic Hemp Production Plan; or
(B) For hemp originating outside this state, the requirements of the federal Agriculture Improvement Act of 2018; and
(ii) Carried or transported as provided in section 2-515 or subsection (1) of this section.
(b) No person shall transport hemp in this state concurrently with any other plant material that is not hemp.
(3)(a) A peace officer may detain any person carrying or transporting hemp in this state if such person does not provide the documentation required by this section and section 2-515. Unless the peace officer has probable cause to believe the hemp is, or is being carried or transported with, marijuana or any other controlled substance, the peace officer shall immediately release the hemp and the person carrying or transporting such hemp upon production of such documentation.
(b) The failure of a person detained as described in this subsection to produce documentation required by this section shall constitute probable cause to believe the hemp may be marijuana or another controlled substance. In such case, a peace officer may collect such hemp for testing to determine the delta-9 tetrahydrocannabinol concentration in the hemp, and, if the peace officer has probable cause to believe the person detained is carrying or transporting marijuana or any other controlled substance in violation of state or federal law, the peace officer may seize and impound the hemp or marijuana or other controlled substance and arrest such person.
(c) This subsection does not limit or restrict in any way the power of a peace officer to enforce violations of the Uniform Controlled Substances Act and federal law regulating marijuana and other controlled substances.
(4) In addition to any other penalties provided by law, including those imposed under the Nebraska Hemp Farming Act, any person who intentionally violates this section shall be guilty of a Class IV misdemeanor and fined not more than one thousand dollars.
(5) This section does not apply to a person transporting hemp products purchased at retail in small amounts for personal or household use and not intended for resale.
(6) For purposes of this section:
(a) Agriculture Improvement Act of 2018 has the same meaning as in section 2-503;
(b) Approved testing facility has the same meaning as in section 2-503;
(c) Cultivator has the same meaning as in section 2-503; and
(d) Processor-handler has the same meaning as in section 2-503.
Source: Laws 2020, LB1152, § 16.

Cross References

- **Nebraska Hemp Farming Act,** see section 2-501.