LEGISLATIVE BILL 657

Introduced by Wayne, 13.
Read first time January 23, 2019
Committee: Agriculture

A BILL FOR AN ACT relating to agriculture; to amend section 28-401, Revised Statutes Cumulative Supplement, 2018; to adopt the Nebraska Hemp Act; to define and redefine terms under the Uniform Controlled Substances Act; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 23 of this act shall be known and may be cited as the Nebraska Hemp Act.

Sec. 2. For purposes of the Nebraska Hemp Act:

(1) Broker means to engage or participate in the marketing of hemp by acting as an intermediary or negotiator between prospective buyers and sellers;

(2) Cannabis means the plant Cannabis sativa L. and any part of that plant, whether growing or not;

(3) Commission means the Nebraska Hemp Commission;

(4) Department means the Department of Agriculture;

(5) Director means the Director of Agriculture or his or her designee;

(6) GPS coordinates means latitude and longitude coordinates derived from a global positioning system;

(7) Grow means to plant, propagate, grow, cultivate, or harvest live plants or viable seeds;

(8) Grower means a person registered by the department under the Nebraska Hemp Act to grow hemp;

(9) Handle means to possess, store, or transport hemp on premises owned, operated, or controlled by a registered grower or licenses processor-handler;

(10) Hemp means the plant Cannabis sativa L. and any part of that plant, including the viable seeds of that plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths percent on a dry weight basis. Hemp includes hemp Commodities and products and topical or ingestible animal or consumer products derived from the plant Cannabis sativa L. with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths percent on a dry weight basis;

(11) Location ID means the unique identifier established by the
applicant for each unique set of GPS coordinates where hemp will be
grown, handled, stored, processed, or brokered;

(12) Market means to promote or sell hemp or a hemp commodity or
product. Market includes, but is not limited to, efforts to advertise and
gather information about the needs or preferences of potential consumers
or suppliers;

(13) Nonviable seed means seed that has been crushed, dehulled, heat
treated, or otherwise rendered to have a zero percent germination rate;

(14) Person means an individual, partnership, corporation, limited
liability company, association, or other legal entity;

(15) Plot means a contiguous area in a field, greenhouse, or indoor
growing structure containing the same variety of hemp throughout the
area;

(16) Postsecondary institution means a postsecondary institution as
defined in section 85-2403 that also meets the requirements of 20 U.S.C.
1001, as such section existed on January 1, 2019;

(17) Process means to convert raw hemp into a marketable form;

(18) Processor-handler means a person licensed by the department
under the Nebraska Hemp Act to process, handle, broker, or market hemp;

(19) Propagule means a plant or plant part that is utilized to grow
a new plant;

(20) Testing facility means a testing facility operated by the
University of Nebraska;

(21) THC means tetrahydrocannabinol;

(22) Variety means a subdivision of a species that has the following
characteristics:

(a) The subdivision is uniform, in the sense that variations between
the subdivision and other subdivisions in essential and distinctive
characteristics are describable; and

(b) The subdivision is distinct, in the sense that the subdivision
can be differentiated by one or more identifiable morphological,
physiological, or other characteristics from all other known subdivisions.

Sec. 3. (1) The department, a postsecondary institution, a grower, or a processor-handler that transports hemp for purposes authorized under the Nebraska Hemp Act shall include along with a shipment of hemp a letter on the department's or the postsecondary institution's letterhead, or a copy of his or her registration or license, whichever is applicable, that provides notice that the shipment includes hemp authorized under such act.

(2) A postsecondary institution may receive direct grants from the federal government or any other source for the purpose of conducting research authorized under the Nebraska Hemp Act.

Sec. 4. (1) The department shall establish, operate, and administer a hemp grower registration program. Except as otherwise provided under the Nebraska Hemp Act for a postsecondary institution, a person shall not grow hemp in this state unless the person is registered as a grower under the act. A person other than a postsecondary institution that wishes to grow hemp in this state shall submit the registration application fee provided under section 14 of this act and register with the department on a form prescribed by the department that includes, but is not limited to, the following:

(a) The applicant's full name, birthdate, mailing address, telephone number, and valid and monitored electronic mail address. If the applicant is not an individual, the full name of each officer and director, partner, member, or owner owning in excess of ten percent of equity or stock, including his or her birthdate, title, and valid and monitored electronic mail address;

(b) The proposed acreage or greenhouse or other indoor square footage to be planted;

(c) The street address, location ID, and GPS coordinates for each field, greenhouse, building, or other site where hemp will be grown.
handled, or stored; and

(d) Maps depicting each field, greenhouse, building, or other site
where hemp will be grown, handled, or stored, with appropriate
indications for entrances, field boundaries, and specific locations
corresponding to the GPS coordinates provided under subdivision (c) of
this subsection.

(2) An initial grower registration application may be submitted at
any time. An initial grower registration issued by the department expires
at midnight on November 30 in the year in which it is issued.

(3) A renewal grower registration is valid from December 1 until
midnight on the following November 30.

(4) An application to renew an existing grower registration shall be
postmarked on or before November 30. An application postmarked after
November 30 is subject to a late fee of two hundred fifty dollars.

(5) An application and supporting documents submitted to the
department under this section are not public records subject to
disclosure pursuant to sections 84-712 to 84-712.09.

Sec. 5. (1) The department shall establish, operate, and administer
a hemp processor-handler licensing program. Except as otherwise provided
under the Nebraska Hemp Act for a postsecondary institution or a testing
facility, a person shall not process, handle, broker, or market hemp in
this state unless the person is licensed as a processor-handler under the
act. A person other than a postsecondary institution that wishes to
process, handle, broker, or market hemp in this state shall submit the
license application fee provided under section 14 of this act and apply
to the department for a processor-handler license on a form prescribed by
the department that includes, but is not limited to, the following:

(a) The applicant's full name, birthdate, mailing address, telephone
number, and valid and monitored electronic mail address. If the applicant
is not an individual, the full name of each officer and director,
partner, member, or owner owning in excess of ten percent of equity or
stock, including his or her birthdate, title, and valid and monitored
electronic mail address;

(b) The street address, location ID, and GPS coordinates for each
building or site where hemp will be processed, handled, stored, or
brokered; and

(c) Maps depicting each field, greenhouse, building, or other site
where hemp will be processed, handled, stored, or brokered, with
appropriate indications for entrances and specific locations
corresponding to the GPS coordinates provided under subdivision (b) of
this subsection.

(2) An initial processor-handler license application may be
submitted at any time. An initial processor-handler license issued by the
department expires at midnight on November 30 in the year in which it is
issued.

(3) A renewal processor-handler license is valid from December 1
until midnight on the following November 30.

(4) An application to renew an existing processor-handler license
shall be postmarked on or before November 30. An application postmarked
after November 30 is subject to a late fee of two hundred fifty dollars.

(5) An application and supporting documents submitted to the
department under this section are not public records subject to
disclosure pursuant to sections 84-712 to 84-712.09.

Sec. 6. (1) The department shall approve or deny a grower
registration or processor-handler license application submitted under the
Nebraska Hemp Act in a timely manner. The department shall deny a
registration or license application if the application is incomplete or
if any of the following apply:

(a) The applicant, if an individual, is under the age of 18;

(b) The applicant's growing, handling, storage, processing, or
brokering sites are not located in this state;

(c) The applicant has not demonstrated, as determined by the
director, a willingness to comply with the department's rules and regulations, instructions from the department, or instructions from a law enforcement agency;

(d) The applicant has unpaid fees, fines, or civil penalties owed to this state under the act;

(e) The applicant has made false statements or representations, as determined by the director, to the department or a law enforcement agency; or

(f) The applicant has had a grower registration or processor-handler license revoked in the five years preceding the date of application.

(2) If the application is denied because it is incomplete, the department shall notify the applicant in writing within a timely manner after the department receives the application describing the deficiency and requesting additional information.

Sec. 7. (1) If the department denies a grower registration or processor-handler license application under the Nebraska Hemp Act, the department shall notify the applicant of the denial in writing by letter or electronic mail.

(2) An applicant may appeal a denial of his or her registration or license application by submitting to the department a written request for a hearing. The applicant shall submit the request to the department not more than fifteen days after the date of the denial.

(3) The department shall conduct a hearing requested under this section in accordance with the Administrative Procedure Act.

Sec. 8. (1) A grower consents to all of the following:

(a) Entry onto, and inspection of, all premises registered pursuant to section 4 of this act by the department, or by a law enforcement agency at the direction of the department, with or without cause, and with or without advance notice, where hemp or hemp cultivation equipment or materials are located or to be located;

(b) Testing of samples of cannabis material in possession of the
grower by a testing facility. The fee for testing under this subdivision shall be limited to reasonable costs of conducting the testing;

(c) Forfeiture and destruction of any of the following, without compensation:

(i) Cannabis found to have a measured delta-9 THC content greater than three-tenths percent on a dry weight basis;

(ii) Hemp present at a location that is not included in the grower's registration; or

(iii) Hemp that is grown, handled, or stored in a manner that violates the Nebraska Hemp Act; and

(d) The risk of financial or other loss under the Nebraska Hemp Act is borne solely by the grower.

(2) A grower shall not do any of the following:

(a) Handle or store hemp not grown under the authority of his or her grower registration unless licensed as a processor-handler; and

(b) Interplant hemp with any other crop without express written permission from the department. As used in this subdivision, interplant means to plant a crop of hemp together with a crop that is not hemp on a single plot of land.

(3) Upon request from the department, or from a law enforcement agency as directed by the department, a grower shall immediately produce a copy of his or her registration for inspection.

Sec. 9. (1) A processor-handler consents to all of the following:

(a) Entry onto, and inspection of, all premises licensed pursuant to section 5 of this act by the department, or by a law enforcement agency at the direction of the department, with or without cause, and with or without advance notice, where hemp or hemp processing equipment or materials are located or to be located;

(b) Collection by the department of samples of cannabis material in possession of the processor-handler at any time;

(c) Forfeiture and destruction of any of the following, without
compensation:

(i) Cannabis found to have a measured delta-9 THC content greater than three-tenths percent on a dry weight basis;

(ii) Hemp that is processed, handled, stored, or brokered in a manner that violates the Nebraska Hemp Act; and

(iii) Live hemp plants unless the processor-handler is also registered as a grower; and

(d) The risk of financial or other loss under the Nebraska Hemp Act is borne solely by the processor-handler.

(2) Upon request from the department, or from a law enforcement agency as directed by the department, a processor-handler shall immediately produce a copy of his or her license for inspection.

Sec. 10. (1) If any of the following allegations are made concerning a grower or processor-handler, the department shall suspend his or her registration or license for not more than sixty days:

(a) The grower or processor-handler intentionally grew or was in possession of cannabis with a delta-9 THC content greater than three-tenths percent on a dry weight basis;

(b) The grower or processor-handler violated a provision of the Nebraska Hemp Act;

(c) The grower or processor-handler made a false statement, as determined by the department, to the department or a law enforcement agency; or

(d) The grower or processor-handler failed to comply with an instruction or order from the department or a law enforcement agency.

(2) If the department suspends a registration or license, the department shall notify the grower or processor-handler in writing that his or her registration or license has been suspended.

(3) A person whose grower registration has been suspended under this section shall not harvest or remove hemp from the premises where hemp was located at the time the department issued its notice of suspension.
except as authorized in writing by the department.

(4) A person whose processor-handler license has been suspended under this section shall not process or remove hemp from the premises where hemp was located at the time the department issued its notice of suspension, except as authorized in writing by the department.

Sec. 11. (1) The department shall not permanently revoke a registration or license suspended under section 10 of this act unless the department has notified the grower or processor-handler of the allegation against him or her and given him or her an opportunity for a hearing to contest the revocation.

(2) The department shall schedule a registration or license revocation hearing for a date as soon as practicable that is not more than sixty days after the date of notification of suspension.

(3) The hearing shall be conducted in accordance with the Administrative Procedure Act.

(4) If the director finds by a preponderance of the evidence that an allegation under section 10 of this act is true, the director shall revoke the registration or license effective immediately and the department, or a law enforcement agency as directed by the department, shall confiscate all cannabis that is in the person's possession or order it to be destroyed. Destruction shall be conducted by the department pursuant to the Noxious Weed Control Act. The cost of destruction shall be paid by the grower or processor-handler.

(5) The department or a law enforcement agency shall not owe compensation or indemnity for the value of the cannabis destroyed or confiscated under this section.

(6) A person whose registration or license has been revoked is barred from participation as a grower or processor-handler in any capacity for a minimum of five years from the date on which the registration or license was revoked.

(7) If the director does not find by a preponderance of the evidence
that an allegation under section 10 of this act is true, the department shall lift the suspension imposed under section 10 of this act within twenty-four hours.

Sec. 12. (1) A grower that intends to grow, harvest, or destroy a hemp crop shall schedule a test of a sample of the crop by a testing facility, and the testing facility shall test the sample not less than fifteen days before the intended growing, harvest, or destruction date.

(2) A grower who grows, harvests, or destroys a crop before receiving the results of testing under this section is subject to suspension and revocation of his or her registration.

(3) The testing facility shall measure the THC concentration of each sample collected under this section. The following apply to the THC test results:

(a) If the results of the THC test indicate a delta-9 THC concentration of less than three-tenths percent on a dry weight basis, the testing facility shall provide to the grower and to the department a certified report stating that result;

(b) If the results of the THC test indicate a delta-9 THC concentration that is equal to or greater than three-tenths percent on a dry weight basis, the grower may destroy the crop or repeat the testing an additional two times. The testing facility shall provide to the grower and to the department a certified report stating the result of each test performed under this subdivision; and

(c) If a third THC test under this subsection indicates a delta-9 THC concentration that is equal to or greater than three-tenths percent, the testing facility shall provide to the grower and to the department a certified report stating such result, and the department or a law enforcement agency directed by the department shall confiscate all cannabis that is in the grower's possession or order it destroyed. Destruction shall be conducted by the department pursuant to the Noxious Weed Act.
(4) The department shall adopt and promulgate rules and regulations for testing under this section. All costs for testing and destruction under this section shall be paid by the grower.

(5) An individual who allows a falsified sample of a hemp crop to be taken by the testing facility under this section is guilty of a Class IV felony and shall be imprisoned for not less than one year and shall be fined five thousand dollars.

Sec. 13. (1) Before implementing an alteration to a site listed in a grower's registration, the grower shall submit a site modification request form as prescribed by the department and the required fee as provided in section 14 of this act, based on the number of requested alterations, and obtain written approval from the department.

(2) The department shall not approve a site modification request under this section unless the grower has paid the site modification fee in full.

Sec. 14. (1) Fees under the Nebraska Hemp Act are as follows:

(a) A grower registration fee of one hundred dollars;

(b) A processor-handler license application fee of one thousand three hundred fifty dollars; and

(c) A site modification fee of fifty dollars for each alteration to a site listed in a grower registration after the registration has been issued.

(2) All fees under this section shall be paid with a check or money order payable to the department within fifteen days of invoice.

(3) A fee required under this section is nonrefundable.

(4) All fees collected under this section shall be remitted to the State Treasurer for credit to the Nebraska Hemp Program Fund.

Sec. 15. (1) The Nebraska Hemp Commission is created and shall be housed in the department for administrative purposes.

(2) The commission shall consist of the following members:

(a) The director or his or her designee:
(b) The Superintendent of Law Enforcement and Public Safety or his or her designee;

(c) The Director of Economic Development or his or her designee;

(d) The dean of the University of Nebraska College of Agricultural Sciences and Natural Resources or his or her designee;

(e) One member representing each postsecondary institution choosing to participate in the commission;

(f) The president of the Nebraska County Sheriffs' Association or his or her designee; and

(g) Four members appointed by the Governor representing the following interests:

(i) A Nebraska farmer with an interest in growing hemp;

(ii) A retailer of hemp products;

(iii) A wholesaler of hemp products; and

(iv) A manufacturer of hemp products.

(3) Members appointed pursuant to subdivision (2)(g) of this section shall serve a term of four years and may be reappointed.

Sec. 16. (1) A majority of the members of the commission shall constitute a quorum.

(2) The director shall serve as vice-chairperson, and the commission shall annually elect one member from among the remaining members to serve as chairperson.

Sec. 17. (1) The commission shall meet quarterly and may meet more often upon the call of the chairperson or by request of a majority of the members.

(2) The commission shall be appointed and conduct its first meeting no later than September 1, 2019.

(3) The members of the commission shall serve without pay but shall receive actual and necessary expenses incurred while on official business as provided in sections 81-1174 to 81-1177.

(4) Administrative support services shall be provided to the
commission by the department at the request of the commission, including, but not limited to, services relating to:

(a) Financial accounting, recordkeeping, and other budgetary functions; and

(b) Meeting coordination and staffing.

(5) Administrative expenses of the commission, including, but not limited to, expenses for the services outlined in subsection (4) of this section, shall be paid from the Nebraska Hemp Program Fund as approved by the commission.

Sec. 18. (1) The commission shall periodically report to the Governor and to the Legislature on hemp policies and practices that will result in the proper legal growing, management, marketing, and use of the state’s potential hemp industry. Any report submitted to the Legislature shall be submitted electronically. These policies and practices shall, at a minimum, address the following:

(a) Federal laws and regulatory constraints;

(b) The economic and financial feasibility of a hemp market in Nebraska;

(c) Nebraska businesses that may potentially utilize hemp;

(d) Examination of research on hemp production and utilization;

(e) The potential for globally marketing Nebraska hemp;

(f) The feasibility of private funding for the Nebraska hemp research program;

(g) Law enforcement concerns;

(h) Statutory and regulatory schemes for growing of hemp by private producers; and

(i) Technical support and education about hemp.

(2) The commission is authorized to develop and coordinate programs to promote hemp. The commission shall establish such programs with the goal of securing at least twenty percent participation by small and emerging businesses in the Nebraska hemp industry, including, but not
limited to, growing, processing, transporting, marketing, and selling
hemp.

Sec. 19. (1) The Nebraska Hemp Program Fund is established. The
fund shall be administered by the department and the commission for the
purpose of covering the costs of the department and commission in
administering the Nebraska Hemp Act, as approved by the department and
the commission, and for hemp promotional programs developed and
coordinated by the commission pursuant to section 18 of this act.

(2) The fund may receive appropriations by the Legislature, gifts,
grants, federal funds, and any other funds both public and private, and
all registration and license application fees collected by the department
shall be remitted to the State Treasurer for credit to the fund.

(3) 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.

Sec. 20. (1) A person who individually, or by the action of his or
her agent or employee, or as the agent or employee of another, violates
the Nebraska Hemp Act or a rule or regulation adopted and promulgated
under the act is subject to an administrative fine. After notice to the
alleged violator, the director shall conduct a hearing in accordance with
the Administrative Procedure Act to determine if a fine should be
imposed. The department shall impose a fine authorized by this section as
follows:

(a) For a first violation, not less than one hundred dollars or more
than five hundred dollars, plus the actual costs of any investigation;

(b) For a second violation within five years after the first
violation, not less than five hundred dollars or more than one thousand
dollars, plus the actual costs of any investigation; or

(c) For a third or subsequent violation within five years after the
date of the first violation, not less than one thousand dollars or more
than two thousand dollars, plus the actual costs of any investigation.
(2) A decision of the director under this section may be appealed, and such appeal shall be in accordance with the Administrative Procedure Act.

(3) The director shall advise the Attorney General of the failure of any person to pay an administrative fine imposed under this section. The Attorney General shall bring an action in Lancaster County district court to recover the fine.

(4) Any administrative fine collected under this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Sec. 21. A city, county, or other political subdivision of this state shall not adopt any rule, regulation, resolution, code, or ordinance to restrict or limit any requirements under the Nebraska Hemp Act relating to hemp. The act supersedes and preempts any rule, regulation, resolution, code, or ordinance of any city, county, or political subdivision of this state relating to hemp.

Sec. 22. The Nebraska Hemp Act shall constitute the state plan by which the State of Nebraska monitors and regulates hemp production in compliance with the federal Agriculture Improvement Act of 2018, Public Law 115-334. No later than thirty days after the effective date of this act, the director shall submit such state plan to the United States Secretary of Agriculture for approval.

Sec. 23. The State of Nebraska shall not treat hemp or hemp commodities and products as a Schedule I or Schedule II controlled substance under 26 U.S.C. 280E, as such section existed on January 1, 2019, when calculating sales or income tax owed to the state. The department shall update and issue guidance to taxpayers on how to properly adjust Internal Revenue Service forms filed with the department to reflect any proper tax in conformance with federal law.

Sec. 24. Section 28-401, Revised Statutes Cumulative Supplement, 2018, is amended to read:
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 of this act;

(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, but 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 or obtained pursuant to sections 28-463 to 28-468.
(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. 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) (14) 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) (15) 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) (16) 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) (17) Opium poppy means the plant of the species Papaver
somniferum L., except the seeds thereof;

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

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

(21) (20) 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) (21) Production includes the manufacture, planting,
cultivation, or harvesting of a controlled substance;

(23) (22) 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) (23) State means the State of Nebraska;

(25) (24) 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) (25) Hospital has the same meaning as in section 71-419;

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

(29) (28) 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) (29) 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) (32) 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) (33) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

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

(36) (35) 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) (36) 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) (37) 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) (38) 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
(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 shall mean 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; 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;
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.

Sec. 25. Original section 28-401, Revised Statutes Cumulative Supplement, 2018, is repealed.

Sec. 26. Since an emergency exists, this act takes effect when
1 passed and approved according to law.