

ONE HUNDRED FOURTH LEGISLATURE - FIRST SESSION - 2015
COMMITTEE STATEMENT
LB189

Hearing Date: Wednesday January 28, 2015
Committee On: Judiciary
Introducer: Davis
One Liner: Change provisions and penalties relating to marijuana and alphabetize definitions

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Chambers, Coash, Ebke, Krist, Morfeld, Pansing Brooks, Seiler
Nay:		
Absent:		
Present Not Voting:	1	Senator Williams

Verbal Testimony:

Proponents:

SEN. AL DAVIS
WILLIAM ACHORD
TOM STRIGENZ
ALAN PETERSON
BILL HAWKINS

Representing:

INTRODUCER
NE HEMP ASSOCIATION
NE CRIMINAL DEFENSE ATTORNEY ASSOCIATION
ACLU NEBRASKA
SELF

Opponents:

KEVIN STUKENHOLZ

Representing:

NE SHERIFF'S ASSOCIATION

Neutral:

Representing:

Summary of purpose and/or changes:

LB189 would change certain definitions and penalties relating to marijuana and other controlled substances.

Section 1 would amend Section 28-401, the definition section of the Uniform Controlled Substances Act, by providing new terms and definitions, and by putting the terms in alphabetical order.

New definitions:

Marijuana Concentrate means any derivative, preparation, compound, or mixture obtained from a plant of the genus cannabis which contains any quantifiable amount of tetrahydrocannabinols. Marijuana concentrate includes cannabis resin, hashish, hash oil, and other substances which contain tetrahydrocannabinols extracted or isolated from marijuana. Marijuana concentrate does not include resins or oils extracted from industrial hemp as defined in section 2-5701. (page 7, lines 23-29)

Marijuana means all parts of a plant of the genus cannabis, whether growing or not, and every manufacture or preparation of such plant or its seeds. Marijuana does not include marijuana concentrate or industrial hemp as defined in section 2-5701. (page 7, lines 19-22)

Tetrahydrocannabinol means a cannabinoid naturally occurring in a plant of the genus cannabis, which is primarily responsible for the psychoactive effects of marijuana. Tetrahydrocannabinol does not include synthetic tetrahydrocannabinols or any other synthetically produced cannabinoid listed in section 28-405. (page 9, lines 27-31)

Section 3 would amend section 28-405, by changing the terminology used in Schedule I of the Uniform Controlled Substances Act.

New definition:

Synthetic Tetrahydrocannabinols means: Any equivalent of the substances naturally contained in a plant of the genus cannabis or derivatives and their isomers with similar chemical structure and pharmacological activity. Synthetic tetrahydrocannabinols includes 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. Synthetic tetrahydrocannabinols does not include dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration. (page 20, lines 3-17)

Section 4 would amend 28-416 to clarify the penalties for possession of marijuana, marijuana concentrate, and synthetic cannabinoids by dividing the relevant provisions into two separate subsections.

In general, possession of a controlled substance is a Class IV felony. However, possession of marijuana has been an exception to this general rule since the passage of LB808 (1978). Possession of an ounce or less of marijuana is an infraction.

As amended, Section 28-416(13) explicitly provides that possession of substances containing any amount of marijuana concentrate should be treated like possession of an ounce or less of marijuana. (page 46, line 22)

The provision regarding penalties for possession of synthetic cannabinoids would move to a separate subsection. (page 47, lines 5-16)

Penalty increases for subsequent offenses:

The penalty increase for first, second, and third offense marijuana possession would remain the same 2013 an infraction, class IV misdemeanor, or class IIIA misdemeanor, respectively (page 46, line 20 through page 47, line 4), except that a sentence of seven days imprisonment for the third and all subsequent offenses would be permitted, but not required.

Possession of synthetic cannabinoids, as provided in this bill, is a class IIIA misdemeanor for the second offense and all subsequent offenses. (page 47, lines 14-16)

Section 5 of LB189 would move the provision regarding the weight of marijuana from the definition section to its own section. (page 49, lines 18-21)

Section 6 would amend 28-439, to change "hash or hashish oil" to "marijuana concentrate" in a drug paraphernalia provision. (page 50, line 12)

Section 7 would amend 28-1354, to update a reference to offenses related to controlled substances for purposes of the Public Protection Act, as a result of re-numbered provisions. (page 52, line 11)

Section 8 would repeal the sections amended by this act

Explanation of amendments:

AM412 to LB189 would amend the bill as follows:

Change the definitions of marijuana, tetrahydrocannabinols, and synthetic THC

Page 7, lines 19-22: Provide a new definition of "marijuana" in 28-401:

Marijuana means all parts of a plant of the genus cannabis, whether growing or not, which contains any quantifiable amount of tetrahydrocannabinols. Marijuana includes every manufacture or preparation of such plant or its seeds which

contain any quantifiable amount of tetrahydrocannabinols. Marijuana does not include marijuana concentrate, industrial hemp as defined in section 2-5701, or any product made from the mature stalks or sterilized seeds of a plant of the genus cannabis

Page 9, lines 27-31: Remove the "tetrahydrocannabinol" definition from 28-401 (and 28-405)

Page 20, lines 4 and 5: Make minor changes to the "synthetic THC" definition in 28-405

Move the provision regarding the weight of marijuana closer to the definition section (still in its own new section).

Page 13, line 15: insert lines 18-21 from page 49 as new Section 3, re-number sections accordingly

Address inconsistent prosecution of edibles by removing "marijuana" from 28-405, instead of removing "THC". Restore "Tetrahydrocannabinols" to 28-405, and re-number accordingly.

Page 17, strike line 31

Page 18, strike line 1

Page 18, line 10: restore "Tetrahydrocannabinols"

Move the reference to industrial hemp regulations from the marijuana definition to the penalty provision, instead of eliminating it entirely.

Page 43, line 9: after "unless", insert (a)

Page 43, line 11: insert , or (b) such substance is in the possession of a person as authorized under section 2-5701, in compliance with rules and regulations promulgated by the Department of Agriculture.

Increase the penalty for possession of marijuana concentrate to an infraction for 1st offense, misdemeanor for 2nd offense, like synthetics.

Page 46, lines 21-24: strike "or any substance" through "section 28-405"

Page 47, line 6: after "amount of", insert "marijuana concentrate or"

Les Seiler, Chairperson