

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 923

Introduced by Morfeld, 46.

Read first time January 09, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to immunity; to amend sections 53-180.05 and
- 2 53-181, Revised Statutes Cumulative Supplement, 2016, and section
- 3 28-470, Revised Statutes Supplement, 2017; to provide immunity for
- 4 certain law enforcement agency employees as prescribed; to define a
- 5 term; to change penalty provisions for certain violations relating
- 6 to or committed by minors or persons who are mentally incompetent;
- 7 and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-470, Revised Statutes Supplement, 2017, is
2 amended to read:

3 28-470 (1) A health professional who is authorized to prescribe or
4 dispense naloxone, if acting with reasonable care, may prescribe,
5 administer, or dispense naloxone to any of the following persons without
6 being subject to administrative action or criminal prosecution:

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

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

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

22 (3) An emergency responder who, acting in good faith, obtains
23 naloxone from the emergency responder's emergency medical service
24 organization and administers the naloxone to a person who is apparently
25 experiencing an opioid-related overdose shall not be:

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

27 (b) Personally liable in any civil action to respond in damages as a
28 result of his or her acts of commission or omission arising out of and in
29 the course of his or her rendering such care or services or arising out
30 of his or her failure to act to provide or arrange for further medical
31 treatment or care for the person who is apparently experiencing an

1 opioid-related overdose, unless the emergency responder caused damage or
2 injury by his or her willful, wanton, or grossly negligent act of
3 commission or omission. This subdivision shall not affect the liability
4 of such emergency medical service organization for the emergency
5 responder's acts of commission or omission.

6 (4) A peace officer or law enforcement employee who, acting in good
7 faith, obtains naloxone from the peace officer's or employee's law
8 enforcement agency and administers the naloxone to a person who is
9 apparently experiencing an opioid-related overdose shall not be:

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

11 (b) Personally liable in any civil action to respond in damages as a
12 result of his or her acts of commission or omission arising out of and in
13 the course of his or her rendering such care or services or arising out
14 of his or her failure to act to provide or arrange for further medical
15 treatment or care for the person who is apparently experiencing an
16 opioid-related overdose, unless the peace officer or employee caused
17 damage or injury by his or her willful, wanton, or grossly negligent act
18 of commission or omission. This subdivision shall not affect the
19 liability of such law enforcement agency for the peace officer's or
20 employee's acts of commission or omission.

21 (5) For purposes of this section:

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

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

24 (c) Emergency responder means an emergency medical responder, an
25 emergency medical technician, an advanced emergency medical technician,
26 or a paramedic licensed under the Emergency Medical Services Practice
27 Act;

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

31 (e) Law enforcement agency means a police department, a town

1 marshal, the office of sheriff, or the Nebraska State Patrol;

2 (f) Law enforcement employee means an employee of a law enforcement
3 agency, a contractor of a law enforcement agency, or an employee of such
4 contractor who regularly, as part of his or her duties, handles,
5 processes, or is likely to come into contact with any evidence or
6 property which may include or contain opioids;

7 (g) (f) Naloxone means naloxone hydrochloride; and

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

9 Sec. 2. Section 53-180.05, Revised Statutes Cumulative Supplement,
10 2016, is amended to read:

11 53-180.05 (1) Except as provided in subsection (2) of this section,
12 any person who violates section 53-180 shall be guilty of a Class I
13 misdemeanor.

14 (2) Any person who knowingly and intentionally violates section
15 53-180 shall be guilty of a Class IIIA felony and serve a mandatory
16 minimum of at least thirty days' imprisonment as part of any sentence he
17 or she receives if serious bodily injury or death to any person resulted
18 and was proximately caused by a minor's (a) consumption of the alcoholic
19 liquor provided or (b) impaired condition which, in whole or in part, can
20 be attributed to the alcoholic liquor provided.

21 (3) Any person who violates any of the provisions of section
22 53-180.01 or 53-180.03 shall be guilty of a Class III misdemeanor.

23 (4)(a) Except as otherwise provided in subdivisions ~~subdivision~~ (b),
24 (c), and (d) of this subsection, any person older than eighteen years of
25 age and under the age of twenty-one years violating section 53-180.02 is
26 guilty of a Class III misdemeanor.

27 (b) Subdivision (a) of this subsection shall not apply if the
28 person:

29 (i) Made a good faith request for ~~Requested~~ emergency medical
30 assistance in response to the possible alcohol overdose of himself or
31 herself or another person as soon as the emergency situation is apparent

1 after such violation of section 53-180.02;

2 (ii) ~~Made the~~ ~~Was the first person to make a~~ request for medical
3 assistance under subdivision (b)(i) of this subsection as soon as the
4 emergency situation is apparent after such violation of section
5 53-180.02; and

6 (iii) When emergency medical assistance was requested for the
7 possible alcohol overdose of another person:

8 (A) Remained on the scene until the medical assistance arrived; and

9 (B) Cooperated with medical assistance and law enforcement
10 personnel.

11 (c) The exception from criminal liability provided in subdivision
12 (4)(b) of this section applies to any person who makes a request for
13 emergency medical assistance and complies with the requirements of
14 subdivision (4)(b) of this section.

15 (d) Subdivision (a) of this subsection shall not apply to the person
16 experiencing a possible alcohol overdose if a request for emergency
17 medical assistance in response to such possible alcohol overdose was made
18 by another person in compliance with subdivision (b) of this subsection.

19 ~~(e)~~ (e) A person shall not initiate or maintain an action against a
20 peace officer or the employing state agency or political subdivision
21 based on the officer's compliance with ~~subdivisions~~ subdivision (b), (c),
22 or (d) of this subsection.

23 (5) Any person eighteen years of age or younger violating section
24 53-180.02 is guilty of a misdemeanor as provided in section 53-181 and
25 shall be punished as provided in such section.

26 (6) Any person who knowingly manufactures, creates, or alters any
27 form of identification for the purpose of sale or delivery of such form
28 of identification to a person under the age of twenty-one years shall be
29 guilty of a Class I misdemeanor. For purposes of this subsection, form of
30 identification means any card, paper, or legal document that may be used
31 to establish the age of the person named thereon for the purpose of

1 purchasing alcoholic liquor.

2 (7) When a minor is arrested for a violation of sections 53-180 to
3 53-180.02 or subsection (6) of this section, the law enforcement agency
4 employing the arresting peace officer shall make a reasonable attempt to
5 notify such minor's parent or guardian of the arrest.

6 Sec. 3. Section 53-181, Revised Statutes Cumulative Supplement,
7 2016, is amended to read:

8 53-181 (1) Except as otherwise provided in subsections ~~subsection~~
9 (3), (4), and (5) of this section, the penalty for violation of section
10 53-180.02 by a person eighteen years of age or younger shall be as
11 follows:

12 (a) If the person convicted or adjudicated of violating such section
13 has one or more licenses or permits issued under the Motor Vehicle
14 Operator's License Act:

15 (i) For the first offense, such person is guilty of a Class III
16 misdemeanor and the court may, as a part of the judgment of conviction or
17 adjudication, impound any such licenses or permits for thirty days and
18 require such person to attend an alcohol education class;

19 (ii) For a second offense, such person is guilty of a Class III
20 misdemeanor and the court, as a part of the judgment of conviction or
21 adjudication, may (A) impound any such licenses or permits for ninety
22 days and (B) require such person to complete no fewer than twenty and no
23 more than forty hours of community service and to attend an alcohol
24 education class; and

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

1 (b) If the person convicted or adjudicated of violating such section
2 does not have a permit or license issued under the Motor Vehicle
3 Operator's License Act:

4 (i) For the first offense, such person is guilty of a Class III
5 misdemeanor and the court, as part of the judgment of conviction or
6 adjudication, may (A) prohibit such person from obtaining any permit or
7 any license pursuant to the act for which such person would otherwise be
8 eligible until thirty days after the date of such order and (B) require
9 such person to attend an alcohol education class;

10 (ii) For a second offense, such person is guilty of a Class III
11 misdemeanor and the court, as part of the judgment of conviction or
12 adjudication, may (A) prohibit such person from obtaining any permit or
13 any license pursuant to the act for which such person would otherwise be
14 eligible until ninety days after the date of such order and (B) require
15 such person to complete no fewer than twenty hours and no more than forty
16 hours of community service and to attend an alcohol education class; and

17 (iii) For a third or subsequent offense, such person is guilty of a
18 Class III misdemeanor and the court, as part of the judgment of
19 conviction or adjudication, may (A) prohibit such person from obtaining
20 any permit or any license pursuant to the act for which such person would
21 otherwise be eligible until twelve months after the date of such order
22 and (B) require such person to complete no fewer than sixty hours of
23 community service, to attend an alcohol education class, and to submit to
24 an alcohol assessment by a licensed alcohol and drug counselor.

25 (2) A copy of an abstract of the court's conviction or adjudication
26 shall be transmitted to the Director of Motor Vehicles pursuant to
27 sections 60-497.01 to 60-497.04.

28 (3) Subsection (1) of this section shall not apply if the person:

29 (a) Made a good faith request for ~~Requested~~ emergency medical
30 assistance in response to the possible alcohol overdose of himself or
31 herself or another person as soon as the emergency situation is apparent

1 after such violation of section 53-180.02;

2 (b) ~~Made the~~ ~~Was the first person to make a~~ request for medical
3 assistance under subdivision (a) of this subsection as soon as the
4 emergency situation is apparent after such violation of section
5 53-180.02; and

6 (c) When emergency medical assistance was requested for the possible
7 alcohol overdose of another person:

8 (i) Remained on the scene until the medical assistance arrived; and

9 (ii) Cooperated with medical assistance and law enforcement
10 personnel.

11 (4) The exception from criminal liability provided in subsection (3)
12 of this section applies to any person who makes a request for emergency
13 medical assistance and complies with the requirements of subsection (3)
14 of this section.

15 (5) Subsection (1) of this section shall not apply to the person
16 experiencing a possible alcohol overdose if a request for emergency
17 medical assistance in response to such possible alcohol overdose was made
18 by another person in compliance with subsection (3) of this section.

19 (6) (4) A person shall not initiate or maintain an action against a
20 peace officer or the employing state agency or political subdivision
21 based on the officer's compliance with subsections ~~subsection~~ (3), (4),
22 or (5) of this section.

23 Sec. 4. Original sections 53-180.05 and 53-181, Revised Statutes
24 Cumulative Supplement, 2016, and section 28-470, Revised Statutes
25 Supplement, 2017, are repealed.