

LEGISLATIVE BILL 403

Approved by the Governor January 31, 1984

Introduced by Rupp, 22

AN ACT relating to criminal investigations; to amend sections 28-430, 28-434, 28-1439, and 81-2004, Reissue Revised Statutes of Nebraska, 1943; to transfer duties relating to the analysis of controlled substances; to provide duties; to create a cash fund; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-430, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-430. The department shall enforce the provisions of this article 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 Federal Bureau of Narcotics and Dangerous Drugs Drug Enforcement Administration and the Federal Bureau of Investigation; (3) do drug accountability audits of all registered practitioners in accordance with the provisions of this article; (4) provide laboratory analysis upon request from the Division of Drug Control and the Bureau of Examining Boards; and other peace officers of this state in accordance with the provisions of this article; (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 Federal Bureau of Narcotics and Dangerous Drugs relating to the regulatory functions of this article, 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 provisions of this article.

Sec. 2. That section 28-434, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-434. (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 provisions of this article, 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 provisions of this article, (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 Bureau of Examining Boards shall cooperate with the Division of Drug Control providing technical advice and information, including all evidence of violations of the provisions of this article disclosed by drug accountability inspections. ~~The department shall cooperate with the Division of Drug Control and peace officers by providing 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 provisions of this article.

(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.

Sec. 3. That section 28-1439, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1439. Whenever matter is submitted to the Department of Health 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.

Sec. 4. That section 81-2004, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2004. The Nebraska State Patrol, its subordinate officers such as lieutenant colonel, majors, captains, lieutenants, sergeants, corporals, patrolmen, and other employees shall be used primarily for the enforcement of the traffic and motor vehicle laws of the State of Nebraska and the handling of traffic within the state; PROVIDED, the superintendent, with the approval of the Governor, may designate such personnel of the Nebraska State Patrol to qualify and act as his or her deputies or investigators to assist him or her in the enforcement of the laws of the state relating to felonies and the superintendent shall designate and train fifteen investigators in addition to those authorized on September 2, 1973, to assist ~~him~~ in such law enforcement; AND PROVIDED FURTHER, the superintendent shall designate and train ten special investigators in addition to those authorized on July 12, 1974, to assist him or her and all other law enforcement agencies in this state with enforcement of drug control legislation. As an aid to such special investigators, the superintendent shall appoint two stenographers and one laboratory technician in addition to those authorized on September 2, 1973. The laboratory technician shall be stationed in the Department of Health for the purposes of drug analysis.

There is hereby created in the state treasury a cash fund to be known as the Nebraska State Patrol Criminal Investigation Cash Fund which shall be used for the enforcement of any state law relating to felonies. Any money in the Criminal Investigation Cash Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 5. On the effective date of this act, the Department of Health shall transfer all equipment, materials, and records under its control which were used by Nebraska State Patrol laboratory technicians for the purposes of drug analysis to the Nebraska State Patrol.

Sec. 6. That original sections 28-430, 28-434, 28-1439, and 81-2004, Reissue Revised Statutes of Nebraska, 1943, are repealed.