

Chapter 37c Utah Controlled Substance Precursor Act

58-37c-1 Short title.

This act shall be known as the "Utah Controlled Substance Precursor Act."

Repealed and Re-enacted by Chapter 155, 1992 General Session

58-37c-2 Purpose.

The purpose of this act is to provide for the licensure of regulated distributors and regulated purchasers engaged in regulated transactions of listed controlled substance precursor chemicals as they are identified in the act or rules adopted pursuant to the act, to provide for maintaining of records and submission of reports with respect to regulated transactions, to provide for reasonable and necessary regulation of defined types of transactions, to provide that violation of the provisions of this act shall be unlawful and unprofessional conduct, and to provide for criminal and administrative actions for that conduct.

Repealed and Re-enacted by Chapter 155, 1992 General Session

58-37c-3 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) "Controlled substance precursor" includes a chemical reagent and means any of the following:
 - (a) Phenyl-2-propanone;
 - (b) Methylamine;
 - (c) Ethylamine;
 - (d) D-lysergic acid;
 - (e) Ergotamine and its salts;
 - (f) Diethyl malonate;
 - (g) Malonic acid;
 - (h) Ethyl malonate;
 - (i) Barbituric acid;
 - (j) Piperidine and its salts;
 - (k) N-acetylanthranilic acid and its salts;
 - (l) Pyrrolidine;
 - (m) Phenylacetic acid and its salts;
 - (n) Anthranilic acid and its salts;
 - (o) Morpholine;
 - (p) Ephedrine;
 - (q) Pseudoephedrine;
 - (r) Norpseudoephedrine;
 - (s) Phenylpropanolamine;
 - (t) Benzyl cyanide;
 - (u) Ergonovine and its salts;
 - (v) 3,4-Methylenedioxyphenyl-2-propanone;
 - (w) propionic anhydride;
 - (x) Insosafrole;
 - (y) Safrole;

- (z) Piperonal;
 - (aa) N-Methylephedrine;
 - (bb) N-ethylephedrine;
 - (cc) N-methylpseudoephedrine;
 - (dd) N-ethylpseudoephedrine;
 - (ee) Hydriotic acid;
 - (ff) gamma butyrolactone (GBL), including butyrolactone, 1,2 butanolide, 2-oxanolone, tetrahydro-2-furanone, dihydro-2(3H)-furanone, and tetramethylene glycol, but not including gamma aminobutric acid (GABA);
 - (gg) 1,4 butanediol;
 - (hh) any salt, isomer, or salt of an isomer of the chemicals listed in Subsections (1)(a) through (gg);
 - (ii) Crystal iodine;
 - (jj) Iodine at concentrations greater than 1.5% by weight in a solution or matrix;
 - (kk) Red phosphorous, except as provided in Section 58-37c-19.7;
 - (ll) anhydrous ammonia, except as provided in Section 58-37c-19.9;
 - (mm) any controlled substance precursor listed under the provisions of the Federal Controlled Substances Act which is designated by the director under the emergency listing provisions set forth in Section 58-37c-14; and
 - (nn) any chemical which is designated by the director under the emergency listing provisions set forth in Section 58-37c-14.
- (2) "Deliver," "delivery," "transfer," or "furnish" means the actual, constructive, or attempted transfer of a controlled substance precursor.
- (3) "Matrix" means something, as a substance, in which something else originates, develops, or is contained.
- (4) "Person" means any individual, group of individuals, proprietorship, partnership, joint venture, corporation, or organization of any type or kind.
- (5) "Practitioner" means a physician, dentist, podiatric physician, veterinarian, pharmacist, scientific investigator, pharmacy, hospital, pharmaceutical manufacturer, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.
- (6)
- (a) "Regulated distributor" means a person within the state who provides, sells, furnishes, transfers, or otherwise supplies a listed controlled substance precursor chemical in a regulated transaction.
 - (b) "Regulated distributor" does not include any person excluded from regulation under this chapter.
- (7)
- (a) "Regulated purchaser" means any person within the state who receives a listed controlled substance precursor chemical in a regulated transaction.
 - (b) "Regulated purchaser" does not include any person excluded from regulation under this chapter.
- (8) "Regulated transaction" means any actual, constructive or attempted:
- (a) transfer, distribution, delivery, or furnishing by a person within the state to another person within or outside of the state of a threshold amount of a listed precursor chemical; or
 - (b) purchase or acquisition by any means by a person within the state from another person within or outside the state of a threshold amount of a listed precursor chemical.

- (9) "Retail distributor" means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor are limited almost exclusively to sales for personal use:
- (a) in both number of sales and volume of sales; and
 - (b) either directly to walk-in customers or in face-to-face transactions by direct sales.
- (10) "Threshold amount of a listed precursor chemical" means any amount of a controlled substance precursor or a specified amount of a controlled substance precursor in a matrix; however, the division may exempt from the provisions of this chapter a specific controlled substance precursor in a specific amount and in certain types of transactions which provisions for exemption shall be defined by the division by rule adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (11) "Unlawful conduct" as defined in Section 58-1-501 includes knowingly and intentionally:
- (a) engaging in a regulated transaction without first being appropriately licensed or exempted from licensure under this chapter;
 - (b) acting as a regulated distributor and selling, transferring, or in any other way conveying a controlled substance precursor to a person within the state who is not appropriately licensed or exempted from licensure as a regulated purchaser, or selling, transferring, or otherwise conveying a controlled substance precursor to a person outside of the state and failing to report the transaction as required;
 - (c) acting as a regulated purchaser and purchasing or in any other way obtaining a controlled substance precursor from a person within the state who is not a licensed regulated distributor, or purchasing or otherwise obtaining a controlled substance precursor from a person outside of the state and failing to report the transaction as required;
 - (d) engaging in a regulated transaction and failing to submit reports and keep required records of inventories required under the provisions of this chapter or rules adopted pursuant to this chapter;
 - (e) making any false statement in any application for license, in any record to be kept, or on any report submitted as required under this chapter;
 - (f) with the intent of causing the evasion of the recordkeeping or reporting requirements of this chapter and rules related to this chapter, receiving or distributing any listed controlled substance precursor chemical in any manner designed so that the making of records or filing of reports required under this chapter is not required;
 - (g) failing to take immediate steps to comply with licensure, reporting, or recordkeeping requirements of this chapter because of lack of knowledge of those requirements, upon becoming informed of the requirements;
 - (h) presenting false or fraudulent identification where or when receiving or purchasing a listed controlled substance precursor chemical;
 - (i) creating a chemical mixture for the purpose of evading any licensure, reporting or recordkeeping requirement of this chapter or rules related to this chapter, or receiving a chemical mixture created for that purpose;
 - (j) if the person is at least 18 years of age, employing, hiring, using, persuading, inducing, enticing, or coercing another person under 18 years of age to violate any provision of this chapter, or assisting in avoiding detection or apprehension for any violation of this chapter by any federal, state, or local law enforcement official; and
 - (k) obtaining or attempting to obtain or to possess any controlled substance precursor or any combination of controlled substance precursors knowing or having a reasonable cause to believe that the controlled substance precursor is intended to be used in the unlawful manufacture of any controlled substance.

- (12) "Unprofessional conduct" as defined in Section 58-1-102 and as may be further defined by rule includes the following:
- (a) violation of any provision of this chapter, the Controlled Substance Act of this state or any other state, or the Federal Controlled Substance Act; and
 - (b) refusing to allow agents or representatives of the division or authorized law enforcement personnel to inspect inventories or controlled substance precursors or records or reports relating to purchases and sales or distribution of controlled substance precursors as such records and reports are required under this chapter.

Amended by Chapter 258, 2015 General Session

58-37c-5 Responsibility of Department of Commerce -- Delegation to the Division of Occupational and Professional Licensing -- Rulemaking authority of the division.

- (1) Responsibility for the enforcement of the licensing and reporting provisions of this chapter shall be with the Department of Commerce.
- (2) The executive director shall delegate specific responsibility within the department to the Division of Occupational and Professional Licensing.
- (3) The division shall make, adopt, amend, and repeal rules necessary for the proper administration and enforcement of this chapter.

Repealed and Re-enacted by Chapter 155, 1992 General Session

58-37c-6 Division duties.

The division shall be responsible for the licensing and reporting provisions of this chapter and those duties shall include:

- (1) providing for a system of licensure of regulated distributors and regulated purchasers;
- (2) refusing to renew a license or revoking, suspending, restricting, placing on probation, issuing a private or public letter of censure or reprimand, or imposing other appropriate action against a license;
- (3) with respect to the licensure and reporting provisions of this chapter, investigating or causing to be investigated any violation of this chapter by any person and to cause, when necessary, appropriate administrative action with respect to the license of that person;
- (4) presenting evidence obtained from investigations conducted by appropriate county attorneys and the Office of the Attorney General for civil or criminal prosecution or for administrative action against a licensee;
- (5) conducting hearings for the purpose of revoking, suspending, placing on probation, or imposing other appropriate administrative action against the license of regulated distributors or regulated purchasers in accordance with the provisions of Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, and Title 63G, Chapter 4, Administrative Procedures Act;
- (6) assisting all other law enforcement agencies of the state in enforcing all laws regarding controlled substance precursors;
- (7) specifying reports, frequency of reports, and conditions under which reports are to be submitted and to whom reports are to be submitted by regulated distributors and regulated purchasers with respect to transactions involving threshold amounts of controlled substance precursors; and
- (8) performing all other functions necessary to fulfill division duties and responsibilities as outlined under this chapter or rules adopted pursuant to this chapter.

Amended by Chapter 382, 2008 General Session

58-37c-7 Controlled substance precursor license.

- (1) The division shall issue to persons qualified under the provisions of this chapter and rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a controlled substance precursor license.
- (2) It is unlawful for a person to engage in the distribution, sale, or transfer, or in the purchase or obtaining of a controlled substance precursor in a regulated transaction without being licensed or excepted from licensure under this chapter.

Amended by Chapter 240, 2010 General Session

58-37c-8 License -- Exceptions from licensure or regulation.

- (1) A person engaged in a regulated transaction under this chapter shall hold a controlled substance precursor license issued under Section 58-37c-7, unless excepted from licensure under this chapter.
- (2) The division shall:
 - (a) establish the form of application for a license, the requirements for licensure, and fees for initial licensure and renewal; and
 - (b) identify required information to be contained in the application as a condition of licensure.
- (3) A practitioner who holds a Utah Controlled Substance License and a Controlled Substance Registration issued by the Drug Enforcement Administration of the U.S. Government is excepted from licensure under this chapter.
- (4) The purchase, sale, transfer, furnishing, or receipt of a drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, if the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription pursuant to the federal Food, Drug and Cosmetic Act, 21 USC, Sec. 301 et seq., or regulations adopted under that act, are excepted from licensure, reporting, and recordkeeping under this chapter, except that products containing ephedrine, pseudoephedrine, or phenylpropanolamine are subject to Section 58-37c-20.5.
- (5) The purchase, sale, transfer, receipt, or manufacture of dietary supplements, vitamins, minerals, herbs, or other similar substances, including concentrates or extracts, which are not otherwise prohibited by law, and which may contain naturally occurring amounts of chemicals or substances listed in this chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, are exempt from licensure under this chapter.
- (6) A purchaser of two ounces or less of crystal iodine in a single transaction is not required to be licensed as a regulated purchaser if the transaction complies with Section 58-37c-18.
- (7) The purchase, sale, transfer, receipt, or manufacture of a product that contains a precursor chemical listed in Subsection 58-37c-3(1)(ff) or (gg) and that is not intended for human consumption is exempt from licensure or regulation and is not subject to criminal penalties under this chapter.

Amended by Chapter 262, 2013 General Session

Amended by Chapter 413, 2013 General Session

58-37c-9 Term of license -- Expiration -- Renewal.

- (1) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule. A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
- (2) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with Section 58-1-308.

Repealed and Re-enacted by Chapter 297, 1993 General Session

58-37c-10 Reporting and recordkeeping.

- (1) Any person who engages in a regulated transaction, unless excepted under the provisions of Subsections 58-37c-8(3) and (4), shall submit a report with respect to such transaction and shall maintain records of inventories in accordance with rules adopted by the division.
- (2) The division shall provide reporting forms upon which regulated transactions shall be reported.
- (3) The division shall furnish copies of reports of transactions under this section to appropriate law enforcement agencies.
- (4) The division shall adopt rules regulating:
 - (a) records which shall be maintained and reports which shall be submitted by regulated distributors and regulated purchasers with respect to listed controlled substance precursors obtained, distributed, and held in inventory;
 - (b) records which shall be maintained and reports which shall be submitted by regulated distributors and regulated purchasers with respect to extraordinary or unusual regulated transactions and a requirement that in such cases the report must be received at least three working days prior to transfer of the listed controlled substance precursor;
 - (c) identification which must be presented by a purchaser of any listed controlled substance precursor before the sale or transfer can be completed and recordkeeping requirements related to such identification presented;
 - (d) filing by each licensee the identification of all locations where any listed controlled substance precursor is held in inventory or stored and amending such filing when any change in location is made;
 - (e) reports and actions which must be taken by a regulated distributor or regulated purchaser in the event of any theft, loss, or shortage of a listed controlled substance precursor;
 - (f) reports and actions which must be taken by a regulated distributor relating to a regulated transaction with an out-of-state purchaser;
 - (g) reports and actions which must be taken by a regulated purchaser relating to a regulated transaction with an out-of-state distributor; and
 - (h) regulated transactions to the extent such regulation is reasonable and necessary to protect the public health, safety, or welfare.
- (5) A person who engages in a regulated transaction may not accept a driving privilege card issued in accordance with Section 53-3-207 as proof of identification as required under Subsection (4) (c).

Amended by Chapter 322, 2008 General Session

58-37c-11 Penalty for unlawful conduct.

- (1) A person who violates the unlawful conduct provision defined in Subsections 58-37c-3(11)(a) through (j) is guilty of a class A misdemeanor.
- (2) A person who violates the unlawful conduct provisions defined in Subsection 58-37c-3(11)(k) is guilty of a second degree felony.

Amended by Chapter 262, 2013 General Session
Amended by Chapter 413, 2013 General Session

58-37c-12 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.

Repealed and Re-enacted by Chapter 297, 1993 General Session

58-37c-13 License does not authorize possession of controlled substances.

Nothing in the provisions of this chapter shall authorize persons not licensed under provisions of Title 58, Chapter 37, Utah Controlled Substances Act, to distribute, possess, dispense, administer, or otherwise deal in controlled substances as defined in the Utah Controlled Substance Act.

Enacted by Chapter 155, 1992 General Session

58-37c-14 Emergency listing provision.

- (1) Upon a written finding of cause by the director that the listing of a chemical as a controlled substance precursor is necessary to protect the public health, safety, or welfare, the director may make an emergency listing of that chemical as a controlled substance precursor by adopting a rule pursuant to the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) Such listing shall have effect until the close of the next immediately succeeding regular session of the Legislature. In the event the Legislature adopts the chemical as a controlled precursor by amendment to this chapter, the chemical shall remain listed under emergency provisions until the effective date of the amendment.
- (3) Any violation of this chapter dealing with a controlled substance precursor listed under the emergency listing provisions of this section shall constitute a violation subject only to civil or administrative penalties.

Amended by Chapter 382, 2008 General Session

58-37c-15 Civil forfeiture.

The following shall be subject to forfeiture in accordance with the procedures and substantive protections of Title 24, Forfeiture and Disposition of Property Act:

- (1) all listed controlled substance precursor chemicals regulated under the provisions of this chapter which have been distributed, possessed, or are intended to be distributed or otherwise transferred in violation of any felony provision of this chapter; and
- (2) all property used by any person to facilitate, aid, or otherwise cause the unlawful distribution, transfer, possession, or intent to distribute, transfer, or possess a listed controlled substance precursor chemical in violation of any felony provision of this chapter.

Amended by Chapter 258, 2015 General Session

58-37c-16 Civil penalties.

Any person who is a regulated distributor or a regulated purchaser who acts in violation of the provisions of Section 58-37c-10 in addition to any criminal penalties, shall be subject to a civil penalty of not more than \$25,000 for each offense.

Enacted by Chapter 155, 1992 General Session

58-37c-17 Inspection authority.

For the purpose of inspecting, copying, and auditing records and reports required under this chapter and rules adopted pursuant thereto, and for the purpose of inspecting and auditing inventories of listed controlled substance precursors, the director, or his authorized agent, and law enforcement personnel of any federal, state, or local law enforcement agency is authorized to enter the premises of regulated distributors and regulated purchasers during normal business hours to conduct administrative inspections.

Amended by Chapter 278, 2013 General Session

58-37c-18 Recordkeeping requirements for sale of crystal iodine.

- (1) Any person licensed to engage in a regulated transaction and who sells crystal iodine to another person shall:
 - (a) comply with the recordkeeping requirements of Section 58-37c-10;
 - (b) require photo identification of the purchaser;
 - (c) obtain from the purchaser a signature on a certificate of identification provided by the seller; and
 - (d) obtain from the purchaser a legible fingerprint, preferably of the right thumb, which shall be placed on the certificate next to the purchaser's signature.
- (2) Any failure to comply with Subsection (1) is a class B misdemeanor.

Amended by Chapter 21, 1999 General Session

58-37c-19 Possession or sale of crystal iodine.

- (1) A person licensed to engage in a regulated transaction is guilty of a class B misdemeanor who, under circumstances not amounting to a violation of Subsection 58-37d-4(1)(c), offers to sell, sells, or distributes more than two ounces of crystal iodine to another person who is:
 - (a) not licensed as a regulated purchaser of crystal iodine;
 - (b) not excepted from licensure; or
 - (c) not excepted under Subsection (3).
- (2) A person who is not licensed to engage in regulated transactions and not excepted from licensure is guilty of a class A misdemeanor who, under circumstances not amounting to a violation of Subsection 58-37c-3(11)(k) or Subsection 58-37d-4(1)(a):
 - (a) possesses more than two ounces of crystal iodine; or
 - (b) offers to sell, sells, or distributes crystal iodine to another person.
- (3) Subsection (2)(a) does not apply to:
 - (a) a chemistry laboratory maintained by:
 - (i) a public or private regularly established secondary school; or
 - (ii) a public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;
 - (b) a veterinarian licensed to practice under Title 58, Chapter 28, Veterinary Practice Act; or
 - (c) a general acute hospital.

Amended by Chapter 262, 2013 General Session
Amended by Chapter 413, 2013 General Session

58-37c-19.5 Iodine solution greater than 1.5% -- Prescription or permit required -- Penalties.

- (1) As used in this section, "iodine matrix" means iodine at concentrations greater than 1.5% by weight in a matrix or solution.
- (2) A person may offer to sell, sell, or distribute an iodine matrix only:
 - (a) as a prescription drug, pursuant to a prescription issued by a veterinarian or physician licensed within the state; or
 - (b) to a person who is actively engaged in the legal practice of animal husbandry of livestock, as defined in Section 4-1-8.
- (3) Prescriptions issued under this section:
 - (a) shall provide for a specified number of refills;
 - (b) may be issued by electronic means, in accordance with Title 58, Chapter 17b, Pharmacy Practice Act; and
 - (c) may be filled by a person other than the veterinarian or physician issuing the prescription.
- (4) A retailer offering iodine matrix for sale:
 - (a) shall store the iodine matrix so that the public does not have access to the iodine matrix without the direct assistance or intervention of a retail employee;
 - (b) shall keep a record, which may consist of sales receipts, of each person purchasing iodine matrix; and
 - (c) may, if necessary to ascertain the identity of the purchaser, ask for proof of identification from the purchaser.
- (5) A person engaging in a regulated transaction under Subsection (2) is guilty of a class B misdemeanor if the person, under circumstances not amounting to a violation of Subsection 58-37d-4(1)(c), offers to sell, sells, or distributes an iodine matrix to a person who:
 - (a) does not present a prescription or is not engaged in animal husbandry, as required under Subsection (2); or
 - (b) is not excepted under Subsection (7).
- (6) A person is guilty of a class A misdemeanor who, under circumstances not amounting to a violation of Subsection 58-37c-3(11)(k) or 58-37d-4(1)(a):
 - (a) possesses an iodine matrix without proof of obtaining the solution in compliance with Subsection (2); or
 - (b) offers to sell, sells, or distributes an iodine matrix in violation of Subsection (2).
- (7) Subsection (6)(a) does not apply to:
 - (a) a chemistry or chemistry-related laboratory maintained by:
 - (i) a public or private regularly established secondary school; or
 - (ii) a public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;
 - (b) a veterinarian licensed to practice under Title 58, Chapter 28, Veterinary Practice Act;
 - (c) a general acute hospital; or
 - (d) a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons who possesses an iodine matrix in the regular course of lawful business activities.

Amended by Chapter 262, 2013 General Session
Amended by Chapter 413, 2013 General Session

58-37c-19.7 Red phosphorus is a precursor -- Affirmative defense.

- (1) A person is guilty of a class A misdemeanor who is not licensed to engage in a regulated transaction and is not excepted from licensure who, under circumstances not amounting to a violation of Subsection 58-37c-3(11)(k) or 58-37d-4(1)(a), possesses any amount of red phosphorus.
- (2) It is an affirmative defense to a charge under Subsection (1) that the person in possession of red phosphorus:
 - (a) is conducting a licensed business that involves red phosphorus in the manufacture of any of the following:
 - (i) the striking surface used for lighting matches, which is sometimes referred to as the striker plate;
 - (ii) flame retardant in polymers; or
 - (iii) fireworks, for which the person or entity possesses a federal license to manufacture explosives as required under 27 CFR Chapter II, Part 555, Commerce in Explosives; or
 - (b)
 - (i) is a wholesaler, manufacturer, warehouseman, or common carrier handling red phosphorus, or is an agent of any of these persons; and
 - (ii) possesses the substances in the regular course of lawful business activities.
- (3)
 - (a) A defendant shall provide written notice of intent to claim an affirmative defense under this section as soon as practicable, but not later than 10 days prior to trial. The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.
 - (b) The notice shall include the specifics of the affirmative defense.
 - (c) The defendant shall establish the affirmative defense by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.
- (4) Subsection (1) does not apply to:
 - (a) a chemistry or chemistry-related laboratory maintained by:
 - (i) a public or private regularly established secondary school; or
 - (ii) a public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education; or
 - (b) a retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons who possesses red phosphorus in the regular course of lawful business activities.

Amended by Chapter 262, 2013 General Session

Amended by Chapter 413, 2013 General Session

58-37c-19.9 Anhydrous ammonia is a precursor -- Requirements regarding purposes and containers.

- (1) A person is guilty of a class A misdemeanor who is not licensed to engage in a regulated transaction and is not excepted from licensure or exempted under Subsection (2), and who possesses any amount of anhydrous ammonia under circumstances not amounting to a violation of Subsection 58-37c-3(11)(k) or 58-37d-4(1)(a).
- (2) A person who possesses anhydrous ammonia has an affirmative defense to a charge under Subsection (1) if the person is:

- (a) directly involved in or actively operating land in agricultural use as defined in Section 59-2-502;
- (b) a retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons, who possesses anhydrous ammonia in the regular course of lawful business activities;
- (c) directly involved in or actively operating a business or other lawful activity providing or using anhydrous ammonia for refrigeration applications; or
- (d) directly involved in or actively operating a lawful business enterprise, including an industrial enterprise, that uses anhydrous ammonia in the regular course of its business activities.

Amended by Chapter 262, 2013 General Session

Amended by Chapter 413, 2013 General Session

58-37c-20 Possession of ephedrine, pseudoephedrine, or phenylpropanolamine -- Penalties.

- (1) A person is guilty of a class A misdemeanor:
 - (a) who is not licensed to engage in regulated transactions and is not excepted from licensure; and
 - (b) who, under circumstances not amounting to a violation of Subsection 58-37c-3(11)(k) or Subsection 58-37d-4(1)(a), possesses more than 9 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances.
- (2) It is an affirmative defense to a charge under Subsection (1) that the person in possession of ephedrine, pseudoephedrine, phenylpropanolamine, or a combination of these two substances:
 - (a)
 - (i) is a physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons; and
 - (ii) possesses the substances in the regular course of lawful business activities; or
 - (b) possesses the substance pursuant to a valid prescription as defined in Section 58-37-2.
- (3)
 - (a) A defendant shall provide written notice of intent to claim an affirmative defense under this section as soon as practicable, but not later than 10 days prior to trial. The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.
 - (b) The notice shall include the specifics of the asserted defense.
 - (c) The defendant shall establish the affirmative defense by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.
- (4) This section does not apply to dietary supplements, herbs, or other natural products, including concentrates or extracts, which:
 - (a) are not otherwise prohibited by law; and
 - (b) may contain naturally occurring ephedrine, ephedrine alkaloids, or pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these substances, that:
 - (i) are contained in a matrix of organic material; and
 - (ii) do not exceed 15% of the total weight of the natural product.

Amended by Chapter 262, 2013 General Session

Amended by Chapter 413, 2013 General Session

58-37c-20.5 Pseudoephedrine products -- Limitations on retail sale.

- (1) As used in this section:
 - (a) "Mobile retail vendor" means a person or entity that sells product at retail from a stand that is intended to be temporary, or that is capable of being moved from one location to another, whether the stand is located within or on the premises of a fixed facility or is located on unimproved real estate; and
 - (b) "Product" means any product, mixture, or preparation, or any combination of products that contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or isomers, or salts of optical isomers, or a combination of any of these substances.
- (2) A retail distributor or a mobile retail vendor may not distribute or sell any product that exceeds the threshold amount of 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, or any combination of these, regardless of the number of transactions, during any 24-hour period.
- (3) A mobile retail vendor may not distribute or sell any product that exceeds the threshold amount of 7.5 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, regardless of the number of transactions, during any 30-day period.
- (4) A retail distributor or a mobile retail vendor may not distribute or sell any product, unless the retail distributor or mobile retail vendor:
 - (a) stores the product in an area not accessible to customers prior to the sale, which area may include a locked cabinet to display the product in an area accessible to customers, if the locked cabinet may be opened only by the retail distributor or mobile retail vendor or its employees;
 - (b) stores all nonliquid scheduled listed chemical products in packaging containing blister packs, with each blister containing no more than two dosage units;
 - (c) requires the purchaser of the product to provide photo identification issued by a governmental agency and that includes the purchaser's date of birth;
 - (d) maintains a written or electronic log under Subsection (5) of the sales made under this section; and
 - (e) provides a notice concerning federal penalties for making false statements or misrepresentations, as provided in Subsection (5)(d).
- (5) Each retail distributor or mobile retail vendor shall maintain an electronic or written log that contains the following information regarding each person to whom product is distributed or sold under this section. The log shall include:
 - (a) the following information, provided or written in the log by the purchaser:
 - (i) the purchaser's name, address, and date of birth, as demonstrated by a form of personal identification issued by the state or the federal government and that provides an identifying photograph of the person;
 - (ii) the date and time of the transaction; and
 - (iii) the purchaser's signature; and
 - (b) the following information verified or written in by the retail distributor or the mobile retail vendor:
 - (i) verification of the identity of the purchaser as indicated by the form of identification presented by the purchaser;
 - (ii) verification that the date and time of the transaction as entered in the log is correct; and
 - (iii) entry of the brand name and the quantity of the product sold in the transaction.
 - (c) The retail distributor or the mobile retail vendor shall maintain the information required to be recorded in a log under Subsections (5)(a) and (b) for not less than two years from the most recent date contained in the log.

- (d) In addition to the log information required under this Subsection (5), the log, or a prominently displayed sign, shall contain the following statement verbatim which shall be visible to purchasers of product:

"WARNING: Section 1001 of Title 18, United States Code, states that whoever, with respect to the information to be provided in this log, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document, knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than \$250,000 if an individual or \$500,000 if an organization, imprisoned for not more than five years, or both."

- (6)
 - (a) A person may not knowingly and intentionally use, release, publish, or otherwise make available to any person or entity any information in or obtained from a log maintained by a retail distributor or a mobile retail vendor under this section for any purpose other than those specified in Subsection (6)(b).
 - (b) The retail distributor or its designee shall make information in the log available only to:
 - (i) federal, state, and local law enforcement authorities engaged as a duty of their employment in enforcing laws regulating controlled substances; and
 - (ii) an individual:
 - (A) whose request is for records in the log of that individual's purchase or receipt of product; and
 - (B) who has provided evidence satisfactory to the retail distributor that the individual is in fact the person regarding whom the requested log entry is made.
 - (c) Any person who knowingly and intentionally releases or modifies any information in the log in violation of this Subsection (6) is guilty of a class B misdemeanor.
- (7)
 - (a) A person may not purchase product that exceeds the threshold amount of 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, or any combination of these, regardless of the number of transactions, during any 24-hour period.
 - (b) A person may not purchase product that exceeds the threshold amount of 9 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, or any combination of these, regardless of the number of transactions, during any 30-day period.
 - (c) A violation of this Subsection (7) is a class B misdemeanor.
- (8) This section does not apply to any quantity of product possessed by:
 - (a) a physician, pharmacist, veterinarian, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or any agent of these persons, who possess the product in the regular course of lawful business activities; or
 - (b) a person who possesses the product pursuant to a valid prescription as defined in Section 58-37-2.
- (9) This section does not apply to dietary supplements, herbs, or other natural products, including concentrates or extracts, which:
 - (a) are not otherwise prohibited by law; and
 - (b) may contain naturally occurring ephedrine, ephedrine alkaloids, or pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these substances, that:
 - (i) are contained in a matrix of organic material; and
 - (ii) do not exceed 15% of the total weight of the natural product.
- (10) This section does not apply to an individual sales transaction in which the purchaser purchases a single package containing no more than 60 mg of pseudoephedrine.

(11)

- (a) A violation of this section is a class B misdemeanor, and a second or subsequent violation of this section is a class A misdemeanor.
- (b) For purposes of this section, a plea of guilty or no contest to a violation of this section which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction for a violation of this section, even if the charge has been subsequently reduced or dismissed in accordance with a plea in abeyance agreement.

Enacted by Chapter 358, 2007 General Session

58-37c-21 Department of Public Safety enforcement authority.

- (1) As used in this section, "division" means the Criminal Investigations and Technical Services Division of the Department of Public Safety, created in Section 53-10-103.
- (2) The division has authority to enforce this chapter. To carry out this purpose, the division may:
 - (a) inspect, copy, and audit records, inventories of controlled substance precursors, and reports required under this chapter and rules adopted under this chapter;
 - (b) enter the premises of regulated distributors and regulated purchasers during normal business hours to conduct administrative inspections;
 - (c) assist the law enforcement agencies of the state in enforcing this chapter;
 - (d) conduct investigations to enforce this chapter;
 - (e) present evidence obtained from investigations conducted in conjunction with appropriate county and district attorneys and the Office of the Attorney General for civil or criminal prosecution or for administrative action against a licensee; and
 - (f) work in cooperation with the Division of Occupational and Professional Licensing, created under Section 58-1-103, to accomplish the purposes of this section.

Amended by Chapter 21, 1999 General Session