

1 **AMENDMENTS TO PHARMACEUTICAL LAW**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Richard M. Siddoway**

5 AN ACT RELATING TO LICENSURE AND CRIMINAL LAW; AMENDING THE
6 DEFINITION OF CONTROLLED SUBSTANCES TO INCLUDE PRESCRIPTION DRUGS.

7 This act affects sections of Utah Code Annotated 1953 as follows:

8 AMENDS:

9 **58-37-2**, as last amended by Chapter 64, Laws of Utah 1997

10 *Be it enacted by the Legislature of the state of Utah:*

11 Section 1. Section **58-37-2** is amended to read:

12 **58-37-2. Definitions.**

13 (1) As used in this chapter:

14 (a) "Administer" means the direct application of a controlled substance, whether by
15 injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

16 (i) a practitioner or, in his presence, by his authorized agent; or

17 (ii) the patient or research subject at the direction and in the presence of the practitioner.

18 (b) "Agent" means an authorized person who acts on behalf of or at the direction of a
19 manufacturer, distributor, or practitioner but does not include a motor carrier, public
20 warehouseman, or employee of any of them.

21 (c) "Continuing criminal enterprise" means any individual, sole proprietorship,
22 partnership, corporation, business trust, association, or other legal entity, and any union or groups
23 of individuals associated in fact although not a legal entity, and includes illicit as well as licit
24 entities created or maintained for the purpose of engaging in conduct which constitutes the
25 commission of episodes of activity made unlawful by Title 58, Chapters 37, 37a, 37b, 37c, or 37d,
26 which episodes are not isolated, but have the same or similar purposes, results, participants,
27 victims, methods of commission, or otherwise are interrelated by distinguishing characteristics.

1 Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either
2 to each other or to the enterprise.

3 (d) "Control" means to add, remove, or change the placement of a drug, substance, or
4 immediate precursor under Section 58-37-3.

5 (e) (i) "Controlled substance" means a drug or substance:

6 (A) included in Schedules I, II, III, IV, or V of Section 58-37-4~~[-and also includes a drug~~
7 ~~or substance];~~

8 (B) included in Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title
9 II, P.L. 91-513~~[-or any];~~

10 (C) ~~that is a controlled substance analog; or~~

11 (D) ~~any prescription drug or legend drug as defined in Section 58-17a-102.~~

12 (ii) "Controlled substance" does not include:

13 (A) distilled spirits, wine, or malt beverages, as those terms are defined or used in Title
14 32A, regarding tobacco or food;

15 (B) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or
16 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,
17 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred,
18 or furnished as an over-the-counter medication without prescription; or

19 (C) dietary supplements, vitamins, minerals, herbs, or other similar substances including
20 concentrates or extracts, which are not otherwise regulated by law, which may contain naturally
21 occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to
22 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

23 (f) (i) "Controlled substance analog" means a substance the chemical structure of which
24 is substantially similar to the chemical structure of a controlled substance listed in Schedules I and
25 II of Section 58-37-4, or in Schedules I and II of the federal Controlled Substances Act, Title II,
26 P.L. 91-513:

27 (A) which has a stimulant, depressant, or hallucinogenic effect on the central nervous
28 system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central
29 nervous system of controlled substances in the schedules set forth in this subsection; or

30 (B) which, with respect to a particular individual, is represented or intended to have a
31 stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar

1 to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled
2 substances in the schedules set forth in this subsection.

3 (ii) Controlled substance analog does not include:

4 (A) a controlled substance currently scheduled in Schedules I through V of Section
5 58-37-4;

6 (B) a substance for which there is an approved new drug application;

7 (C) a substance with respect to which an exemption is in effect for investigational use by
8 a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 366, to the
9 extent the conduct with respect to the substance is permitted by the exemption; [or]

10 (D) any substance to the extent not intended for human consumption before an exemption
11 takes effect with respect to the substance[-];

12 (E) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or
13 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,
14 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold, transferred,
15 or furnished as an over-the-counter medication without prescription[-]; or

16 (F) dietary supplements, vitamins, minerals, herbs, or other similar substances including
17 concentrates or extracts, which are not otherwise regulated by law, which may contain naturally
18 occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant to
19 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

20 (g) "Conviction" means a determination of guilt by verdict, whether jury or bench, or plea,
21 whether guilty or no contest, for any offense proscribed by Title 58, Chapters 37, 37a, 37b, 37c,
22 or 37d, or for any offense under the laws of the United States and any other state which, if
23 committed in this state, would be an offense under Title 58, Chapters 37, 37a, 37b, 37c, or 37d.

24 (h) "Counterfeit substance" means:

25 (i) any substance or container or labeling of any substance that without authorization bears
26 the trademark, trade name, or other identifying mark, imprint, number, device, or any likeness of
27 them, of a manufacturer, distributor, or dispenser other than the person or persons who in fact
28 manufactured, distributed, or dispensed the substance which falsely purports to be a controlled
29 substance distributed by, any other manufacturer, distributor, or dispenser; or

30 (ii) any substance that is represented to be a controlled substance.

31 (i) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a

1 controlled substance or a listed chemical, whether or not an agency relationship exists.

2 (j) "Department" means the Department of Commerce.

3 (k) "Depressant or stimulant substance" means:

4 (i) a drug which contains any quantity of:

5 (A) barbituric acid or any of the salts of barbituric acid; or

6 (B) any derivative of barbituric acid which has been designated by the Secretary of
7 Agriculture as habit-forming under Section 502 (d) of the federal Food, Drug, and Cosmetic Act,
8 21 U.S.C. 352 (d);

9 (ii) a drug which contains any quantity of:

10 (A) amphetamine or any of its optical isomers;

11 (B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or

12 (C) any substance which the Secretary of Health and Human Services or the Attorney
13 General of the United States after investigation has found and by regulation designated
14 habit-forming because of its stimulant effect on the central nervous system; or

15 (iii) lysergic acid diethylamide; or

16 (iv) any drug which contains any quantity of a substance which the Secretary of Health
17 and Human Services or the Attorney General of the United States after investigation has found to
18 have, and by regulation designated as having, a potential for abuse because of its depressant or
19 stimulant effect on the central nervous system or its hallucinogenic effect.

20 (l) "Dispense" means the delivery of a controlled substance by a pharmacist to an ultimate
21 user pursuant to the lawful order or prescription of a practitioner, and includes distributing to,
22 leaving with, giving away, or disposing of that substance as well as the packaging, labeling, or
23 compounding necessary to prepare the substance for delivery.

24 (m) "Dispenser" means a pharmacist who dispenses a controlled substance.

25 (n) "Distribute" means to deliver other than by administering or dispensing a controlled
26 substance or a listed chemical.

27 (o) "Distributor" means a person who distributes controlled substances.

28 (p) "Drug" means:

29 (i) articles recognized in the official United States Pharmacopoeia, Official Homeopathic
30 Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of
31 them;

1 (ii) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of
2 disease in man or other animals;

3 (iii) articles, other than food, intended to affect the structure or function of man or other
4 animals; and

5 (iv) articles intended for use as a component of any articles specified in Subsection (i), (ii),
6 or (iii); but does not include devices or their components, parts, or accessories.

7 (q) "Drug dependent person" means any individual who unlawfully and habitually uses
8 any controlled substance to endanger the public morals, health, safety, or welfare, or who is so
9 dependent upon the use of controlled substances as to have lost the power of self-control with
10 reference to his dependency.

11 (r) "Food" means:

12 (i) any nutrient or substance of plant, mineral, or animal origin other than a drug as
13 specified in this chapter, and normally ingested by human beings; and

14 (ii) foods for special dietary uses as exist by reason of a physical, physiological,
15 pathological, or other condition including but not limited to the conditions of disease,
16 convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and
17 overweight; uses for supplying a particular dietary need which exist by reason of age including but
18 not limited to the ages of infancy and childbirth, and also uses for supplementing and for fortifying
19 the ordinary or unusual diet with any vitamin, mineral, or other dietary property for use of a food.
20 Any particular use of a food is a special dietary use regardless of the nutritional purposes.

21 (s) "Immediate precursor" means a substance which the Attorney General of the United
22 States has found to be, and by regulation designated as being, the principal compound used or
23 produced primarily for use in the manufacture of a controlled substance, or which is an immediate
24 chemical intermediary used or likely to be used in the manufacture of a controlled substance, the
25 control of which is necessary to prevent, curtail, or limit the manufacture of the controlled
26 substance.

27 (t) "Manufacture" means the production, preparation, propagation, compounding, or
28 processing of a controlled substance, either directly or indirectly by extraction from substances of
29 natural origin, or independently by means of chemical synthesis or by a combination of extraction
30 and chemical synthesis.

31 (u) "Manufacturer" includes any person who packages, repackages, or labels any container

1 of any controlled substance, except pharmacists who dispense or compound prescription orders
2 for delivery to the ultimate consumer.

3 (v) "Marijuana" means all species of the genus cannabis and all parts of the genus, whether
4 growing or not; the seeds of it; the resin extracted from any part of the plant; and every compound,
5 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term
6 does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made
7 from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or
8 preparation of the mature stalks, except the resin extracted from them, fiber, oil or cake, or the
9 sterilized seed of the plant which is incapable of germination. Any synthetic equivalents of the
10 substances contained in the plant cannabis sativa or any other species of the genus cannabis which
11 are chemically indistinguishable and pharmacologically active are also included.

12 (w) "Money" means officially issued coin and currency of the United States or any foreign
13 country.

14 (x) "Narcotic drug" means any of the following, whether produced directly or indirectly
15 by extraction from substances of vegetable origin, or independently by means of chemical
16 synthesis, or by a combination of extraction and chemical synthesis:

17 (i) opium, coca leaves, and opiates;

18 (ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or
19 opiates;

20 (iii) opium poppy and poppy straw; or

21 (iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the
22 substance, which is chemically identical with any of the substances referred to in Subsection (i),
23 (ii), or (iii), except narcotic drug does not include decocainized coca leaves or extracts of coca
24 leaves which do not contain cocaine or ecgonine.

25 (y) "Negotiable instrument" means documents, containing an unconditional promise to pay
26 a sum of money, which are legally transferable to another party by endorsement or delivery.

27 (z) "Opiate" means any drug or other substance having an addiction-forming or
28 addiction-sustaining liability similar to morphine or being capable of conversion into a drug
29 having addiction-forming or addiction-sustaining liability.

30 (aa) "Opium poppy" means the plant of the species papaver somniferum L., except the
31 seeds of the plant.

1 (bb) "Person" means any corporation, association, partnership, trust, other institution or
2 entity or one or more individuals.

3 (cc) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

4 (dd) "Possession" or "use" means the joint or individual ownership, control, occupancy,
5 holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection,
6 or consumption, as distinguished from distribution, of controlled substances and includes
7 individual, joint, or group possession or use of controlled substances. For a person to be a
8 possessor or user of a controlled substance, it is not required that he be shown to have individually
9 possessed, used, or controlled the substance, but it is sufficient if it is shown that the person jointly
10 participated with one or more persons in the use, possession, or control of any substances with
11 knowledge that the activity was occurring, or the controlled substance is found in a place or under
12 circumstances indicating that the person had the ability and the intent to exercise dominion and
13 control over it.

14 (ee) "Practitioner" means a physician, dentist, veterinarian, pharmacist, scientific
15 investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted to
16 distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical
17 analysis a controlled substance in the course of professional practice or research in this state.

18 (ff) "Prescribe" means to issue a prescription orally or in writing.

19 (gg) "Prescription" means an order issued by a licensed practitioner, in the course of that
20 practitioner's professional practice, for a controlled substance, other drug, or device which it
21 dispenses or administers for use by a patient or an animal. The order may be issued by word of
22 mouth, written document, telephone, facsimile transmission, computer, or other electronic means
23 of communication as defined by rule.

24 (hh) "Production" means the manufacture, planting, cultivation, growing, or harvesting
25 of a controlled substance.

26 (ii) "Securities" means any stocks, bonds, notes, or other evidences of debt or of property.

27 (jj) "State" means the state of Utah.

28 (kk) "Ultimate user" means any person who lawfully possesses a controlled substance for
29 his own use, for the use of a member of his household, or for administration to an animal owned
30 by him or a member of his household.

31 (2) If a term used in this chapter is not defined, the definition and terms of Title 76, Utah

1 Criminal Code, shall apply.

Legislative Review Note
as of 12-8-97 1:27 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel