



1 or more persons with respect to whom the person occupies a position of organizer, supervisor, or  
2 any other position of management.

3 (b) Any person convicted of violating Subsection (1)(a) with respect to:

4 (i) a substance classified in Schedule I or II or a controlled substance analog is guilty of  
5 a second degree felony and upon a second or subsequent conviction is guilty of a first degree  
6 felony;

7 (ii) a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree  
8 felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

9 (iii) a substance classified in Schedule V is guilty of a class A misdemeanor and upon a  
10 second or subsequent conviction is guilty of a third degree felony.

11 (c) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony  
12 punishable by imprisonment for an indeterminate term of not less than seven years and which may  
13 be for life. Imposition or execution of the sentence may not be suspended, and the person is not  
14 eligible for probation.

15 (2) Prohibited acts B -- Penalties:

16 (a) It is unlawful:

17 (i) for any person knowingly and intentionally to possess or use a controlled substance,  
18 unless it was obtained under a valid prescription or order, directly from a practitioner while acting  
19 in the course of his professional practice, or as otherwise authorized by this subsection;

20 (ii) for any owner, tenant, licensee, or person in control of any building, room, tenement,  
21 vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied  
22 by persons unlawfully possessing, using, or distributing controlled substances in any of those  
23 locations; or

24 (iii) for any person knowingly and intentionally to possess an altered or forged prescription  
25 or written order for a controlled substance.

26 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

27 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

28 (ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16  
29 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree  
30 felony; or

31 (iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of

1 the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A  
2 misdemeanor.

3 (c) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior  
4 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or any  
5 public jail or other place of confinement shall be sentenced to a penalty one degree greater than  
6 provided in Subsection (2)(b).

7 (d) Upon a second or subsequent conviction of possession of any controlled substance by  
8 a person, that person shall be sentenced to a one degree greater penalty than provided in this  
9 subsection.

10 (e) Any person who violates Subsection (2)(a)(i) with respect to all other controlled  
11 substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one ounce of  
12 marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person is guilty of  
13 a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a third  
14 degree felony.

15 (f) Any person convicted of violating Subsection (2)(a)(ii) or (2)(a)(iii) is:

16 (i) on a first conviction, guilty of a class B misdemeanor;

17 (ii) on a second conviction, guilty of a class A misdemeanor; and

18 (iii) on a third or subsequent conviction, guilty of a third degree felony.

19 (3) Prohibited acts C -- Penalties:

20 (a) It is unlawful for any person knowingly and intentionally:

21 (i) to use in the course of the manufacture or distribution of a controlled substance a  
22 license number which is fictitious, revoked, suspended, or issued to another person or, for the  
23 purpose of obtaining a controlled substance, to assume the title of, or represent himself to be, a  
24 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;

25 (ii) to acquire or obtain possession of, to procure or attempt to procure the administration  
26 of, to obtain a prescription for, to prescribe or dispense to any person known to be attempting to  
27 acquire or obtain possession of, or to procure the administration of any controlled substance by  
28 misrepresentation or failure by the person to disclose his receiving any controlled substance from  
29 another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order  
30 for a controlled substance, or the use of a false name or address;

31 (iii) to make any false or forged prescription or written order for a controlled substance,

1 or to utter the same, or to alter any prescription or written order issued or written under the terms  
2 of this chapter; or

3 (iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to  
4 print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or  
5 device of another or any likeness of any of the foregoing upon any drug or container or labeling  
6 so as to render any drug a counterfeit controlled substance.

7 (b) Any person convicted of violating Subsection (3)(a) is guilty of a third degree felony.

8 (4) Prohibited acts D -- Penalties:

9 (a) Notwithstanding other provisions of this section, a person not authorized under this  
10 chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a,  
11 Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances Act,  
12 is upon conviction subject to the penalties and classifications under Subsection (4)(b) if the act is  
13 committed:

14 (i) in a public or private elementary or secondary school or on the grounds of any of those  
15 schools;

16 (ii) in a public or private vocational school or postsecondary institution or on the grounds  
17 of any of those schools or institutions;

18 (iii) in those portions of any building, park, stadium, or other structure or grounds which  
19 are, at the time of the act, being used for an activity sponsored by or through a school or institution  
20 under Subsections (4)(a)(i) and (ii);

21 (iv) in or on the grounds of a preschool or child-care facility;

22 (v) in a public park, amusement park, arcade, or recreation center;

23 (vi) in a church or synagogue;

24 (vii) in a shopping mall, sports facility, stadium, arena, theater, movie house, playhouse,  
25 or parking lot or structure adjacent thereto;

26 (viii) in a public parking lot or structure;

27 (ix) within 1,000 feet of any structure, facility, or grounds included in Subsections (4)(a)(i)  
28 through (viii); or

29 (x) with a person younger than 18 years of age, regardless of where the act occurs.

30 (b) A person convicted under this subsection is guilty of a first degree felony and shall be  
31 imprisoned for a term of not less than five years if the penalty that would otherwise have been

1 established but for this subsection would have been a first degree felony. Imposition or execution  
2 of the sentence may not be suspended, and the person is not eligible for probation.

3 (c) If the classification that would otherwise have been established would have been less  
4 than a first degree felony but for this subsection, a person convicted under this subsection is guilty  
5 of one degree more than the maximum penalty prescribed for that offense.

6 (d) It is not a defense to a prosecution under this subsection that the actor mistakenly  
7 believed the individual to be 18 years of age or older at the time of the offense or was unaware of  
8 the individual's true age; nor that the actor mistakenly believed that the location where the act  
9 occurred was not as described in Subsection (4)(a) or was unaware that the location where the act  
10 occurred was as described in Subsection (4)(a).

11 (5) Any violation of this chapter for which no penalty is specified is a class B  
12 misdemeanor.

13 ~~[(6) Any person who attempts or conspires to commit any offense unlawful under this~~  
14 ~~chapter is upon conviction guilty of one degree less than the maximum penalty prescribed for that~~  
15 ~~offense.]~~

16 [(7)] (6) (a) Any penalty imposed for violation of this section is in addition to, and not in  
17 lieu of, any civil or administrative penalty or sanction authorized by law.

18 (b) Where violation of this chapter violates a federal law or the law of another state,  
19 conviction or acquittal under federal law or the law of another state for the same act is a bar to  
20 prosecution in this state.

21 [(8)] (7) In any prosecution for a violation of this chapter, evidence or proof which shows  
22 a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled  
23 substance or substances, is prima facie evidence that the person or persons did so with knowledge  
24 of the character of the substance or substances.

25 [(9)] (8) This section does not prohibit a veterinarian, in good faith and in the course of  
26 his professional practice only and not for humans, from prescribing, dispensing, or administering  
27 controlled substances or from causing the substances to be administered by an assistant or orderly  
28 under his direction and supervision.

29 [(10)] (9) Civil or criminal liability may not be imposed under this section on:

30 (a) any person registered under the Controlled Substances Act who manufactures,  
31 distributes, or possesses an imitation controlled substance for use as a placebo or investigational

1 new drug by a registered practitioner in the ordinary course of professional practice or research;  
2 or

3 (b) any law enforcement officer acting in the course and legitimate scope of his  
4 employment.

5 [(H)] (10) If any provision of this chapter, or the application of any provision to any  
6 person or circumstances, is held invalid, the remainder of this chapter shall be given effect without  
7 the invalid provision or application.

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**Legislative Review Note**  
**as of 1-23-98 7:31 AM**

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

**Office of Legislative Research and General Counsel**