

1                                   **ENHANCEMENT OF PENALTIES IN DRUG**  
2   **OFFENSES**

3   1999 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: A. Lamont Tyler**

6 AN ACT RELATING TO CRIMINAL CODE; PROVIDING FOR AN ENHANCEMENT IN  
7 SENTENCE FOR USE OF A FIREARM IN RELATION TO THE DISTRIBUTION OF A  
8 CONTROLLED OR COUNTERFEIT SUBSTANCE; AND MAKING TECHNICAL  
9 CORRECTIONS.

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

11 AMENDS:

12                   **58-37-8**, as last amended by Chapter 139, Laws of Utah 1998

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

14                   Section 1. Section **58-37-8** is amended to read:

15                   **58-37-8. Prohibited acts -- Penalties.**

16                   (1) Prohibited acts A -- Penalties:

17                   (a) Except as authorized by this chapter, it is unlawful for any person to knowingly and  
18 intentionally:

19                   (i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture,  
20 or dispense, a controlled or counterfeit substance;

21                   (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange  
22 to distribute a controlled or counterfeit substance;

23                   (iii) possess a controlled or counterfeit substance with intent to distribute; or

24                   (iv) engage in a continuing criminal enterprise where:

25                   (A) the person participates, directs, or engages in conduct which results in any violation  
26 of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and

27                   (B) the violation is a part of a continuing series of two or more violations of Title 58,

28 Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with five  
 29 or more persons with respect to whom the person occupies a position of organizer, supervisor, or  
 30 any other position of management.

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

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

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

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

39 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may  
 40 be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact  
 41 finds a firearm as defined in Section 76-10-501 was used, carried, or possessed § ON HIS PERSON  
 41a OR IN HIS IMMEDIATE POSSESSION § during the  
 42 commission or in furtherance of the offense, the court shall additionally sentence the person  
 43 convicted for a term of one year to run consecutively and not concurrently; and the court may  
 44 additionally sentence the person convicted for an indeterminate term not to exceed five years to  
 45 run consecutively and not concurrently.

46 [~~(c)~~] (d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree  
 47 felony punishable by imprisonment for an indeterminate term of not less than seven years and  
 48 which may be for life. Imposition or execution of the sentence may not be suspended, and the  
 49 person is not eligible for probation.

50 (2) Prohibited acts B -- Penalties:

51 (a) It is unlawful:

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

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

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

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

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

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

66 (iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of  
67 the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A  
68 misdemeanor.

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

73 (d) Upon a second or subsequent conviction of possession of any controlled substance by  
74 a person, that person shall be sentenced to a one degree greater penalty than provided in this  
75 Subsection (2).

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

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

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

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

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

85 (3) Prohibited acts C -- Penalties:

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

87 (i) to use in the course of the manufacture or distribution of a controlled substance a  
88 license number which is fictitious, revoked, suspended, or issued to another person or, for the  
89 purpose of obtaining a controlled substance, to assume the title of, or represent himself to be, a

90 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;

91 (ii) to acquire or obtain possession of, to procure or attempt to procure the administration  
92 of, to obtain a prescription for, to prescribe or dispense to any person known to be attempting to  
93 acquire or obtain possession of, or to procure the administration of any controlled substance by  
94 misrepresentation or failure by the person to disclose his receiving any controlled substance from  
95 another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order  
96 for a controlled substance, or the use of a false name or address;

97 (iii) to make any false or forged prescription or written order for a controlled substance,  
98 or to utter the same, or to alter any prescription or written order issued or written under the terms  
99 of this chapter; or

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

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

105 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

120 (vi) in a church or synagogue;

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

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

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

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

127 (b) A person convicted under this subsection is guilty of a first degree felony and shall be  
128 imprisoned for a term of not less than five years if the penalty that would otherwise have been  
129 established but for this subsection would have been a first degree felony. Imposition or execution  
130 of the sentence may not be suspended, and the person is not eligible for probation.

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

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

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

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

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

146 (7) In any prosecution for a violation of this chapter, evidence or proof which shows a  
147 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled  
148 substance or substances, is prima facie evidence that the person or persons did so with knowledge  
149 of the character of the substance or substances.

150 (8) This section does not prohibit a veterinarian, in good faith and in the course of his  
151 professional practice only and not for humans, from prescribing, dispensing, or administering

152 controlled substances or from causing the substances to be administered by an assistant or orderly  
153 under his direction and supervision.

154 (9) Civil or criminal liability may not be imposed under this section on:

155 (a) any person registered under the Controlled Substances Act who manufactures,  
156 distributes, or possesses an imitation controlled substance for use as a placebo or investigational  
157 new drug by a registered practitioner in the ordinary course of professional practice or research;  
158 or

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

161 (10) If any provision of this chapter, or the application of any provision to any person or  
162 circumstances, is held invalid, the remainder of this chapter shall be given effect without the  
163 invalid provision or application.

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**Legislative Review Note**

**as of 2-2-99 3:48 PM**

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

**Office of Legislative Research and General Counsel**