

**SURREPTITIOUS ADMINISTRATION OF A  
SUBSTANCE**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Ron Bigelow**

**This act modifies the Criminal Code to create the specific criminal offense of surreptitiously administering deleterious or alcoholic substances or drugs to another person. The act provides definitions, and also graduated penalties based on the risks posed by the substance administered. The act includes a defense for administering medical treatment.**

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

ENACTS:

**76-5-113**, Utah Code Annotated 1953

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

Section 1. Section **76-5-113** is enacted to read:

**76-5-113. Surreptitious administration of certain substances -- Definitions -- Penalties -- Defenses.**

(1) As used in this section:

(a) "Administer" means the introduction of a substance into the body by injection, inhalation, ingestion, or by any other means.

(b) "Alcoholic beverage" has the same meaning as "alcoholic beverages" in Section 32A-1-105.

(c) "Bodily injury" has the same definition as in Section 76-1-601.

(d) "Controlled substance" has the same definition as in Section 58-37-2.

(e) "Deleterious substance" means a substance which, if administered, would likely cause bodily injury.

(f) "Poisonous" means a substance which, if administered, would likely cause serious bodily injury or death.



28 (g) "Prescription drug" has the same definition as in Section 58-17a-102.

29 (h) "Serious bodily injury ~~h~~ [or death] ~~h~~ " has the same definition as in Section 19-2-115.

30 (i) "Substance" means a controlled substance, poisonous substance, or deleterious  
31 substance as defined in this Subsection (1).

32 (2) In addition to any other offense the actor's conduct may constitute, it is a criminal  
33 offense for a person, surreptitiously or by means of fraud, deception, or misrepresentation, to cause  
34 another person to unknowingly consume or receive the administration of:

35 (a) any poisonous, deleterious, or controlled substance; or

36 (b) any alcoholic beverage.

37 (3) A violation of Subsection (2) is:

38 (a) a second degree felony if the substance is a poisonous substance, regardless of whether  
39 the substance is a controlled substance or a prescription drug;

40 (b) a third degree felony if the substance is not within the scope of Subsection (3)(a), and  
41 is a controlled substance or a prescription drug; and

42 (c) a class A misdemeanor if the substance is a deleterious substance or an alcoholic  
43 beverage.

44 (4) (a) It is an affirmative defense to a prosecution under Subsection (2) that the actor:

45 (i) provided the appropriate administration of a prescription drug; and

46 (ii) acted on the reasonable belief that his conduct was in the best interest of the well being  
47 of the person to whom the prescription drug was administered.

48 (b) (i) The defendant shall file and serve on the prosecuting attorney a notice in writing  
49 of his intention to claim a defense under Subsection (4)(a) not fewer than 20 days before the trial.

50 (ii) The notice shall specifically identify the factual basis for the defense and the names  
51 and addresses of the witnesses the defendant proposes to examine to establish the defense.

52 (c) The prosecuting attorney shall file and serve the defendant with a notice containing the  
53 names and addresses of the witnesses the prosecutor proposes to examine in order to contradict  
54 or rebut the defendant's claim of an affirmative defense under Subsection (4)(a). This notice shall  
55 be filed or served not more than ten days after receipt of the defendant's notice under Subsection  
56 (4)(b), or at another time as the court may direct.

57 (d) (i) Failure of a party to comply with the requirements of Subsection (4)(b) or (4)(c)  
58 entitles the opposing party to a continuance to allow for preparation.

59            (ii) If the court finds that a party's failure to comply is the result of bad faith, it may impose  
60 appropriate sanctions.

61            (5) This section does not diminish the scope of authorized health care by a health care  
62 provider as defined in Section 26-23a-1.

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**Legislative Review Note**  
**as of 1-16-01 4:14 PM**

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

**Office of Legislative Research and General Counsel**