

1 **CONTROLLED SUBSTANCE POSSESSION**

2 **AMENDMENT**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Ann W. Hardy**

6 Senate Sponsor: David L. Thomas

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Utah Controlled Substances Act regarding the penalty for
11 unlawful possession of Schedule III controlled substances.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ amends the penalty from a class B misdemeanor to a third degree felony for
15 unlawful possession of a Schedule III controlled substance, including possession
16 without a valid prescription.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **58-37-8**, as last amended by Chapter 30, Laws of Utah 2005

24

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

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

27 **58-37-8. Prohibited acts -- Penalties.**



28 (1) Prohibited acts A -- Penalties:

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

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

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

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

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

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

39 (B) the violation is a part of a continuing series of two or more violations of Title 58,
40 Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with
41 five or more persons with respect to whom the person occupies a position of organizer,
42 supervisor, or any other position of management.

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

44 (i) a substance classified in Schedule I or II, a controlled substance analog, or
45 gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony and
46 upon a second or subsequent conviction is guilty of a first degree felony;

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

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

51 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)
52 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier
53 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his
54 person or in his immediate possession during the commission or in furtherance of the offense,
55 the court shall additionally sentence the person convicted for a term of one year to run
56 consecutively and not concurrently; and the court may additionally sentence the person
57 convicted for an indeterminate term not to exceed five years to run consecutively and not
58 concurrently.

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

63 (2) Prohibited acts B -- Penalties:

64 (a) It is unlawful:

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

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

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

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

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

77 (ii) a substance classified in Schedule I [σ], II, or III, or marijuana, if the amount is
78 more than 16 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a
79 third degree felony; or

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

83 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
84 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater
85 penalty than provided in this Subsection (2).

86 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled
87 substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one ounce of
88 marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person is guilty
89 of a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a

90 third degree felony.

91 (e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior
92 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or
93 any public jail or other place of confinement shall be sentenced to a penalty one degree greater
94 than provided in Subsection (2)(b), and if the conviction is with respect to controlled
95 substances as listed in:

96 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an
97 indeterminate term as provided by law, and:

98 (A) the court shall additionally sentence the person convicted to a term of one year to
99 run consecutively and not concurrently; and

100 (B) the court may additionally sentence the person convicted for an indeterminate term
101 not to exceed five years to run consecutively and not concurrently; and

102 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an
103 indeterminate term as provided by law, and the court shall additionally sentence the person
104 convicted to a term of six months to run consecutively and not concurrently.

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

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

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

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

109 (g) A person is subject to the penalties under Subsection (4)(c) who, in an offense not
110 amounting to a violation of Section 76-5-207:

111 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in his body any
112 measurable amount of a controlled substance; and

113 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,
114 causing serious bodily injury as defined in Section 76-1-601 or the death of another.

115 (3) Prohibited acts C -- Penalties:

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

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

121 person;

122 (ii) to acquire or obtain possession of, to procure or attempt to procure the
123 administration of, to obtain a prescription for, to prescribe or dispense to any person known to
124 be attempting to acquire or obtain possession of, or to procure the administration of any
125 controlled substance by misrepresentation or failure by the person to disclose his receiving any
126 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a
127 prescription or written order for a controlled substance, or the use of a false name or address;

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

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

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

137 (4) Prohibited acts D -- Penalties:

138 (a) Notwithstanding other provisions of this section, a person not authorized under this
139 chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a,
140 Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances
141 Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if
142 the trier of fact finds the act is committed:

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

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

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

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

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

152 (vi) in or on the grounds of a house of worship as defined in Section 76-10-501;

153 (vii) in a shopping mall, sports facility, stadium, arena, theater, movie house,

154 playhouse, or parking lot or structure adjacent thereto;

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

156 (ix) within 1,000 feet of any structure, facility, or grounds included in Subsections

157 (4)(a)(i) through (viii);

158 (x) in the immediate presence of a person younger than 18 years of age, regardless of
159 where the act occurs; or

160 (xi) for the purpose of facilitating, arranging, or causing the transport, delivery, or
161 distribution of a substance in violation of this section to an inmate or on the grounds of any
162 correctional facility as defined in Section 76-8-311.3.

163 (b) A person convicted under this Subsection (4) is guilty of a first degree felony and
164 shall be imprisoned for a term of not less than five years if the penalty that would otherwise
165 have been established but for this subsection would have been a first degree felony. Imposition
166 or execution of the sentence may not be suspended, and the person is not eligible for probation.

167 (c) If the classification that would otherwise have been established would have been
168 less than a first degree felony but for this Subsection (4), a person convicted under Subsection
169 (2)(g) or this Subsection (4) is guilty of one degree more than the maximum penalty prescribed
170 for that offense.

171 (d) (i) If the violation is of Subsection (4)(a)(xi):

172 (A) the person may be sentenced to imprisonment for an indeterminate term as
173 provided by law, and the court shall additionally sentence the person convicted for a term of
174 one year to run consecutively and not concurrently; and

175 (B) the court may additionally sentence the person convicted for an indeterminate term
176 not to exceed five years to run consecutively and not concurrently; and

177 (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with
178 the mental state required for the commission of an offense, directly or indirectly solicits,
179 requests, commands, coerces, encourages, or intentionally aids another person to commit a
180 violation of Subsection (4)(a)(xi).

181 (e) It is not a defense to a prosecution under this Subsection (4) that the actor
182 mistakenly believed the individual to be 18 years of age or older at the time of the offense or

183 was unaware of the individual's true age; nor that the actor mistakenly believed that the
184 location where the act occurred was not as described in Subsection (4)(a) or was unaware that
185 the location where the act occurred was as described in Subsection (4)(a).

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

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

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

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

197 (8) This section does not prohibit a veterinarian, in good faith and in the course of his
198 professional practice only and not for humans, from prescribing, dispensing, or administering
199 controlled substances or from causing the substances to be administered by an assistant or
200 orderly under his direction and supervision.

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

202 (a) any person registered under [~~the Controlled Substances Act~~] this chapter who
203 manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or
204 investigational new drug by a registered practitioner in the ordinary course of professional
205 practice or research; or

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

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

Legislative Review Note

as of 12-29-05 1:11 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel