

**CONTROLLED SUBSTANCE MODIFICATIONS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: Allen M. Christensen

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**LONG TITLE**

**Committee Note:**

The Health and Human Services Interim Committee recommended this bill.

**General Description:**

This bill modifies provisions relating to the Utah Controlled Substances Act by creating a controlled class of listed synthetic cannabinoid substances found in products often referred to as "spice."

**Highlighted Provisions:**

This bill:

▶ expands the definition of a controlled substance to include a list of synthetic equivalent cannabinoid substances and their analogs and homologs found in products commonly referred to as "spice";

**§→ ▶ expands the definition of a controlled substance to include substances and their analogs and homologs found in products referred to as "bath salts;" ←§**

▶ clarifies that the tetrahydrocannabinols in Schedule I of the Utah Controlled Substances Act include those both naturally and synthetically derived;

▶ provides that it is an affirmative defense that the person produced, possessed, or administered any of these listed substances if the person:

- was engaged in medical research; and
- was a holder of a license to possess controlled substances for research;

▶ authorizes the Controlled Substances Advisory Committee to recommend placement of a substance on a controlled substance list if it finds that the substance has a potential for abuse and that an accepted standard has not been established for



28 safe use in treatment for medical purposes;  
 29       ▶ adds "spice" to the driver license provisions regarding driving under the influence;  
 30 and  
 31       ▶ provides that a legislative body of a political subdivision may not enact an  
 32 ordinance that is less restrictive than any provision of the Utah Controlled  
 33 Substances Act.

34 **Money Appropriated in this Bill:**

35       None

36 **Other Special Clauses:**

37       This bill provides an effective date.

38 **Utah Code Sections Affected:**

39 AMENDS:

- 40       **41-6a-517**, as last amended by Laws of Utah 2009, Chapter 390
- 41       **58-37-2 (Superseded 07/01/11)**, as last amended by Laws of Utah 2010, Chapters 64
- 42 and 101
- 43       **58-37-2 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapters 64, 101,
- 44 and 276
- 45       **58-37-3**, as last amended by Laws of Utah 1997, Chapter 64
- 46       **58-37-4**, as last amended by Laws of Utah 2010, Chapter 106
- 47       **58-37-6**, as last amended by Laws of Utah 2010, Chapter 287
- 48       **58-37-8**, as last amended by Laws of Utah 2010, Chapter 64
- 49       **58-38a-203**, as enacted by Laws of Utah 2010, Chapter 231
- 50       **58-38a-204**, as enacted by Laws of Utah 2010, Chapter 231

51 ENACTS:

52       **58-37-4.2**, Utah Code Annotated 1953

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

55       Section 1. Section **41-6a-517** is amended to read:

56       **41-6a-517. Definitions -- Driving with any measurable controlled substance in the**  
 57 **body -- Penalties -- Arrest without warrant.**

58       (1) As used in this section:

59 (a) "Controlled substance" [~~means any substance scheduled under Section 58-37-4.~~]  
60 has the same meaning as in Section 58-37-2.

61 (b) "Practitioner" has the same meaning as [~~provided~~] in Section 58-37-2.

62 (c) "Prescribe" has the same meaning as [~~provided~~] in Section 58-37-2.

63 (d) "Prescription" has the same meaning as [~~provided~~] in Section 58-37-2.

64 (2) In cases not amounting to a violation of Section 41-6a-502, a person may not  
65 operate or be in actual physical control of a motor vehicle within this state if the person has any  
66 measurable controlled substance or metabolite of a controlled substance in the person's body.

67 (3) It is an affirmative defense to prosecution under this section that the controlled  
68 substance was:

69 (a) involuntarily ingested by the accused;

70 (b) prescribed by a practitioner for use by the accused; or

71 (c) otherwise legally ingested.

72 (4) (a) A person convicted of a violation of Subsection (2) is guilty of a class B  
73 misdemeanor.

74 (b) A person who violates this section is subject to conviction and sentencing under  
75 both this section and any applicable offense under Section 58-37-8.

76 (5) A peace officer may, without a warrant, arrest a person for a violation of this  
77 section when the officer has probable cause to believe the violation has occurred, although not  
78 in the officer's presence, and if the officer has probable cause to believe that the violation was  
79 committed by the person.

80 (6) The Driver License Division shall:

81 (a) if the person is 21 years of age or older on the date of arrest:

82 (i) suspend, for a period of 120 days, the driver license of a person convicted under  
83 Subsection (2) of an offense committed on or after July 1, 2009; or

84 (ii) revoke, for a period of two years, the driver license of a person if:

85 (A) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

86 (B) the current violation under Subsection (2) is committed:

87 (I) within a period of 10 years after the date of the prior violation; and

88 (II) on or after July 1, 2009;

89 (b) if the person is under 21 years of age on the date of arrest:

90 (i) suspend, until the person is 21 years of age or for a period of 120 days, the driver  
91 license of a person convicted under Subsection (2) of an offense committed on or after July 1,  
92 2009; or

93 (ii) revoke, until the person is 21 years of age or for a period of two years, the driver  
94 license of a person if:

95 (A) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

96 (B) the current violation under Subsection (2) is committed:

97 (I) within a period of 10 years after the date of the prior violation; and

98 (II) on or after July 1, 2009;

99 (c) subtract from any suspension or revocation period the number of days for which a  
100 license was previously suspended under Section 53-3-223 or 53-3-231, if the previous  
101 suspension was based on the same occurrence upon which the record of conviction is based;  
102 and

103 (d) deny, suspend, or revoke a person's license for the denial and suspension periods in  
104 effect prior to July 1, 2009, for a conviction of a violation under Subsection (2) that was  
105 committed prior to July 1, 2009.

106 (7) (a) The court shall notify the Driver License Division if a person fails to:

107 (i) complete all court ordered screening and assessment, educational series, and  
108 substance abuse treatment; or

109 (ii) pay all fines and fees, including fees for restitution and treatment costs.

110 (b) Upon receiving the notification, the division shall suspend the person's driving  
111 privilege in accordance with Subsections 53-3-221(2) and (3).

112 (8) The court shall order supervised probation in accordance with Section 41-6a-507  
113 for a person convicted under Subsection (2).

114 Section 2. Section **58-37-2 (Superseded 07/01/11)** is amended to read:

115 **58-37-2 (Superseded 07/01/11). Definitions.**

116 (1) As used in this chapter:

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

120 (i) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent;

121 or

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

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

127 (c) "Consumption" means ingesting or having any measurable amount of a controlled  
128 substance in a person's body, but this Subsection (1)(c) does not include the metabolite of a  
129 controlled substance.

130 (d) "Continuing criminal enterprise" means any individual, sole proprietorship,  
131 partnership, corporation, business trust, association, or other legal entity, and any union or  
132 groups of individuals associated in fact although not a legal entity, and includes illicit as well  
133 as licit entities created or maintained for the purpose of engaging in conduct which constitutes  
134 the commission of episodes of activity made unlawful by Title 58, Chapter 37, Utah Controlled  
135 Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled  
136 Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d,  
137 Clandestine Drug Lab Act, which episodes are not isolated, but have the same or similar  
138 purposes, results, participants, victims, methods of commission, or otherwise are interrelated  
139 by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing  
140 unlawful conduct and be related either to each other or to the enterprise.

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

143 (f) (i) "Controlled substance" means a drug or substance:

144 (A) included in Schedules I, II, III, IV, or V of Section 58-37-4;

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

147 (C) that is a controlled substance analog[-]; or

148 (D) a substance listed in Section 58-37-4.2.

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

150 (A) distilled spirits, wine, or malt beverages, as those terms are defined in Title 32A,  
151 Alcoholic Beverage Control Act;

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

156 (C) dietary supplements, vitamins, minerals, herbs, or other similar substances  
157 including concentrates or extracts, which:

158 (I) are not otherwise regulated by law; and

159 (II) may contain naturally occurring amounts of chemical or substances listed in this  
160 chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking  
161 Act.

162 (g) (i) "Controlled substance analog" means a substance the chemical structure of  
163 which is substantially similar to the chemical structure of a controlled substance listed in  
164 Schedules I and II of Section 58-37-4, or in Schedules I and II of the federal Controlled  
165 Substances Act, Title II, P.L. 91-513, or listed in Section 58-37-4.2:

166 (A) which has a stimulant, depressant, or hallucinogenic effect on the central nervous  
167 system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central  
168 nervous system of controlled substances in the schedules set forth in Subsection (1)(f), or a  
169 substance listed in Section 58-37-4.2; or

170 (B) which, with respect to a particular individual, is represented or intended to have a  
171 stimulant, depressant, or hallucinogenic effect on the central nervous system substantially  
172 similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of  
173 controlled substances in the schedules or list set forth in this Subsection (1).

174 (ii) "Controlled substance analog" does not include:

175 (A) a controlled substance currently scheduled in Schedules I through V of Section  
176 58-37-4 or listed in Section 58-37-4.2;

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

178 (C) a substance with respect to which an exemption is in effect for investigational use  
179 by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355,  
180 to the extent the conduct with respect to the substance is permitted by the exemption;

181 (D) any substance to the extent not intended for human consumption before an  
182 exemption takes effect with respect to the substance;

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

187 (F) dietary supplements, vitamins, minerals, herbs, or other similar substances  
188 including concentrates or extracts, which are not otherwise regulated by law, which may  
189 contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules  
190 adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

191 (h) "Conviction" means a determination of guilt by verdict, whether jury or bench, or  
192 plea, whether guilty or no contest, for any offense proscribed by Title 58, Chapters 37, 37a,  
193 37b, 37c, or 37d, or for any offense under the laws of the United States and any other state  
194 which, if committed in this state, would be an offense under Title 58, Chapters 37, 37a, 37b,  
195 37c, or 37d.

196 (i) "Counterfeit substance" means:

197 (i) any controlled substance or container or labeling of any controlled substance that:

198 (A) without authorization bears the trademark, trade name, or other identifying mark,  
199 imprint, number, device, or any likeness of them, of a manufacturer, distributor, or dispenser  
200 other than the person or persons who in fact manufactured, distributed, or dispensed the  
201 substance which falsely purports to be a controlled substance distributed by any other  
202 manufacturer, distributor, or dispenser; and

203 (B) a reasonable person would believe to be a controlled substance distributed by an  
204 authorized manufacturer, distributor, or dispenser based on the appearance of the substance as  
205 described under Subsection (1)(i)(i)(A) or the appearance of the container of that controlled  
206 substance; or

207 (ii) any substance other than under Subsection (1)(i)(i) that:

208 (A) is falsely represented to be any legally or illegally manufactured controlled  
209 substance; and

210 (B) a reasonable person would believe to be a legal or illegal controlled substance.

211 (j) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a  
212 controlled substance or a listed chemical, whether or not an agency relationship exists.

213 (k) "Department" means the Department of Commerce.

- 214 (l) "Depressant or stimulant substance" means:
- 215 (i) a drug which contains any quantity of barbituric acid or any of the salts of barbituric
- 216 acid;
- 217 (ii) a drug which contains any quantity of:
- 218 (A) amphetamine or any of its optical isomers;
- 219 (B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or
- 220 (C) any substance which the Secretary of Health and Human Services or the Attorney
- 221 General of the United States after investigation has found and by regulation designated
- 222 habit-forming because of its stimulant effect on the central nervous system;
- 223 (iii) lysergic acid diethylamide; or
- 224 (iv) any drug which contains any quantity of a substance which the Secretary of Health
- 225 and Human Services or the Attorney General of the United States after investigation has found
- 226 to have, and by regulation designated as having, a potential for abuse because of its depressant
- 227 or stimulant effect on the central nervous system or its hallucinogenic effect.
- 228 (m) "Dispense" means the delivery of a controlled substance by a pharmacist to an
- 229 ultimate user pursuant to the lawful order or prescription of a practitioner, and includes
- 230 distributing to, leaving with, giving away, or disposing of that substance as well as the
- 231 packaging, labeling, or compounding necessary to prepare the substance for delivery.
- 232 (n) "Dispenser" means a pharmacist who dispenses a controlled substance.
- 233 (o) "Distribute" means to deliver other than by administering or dispensing a controlled
- 234 substance or a listed chemical.
- 235 (p) "Distributor" means a person who distributes controlled substances.
- 236 (q) "Division" means the Division of Occupational and Professional Licensing created
- 237 in Section 58-1-103.
- 238 (r) (i) "Drug" means:
- 239 (A) a substance recognized in the official United States Pharmacopoeia, Official
- 240 Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any
- 241 supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment, or
- 242 prevention of disease in humans or animals;
- 243 (B) a substance that is required by any applicable federal or state law or rule to be
- 244 dispensed by prescription only or is restricted to administration by practitioners only;



245 (C) a substance other than food intended to affect the structure or any function of the  
246 body of humans or other animals; and

247 (D) substances intended for use as a component of any substance specified in  
248 Subsections (1)(r)(i)(A), (B), and (C)[, ~~and (D)~~].

249 (ii) "Drug" does not include dietary supplements.

250 (s) "Drug dependent person" means any individual who unlawfully and habitually uses  
251 any controlled substance to endanger the public morals, health, safety, or welfare, or who is so  
252 dependent upon the use of controlled substances as to have lost the power of self-control with  
253 reference to the individual's dependency.

254 (t) "Food" means:

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

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

265 (u) "Immediate precursor" means a substance which the Attorney General of the United  
266 States has found to be, and by regulation designated as being, the principal compound used or  
267 produced primarily for use in the manufacture of a controlled substance, or which is an  
268 immediate chemical intermediary used or likely to be used in the manufacture of a controlled  
269 substance, the control of which is necessary to prevent, curtail, or limit the manufacture of the  
270 controlled substance.

271 (v) "Indian" means a member of an Indian tribe.

272 (w) "Indian religion" means any religion:

273 (i) the origin and interpretation of which is from within a traditional Indian culture or  
274 community; and

275 (ii) which is practiced by Indians.

276 (x) "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or  
277 community of Indians, including any Alaska Native village, which is legally recognized as  
278 eligible for and is consistent with the special programs, services, and entitlements provided by  
279 the United States to Indians because of their status as Indians.

280 (y) "Manufacture" means the production, preparation, propagation, compounding, or  
281 processing of a controlled substance, either directly or indirectly by extraction from substances  
282 of natural origin, or independently by means of chemical synthesis or by a combination of  
283 extraction and chemical synthesis.

284 (z) "Manufacturer" includes any person who packages, repackages, or labels any  
285 container of any controlled substance, except pharmacists who dispense or compound  
286 prescription orders for delivery to the ultimate consumer.

287 (aa) "Marijuana" means all species of the genus cannabis and all parts of the genus,  
288 whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every  
289 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or  
290 resin. The term does not include the mature stalks of the plant, fiber produced from the stalks,  
291 oil or cake made from the seeds of the plant, any other compound, manufacture, salt,  
292 derivative, mixture, or preparation of the mature stalks, except the resin extracted from them,  
293 fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any  
294 synthetic equivalents of the substances contained in the plant cannabis sativa or any other  
295 species of the genus cannabis which are chemically indistinguishable and pharmacologically  
296 active are also included.

297 (bb) "Money" means officially issued coin and currency of the United States or any  
298 foreign country.

299 (cc) "Narcotic drug" means any of the following, whether produced directly or  
300 indirectly by extraction from substances of vegetable origin, or independently by means of  
301 chemical synthesis, or by a combination of extraction and chemical synthesis:

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

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

305 (iii) opium poppy and poppy straw; or

306 (iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the

307 substance, which is chemically identical with any of the substances referred to in Subsection  
308 (1)(cc)(i), (ii), or (iii), except narcotic drug does not include decocainized coca leaves or  
309 extracts of coca leaves which do not contain cocaine or ecgonine.

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

313 (ee) "Opiate" means any drug or other substance having an addiction-forming or  
314 addiction-sustaining liability similar to morphine or being capable of conversion into a drug  
315 having addiction-forming or addiction-sustaining liability.

316 (ff) "Opium poppy" means the plant of the species *papaver somniferum* L., except the  
317 seeds of the plant.

318 (gg) "Person" means any corporation, association, partnership, trust, other institution or  
319 entity or one or more individuals.

320 (hh) "Poppy straw" means all parts, except the seeds, of the opium poppy, after  
321 mowing.

322 (ii) "Possession" or "use" means the joint or individual ownership, control, occupancy,  
323 holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection,  
324 or consumption, as distinguished from distribution, of controlled substances and includes  
325 individual, joint, or group possession or use of controlled substances. For a person to be a  
326 possessor or user of a controlled substance, it is not required that the person be shown to have  
327 individually possessed, used, or controlled the substance, but it is sufficient if it is shown that  
328 the person jointly participated with one or more persons in the use, possession, or control of  
329 any substances with knowledge that the activity was occurring, or the controlled substance is  
330 found in a place or under circumstances indicating that the person had the ability and the intent  
331 to exercise dominion and control over it.

332 (jj) "Practitioner" means a physician, dentist, naturopathic physician, veterinarian,  
333 pharmacist, scientific investigator, pharmacy, hospital, or other person licensed, registered, or  
334 otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use  
335 in teaching or chemical analysis a controlled substance in the course of professional practice or  
336 research in this state.

337 (kk) "Prescribe" means to issue a prescription:

338 (i) orally or in writing; or  
339 (ii) by telephone, facsimile transmission, computer, or other electronic means of  
340 communication as defined by division rule.

341 (ll) "Prescription" means an order issued:

342 (i) by a licensed practitioner, in the course of that practitioner's professional practice or  
343 by collaborative pharmacy practice agreement; and

344 (ii) for a controlled substance or other prescription drug or device for use by a patient  
345 or an animal.

346 (mm) "Production" means the manufacture, planting, cultivation, growing, or  
347 harvesting of a controlled substance.

348 (nn) "Securities" means any stocks, bonds, notes, or other evidences of debt or of  
349 property.

350 (oo) "State" means the state of Utah.

351 (pp) "Ultimate user" means any person who lawfully possesses a controlled substance  
352 for the person's own use, for the use of a member of the person's household, or for  
353 administration to an animal owned by the person or a member of the person's household.

354 (2) If a term used in this chapter is not defined, the definition and terms of Title 76,  
355 Utah Criminal Code, shall apply.

356 Section 3. Section **58-37-2 (Effective 07/01/11)** is amended to read:

357 **58-37-2 (Effective 07/01/11). Definitions.**

358 (1) As used in this chapter:

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

362 (i) a practitioner or, in the practitioner's presence, by the practitioner's authorized agent;  
363 or

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

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

369 (c) "Consumption" means ingesting or having any measurable amount of a controlled  
370 substance in a person's body, but this Subsection (1)(c) does not include the metabolite of a  
371 controlled substance.

372 (d) "Continuing criminal enterprise" means any individual, sole proprietorship,  
373 partnership, corporation, business trust, association, or other legal entity, and any union or  
374 groups of individuals associated in fact although not a legal entity, and includes illicit as well  
375 as licit entities created or maintained for the purpose of engaging in conduct which constitutes  
376 the commission of episodes of activity made unlawful by Title 58, Chapter 37, Utah Controlled  
377 Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled  
378 Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d,  
379 Clandestine Drug Lab Act, which episodes are not isolated, but have the same or similar  
380 purposes, results, participants, victims, methods of commission, or otherwise are interrelated  
381 by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing  
382 unlawful conduct and be related either to each other or to the enterprise.

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

385 (f) (i) "Controlled substance" means a drug or substance:

386 (A) included in Schedules I, II, III, IV, or V of Section 58-37-4;

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

389 (C) ~~[that is]~~ a controlled substance analog~~[-]; or~~

390 (D) a substance listed in Section 58-37-4.2.

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

392 (A) distilled spirits, wine, or malt beverages, as those terms are defined in Title 32B,  
393 Alcoholic Beverage Control Act;

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

398 (C) dietary supplements, vitamins, minerals, herbs, or other similar substances  
399 including concentrates or extracts, which:

400 (I) are not otherwise regulated by law; and  
401 (II) may contain naturally occurring amounts of chemical or substances listed in this  
402 chapter, or in rules adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking  
403 Act.

404 (g) (i) "Controlled substance analog" means a substance the chemical structure of  
405 which is substantially similar to the chemical structure of a controlled substance listed in  
406 Schedules I and II of Section 58-37-4, a substance listed in Section 58-37-4.2, or in Schedules  
407 I and II of the federal Controlled Substances Act, Title II, P.L. 91-513:

408 (A) which has a stimulant, depressant, or hallucinogenic effect on the central nervous  
409 system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central  
410 nervous system of controlled substances in the schedules set forth in Subsection (1)(f), a  
411 substance listed in Section 58-37-4.2; or

412 (B) which, with respect to a particular individual, is represented or intended to have a  
413 stimulant, depressant, or hallucinogenic effect on the central nervous system substantially  
414 similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of  
415 controlled substances in the schedules or list set forth in this Subsection (1).

416 (ii) "Controlled substance analog" does not include:

417 (A) a controlled substance currently scheduled in Schedules I through V of Section  
418 58-37-4;

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

420 (C) a substance with respect to which an exemption is in effect for investigational use  
421 by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355,  
422 to the extent the conduct with respect to the substance is permitted by the exemption;

423 (D) any substance to the extent not intended for human consumption before an  
424 exemption takes effect with respect to the substance;

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

429 (F) dietary supplements, vitamins, minerals, herbs, or other similar substances  
430 including concentrates or extracts, which are not otherwise regulated by law, which may

431 contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules  
432 adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

433 (h) "Conviction" means a determination of guilt by verdict, whether jury or bench, or  
434 plea, whether guilty or no contest, for any offense proscribed by Title 58, Chapters 37, 37a,  
435 37b, 37c, or 37d, or for any offense under the laws of the United States and any other state  
436 which, if committed in this state, would be an offense under Title 58, Chapters 37, 37a, 37b,  
437 37c, or 37d.

438 (i) "Counterfeit substance" means:

439 (i) any controlled substance or container or labeling of any controlled substance that:

440 (A) without authorization bears the trademark, trade name, or other identifying mark,  
441 imprint, number, device, or any likeness of them, of a manufacturer, distributor, or dispenser  
442 other than the person or persons who in fact manufactured, distributed, or dispensed the  
443 substance which falsely purports to be a controlled substance distributed by any other  
444 manufacturer, distributor, or dispenser; and

445 (B) a reasonable person would believe to be a controlled substance distributed by an  
446 authorized manufacturer, distributor, or dispenser based on the appearance of the substance as  
447 described under Subsection (1)(i)(i)(A) or the appearance of the container of that controlled  
448 substance; or

449 (ii) any substance other than under Subsection (1)(i)(i) that:

450 (A) is falsely represented to be any legally or illegally manufactured controlled  
451 substance; and

452 (B) a reasonable person would believe to be a legal or illegal controlled substance.

453 (j) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a  
454 controlled substance or a listed chemical, whether or not an agency relationship exists.

455 (k) "Department" means the Department of Commerce.

456 (l) "Depressant or stimulant substance" means:

457 (i) a drug which contains any quantity of barbituric acid or any of the salts of barbituric  
458 acid;

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

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

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

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

465 (iii) lysergic acid diethylamide; or

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

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

474 (n) "Dispenser" means a pharmacist who dispenses a controlled substance.

475 (o) "Distribute" means to deliver other than by administering or dispensing a controlled  
476 substance or a listed chemical.

477 (p) "Distributor" means a person who distributes controlled substances.

478 (q) "Division" means the Division of Occupational and Professional Licensing created  
479 in Section 58-1-103.

480 (r) (i) "Drug" means:

481 (A) a substance recognized in the official United States Pharmacopoeia, Official  
482 Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any  
483 supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment, or  
484 prevention of disease in humans or animals;

485 (B) a substance that is required by any applicable federal or state law or rule to be  
486 dispensed by prescription only or is restricted to administration by practitioners only;

487 (C) a substance other than food intended to affect the structure or any function of the  
488 body of humans or other animals; and

489 (D) substances intended for use as a component of any substance specified in  
490 Subsections (1)(r)(i)(A), (B), and (C)[~~and (D)~~].

491 (ii) "Drug" does not include dietary supplements.

492 (s) "Drug dependent person" means any individual who unlawfully and habitually uses



493 any controlled substance to endanger the public morals, health, safety, or welfare, or who is so  
494 dependent upon the use of controlled substances as to have lost the power of self-control with  
495 reference to the individual's dependency.

496 (t) "Food" means:

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

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

507 (u) "Immediate precursor" means a substance which the Attorney General of the United  
508 States has found to be, and by regulation designated as being, the principal compound used or  
509 produced primarily for use in the manufacture of a controlled substance, or which is an  
510 immediate chemical intermediary used or likely to be used in the manufacture of a controlled  
511 substance, the control of which is necessary to prevent, curtail, or limit the manufacture of the  
512 controlled substance.

513 (v) "Indian" means a member of an Indian tribe.

514 (w) "Indian religion" means any religion:

515 (i) the origin and interpretation of which is from within a traditional Indian culture or  
516 community; and

517 (ii) which is practiced by Indians.

518 (x) "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or  
519 community of Indians, including any Alaska Native village, which is legally recognized as  
520 eligible for and is consistent with the special programs, services, and entitlements provided by  
521 the United States to Indians because of their status as Indians.

522 (y) "Manufacture" means the production, preparation, propagation, compounding, or  
523 processing of a controlled substance, either directly or indirectly by extraction from substances

524 of natural origin, or independently by means of chemical synthesis or by a combination of  
525 extraction and chemical synthesis.

526 (z) "Manufacturer" includes any person who packages, repackages, or labels any  
527 container of any controlled substance, except pharmacists who dispense or compound  
528 prescription orders for delivery to the ultimate consumer.

529 (aa) "Marijuana" means all species of the genus cannabis and all parts of the genus,  
530 whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every  
531 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or  
532 resin. The term does not include the mature stalks of the plant, fiber produced from the stalks,  
533 oil or cake made from the seeds of the plant, any other compound, manufacture, salt,  
534 derivative, mixture, or preparation of the mature stalks, except the resin extracted from them,  
535 fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any  
536 synthetic equivalents of the substances contained in the plant cannabis sativa or any other  
537 species of the genus cannabis which are chemically indistinguishable and pharmacologically  
538 active are also included.

539 (bb) "Money" means officially issued coin and currency of the United States or any  
540 foreign country.

541 (cc) "Narcotic drug" means any of the following, whether produced directly or  
542 indirectly by extraction from substances of vegetable origin, or independently by means of  
543 chemical synthesis, or by a combination of extraction and chemical synthesis:

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

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

547 (iii) opium poppy and poppy straw; or

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

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

555 (ee) "Opiate" means any drug or other substance having an addiction-forming or  
556 addiction-sustaining liability similar to morphine or being capable of conversion into a drug  
557 having addiction-forming or addiction-sustaining liability.

558 (ff) "Opium poppy" means the plant of the species *papaver somniferum* L., except the  
559 seeds of the plant.

560 (gg) "Person" means any corporation, association, partnership, trust, other institution or  
561 entity or one or more individuals.

562 (hh) "Poppy straw" means all parts, except the seeds, of the opium poppy, after  
563 mowing.

564 (ii) "Possession" or "use" means the joint or individual ownership, control, occupancy,  
565 holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection,  
566 or consumption, as distinguished from distribution, of controlled substances and includes  
567 individual, joint, or group possession or use of controlled substances. For a person to be a  
568 possessor or user of a controlled substance, it is not required that the person be shown to have  
569 individually possessed, used, or controlled the substance, but it is sufficient if it is shown that  
570 the person jointly participated with one or more persons in the use, possession, or control of  
571 any substances with knowledge that the activity was occurring, or the controlled substance is  
572 found in a place or under circumstances indicating that the person had the ability and the intent  
573 to exercise dominion and control over it.

574 (jj) "Practitioner" means a physician, dentist, naturopathic physician, veterinarian,  
575 pharmacist, scientific investigator, pharmacy, hospital, or other person licensed, registered, or  
576 otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use  
577 in teaching or chemical analysis a controlled substance in the course of professional practice or  
578 research in this state.

579 (kk) "Prescribe" means to issue a prescription:

580 (i) orally or in writing; or

581 (ii) by telephone, facsimile transmission, computer, or other electronic means of  
582 communication as defined by division rule.

583 (ll) "Prescription" means an order issued:

584 (i) by a licensed practitioner, in the course of that practitioner's professional practice or  
585 by collaborative pharmacy practice agreement; and

586 (ii) for a controlled substance or other prescription drug or device for use by a patient  
587 or an animal.

588 (mm) "Production" means the manufacture, planting, cultivation, growing, or  
589 harvesting of a controlled substance.

590 (nn) "Securities" means any stocks, bonds, notes, or other evidences of debt or of  
591 property.

592 (oo) "State" means the state of Utah.

593 (pp) "Ultimate user" means any person who lawfully possesses a controlled substance  
594 for the person's own use, for the use of a member of the person's household, or for  
595 administration to an animal owned by the person or a member of the person's household.

596 (2) If a term used in this chapter is not defined, the definition and terms of Title 76,  
597 Utah Criminal Code, shall apply.

598 Section 4. Section **58-37-3** is amended to read:

599 **58-37-3. Controlled substances.**

600 (1) All substances listed in Section 58-37-4 or Section 58-37-4.2 are [~~considered~~]  
601 controlled.

602 (2) All substances listed in the federal Controlled Substances Act, Title II, P.L. 91-513,  
603 are [~~considered~~] controlled.

604 Section 5. Section **58-37-4** is amended to read:

605 **58-37-4. Schedules of controlled substances -- Schedules I through V -- Findings**  
606 **required -- Specific substances included in schedules.**

607 (1) There are established five schedules of controlled substances known as Schedules I,  
608 II, III, IV, and V which [~~shall~~] consist of substances listed in this section.

609 (2) Schedules I, II, III, IV, and V consist of the following drugs or other substances by  
610 the official name, common or usual name, chemical name, or brand name designated:

611 (a) Schedule I:

612 (i) Unless specifically excepted or unless listed in another schedule, any of the  
613 following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and  
614 ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific  
615 chemical designation:

616 (A) Acetyl-alpha-methylfentanyl

- 617 (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- 618 (B) Acetylmethadol;
- 619 (C) Allylprodine;
- 620 (D) Alphacetylmethadol, except levo-alphacetylmethadol also known as
- 621 levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;
- 622 (E) Alphameprodine;
- 623 (F) Alphamethadol;
- 624 (G) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]
- 625 propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- 626 (H) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-
- 627 piperidinyl]-N-phenylpropanamide);
- 628 (I) Benzethidine;
- 629 (J) Betacetylmethadol;
- 630 (K) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-
- 631 piperidinyl]-N-phenylpropanamide);
- 632 (L) Beta-hydroxy-3-methylfentanyl, other name: N-[1-(2-hydroxy-2-
- 633 phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;
- 634 (M) Betameprodine;
- 635 (N) Betamethadol;
- 636 (O) Betaprodine;
- 637 (P) Clonitazene;
- 638 (Q) Dextromoramide;
- 639 (R) Diampromide;
- 640 (S) Diethylthiambutene;
- 641 (T) Difenoxin;
- 642 (U) Dimenoxadol;
- 643 (V) Dimepheptanol;
- 644 (W) Dimethylthiambutene;
- 645 (X) Dioxaphetyl butyrate;
- 646 (Y) Dipipanone;
- 647 (Z) Ethylmethylthiambutene;

- 648 (AA) Etonitazene;
- 649 (BB) Etoxidine;
- 650 (CC) Furethidine;
- 651 (DD) Hydroxypethidine;
- 652 (EE) Ketobemidone;
- 653 (FF) Levomoramide;
- 654 (GG) Levophenacymorphan;
- 655 (HH) Morpheridine;
- 656 (II) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 657 (JJ) Noracymethadol;
- 658 (KK) Norlevorphanol;
- 659 (LL) Normethadone;
- 660 (MM) Norpipanone;
- 661 (NN) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]
- 662 propanamide;
- 663 (OO) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- 664 (PP) Phenadoxone;
- 665 (QQ) Phenampromide;
- 666 (RR) Phenomorphan;
- 667 (SS) Phenoperidine;
- 668 (TT) Piritramide;
- 669 (UU) Proheptazine;
- 670 (VV) Properidine;
- 671 (WW) Propiram;
- 672 (XX) Racemoramide;
- 673 (YY) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]- propanamide;
- 674 (ZZ) Tilidine;
- 675 (AAA) Trimeperidine;
- 676 (BBB) 3-methylfentanyl, including the optical and geometric isomers
- 677 (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]- N-phenylpropanamide); and
- 678 (CCC) 3-methylthiofentanyl

679 (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).

680 (ii) Unless specifically excepted or unless listed in another schedule, any of the  
681 following opium derivatives, their salts, isomers, and salts of isomers when the existence of the  
682 salts, isomers, and salts of isomers is possible within the specific chemical designation:

- 683 (A) Acetorphine;
- 684 (B) Acetyldihydrocodeine;
- 685 (C) Benzylmorphine;
- 686 (D) Codeine methylbromide;
- 687 (E) Codeine-N-Oxide;
- 688 (F) Cyprenorphine;
- 689 (G) Desomorphine;
- 690 (H) Dihydromorphine;
- 691 (I) Drotebanol;
- 692 (J) Etorphine (except hydrochloride salt);
- 693 (K) Heroin;
- 694 (L) Hydromorphenol;
- 695 (M) Methyldesorphine;
- 696 (N) Methylhydromorphine;
- 697 (O) Morphine methylbromide;
- 698 (P) Morphine methylsulfonate;
- 699 (Q) Morphine-N-Oxide;
- 700 (R) Myrophine;
- 701 (S) Nicocodeine;
- 702 (T) Nicomorphine;
- 703 (U) Normorphine;
- 704 (V) Pholcodine; and
- 705 (W) Thebacon.

706 (iii) Unless specifically excepted or unless listed in another schedule, any material,  
707 compound, mixture, or preparation which contains any quantity of the following hallucinogenic  
708 substances, or which contains any of their salts, isomers, and salts of isomers when the  
709 existence of the salts, isomers, and salts of isomers is possible within the specific chemical

710 designation; as used in this Subsection (2)(iii) only, "isomer" includes the optical, position, and  
711 geometric isomers:

712 (A) Alpha-ethyltryptamine, some trade or other names: etryptamine; Monase;  
713  $\alpha$ -ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole;  $\alpha$ -ET; and AET;

714 (B) 4-bromo-2,5-dimethoxy-amphetamine, some trade or other names:  
715 4-bromo-2,5-dimethoxy- $\alpha$ -methylphenethylamine; 4-bromo-2,5-DMA;

716 (C) 4-bromo-2,5-dimethoxypenethylamine, some trade or other names:  
717 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

718 (D) 2,5-dimethoxyamphetamine, some trade or other names:  
719 2,5-dimethoxy- $\alpha$ -methylphenethylamine; 2,5-DMA;

720 (E) 2,5-dimethoxy-4-ethylamphetamine, some trade or other names: DOET;

721 (F) 4-methoxyamphetamine, some trade or other names:

722 4-methoxy- $\alpha$ -methylphenethylamine; paramethoxyamphetamine, PMA;

723 (G) 5-methoxy-3,4-methylenedioxyamphetamine;

724 (H) 4-methyl-2,5-dimethoxy-amphetamine, some trade and other names:  
725 4-methyl-2,5-dimethoxy- $\alpha$ -methylphenethylamine; "DOM"; and "STP";

726 (I) 3,4-methylenedioxy amphetamine;

727 (J) 3,4-methylenedioxymethamphetamine (MDMA);

728 (K) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-  
729 alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;

730 (L) N-hydroxy-3,4-methylenedioxyamphetamine, also known as  
731 N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;

732 (M) 3,4,5-trimethoxy amphetamine;

733 (N) Bufotenine, some trade and other names:

734 3-( $\beta$ -Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,  
735 N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

736 (O) Diethyltryptamine, some trade and other names: N,N-Diethyltryptamine; DET;

737 (P) Dimethyltryptamine, some trade or other names: DMT;

738 (Q) Ibogaine, some trade and other names:

739 7-Ethyl-6,6 $\beta$ ,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino  
740 [5,4-b] indole; Tabernanthe iboga;



- 741 (R) Lysergic acid diethylamide;
- 742 (S) Marijuana;
- 743 (T) Mescaline;
- 744 (U) Parahexyl, some trade or other names:
- 745 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl;
- 746 (V) Peyote, meaning all parts of the plant presently classified botanically as
- 747 *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from
- 748 any part of such plant, and every compound, manufacture, salts, derivative, mixture, or
- 749 preparation of such plant, its seeds or extracts (Interprets 21 USC 812(c), Schedule I(c) (12));
- 750 (W) N-ethyl-3-piperidyl benzilate;
- 751 (X) N-methyl-3-piperidyl benzilate;
- 752 (Y) Psilocybin;
- 753 (Z) Psilocyn;
- 754 (AA) Tetrahydrocannabinols, naturally contained in a plant of the genus Cannabis
- 755 (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis
- 756 plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives,
- 757 and their isomers with similar chemical structure and pharmacological activity to those
- 758 substances contained in the plant, such as the following:  $\Delta^1$  cis or trans tetrahydrocannabinol,
- 759 and their optical isomers  $\Delta^6$  cis or trans tetrahydrocannabinol, and their optical isomers  $\Delta^3,4$
- 760 cis or trans tetrahydrocannabinol, and its optical isomers, and since nomenclature of these
- 761 substances is not internationally standardized, compounds of these structures, regardless of
- 762 numerical designation of atomic positions covered;
- 763 (BB) Ethylamine analog of phencyclidine, some trade or other names:
- 764 N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine,
- 765 N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE;
- 766 (CC) Pyrrolidine analog of phencyclidine, some trade or other names:
- 767 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;
- 768 (DD) Thiophene analog of phencyclidine, some trade or other names:
- 769 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP; and
- 770 (EE) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, some other names: TCPy.
- 771 (iv) Unless specifically excepted or unless listed in another schedule, any material

772 compound, mixture, or preparation which contains any quantity of the following substances  
773 having a depressant effect on the central nervous system, including its salts, isomers, and salts  
774 of isomers when the existence of the salts, isomers, and salts of isomers is possible within the  
775 specific chemical designation:

776 (A) Mecloqualone; and

777 (B) Methaqualone.

778 (v) Any material, compound, mixture, or preparation containing any quantity of the  
779 following substances having a stimulant effect on the central nervous system, including their  
780 salts, isomers, and salts of isomers:

781 (A) Aminorex, some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or  
782 4,5-dihydro-5-phenyl-2-oxazolamine;

783 (B) Cathinone, some trade or other names: 2-amino-1-phenyl-1-propanone,  
784 alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;

785 (C) Fenethylamine;

786 (D) Methcathinone, some other names: 2-(methylamino)-propionophenone;

787 alpha-(methylamino)propionophenone; 2-(methylamino)-1-phenylpropan-1-one;

788 alpha-N-methylaminopropionophenone; monomethylpropion; ephedrone; N-methylcathinone;

789 methylcathinone; AL-464; AL-422; AL-463 and UR1432, its salts, optical isomers, and salts of  
790 optical isomers;

791 (E) ( $\pm$ )cis-4-methylaminorex (( $\pm$ )cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

792 (F) N-ethylamphetamine; and

793 (G) N,N-dimethylamphetamine, also known as

794 N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

795 (vi) Any material, compound, mixture, or preparation which contains any quantity of  
796 the following substances, including their optical isomers, salts, and salts of isomers, subject to  
797 temporary emergency scheduling:

798 (A) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl); and

799 (B) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thienylfentanyl).

800 (vii) Unless specifically excepted or unless listed in another schedule, any material,  
801 compound, mixture, or preparation which contains any quantity of gamma hydroxy butyrate  
802 (gamma hydrobutyric acid), including its salts, isomers, and salts of isomers.

803 (b) Schedule II:

804 (i) Unless specifically excepted or unless listed in another schedule, any of the  
805 following substances whether produced directly or indirectly by extraction from substances of  
806 vegetable origin, or independently by means of chemical synthesis, or by a combination of  
807 extraction and chemical synthesis:

808 (A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or  
809 opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone,  
810 and their respective salts, but including:

811 (I) Raw opium;

812 (II) Opium extracts;

813 (III) Opium fluid;

814 (IV) Powdered opium;

815 (V) Granulated opium;

816 (VI) Tincture of opium;

817 (VII) Codeine;

818 (VIII) Ethylmorphine;

819 (IX) Etorphine hydrochloride;

820 (X) Hydrocodone;

821 (XI) Hydromorphone;

822 (XII) Metopon;

823 (XIII) Morphine;

824 (XIV) Oxycodone;

825 (XV) Oxymorphone; and

826 (XVI) Thebaine;

827 (B) Any salt, compound, derivative, or preparation which is chemically equivalent or  
828 identical with any of the substances referred to in Subsection (2)(b)(i)(A), except that these  
829 substances may not include the isoquinoline alkaloids of opium;

830 (C) Opium poppy and poppy straw;

831 (D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and  
832 any salt, compound, derivative, or preparation which is chemically equivalent or identical with  
833 any of these substances, and includes cocaine and ecgonine, their salts, isomers, derivatives,

834 and salts of isomers and derivatives, whether derived from the coca plant or synthetically  
835 produced, except the substances may not include decocainized coca leaves or extraction of coca  
836 leaves, which extractions do not contain cocaine or ecgonine; and

837 (E) Concentrate of poppy straw, which means the crude extract of poppy straw in either  
838 liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

839 (ii) Unless specifically excepted or unless listed in another schedule, any of the  
840 following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and  
841 ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific  
842 chemical designation, except dextrophan and levopropoxyphene:

843 (A) Alfentanil;

844 (B) Alphaprodine;

845 (C) Anileridine;

846 (D) Bezitramide;

847 (E) Bulk dextropropoxyphene (nondosage forms);

848 (F) Carfentanil;

849 (G) Dihydrocodeine;

850 (H) Diphenoxylate;

851 (I) Fentanyl;

852 (J) Isomethadone;

853 (K) Levo-alpha-acetylmethadol, some other names: levo-alpha-acetylmethadol,

854 levomethadyl acetate, or LAAM;

855 (L) Levomethorphan;

856 (M) Levorphanol;

857 (N) Metazocine;

858 (O) Methadone;

859 (P) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

860 (Q) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic

861 acid;

862 (R) Pethidine (meperidine);

863 (S) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

864 (T) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

- 865 (U) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;  
866 (V) Phenazocine;  
867 (W) Piminodine;  
868 (X) Racemethorphan;  
869 (Y) Racemorphan;  
870 (Z) Remifentanyl; and  
871 (AA) Sufentanyl.
- 872 (iii) Unless specifically excepted or unless listed in another schedule, any material,  
873 compound, mixture, or preparation which contains any quantity of the following substances  
874 having a stimulant effect on the central nervous system:
- 875 (A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;  
876 (B) Methamphetamine, its salts, isomers, and salts of its isomers;  
877 (C) Phenmetrazine and its salts; and  
878 (D) Methylphenidate.
- 879 (iv) Unless specifically excepted or unless listed in another schedule, any material,  
880 compound, mixture, or preparation which contains any quantity of the following substances  
881 having a depressant effect on the central nervous system, including its salts, isomers, and salts  
882 of isomers when the existence of the salts, isomers, and salts of isomers is possible within the  
883 specific chemical designation:
- 884 (A) Amobarbital;  
885 (B) Glutethimide;  
886 (C) Pentobarbital;  
887 (D) Phencyclidine;  
888 (E) Phencyclidine immediate precursors: 1-phenylcyclohexylamine and  
889 1-piperidinocyclohexanecarbonitrile (PCC); and  
890 (F) Secobarbital.
- 891 (v) (A) Unless specifically excepted or unless listed in another schedule, any material,  
892 compound, mixture, or preparation which contains any quantity of Phenylacetone.  
893 (B) Some of these substances may be known by trade or other names:  
894 phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone.  
895 (vi) Nabilone, another name for nabilone;

896 (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,  
897 6-dimethyl-9H-dibenzo[b,d]pyran-9-one.

898 (c) Schedule III:

899 (i) Unless specifically excepted or unless listed in another schedule, any material,  
900 compound, mixture, or preparation which contains any quantity of the following substances  
901 having a stimulant effect on the central nervous system, including its salts, isomers whether  
902 optical, position, or geometric, and salts of the isomers when the existence of the salts, isomers,  
903 and salts of isomers is possible within the specific chemical designation:

904 (A) Those compounds, mixtures, or preparations in dosage unit form containing any  
905 stimulant substances listed in Schedule II, which compounds, mixtures, or preparations were  
906 listed on August 25, 1971, as excepted compounds under Section 1308.32 of Title 21 of the  
907 Code of Federal Regulations, and any other drug of the quantitative composition shown in that  
908 list for those drugs or which is the same except that it contains a lesser quantity of controlled  
909 substances;

910 (B) Benzphetamine;

911 (C) Chlorphentermine;

912 (D) Clortermine; and

913 (E) Phendimetrazine.

914 (ii) Unless specifically excepted or unless listed in another schedule, any material,  
915 compound, mixture, or preparation which contains any quantity of the following substances  
916 having a depressant effect on the central nervous system:

917 (A) Any compound, mixture, or preparation containing amobarbital, secobarbital,  
918 pentobarbital, or any salt of any of them, and one or more other active medicinal ingredients  
919 which are not listed in any schedule;

920 (B) Any suppository dosage form containing amobarbital, secobarbital, or  
921 pentobarbital, or any salt of any of these drugs which is approved by the Food and Drug  
922 Administration for marketing only as a suppository;

923 (C) Any substance which contains any quantity of a derivative of barbituric acid or any  
924 salt of any of them;

925 (D) Chlorhexadol;

926 (E) Buprenorphine;

- 927 (F) Any drug product containing gamma hydroxybutyric acid, including its salts,  
928 isomers, and salts of isomers, for which an application is approved under the federal Food,  
929 Drug, and Cosmetic Act, Section 505;
- 930 (G) Ketamine, its salts, isomers, and salts of isomers, some other names for ketamine:  
931  $\pm$  -2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;
- 932 (H) Lysergic acid;
- 933 (I) Lysergic acid amide;
- 934 (J) Methyprylon;
- 935 (K) Sulfondiethylmethane;
- 936 (L) Sulfonethylmethane;
- 937 (M) Sulfonmethane; and
- 938 (N) Tiletamine and zolazepam or any of their salts, some trade or other names for a  
939 tiletamine-zolazepam combination product: Telazol, some trade or other names for tiletamine:  
940 2-(ethylamino)-2-(2-thienyl)-cyclohexanone, some trade or other names for zolazepam:  
941 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one,  
942 flupyrazapon.
- 943 (iii) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a  
944 U.S. Food and Drug Administration approved drug product, some other names for dronabinol:  
945 (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or  
946 (-)-delta-9-(trans)-tetrahydrocannabinol.
- 947 (iv) Nalorphine.
- 948 (v) Unless specifically excepted or unless listed in another schedule, any material,  
949 compound, mixture, or preparation containing limited quantities of any of the following  
950 narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid:
- 951 (A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90  
952 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of  
953 opium;
- 954 (B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90  
955 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized  
956 therapeutic amounts;
- 957 (C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more

958 than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline  
959 alkaloid of opium;

960 (D) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more  
961 than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in  
962 recognized therapeutic amounts;

963 (E) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90  
964 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized  
965 therapeutic amounts;

966 (F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more  
967 than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in  
968 recognized therapeutic amounts;

969 (G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not  
970 more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in  
971 recognized therapeutic amounts; and

972 (H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with  
973 one or more active, non-narcotic ingredients in recognized therapeutic amounts.

974 (vi) Unless specifically excepted or unless listed in another schedule, anabolic steroids  
975 including any of the following or any isomer, ester, salt, or derivative of the following that  
976 promotes muscle growth:

977 (A) Boldenone;

978 (B) Chlorotestosterone (4-chlortestosterone);

979 (C) Clostebol;

980 (D) Dehydrochlormethyltestosterone;

981 (E) Dihydrotestosterone (4-dihydrotestosterone);

982 (F) Drostanolone;

983 (G) Ethylestrenol;

984 (H) Fluoxymesterone;

985 (I) Formebolone (formebolone);

986 (J) Mesterolone;

987 (K) Methandienone;

988 (L) Methandranone;



- 989 (M) Methandriol;  
990 (N) Methandrostenolone;  
991 (O) Methenolone;  
992 (P) Methyltestosterone;  
993 (Q) Mibolerone;  
994 (R) Nandrolone;  
995 (S) Norethandrolone;  
996 (T) Oxandrolone;  
997 (U) Oxymesterone;  
998 (V) Oxymetholone;  
999 (W) Stanolone;  
1000 (X) Stanozolol;  
1001 (Y) Testolactone;  
1002 (Z) Testosterone; and  
1003 (AA) Trenbolone.  
1004 (vii) Anabolic steroids expressly intended for administration through implants to cattle  
1005 or other nonhuman species, and approved by the Secretary of Health and Human Services for  
1006 use, may not be classified as a controlled substance.  
1007 (d) Schedule IV:  
1008 (i) Unless specifically excepted or unless listed in another schedule, any material,  
1009 compound, mixture, or preparation containing not more than 1 milligram of difenoxin and not  
1010 less than 25 micrograms of atropine sulfate per dosage unit, or any salts of any of them.  
1011 (ii) Unless specifically excepted or unless listed in another schedule, any material,  
1012 compound, mixture, or preparation which contains any quantity of the following substances,  
1013 including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and  
1014 salts of isomers is possible within the specific chemical designation:  
1015 (A) Alprazolam;  
1016 (B) Barbitol;  
1017 (C) Bromazepam;  
1018 (D) Butorphanol;  
1019 (E) Camazepam;

- 1020 (F) Carisoprodol;
- 1021 (G) Chloral betaine;
- 1022 (H) Chloral hydrate;
- 1023 (I) Chlordiazepoxide;
- 1024 (J) Clobazam;
- 1025 (K) Clonazepam;
- 1026 (L) Clorazepate;
- 1027 (M) Clotiazepam;
- 1028 (N) Cloxazolam;
- 1029 (O) Delorazepam;
- 1030 (P) Diazepam;
- 1031 (Q) Dichloralphenazone;
- 1032 (R) Estazolam;
- 1033 (S) Ethchlorvynol;
- 1034 (T) Ethinamate;
- 1035 (U) Ethyl loflazepate;
- 1036 (V) Fludiazepam;
- 1037 (W) Flunitrazepam;
- 1038 (X) Flurazepam;
- 1039 (Y) Halazepam;
- 1040 (Z) Haloxazolam;
- 1041 (AA) Ketazolam;
- 1042 (BB) Loprazolam;
- 1043 (CC) Lorazepam;
- 1044 (DD) Lormetazepam;
- 1045 (EE) Mebutamate;
- 1046 (FF) Medazepam;
- 1047 (GG) Meprobamate;
- 1048 (HH) Methohexital;
- 1049 (II) Methylphenobarbital (mephobarbital);
- 1050 (JJ) Midazolam;

- 1051 (KK) Nimetazepam;
- 1052 (LL) Nitrazepam;
- 1053 (MM) Nordiazepam;
- 1054 (NN) Oxazepam;
- 1055 (OO) Oxazolam;
- 1056 (PP) Paraldehyde;
- 1057 (QQ) Pentazocine;
- 1058 (RR) Petrichloral;
- 1059 (SS) Phenobarbital;
- 1060 (TT) Pinazepam;
- 1061 (UU) Prazepam;
- 1062 (VV) Quazepam;
- 1063 (WW) Temazepam;
- 1064 (XX) Tetrazepam;
- 1065 (YY) Triazolam;
- 1066 (ZZ) Zaleplon; and
- 1067 (AAA) Zolpidem.

1068 (iii) Any material, compound, mixture, or preparation of fenfluramine which contains  
1069 any quantity of the following substances, including its salts, isomers whether optical, position,  
1070 or geometric, and salts of the isomers when the existence of the salts, isomers, and salts of  
1071 isomers is possible.

1072 (iv) Unless specifically excepted or unless listed in another schedule, any material,  
1073 compound, mixture, or preparation which contains any quantity of the following substances  
1074 having a stimulant effect on the central nervous system, including its salts, isomers whether  
1075 optical, position, or geometric isomers, and salts of the isomers when the existence of the salts,  
1076 isomers, and salts of isomers is possible within the specific chemical designation:

- 1077 (A) Cathine ((+)-norpseudoephedrine);
- 1078 (B) Diethylpropion;
- 1079 (C) Fencamfamine;
- 1080 (D) Fenproporex;
- 1081 (E) Mazindol;

- 1082 (F) Mefenorex;
- 1083 (G) Modafinil;
- 1084 (H) Pemoline, including organometallic complexes and chelates thereof;
- 1085 (I) Phentermine;
- 1086 (J) Pipradrol;
- 1087 (K) Sibutramine; and
- 1088 (L) SPA ((-)-1-dimethylamino-1,2-diphenylethane).
- 1089 (v) Unless specifically excepted or unless listed in another schedule, any material,
- 1090 compound, mixture, or preparation which contains any quantity of dextropropoxyphene
- 1091 (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane), including its salts.
- 1092 (e) Schedule V: Any compound, mixture, or preparation containing any of the
- 1093 following limited quantities of narcotic drugs, or their salts calculated as the free anhydrous
- 1094 base or alkaloid, which includes one or more non-narcotic active medicinal ingredients in
- 1095 sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal
- 1096 qualities other than those possessed by the narcotic drug alone:
  - 1097 (i) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
  - 1098 (ii) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100
  - 1099 grams;
  - 1100 (iii) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100
  - 1101 grams;
  - 1102 (iv) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of
  - 1103 atropine sulfate per dosage unit;
  - 1104 (v) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
  - 1105 (vi) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of
  - 1106 atropine sulfate per dosage unit; and
  - 1107 (vii) unless specifically exempted or excluded or unless listed in another schedule, any
  - 1108 material, compound, mixture, or preparation which contains Pyrovalerone having a stimulant
  - 1109 effect on the central nervous system, including its salts, isomers, and salts of isomers.

1110 Section 6. Section **58-37-4.2** is enacted to read:

1111 **58-37-4.2. Listed controlled substances.**

1112 The following substances, their analogs, homologs, and synthetic equivalents are listed

1113 controlled substances:

- 1114 (1) AM-694;1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-iodophenyl)methanone;  
 1115 (2) CP 47,497 and its C6, C8, and C9 homologs; 2-[(1R,3S)-3-hydroxycyclohexyl]  
 1116 -5-(2-methyloctan-2-yl)phenol;  
 1117 (3) HU-210; (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)  
 1118 -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;  
 1119 (4) HU-211; Dexanabinol,(6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-  
 1120 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;  
 1121 (5) JWH-015; (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone;  
 1122 (6) JWH-018; Naphthalen-1-yl-(pentylindol-3-yl)methanone {also known as  
 1123 1-Pentyl-3-(1-naphthoyl)indole};  
 1124 (7) JWH-019; 1-hexyl-3-(1-naphthoyl)indole;  
 1125 (8) JWH-073; Naphthalen-1-yl(1-butylindol-3-yl)methanone {also known as  
 1126 1-Butyl-3-(1-naphthoyl)indole};  
 1127 (9) JWH-081; 4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone;  
 1128 (10) JWH-122; CAS#619294-47-2; (1-Pentyl-3-(4-methyl-1-naphthoyl)indole);  
 1129 (11) JWH-200; 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl) indole;  
 1130 (12) JWH-250; 1-pentyl-3-(2-methoxyphenylacetyl)indole;  
 1131 (13) JWH-251; 2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-yl)-ethanone;  
 1132 (14) JWH-398; 1-pentyl-3-(4-chloro-1-naphthoyl)indole; ~~§~~ → [and] ← ~~§~~  
 1133 (15) RCS-8; 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole {also known as  
 1134 BTW-8 and SR-18} ~~§~~ → [·] ;  
 1134a (16) 4-methylmethcathinone {also known as mephedrone};  
 1134b (17) 3,4-methylenedioxypropylvalerone {also known as MDPV};  
 1134c (18) 3,4-Methylenedioxypropylmethcathinone {also known as methylone};  
 1134d (19) 4-methoxymethcathinone;  
 1134e (20) 4-Fluoromethcathinone; and  
 1134f (21) 3-Fluoromethcathinone. ← ~~§~~

1135 Section 7. Section **58-37-6** is amended to read:

1136 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**  
 1137 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**  
 1138 **required -- Prescriptions.**

1139 (1) (a) The division may adopt rules relating to the licensing and control of the  
 1140 manufacture, distribution, production, prescription, administration, dispensing, conducting of  
 1141 research with, and performing of laboratory analysis upon controlled substances within this  
 1142 state.

1143 (b) The division may assess reasonable fees to defray the cost of issuing original and

1144 renewal licenses under this chapter pursuant to Section 63J-1-504.

1145           (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses,  
1146 administers, conducts research with, or performs laboratory analysis upon any controlled  
1147 substance in Schedules II through V within this state, or who proposes to engage in  
1148 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting  
1149 research with, or performing laboratory analysis upon controlled substances included in  
1150 Schedules II through V within this state shall obtain a license issued by the division.

1151           (ii) The division shall issue each license under this chapter in accordance with a  
1152 two-year renewal cycle established by rule. The division may by rule extend or shorten a  
1153 renewal period by as much as one year to stagger the renewal cycles it administers.

1154           (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,  
1155 administer, conduct research with, or perform laboratory analysis upon controlled substances in  
1156 Schedules II through V within this state may possess, manufacture, produce, distribute,  
1157 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon  
1158 those substances to the extent authorized by their license and in conformity with this chapter.

1159           (c) The following persons are not required to obtain a license and may lawfully possess  
1160 controlled substances under this section:

1161           (i) an agent or employee, except a sales representative, of any registered manufacturer,  
1162 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the  
1163 usual course of the person's business or employment; however, nothing in this subsection shall  
1164 be interpreted to permit an agent, employee, sales representative, or detail man to maintain an  
1165 inventory of controlled substances separate from the location of the person's employer's  
1166 registered and licensed place of business;

1167           (ii) a motor carrier or warehouseman, or an employee of a motor carrier or  
1168 warehouseman, who possesses any controlled substance in the usual course of the person's  
1169 business or employment; and

1170           (iii) an ultimate user, or any person who possesses any controlled substance pursuant to  
1171 a lawful order of a practitioner.

1172           (d) The division may enact rules waiving the license requirement for certain  
1173 manufacturers, producers, distributors, prescribers, dispensers, administrators, research  
1174 practitioners, or laboratories performing analysis if consistent with the public health and safety.

1175 (e) A separate license is required at each principal place of business or professional  
1176 practice where the applicant manufactures, produces, distributes, dispenses, conducts research  
1177 with, or performs laboratory analysis upon controlled substances.

1178 (f) The division may enact rules providing for the inspection of a licensee or applicant's  
1179 establishment, and may inspect the establishment according to those rules.

1180 (3) (a) Upon proper application, the division shall license a qualified applicant to  
1181 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon  
1182 controlled substances included in Schedules I through V, unless it determines that issuance of a  
1183 license is inconsistent with the public interest. The division shall not issue a license to any  
1184 person to prescribe, dispense, or administer a Schedule I controlled substance. In determining  
1185 public interest, the division shall consider whether or not the applicant has:

1186 (i) maintained effective controls against diversion of controlled substances and any  
1187 Schedule I or II substance compounded from any controlled substance into other than  
1188 legitimate medical, scientific, or industrial channels;

1189 (ii) complied with applicable state and local law;

1190 (iii) been convicted under federal or state laws relating to the manufacture, distribution,  
1191 or dispensing of substances;

1192 (iv) past experience in the manufacture of controlled dangerous substances;

1193 (v) established effective controls against diversion; and

1194 (vi) complied with any other factors that the division establishes that promote the  
1195 public health and safety.

1196 (b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture,  
1197 produce, distribute, conduct research with, or perform laboratory analysis upon controlled  
1198 substances in Schedule I other than those specified in the license.

1199 (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with  
1200 substances in Schedules II through V if they are authorized to administer, dispense, or conduct  
1201 research under the laws of this state.

1202 (ii) The division need not require a separate license for practitioners engaging in  
1203 research with nonnarcotic controlled substances in Schedules II through V where the licensee is  
1204 already licensed under this chapter in another capacity.

1205 (iii) With respect to research involving narcotic substances in Schedules II through V,

1206 or where the division by rule requires a separate license for research of nonnarcotic substances  
1207 in Schedules II through V, a practitioner shall apply to the division prior to conducting  
1208 research.

1209 (iv) Licensing for purposes of bona fide research with controlled substances by a  
1210 practitioner considered qualified may be denied only on a ground specified in Subsection (4),  
1211 or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard  
1212 adequately the practitioner's supply of substances against diversion from medical or scientific  
1213 use.

1214 (v) Practitioners registered under federal law to conduct research in Schedule I  
1215 substances may conduct research in Schedule I substances within this state upon furnishing the  
1216 division evidence of federal registration.

1217 (d) Compliance by manufacturers, producers, and distributors with the provisions of  
1218 federal law respecting registration, excluding fees, entitles them to be licensed under this  
1219 chapter.

1220 (e) The division shall initially license those persons who own or operate an  
1221 establishment engaged in the manufacture, production, distribution, dispensation, or  
1222 administration of controlled substances prior to April 3, 1980, and who are licensed by the  
1223 state.

1224 (4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed  
1225 on probation, or revoked by the division upon finding that the applicant or licensee has:

1226 (i) materially falsified any application filed or required pursuant to this chapter;

1227 (ii) been convicted of an offense under this chapter or any law of the United States, or  
1228 any state, relating to any substance defined as a controlled substance;

1229 (iii) been convicted of a felony under any other law of the United States or any state  
1230 within five years of the date of the issuance of the license;

1231 (iv) had a federal license denied, suspended, or revoked by competent federal authority  
1232 and is no longer authorized to engage in the manufacturing, distribution, or dispensing of  
1233 controlled substances;

1234 (v) had the licensee's license suspended or revoked by competent authority of another  
1235 state for violation of laws or regulations comparable to those of this state relating to the  
1236 manufacture, distribution, or dispensing of controlled substances;



- 1237 (vi) violated any division rule that reflects adversely on the licensee's reliability and  
1238 integrity with respect to controlled substances;
- 1239 (vii) refused inspection of records required to be maintained under this chapter by a  
1240 person authorized to inspect them; or
- 1241 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the  
1242 purpose of manipulating human hormonal structure so as to:
- 1243 (A) increase muscle mass, strength, or weight without medical necessity and without a  
1244 written prescription by any practitioner in the course of the practitioner's professional practice;  
1245 or
- 1246 (B) improve performance in any form of human exercise, sport, or game.
- 1247 (b) The division may limit revocation or suspension of a license to a particular  
1248 controlled substance with respect to which grounds for revocation or suspension exist.
- 1249 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to  
1250 this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of  
1251 Occupational and Professional Licensing Act, and conducted in conjunction with the  
1252 appropriate representative committee designated by the director of the department.
- 1253 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and  
1254 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,  
1255 except where the division is designated by law to perform those functions, or, when not  
1256 designated by law, is designated by the executive director of the Department of Commerce to  
1257 conduct the proceedings.
- 1258 (d) (i) The division may suspend any license simultaneously with the institution of  
1259 proceedings under this section if it finds there is an imminent danger to the public health or  
1260 safety.
- 1261 (ii) Suspension shall continue in effect until the conclusion of proceedings, including  
1262 judicial review, unless withdrawn by the division or dissolved by a court of competent  
1263 jurisdiction.
- 1264 (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled  
1265 substances owned or possessed by the licensee may be placed under seal in the discretion of the  
1266 division.
- 1267 (ii) Disposition may not be made of substances under seal until the time for taking an

1268 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,  
1269 orders the sale of perishable substances and the proceeds deposited with the court.

1270 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

1271 (f) The division shall notify promptly the Drug Enforcement Administration of all  
1272 orders suspending or revoking a license and all forfeitures of controlled substances.

1273 (5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and  
1274 inventories in conformance with the record keeping and inventory requirements of federal and  
1275 state law and any additional rules issued by the division.

1276 (b) (i) Every physician, dentist, naturopathic physician, veterinarian, practitioner, or  
1277 other person who is authorized to administer or professionally use a controlled substance shall  
1278 keep a record of the drugs received by him and a record of all drugs administered, dispensed, or  
1279 professionally used by him otherwise than by a prescription.

1280 (ii) A person using small quantities or solutions or other preparations of those drugs for  
1281 local application has complied with this Subsection (5)(b) if the person keeps a record of the  
1282 quantity, character, and potency of those solutions or preparations purchased or prepared by  
1283 him, and of the dates when purchased or prepared.

1284 (6) Controlled substances in Schedules I through V may be distributed only by a  
1285 licensee and pursuant to an order form prepared in compliance with division rules or a lawful  
1286 order under the rules and regulations of the United States.

1287 (7) (a) A person may not write or authorize a prescription for a controlled substance  
1288 unless the person is:

1289 (i) a practitioner authorized to prescribe drugs and medicine under the laws of this state  
1290 or under the laws of another state having similar standards; and

1291 (ii) licensed under this chapter or under the laws of another state having similar  
1292 standards.

1293 (b) A person other than a pharmacist licensed under the laws of this state, or the  
1294 pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not  
1295 dispense a controlled substance.

1296 (c) (i) A controlled substance may not be dispensed without the written prescription of  
1297 a practitioner, if the written prescription is required by the federal Controlled Substances Act.

1298 (ii) That written prescription shall be made in accordance with Subsection (7)(a) and in

1299 conformity with Subsection (7)(d).

1300 (iii) In emergency situations, as defined by division rule, controlled substances may be  
1301 dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms  
1302 designated by the division and filed by the pharmacy.

1303 (iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with  
1304 Subsection (7)(d).

1305 (d) Except for emergency situations designated by the division, a person may not issue,  
1306 fill, compound, or dispense a prescription for a controlled substance unless the prescription is  
1307 signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of  
1308 the prescriber as authorized by division rule, and contains the following information:

1309 (i) the name, address, and registry number of the prescriber;

1310 (ii) the name, address, and age of the person to whom or for whom the prescription is  
1311 issued;

1312 (iii) the date of issuance of the prescription; and

1313 (iv) the name, quantity, and specific directions for use by the ultimate user of the  
1314 controlled substance.

1315 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I  
1316 controlled substance.

1317 (f) Except when administered directly to an ultimate user by a licensed practitioner,  
1318 controlled substances are subject to the following restrictions:

1319 (i) (A) A prescription for a Schedule II substance may not be refilled.

1320 (B) A Schedule II controlled substance may not be filled in a quantity to exceed a  
1321 one-month's supply, as directed on the daily dosage rate of the prescriptions.

1322 (ii) A Schedule III or IV controlled substance may be filled only within six months of  
1323 issuance, and may not be refilled more than six months after the date of its original issuance or  
1324 be refilled more than five times after the date of the prescription unless renewed by the  
1325 practitioner.

1326 (iii) All other controlled substances in Schedule V may be refilled as the prescriber's  
1327 prescription directs, but they may not be refilled one year after the date the prescription was  
1328 issued unless renewed by the practitioner.

1329 (iv) Any prescription for a Schedule II substance may not be dispensed if it is not

1330 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days  
1331 after the date the prescription was issued, or 30 days after the dispensing date, if that date is  
1332 specified separately from the date of issue.

1333 (v) A practitioner may issue more than one prescription at the same time for the same  
1334 Schedule II controlled substance, but only under the following conditions:

1335 (A) no more than three prescriptions for the same Schedule II controlled substance may  
1336 be issued at the same time;

1337 (B) no one prescription may exceed a 30-day supply;

1338 (C) a second or third prescription shall include the date of issuance and the date for  
1339 dispensing; and

1340 (D) unless the practitioner determines there is a valid medical reason to the contrary,  
1341 the date for dispensing a second or third prescription may not be fewer than 30 days from the  
1342 dispensing date of the previous prescription.

1343 (vi) Each prescription for a controlled substance may contain only one controlled  
1344 substance per prescription form and may not contain any other legend drug or prescription  
1345 item.

1346 (g) An order for a controlled substance in Schedules II through V for use by an  
1347 inpatient or an outpatient of a licensed hospital is exempt from all requirements of this  
1348 Subsection (7) if the order is:

1349 (i) issued or made by a prescribing practitioner who holds an unrestricted registration  
1350 with the federal Drug Enforcement Administration, and an active Utah controlled substance  
1351 license in good standing issued by the division under this section, or a medical resident who is  
1352 exempted from licensure under Subsection 58-1-307(1)(c);

1353 (ii) authorized by the prescribing practitioner treating the patient and the prescribing  
1354 practitioner designates the quantity ordered;

1355 (iii) entered upon the record of the patient, the record is signed by the prescriber  
1356 affirming the prescriber's authorization of the order within 48 hours after filling or  
1357 administering the order, and the patient's record reflects the quantity actually administered; and

1358 (iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within  
1359 the physical structure of the hospital, or the order is taken from a supply lawfully maintained by  
1360 the hospital and the amount taken from the supply is administered directly to the patient

1361 authorized to receive it.

1362 (h) A practitioner licensed under this chapter may not prescribe, administer, or  
1363 dispense a controlled substance to a child, without first obtaining the consent required in  
1364 Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except  
1365 in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same  
1366 meaning as defined in Section 78A-6-105, and "emergency" means any physical condition  
1367 requiring the administration of a controlled substance for immediate relief of pain or suffering.

1368 (i) A practitioner licensed under this chapter may not prescribe or administer dosages  
1369 of a controlled substance in excess of medically recognized quantities necessary to treat the  
1370 ailment, malady, or condition of the ultimate user.

1371 (j) A practitioner licensed under this chapter may not prescribe, administer, or dispense  
1372 any controlled substance to another person knowing that the other person is using a false name,  
1373 address, or other personal information for the purpose of securing the controlled substance.

1374 (k) A person who is licensed under this chapter to manufacture, distribute, or dispense  
1375 a controlled substance may not manufacture, distribute, or dispense a controlled substance to  
1376 another licensee or any other authorized person not authorized by this license.

1377 (l) A person licensed under this chapter may not omit, remove, alter, or obliterate a  
1378 symbol required by this chapter or by a rule issued under this chapter.

1379 (m) A person licensed under this chapter may not refuse or fail to make, keep, or  
1380 furnish any record notification, order form, statement, invoice, or information required under  
1381 this chapter.

1382 (n) A person licensed under this chapter may not refuse entry into any premises for  
1383 inspection as authorized by this chapter.

1384 (o) A person licensed under this chapter may not furnish false or fraudulent material  
1385 information in any application, report, or other document required to be kept by this chapter or  
1386 willfully make any false statement in any prescription, order, report, or record required by this  
1387 chapter.

1388 (8) (a) (i) Any person licensed under this chapter who is found by the division to have  
1389 violated any of the provisions of Subsections (7)(k) through (7)(o) or Subsection (10) is subject  
1390 to a penalty not to exceed \$5,000. The division shall determine the procedure for adjudication  
1391 of any violations in accordance with Sections 58-1-106 and 58-1-108.

1392 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the  
1393 General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

1394 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through  
1395 (7)(j) or Subsection (10) is:

1396 (i) upon first conviction, guilty of a class B misdemeanor;

1397 (ii) upon second conviction, guilty of a class A misdemeanor; and

1398 (iii) on third or subsequent conviction, guilty of a third degree felony.

1399 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through  
1400 (7)(o) shall upon conviction be guilty of a third degree felony.

1401 (9) Any information communicated to any licensed practitioner in an attempt to  
1402 unlawfully procure, or to procure the administration of, a controlled substance is not considered  
1403 to be a privileged communication.

1404 (10) A person holding a valid license under this chapter who is engaged in medical  
1405 research may produce, possess, or administer, but may not prescribe or dispense, a controlled  
1406 substance listed in Section 58-37-4.2.

1407 Section 8. Section **58-37-8** is amended to read:

1408 **58-37-8. Prohibited acts -- Penalties.**

1409 (1) Prohibited acts A -- Penalties:

1410 (a) Except as authorized by this chapter, it is unlawful for any person to knowingly and  
1411 intentionally:

1412 (i) produce, manufacture, or dispense, or to possess with intent to produce,  
1413 manufacture, or dispense, a controlled or counterfeit substance;

1414 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or  
1415 arrange to distribute a controlled or counterfeit substance;

1416 (iii) possess a controlled or counterfeit substance with intent to distribute; or

1417 (iv) engage in a continuing criminal enterprise where:

1418 (A) the person participates, directs, or engages in conduct which results in any  
1419 violation of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and

1420 (B) the violation is a part of a continuing series of two or more violations of Title 58,  
1421 Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with  
1422 five or more persons with respect to whom the person occupies a position of organizer,

1423 supervisor, or any other position of management.

1424 (b) Any person convicted of violating Subsection (1)(a) with respect to:

1425 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled  
1426 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second  
1427 degree felony and upon a second or subsequent conviction is guilty of a first degree felony;

1428 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or  
1429 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and  
1430 upon a second or subsequent conviction is guilty of a second degree felony; or

1431 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a  
1432 class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree  
1433 felony.

1434 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)  
1435 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier  
1436 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his  
1437 person or in his immediate possession during the commission or in furtherance of the offense,  
1438 the court shall additionally sentence the person convicted for a term of one year to run  
1439 consecutively and not concurrently; and the court may additionally sentence the person  
1440 convicted for an indeterminate term not to exceed five years to run consecutively and not  
1441 concurrently.

1442 (d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree  
1443 felony punishable by imprisonment for an indeterminate term of not less than seven years and  
1444 which may be for life. Imposition or execution of the sentence may not be suspended, and the  
1445 person is not eligible for probation.

1446 (2) Prohibited acts B -- Penalties:

1447 (a) It is unlawful:

1448 (i) for any person knowingly and intentionally to possess or use a controlled substance  
1449 analog or a controlled substance, unless it was obtained under a valid prescription or order,  
1450 directly from a practitioner while acting in the course of the person's professional practice, or as  
1451 otherwise authorized by this chapter;

1452 (ii) for any owner, tenant, licensee, or person in control of any building, room,  
1453 tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to

1454 be occupied by persons unlawfully possessing, using, or distributing controlled substances in  
1455 any of those locations; or

1456 (iii) for any person knowingly and intentionally to possess an altered or forged  
1457 prescription or written order for a controlled substance.

1458 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

1459 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

1460 (ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16  
1461 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree  
1462 felony; or

1463 (iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of  
1464 the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A  
1465 misdemeanor.

1466 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a  
1467 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater  
1468 penalty than provided in this Subsection (2).

1469 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled  
1470 substances not included in Subsection (2)(b)(i), (ii), or (iii), including a substance listed in  
1471 Section 58-37-4.2, or less than one ounce of marijuana, is guilty of a class B misdemeanor.

1472 Upon a second conviction the person is guilty of a class A misdemeanor, and upon a third or  
1473 subsequent conviction the person is guilty of a third degree felony.

1474 (e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior  
1475 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or  
1476 any public jail or other place of confinement shall be sentenced to a penalty one degree greater  
1477 than provided in Subsection (2)(b), and if the conviction is with respect to controlled  
1478 substances as listed in:

1479 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an  
1480 indeterminate term as provided by law, and:

1481 (A) the court shall additionally sentence the person convicted to a term of one year to  
1482 run consecutively and not concurrently; and

1483 (B) the court may additionally sentence the person convicted for an indeterminate term  
1484 not to exceed five years to run consecutively and not concurrently; and



- 1485 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an  
1486 indeterminate term as provided by law, and the court shall additionally sentence the person  
1487 convicted to a term of six months to run consecutively and not concurrently.
- 1488 (f) Any person convicted of violating Subsection (2)(a)(ii) or ~~[(2)(a)]~~(iii) is:  
1489 (i) on a first conviction, guilty of a class B misdemeanor;  
1490 (ii) on a second conviction, guilty of a class A misdemeanor; and  
1491 (iii) on a third or subsequent conviction, guilty of a third degree felony.
- 1492 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not  
1493 amounting to a violation of Section 76-5-207:
- 1494 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's  
1495 body any measurable amount of a controlled substance; and  
1496 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,  
1497 causing serious bodily injury as defined in Section 76-1-601 or the death of another.
- 1498 (h) A person who violates Subsection (2)(g) by having in the person's body:  
1499 (i) a controlled substance classified under Schedule I, other than those described in  
1500 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second  
1501 degree felony;  
1502 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection  
1503 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third  
1504 degree felony; or  
1505 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class  
1506 A misdemeanor.
- 1507 (i) A person is guilty of a separate offense for each victim suffering serious bodily  
1508 injury or death as a result of the person's negligent driving in violation of Subsection  
1509 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.
- 1510 (3) Prohibited acts C -- Penalties:  
1511 (a) It is unlawful for any person knowingly and intentionally:  
1512 (i) to use in the course of the manufacture or distribution of a controlled substance a  
1513 license number which is fictitious, revoked, suspended, or issued to another person or, for the  
1514 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a  
1515 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized

1516 person;

1517 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
1518 administration of, to obtain a prescription for, to prescribe or dispense to any person known to  
1519 be attempting to acquire or obtain possession of, or to procure the administration of any  
1520 controlled substance by misrepresentation or failure by the person to disclose receiving any  
1521 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
1522 prescription or written order for a controlled substance, or the use of a false name or address;

1523 (iii) to make any false or forged prescription or written order for a controlled substance,  
1524 or to utter the same, or to alter any prescription or written order issued or written under the  
1525 terms of this chapter; or

1526 (iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed  
1527 to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or  
1528 device of another or any likeness of any of the foregoing upon any drug or container or labeling  
1529 so as to render any drug a counterfeit controlled substance.

1530 (b) Any person convicted of violating Subsection (3)(a) is guilty of a third degree  
1531 felony.

1532 (4) Prohibited acts D -- Penalties:

1533 (a) Notwithstanding other provisions of this section, a person not authorized under this  
1534 chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a,  
1535 Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances  
1536 Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if  
1537 the trier of fact finds the act is committed:

1538 (i) in a public or private elementary or secondary school or on the grounds of any of  
1539 those schools;

1540 (ii) in a public or private vocational school or postsecondary institution or on the  
1541 grounds of any of those schools or institutions;

1542 (iii) in those portions of any building, park, stadium, or other structure or grounds  
1543 which are, at the time of the act, being used for an activity sponsored by or through a school or  
1544 institution under Subsections (4)(a)(i) and (ii);

1545 (iv) in or on the grounds of a preschool or child-care facility;

1546 (v) in a public park, amusement park, arcade, or recreation center;

- 1547 (vi) in or on the grounds of a house of worship as defined in Section 76-10-501;  
1548 (vii) in a shopping mall, sports facility, stadium, arena, theater, movie house,  
1549 playhouse, or parking lot or structure adjacent thereto;  
1550 (viii) in or on the grounds of a library;  
1551 (ix) within any area that is within 1,000 feet of any structure, facility, or grounds  
1552 included in Subsections (4)(a)(i), (ii), (iv), (vi), and (vii);  
1553 (x) in the presence of a person younger than 18 years of age, regardless of where the act  
1554 occurs; or  
1555 (xi) for the purpose of facilitating, arranging, or causing the transport, delivery, or  
1556 distribution of a substance in violation of this section to an inmate or on the grounds of any  
1557 correctional facility as defined in Section 76-8-311.3.
- 1558 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony  
1559 and shall be imprisoned for a term of not less than five years if the penalty that would  
1560 otherwise have been established but for this Subsection (4) would have been a first degree  
1561 felony.
- 1562 (ii) Imposition or execution of the sentence may not be suspended, and the person is  
1563 not eligible for probation.
- 1564 (c) If the classification that would otherwise have been established would have been  
1565 less than a first degree felony but for this Subsection (4), a person convicted under this  
1566 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that  
1567 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).
- 1568 (d) (i) If the violation is of Subsection (4)(a)(xi):
- 1569 (A) the person may be sentenced to imprisonment for an indeterminate term as  
1570 provided by law, and the court shall additionally sentence the person convicted for a term of  
1571 one year to run consecutively and not concurrently; and
- 1572 (B) the court may additionally sentence the person convicted for an indeterminate term  
1573 not to exceed five years to run consecutively and not concurrently; and
- 1574 (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with  
1575 the mental state required for the commission of an offense, directly or indirectly solicits,  
1576 requests, commands, coerces, encourages, or intentionally aids another person to commit a  
1577 violation of Subsection (4)(a)(xi).

1578 (e) It is not a defense to a prosecution under this Subsection (4) that the actor  
1579 mistakenly believed the individual to be 18 years of age or older at the time of the offense or  
1580 was unaware of the individual's true age; nor that the actor mistakenly believed that the  
1581 location where the act occurred was not as described in Subsection (4)(a) or was unaware that  
1582 the location where the act occurred was as described in Subsection (4)(a).

1583 (5) Any violation of this chapter for which no penalty is specified is a class B  
1584 misdemeanor.

1585 (6) For purposes of penalty enhancement under Subsections (1)(b) and (2)(c), a plea of  
1586 guilty or no contest to a violation of this section which is held in abeyance under Title 77,  
1587 Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been  
1588 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

1589 (7) A person may be charged and sentenced for a violation of this section,  
1590 notwithstanding a charge and sentence for a violation of any other section of this chapter.

1591 (8) (a) Any penalty imposed for violation of this section is in addition to, and not in  
1592 lieu of, any civil or administrative penalty or sanction authorized by law.

1593 (b) Where violation of this chapter violates a federal law or the law of another state,  
1594 conviction or acquittal under federal law or the law of another state for the same act is a bar to  
1595 prosecution in this state.

1596 (9) In any prosecution for a violation of this chapter, evidence or proof which shows a  
1597 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled  
1598 substance or substances, is prima facie evidence that the person or persons did so with  
1599 knowledge of the character of the substance or substances.

1600 (10) This section does not prohibit a veterinarian, in good faith and in the course of the  
1601 veterinarian's professional practice only and not for humans, from prescribing, dispensing, or  
1602 administering controlled substances or from causing the substances to be administered by an  
1603 assistant or orderly under the veterinarian's direction and supervision.

1604 (11) Civil or criminal liability may not be imposed under this section on:

1605 (a) any person registered under this chapter who manufactures, distributes, or possesses  
1606 an imitation controlled substance for use as a placebo or investigational new drug by a  
1607 registered practitioner in the ordinary course of professional practice or research; or

1608 (b) any law enforcement officer acting in the course and legitimate scope of the

1609 officer's employment.

1610 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,  
1611 as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide  
1612 traditional ceremonial purposes in connection with the practice of a traditional Indian religion  
1613 as defined in Subsection 58-37-2(1)(w).

1614 (b) In a prosecution alleging violation of this section regarding peyote as defined in  
1615 Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used,  
1616 possessed, or transported by an Indian for bona fide traditional ceremonial purposes in  
1617 connection with the practice of a traditional Indian religion.

1618 (c) (i) The defendant shall provide written notice of intent to claim an affirmative  
1619 defense under this Subsection (12) as soon as practicable, but not later than 10 days prior to  
1620 trial.

1621 (ii) The notice shall include the specific claims of the affirmative defense.

1622 (iii) The court may waive the notice requirement in the interest of justice for good  
1623 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

1624 (d) The defendant shall establish the affirmative defense under this Subsection (12) by  
1625 a preponderance of the evidence. If the defense is established, it is a complete defense to the  
1626 charges.

1627 (13) (a) It is an affirmative defense that the person produced, possessed, or  
1628 administered a controlled substance listed in Section 58-37-4.2 if the person:

1629 (i) was engaged in medical research; and

1630 (ii) was a holder of a valid license to possess controlled substances under Section  
1631 58-37-6.

1632 (b) It is not a defense under Subsection 58-37-8(13)(a) that the person prescribed or  
1633 dispensed a controlled substance listed in 58-37-4.2.

1634 (14) It is an affirmative defense that the person possessed, in the person's body, a  
1635 controlled substance listed in Section 58-37-4.2 if:

1636 (a) the person was the subject of medical research conducted by a holder of a valid  
1637 license to possess controlled substances under Section 58-37-6; and

1638 (b) the substance was administered to the person by the medical researcher.

1639 [~~13~~] (15) If any provision of this chapter, or the application of any provision to any

1640 person or circumstances, is held invalid, the remainder of this chapter shall be given effect  
1641 without the invalid provision or application.

1642 (16) A legislative body of a political subdivision may not enact an ordinance that is  
1643 less restrictive than any provision of this chapter.

1644 Section 9. Section **58-38a-203** is amended to read:

1645 **58-38a-203. Duties of the committee.**

1646 (1) The committee serves as a consultative and advisory body to the Legislature  
1647 regarding:

1648 (a) the movement of a controlled substance from one schedule or list to another;

1649 (b) the removal of a controlled substance from any schedule or list; and

1650 (c) the designation of a substance as a controlled substance and the placement of the  
1651 substance in a designated schedule or list.

1652 (2) On or before September 30 of each year, the committee shall submit to the Health  
1653 and Human Services Interim Committee a written report:

1654 (a) [~~listing~~] describing any substances recommended by the committee for scheduling,  
1655 rescheduling, listing, or deletion from the schedules or list by the Legislature; and

1656 (b) stating the reasons for the recommendation.

1657 (3) In advising the Legislature regarding the need to add, delete, relist, or reschedule a  
1658 substance, the committee shall consider:

1659 (a) the actual or probable abuse of the substance, including:

1660 (i) the history and current pattern of abuse both in Utah and in other states;

1661 (ii) the scope, duration, and significance of abuse;

1662 (iii) the degree of actual or probable detriment to public health which may result from  
1663 abuse of the substance; and

1664 (iv) the probable physical and social impact of widespread abuse of the substance;

1665 (b) the biomedical hazard of the substance, including:

1666 (i) its pharmacology, including the effects and modifiers of the effects of the substance;

1667 (ii) its toxicology, acute and chronic toxicity, interaction with other substances,

1668 whether controlled or not, and the degree to which it may cause psychological or physiological  
1669 dependence; and

1670 (iii) the risk to public health and the particular susceptibility of segments of the

1671 population;

1672 (c) whether the substance is an immediate precursor, as defined in Section 58-37-2, of  
1673 a substance that is currently a controlled substance;

1674 (d) the current state of scientific knowledge regarding the substance, including whether  
1675 there is any acceptable means to safely use the substance under medical supervision;

1676 (e) the relationship between the use of the substance and criminal activity, including  
1677 whether:

1678 (i) persons engaged in illicit trafficking of the substance are also engaged in other  
1679 criminal activity;

1680 (ii) the nature and relative profitability of manufacturing or delivering the substance  
1681 encourages illicit trafficking in the substance;

1682 (iii) the commission of other crimes is one of the recognized effects of abuse of the  
1683 substance; and

1684 (iv) addiction to the substance relates to the commission of crimes to facilitate the  
1685 continued use of the substance;

1686 (f) whether the substance has been scheduled by other states; and

1687 (g) whether the substance has any accepted medical use in treatment in the United  
1688 States.

1689 (4) The committee's duties under this chapter do not include tobacco products as  
1690 defined in Section 59-14-102 or alcoholic beverages as defined in Section 32A-1-105.

1691 Section 10. Section **58-38a-204** is amended to read:

1692 **58-38a-204. Guidelines for scheduling or listing drugs.**

1693 (1) (a) The committee shall recommend placement of a substance in Schedule I if it  
1694 finds:

1695 (i) that the substance has high potential for abuse; and

1696 (ii) that an accepted standard has not been established for safe use in treatment for  
1697 medical purposes.

1698 (b) The committee may recommend placement of a substance in Schedule I under  
1699 Section 58-37-4 if it finds that the substance is classified as a controlled substance in Schedule  
1700 I under federal law.

1701 (2) (a) The committee shall recommend placement of a substance in Schedule II if it

1702 finds that:

- 1703 (i) the substance has high potential for abuse;
- 1704 (ii) the substance has a currently accepted medical use in treatment in the United  
1705 States, or a currently accepted medical use subject to severe restrictions; and
- 1706 (iii) the abuse of the substance may lead to severe psychological or physiological  
1707 dependence.

1708 (b) The committee may recommend placement of a substance in Schedule II if it finds  
1709 that the substance is classified as a controlled substance in Schedule II under federal law.

1710 (3) (a) The committee shall recommend placement of a substance in Schedule III if it  
1711 finds that:

- 1712 (i) the substance has a potential for abuse that is less than the potential for substances  
1713 listed in Schedules I and II;
- 1714 (ii) the substance has a currently accepted medical use in treatment in the United  
1715 States; and
- 1716 (iii) abuse of the substance may lead to moderate or low physiological dependence or  
1717 high psychological dependence.

1718 (b) The committee may recommend placement of a substance in Schedule III if it finds  
1719 that the substance is classified as a controlled substance in Schedule III under federal law.

1720 (4) (a) The committee shall recommend placement of a substance in Schedule IV if it  
1721 finds that:

- 1722 (i) the substance has a low potential for abuse relative to substances in Schedule III;
- 1723 (ii) the substance has currently accepted medical use in treatment in the United States;  
1724 and
- 1725 (iii) abuse of the substance may lead to limited physiological dependence or  
1726 psychological dependence relative to the substances in Schedule III.

1727 (b) The committee may recommend placement of a substance in Schedule IV if it finds  
1728 that the substance is classified as a controlled substance in Schedule IV under federal law.

1729 (5) (a) The committee shall recommend placement of a substance in Schedule V if it  
1730 finds that:

- 1731 (i) the substance has low potential for abuse relative to the controlled substances listed  
1732 in Schedule IV;



1733 (ii) the substance has currently accepted medical use in treatment in the United States;  
1734 and

1735 (iii) the substance has limited physiological dependence or psychological dependence  
1736 liability relative to the controlled substances listed in Schedule IV.

1737 (b) The committee may recommend placement of a substance in Schedule V under this  
1738 chapter if it finds that the substance is classified as a controlled substance in Schedule V under  
1739 federal law.

1740 (6) The committee may recommend placement of a substance on a controlled substance  
1741 list if it finds that the substance has a potential for abuse and that an accepted standard has not  
1742 been established for safe use in treatment for medical purposes.

1743 Section 11. **Effective date.**

1744 If approved by two-thirds of all the members elected to each house, this bill takes effect  
1745 upon approval by the governor, or the day following the constitutional time limit of Utah  
1746 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
1747 the date of veto override, except that the amendments to Section 58-37-2 (Effective 07/01/11)  
1748 take effect on July 1, 2011.

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**Legislative Review Note**  
**as of 11-18-10 10:26 AM**

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 23, 2011 General Session

SHORT TITLE: **Controlled Substance Modifications**

SPONSOR: **Froerer, G.**

STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget. To the extent that additional convictions occur as a result of this legislation, the Department of Public Safety would collect additional driving reinstatement fee revenue. DPS reports that such additional revenue will cover the costs of reinstating those driving licenses.

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Individuals convicted of a violation under this legislation would pay the existing \$65 fee to reinstate their driving license.