

**Representative Stephen G. Handy** proposes the following substitute bill:

**PUBLIC TRANSIT AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen G. Handy**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends provisions related to public transit safety.

**Highlighted Provisions:**

This bill:

- ▶ exempts an occupant of a paratransit vehicle operated by a public transit district from a requirement to wear a seatbelt;
- ▶ enhances a drug-related charge if an offense occurs in a transit vehicle or within 100 feet of certain facilities related to public transit; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**41-6a-1804**, as renumbered and amended by Laws of Utah 2005, Chapter 2

**58-37-8**, as last amended by Laws of Utah 2016, Chapters 99 and 348

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

27 Section 1. Section **41-6a-1804** is amended to read:

28 **41-6a-1804. Exceptions.**

29 (1) This part does not apply to an operator or passenger of:

30 (a) a motor vehicle manufactured before July 1, 1966;

31 (b) a motor vehicle in which the operator or passengers possess a written verification  
32 from a licensed physician that the person is unable to wear a safety belt for physical or medical  
33 reasons; [~~or~~]

34 (c) a motor vehicle or seating position which is not required to be equipped with a  
35 safety belt system under federal law[-]; or

36 (d) a paratransit vehicle operated by a public transit district.

37 (2) This part does not apply to a passenger if all seating positions are occupied by other  
38 passengers.

39 Section 2. Section **58-37-8** is amended to read:

40 **58-37-8. Prohibited acts -- Penalties.**

41 (1) Prohibited acts A -- Penalties and reporting:

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

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

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

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

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

50 (A) the person participates, directs, or engages in conduct that results in any violation  
51 of any provision of Title 58, Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug  
52 Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Utah Controlled Substance  
53 Precursor Act, or 37d, Clandestine Drug Lab Act, that is a felony; and

54 (B) the violation is a part of a continuing series of two or more violations of Title 58,  
55 Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b,  
56 Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d,

57 Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or  
58 more persons with respect to whom the person occupies a position of organizer, supervisor, or  
59 any other position of management.

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

61 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled  
62 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second  
63 degree felony, punishable by imprisonment for not more than 15 years, and upon a second or  
64 subsequent conviction is guilty of a first degree felony;

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

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

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

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

83 (e) The Administrative Office of the Courts shall report to the Division of  
84 Occupational and Professional Licensing the name, case number, date of conviction, and if  
85 known, the date of birth of each person convicted of violating Subsection (2)(a).

86 (2) Prohibited acts B -- Penalties and reporting:

87 (a) It is unlawful:

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

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

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

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

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

101 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty  
102 of a class A misdemeanor on a first or second conviction, and on a third or subsequent  
103 conviction is guilty of a third degree felony.

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

107 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled  
108 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section  
109 58-37-4.2, or marijuana, is guilty of a class B misdemeanor. Upon a third conviction the  
110 person is guilty of a class A misdemeanor, and upon a fourth or subsequent conviction the  
111 person is guilty of a third degree felony.

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

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

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

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

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

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

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

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

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

130 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not  
131 amounting to a violation of Section 76-5-207:

132 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's  
133 body any measurable amount of a controlled substance; and

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

136 (h) A person who violates Subsection (2)(g) by having in the person's body:

137 (i) a controlled substance classified under Schedule I, other than those described in  
138 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second  
139 degree felony;

140 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection  
141 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third  
142 degree felony; or

143 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class  
144 A misdemeanor.

145 (i) A person is guilty of a separate offense for each victim suffering serious bodily  
146 injury or death as a result of the person's negligent driving in violation of Subsection  
147 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.

148 (j) The Administrative Office of the Courts shall report to the Division of Occupational  
149 and Professional Licensing the name, case number, date of conviction, and if known, the date

150 of birth of each person convicted of violating Subsection (2)(a).

151 (3) Prohibited acts C -- Penalties:

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

153 (i) to use in the course of the manufacture or distribution of a controlled substance a  
154 license number which is fictitious, revoked, suspended, or issued to another person or, for the  
155 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a  
156 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized  
157 person;

158 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
159 administration of, to obtain a prescription for, to prescribe or dispense to any person known to  
160 be attempting to acquire or obtain possession of, or to procure the administration of any  
161 controlled substance by misrepresentation or failure by the person to disclose receiving any  
162 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
163 prescription or written order for a controlled substance, or the use of a false name or address;

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

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

171 (b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A  
172 misdemeanor.

173 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third  
174 degree felony.

175 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.

176 (4) Prohibited acts D -- Penalties:

177 (a) Notwithstanding other provisions of this section, a person not authorized under this  
178 chapter who commits any act that is unlawful under Subsection (1)(a), Section 58-37a-5, or  
179 Section 58-37b-4 is upon conviction subject to the penalties and classifications under this  
180 Subsection (4) if the trier of fact finds the act is committed:

181 (i) in a public or private elementary or secondary school or on the grounds of any of  
182 those schools during the hours of 6 a.m. through 10 p.m.;

183 (ii) in a public or private vocational school or postsecondary institution or on the  
184 grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

185 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or  
186 facility's hours of operation;

187 (iv) in a public park, amusement park, arcade, or recreation center when the public or  
188 amusement park, arcade, or recreation center is open to the public;

189 (v) in or on the grounds of a house of worship as defined in Section [76-10-501](#);

190 (vi) in or on the grounds of a library when the library is open to the public;

191 (vii) within any area that is within 100 feet of any structure, facility, or grounds  
192 included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);

193 (viii) (A) in or on a transit vehicle as defined in Section [17B-2a-802](#); or

194 (B) within 100 feet of a transit station, depot, passenger loading or unloading zone,  
195 parking lot, or other facility;

196 [~~viii~~] (ix) in the presence of a person younger than 18 years of age, regardless of  
197 where the act occurs; or

198 [~~ix~~] (x) for the purpose of facilitating, arranging, or causing the transport, delivery, or  
199 distribution of a substance in violation of this section to an inmate or on the grounds of any  
200 correctional facility as defined in Section [76-8-311.3](#).

201 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony  
202 and shall be imprisoned for a term of not less than five years if the penalty that would  
203 otherwise have been established but for this Subsection (4) would have been a first degree  
204 felony.

205 (ii) Imposition or execution of the sentence may not be suspended, and the person is  
206 not eligible for probation.

207 (c) If the classification that would otherwise have been established would have been  
208 less than a first degree felony but for this Subsection (4), a person convicted under this  
209 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that  
210 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

211 (d) (i) If the violation is of Subsection (4)(a)(ix):

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

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

217 (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with  
218 the mental state required for the commission of an offense, directly or indirectly solicits,  
219 requests, commands, coerces, encourages, or intentionally aids another person to commit a  
220 violation of Subsection (4)(a)[~~(ix)~~](x).

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

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

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

233 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a  
234 conviction that is:

235 (i) from a separate criminal episode than the current charge; and

236 (ii) from a conviction that is separate from any other conviction used to enhance the  
237 current charge.

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

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

242 (b) Where violation of this chapter violates a federal law or the law of another state,



243 conviction or acquittal under federal law or the law of another state for the same act is a bar to  
244 prosecution in this state.

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

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

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

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

257 (b) any law enforcement officer acting in the course and legitimate scope of the  
258 officer's employment.

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

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

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

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

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

273 (d) The defendant shall establish the affirmative defense under this Subsection (12) by

274 a preponderance of the evidence. If the defense is established, it is a complete defense to the  
275 charges.

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

278 (i) was engaged in medical research; and

279 (ii) was a holder of a valid license to possess controlled substances under Section  
280 58-37-6.

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

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

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

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

288 (15) The application of any increase in penalty under this section to a violation of  
289 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This  
290 Subsection (15) takes precedence over any conflicting provision of this section.

291 (16) (a) It is an affirmative defense to an allegation of the commission of an offense  
292 listed in Subsection (16)(b) that the person:

293 (i) reasonably believes that the person or another person is experiencing an overdose  
294 event due to the ingestion, injection, inhalation, or other introduction into the human body of a  
295 controlled substance or other substance;

296 (ii) reports in good faith the overdose event to a medical provider, an emergency  
297 medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911  
298 emergency call system, or an emergency dispatch system, or the person is the subject of a  
299 report made under this Subsection (16);

300 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the  
301 actual location of the overdose event that facilitates responding to the person experiencing the  
302 overdose event;

303 (iv) remains at the location of the person experiencing the overdose event until a  
304 responding law enforcement officer or emergency medical service provider arrives, or remains

305 at the medical care facility where the person experiencing an overdose event is located until a  
306 responding law enforcement officer arrives;

307 (v) cooperates with the responding medical provider, emergency medical service  
308 provider, and law enforcement officer, including providing information regarding the person  
309 experiencing the overdose event and any substances the person may have injected, inhaled, or  
310 otherwise introduced into the person's body; and

311 (vi) is alleged to have committed the offense in the same course of events from which  
312 the reported overdose arose.

313 (b) The offenses referred to in Subsection (16)(a) are:

314 (i) the possession or use of less than 16 ounces of marijuana;

315 (ii) the possession or use of a scheduled or listed controlled substance other than  
316 marijuana; and

317 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,  
318 Imitation Controlled Substances Act.

319 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not  
320 include seeking medical assistance under this section during the course of a law enforcement  
321 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

322 (17) If any provision of this chapter, or the application of any provision to any person  
323 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the  
324 invalid provision or application.

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

327 (19) (a) If a minor who is under 18 years of age is found by a court to have violated this  
328 section and the violation is the minor's first violation of this section, the court may:

329 (i) order the minor to complete a screening as defined in Section 41-6a-501;

330 (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the  
331 screening indicates an assessment to be appropriate; and

332 (iii) order the minor to complete an educational series as defined in Section 41-6a-501  
333 or substance abuse treatment as indicated by an assessment.

334 (b) If a minor who is under 18 years of age is found by a court to have violated this  
335 section and the violation is the minor's second or subsequent violation of this section, the court

336 shall:

337 (i) order the minor to complete a screening as defined in Section [41-6a-501](#);

338 (ii) order the minor to complete an assessment as defined in Section [41-6a-501](#) if the  
339 screening indicates an assessment to be appropriate; and

340 (iii) order the minor to complete an educational series as defined in Section [41-6a-501](#)  
341 or substance abuse treatment as indicated by an assessment.