

Representative Karen Kwan proposes the following substitute bill:

PUBLIC TRANSIT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

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



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~~] this chapter,
52 Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act,
53 Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab
54 Act, that is a felony; and

55 (B) the violation is a part of a continuing series of two or more violations of [~~Title 58,~~
56 ~~Chapters 37, Utah Controlled Substances Act~~] this chapter, Chapter 37a, Utah Drug

57 Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah
58 Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, on separate
59 occasions that are undertaken in concert with five or more persons with respect to whom the
60 person occupies a position of organizer, supervisor, or any other position of management.

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

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

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

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

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

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

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

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

- 88 (a) It is unlawful:
- 89 (i) for any person knowingly and intentionally to possess or use a controlled substance
- 90 analog or a controlled substance, unless it was obtained under a valid prescription or order,
- 91 directly from a practitioner while acting in the course of the person's professional practice, or as
- 92 otherwise authorized by this chapter;
- 93 (ii) for any owner, tenant, licensee, or person in control of any building, room,
- 94 tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to
- 95 be occupied by persons unlawfully possessing, using, or distributing controlled substances in
- 96 any of those locations; or
- 97 (iii) for any person knowingly and intentionally to possess an altered or forged
- 98 prescription or written order for a controlled substance.
- 99 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:
- 100 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;
- 101 or
- 102 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty
- 103 of a class A misdemeanor on a first or second conviction, and on a third or subsequent
- 104 conviction is guilty of a third degree felony.
- 105 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
- 106 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater
- 107 penalty than provided in this Subsection (2).
- 108 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled
- 109 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section
- 110 58-37-4.2, or marijuana, is guilty of a class B misdemeanor. Upon a third conviction the
- 111 person is guilty of a class A misdemeanor, and upon a fourth or subsequent conviction the
- 112 person is guilty of a third degree felony.
- 113 (e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior
- 114 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or
- 115 any public jail or other place of confinement shall be sentenced to a penalty one degree greater
- 116 than provided in Subsection (2)(b), and if the conviction is with respect to controlled
- 117 substances as listed in:
- 118 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an

119 indeterminate term as provided by law, and:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

146 (i) A person is guilty of a separate offense for each victim suffering serious bodily
147 injury or death as a result of the person's negligent driving in violation of Subsection
148 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.

149 (j) The Administrative Office of the Courts shall report to the Division of Occupational

150 and Professional Licensing the name, case number, date of conviction, and if known, the date
151 of birth of each person convicted of violating Subsection (2)(a).

152 (3) Prohibited acts C -- Penalties:

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

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

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

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

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

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

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

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

177 (4) Prohibited acts D -- Penalties:

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

181 Subsection (4) if the trier of fact finds the act is committed:

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

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

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

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

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

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

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

194 (viii) in the presence of a person younger than 18 years of age, regardless of where the
195 act occurs; or

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

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

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

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

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

210 (A) the person may be sentenced to imprisonment for an indeterminate term as
211 provided by law, and the court shall additionally sentence the person convicted for a term of

212 one year to run consecutively and not concurrently; and

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

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

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

224 (5) (a) Except as authorized by this chapter, it is unlawful for any person in or on a
225 transit vehicle as defined in Section 17B-2a-802, or within 100 feet of a public transit station,
226 depot, passenger loading or unloading zone, or parking lot to:

227 (i) knowingly and intentionally possess or use a controlled or counterfeit substance;

228 (ii) produce, manufacture, or dispense, or to possess with intent to produce,
229 manufacture, or dispense, a controlled or counterfeit substance;

230 (iii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or
231 arrange to distribute a controlled or counterfeit substance;

232 (iv) possess a controlled or counterfeit substance with intent to distribute;

233 (v) engage in a continuing criminal enterprise where:

234 (A) the person participates, directs, or engages in conduct that results in any violation
235 of any provision of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b,
236 Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act,
237 or Chapter 37d, Clandestine Drug Lab Act, that is a felony; and

238 (B) the violation is a part of a continuing series of two or more violations of this
239 chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled
240 Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d,
241 Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or
242 more persons with respect to whom the person occupies a position of organizer, supervisor, or

243 any other position of management; or

244 (vi) violate Section 58-37a-5 or Section 58-37b-4.

245 (b) A person convicted of a violation under this Subsection (5) is guilty of a third
246 degree felony.

247 [~~5~~] (6) Any violation of this chapter for which no penalty is specified is a class B
248 misdemeanor.

249 [~~6~~] (7) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea
250 of guilty or no contest to a violation or attempted violation of this section or a plea which is
251 held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a
252 conviction, even if the charge has been subsequently reduced or dismissed in accordance with
253 the plea in abeyance agreement.

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

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

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

259 [~~7~~] (8) A person may be charged and sentenced for a violation of this section,
260 notwithstanding a charge and sentence for a violation of any other section of this chapter.

261 [~~8~~] (9) (a) Any penalty imposed for violation of this section is in addition to, and not
262 in lieu of, any civil or administrative penalty or sanction authorized by law.

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

266 [~~9~~] (10) In any prosecution for a violation of this chapter, evidence or proof that
267 shows a person or persons produced, manufactured, possessed, distributed, or dispensed a
268 controlled substance or substances, is prima facie evidence that the person or persons did so
269 with knowledge of the character of the substance or substances.

270 [~~10~~] (11) This section does not prohibit a veterinarian, in good faith and in the course
271 of the veterinarian's professional practice only and not for humans, from prescribing,
272 dispensing, or administering controlled substances or from causing the substances to be
273 administered by an assistant or orderly under the veterinarian's direction and supervision.

274 [~~(H)~~] (12) Civil or criminal liability may not be imposed under this section on:

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

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

280 [~~(H2)~~] (13) (a) Civil or criminal liability may not be imposed under this section on any
281 Indian, as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for
282 bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian
283 religion as defined in Subsection 58-37-2(1)(w).

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

288 (c) (i) The defendant shall provide written notice of intent to claim an affirmative
289 defense under this Subsection [~~(H2)~~] (13) as soon as practicable, but not later than 10 days prior
290 to trial.

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

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

294 (d) The defendant shall establish the affirmative defense under this Subsection [~~(H2)~~]
295 (13) by a preponderance of the evidence. If the defense is established, it is a complete defense
296 to the charges.

297 [~~(H3)~~] (14) (a) It is an affirmative defense that the person produced, possessed, or
298 administered a controlled substance listed in Section 58-37-4.2 if the person:

299 (i) was engaged in medical research; and

300 (ii) was a holder of a valid license to possess controlled substances under Section
301 58-37-6.

302 (b) It is not a defense under Subsection [~~(H3)~~] (14)(a) that the person prescribed or
303 dispensed a controlled substance listed in Section 58-37-4.2.

304 [~~(H4)~~] (15) It is an affirmative defense that the person possessed, in the person's body, a

305 controlled substance listed in Section [58-37-4.2](#) if:

306 (a) the person was the subject of medical research conducted by a holder of a valid
307 license to possess controlled substances under Section [58-37-6](#); and

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

309 ~~[(15)]~~ (16) The application of any increase in penalty under this section to a violation
310 of Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This
311 Subsection ~~[(15)]~~ (16) takes precedence over any conflicting provision of this section.

312 ~~[(16)]~~ (17) (a) It is an affirmative defense to an allegation of the commission of an
313 offense listed in Subsection ~~[(16)]~~ (17)(b) that the person:

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

317 (ii) reports in good faith the overdose event to a medical provider, an emergency
318 medical service provider as defined in Section [26-8a-102](#), a law enforcement officer, a 911
319 emergency call system, or an emergency dispatch system, or the person is the subject of a
320 report made under this Subsection ~~[(16)]~~ (17);

321 (iii) provides in the report under Subsection ~~[(16)]~~ (17)(a)(ii) a functional description
322 of the actual location of the overdose event that facilitates responding to the person
323 experiencing the overdose event;

324 (iv) remains at the location of the person experiencing the overdose event until a
325 responding law enforcement officer or emergency medical service provider arrives, or remains
326 at the medical care facility where the person experiencing an overdose event is located until a
327 responding law enforcement officer arrives;

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

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

334 (b) The offenses referred to in Subsection ~~[(16)]~~ (17)(a) are:

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

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

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

340 (c) As used in this Subsection [~~(16)~~] (17) and in Section 76-3-203.11, "good faith"
341 does not include seeking medical assistance under this section during the course of a law
342 enforcement agency's execution of a search warrant, execution of an arrest warrant, or other
343 lawful search.

344 [~~(17)~~] (18) If any provision of this chapter, or the application of any provision to any
345 person or circumstances, is held invalid, the remainder of this chapter shall be given effect
346 without the invalid provision or application.

347 [~~(18)~~] (19) A legislative body of a political subdivision may not enact an ordinance that
348 is less restrictive than any provision of this chapter.

349 [~~(19)~~] (20) (a) If a minor who is under 18 years of age is found by a court to have
350 violated this section and the violation is the minor's first violation of this section, the court
351 may:

- 352 (i) order the minor to complete a screening as defined in Section 41-6a-501;
- 353 (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the
354 screening indicates an assessment to be appropriate; and
- 355 (iii) order the minor to complete an educational series as defined in Section 41-6a-501
356 or substance abuse treatment as indicated by an assessment.

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

- 360 (i) order the minor to complete a screening as defined in Section 41-6a-501;
- 361 (ii) order the minor to complete an assessment as defined in Section 41-6a-501 if the
362 screening indicates an assessment to be appropriate; and
- 363 (iii) order the minor to complete an educational series as defined in Section 41-6a-501
364 or substance abuse treatment as indicated by an assessment.