

HOMELESS RESOURCE CENTER ZONE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Joel K. Briscoe

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Controlled Substances Act.

Highlighted Provisions:

This bill:

- ▶ modifies penalties related to violations of the Utah Controlled Substances Act when the violation occurs in or near a homeless shelter; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

58-37f-201, as last amended by Laws of Utah 2016, Chapter 99

58-37f-704, as enacted by Laws of Utah 2016, Chapter 99

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

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

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



- 28 (1) Prohibited acts A -- Penalties and reporting:
- 29 (a) Except as authorized by this chapter, it is unlawful for any person to knowingly and
- 30 intentionally:
- 31 (i) produce, manufacture, or dispense, or to possess with intent to produce,
- 32 manufacture, or dispense, a controlled or counterfeit substance;
- 33 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or
- 34 arrange to distribute a controlled or counterfeit substance;
- 35 (iii) possess a controlled or counterfeit substance with intent to distribute; or
- 36 (iv) engage in a continuing criminal enterprise where:
- 37 (A) the person participates, directs, or engages in conduct that results in any violation
- 38 of any provision of [~~Title 58,~~] Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug
- 39 Paraphernalia Act, 37b, Imitation Controlled Substances Act, 37c, Utah Controlled Substance
- 40 Precursor Act, or 37d, Clandestine Drug Lab Act, that is a felony; and
- 41 (B) the violation is a part of a continuing series of two or more violations of [~~Title 58,~~]
- 42 Chapters 37, Utah Controlled Substances Act, 37a, Utah Drug Paraphernalia Act, 37b,
- 43 Imitation Controlled Substances Act, 37c, Utah Controlled Substance Precursor Act, or 37d,
- 44 Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or
- 45 more persons with respect to whom the person occupies a position of organizer, supervisor, or
- 46 any other position of management.
- 47 (b) Any person convicted of violating Subsection (1)(a) with respect to:
- 48 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled
- 49 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second
- 50 degree felony, punishable by imprisonment for not more than 15 years, and upon a second or
- 51 subsequent conviction is guilty of a first degree felony;
- 52 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or
- 53 marijuana, or a substance listed in Section [58-37-4.2](#) is guilty of a third degree felony, and
- 54 upon a second or subsequent conviction is guilty of a second degree felony; or
- 55 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a
- 56 class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree
- 57 felony.
- 58 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)

59 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier
60 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his
61 person or in his immediate possession during the commission or in furtherance of the offense,
62 the court shall additionally sentence the person convicted for a term of one year to run
63 consecutively and not concurrently; and the court may additionally sentence the person
64 convicted for an indeterminate term not to exceed five years to run consecutively and not
65 concurrently.

66 (d) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)
67 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier
68 of fact finds the offense occurred during anytime of day in, on the grounds of or within 100 feet
69 of, a permanent housing, permanent supporting, or transitional facility, as defined in Section
70 35A-5-302, the court may additionally sentence the person convicted for an indeterminate term
71 not to exceed two years to run consecutively and not concurrently.

72 [~~(d)~~] (e) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first
73 degree felony punishable by imprisonment for an indeterminate term of not less than seven
74 years and which may be for life. Imposition or execution of the sentence may not be
75 suspended, and the person is not eligible for probation.

76 [~~(e)~~] (f) The Administrative Office of the Courts shall report to the Division of
77 Occupational and Professional Licensing the name, case number, date of conviction, and if
78 known, the date of birth of each person convicted of violating Subsection (2)(a).

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

80 (a) It is unlawful:

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

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

89 (iii) for any person knowingly and intentionally to possess an altered or forged

90 prescription or written order for a controlled substance.

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

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

93 or

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

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

100 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled
101 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section
102 58-37-4.2, or marijuana, is guilty of a class B misdemeanor. Upon a third conviction the
103 person is guilty of a class A misdemeanor, and upon a fourth or subsequent conviction the
104 person is guilty of a third degree felony.

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

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

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

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

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

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

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

- 121 (ii) on a second conviction, guilty of a class A misdemeanor; and
- 122 (iii) on a third or subsequent conviction, guilty of a third degree felony.
- 123 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not
- 124 amounting to a violation of Section 76-5-207:
- 125 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's
- 126 body any measurable amount of a controlled substance; and
- 127 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,
- 128 causing serious bodily injury as defined in Section 76-1-601 or the death of another.
- 129 (h) A person who violates Subsection (2)(g) by having in the person's body:
- 130 (i) a controlled substance classified under Schedule I, other than those described in
- 131 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second
- 132 degree felony;
- 133 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection
- 134 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third
- 135 degree felony; or
- 136 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class
- 137 A misdemeanor.
- 138 (i) A person is guilty of a separate offense for each victim suffering serious bodily
- 139 injury or death as a result of the person's negligent driving in violation of Subsection
- 140 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.
- 141 (j) The Administrative Office of the Courts shall report to the Division of Occupational
- 142 and Professional Licensing the name, case number, date of conviction, and if known, the date
- 143 of birth of each person convicted of violating Subsection (2)(a).
- 144 (3) Prohibited acts C -- Penalties:
- 145 (a) It is unlawful for any person knowingly and intentionally:
- 146 (i) to use in the course of the manufacture or distribution of a controlled substance a
- 147 license number which is fictitious, revoked, suspended, or issued to another person or, for the
- 148 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a
- 149 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
- 150 person;
- 151 (ii) to acquire or obtain possession of, to procure or attempt to procure the

152 administration of, to obtain a prescription for, to prescribe or dispense to any person known to
153 be attempting to acquire or obtain possession of, or to procure the administration of any
154 controlled substance by misrepresentation or failure by the person to disclose receiving any
155 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a
156 prescription or written order for a controlled substance, or the use of a false name or address;

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

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

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

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

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

169 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

- 183 (vi) in or on the grounds of a library when the library is open to the public;
- 184 (vii) within any area that is within 100 feet of any structure, facility, or grounds
- 185 included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);
- 186 (viii) in the presence of a person younger than 18 years of age, regardless of where the
- 187 act occurs; or
- 188 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or
- 189 distribution of a substance in violation of this section to an inmate or on the grounds of any
- 190 correctional facility as defined in Section 76-8-311.3.

191 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony

192 and shall be imprisoned for a term of not less than five years if the penalty that would

193 otherwise have been established but for this Subsection (4) would have been a first degree

194 felony.

195 (ii) Imposition or execution of the sentence may not be suspended, and the person is

196 not eligible for probation.

197 (c) If the classification that would otherwise have been established would have been

198 less than a first degree felony but for this Subsection (4), a person convicted under this

199 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that

200 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

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

202 (A) the person may be sentenced to imprisonment for an indeterminate term as

203 provided by law, and the court shall additionally sentence the person convicted for a term of

204 one year to run consecutively and not concurrently; and

205 (B) the court may additionally sentence the person convicted for an indeterminate term

206 not to exceed five years to run consecutively and not concurrently; and

207 (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with

208 the mental state required for the commission of an offense, directly or indirectly solicits,

209 requests, commands, coerces, encourages, or intentionally aids another person to commit a

210 violation of Subsection (4)(a)(ix).

211 (e) It is not a defense to a prosecution under this Subsection (4) that the actor

212 mistakenly believed the individual to be 18 years of age or older at the time of the offense or

213 was unaware of the individual's true age; nor that the actor mistakenly believed that the

214 location where the act occurred was not as described in Subsection (4)(a) or was unaware that
215 the location where the act occurred was as described in Subsection (4)(a).

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

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

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

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

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

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

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

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

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

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

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

244 (a) any person registered under this chapter who manufactures, distributes, or possesses

245 an imitation controlled substance for use as a placebo or investigational new drug by a
246 registered practitioner in the ordinary course of professional practice or research; or

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

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

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

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

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

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

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

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

268 (i) was engaged in medical research; and

269 (ii) was a holder of a valid license to possess controlled substances under Section
270 58-37-6.

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

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

275 (a) the person was the subject of medical research conducted by a holder of a valid

276 license to possess controlled substances under Section 58-37-6; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

332 Section 2. Section 58-37f-201 is amended to read:

333 **58-37f-201. Controlled substance database -- Creation -- Purpose.**

334 (1) There is created within the division a controlled substance database.

335 (2) The division shall administer and direct the functioning of the database in
336 accordance with this chapter.

337 (3) The division may, under state procurement laws, contract with another state agency

338 or a private entity to establish, operate, or maintain the database.

339 (4) The division shall, in collaboration with the board, determine whether to operate
340 the database within the division or contract with another entity to operate the database, based
341 on an analysis of costs and benefits.

342 (5) The purpose of the database is to contain:

343 (a) the data described in Section 58-37f-203 regarding every prescription for a
344 controlled substance dispensed in the state to any individual other than an inpatient in a
345 licensed health care facility;

346 (b) data reported to the division under Section 26-21-26 regarding poisoning or
347 overdose;

348 (c) data reported to the division under Subsection 41-6a-502(4) or 41-6a-502.5(5)(b)
349 regarding convictions for driving under the influence of a prescribed controlled substance or
350 impaired driving; and

351 (d) data reported to the division under Subsection 58-37-8(1)~~(e)~~(f) or 58-37-8(2)(j)
352 regarding certain violations of the Utah Controlled Substances Act.

353 (6) The division shall maintain the database in an electronic file or by other means
354 established by the division to facilitate use of the database for identification of:

355 (a) prescribing practices and patterns of prescribing and dispensing controlled
356 substances;

357 (b) practitioners prescribing controlled substances in an unprofessional or unlawful
358 manner;

359 (c) individuals receiving prescriptions for controlled substances from licensed
360 practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet
361 in quantities or with a frequency inconsistent with generally recognized standards of dosage for
362 that controlled substance;

363 (d) individuals presenting forged or otherwise false or altered prescriptions for
364 controlled substances to a pharmacy;

365 (e) individuals admitted to a general acute hospital for poisoning or overdose involving
366 a prescribed controlled substance; and

367 (f) individuals convicted for:

368 (i) driving under the influence of a prescribed controlled substance that renders the

369 individual incapable of safely operating a vehicle;
370 (ii) driving while impaired, in whole or in part, by a prescribed controlled substance; or
371 (iii) certain violations of the Utah Controlled Substances Act.
372 Section 3. Section **58-37f-704** is amended to read:
373 **58-37f-704. Entering certain convictions into the database.**
374 Beginning October 1, 2016, if the division receives a report from a court under
375 Subsection ~~58-37-8(1)(e)~~(f) or ~~58-37-8(2)(i)~~(j), the division shall daily enter into the database
376 the information supplied in the report.

Legislative Review Note
Office of Legislative Research and General Counsel