

# SB0090S05 compared with SB0090

~~{Omitted text}~~ shows text that was in SB0090 but was omitted in SB0090S05

inserted text shows text that was not in SB0090 but was inserted into SB0090S05

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## ~~{Unlawful Presence Criminal Enhancement}~~ } Mandatory Jail Sentence Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Calvin R. Musselman

House Sponsor: Colin W. Jack

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### LONG TITLE

#### General Description:

This bill ~~{enhances criminal penalties for a crime-}~~ requires a mandatory jail sentence for certain crimes committed ~~{by an individual who is unlawfully present in the United States}~~ under certain conditions.

#### Highlighted Provisions:

This bill:

- ~~{creates an enhancement for a crime committed by an individual who is unlawfully present in the United States.}~~
- requires a mandatory jail sentence for certain drug and theft crimes committed under certain conditions and with specified prior criminal convictions;
- provides that a person who receives a mandatory jail sentence under certain conditions may not be turned over to the federal government for deportation until the person has served the entire mandatory jail sentence, with limited exceptions;

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adds a coordination clause in order to incorporate the changes made in this bill to Section 58-37-8.1 as enacted in H.B. 87 if both this bill and H.B. 87, Drug Trafficking Amendments, both pass and become law; and

▸ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a coordination clause.

### AMENDS:

**58-37-8 , as last amended by Laws of Utah 2024, Chapter 105 , as last amended by Laws of Utah 2024, Chapter 105**

**76-6-404 , as last amended by Laws of Utah 2023, Chapter 111 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 407 , as last amended by Laws of Utah 2023, Chapter 111 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 407**

**76-6-602 , as last amended by Laws of Utah 2023, Chapter 111 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 407 , as last amended by Laws of Utah 2023, Chapter 111 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 407**

### ENACTS:

~~{76-3-203.19 , Utah Code Annotated 1953 , Utah Code Annotated 1953}~~

### Utah Code Sections affected by Coordination Clause:

*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.**

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

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

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

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- (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;
- 42 (iii) possess a controlled or counterfeit substance with intent to distribute; or
- 43 (iv) engage in a continuing criminal enterprise where:
- 44 (A) the person participates, directs, or engages in conduct that results in a violation of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a felony; and
- 49 (B) the violation is a part of a continuing series of two or more violations of this chapter, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.
- 56 (b) A person convicted of violating Subsection (1)(a) with respect to:
- 57 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony, punishable by imprisonment for not more than 15 years, and upon a second or subsequent conviction is guilty of a first degree felony;
- 62 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or
- 66 (iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.
- 69 (c)
- (i) Except as provided in Subsection (1)(c)(ii), a person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as described in Subsection (1)(b) and Title 76, Chapter 3, Punishments.
- 73 (ii) The court shall impose an indeterminate prison term for a person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) that is a first degree felony or a second degree felony if the trier of fact finds beyond a reasonable doubt that, during the commission or furtherance of the violation, the person intentionally or knowingly:

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- 78 (A) used, drew, or exhibited a dangerous weapon, as that term is defined in Section 76-10-501, that is  
not a firearm, in an angry, threatening, intimidating, or coercive manner;
- 81 (B) used a firearm or had a firearm readily accessible for immediate use, as those terms are defined in  
Section 76-10-501; or
- 83 (C) distributed a firearm, as that term is defined in Section 76-10-501, or possessed a firearm with intent  
to distribute the firearm.
- 85 (iii) Notwithstanding Subsection (1)(c)(ii), a court may suspend the indeterminate prison term for a  
person convicted under Subsection (1)(c)(ii) if the court:
- 87 (A) details on the record the reasons why it is in the interests of justice not to impose the indeterminate  
prison term;
- 89 (B) makes a finding on the record that the person does not pose a significant safety risk to the public;  
and
- 91 (C) orders the person to complete the terms and conditions of supervised probation provided by the  
Department of Corrections.
- 93 (d)
- (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by  
imprisonment for an indeterminate term of not less than:
- 95 (A) seven years and which may be for life; or
- 96 (B) 15 years and which may be for life if the trier of fact determined that the defendant knew or  
reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B) was under  
18 years old.
- 99 (ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for  
probation.
- 101 (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the offense, was under  
18 years old.
- 103 (e) The Administrative Office of the Courts shall report to the Division of Professional Licensing the  
name, case number, date of conviction, and if known, the date of birth of each person convicted of  
violating Subsection (1)(a).
- 106 (f)
- (i) A court shall impose the mandatory jail sentence described in Subsection (1)(f)(ii), and may not  
suspend any portion of the jail sentence or grant early release, if:

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- 109        (A) the court suspends the imposition of a prison sentence for a felony conviction under Subsection  
             (1)(a) or sentences a person for a misdemeanor violation of an offense under Subsection (1)(a);
- 112        (B)
- (I) the violation is the person's second or subsequent conviction for any level of offense under  
             Subsection (1)(a); or
- 114        (II) the person previously has been convicted of a criminal violation in another jurisdiction, including a  
             state or federal court, that is substantially equivalent to the violation of an offense under Subsection  
             (1)(a); and
- 117        (C) the person previously has been convicted of reentry of a removed alien under 8 U.S.C. Sec.  
             1326.
- 119        (ii) The mandatory jail sentences referred to in Subsection (1)(f)(i) are:
- 120        (A) for a felony or a class A misdemeanor, 360 days in jail;
- 121        (B) for a class B misdemeanor, 180 days in jail; and
- 122        (C) for a class C misdemeanor, 90 days in jail.
- 123        (iii)
- (A) Except as provided in Subsection (1)(f)(iii)(B), a person who is subject to a mandatory jail sentence  
             under Subsection (1)(f)(i) may not be released to the federal Immigration and Customs Enforcement  
             Agency of the United States Department of Homeland Security for deportation until the person has  
             served the entire jail sentence described in Subsection (1)(f)(ii).
- 128        (B) A person may be released to the federal Immigration and Customs Enforcement Agency of the  
             United States Department of Homeland Security for deportation at any time during the 14-day  
             period before the final day of the person's jail sentence described in Subsection (1)(f)(ii).
- 132        (2) Prohibited acts B -- Penalties and reporting:
- 133        (a) It is unlawful:
- 134        (i) for a person knowingly and intentionally to possess or use a controlled substance analog or a  
             controlled substance, unless it was obtained under a valid prescription or order, directly from  
             a practitioner while acting in the course of the person's professional practice, or as otherwise  
             authorized by this chapter;
- 138        (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement, vehicle, boat,  
             aircraft, or other place knowingly and intentionally to permit them to be occupied by persons  
             unlawfully possessing, using, or distributing controlled substances in any of those locations; or

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- 142 (iii) for a person knowingly and intentionally to possess an altered or forged prescription or written  
order for a controlled substance.
- 144 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:
- 145 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony; or
- 147 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty of a class A  
misdemeanor on a first or second conviction, and on a third or subsequent conviction if each prior  
offense was committed within seven years before the date of the offense upon which the current  
conviction is based is guilty of a third degree felony.
- 152 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a conviction under  
Subsection (1)(a), that person shall be sentenced to a one degree greater penalty than provided in  
this Subsection (2).
- 155 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled substances not  
included in Subsection (2)(b)(i) or (ii), including a substance listed in Section 58-37-4.2, or  
marijuana, is guilty of a class B misdemeanor.
- 158 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each prior offense was  
committed within seven years before the date of the offense upon which the current conviction is  
based.
- 161 (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree felony if each prior  
offense was committed within seven years before the date of the offense upon which the current  
conviction is based.
- 164 (e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property  
occupied by a correctional facility as defined in Section 64-13-1 or a public jail or other place of  
confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b),  
and if the conviction is with respect to controlled substances as listed in:
- 169 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as  
provided by law, and:
- 171 (A) the court shall additionally sentence the person convicted to a term of one year to run consecutively  
and not concurrently; and
- 173 (B) the court may additionally sentence the person convicted for an indeterminate term not to exceed  
five years to run consecutively and not concurrently; and

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- (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.
- 179 (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:
- 180 (i) on a first conviction, guilty of a class B misdemeanor;
- 181 (ii) on a second conviction, guilty of a class A misdemeanor; and
- 182 (iii) on a third or subsequent conviction, guilty of a third degree felony.
- 183 (g) The Administrative Office of the Courts shall report to the Division of Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).
- 186 (3) Prohibited acts C -- Penalties:
- 187 (a) It is unlawful for a person knowingly and intentionally:
- 188 (i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;
- 193 (ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to a person known to be attempting to acquire or obtain possession of, or to procure the administration of a controlled substance by misrepresentation or failure by the person to disclose receiving a controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;
- 200 (iii) to make a false or forged prescription or written order for a controlled substance, or to utter the same, or to alter a prescription or written order issued or written under the terms of this chapter; or
- 203 (iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render a drug a counterfeit controlled substance.
- 208 (b)
- (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A misdemeanor.
- 210 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third degree felony.

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- 212 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.
- 213 (4) Prohibited acts D -- Penalties:
- 214 (a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act that is unlawful under Subsection (1)(a) or Section 58-37b-4 is upon conviction subject to the penalties and classifications under this Subsection (4) if the trier of fact finds the act is committed:
- 218 (i) in a public or private elementary or secondary school or on the grounds of any of those schools during the hours of 6 a.m. through 10 p.m.;
- 220 (ii) in a public or private vocational school or postsecondary institution or on the grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;
- 223 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or facility's hours of operation;
- 225 (iv) in a public park, amusement park, arcade, or recreation center when the public or amusement park, arcade, or recreation center is open to the public;
- 227 (v) in or on the grounds of a house of worship as defined in Section 76-10-501;
- 228 (vi) in or on the grounds of a library when the library is open to the public;
- 229 (vii) within an area that is within 100 feet of any structure, facility, or grounds included in Subsections (4)(a)(i) through (vi);
- 231 (viii) in the presence of a person younger than 18 years old, regardless of where the act occurs; or
- 233 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an inmate or on the grounds of a correctional facility as defined in Section 76-8-311.3.
- 236 (b)
- (i) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this Subsection (4) would have been a first degree felony.
- 240 (ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.
- 242 (c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense.



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- 246 (d)
- (i) If the violation is of Subsection (4)(a)(ix):
- 247 (A) the person may be sentenced to imprisonment for an indeterminate term as provided by law,  
and the court shall additionally sentence the person convicted for a term of one year to run  
consecutively and not concurrently; and
- 250 (B) the court may additionally sentence the person convicted for an indeterminate term not to  
exceed five years to run consecutively and not concurrently; and
- 252 (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with the mental state  
required for the commission of an offense, directly or indirectly solicits, requests, commands,  
coerces, encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)  
(ix).
- 256 (e) It is not a defense to a prosecution under this Subsection (4) that:
- 257 (i) the actor mistakenly believed the individual to be 18 years old or older at the time of the offense or  
was unaware of the individual's true age; or
- 259 (ii) the actor mistakenly believed that the location where the act occurred was not as described in  
Subsection (4)(a) or was unaware that the location where the act occurred was as described in  
Subsection (4)(a).
- 262 (5) A violation of this chapter for which no penalty is specified is a class B misdemeanor.
- 263 (6)
- (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of guilty or no contest  
to a violation or attempted violation of this section or a plea which is held in abeyance under Title  
77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been  
subsequently reduced or dismissed in accordance with the plea in abeyance agreement.
- 268 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a conviction that is:
- 270 (i) from a separate criminal episode than the current charge; and
- 271 (ii) from a conviction that is separate from any other conviction used to enhance the current charge.
- 273 (7) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and  
sentence for a violation of any other section of this chapter.
- 275 (8)
- (a) A penalty imposed for violation of this section is in addition to, and not in lieu of, a civil or  
administrative penalty or sanction authorized by law.

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- 277 (b) When a violation of this chapter violates a federal law or the law of another state, conviction or  
acquittal under federal law or the law of another state for the same act is a bar to prosecution in this  
state.
- 280 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a person or persons  
produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances,  
is prima facie evidence that the person or persons did so with knowledge of the character of the  
substance or substances.
- 284 (10) This section does not prohibit a veterinarian, in good faith and in the course of the veterinarian's  
professional practice only and not for humans, from prescribing, dispensing, or administering  
controlled substances or from causing the substances to be administered by an assistant or orderly  
under the veterinarian's direction and supervision.
- 288 (11) Civil or criminal liability may not be imposed under this section on:
- 289 (a) a person registered under this chapter who manufactures, distributes, or possesses an imitation  
controlled substance for use as a placebo or investigational new drug by a registered practitioner in  
the ordinary course of professional practice or research;
- 292 (b) a law enforcement officer acting in the course and legitimate scope of the officer's employment; or
- 294 (c) a healthcare facility, substance use harm reduction services program, or drug addiction treatment  
facility that temporarily possesses a controlled or counterfeit substance to conduct a test or analysis  
on the controlled or counterfeit substance to identify or analyze the strength, effectiveness, or purity  
of the substance for a public health or safety reason.
- 299 (12)
- (a) Civil or criminal liability may not be imposed under this section on any Indian, as defined in Section  
58-37-2, who uses, possesses, or transports peyote for bona fide traditional ceremonial purposes in  
connection with the practice of a traditional Indian religion as defined in Section 58-37-2.
- 303 (b) In a prosecution alleging violation of this section regarding peyote as defined in Section 58-37-4, it  
is an affirmative defense that the peyote was used, possessed, or transported by an Indian for bona  
fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion.
- 307 (c)
- (i) The defendant shall provide written notice of intent to claim an affirmative defense under this  
Subsection (12) as soon as practicable, but not later than 10 days before trial.
- 310 (ii) The notice shall include the specific claims of the affirmative defense.

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- 311 (iii) The court may waive the notice requirement in the interest of justice for good cause shown, if the  
prosecutor is not unfairly prejudiced by the lack of timely notice.
- 314 (d) The defendant shall establish the affirmative defense under this Subsection (12) by a preponderance  
of the evidence. If the defense is established, it is a complete defense to the charges.
- 317 (13)
- (a) It is an affirmative defense that the person produced, possessed, or administered a controlled  
substance listed in Section 58-37-4.2 if the person was:
- 319 (i) engaged in medical research; and
- 320 (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.
- 321 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a controlled  
substance listed in Section 58-37-4.2.
- 323 (14) It is an affirmative defense that the person possessed, in the person's body, a controlled substance  
listed in Section 58-37-4.2 if:
- 325 (a) the person was the subject of medical research conducted by a holder of a valid license to possess  
controlled substances under Section 58-37-6; and
- 327 (b) the substance was administered to the person by the medical researcher.
- 328 (15) The application of any increase in penalty under this section to a violation of Subsection (2)(a)  
(i) may not result in any greater penalty than a second degree felony. This Subsection (15) takes  
precedence over any conflicting provision of this section.
- 331 (16)
- (a) It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (16)  
(b) that the person or bystander:
- 333 (i) reasonably believes that the person or another person is experiencing an overdose event due to  
the ingestion, injection, inhalation, or other introduction into the human body of a controlled  
substance or other substance;
- 336 (ii) reports, or assists a person who reports, in good faith the overdose event to a medical provider,  
an emergency medical service provider as defined in Section 53-2d-101, a law enforcement  
officer, a 911 emergency call system, or an emergency dispatch system, or the person is the  
subject of a report made under this Subsection (16);

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- (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the actual location of the overdose event that facilitates responding to the person experiencing the overdose event;
- 344 (iv) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;
- 348 (v) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and
- 352 (vi) is alleged to have committed the offense in the same course of events from which the reported overdose arose.
- 354 (b) The offenses referred to in Subsection (16)(a) are:
  - 355 (i) the possession or use of less than 16 ounces of marijuana;
  - 356 (ii) the possession or use of a scheduled or listed controlled substance other than marijuana; and
  - 358 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substances Act.
- 360 (c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not include seeking medical assistance under this section during the course of a law enforcement agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.
- 364 (17) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.
- 367 (18) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than any provision of this chapter.
- 369 (19) If a minor who is under 18 years old is found by a court to have violated this section or Subsection 76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to complete:
  - 372 (a) a screening as defined in Section 41-6a-501;
  - 373 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and

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(c) an educational series as defined in Section 41-6a-501 or substance use disorder treatment as indicated by an assessment.

Section 1. Section 1 is enacted to read:

**76-3-203.19. Enhancement of an offense committed by an individual unlawfully present in the United States.**

(1) If the trier of fact finds that an actor was unlawfully present in the United States at the time the actor committed an offense, the actor is:

(a) guilty of:

(i) a class B misdemeanor if the actor is charged with an offense that is designated by law as a class C misdemeanor;

(ii) a class A misdemeanor if the actor is charged with an offense that is designated by law as a class B misdemeanor;

(iii) a third degree felony if the actor is charged with an offense that is designated by law as a class A misdemeanor;

(iv) a second degree felony if the actor is charged with an offense that is designated by law as a third degree felony; or

(v) a first degree felony if the actor is charged with an offense that is designated by law as a second degree felony; or

(b) subject to the penalty described in Subsection (2)(f) if the actor is charged with an offense that is designated by law as a first degree felony.

(2)

(a) If an actor is guilty of a class B misdemeanor as described in Subsection (1)(a)(i), the court shall impose a mandatory fine of no less than \$750 in addition to any other penalty the court may impose for a class B misdemeanor.

(b) If an actor is guilty of a class A misdemeanor as described in Subsection (1)(a)(ii), the court shall impose a mandatory fine of no less than \$1,000 in addition to any other penalty the court may impose for a class A misdemeanor.

(c) If an actor is guilty of a third degree felony as described in Subsection (1)(a)(iii), the court shall impose:

(i) a mandatory fine of no less than \$2,500; and

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(ii) an indeterminate term of imprisonment for no less than one year and no more than five years in addition to any other penalty the court may impose for a third degree felony.

50 (d) If an actor is guilty of a second degree felony as described in Subsection (1)(a)(iv), the court shall impose:

52 (i) a mandatory fine of no less than \$5,000; and

53 (ii) an indeterminate term of imprisonment for no less than two years and no more than 15 years in addition to any other penalty the court may impose for a second degree felony.

56 (e) If an actor is guilty of a first degree felony as described in Subsection (1)(a)(v), the court shall impose:

58 (i) a mandatory fine of no less than \$7,500; and

59 (ii) an indeterminate term of imprisonment that adds four years to the minimum term of the applicable sentence in addition to any other penalty the court may impose for a first degree felony.

62 (f) If an actor is guilty of a first degree felony as described in Subsection (1)(b), the court shall impose:

64 (i) a mandatory fine of no less than \$10,000; and

65 (ii) an indeterminate term of imprisonment that adds six years to the minimum term of the applicable sentence in addition to any other penalty the court may impose for a first degree felony.

68 (3) Except as otherwise provided by another provision of the Utah Code, the court may suspend the execution of an indeterminate term of imprisonment described in Subsection (2)(c)(ii), (2)(d)(ii), (2)(e)(ii), or (2)(f)(ii) in accordance with Section 77-18-105.

71 (4) The prosecuting attorney, or the grand jury if an indictment is returned, shall include notice in the information or indictment that the offense is subject to an enhancement under this section.

377 Section 2. Section ~~76-6-404~~ is amended to read:

378 **76-6-404. Theft -- Elements.**

379 (1) Terms defined in Section 76-1-101.5 apply to this section.

380 (2) An actor commits theft if the actor obtains or exercises unauthorized control over another person's property with a purpose to deprive the person of the person's property.

382 (3) A violation of Subsection (2) is:

383 (a) a second degree felony if the:

384 (i) value of the property is or exceeds \$5,000;

385 (ii) property stolen is a firearm or an operable motor vehicle; or

386 (iii) property is stolen from the person of another;

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- 387 (b) a third degree felony if:
- 388 (i) the value of the property is or exceeds \$1,500 but is less than \$5,000;
- 389 (ii) the property is:
- 390 (A) a catalytic converter as defined under Section 76-6-1402; or
- 391 (B) 25 pounds or more of a suspect metal item as defined under Section 76-6-1402 if the value is less  
than \$5,000 and the suspect metal is made of or contains aluminum or copper and is not a lead  
battery;
- 394 (iii) the value of the property is or exceeds \$500 and the actor has been twice before convicted of any  
of the following offenses, if each prior offense was committed within 10 years before the date of the  
current conviction or the date of the offense upon which the current conviction is based and at least  
one of those convictions is for a class A misdemeanor:
- 399 (A) any theft, any robbery, or any burglary with intent to commit theft;
- 400 (B) any offense under Part 5, Fraud; or
- 401 (C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);
- 402 (iv)
- (A) the value of property is or exceeds \$500 but is less than \$1,500;
- 403 (B) the theft occurs on a property where the offender has committed any theft within the past five years;  
and
- 405 (C) the offender has received written notice from the merchant prohibiting the offender from entering  
the property pursuant to Subsection 78B-3-108(4); or
- 407 (v) the actor has been previously convicted of a felony violation of any of the offenses listed in  
Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior offense was committed within 10 years  
before the date of the current conviction or the date of the offense upon which the current conviction  
is based;
- 411 (c) a class A misdemeanor if:
- 412 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;
- 413 (ii)
- (A) the value of property is less than \$500;
- 414 (B) the theft occurs on a property where the offender has committed any theft within the past five years;  
and
- 416

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- (C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Subsection 78B-3-108(4); or
- 418 (iii) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if each prior offense was committed within 10 years before the date of the current conviction or the date of the offense upon which the current conviction is based; or
- 422 (d) a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (3)(c).
- 424 (4)
- (a) A court shall impose the mandatory jail sentence described in Subsection (4)(b), and may not suspend any portion of the jail sentence or grant early release, if:
- 426 (i) the court suspends the imposition of a prison sentence for a felony conviction under this section or sentences an actor for a misdemeanor violation of this section;
- 428 (ii)
- (A) the violation is the actor's second or subsequent conviction for any level of offense under this section; or
- 430 (B) the actor previously has been convicted of a criminal violation in another jurisdiction, including a state or federal court, that is substantially equivalent to the violation of this section; and
- 433 (iii) the actor previously has been convicted of reentry of a removed alien under 8 U.S.C. Sec. 1326.
- 435 (b) The mandatory jail sentences referred to in Subsection (4)(a) are:
- 436 (i) for a felony or a class A misdemeanor, 360 days in jail;
- 437 (ii) for a class B misdemeanor, 180 days in jail; and
- 438 (iii) for a class C misdemeanor, 90 days in jail.
- 439 (c)
- (i) Except as provided in Subsection (4)(c)(ii), an actor who is subject to a mandatory jail sentence under Subsection (4)(a) may not be released to the federal Immigration and Customs Enforcement Agency of the United States Department of Homeland Security for deportation until the actor has served the entire jail sentence described in Subsection (4)(b).
- 444 (ii) An actor may be released to the federal Immigration and Customs Enforcement Agency of the United States Department of Homeland Security for deportation at any time during the 14-day period before the final day of the actor's jail sentence described in Subsection (4)(b).



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### Section 3. Section 76-6-602 is amended to read:

#### **76-6-602. Retail theft.**

- (1) Terms defined in Sections 76-1-101.5 and 76-6-601 apply to this section.
- (2) An actor commits retail theft if the actor knowingly:
  - (a) takes possession of, conceals, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored, or offered for sale in a retail mercantile establishment with the intention of:
    - (i) retaining the merchandise; or
    - (ii) depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the retail value of the merchandise;
  - (b)
    - (i) alters, transfers, or removes any label, price tag, marking, indicia of value, or any other markings which aid in determining value of any merchandise displayed, held, stored, or offered for sale, in a retail mercantile establishment; and
    - (ii) attempts to purchase the merchandise described in Subsection (2)(b)(i) personally or in consort with another at less than the retail value with the intention of depriving the merchant of the retail value of the merchandise;
  - (c) transfers any merchandise displayed, held, stored, or offered for sale in a retail mercantile establishment from the container in or on which the merchandise is displayed to any other container with the intention of depriving the merchant of the retail value of the merchandise;
  - (d) under-rings with the intention of depriving the merchant of the retail value of the merchandise; or
  - (e) removes a shopping cart from the premises of a retail mercantile establishment with the intent of depriving the merchant of the possession, use, or benefit of the shopping cart.
- (3) A violation of Subsection (2) is:
  - (a) a second degree felony if the:
    - (i) value of the merchandise or shopping cart is or exceeds \$5,000;
    - (ii) merchandise stolen is a firearm or an operable motor vehicle; or
  - (b) a third degree felony if:
    - (i) the value of the merchandise is or exceeds \$1,500 but is less than \$5,000;
    - (ii) the merchandise is:
      - (A) a catalytic converter as defined under Section 76-6-1402; or

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- 481 (B) 25 pounds or more of a suspect metal item as defined under Section 76-6-1402 if the value is less  
than \$5,000 and the suspect metal is made of or contains aluminum or copper and is not a lead  
battery;
- 484 (iii) the value of the merchandise or shopping cart is or exceeds \$500 and the actor has been twice  
before convicted of any of the following offenses, if each prior offense was committed within 10  
years before the date of the current conviction or the date of the offense upon which the current  
conviction is based and at least one of those convictions is for a class A misdemeanor:
- 489 (A) any theft, any robbery, or any burglary with intent to commit theft;
- 490 (B) any offense under Part 5, Fraud; or
- 491 (C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);
- 492 (iv)
- (A) the value of merchandise or shopping cart is or exceeds \$500 but is less than \$1,500;
- 494 (B) the theft occurs in a retail mercantile establishment or on the premises of a retail mercantile  
establishment where the offender has committed any theft within the past five years; and
- 497 (C) the offender has received written notice from the merchant prohibiting the offender from entering  
the retail mercantile establishment or premises of a retail mercantile establishment pursuant to  
Subsection 78B-3-108(4); or
- 500 (v) the actor has been previously convicted of a felony violation of any of the offenses listed in  
Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior offense was committed within 10 years  
before the date of the current conviction or the date of the offense upon which the current conviction  
is based;
- 504 (c) a class A misdemeanor if:
- 505 (i) the value of the merchandise or shopping cart stolen is or exceeds \$500 but is less than \$1,500;
- 507 (ii)
- (A) the value of merchandise or shopping cart is less than \$500;
- 508 (B) the theft occurs in a retail mercantile establishment or premises of a retail mercantile establishment  
where the offender has committed any theft within the past five years; and
- 511 (C) the offender has received written notice from the merchant prohibiting the offender from entering  
the retail mercantile establishment or premises of a retail mercantile establishment pursuant to  
Subsection 78B-3-108(4); or

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(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if each prior offense was committed within 10 years before the date of the current conviction or the date of the offense upon which the current conviction is based; or

518 (d) a class B misdemeanor if the value of the merchandise or shopping cart stolen is less than \$500 and the theft is not an offense under Subsection (3)(c).

520 (4)

(a) A court shall impose the mandatory jail sentence described in Subsection (4)(b), and may not suspend any portion of the jail sentence or grant early release, if:

522 (i) the court suspends the imposition of a prison sentence for a felony conviction under this section or sentences an actor for a misdemeanor violation of this section;

524 (ii)

(A) the violation is the actor's second or subsequent conviction for any level of offense under this section; or

526 (B) the actor previously has been convicted of a criminal violation in another jurisdiction, including a state or federal court, that is substantially equivalent to the violation of this section; and

529 (iii) the actor previously has been convicted of reentry of a removed alien under 8 U.S.C. Sec. 1326.

531 (b) The mandatory jail sentences referred to in Subsection (4)(a) are:

532 (i) for a felony or a class A misdemeanor, 360 days in jail;

533 (ii) for a class B misdemeanor, 180 days in jail; and

534 (iii) for a class C misdemeanor, 90 days in jail.

535 (c)

(i) Except as provided in Subsection (4)(c)(ii), an actor who is subject to a mandatory jail sentence under Subsection (4)(a) may not be released to the federal Immigration and Customs Enforcement Agency of the United States Department of Homeland Security for deportation until the actor has served the entire jail sentence described in Subsection (4)(b).

540 (ii) An actor may be released to the federal Immigration and Customs Enforcement Agency of the United States Department of Homeland Security for deportation at any time during the 14-day period before the final day of the actor's jail sentence described in Subsection (4)(b).

544 Section 4. **Effective date.**

This bill takes effect on May 7, 2025.

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### Section 5. Coordinating S.B. 90 with H.B. 87.

If S.B. 90, Mandatory Jail Sentence Amendments, and H.B. 87, Drug Trafficking Amendments, both pass and become law, the Legislature intends that, on May 7, 2025:

(1) the language "Except as provided by Subsection (7)" be inserted at the beginning of Subsection 58-37-8.1(5) enacted in H.B. 87; and

(2) the following language be inserted as Subsection 58-37-8.1(7) in H.B. 87:

"(7)(a) If a court seeks to suspend the execution or imposition of a prison sentence under Subsection (5), the court shall impose the mandatory jail sentence described in Subsection (7)(b), and may not suspend any portion of the jail sentence or grant early release, if:

\_\_\_\_\_ (i) the court suspends the imposition of a prison sentence for a conviction under Subsection (2);

\_\_\_\_\_ (ii) (A) the violation is the person's second or subsequent conviction for an offense under Subsection (2); or

\_\_\_\_\_ (B) the person previously has been convicted of a criminal violation in another jurisdiction, including a state or federal court, that is substantially equivalent to the violation of an offense under Subsection (2); and

\_\_\_\_\_ (iii) the person previously has been convicted of reentry of a removed alien under 8 U.S.C. Sec. 1326.

(b) The mandatory jail sentence referred to in Subsection (7)(a) is 360 days in jail.

(c) (i) Except as provided in Subsection (7)(c)(ii), a person who is subject to a mandatory jail sentence under Subsection (7)(a) may not be released to the federal Immigration and Customs Enforcement Agency of the United States Department of Homeland Security for deportation until the person has served the entire jail sentence described in Subsection (7)(b).

\_\_\_\_\_ (ii) A person may be released to the federal Immigration and Customs Enforcement Agency of the United States Department of Homeland Security for deportation at any time during the 14-day period before the final day of the person's jail sentence described in Subsection (7)(b)."

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