

Chapter 37d Clandestine Drug Lab Act

58-37d-1 Short title.

This act shall be known as the "Clandestine Drug Lab Act."

Enacted by Chapter 156, 1992 General Session

58-37d-2 Purpose.

The clandestine production of methamphetamine, other amphetamines, phencyclidine, narcotic analgesic analogs, so-called "designer drugs," various hallucinogens, concentrated tetrahydrocannabinols, counterfeit opioids, cocaine and methamphetamine, base "crack" cocaine and methamphetamine "ice" respectively, has increased dramatically throughout the western states and Utah. These highly technical illegal operations create substantial dangers to the general public and environment from fire, explosions, and the release of toxic chemicals. By their very nature these activities often involve a number of persons in a conspiratorial enterprise to bring together all necessary components for clandestine production, to thwart regulation and detection, and to distribute the final product. Therefore, the Legislature enacts the following Utah Clandestine Laboratory Act for prosecution of specific illegal laboratory operations. With regard to the controlled substances specified herein, this act shall control, notwithstanding the prohibitions and penalties in Title 58, Chapter 37, Utah Controlled Substances Act.

Amended by Chapter 420, 2019 General Session

58-37d-3 Definitions.

(1) As used in this chapter:

(a)

- (i) "Booby trap" means a concealed or camouflaged device designed to cause bodily injury when triggered by the action of a person making contact with the device.
- (ii) "Booby trap" includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices, lines or wires with hooks attached, and devices for the production of toxic fumes or gases.

(b) "Clandestine laboratory operation" means the:

- (i) purchase or procurement of chemicals, supplies, equipment, or laboratory location for the illegal manufacture of specified controlled substances;
- (ii) transportation or arranging for the transportation of chemicals, supplies, or equipment for the illegal manufacture of specified controlled substances;
- (iii) setting up of equipment or supplies in preparation for the illegal manufacture of specified controlled substances;
- (iv) activity of compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing of a substance, including a controlled substance precursor, or the packaging, repackaging, labeling, or relabeling of a container holding a substance that is a product of any of these activities, when the substance is to be used for the illegal manufacture of specified controlled substances;
- (v) illegal manufacture of specified controlled substances; or
- (vi) distribution or disposal of chemicals, equipment, supplies, or products used in or produced by the illegal manufacture of specified controlled substances.

- (c) "Controlled substance precursor" means those chemicals designated in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, except those substances designated in Subsections 58-37c-3(1)(kk) and (ll).
 - (d) "Counterfeit opioid" means an opioid or container or labeling of an opioid that:
 - (i)
 - (A) without authorization bears the trademark, trade name, or other identifying mark, imprint, number, device, or any likeness of them, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance which falsely purports to be an opioid distributed by another manufacturer, distributor, or dispenser; and
 - (B) a reasonable person would believe to be an opioid distributed by an authorized manufacturer, distributor, or dispenser based on the appearance of the substance as described under this Subsection (1)(d)(i) or the appearance of the container or labeling of the opioid; or
 - (ii)
 - (A) is falsely represented to be any legally or illegally manufactured opioid; and
 - (B) a reasonable person would believe to be a legal or illegal opioid.
 - (e) "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking, or placing of hazardous or dangerous material into or on property, land, or water so that the material may enter the environment, be emitted into the air, or discharged into any waters, including groundwater.
 - (f) "Hazardous or dangerous material" means a substance that because of its quantity, concentration, physical characteristics, or chemical characteristics may cause or significantly contribute to an increase in mortality, an increase in serious illness, or may pose a substantial present or potential future hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise improperly managed.
 - (g) "Illegal manufacture of specified controlled substances" means in violation of Title 58, Chapter 37, Utah Controlled Substances Act, the:
 - (i) compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing for the purpose of producing methamphetamine, other amphetamine compounds as listed in Schedule I of the Utah Controlled Substances Act, phencyclidine, narcotic analgesic analogs as listed in Schedule I of the Utah Controlled Substances Act, lysergic acid diethylamide, mescaline, tetrahydrocannabinol, or counterfeit opioid;
 - (ii) conversion of cocaine or methamphetamine to their base forms; or
 - (iii) extraction, concentration, or synthesis of tetrahydrocannabinol.
 - (h) "Opioid" means the same as that term is defined in Section 58-37f-303.
 - (i) "Tetrahydrocannabinol" means the same as that term is defined in Section 58-37-3.6.
- (2) Unless otherwise specified, the definitions in Section 58-37-2 also apply to this chapter.

Amended by Chapter 420, 2019 General Session

58-37d-4 Prohibited acts -- Second degree felony.

- (1) It is unlawful for any person to knowingly or intentionally:
 - (a) possess a controlled substance or a controlled substance precursor with the intent to engage in a clandestine laboratory operation;
 - (b) possess laboratory equipment or supplies with the intent to engage in a clandestine laboratory operation;

- (c) sell, distribute, or otherwise supply a controlled substance, controlled substance precursor, laboratory equipment, or laboratory supplies, knowing or having reasonable cause to believe any of these items will be used for a clandestine laboratory operation;
 - (d) evade the recordkeeping provisions of Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, knowing or having reasonable cause to believe that the material distributed or received will be used for a clandestine laboratory operation;
 - (e) conspire with or aid another to engage in a clandestine laboratory operation;
 - (f) produce or manufacture, or possess with intent to produce or manufacture a controlled or counterfeit substance except as authorized under Title 58, Chapter 37, Utah Controlled Substances Act;
 - (g) transport or convey a controlled or counterfeit substance with the intent to distribute or to be distributed by the person transporting or conveying the controlled or counterfeit substance or by another person regardless of whether the final destination for the distribution is within this state or another location; or
 - (h) engage in compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing of any substance, including a controlled substance precursor, or the packaging, repackaging, labeling, or relabeling of a container holding a substance that is a product of any of these activities, knowing or having reasonable cause to believe that the substance is a product of any of these activities and will be used in the illegal manufacture of specified controlled substances.
- (2) A person who violates Subsection (1) is guilty of a second degree felony punishable by imprisonment for an indeterminate term of not less than three years nor more than 15 years.

Amended by Chapter 420, 2019 General Session

58-37d-5 Prohibited acts -- First degree felony.

- (1) A person who violates Subsection 58-37d-4(1)(a), (b), (e), (f), or (h) is guilty of a first degree felony if the trier of fact also finds any one of the following conditions occurred in conjunction with that violation:
- (a) possession of a firearm;
 - (b) use of a booby trap;
 - (c) illegal possession, transportation, or disposal of hazardous or dangerous material or while transporting or causing to be transported materials in furtherance of a clandestine laboratory operation, there was created a substantial risk to human health or safety or a danger to the environment;
 - (d) intended laboratory operation was to take place or did take place within 500 feet of a residence, place of business, church, or school;
 - (e) clandestine laboratory operation actually produced any amount of a specified controlled substance or a counterfeit opioid; or
 - (f) intended clandestine laboratory operation was for the production of cocaine base or methamphetamine base.
- (2) If the trier of fact finds that two or more of the conditions listed in Subsections (1)(a) through (f) of this section occurred in conjunction with the violation, at sentencing for the first degree felony:
- (a) probation shall not be granted;
 - (b) the execution or imposition of sentence shall not be suspended; and
 - (c) the court shall not enter a judgment for a lower category of offense.

Amended by Chapter 420, 2019 General Session

58-37d-6 Legal inference of intent -- Illegal possession of a controlled substance precursor or clandestine laboratory equipment.

The trier of fact may infer that a defendant intended to engage in a clandestine laboratory operation if the defendant:

- (1) is in illegal possession of a controlled substance precursor; or
- (2) illegally possesses or attempts to illegally possess a controlled substance or controlled substance precursor and is in possession of any one of the following pieces of equipment:
 - (a) glass reaction vessel;
 - (b) separatory funnel;
 - (c) glass condenser;
 - (d) analytical balance;
 - (e) heating mantle;
 - (f) pill press machine or similar device;
 - (g) closed loop extraction system;
 - (h) extraction tube; or
 - (i) rotary evaporator.

Amended by Chapter 420, 2019 General Session

58-37d-7 Seizure and forfeiture.

Chemicals, equipment, supplies, vehicles, aircraft, vessels, and personal and real property used in furtherance of a clandestine laboratory operation are subject to seizure and forfeiture under the procedures and substantive protections of Title 77, Chapter 11a, Seizure of Property and Contraband, and Title 77, Chapter 11b, Forfeiture of Seized Property.

Amended by Chapter 448, 2023 General Session

58-37d-8 Applicability of Title 76 prosecutions under this chapter.

Unless specifically excluded in or inconsistent with the provisions of this chapter, the provisions of Title 76, Chapter 1, General Provisions, Chapter 2, Principles of Criminal Responsibility, Chapter 3, Punishments, and Chapter 4, Inchoate Offenses, are fully applicable to prosecutions under this chapter.

Enacted by Chapter 64, 1997 General Session

58-37d-9 Department of Public Safety enforcement authority.

- (1) As used in this section, "division" means the Criminal Investigations and Technical Services Division of the Department of Public Safety, created in Section 53-10-103.
- (2) The division has authority to enforce this chapter. To carry out this purpose, the division may:
 - (a) assist the law enforcement agencies of the state in enforcing this chapter;
 - (b) conduct investigations to enforce this chapter;
 - (c) present evidence obtained from investigations conducted in conjunction with appropriate county and district attorneys and the Office of the Attorney General for civil or criminal prosecution or for administrative action against a licensee; and
 - (d) work in cooperation with the Division of Professional Licensing, created under Section 58-1-103, to accomplish the purposes of this section.

Amended by Chapter 415, 2022 General Session