

CONTROLLED SUBSTANCES PRECURSOR AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

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AN ACT RELATING TO CONTROLLED SUBSTANCES; AMENDING THE CONTROLLED SUBSTANCES PRECURSOR ACT TO ADD CRYSTAL IODINE AS A PRECURSOR; ADDING PROVISIONS TO LIMIT ITS SALE AND POSSESSION TO LEGITIMATE USES; AND LIMITING THE POSSESSION OF SPECIFIED LARGE QUANTITIES OF EPHEDRINE AND PSEUDOEPHEDRINE TO LEGITIMATE USES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

58-37c-3, as last amended by Chapter 232, Laws of Utah 1996

58-37c-8, as repealed and reenacted by Chapter 155, Laws of Utah 1992

ENACTS:

58-37c-18, Utah Code Annotated 1953

58-37c-19, Utah Code Annotated 1953

58-37c-20, Utah Code Annotated 1953

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

Section 1. Section **58-37c-3** is amended to read:

58-37c-3. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Controlled Substance Precursor Advisory Board created in Section 58-37c-4.

(2) "Controlled substance precursor" includes a chemical reagent and means any of the following:

- (a) Phenyl-2-propanone;
- (b) Methylamine;
- (c) Ethylamine;
- (d) D-lysergic acid;
- (e) Ergotamine and its salts;
- (f) Diethyl malonate;
- (g) Malonic acid;
- (h) Ethyl malonate;
- (i) Barbituric acid;
- (j) Piperidine and its salts;
- (k) N-acetylanthranilic acid and its salts;
- (l) Pyrrolidine;
- (m) Phenylacetic acid and its salts;
- (n) Anthranilic acid and its salts;
- (o) Morpholine;
- (p) Ephedrine[~~-, its salts, optical isomers, and salts of optical isomers~~];
- (q) Pseudoephedrine[~~-, its salts, optical isomers, and salts of optical isomers~~];

- (r) Norpseudoephedrine[, its salts, optical isomers, and salts of optical isomers];
- (s) Phenylpropanolamine[, its salts, optical isomers, and salts of optical isomers];
- (t) Benzyl cyanide;
- (u) Ergonovine and its salts;
- (v) 3,4-Methylenedioxyphenyl-2-propanone;
- (w) propionic anhydride;
- (x) Insosafrole;
- (y) Safrole;
- (z) Piperonal;
- (aa) N-Methylephedrine;
- (bb) N-ethylephedrine;
- (cc) N-methylpseudoephedrine;
- (dd) N-ethylpseudoephedrine;
- (ee) Hydriotic acid;
- (ff) any salt, [~~optical~~] isomer, or salt of an [~~optical~~] isomer of the chemicals listed in

Subsections (a) through (ee) of this section;

(gg) Crystal iodine;

[~~(gg)~~] (hh) any controlled substance precursor listed under the provisions of the Federal Controlled Substances Act which is designated by the director under the emergency listing provisions set forth in Section 58-37c-14; and

[~~(hh)~~] (ii) any chemical which is designated by the director under the emergency listing provisions set forth in Section 58-37c-14.

(3) "Deliver," "delivery," "transfer," or "furnish" means the actual, constructive, or attempted transfer of a controlled substance precursor.

(4) "Matrix" means something, as a substance, in which something else originates, develops, or is contained.

[~~(4)~~] (5) "Person" means any individual, group of individuals, proprietorship, partnership, joint venture, corporation, or organization of any type or kind.

~~[(5)]~~ (6) "Practitioner" means a physician, dentist, podiatric physician, veterinarian, pharmacist, scientific investigator, pharmacy, hospital, pharmaceutical manufacturer, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use in teaching, or chemical analysis a controlled substance in the course of professional practice or research in this state.

~~[(6)]~~ (7) (a) "Regulated distributor" means a person within the state who provides, sells, furnishes, transfers, or otherwise supplies a listed controlled substance precursor chemical in a regulated transaction.

(b) "Regulated distributor" does not include any person excluded from regulation under this chapter.

~~[(7)]~~ (8) (a) "Regulated purchaser" means any person within the state who receives a listed controlled substance precursor chemical in a regulated transaction.

(b) "Regulated purchaser" does not include any person excluded from regulation under this chapter.

~~[(8)]~~ (9) "Regulated transaction" means any actual, constructive or attempted:

(a) transfer, distribution, delivery, or furnishing by a person within the state to another person within or outside of the state of a threshold amount of a listed precursor chemical; or

(b) purchase or acquisition by any means by a person within the state from another person within or outside the state of a threshold amount of a listed precursor chemical.

(10) "Retail distributor" means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor are limited almost exclusively to sales for personal use:

(a) in both number of sales and volume of sales; and

(b) either directly to walk-in customers or in face-to-face transactions by direct sales.

~~[(9)]~~ (11) "Threshold amount of a listed precursor chemical" means any amount of a controlled substance precursor; however, the division may exempt from the provisions of this chapter a specific controlled substance precursor in a specific amount and in certain types of transactions which provisions for exemption shall be defined by the division by rule adopted

pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

~~[(10)]~~ (12) "Unlawful conduct" as defined in Section 58-1-501 includes knowingly and intentionally:

(a) engaging in a regulated transaction without first being appropriately licensed or exempted from licensure under this chapter;

(b) acting as a regulated distributor and selling, transferring, or in any other way conveying a controlled substance precursor to a person within the state who is not appropriately licensed or exempted from licensure as a regulated purchaser, or selling, transferring, or otherwise conveying a controlled substance precursor to a person outside of the state and failing to report the transaction as required;

(c) acting as a regulated purchaser and purchasing or in any other way obtaining a controlled substance precursor from a person within the state who is not a licensed regulated distributor, or purchasing or otherwise obtaining a controlled substance precursor from a person outside of the state and failing to report the transaction as required;

(d) engaging in a regulated transaction and failing to submit reports and keep required records of inventories required under the provisions of this chapter or rules adopted pursuant to this chapter;

(e) making any false statement in any application for license, in any record to be kept, or on any report submitted as required under this chapter;

(f) with the intent of causing the evasion of the recordkeeping or reporting requirements of this chapter and rules related to this chapter, receiving or distributing any listed controlled substance precursor chemical in any manner designed so that the making of records or filing of reports required under this chapter is not required;

(g) failing to take immediate steps to comply with licensure, reporting, or recordkeeping requirements of this chapter because of lack of knowledge of those requirements, upon becoming informed of the requirements;

(h) presenting false or fraudulent identification where or when receiving or purchasing a listed controlled substance precursor chemical;

(i) creating a chemical mixture for the purpose of evading any licensure, reporting or recordkeeping requirement of this chapter or rules related to this chapter, or receiving a chemical mixture created for that purpose;

(j) if the person is at least 18 years of age, employing, hiring, using, persuading, inducing, enticing, or coercing another person under 18 years of age to violate any provision of this chapter, or assisting in avoiding detection or apprehension for any violation of this chapter by any federal, state, or local law enforcement official; and

(k) obtaining or attempting to obtain or to possess any controlled substance precursor or any combination of controlled substance precursors knowing or having a reasonable cause to believe that the controlled substance precursor is intended to be used in the unlawful manufacture of any controlled substance.

~~[(H)]~~ (13) "Unprofessional conduct" as defined in Section 58-1-102 and as may be further defined by rule includes the following:

(a) violation of any provision of this chapter, the Controlled Substance Act of this state or any other state, or the Federal Controlled Substance Act; and

(b) refusing to allow agents or representatives of the division or authorized law enforcement personnel to inspect inventories or controlled substance precursors or records or reports relating to purchases and sales or distribution of controlled substance precursors as such records and reports are required under this chapter.

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

58-37c-8. License -- Exceptions from licensure or regulation.

(1) Any person engaged in a regulated transaction must be appropriately licensed under ~~[the provisions of]~~ this chapter as a regulated distributor and regulated purchaser unless excepted from licensure under ~~[the provisions of Subsection (3)]~~ this chapter.

(2) The division shall:

(a) establish the form of application for a license, the requirements for licensure, and fees for initial licensure and renewal; and

(b) identify required information to be contained in the application as a condition of

licensure.

(3) A practitioner who holds a Utah Controlled Substance License and a Controlled Substance Registration issued by the Drug Enforcement Administration of the U.S. Government is excepted from licensure under this chapter.

(4) Any purchase, sale, transfer, furnishing, or receipt of any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine if such drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription pursuant to the federal Food, Drug and Cosmetic Act, 21 USC, Sec. 301 et seq., or regulations adopted thereunder are excepted from licensure, reporting, and recordkeeping under this chapter.

(5) Any purchase, sale, transfer, receipt, or manufacture of any dietary supplement, vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which are not otherwise [regulated] prohibited by law, which may contain naturally occurring amounts of chemicals or substances listed in this chapter, or in rules adopted pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, are exempt from licensure under this chapter.

(6) A purchaser of two ounces or less of crystal iodine in a single transaction is not required to be licensed as a regulated purchaser if the transaction complies with Section 58-37c-18.

Section 3. Section **58-37c-18** is enacted to read:

58-37c-18. Recordkeeping requirements for sale of crystal iodine.

(1) Any person licensed to engage in a regulated transaction and who sells crystal iodine to another person shall:

(a) comply with the recordkeeping requirements of Section 58-37-10;

(b) require photo identification of the purchaser;

(c) obtain from the purchaser a signature on a certificate of identification provided by the seller; and

(d) obtain from the purchaser a legible fingerprint, preferably of the right thumb, which shall be placed on the certificate next to the purchaser's signature.

(2) Any failure to comply with Subsection (1) is a class B misdemeanor.

Section 4. Section **58-37c-19** is enacted to read:

58-37c-19. Possession or sale of crystal iodine.

(1) Any person licensed to engage in a regulated transaction is guilty of a class B misdemeanor who, under circumstances not amounting to a violation of Subsection 58-37d-4(1)(c), offers to sell, sells, or distributes more than two ounces of crystal iodine to another person who is:

(a) not licensed as a regulated purchaser of crystal iodine;

(b) not excepted from licensure; or

(c) not excepted under Subsection (3).

(2) Any person who is not licensed to engage in regulated transactions and not excepted from licensure is guilty of a class A misdemeanor who, under circumstances not amounting to a violation of Subsection 58-37c-3(10)(k) or Subsection 58-37d-4(1)(a):

(a) possesses more than two ounces of crystal iodine; or

(b) offers to sell, sells, or distributes crystal iodine to another.

(3) Subsection (2)(a) does not apply to:

(a) a chemistry laboratory maintained by:

(i) a public or private regularly established secondary school; or

(ii) a public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;

(b) a veterinarian licensed to practice under Title 58, Chapter 28, Veterinarians; or

(c) a general acute hospital.

Section 5. Section **58-37c-20** is enacted to read:

58-37c-20. Possession of ephedrine or pseudoephedrine -- Penalties.

(1) Any person who is not licensed to engage in regulated transactions and not excepted from licensure who, under circumstances not amounting to a violation of Subsection 58-37c-3(10)(k) or Subsection 58-37d-(4)(1)(a), possesses more than 12 grams of ephedrine or pseudoephedrine, their salts, isomers, or salts of isomers, or a combination of any of these substances, is guilty of a class A misdemeanor.

(2) (a) It is an affirmative defense to a charge under Subsection (1) that the person in possession of ephedrine or pseudoephedrine, or a combination of these two substances:

(i) is a physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons; and

(ii) possesses the substances in the regular course of lawful business activities.

(b) (i) The defendant shall provide written notice of intent to claim an affirmative defense under this section as soon as practicable, but not later than ten days prior to trial. 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.

(ii) The notice shall include the specifics of the asserted defense.

(iii) The defendant shall establish the affirmative defense by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.

(3) This section does not apply to dietary supplements, herbs, or other natural products, including concentrates or extracts, which:

(a) are not otherwise prohibited by law; and

(b) may contain naturally occurring ephedrine, ephedrine alkaloids, or pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these substances, that:

(i) are contained in a matrix of organic material; and

(ii) do not exceed 15% of the total weight of the natural product.