

1 **CONTROLLED SUBSTANCES PRECURSOR**

2 **AMENDMENTS**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: A. Lamont Tyler**

6 AN ACT RELATING TO CONTROLLED SUBSTANCES AND PROFESSIONAL
7 LICENSURE; PROVIDING THAT AN IODINE SOLUTION CONTAINING A SPECIFIED
8 PERCENTAGE OF IODINE OR GREATER IS SUBJECT TO REGULATION AS A
9 PRECURSOR; DESIGNATING RED PHOSPHORUS AS A PRECURSOR, AND EXEMPTING
10 CERTAIN MANUFACTURING AND ACADEMIC PURPOSES THAT USE RED
11 PHOSPHORUS; AND DESIGNATING ANHYDROUS AMMONIA AS A PRECURSOR, WITH
12 SPECIFIED EXCEPTIONS.

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

14 AMENDS:

15 **58-37c-3**, as last amended by Chapter 100, Laws of Utah 1998

16 **58-37d-3**, as last amended by Chapter 64, Laws of Utah 1997

17 ENACTS:

18 **58-37c-19.5**, Utah Code Annotated 1953

19 **58-37c-19.7**, Utah Code Annotated 1953

20 **58-37c-19.9**, Utah Code Annotated 1953

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

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

23 **58-37c-3. Definitions.**

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

25 (1) "Board" means the Controlled Substance Precursor Advisory Board created in Section
26 58-37c-4.

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

- 28 following:
- 29 (a) Phenyl-2-propanone;
 - 30 (b) Methylamine;
 - 31 (c) Ethylamine;
 - 32 (d) D-lysergic acid;
 - 33 (e) Ergotamine and its salts;
 - 34 (f) Diethyl malonate;
 - 35 (g) Malonic acid;
 - 36 (h) Ethyl malonate;
 - 37 (i) Barbituric acid;
 - 38 (j) Piperidine and its salts;
 - 39 (k) N-acetylanthranilic acid and its salts;
 - 40 (l) Pyrrolidine;
 - 41 (m) Phenylacetic acid and its salts;
 - 42 (n) Anthranilic acid and its salts;
 - 43 (o) Morpholine;
 - 44 (p) Ephedrine;
 - 45 (q) Pseudoephedrine;
 - 46 (r) Norpseudoephedrine;
 - 47 (s) Phenylpropanolamine;
 - 48 (t) Benzyl cyanide;
 - 49 (u) Ergonovine and its salts;
 - 50 (v) 3,4-Methylenedioxyphenyl-2-propanone;
 - 51 (w) propionic anhydride;
 - 52 (x) Insosafrole;
 - 53 (y) Safrole;
 - 54 (z) Piperonal;
 - 55 (aa) N-Methylephedrine;
 - 56 (bb) N-ethylephedrine;
 - 57 (cc) N-methylpseudoephedrine;
 - 58 (dd) N-ethylpseudoephedrine;

59 (ee) Hydriotic acid;

60 (ff) any salt, isomer, or salt of an isomer of the chemicals listed in Subsections (2)(a)

61 through (ee) [~~of this section~~];

62 (gg) Crystal iodine;

63 (hh) Iodine at concentrations greater than 1.5% by weight in a solution or matrix;

64 (ii) Red phosphorous, except as provided in Section 58-37c-19.7;

65 (jj) anhydrous ammonia, except as provided in Section 58-37c-19.9;

66 [~~(hh)~~] (kk) any controlled substance precursor listed under the provisions of the Federal

67 Controlled Substances Act which is designated by the director under the emergency listing

68 provisions set forth in Section 58-37c-14; and

69 [~~(ii)~~] (ll) any chemical which is designated by the director under the emergency listing

70 provisions set forth in Section 58-37c-14.

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

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

75 (5) "Person" means any individual, group of individuals, proprietorship, partnership, joint
76 venture, corporation, or organization of any type or kind.

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

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

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

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

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

90 chapter.

91 (9) "Regulated transaction" means any actual, constructive or attempted:

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

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

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

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

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

101 (11) "Threshold amount of a listed precursor chemical" means any amount of a controlled
102 substance precursor or a specified amount of a controlled substance precursor in a matrix;
103 however, the division may exempt from the provisions of this chapter a specific controlled
104 substance precursor in a specific amount and in certain types of transactions which provisions for
105 exemption shall be defined by the division by rule adopted pursuant to Title 63, Chapter 46a, Utah
106 Administrative Rulemaking Act.

107 (12) "Unlawful conduct" as defined in Section 58-1-501 includes knowingly and
108 intentionally:

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

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

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

120 (d) engaging in a regulated transaction and failing to submit reports and keep required

121 records of inventories required under the provisions of this chapter or rules adopted pursuant to
122 this chapter;

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

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

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

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

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

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

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

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

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

149 (b) refusing to allow agents or representatives of the division or authorized law
150 enforcement personnel to inspect inventories or controlled substance precursors or records or
151 reports relating to purchases and sales or distribution of controlled substance precursors as such

152 records and reports are required under this chapter.

153 Section 2. Section **58-37c-19.5** is enacted to read:

154 **58-37c-19.5. Iodine solution greater than 1.5% -- Prescription or permit required --**

155 **Penalties.**

156 (1) As used in this section, "iodine matrix" means iodine at concentrations greater than
 157 1.5% by weight in a matrix or solution.

158 (2) A person may offer to sell, sell, or distribute an iodine matrix only:

159 (a) as a prescription drug, pursuant to a prescription issued by a veterinarian or physician
 160 licensed within the state; or

161 h [(b) upon presentation of a current permit or certificate to produce milk issued under
 162 Section 4-3-8.]

162a (b) TO A PERSON WHO IS ACTIVELY ENGAGED IN THE LEGAL PRACTICE OF ANIMAL
 162b HUSBANDRY OF LIVESTOCK, AS DEFINED IN SECTION 4-1-8. h

163 (3) Prescriptions issued under this section:

164 (a) shall provide for a specified number of refills;

165 (b) may be issued by electronic means, in accordance with Title 58, Chapter 17a,
 166 Pharmacy Practice Act; and

167 (c) may be filled by a person other than the veterinarian or physician issuing the
 168 prescription.

168a h (4) A RETAILER OFFERING IODINE MATRIX FOR SALE:

168b (a) SHALL STORE THE IODINE MATRIX SO THAT THE PUBLIC DOES NOT HAVE ACCESS TO
 168c THE IODINE MATRIX WITHOUT THE DIRECT ASSISTANCE OR INTERVENTION OF A RETAIL
 168d EMPLOYEE;

168e (b) SHALL KEEP A RECORD, WHICH MAY CONSIST OF SALES RECEIPTS, OF EACH
 168f PERSON PURCHASING IODINE MATRIX; AND

168g (c) MAY, IF NECESSARY TO ASCERTAIN THE IDENTITY OF THE PURCHASER, ASK FOR
 168h PROOF OF IDENTIFICATION FROM THE PURCHASER. h

169 h [(4) (5) h A person engaging in a regulated transaction under Subsection (2) is guilty of a
 169a class

170 B misdemeanor if the person, under circumstances not amounting to a violation of Subsection
 171 58-37d-4(1)(c), offers to sell, sells, or distributes an iodine matrix to a person who:

172 (a) does not present h [either] h a prescription or h [a dairy permit or certificate] IS NOT
 172a ENGAGED IN ANIMAL HUSBANDRY, h as required under

173 Subsection (2); or

174 (b) is not excepted under Subsection h [(6) (7) h .

175 h [(5)] (6) h A person is guilty of a class A misdemeanor who, under circumstances not
175a amounting

176 to a violation of Subsection 58-37c-3(12)(k) or 58-37d-4(1)(a):

177 (a) h [h ~~ON AND AFTER JULY 1, 2001, h~~] h possesses an iodine matrix without proof of
177a obtaining

177a the solution in compliance with

178 Subsection (2); or

179 (b) offers to sell, sells, or distributes an iodine matrix in violation of Subsection (2).

180 h [(6)] (7) h Subsection h [(5)(a)] (6)(a) h does not apply to:

181 (a) a chemistry or chemistry-related laboratory maintained by:

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

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

185 (b) a veterinarian licensed to practice under Title 58, Chapter 28, Veterinary Practice Act;

186 (c) a general acute hospital; or

187 (d) a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer,
 188 warehouseman, or common carrier, or an agent of any of these persons who possesses an iodine
 189 matrix in the regular course of lawful business activities.

190 Section 3. Section **58-37c-19.7** is enacted to read:

191 **58-37c-19.7. Red phosphorus is a precursor -- Affirmative defense.**

192 (1) A person is guilty of a class A misdemeanor who is not licensed to engage in a
 193 regulated transaction and is not excepted from licensure who, under circumstances not amounting
 194 to a violation of Subsection 58-37c-3(12)(k) or 58-37d-4(1)(a), possesses any amount of red
 195 phosphorus.

196 (2) It is an affirmative defense to a charge under Subsection (1) that the person in
 197 possession of red phosphorus:

198 (a) is conducting a licensed business which ~~is~~ **[includes] INVOLVES RED PHOSPHORUS IN** ~~is~~
 198a the manufacture of any of the
 199 following ~~is~~ **[and that red phosphorus is used in the manufacturing process]** ~~is~~ :

200 (i) the striking surface used for lighting matches, which is sometimes referred to as the
 201 striker plate;

202 (ii) flame retardant in polymers; or

203 (iii) fireworks, for which the person or entity possesses a federal license to manufacture
 204 explosives as required under 27 CFR Chapter 1, Part 55, Commerce in Explosives; or

205 (b) (i) is a wholesaler, manufacturer, warehouseman, or common carrier handling red
 206 phosphorus, or is an agent of any of these persons; and

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

208 (3) (a) The defendant shall provide written notice of intent to claim an affirmative defense
 209 under this section as soon as practicable, but not later than ten days prior to trial. The court may
 210 waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is
 211 not unfairly prejudiced by the lack of timely notice.

212 (b) The notice shall include the specifics of the ~~is~~ **[asserted] AFFIRMATIVE** ~~is~~ defense.

213 (c) The defendant shall establish the affirmative defense by a preponderance of the

214 evidence. If the defense is established, it is a complete defense to the charges.

215 (4) Subsection (1) does not apply to:

216 (a) a chemistry or chemistry-related laboratory maintained by:

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

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

220 (b) a retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or
 221 an agent of any of these persons who possesses red phosphorus in the regular course of lawful
 222 business activities.

223 Section 4. Section **58-37c-19.9** is enacted to read:

224 **58-37c-19.9. Anhydrous ammonia -- Requirements regarding purposes and**
 225 **containers.**

226 (1) A person is guilty of a class A misdemeanor who is not licensed to engage in a
 227 regulated transaction and is not excepted from licensure or exempted under Subsection (2), and
 228 who possesses any amount of anhydrous ammonia under circumstances not amounting to a
 229 violation of Subsection 58-37c-3(12)(k) or 58-37d-4(1)(a).

230 (2) A person who possesses anhydrous ammonia ~~is exempt from~~ **HAS AN AFFIRMATIVE**
 230a **DEFENSE TO A CHARGE UNDER** Subsection (1) if **:**

231 **(a)** the person is:

232 ~~(i)~~ **(a)** directly involved in or actively operating ~~a lawful~~ **LAND IN** agricultural
 232a **activity;** **USE AS DEFINED IN SECTION 59-2-502;** ~~or~~

233 ~~(ii)~~ **(b)** a retail distributor, wholesaler, manufacturer, warehouseman, or common
 233a carrier, or

234 an agent of any of these persons, who possesses anhydrous ammonia in the regular course of lawful
 235 business activities; ~~and~~ **OR**

235a ~~(iii)~~ **(c) DIRECTLY INVOLVED IN OR ACTIVELY OPERATING** ~~a~~ **A BUSINESS OR OTHER**
 235a1 **LAWFUL ACTIVITY PROVIDING OR USING ANHYDROUS**

235b **AMMONIA FOR REFRIGERATION APPLICATIONS;** ~~and~~ **OR**

235c **(d) DIRECTLY INVOLVED IN OR ACTIVELY OPERATING A LAWFUL BUSINESS**

235d **ENTERPRISE, INCLUDING AN INDUSTRIAL ENTERPRISE, THAT USES ANHYDROUS AMMONIA IN**
 235e **THE REGULAR COURSE OF ITS BUSINESS ACTIVITIES.**

236 ~~(b) the anhydrous ammonia is stored in a container that is in compliance with~~ :

236a ~~(i)~~ **federal 29**

237 **CFR 1910.111, Occupational Safety and Health Administration** ~~,~~ **IF THE ANHYDROUS AMMONIA]**

h

- 237a ~~h [IS FOR AGRICULTURAL OR INDUSTRIAL APPLICATIONS; OR~~
- 237b ~~—— (ii) THE INTERNATIONAL INSTITUTE OF AMMONIA REFRIGERATION (IIAR) STANDARD~~
- 237c ~~REFERRED TO AS AMERICAN NATIONAL STANDARD FOR EQUIPMENT, DESIGN, AND~~
- 237d ~~INSTALLATION OF AMMONIA MECHANICAL REFRIGERATING SYSTEMS ANSI/IIAR 2-1999, OR THE~~
- 237e ~~MOST CURRENT EDITION OF THIS STANDARD APPROVED BY THE AMERICAN NATIONAL~~
- 237f ~~STANDARDS INSTITUTE (ANSI), IF THE ANHYDROUS AMMONIA IS FOR REFRIGERATION~~
- 237g ~~APPLICATIONS h-] h~~

238 Section 5. Section 58-37d-3 is amended to read:

239 **58-37d-3. Definitions.**

240 (1) As used in this chapter:

241 (a) "Booby trap" means any concealed or camouflaged device designed to cause bodily
242 injury when triggered by any action of a person making contact with the device. This term
243 includes guns, ammunition, or explosive devices attached to trip wires or other triggering
244 mechanisms, sharpened stakes, nails, spikes, electrical devices, lines or wires with hooks attached,

245 and devices for the production of toxic fumes or gases.

246 (b) "Clandestine laboratory operation" means the:

247 (i) purchase or procurement of chemicals, supplies, equipment, or laboratory location for
248 the illegal manufacture of the above specified controlled substances specified in this act;

249 (ii) transportation or arranging for the transportation of chemicals, supplies, or equipment
250 for the illegal manufacture of specified controlled substances specified in this act;

251 (iii) setting up of equipment or supplies in preparation for the illegal manufacture of the
252 above specified controlled substances specified in this act;

253 (iv) illegal manufacture of the above specified controlled substances specified in this act;

254 or

255 (v) distribution or disposal of chemicals, equipment, supplies, or products used in or
256 produced by the illegal manufacture of specified controlled substances specified in this act.

257 (c) "Controlled substance precursor" means those chemicals designated in Title 58,
258 Chapter 37c, Controlled ~~[Substances]~~ Substance Precursor Act, except those substances designated
259 in Subsections 58-37c-3(2)~~(gg)~~(kk) and ~~(2)(hh)~~ (ll).

260 (d) "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling,
261 leaking, or placing of any hazardous or dangerous material into or on any property, land or water
262 so that the material may enter the environment, be emitted into the air, or discharged into any
263 waters, including groundwater.

264 (e) "Hazardous or dangerous material" means any substance which because of its quantity,
265 concentration, physical characteristics, or chemical characteristics may cause or significantly
266 contribute to an increase in mortality, an increase in serious illness, or may pose a substantial
267 present or potential future hazard to human health or the environment when improperly treated,
268 stored, transported, disposed of, or otherwise improperly managed.

269 (f) "Illegal manufacture of specified controlled substances" means in violation of Title 58,
270 Chapter 37, Utah Controlled Substances Act, the:

271 (i) compounding, synthesis, concentration, purification, separation, extraction, or other
272 physical or chemical processing for the purpose of producing methamphetamine, other
273 amphetamine compounds as listed in Schedule I of the Utah Controlled Substances Act,
274 phencyclidine, narcotic analgesic analogs as listed in Schedule I of the Utah Controlled Substances
275 Act, lysergic acid diethylamide, mescaline;

276 (ii) conversion of cocaine or methamphetamine to their base forms; or
277 (iii) extraction, concentration, or synthesis of marijuana as that drug is defined in Section
278 58-37-2.
279 (2) Unless otherwise specified, the definitions in Section 58-37-2 also apply to this
280 chapter.

Legislative Review Note
as of 12-29-99 8:33 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel