

CONTROLLED SUBSTANCES PRECURSOR AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: A. Lamont Tyler

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

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

AMENDS:

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

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

ENACTS:

58-37c-19.5, Utah Code Annotated 1953

58-37c-19.7, Utah Code Annotated 1953

58-37c-19.9, 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;
- (q) Pseudoephedrine;
- (r) Norpseudoephedrine;
- (s) Phenylpropanolamine;
- (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, isomer, or salt of an isomer of the chemicals listed in Subsections (2)(a) through (ee) ~~[of this section]~~;
- (gg) Crystal iodine;
- (hh) Iodine at concentrations greater than 1.5% by weight in a solution or matrix;
- (ii) Red phosphorous, except as provided in Section 58-37c-19.7;
- (jj) anhydrous ammonia, except as provided in Section 58-37c-19.9;
- ~~[(hh)]~~ (kk) 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
- ~~[(ii)]~~ (ll) 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.
- (5) "Person" means any individual, group of individuals, proprietorship, partnership, joint venture, corporation, or organization of any type or kind.
- (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.
- (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.

(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.

(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.

(11) "Threshold amount of a listed precursor chemical" means any amount of a controlled substance precursor or a specified amount of a controlled substance precursor in a matrix; 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.

(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.

(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-19.5** is enacted to read:

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

Penalties.

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

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

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

(b) to a person who is actively engaged in the legal practice of animal husbandry of livestock, as defined in Section 4-1-8.

(3) Prescriptions issued under this section:

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

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

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

(4) A retailer offering iodine matrix for sale:

(a) shall store the iodine matrix so that the public does not have access to the iodine matrix without the direct assistance or intervention of a retail employee;

(b) shall keep a record, which may consist of sales receipts, of each person purchasing iodine

matrix; and

(c) may, if necessary to ascertain the identity of the purchaser, ask for proof of identification from the purchaser.

(5) A person engaging in a regulated transaction under Subsection (2) is guilty of a class B misdemeanor if the person, under circumstances not amounting to a violation of Subsection 58-37d-4(1)(c), offers to sell, sells, or distributes an iodine matrix to a person who:

(a) does not present a prescription or is not engaged in animal husbandry, as required under Subsection (2); or

(b) is not excepted under Subsection (7).

(6) A person is guilty of a class A misdemeanor who, under circumstances not amounting to a violation of Subsection 58-37c-3(12)(k) or 58-37d-4(1)(a):

(a) possesses an iodine matrix without proof of obtaining the solution in compliance with Subsection (2); or

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

(7) Subsection (6)(a) does not apply to:

(a) a chemistry or chemistry-related 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, Veterinary Practice Act;

(c) a general acute hospital; or

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

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

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

(1) A person is guilty of a class A misdemeanor who is not licensed to engage in a regulated transaction and is not excepted from licensure who, under circumstances not amounting to a violation

of Subsection 58-37c-3(12)(k) or 58-37d-4(1)(a), possesses any amount of red phosphorus.

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

(a) is conducting a licensed business which involves red phosphorus in the manufacture of any of the following:

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

(ii) flame retardant in polymers; or

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

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

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

(3) (a) 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.

(b) The notice shall include the specifics of the affirmative defense.

(c) 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.

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

(a) a chemistry or chemistry-related 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; or

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

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

58-37c-19.9. Anhydrous ammonia is a precursor -- Requirements regarding purposes and containers.

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

(2) A person who possesses anhydrous ammonia has an affirmative defense to a charge under Subsection (1) if the person is:

(a) directly involved in or actively operating land in agricultural use as defined in Section 59-2-502;

(b) a retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons, who possesses anhydrous ammonia in the regular course of lawful business activities;

(c) directly involved in or actively operating a business or other lawful activity providing or using anhydrous ammonia for refrigeration applications; or

(d) directly involved in or actively operating a lawful business enterprise, including an industrial enterprise, that uses anhydrous ammonia in the regular course of its business activities.

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

58-37d-3. Definitions.

(1) As used in this chapter:

(a) "Booby trap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of a person making contact with the device. This term 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 the above specified controlled substances specified in this act;

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

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

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

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

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

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

(e) "Hazardous or dangerous material" means any substance which 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.

(f) "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;

(ii) conversion of cocaine or methamphetamine to their base forms; or

(iii) extraction, concentration, or synthesis of marijuana as that drug is defined in Section 58-37-2.

(2) Unless otherwise specified, the definitions in Section 58-37-2 also apply to this chapter.