

CONTROLLED SUBSTANCE LAW AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Brad L. Dee

LONG TITLE

General Description:

This bill provides a definition of the term "consumption" as it relates to possession of a controlled substance.

Highlighted Provisions:

This bill:

▶ defines consumption of a controlled substance as having any measurable amount of a controlled substance in a person's body ~~§~~ **and clarifies that controlled substance does not include the metabolite of a controlled substance** ~~←§~~ ; and

▶ provides that a person who is found to be driving with any measurable controlled substance in the body is subject to conviction and sentencing under the relevant DUI law and controlled substance law.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-6a-517, as renumbered and amended by Chapter 2, Laws of Utah 2005

58-37-2, as last amended by Chapter 241, Laws of Utah 2004

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

Section 1. Section **41-6a-517** is amended to read:



28 **41-6a-517. Definitions -- Driving with any measurable controlled substance in the**
29 **body -- Penalties -- Arrest without warrant.**

30 (1) As used in this section:

31 (a) "Controlled substance" means any substance scheduled under Section 58-37-4.

32 (b) "Practitioner" has the same meaning as provided in Section 58-37-2.

33 (c) "Prescribe" has the same meaning as provided in Section 58-37-2.

34 (d) "Prescription" has the same meaning as provided in Section 58-37-2.

35 (2) In cases not amounting to a violation of Section 41-6a-502, a person may not
36 operate or be in actual physical control of a motor vehicle within this state if the person has any
37 measurable controlled substance or metabolite of a controlled substance in the person's body.

38 (3) It is an affirmative defense to prosecution under this section that the controlled
39 substance was involuntarily ingested by the accused or prescribed by a practitioner for use by
40 the accused.

41 (4) (a) A person convicted of a violation of Subsection (2) is guilty of a class B
42 misdemeanor.

43 (b) A person who violates this section is subject to conviction and sentencing under
44 both this section and any applicable offense under Section 58-37-8.

45 (5) A peace officer may, without a warrant, arrest a person for a violation of this
46 section when the officer has probable cause to believe the violation has occurred, although not
47 in the officer's presence, and if the officer has probable cause to believe that the violation was
48 committed by the person.

49 (6) The Driver License Division shall:

50 (a) suspend, for 90 days, the driver license of a person convicted under Subsection (2);

51 (b) revoke, for one year, the driver license of a person convicted of a second or
52 subsequent offense under Subsection (2) or if the person has a prior conviction as defined
53 under Subsection 41-6a-501(2), if the violation is committed within a period of ten years after
54 the date of the prior violation; and

55 (c) subtract from any suspension or revocation period the number of days for which a
56 license was previously suspended under Section 53-3-223 or 53-3-231, if the previous
57 suspension was based on the same occurrence upon which the record of conviction is based.

58 (7) (a) The court shall notify the Driver License Division if a person fails to:

59 (i) complete all court ordered screening and assessment, educational series, and
60 substance abuse treatment; or

61 (ii) pay all fines and fees, including fees for restitution and treatment costs.

62 (b) Upon receiving the notification, the division shall suspend the person's driving
63 privilege in accordance with Subsections 53-3-221(2) and (3).

64 (8) The court shall order supervised probation in accordance with Section 41-6a-507
65 for a person convicted under Subsection (2).

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

67 **58-37-2. Definitions.**

68 (1) As used in this chapter:

69 (a) "Administer" means the direct application of a controlled substance, whether by
70 injection, inhalation, ingestion, or any other means, to the body of a patient or research subject
71 by:

72 (i) a practitioner or, in his presence, by his authorized agent; or

73 (ii) the patient or research subject at the direction and in the presence of the
74 practitioner.

75 (b) "Agent" means an authorized person who acts on behalf of or at the direction of a
76 manufacturer, distributor, or practitioner but does not include a motor carrier, public
77 warehouseman, or employee of any of them.

78 (c) "Consumption" means ingesting or having any measurable amount of a controlled
79 substance in a person's body ~~§~~ , but this Subsection (1)(c) does not include the metabolite of a
79a controlled substance ~~←~~ .

80 [~~(c)~~] (d) "Continuing criminal enterprise" means any individual, sole proprietorship,
81 partnership, corporation, business trust, association, or other legal entity, and any union or
82 groups of individuals associated in fact although not a legal entity, and includes illicit as well
83 as licit entities created or maintained for the purpose of engaging in conduct which constitutes
84 the commission of episodes of activity made unlawful by Title 58, Chapters 37, 37a, 37b, 37c,
85 or 37d, which episodes are not isolated, but have the same or similar purposes, results,
86 participants, victims, methods of commission, or otherwise are interrelated by distinguishing
87 characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct
88 and be related either to each other or to the enterprise.

89 [~~(d)~~] (e) "Control" means to add, remove, or change the placement of a drug,

90 substance, or immediate precursor under Section 58-37-3.

91 ~~[(e)]~~ (f) (i) "Controlled substance" means a drug or substance included in Schedules I,
92 II, III, IV, or V of Section 58-37-4, and also includes a drug or substance included in Schedules
93 I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513, or any
94 controlled substance analog.

95 (ii) "Controlled substance" does not include:

96 (A) distilled spirits, wine, or malt beverages, as those terms are defined or used in Title
97 32A, regarding tobacco or food;

98 (B) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or
99 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,
100 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold,
101 transferred, or furnished as an over-the-counter medication without prescription; or

102 (C) dietary supplements, vitamins, minerals, herbs, or other similar substances
103 including concentrates or extracts, which are not otherwise regulated by law, which may
104 contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules
105 adopted pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

106 ~~[(f)]~~ (g) (i) "Controlled substance analog" means a substance the chemical structure of
107 which is substantially similar to the chemical structure of a controlled substance listed in
108 Schedules I and II of Section 58-37-4, or in Schedules I and II of the federal Controlled
109 Substances Act, Title II, P.L. 91-513:

110 (A) which has a stimulant, depressant, or hallucinogenic effect on the central nervous
111 system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central
112 nervous system of controlled substances in the schedules set forth in ~~[this]~~ Subsection ~~(1)(f)~~; or

113 (B) which, with respect to a particular individual, is represented or intended to have a
114 stimulant, depressant, or hallucinogenic effect on the central nervous system substantially
115 similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of
116 controlled substances in the schedules set forth in this Subsection (1).

117 (ii) "Controlled substance analog" does not include:

118 (A) a controlled substance currently scheduled in Schedules I through V of Section
119 58-37-4;

120 (B) a substance for which there is an approved new drug application;

121 (C) a substance with respect to which an exemption is in effect for investigational use
122 by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 366,
123 to the extent the conduct with respect to the substance is permitted by the exemption;

124 (D) any substance to the extent not intended for human consumption before an
125 exemption takes effect with respect to the substance;

126 (E) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or
127 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,
128 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold,
129 transferred, or furnished as an over-the-counter medication without prescription; or

130 (F) dietary supplements, vitamins, minerals, herbs, or other similar substances including
131 concentrates or extracts, which are not otherwise regulated by law, which may contain naturally
132 occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant
133 to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

134 ~~[(g)]~~ (h) "Conviction" means a determination of guilt by verdict, whether jury or bench,
135 or plea, whether guilty or no contest, for any offense proscribed by Title 58, Chapters 37, 37a,
136 37b, 37c, or 37d, or for any offense under the laws of the United States and any other state
137 which, if committed in this state, would be an offense under Title 58, Chapters 37, 37a, 37b,
138 37c, or 37d.

139 ~~[(h)]~~ (i) "Counterfeit substance" means:

140 (i) any substance or container or labeling of any substance that without authorization
141 bears the trademark, trade name, or other identifying mark, imprint, number, device, or any
142 likeness of them, of a manufacturer, distributor, or dispenser other than the person or persons
143 who in fact manufactured, distributed, or dispensed the substance which falsely purports to be a
144 controlled substance distributed by, any other manufacturer, distributor, or dispenser; or

145 (ii) any substance that is represented to be a controlled substance.

146 ~~[(i)]~~ (j) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of
147 a controlled substance or a listed chemical, whether or not an agency relationship exists.

148 ~~[(j)]~~ (k) "Department" means the Department of Commerce.

149 ~~[(k)]~~ (l) "Depressant or stimulant substance" means:

150 (i) a drug which contains any quantity of barbituric acid or any of the salts of barbituric
151 acid;

152 (ii) a drug which contains any quantity of:
153 (A) amphetamine or any of its optical isomers;
154 (B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or
155 (C) any substance which the Secretary of Health and Human Services or the Attorney
156 General of the United States after investigation has found and by regulation designated
157 habit-forming because of its stimulant effect on the central nervous system; ~~[or]~~

158 (iii) lysergic acid diethylamide; or
159 (iv) any drug which contains any quantity of a substance which the Secretary of Health
160 and Human Services or the Attorney General of the United States after investigation has found
161 to have, and by regulation designated as having, a potential for abuse because of its depressant
162 or stimulant effect on the central nervous system or its hallucinogenic effect.

163 ~~[(+)]~~ (m) "Dispense" means the delivery of a controlled substance by a pharmacist to an
164 ultimate user pursuant to the lawful order or prescription of a practitioner, and includes
165 distributing to, leaving with, giving away, or disposing of that substance as well as the
166 packaging, labeling, or compounding necessary to prepare the substance for delivery.

167 ~~[(m)]~~ (n) "Dispenser" means a pharmacist who dispenses a controlled substance.

168 ~~[(n)]~~ (o) "Distribute" means to deliver other than by administering or dispensing a
169 controlled substance or a listed chemical.

170 ~~[(o)]~~ (p) "Distributor" means a person who distributes controlled substances.

171 ~~[(p)]~~ (q) "Division" means the Division of Occupational and Professional Licensing
172 created in Section 58-1-103.

173 ~~[(q)]~~ (r) "Drug" means:

174 (i) articles recognized in the official United States Pharmacopoeia, Official
175 Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any
176 supplement to any of them;

177 (ii) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention
178 of disease in man or other animals;

179 (iii) articles, other than food, intended to affect the structure or function of man or
180 other animals; and

181 (iv) articles intended for use as a component of any articles specified in Subsection
182 (1)(q)(i), (ii), or (iii); but does not include devices or their components, parts, or accessories.

183 ~~[(r)]~~ (s) "Drug dependent person" means any individual who unlawfully and habitually
184 uses any controlled substance to endanger the public morals, health, safety, or welfare, or who
185 is so dependent upon the use of controlled substances as to have lost the power of self-control
186 with reference to his dependency.

187 ~~[(s)]~~ (t) "Food" means:

188 (i) any nutrient or substance of plant, mineral, or animal origin other than a drug as
189 specified in this chapter, and normally ingested by human beings; and

190 (ii) foods for special dietary uses as exist by reason of a physical, physiological,
191 pathological, or other condition including but not limited to the conditions of disease,
192 convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and
193 overweight; uses for supplying a particular dietary need which exist by reason of age including
194 but not limited to the ages of infancy and childbirth, and also uses for supplementing and for
195 fortifying the ordinary or unusual diet with any vitamin, mineral, or other dietary property for
196 use of a food. Any particular use of a food is a special dietary use regardless of the nutritional
197 purposes.

198 ~~[(t)]~~ (u) "Immediate precursor" means a substance which the Attorney General of the
199 United States has found to be, and by regulation designated as being, the principal compound
200 used or produced primarily for use in the manufacture of a controlled substance, or which is an
201 immediate chemical intermediary used or likely to be used in the manufacture of a controlled
202 substance, the control of which is necessary to prevent, curtail, or limit the manufacture of the
203 controlled substance.

204 ~~[(u)]~~ (v) "Manufacture" means the production, preparation, propagation, compounding,
205 or processing of a controlled substance, either directly or indirectly by extraction from
206 substances of natural origin, or independently by means of chemical synthesis or by a
207 combination of extraction and chemical synthesis.

208 ~~[(v)]~~ (w) "Manufacturer" includes any person who packages, repackages, or labels any
209 container of any controlled substance, except pharmacists who dispense or compound
210 prescription orders for delivery to the ultimate consumer.

211 ~~[(w)]~~ (x) "Marijuana" means all species of the genus cannabis and all parts of the
212 genus, whether growing or not; the seeds of it; the resin extracted from any part of the plant;
213 and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its

214 seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from
215 the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt,
216 derivative, mixture, or preparation of the mature stalks, except the resin extracted from them,
217 fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any
218 synthetic equivalents of the substances contained in the plant cannabis sativa or any other
219 species of the genus cannabis which are chemically indistinguishable and pharmacologically
220 active are also included.

221 ~~(x)~~ (y) "Money" means officially issued coin and currency of the United States or any
222 foreign country.

223 ~~(y)~~ (z) "Narcotic drug" means any of the following, whether produced directly or
224 indirectly by extraction from substances of vegetable origin, or independently by means of
225 chemical synthesis, or by a combination of extraction and chemical synthesis:

226 (i) opium, coca leaves, and opiates;

227 (ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or
228 opiates;

229 (iii) opium poppy and poppy straw; or

230 (iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the
231 substance, which is chemically identical with any of the substances referred to in Subsection
232 (1)~~(y)~~ (z)(i), (ii), or (iii), except narcotic drug does not include decocainized coca leaves or
233 extracts of coca leaves which do not contain cocaine or ecgonine.

234 ~~(z)~~ (aa) "Negotiable instrument" means documents, containing an unconditional
235 promise to pay a sum of money, which are legally transferable to another party by endorsement
236 or delivery.

237 ~~(aa)~~ (bb) "Opiate" means any drug or other substance having an addiction-forming or
238 addiction-sustaining liability similar to morphine or being capable of conversion into a drug
239 having addiction-forming or addiction-sustaining liability.

240 ~~(bb)~~ (cc) "Opium poppy" means the plant of the species papaver somniferum L.,
241 except the seeds of the plant.

242 ~~(cc)~~ (dd) "Person" means any corporation, association, partnership, trust, other
243 institution or entity or one or more individuals.

244 ~~(dd)~~ (ee) "Poppy straw" means all parts, except the seeds, of the opium poppy, after

245 mowing.

246 ~~[(ee)]~~ (ff) "Possession" or "use" means the joint or individual ownership, control,
247 occupancy, holding, retaining, belonging, maintaining, or the application, inhalation,
248 swallowing, injection, or consumption, as distinguished from distribution, of controlled
249 substances and includes individual, joint, or group possession or use of controlled substances.
250 For a person to be a possessor or user of a controlled substance, it is not required that he be
251 shown to have individually possessed, used, or controlled the substance, but it is sufficient if it
252 is shown that the person jointly participated with one or more persons in the use, possession, or
253 control of any substances with knowledge that the activity was occurring, or the controlled
254 substance is found in a place or under circumstances indicating that the person had the ability
255 and the intent to exercise dominion and control over it.

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

261 ~~[(gg)]~~ (hh) "Prescribe" means to issue a prescription orally or in writing.

262 ~~[(hh)]~~ (ii) "Prescription" means an order issued by a licensed practitioner, in the course
263 of that practitioner's professional practice, for a controlled substance, other drug, or device
264 which it dispenses or administers for use by a patient or an animal. The order may be issued by
265 word of mouth, written document, telephone, facsimile transmission, computer, or other
266 electronic means of communication as defined by rule.

267 ~~[(ii)]~~ (jj) "Production" means the manufacture, planting, cultivation, growing, or
268 harvesting of a controlled substance.

269 ~~[(jj)]~~ (kk) "Securities" means any stocks, bonds, notes, or other evidences of debt or of
270 property.

271 ~~[(kk)]~~ (ll) "State" means the state of Utah.

272 ~~[(ll)]~~ (mm) "Ultimate user" means any person who lawfully possesses a controlled
273 substance for his own use, for the use of a member of his household, or for administration to an
274 animal owned by him or a member of his household.

275 (2) If a term used in this chapter is not defined, the definition and terms of Title 76,

276 Utah Criminal Code, shall apply.

Legislative Review Note
as of 2-9-05 11:15 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0311

Controlled Substance Law Amendments

14-Feb-05

1:59 PM

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

No fiscal impact for individuals who comply with the laws of the State of Utah.

Office of the Legislative Fiscal Analyst