

CONTROLLED SUBSTANCE LAW AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad L. Dee

Senate Sponsor: Gregory S. Bell

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:

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

(6) The Driver License Division shall:

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

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

(c) subtract from any suspension or revocation period the number of days for which a

license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based.

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

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

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

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

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

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

58-37-2. Definitions.

(1) As used in this chapter:

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

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

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

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

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

~~(c)~~ (d) "Continuing criminal enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or groups of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities created or maintained for the purpose of engaging in conduct which constitutes the

commission of episodes of activity made unlawful by Title 58, Chapters 37, 37a, 37b, 37c, or 37d, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise.

~~[(d)]~~ (e) "Control" means to add, remove, or change the placement of a drug, substance, or immediate precursor under Section 58-37-3.

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

(ii) "Controlled substance" does not include:

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

(B) 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 the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

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

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

(A) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central

nervous system of controlled substances in the schedules set forth in ~~[this]~~ Subsection (1)(f); or

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

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

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

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

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

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

(E) 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 the drug is lawfully purchased, sold, transferred, or furnished as an over-the-counter medication without prescription; or

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

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

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

(i) any substance or container or labeling of any substance that 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 a controlled substance distributed by, any other manufacturer, distributor, or dispenser; or

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

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

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

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

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

(ii) a drug which contains any quantity of:

(A) amphetamine or any of its optical isomers;

(B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or

(C) any substance which the Secretary of Health and Human Services or the Attorney General of the United States after investigation has found and by regulation designated habit-forming because of its stimulant effect on the central nervous system; ~~[(or)]~~

(iii) lysergic acid diethylamide; or

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

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

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

~~[(n)]~~ (o) "Distribute" means to deliver other than by administering or dispensing a

controlled substance or a listed chemical.

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

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

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

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

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

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

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

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

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

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

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

purposes.

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

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

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

~~[(w)]~~ (x) "Marijuana" means all species of the genus cannabis and all parts of the genus, whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from them, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any synthetic equivalents of the substances contained in the plant cannabis sativa or any other species of the genus cannabis which are chemically indistinguishable and pharmacologically active are also included.

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

~~[(y)]~~ (z) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of

chemical synthesis, or by a combination of extraction and chemical synthesis:

(i) opium, coca leaves, and opiates;

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

(iii) opium poppy and poppy straw; or

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

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

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

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

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

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

~~(ee)~~ (ff) "Possession" or "use" means the joint or individual ownership, control, occupancy, holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection, or consumption, as distinguished from distribution, of controlled substances and includes individual, joint, or group possession or use of controlled substances. For a person to be a possessor or user of a controlled substance, it is not required that he be shown to have individually possessed, used, or controlled the substance, but it is sufficient if it is shown that the person jointly participated with one or more persons in the use, possession, or control of any

substances with knowledge that the activity was occurring, or the controlled substance is found in a place or under circumstances indicating that the person had the ability and the intent to exercise dominion and control over it.

~~[(ff)]~~ (gg) "Practitioner" means a physician, dentist, veterinarian, pharmacist, scientific investigator, pharmacy, hospital, 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.

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

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

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

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

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

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

(2) If a term used in this chapter is not defined, the definition and terms of Title 76, Utah Criminal Code, shall apply.