

28 (1) Prohibited acts A -- Penalties:

29 (a) Except as authorized by this chapter, it is unlawful for any person to knowingly and
30 intentionally:

31 (i) produce, manufacture, or dispense, or to possess with intent to produce,
32 manufacture, or dispense, a controlled or counterfeit substance;

33 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or
34 arrange to distribute a controlled or counterfeit substance;

35 (iii) possess a controlled or counterfeit substance with intent to distribute; or

36 (iv) engage in a continuing criminal enterprise where:

37 (A) the person participates, directs, or engages in conduct which results in any
38 violation of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and

39 (B) the violation is a part of a continuing series of two or more violations of Title 58,
40 Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with
41 five or more persons with respect to whom the person occupies a position of organizer,
42 supervisor, or any other position of management.

43 (b) Any person convicted of violating Subsection (1)(a) with respect to:

44 (i) a substance classified in Schedule I or II, a controlled substance analog, or
45 gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony and
46 upon a second or subsequent conviction is guilty of a first degree felony;

47 (ii) a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree
48 felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

49 (iii) a substance classified in Schedule V is guilty of a class A misdemeanor and upon a
50 second or subsequent conviction is guilty of a third degree felony.

51 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)
52 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier
53 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his
54 person or in his immediate possession during the commission or in furtherance of the offense,
55 the court shall additionally sentence the person convicted for a term of one year to run
56 consecutively and not concurrently; and the court may additionally sentence the person
57 convicted for an indeterminate term not to exceed five years to run consecutively and not
58 concurrently.

59 (d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree
60 felony punishable by imprisonment for an indeterminate term of not less than seven years and
61 which may be for life. Imposition or execution of the sentence may not be suspended, and the
62 person is not eligible for probation.

63 (2) Prohibited acts B -- Penalties:

64 (a) It is unlawful:

65 (i) for any person knowingly and intentionally to possess or use a controlled substance
66 analog or a controlled substance, unless it was obtained under a valid prescription or order,
67 directly from a practitioner while acting in the course of his professional practice, or as
68 otherwise authorized by this chapter;

69 (ii) for any owner, tenant, licensee, or person in control of any building, room,
70 tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to
71 be occupied by persons unlawfully possessing, using, or distributing controlled substances in
72 any of those locations; or

73 (iii) for any person knowingly and intentionally to possess an altered or forged
74 prescription or written order for a controlled substance.

75 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

76 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

77 (ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16
78 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree
79 felony; or

80 (iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of
81 the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A
82 misdemeanor.

83 (c) Upon a person's second or subsequent conviction of possession of any controlled
84 substance [by a person] in violation of this Subsection (2) or upon a person's conviction of a
85 violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), that person
86 shall be sentenced to a one degree greater penalty than provided in this Subsection (2).

87 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled
88 substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one ounce of
89 marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person is guilty

90 of a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a
91 third degree felony.

92 (e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior
93 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or
94 any public jail or other place of confinement shall be sentenced to a penalty one degree greater
95 than provided in Subsection (2)(b), and if the conviction is with respect to controlled
96 substances as listed in:

97 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an
98 indeterminate term as provided by law, and:

99 (A) the court shall additionally sentence the person convicted to a term of one year to
100 run consecutively and not concurrently; and

101 (B) the court may additionally sentence the person convicted for an indeterminate term
102 not to exceed five years to run consecutively and not concurrently; and

103 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an
104 indeterminate term as provided by law, and the court shall additionally sentence the person
105 convicted to a term of six months to run consecutively and not concurrently.

106 (f) Any person convicted of violating Subsection (2)(a)(ii) or (2)(a)(iii) is:

107 (i) on a first conviction, guilty of a class B misdemeanor;

108 (ii) on a second conviction, guilty of a class A misdemeanor; and

109 (iii) on a third or subsequent conviction, guilty of a third degree felony.

110 (g) A person is subject to the penalties under Subsection (4)(c) who, in an offense not
111 amounting to a violation of Section 76-5-207:

112 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in his body any
113 measurable amount of a controlled substance; and

114 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,
115 causing serious bodily injury as defined in Section 76-1-601 or the death of another.

116 (3) Prohibited acts C -- Penalties:

117 (a) It is unlawful for any person knowingly and intentionally:

118 (i) to use in the course of the manufacture or distribution of a controlled substance a
119 license number which is fictitious, revoked, suspended, or issued to another person or, for the
120 purpose of obtaining a controlled substance, to assume the title of, or represent himself to be, a

121 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
122 person;

123 (ii) to acquire or obtain possession of, to procure or attempt to procure the
124 administration of, to obtain a prescription for, to prescribe or dispense to any person known to
125 be attempting to acquire or obtain possession of, or to procure the administration of any
126 controlled substance by misrepresentation or failure by the person to disclose his receiving any
127 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a
128 prescription or written order for a controlled substance, or the use of a false name or address;

129 (iii) to make any false or forged prescription or written order for a controlled substance,
130 or to utter the same, or to alter any prescription or written order issued or written under the
131 terms of this chapter; or

132 (iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed
133 to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or
134 device of another or any likeness of any of the foregoing upon any drug or container or labeling
135 so as to render any drug a counterfeit controlled substance.

136 (b) Any person convicted of violating Subsection (3)(a) is guilty of a third degree
137 felony.

138 (4) Prohibited acts D -- Penalties:

139 (a) Notwithstanding other provisions of this section, a person not authorized under this
140 chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a,
141 Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances
142 Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if
143 the trier of fact finds the act is committed:

144 (i) in a public or private elementary or secondary school or on the grounds of any of
145 those schools;

146 (ii) in a public or private vocational school or postsecondary institution or on the
147 grounds of any of those schools or institutions;

148 (iii) in those portions of any building, park, stadium, or other structure or grounds
149 which are, at the time of the act, being used for an activity sponsored by or through a school or
150 institution under Subsections (4)(a)(i) and (ii);

151 (iv) in or on the grounds of a preschool or child-care facility;

- 152 (v) in a public park, amusement park, arcade, or recreation center;
- 153 (vi) in or on the grounds of a house of worship as defined in Section 76-10-501;
- 154 (vii) in a shopping mall, sports facility, stadium, arena, theater, movie house,
- 155 playhouse, or parking lot or structure adjacent thereto;
- 156 (viii) in a public parking lot or structure;
- 157 (ix) within 1,000 feet of any structure, facility, or grounds included in Subsections
- 158 (4)(a)(i) through (viii);
- 159 (x) in the immediate presence of a person younger than 18 years of age, regardless of
- 160 where the act occurs; or
- 161 (xi) for the purpose of facilitating, arranging, or causing the transport, delivery, or
- 162 distribution of a substance in violation of this section to an inmate or on the grounds of any
- 163 correctional facility as defined in Section 76-8-311.3.

164 (b) A person convicted under this Subsection (4) is guilty of a first degree felony and
165 shall be imprisoned for a term of not less than five years if the penalty that would otherwise
166 have been established but for this subsection would have been a first degree felony. Imposition
167 or execution of the sentence may not be suspended, and the person is not eligible for probation.

168 (c) If the classification that would otherwise have been established would have been
169 less than a first degree felony but for this Subsection (4), a person convicted under Subsection
170 (2)(g) or this Subsection (4) is guilty of one degree more than the maximum penalty prescribed
171 for that offense.

172 (d) (i) If the violation is of Subsection (4)(a)(xi):

173 (A) the person may be sentenced to imprisonment for an indeterminate term as
174 provided by law, and the court shall additionally sentence the person convicted for a term of
175 one year to run consecutively and not concurrently; and

176 (B) the court may additionally sentence the person convicted for an indeterminate term
177 not to exceed five years to run consecutively and not concurrently; and

178 (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with
179 the mental state required for the commission of an offense, directly or indirectly solicits,
180 requests, commands, coerces, encourages, or intentionally aids another person to commit a
181 violation of Subsection (4)(a)(xi).

182 (e) It is not a defense to a prosecution under this Subsection (4) that the actor

183 mistakenly believed the individual to be 18 years of age or older at the time of the offense or
184 was unaware of the individual's true age; nor that the actor mistakenly believed that the
185 location where the act occurred was not as described in Subsection (4)(a) or was unaware that
186 the location where the act occurred was as described in Subsection (4)(a).

187 (5) Any violation of this chapter for which no penalty is specified is a class B
188 misdemeanor.

189 (6) (a) Any penalty imposed for violation of this section is in addition to, and not in
190 lieu of, any civil or administrative penalty or sanction authorized by law.

191 (b) Where violation of this chapter violates a federal law or the law of another state,
192 conviction or acquittal under federal law or the law of another state for the same act is a bar to
193 prosecution in this state.

194 (7) In any prosecution for a violation of this chapter, evidence or proof which shows a
195 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled
196 substance or substances, is prima facie evidence that the person or persons did so with
197 knowledge of the character of the substance or substances.

198 (8) This section does not prohibit a veterinarian, in good faith and in the course of his
199 professional practice only and not for humans, from prescribing, dispensing, or administering
200 controlled substances or from causing the substances to be administered by an assistant or
201 orderly under his direction and supervision.

202 (9) Civil or criminal liability may not be imposed under this section on:

203 (a) any person registered under the Controlled Substances Act who manufactures,
204 distributes, or possesses an imitation controlled substance for use as a placebo or
205 investigational new drug by a registered practitioner in the ordinary course of professional
206 practice or research; or

207 (b) any law enforcement officer acting in the course and legitimate scope of his
208 employment.

209 (10) If any provision of this chapter, or the application of any provision to any person
210 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the
211 invalid provision or application.

Legislative Review Note

as of 12-28-04 2:51 PM

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

State Impact

It is estimated that ongoing General Fund appropriations to the Department of Corrections of \$193,000 for FY 2006 and \$510,000 for FY 2007 are required to implement the provisions of this bill. The funding requirement will continue to grow through the fourth year.

| | <u>FY 2006</u> <u>Approp.</u> | <u>FY 2007</u> <u>Approp.</u> | <u>FY 2006</u> <u>Revenue</u> | <u>FY 2007</u> <u>Revenue</u> |
|--------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| General Fund | \$193,200 | \$510,600 | \$0 | \$0 |
| TOTAL | \$193,200 | \$510,600 | \$0 | \$0 |

Individual and Business Impact

Persons convicted of crimes under the provisions of this bill could spend more time incarcerated reducing their ability to generate personal income.

Office of the Legislative Fiscal Analyst