

1                                   **AMENDMENT REGARDING CONTROLLED**

2   **SUBSTANCES**

3   2005 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Curtis Oda**

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7   **LONG TITLE**

8   **General Description:**

9                   This bill amends the Controlled Substances Act to clarify the scope of the exception  
10 established for the ceremonial use of peyote by Indians.

11 **Highlighted Provisions:**

12                   This bill:

13                   ▶ provides definitions in the Controlled Substances Act of "Indian," "Indian religion,"  
14 and "Indian tribe" in order to provide for the determination of individuals who are  
15 members of Indian tribes regarding the peyote use exemption; and

16                   ▶ provides a reference to the exemption created by the definitions under the listing of  
17 Schedule I controlled substances.

18 **Monies Appropriated in this Bill:**

19                   None

20 **Other Special Clauses:**

21                   None

22 **Utah Code Sections Affected:**

23 AMENDS:

24                   **58-37-2**, as last amended by Chapter 241, Laws of Utah 2004

25                   **58-37-4**, as last amended by Chapter 33, Laws of Utah 2003

26                   **58-37-8**, as last amended by Chapter 36, Laws of Utah 2004



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

29 Section 1. Section **58-37-2** is amended to read:

30 **58-37-2. Definitions.**

31 (1) As used in this chapter:

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

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

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

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

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

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

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

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

57 (A) distilled spirits, wine, or malt beverages, as those terms are defined or used in Title  
58 32A, regarding tobacco or food;

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

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

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

71 (A) which has a stimulant, depressant, or hallucinogenic effect on the central nervous  
72 system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central  
73 nervous system of controlled substances in the schedules set forth in this subsection; or

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

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

79 (A) a controlled substance currently scheduled in Schedules I through V of Section  
80 58-37-4;

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

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

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

87 (E) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or  
88 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,  
89 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold,

90 transferred, or furnished as an over-the-counter medication without prescription; or

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

95 (g) "Conviction" means a determination of guilt by verdict, whether jury or bench, or  
96 plea, whether guilty or no contest, for any offense proscribed by Title 58, Chapters 37, 37a,  
97 37b, 37c, or 37d, or for any offense under the laws of the United States and any other state  
98 which, if committed in this state, would be an offense under Title 58, Chapters 37, 37a, 37b,  
99 37c, or 37d.

100 (h) "Counterfeit substance" means:

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

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

107 (i) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a  
108 controlled substance or a listed chemical, whether or not an agency relationship exists.

109 (j) "Department" means the Department of Commerce.

110 (k) "Depressant or stimulant substance" means:

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

113 (ii) a drug which contains any quantity of:

114 (A) amphetamine or any of its optical isomers;

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

116 (C) any substance which the Secretary of Health and Human Services or the Attorney

117 General of the United States after investigation has found and by regulation designated

118 habit-forming because of its stimulant effect on the central nervous system; or

119 (iii) lysergic acid diethylamide; or

120 (iv) any drug which contains any quantity of a substance which the Secretary of Health

121 and Human Services or the Attorney General of the United States after investigation has found  
122 to have, and by regulation designated as having, a potential for abuse because of its depressant  
123 or stimulant effect on the central nervous system or its hallucinogenic effect.

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

128 (m) "Dispenser" means a pharmacist who dispenses a controlled substance.

129 (n) "Distribute" means to deliver other than by administering or dispensing a controlled  
130 substance or a listed chemical.

131 (o) "Distributor" means a person who distributes controlled substances.

132 (p) "Division" means the Division of Occupational and Professional Licensing created  
133 in Section 58-1-103.

134 (q) "Drug" means:

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

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

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

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

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

148 (s) "Food" means:

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

151 (ii) foods for special dietary uses as exist by reason of a physical, physiological,

152 pathological, or other condition including but not limited to the conditions of disease,  
153 convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and  
154 overweight; uses for supplying a particular dietary need which exist by reason of age including  
155 but not limited to the ages of infancy and childbirth, and also uses for supplementing and for  
156 fortifying the ordinary or unusual diet with any vitamin, mineral, or other dietary property for  
157 use of a food. Any particular use of a food is a special dietary use regardless of the nutritional  
158 purposes.

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

165 (u) "Indian" means a member of an Indian tribe.

166 (v) "Indian religion" means any religion:

167 (i) the origin and interpretation of which is from within a traditional Indian culture or  
168 community; and

169 (ii) which is practiced by Indians.

170 (w) "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or  
171 community of Indians, including any Alaska Native village, which is recognized as eligible for  
172 the special programs and services provided by the United States to Indians because of their  
173 status as Indians.

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

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

181 [~~(w)~~] (z) "Marijuana" means all species of the genus cannabis and all parts of the  
182 genus, whether growing or not; the seeds of it; the resin extracted from any part of the plant;

183 and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its  
184 seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from  
185 the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt,  
186 derivative, mixture, or preparation of the mature stalks, except the resin extracted from them,  
187 fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any  
188 synthetic equivalents of the substances contained in the plant cannabis sativa or any other  
189 species of the genus cannabis which are chemically indistinguishable and pharmacologically  
190 active are also included.

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

193 ~~[(y)]~~ (bb) "Narcotic drug" means any of the following, whether produced directly or  
194 indirectly by extraction from substances of vegetable origin, or independently by means of  
195 chemical synthesis, or by a combination of extraction and chemical synthesis:

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

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

199 (iii) opium poppy and poppy straw; or

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

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

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

210 ~~[(bb)]~~ (ee) "Opium poppy" means the plant of the species papaver somniferum L.,  
211 except the seeds of the plant.

212 ~~[(cc)]~~ (ff) "Person" means any corporation, association, partnership, trust, other  
213 institution or entity or one or more individuals.

214 [~~(dd)~~] (gg) "Poppy straw" means all parts, except the seeds, of the opium poppy, after  
215 mowing.

216 [~~(ee)~~] (hh) "Possession" or "use" means the joint or individual ownership, control,  
217 occupancy, holding, retaining, belonging, maintaining, or the application, inhalation,  
218 swallowing, injection, or consumption, as distinguished from distribution, of controlled  
219 substances and includes individual, joint, or group possession or use of controlled substances.  
220 For a person to be a possessor or user of a controlled substance, it is not required that he be  
221 shown to have individually possessed, used, or controlled the substance, but it is sufficient if it  
222 is shown that the person jointly participated with one or more persons in the use, possession, or  
223 control of any substances with knowledge that the activity was occurring, or the controlled  
224 substance is found in a place or under circumstances indicating that the person had the ability  
225 and the intent to exercise dominion and control over it.

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

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

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

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

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

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

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



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

247 Section 2. Section **58-37-4** is amended to read:

248 **58-37-4. Schedules of controlled substances -- Schedules I through V -- Findings**  
249 **required -- Specific substances included in schedules.**

250 (1) There are established five schedules of controlled substances known as Schedules I,  
251 II, III, IV, and V which shall consist of substances listed in this section.

252 (2) Schedules I, II, III, IV, and V consist of the following drugs or other substances by  
253 the official name, common or usual name, chemical name, or brand name designated:

254 (a) Schedule I:

255 (i) Unless specifically excepted or unless listed in another schedule, any of the  
256 following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and  
257 ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific  
258 chemical designation:

259 (A) Acetyl-alpha-methylfentanyl

260 (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

261 (B) Acetylmethadol;

262 (C) Allylprodine;

263 (D) Alphacetylmethadol, except levo-alphacetylmethadol also known as  
264 levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

265 (E) Alphameprodine;

266 (F) Alphamethadol;

267 (G) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]  
268 propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N- propanilido) piperidine);

269 (H) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-  
270 piperidinyl]-N-phenylpropanamide);

271 (I) Benzethidine;

272 (J) Betacetylmethadol;

273 (K) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-  
274 piperidinyl]-N-phenylpropanamide);

275 (L) Beta-hydroxy-3-methylfentanyl, other name: N-[1-(2-hydroxy-2-

- 276 phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;
- 277 (M) Betameprodine;
- 278 (N) Betamethadol;
- 279 (O) Betaprodine;
- 280 (P) Clonitazene;
- 281 (Q) Dextromoramide;
- 282 (R) Diampromide;
- 283 (S) Diethylthiambutene;
- 284 (T) Difenoxin;
- 285 (U) Dimenoxadol;
- 286 (V) Dimepheptanol;
- 287 (W) Dimethylthiambutene;
- 288 (X) Dioxaphetyl butyrate;
- 289 (Y) Dipipanone;
- 290 (Z) Ethylmethylthiambutene;
- 291 (AA) Etonitazene;
- 292 (BB) Etoxidine;
- 293 (CC) Furethidine;
- 294 (DD) Hydroxypethidine;
- 295 (EE) Ketobemidone;
- 296 (FF) Levomoramide;
- 297 (GG) Levophenacetylmorphan;
- 298 (HH) Morpheridine;
- 299 (II) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 300 (JJ) Noracymethadol;
- 301 (KK) Norlevorphanol;
- 302 (LL) Normethadone;
- 303 (MM) Norpipanone;
- 304 (NN) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4- piperidinyl]
- 305 propanamide;
- 306 (OO) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);

- 307 (PP) Phenadoxone;
- 308 (QQ) Phenampromide;
- 309 (RR) Phenomorphan;
- 310 (SS) Phenoperidine;
- 311 (TT) Piritramide;
- 312 (UU) Proheptazine;
- 313 (VV) Properidine;
- 314 (WW) Propiram;
- 315 (XX) Racemoramide;
- 316 (YY) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]- propanamide);
- 317 (ZZ) Tilidine;
- 318 (AAA) Trimeperidine;
- 319 (BBB) 3-methylfentanyl, including the optical and geometric isomers
- 320 (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]- N-phenylpropanamide); and
- 321 (CCC) 3-methylthiofentanyl
- 322 (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
- 323 (ii) Unless specifically excepted or unless listed in another schedule, any of the
- 324 following opium derivatives, their salts, isomers, and salts of isomers when the existence of the
- 325 salts, isomers, and salts of isomers is possible within the specific chemical designation:
- 326 (A) Acetorphine;
- 327 (B) Acetyldihydrocodeine;
- 328 (C) Benzylmorphine;
- 329 (D) Codeine methylbromide;
- 330 (E) Codeine-N-Oxide;
- 331 (F) Cyprenorphine;
- 332 (G) Desomorphine;
- 333 (H) Dihydromorphine;
- 334 (I) Drotebanol;
- 335 (J) Etorphine (except hydrochloride salt);
- 336 (K) Heroin;
- 337 (L) Hydromorphanol;

- 338 (M) Methyldesorphine;  
339 (N) Methylhydromorphine;  
340 (O) Morphine methylbromide;  
341 (P) Morphine methylsulfonate;  
342 (Q) Morphine-N-Oxide;  
343 (R) Myrophine;  
344 (S) Nicocodeine;  
345 (T) Nicomorphine;  
346 (U) Normorphine;  
347 (V) Pholcodine; and  
348 (W) Thebacon.
- 349 (iii) Unless specifically excepted, including the exemption in Subsection 58-37-8(10),  
350 or unless listed in another schedule, any material, compound, mixture, or preparation which  
351 contains any quantity of the following hallucinogenic substances, or which contains any of  
352 their salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of  
353 isomers is possible within the specific chemical designation; as used in this Subsection (2)(iii)  
354 only, "isomer" includes the optical, position, and geometric isomers:
- 355 (A) Alpha-ethyltryptamine, some trade or other names: etryptamine; Monase;  
356  $\alpha$ -ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole;  $\alpha$ -ET; and AET;  
357 (B) 4-bromo-2,5-dimethoxy-amphetamine, some trade or other names:  
358 4-bromo-2,5-dimethoxy- $\alpha$ -methylphenethylamine; 4-bromo-2,5-DMA;  
359 (C) 4-bromo-2,5-dimethoxypenethylamine, some trade or other names:  
360 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;  
361 (D) 2,5-dimethoxyamphetamine, some trade or other names:  
362 2,5-dimethoxy- $\alpha$ -methylphenethylamine; 2,5-DMA;  
363 (E) 2,5-dimethoxy-4-ethylamphetamine, some trade or other names: DOET;  
364 (F) 4-methoxyamphetamine, some trade or other names:  
365 4-methoxy- $\alpha$ -methylphenethylamine; paramethoxyamphetamine, PMA;  
366 (G) 5-methoxy-3,4-methylenedioxyamphetamine;  
367 (H) 4-methyl-2,5-dimethoxy-amphetamine, some trade and other names:  
368 4-methyl-2,5-dimethoxy- $\alpha$ -methylphenethylamine; "DOM"; and "STP";

- 369 (I) 3,4-methylenedioxy amphetamine;
- 370 (J) 3,4-methylenedioxymethamphetamine (MDMA);
- 371 (K) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-
- 372 alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;
- 373 (L) N-hydroxy-3,4-methylenedioxyamphetamine, also known as
- 374 N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;
- 375 (M) 3,4,5-trimethoxy amphetamine;
- 376 (N) Bufotenine, some trade and other names:
- 377 3-( $\beta$ -Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,
- 378 N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;
- 379 (O) Diethyltryptamine, some trade and other names: N,N-Diethyltryptamine; DET;
- 380 (P) Dimethyltryptamine, some trade or other names: DMT;
- 381 (Q) Ibogaine, some trade and other names:
- 382 7-Ethyl-6,6 $\beta$ ,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino
- 383 [5,4-b] indole; Tabernanthe iboga;
- 384 (R) Lysergic acid diethylamide;
- 385 (S) Marijuana;
- 386 (T) Mescaline;
- 387 (U) Parahexyl, some trade or other names:
- 388 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl;
- 389 (V) Peyote, meaning all parts of the plant presently classified botanically as
- 390 *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from
- 391 any part of such plant, and every compound, manufacture, salts, derivative, mixture, or
- 392 preparation of such plant, its seeds or extracts (Interprets 21 USC 812(c), Schedule I(c) (12));
- 393 (W) N-ethyl-3-piperidyl benzilate;
- 394 (X) N-methyl-3-piperidyl benzilate;
- 395 (Y) Psilocybin;
- 396 (Z) Psilocyn;
- 397 (AA) Tetrahydrocannabinols, synthetic equivalents of the substances contained in the
- 398 plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives,
- 399 and their isomers with similar chemical structure and pharmacological activity such as the

400 following:  $\Delta$ 1 cis or trans tetrahydrocannabinol, and their optical isomers  $\Delta$ 6 cis or trans  
401 tetrahydrocannabinol, and their optical isomers  $\Delta$ 3,4 cis or trans tetrahydrocannabinol, and its  
402 optical isomers, and since nomenclature of these substances is not internationally standardized,  
403 compounds of these structures, regardless of numerical designation of atomic positions  
404 covered;

405 (BB) Ethylamine analog of phencyclidine, some trade or other names:

406 N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine,

407 N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE;

408 (CC) Pyrrolidine analog of phencyclidine, some trade or other names:

409 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

410 (DD) Thiophene analog of phencyclidine, some trade or other names:

411 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP; and

412 (EE) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, some other names: TCPy.

413 (iv) Unless specifically excepted or unless listed in another schedule, any material  
414 compound, mixture, or preparation which contains any quantity of the following substances  
415 having a depressant effect on the central nervous system, including its salts, isomers, and salts  
416 of isomers when the existence of the salts, isomers, and salts of isomers is possible within the  
417 specific chemical designation:

418 (A) Mecloqualone; and

419 (B) Methaqualone.

420 (v) Any material, compound, mixture, or preparation containing any quantity of the  
421 following substances having a stimulant effect on the central nervous system, including their  
422 salts, isomers, and salts of isomers:

423 (A) Aminorex, some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or  
424 4,5-dihydro-5-phenyl-2-oxazolamine;

425 (B) Cathinone, some trade or other names: 2-amino-1-phenyl-1-propanone,  
426 alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;

427 (C) Fenethylamine;

428 (D) Methcathinone, some other names: 2-(methylamino)-propionophenone;  
429 alpha-(methylamino)propionophenone; 2-(methylamino)-1-phenylpropan-1-one;

430 alpha-N-methylaminopropionophenone; monomethylpropion; ephedrone; N-methylcathinone;

431 methylcathinone; AL-464; AL-422; AL-463 and UR1432, its salts, optical isomers, and salts of  
432 optical isomers;

433 (E) ( $\pm$ )cis-4-methylaminorex (( $\pm$ )cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

434 (F) N-ethylamphetamine; and

435 (G) N,N-dimethylamphetamine, also known as

436 N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.

437 (vi) Any material, compound, mixture, or preparation which contains any quantity of  
438 the following substances, including their optical isomers, salts, and salts of isomers, subject to  
439 temporary emergency scheduling:

440 (A) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl); and

441 (B) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl).

442 (vii) Unless specifically excepted or unless listed in another schedule, any material,  
443 compound, mixture, or preparation which contains any quantity of gamma hydroxy butyrate  
444 (gamma hydrobutyric acid), including its salts, isomers, and salts of isomers.

445 (b) Schedule II:

446 (i) Unless specifically excepted or unless listed in another schedule, any of the  
447 following substances whether produced directly or indirectly by extraction from substances of  
448 vegetable origin, or independently by means of chemical synthesis, or by a combination of  
449 extraction and chemical synthesis:

450 (A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or  
451 opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone,  
452 and their respective salts, but including:

453 (I) Raw opium;

454 (II) Opium extracts;

455 (III) Opium fluid;

456 (IV) Powdered opium;

457 (V) Granulated opium;

458 (VI) Tincture of opium;

459 (VII) Codeine;

460 (VIII) Ethylmorphine;

461 (IX) Etorphine hydrochloride;

- 462 (X) Hydrocodone;
- 463 (XI) Hydromorphone;
- 464 (XII) Metopon;
- 465 (XIII) Morphine;
- 466 (XIV) Oxycodone;
- 467 (XV) Oxymorphone; and
- 468 (XVI) Thebaine;
- 469 (B) Any salt, compound, derivative, or preparation which is chemically equivalent or  
470 identical with any of the substances referred to in Subsection (2)(b)(i)(A), except that these  
471 substances may not include the isoquinoline alkaloids of opium;
- 472 (C) Opium poppy and poppy straw;
- 473 (D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and  
474 any salt, compound, derivative, or preparation which is chemically equivalent or identical with  
475 any of these substances, and includes cocaine and ecgonine, their salts, isomers, derivatives,  
476 and salts of isomers and derivatives, whether derived from the coca plant or synthetically  
477 produced, except the substances may not include decocainized coca leaves or extraction of coca  
478 leaves, which extractions do not contain cocaine or ecgonine; and
- 479 (E) Concentrate of poppy straw, which means the crude extract of poppy straw in either  
480 liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.
- 481 (ii) Unless specifically excepted or unless listed in another schedule, any of the  
482 following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and  
483 ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific  
484 chemical designation, except dextrophan and levopropoxyphene:
- 485 (A) Alfentanil;
- 486 (B) Alphaprodine;
- 487 (C) Anileridine;
- 488 (D) Bezitramide;
- 489 (E) Bulk dextropropoxyphene (nondosage forms);
- 490 (F) Carfentanil;
- 491 (G) Dihydrocodeine;
- 492 (H) Diphenoxylate;



- 493 (I) Fentanyl;
- 494 (J) Isomethadone;
- 495 (K) Levo-alpha-acetylmethadol, some other names: levo-alpha-acetylmethadol,  
496 levomethadyl acetate, or LAAM;
- 497 (L) Levomethorphan;
- 498 (M) Levorphanol;
- 499 (N) Metazocine;
- 500 (O) Methadone;
- 501 (P) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- 502 (Q) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic  
503 acid;
- 504 (R) Pethidine (meperidine);
- 505 (S) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- 506 (T) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- 507 (U) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- 508 (V) Phenazocine;
- 509 (W) Piminodine;
- 510 (X) Racemethorphan;
- 511 (Y) Racemorphan;
- 512 (Z) Remifentanyl; and
- 513 (AA) Sufentanyl.
- 514 (iii) Unless specifically excepted or unless listed in another schedule, any material,  
515 compound, mixture, or preparation which contains any quantity of the following substances  
516 having a stimulant effect on the central nervous system:
- 517 (A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- 518 (B) Methamphetamine, its salts, isomers, and salts of its isomers;
- 519 (C) Phenmetrazine and its salts; and
- 520 (D) Methylphenidate.
- 521 (iv) Unless specifically excepted or unless listed in another schedule, any material,  
522 compound, mixture, or preparation which contains any quantity of the following substances  
523 having a depressant effect on the central nervous system, including its salts, isomers, and salts

524 of isomers when the existence of the salts, isomers, and salts of isomers is possible within the  
525 specific chemical designation:

526 (A) Amobarbital;

527 (B) Glutethimide;

528 (C) Pentobarbital;

529 (D) Phencyclidine;

530 (E) Phencyclidine immediate precursors: 1-phenylcyclohexylamine and  
531 1-piperidinocyclohexanecarbonitrile (PCC); and

532 (F) Secobarbital.

533 (v) Unless specifically excepted or unless listed in another schedule, any material,  
534 compound, mixture, or preparation which contains any quantity of Phenylacetone.

535 Some of these substances may be known by trade or other names: phenyl-2-propanone,  
536 P2P; benzyl methyl ketone, methyl benzyl ketone.

537 (vi) Nabilone, another name for nabilone:

538 (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,  
539 6-dimethyl-9H-dibenzo[b,d]pyran-9-one.

540 (c) Schedule III:

541 (i) Unless specifically excepted or unless listed in another schedule, any material,  
542 compound, mixture, or preparation which contains any quantity of the following substances  
543 having a stimulant effect on the central nervous system, including its salts, isomers whether  
544 optical, position, or geometric, and salts of the isomers when the existence of the salts, isomers,  
545 and salts of isomers is possible within the specific chemical designation:

546 (A) Those compounds, mixtures, or preparations in dosage unit form containing any  
547 stimulant substances listed in Schedule II, which compounds, mixtures, or preparations were  
548 listed on August 25, 1971, as excepted compounds under Section 1308.32 of Title 21 of the  
549 Code of Federal Regulations, and any other drug of the quantitative composition shown in that  
550 list for those drugs or which is the same except that it contains a lesser quantity of controlled  
551 substances;

552 (B) Benzphetamine;

553 (C) Chlorphentermine;

554 (D) Clortermine; and

- 555 (E) Phendimetrazine.
- 556 (ii) Unless specifically excepted or unless listed in another schedule, any material,  
557 compound, mixture, or preparation which contains any quantity of the following substances  
558 having a depressant effect on the central nervous system:
- 559 (A) Any compound, mixture, or preparation containing amobarbital, secobarbital,  
560 pentobarbital, or any salt of any of them, and one or more other active medicinal ingredients  
561 which are not listed in any schedule;
- 562 (B) Any suppository dosage form containing amobarbital, secobarbital, or  
563 pentobarbital, or any salt of any of these drugs which is approved by the Food and Drug  
564 Administration for marketing only as a suppository;
- 565 (C) Any substance which contains any quantity of a derivative of barbituric acid or any  
566 salt of any of them;
- 567 (D) Chlorhexadol;
- 568 (E) Buprenorphine;
- 569 (F) Any drug product containing gamma hydroxybutyric acid, including its salts,  
570 isomers, and salts of isomers, for which an application is approved under the federal Food,  
571 Drug, and Cosmetic Act, Section 505;
- 572 (G) Ketamine, its salts, isomers, and salts of isomers, some other names for ketamine:  
573  $\pm$  -2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone.
- 574 (H) Lysergic acid;
- 575 (I) Lysergic acid amide;
- 576 (J) Methyprylon;
- 577 (K) Sulfondiethylmethane;
- 578 (L) Sulfonethylmethane;
- 579 (M) Sulfonmethane; and
- 580 (N) Tiletamine and zolazepam or any of their salts, some trade or other names for a  
581 tiletamine-zolazepam combination product: Telazol, some trade or other names for tiletamine:  
582 2-(ethylamino)-2-(2-thienyl)-cyclohexanone, some trade or other names for zolazepam:  
583 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one,  
584 flupyrazapon.
- 585 (iii) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a

586 U.S. Food and Drug Administration approved drug product, some other names for dronabinol:  
587 (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or  
588 (-)-delta-9-(trans)-tetrahydrocannabinol.

589 (iv) Nalorphine.

590 (v) Unless specifically excepted or unless listed in another schedule, any material,  
591 compound, mixture, or preparation containing limited quantities of any of the following  
592 narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid:

593 (A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90  
594 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of  
595 opium;

596 (B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90  
597 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized  
598 therapeutic amounts;

599 (C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more  
600 than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline  
601 alkaloid of opium;

602 (D) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more  
603 than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in  
604 recognized therapeutic amounts;

605 (E) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90  
606 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized  
607 therapeutic amounts;

608 (F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more  
609 than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in  
610 recognized therapeutic amounts;

611 (G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not  
612 more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in  
613 recognized therapeutic amounts; and

614 (H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with  
615 one or more active, non-narcotic ingredients in recognized therapeutic amounts.

616 (vi) Unless specifically excepted or unless listed in another schedule, anabolic steroids

617 including any of the following or any isomer, ester, salt, or derivative of the following that  
618 promotes muscle growth:

- 619 (A) Boldenone;
- 620 (B) Chlorotestosterone (4-chlortestosterone);
- 621 (C) Clostebol;
- 622 (D) Dehydrochlormethyltestosterone;
- 623 (E) Dihydrotestosterone (4-dihydrotestosterone);
- 624 (F) Drostanolone;
- 625 (G) Ethylestrenol;
- 626 (H) Fluoxymesterone;
- 627 (I) Formebolone (formebolone);
- 628 (J) Mesterolone;
- 629 (K) Methandienone;
- 630 (L) Methandranone;
- 631 (M) Methandriol;
- 632 (N) Methandrostenolone;
- 633 (O) Methenolone;
- 634 (P) Methyltestosterone;
- 635 (Q) Mibolerone;
- 636 (R) Nandrolone;
- 637 (S) Norethandrolone;
- 638 (T) Oxandrolone;
- 639 (U) Oxymesterone;
- 640 (V) Oxymetholone;
- 641 (W) Stanolone;
- 642 (X) Stanozolol;
- 643 (Y) Testolactone;
- 644 (Z) Testosterone; and
- 645 (AA) Trenbolone.

646 Anabolic steroids expressly intended for administration through implants to cattle or  
647 other nonhuman species, and approved by the Secretary of Health and Human Services for use,

648 may not be classified as a controlled substance.

649 (d) Schedule IV:

650 (i) Unless specifically excepted or unless listed in another schedule, any material,  
651 compound, mixture, or preparation containing not more than 1 milligram of difenoxin and not  
652 less than 25 micrograms of atropine sulfate per dosage unit, or any salts of any of them.

653 (ii) Unless specifically excepted or unless listed in another schedule, any material,  
654 compound, mixture, or preparation which contains any quantity of the following substances,  
655 including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and  
656 salts of isomers is possible within the specific chemical designation:

657 (A) Alprazolam;

658 (B) Barbitol;

659 (C) Bromazepam;

660 (D) Butorphanol;

661 (E) Camazepam;

662 (F) Chloral betaine;

663 (G) Chloral hydrate;

664 (H) Chlordiazepoxide;

665 (I) Clobazam;

666 (J) Clonazepam;

667 (K) Clorazepate;

668 (L) Clotiazepam;

669 (M) Cloxazolam;

670 (N) Delorazepam;

671 (O) Diazepam;

672 (P) Dichloralphenazone;

673 (Q) Estazolam;

674 (R) Ethchlorvynol;

675 (S) Ethinamate;

676 (T) Ethyl loflazepate;

677 (U) Fludiazepam;

678 (V) Flunitrazepam;

- 679 (W) Flurazepam;
- 680 (X) Halazepam;
- 681 (Y) Haloxazolam;
- 682 (Z) Ketazolam;
- 683 (AA) Loprazolam;
- 684 (BB) Lorazepam;
- 685 (CC) Lormetazepam;
- 686 (DD) Mebutamate;
- 687 (EE) Medazepam;
- 688 (FF) Meprobamate;
- 689 (GG) Methohexital;
- 690 (HH) Methylphenobarbital (mephobarbital);
- 691 (II) Midazolam;
- 692 (JJ) Nimetazepam;
- 693 (KK) Nitrazepam;
- 694 (LL) Nordiazepam;
- 695 (MM) Oxazepam;
- 696 (NN) Oxazolam;
- 697 (OO) Paraldehyde;
- 698 (PP) Pentazocine;
- 699 (QQ) Petrichloral;
- 700 (RR) Phenobarbital;
- 701 (SS) Pinazepam;
- 702 (TT) Prazepam;
- 703 (UU) Quazepam;
- 704 (VV) Temazepam;
- 705 (WW) Tetrazepam;
- 706 (XX) Triazolam;
- 707 (YY) Zaleplon; and
- 708 (ZZ) Zolpidem.
- 709 (iii) Any material, compound, mixture, or preparation of fenfluramine which contains

710 any quantity of the following substances, including its salts, isomers whether optical, position,  
711 or geometric, and salts of the isomers when the existence of the salts, isomers, and salts of  
712 isomers is possible.

713 (iv) Unless specifically excepted or unless listed in another schedule, any material,  
714 compound, mixture, or preparation which contains any quantity of the following substances  
715 having a stimulant effect on the central nervous system, including its salts, isomers whether  
716 optical, position, or geometric isomers, and salts of the isomers when the existence of the salts,  
717 isomers, and salts of isomers is possible within the specific chemical designation:

- 718 (A) Cathine ((+)-norpseudoephedrine);
- 719 (B) Diethylpropion;
- 720 (C) Fencamfamine;
- 721 (D) Fenproporex;
- 722 (E) Mazindol;
- 723 (F) Mefenorex;
- 724 (G) Modafinil;
- 725 (H) Pemoline, including organometallic complexes and chelates thereof;
- 726 (I) Phentermine;
- 727 (J) Pipradrol;
- 728 (K) Sibutramine; and
- 729 (L) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

730 (v) Unless specifically excepted or unless listed in another schedule, any material,  
731 compound, mixture, or preparation which contains any quantity of dextropropoxyphene  
732 (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane), including its salts.

733 (e) Schedule V: Any compound, mixture, or preparation containing any of the  
734 following limited quantities of narcotic drugs, or their salts calculated as the free anhydrous  
735 base or alkaloid, which includes one or more non-narcotic active medicinal ingredients in  
736 sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal  
737 qualities other than those possessed by the narcotic drug alone:

- 738 (i) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
- 739 (ii) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100  
740 grams;



- 741 (iii) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100  
742 grams;
- 743 (iv) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of  
744 atropine sulfate per dosage unit;
- 745 (v) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
- 746 (vi) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of  
747 atropine sulfate per dosage unit; and
- 748 (vii) unless specifically exempted or excluded or unless listed in another schedule, any  
749 material, compound, mixture, or preparation which contains Pyrovalerone having a stimulant  
750 effect on the central nervous system, including its salts, isomers, and salts of isomers.

751 Section 3. Section **58-37-8** is amended to read:

752 **58-37-8. Prohibited acts -- Penalties.**

753 (1) Prohibited acts A -- Penalties:

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

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

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

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

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

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

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

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

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

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

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

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

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

788 (2) Prohibited acts B -- Penalties:

789 (a) It is unlawful:

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

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

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

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

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

802 (ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16

803 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree  
804 felony; or

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

808 (c) Upon a second or subsequent conviction of possession of any controlled substance  
809 by a person, that person shall be sentenced to a one degree greater penalty than provided in this  
810 Subsection (2).

811 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled  
812 substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one ounce of  
813 marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person is guilty  
814 of a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a  
815 third degree felony.

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

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

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

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

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

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

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

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

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

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

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

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

840 (3) Prohibited acts C -- Penalties:

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

842 (i) to use in the course of the manufacture or distribution of a controlled substance a  
843 license number which is fictitious, revoked, suspended, or issued to another person or, for the  
844 purpose of obtaining a controlled substance, to assume the title of, or represent himself to be, a  
845 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized  
846 person;

847 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
848 administration of, to obtain a prescription for, to prescribe or dispense to any person known to  
849 be attempting to acquire or obtain possession of, or to procure the administration of any  
850 controlled substance by misrepresentation or failure by the person to disclose his receiving any  
851 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
852 prescription or written order for a controlled substance, or the use of a false name or address;

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

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

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

862 (4) Prohibited acts D -- Penalties:

863 (a) Notwithstanding other provisions of this section, a person not authorized under this  
864 chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a,

865 Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances  
866 Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if  
867 the trier of fact finds the act is committed:

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

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

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

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

876 (v) in a public park, amusement park, arcade, or recreation center;

877 (vi) in or on the grounds of a house of worship as defined in Section 76-10-501;

878 (vii) in a shopping mall, sports facility, stadium, arena, theater, movie house,  
879 playhouse, or parking lot or structure adjacent thereto;

880 (viii) in a public parking lot or structure;

881 (ix) within 1,000 feet of any structure, facility, or grounds included in Subsections  
882 (4)(a)(i) through (viii);

883 (x) in the immediate presence of a person younger than 18 years of age, regardless of  
884 where the act occurs; or

885 (xi) for the purpose of facilitating, arranging, or causing the transport, delivery, or  
886 distribution of a substance in violation of this section to an inmate or on the grounds of any  
887 correctional facility as defined in Section 76-8-311.3.

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

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

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

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

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

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

906 (e) It is not a defense to a prosecution under this Subsection (4) that the actor  
907 mistakenly believed the individual to be 18 years of age or older at the time of the offense or  
908 was unaware of the individual's true age; nor that the actor mistakenly believed that the  
909 location where the act occurred was not as described in Subsection (4)(a) or was unaware that  
910 the location where the act occurred was as described in Subsection (4)(a).

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

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

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

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

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

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

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

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

933 (10) (a) It is an affirmative defense to a charge of violating Subsection  
934 58-37-4(2)(a)(iii)(V) that the peyote is used, possessed, or transported by an Indian, as defined  
935 by Subsection 58-37-2(1)(u), for bona fide traditional ceremonial purposes in connection with  
936 the practice of a traditional Indian religion, as defined by Subsection 58-37-2(1)(v).

937 (b) (i) The defendant shall provide written notice of intent to claim an affirmative  
938 defense under this Subsection (10) as soon as practicable, but not later than ten days prior to  
939 trial.

940 (ii) The court may waive the notice requirement in the interest of justice for good cause  
941 shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

942 (c) The notice shall include the specific claims of the affirmative defense.

943 (d) The defendant shall establish the affirmative defense under this Subsection (10) by  
944 a preponderance of the evidence. If the defense is established, it is a complete defense to the  
945 charges.

946 [~~10~~] (11) If any provision of this chapter, or the application of any provision to any  
947 person or circumstances, is held invalid, the remainder of this chapter shall be given effect  
948 without the invalid provision or application.

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**Legislative Review Note**

as of 2-1-05 3:17 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**

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**Fiscal Note**  
**Bill Number HB0306**

**Amendment Regarding Controlled Substances**

*10-Feb-05*

*7:47 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**