

CONTROLLED SUBSTANCE AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: Gregory S. Bell

Cosponsors: Gregory H. Hughes Paul Ray

LONG TITLE

General Description:

This bill amends the Controlled Substances Act to clarify the scope of the exception established for the ceremonial use of peyote by Indians in traditional Indian religion and to provide an affirmative defense.

Highlighted Provisions:

This bill:

- ▶ provides definitions in the Controlled Substances Act of "Indian," "Indian religion," and "Indian tribe" in order to provide for the determination of individuals who are members of Indian tribes regarding the peyote use exemption;
- ▶ provides an affirmative defense against a charge for possession of peyote if used by an Indian in an Indian religious ceremony, as these terms are defined in this bill; and
- ▶ provides related qualifying language regarding driving with any measurable controlled substance in the body.

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 and last amended by Chapter 283, Laws of Utah 2005

30 58-37-2, as last amended by Chapter 283, Laws of Utah 2005

31 58-37-4, as last amended by Chapter 33, Laws of Utah 2003

32 58-37-8, as last amended by Chapter 30, Laws of Utah 2005

33

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

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

36 **41-6a-517. Definitions -- Driving with any measurable controlled substance in the**
37 **body -- Penalties -- Arrest without warrant.**

38 (1) As used in this section:

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

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

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

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

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

46 (3) It is an affirmative defense to prosecution under this section that the controlled
47 substance was:

48 (a) involuntarily ingested by the accused [or];

49 (b) prescribed by a practitioner for use by the accused[.]; or

50 (c) otherwise legally ingested.

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

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

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

58 committed by the person.

59 (6) The Driver License Division shall:

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

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

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

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

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

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

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

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

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

77 **58-37-2. Definitions.**

78 (1) As used in this chapter:

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

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

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

85 (b) "Agent" means an authorized person who acts on behalf of or at the direction of a

86 manufacturer, distributor, or practitioner but does not include a motor carrier, public
87 warehouseman, or employee of any of them.

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

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

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

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

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

107 (A) distilled spirits, wine, or malt beverages, as those terms are defined or used in Title
108 32A, Alcoholic Beverage Control Act, regarding tobacco or food;

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

113 (C) dietary supplements, vitamins, minerals, herbs, or other similar substances

114 including concentrates or extracts, which are not otherwise regulated by law, which may
115 contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules
116 adopted pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

121 (A) which has a stimulant, depressant, or hallucinogenic effect on the central nervous
122 system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central
123 nervous system of controlled substances in the schedules set forth in Subsection (1)(f); or

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

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

129 (A) a controlled substance currently scheduled in Schedules I through V of Section
130 58-37-4;

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

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

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

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

141 (F) dietary supplements, vitamins, minerals, herbs, or other similar substances

142 including concentrates or extracts, which are not otherwise regulated by law, which may
143 contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules
144 adopted pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

145 (h) "Conviction" means a determination of guilt by verdict, whether jury or bench, or
146 plea, whether guilty or no contest, for any offense proscribed by Title 58, Chapters 37, 37a,
147 37b, 37c, or 37d, or for any offense under the laws of the United States and any other state
148 which, if committed in this state, would be an offense under Title 58, Chapters 37, 37a, 37b,
149 37c, or 37d.

150 (i) "Counterfeit substance" means:

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

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

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

159 (k) "Department" means the Department of Commerce.

160 (l) "Depressant or stimulant substance" means:

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

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

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

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

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

169 (iii) lysergic acid diethylamide; or

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

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

178 (n) "Dispenser" means a pharmacist who dispenses a controlled substance.

179 (o) "Distribute" means to deliver other than by administering or dispensing a controlled
180 substance or a listed chemical.

181 (p) "Distributor" means a person who distributes controlled substances.

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

184 (r) "Drug" means:

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

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

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

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

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

198 (t) "Food" means:

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

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

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

215 (v) "Indian" means a member of an Indian tribe.

216 (w) "Indian religion" means any religion:

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

219 (ii) which is practiced by Indians.

220 (x) "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or
221 community of Indians, including any Alaska Native village, which is legally recognized as
222 eligible for and is consistent with the special programs, services, and entitlements provided by
223 the United States to Indians because of their status as Indians.

224 [(+)] (y) "Manufacture" means the production, preparation, propagation, compounding,
225 or processing of a controlled substance, either directly or indirectly by extraction from

226 substances of natural origin, or independently by means of chemical synthesis or by a
227 combination of extraction and chemical synthesis.

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

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

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

243 ~~[(z)]~~ (cc) "Narcotic drug" means any of the following, whether produced directly or
244 indirectly by extraction from substances of vegetable origin, or independently by means of
245 chemical synthesis, or by a combination of extraction and chemical synthesis:

- 246 (i) opium, coca leaves, and opiates;
- 247 (ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or
248 opiates;
- 249 (iii) opium poppy and poppy straw; or
- 250 (iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the
251 substance, which is chemically identical with any of the substances referred to in Subsection
252 (1)~~[(z)]~~(cc)(i), (ii), or (iii), except narcotic drug does not include decocainized coca leaves or
253 extracts of coca leaves which do not contain cocaine or ecgonine.

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

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

260 [~~(cc)~~] (ff) "Opium poppy" means the plant of the species *papaver somniferum* L.,
261 except the seeds of the plant.

262 [~~(dd)~~] (gg) "Person" means any corporation, association, partnership, trust, other
263 institution or entity or one or more individuals.

264 [~~(ee)~~] (hh) "Poppy straw" means all parts, except the seeds, of the opium poppy, after
265 mowing.

266 [~~(ff)~~] (ii) "Possession" or "use" means the joint or individual ownership, control,
267 occupancy, holding, retaining, belonging, maintaining, or the application, inhalation,
268 swallowing, injection, or consumption, as distinguished from distribution, of controlled
269 substances and includes individual, joint, or group possession or use of controlled substances.
270 For a person to be a possessor or user of a controlled substance, it is not required that he be
271 shown to have individually possessed, used, or controlled the substance, but it is sufficient if it
272 is shown that the person jointly participated with one or more persons in the use, possession, or
273 control of any substances with knowledge that the activity was occurring, or the controlled
274 substance is found in a place or under circumstances indicating that the person had the ability
275 and the intent to exercise dominion and control over it.

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

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

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

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

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

291 ~~[(H)]~~ (oo) "State" means the state of Utah.

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

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

297 Section 3. Section **58-37-4** is amended to read:

298 **58-37-4. Schedules of controlled substances -- Schedules I through V -- Findings**
299 **required -- Specific substances included in schedules.**

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

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

304 (a) Schedule I:

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

309 (A) Acetyl-alpha-methylfentanyl

- 310 (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- 311 (B) Acetylmethadol;
- 312 (C) Allylprodine;
- 313 (D) Alphacetylmethadol, except levo-alphacetylmethadol also known as
- 314 levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;
- 315 (E) Alphameprodine;
- 316 (F) Alphamethadol;
- 317 (G) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]
- 318 propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- 319 (H) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-
- 320 piperidinyl]-N-phenylpropanamide);
- 321 (I) Benzethidine;
- 322 (J) Betacetylmethadol;
- 323 (K) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-
- 324 piperidinyl]-N-phenylpropanamide);
- 325 (L) Beta-hydroxy-3-methylfentanyl, other name: N-[1-(2-hydroxy-2-
- 326 phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;
- 327 (M) Betameprodine;
- 328 (N) Betamethadol;
- 329 (O) Betaprodine;
- 330 (P) Clonitazene;
- 331 (Q) Dextromoramide;
- 332 (R) Diampromide;
- 333 (S) Diethylthiambutene;
- 334 (T) Difenoxin;
- 335 (U) Dimenoxadol;
- 336 (V) Dimepheptanol;
- 337 (W) Dimethylthiambutene;

- 338 (X) Dioxaphetyl butyrate;
- 339 (Y) Dipipanone;
- 340 (Z) Ethylmethylthiambutene;
- 341 (AA) Etonitazene;
- 342 (BB) Etoxeridine;
- 343 (CC) Furethidine;
- 344 (DD) Hydroxypethidine;
- 345 (EE) Ketobemidone;
- 346 (FF) Levomoramide;
- 347 (GG) Levophenacymorphan;
- 348 (HH) Morpheridine;
- 349 (II) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 350 (JJ) Noracymethadol;
- 351 (KK) Norlevorphanol;
- 352 (LL) Normethadone;
- 353 (MM) Norpipanone;
- 354 (NN) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4- piperidiny]
- 355 propanamide;
- 356 (OO) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- 357 (PP) Phenadoxone;
- 358 (QQ) Phenampromide;
- 359 (RR) Phenomorphan;
- 360 (SS) Phenoperidine;
- 361 (TT) Piritramide;
- 362 (UU) Proheptazine;
- 363 (VV) Properidine;
- 364 (WW) Propiram;
- 365 (XX) Racemoramide;

- 366 (YY) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]- propanamide;
367 (ZZ) Tilidine;
368 (AAA) Trimeperidine;
369 (BBB) 3-methylfentanyl, including the optical and geometric isomers
370 (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]- N-phenylpropanamide); and
371 (CCC) 3-methylthiofentanyl
372 (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
- 373 (ii) Unless specifically excepted or unless listed in another schedule, any of the
374 following opium derivatives, their salts, isomers, and salts of isomers when the existence of the
375 salts, isomers, and salts of isomers is possible within the specific chemical designation:
- 376 (A) Acetorphine;
377 (B) Acetyldihydrocodeine;
378 (C) Benzylmorphine;
379 (D) Codeine methylbromide;
380 (E) Codeine-N-Oxide;
381 (F) Cyprenorphine;
382 (G) Desomorphine;
383 (H) Dihydromorphine;
384 (I) Drotebanol;
385 (J) Etorphine (except hydrochloride salt);
386 (K) Heroin;
387 (L) Hydromorphinol;
388 (M) Methyldesorphine;
389 (N) Methylhydromorphine;
390 (O) Morphine methylbromide;
391 (P) Morphine methylsulfonate;
392 (Q) Morphine-N-Oxide;
393 (R) Myrophine;

- 394 (S) Nicocodeine;
- 395 (T) Nicomorphine;
- 396 (U) Normorphine;
- 397 (V) Pholcodine; and
- 398 (W) Thebacon.
- 399 (iii) Unless specifically excepted or unless listed in another schedule, any material,
- 400 compound, mixture, or preparation which contains any quantity of the following hallucinogenic
- 401 substances, or which contains any of their salts, isomers, and salts of isomers when the
- 402 existence of the salts, isomers, and salts of isomers is possible within the specific chemical
- 403 designation; as used in this Subsection (2)(iii) only, "isomer" includes the optical, position, and
- 404 geometric isomers:
- 405 (A) Alpha-ethyltryptamine, some trade or other names: etryptamine; Monase;
- 406 α -ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; α -ET; and AET;
- 407 (B) 4-bromo-2,5-dimethoxy-amphetamine, some trade or other names:
- 408 4-bromo-2,5-dimethoxy- α -methylphenethylamine; 4-bromo-2,5-DMA;
- 409 (C) 4-bromo-2,5-dimethoxypenethylamine, some trade or other names:
- 410 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;
- 411 (D) 2,5-dimethoxyamphetamine, some trade or other names:
- 412 2,5-dimethoxy- α -methylphenethylamine; 2,5-DMA;
- 413 (E) 2,5-dimethoxy-4-ethylamphetamine, some trade or other names: DOET;
- 414 (F) 4-methoxyamphetamine, some trade or other names:
- 415 4-methoxy- α -methylphenethylamine; paramethoxyamphetamine, PMA;
- 416 (G) 5-methoxy-3,4-methylenedioxyamphetamine;
- 417 (H) 4-methyl-2,5-dimethoxy-amphetamine, some trade and other names:
- 418 4-methyl-2,5-dimethoxy- α -methylphenethylamine; "DOM"; and "STP";
- 419 (I) 3,4-methylenedioxy amphetamine;
- 420 (J) 3,4-methylenedioxymethamphetamine (MDMA);
- 421 (K) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-

- 422 alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;
- 423 (L) N-hydroxy-3,4-methylenedioxyamphetamine, also known as
- 424 N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;
- 425 (M) 3,4,5-trimethoxy amphetamine;
- 426 (N) Bufotenine, some trade and other names:
- 427 3-(β -Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,
- 428 N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;
- 429 (O) Diethyltryptamine, some trade and other names: N,N-Diethyltryptamine; DET;
- 430 (P) Dimethyltryptamine, some trade or other names: DMT;
- 431 (Q) Ibogaine, some trade and other names:
- 432 7-Ethyl-6,6 β ,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino
- 433 [5,4-b] indole; Tabernanthe iboga;
- 434 (R) Lysergic acid diethylamide;
- 435 (S) Marijuana;
- 436 (T) Mescaline;
- 437 (U) Parahexyl, some trade or other names:
- 438 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl;
- 439 (V) Peyote, meaning all parts of the plant presently classified botanically as
- 440 *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from
- 441 any part of such plant, and every compound, manufacture, salts, derivative, mixture, or
- 442 preparation of such plant, its seeds or extracts (Interprets 21 USC 812(c), Schedule I(c) (12));
- 443 (W) N-ethyl-3-piperidyl benzilate;
- 444 (X) N-methyl-3-piperidyl benzilate;
- 445 (Y) Psilocybin;
- 446 (Z) Psilocyn;
- 447 (AA) Tetrahydrocannabinols, synthetic equivalents of the substances contained in the
- 448 plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives,
- 449 and their isomers with similar chemical structure and pharmacological activity such as the

450 following: Δ 1 cis or trans tetrahydrocannabinol, and their optical isomers Δ 6 cis or trans
451 tetrahydrocannabinol, and their optical isomers Δ 3,4 cis or trans tetrahydrocannabinol, and its
452 optical isomers, and since nomenclature of these substances is not internationally standardized,
453 compounds of these structures, regardless of numerical designation of atomic positions
454 covered;

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

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

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

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

459 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

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

461 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TCP, TCP; and

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

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

468 (A) Mecloqualone; and

469 (B) Methaqualone.

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

473 (A) Aminorex, some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or
474 4,5-dihydro-5-phenyl-2-oxazolamine;

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

477 (C) Fenethylamine;

478 (D) Methcathinone, some other names: 2-(methylamino)-propiophenone;
479 alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one;
480 alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone;
481 methylcathinone; AL-464; AL-422; AL-463 and UR1432, its salts, optical isomers, and salts of
482 optical isomers;

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

484 (F) N-ethylamphetamine; and

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

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

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

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

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

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

495 (b) Schedule II:

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

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

503 (I) Raw opium;

504 (II) Opium extracts;

505 (III) Opium fluid;

- 506 (IV) Powdered opium;
- 507 (V) Granulated opium;
- 508 (VI) Tincture of opium;
- 509 (VII) Codeine;
- 510 (VIII) Ethylmorphine;
- 511 (IX) Etorphine hydrochloride;
- 512 (X) Hydrocodone;
- 513 (XI) Hydromorphone;
- 514 (XII) Metopon;
- 515 (XIII) Morphine;
- 516 (XIV) Oxycodone;
- 517 (XV) Oxymorphone; and
- 518 (XVI) Thebaine;
- 519 (B) Any salt, compound, derivative, or preparation which is chemically equivalent or
- 520 identical with any of the substances referred to in Subsection (2)(b)(i)(A), except that these
- 521 substances may not include the isoquinoline alkaloids of opium;
- 522 (C) Opium poppy and poppy straw;
- 523 (D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and
- 524 any salt, compound, derivative, or preparation which is chemically equivalent or identical with
- 525 any of these substances, and includes cocaine and ecgonine, their salts, isomers, derivatives,
- 526 and salts of isomers and derivatives, whether derived from the coca plant or synthetically
- 527 produced, except the substances may not include decocainized coca leaves or extraction of coca
- 528 leaves, which extractions do not contain cocaine or ecgonine; and
- 529 (E) Concentrate of poppy straw, which means the crude extract of poppy straw in either
- 530 liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.
- 531 (ii) Unless specifically excepted or unless listed in another schedule, any of the
- 532 following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and
- 533 ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific

- 534 chemical designation, except dextrorphan and levopropoxyphene:
- 535 (A) Alfentanil;
- 536 (B) Alphaprodine;
- 537 (C) Anileridine;
- 538 (D) Bezitramide;
- 539 (E) Bulk dextropropoxyphene (nondosage forms);
- 540 (F) Carfentanil;
- 541 (G) Dihydrocodeine;
- 542 (H) Diphenoxylate;
- 543 (I) Fentanyl;
- 544 (J) Isomethadone;
- 545 (K) Levo-alpha-acetylmethadol, some other names: levo-alpha-acetylmethadol,
- 546 levomethadyl acetate, or LAAM;
- 547 (L) Levomethorphan;
- 548 (M) Levorphanol;
- 549 (N) Metazocine;
- 550 (O) Methadone;
- 551 (P) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- 552 (Q) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic
- 553 acid;
- 554 (R) Pethidine (meperidine);
- 555 (S) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- 556 (T) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- 557 (U) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- 558 (V) Phenazocine;
- 559 (W) Piminodine;
- 560 (X) Racemethorphan;
- 561 (Y) Racemorphan;

- 562 (Z) Remifentanyl; and
563 (AA) Sufentanyl.
- 564 (iii) Unless specifically excepted or unless listed in another schedule, any material,
565 compound, mixture, or preparation which contains any quantity of the following substances
566 having a stimulant effect on the central nervous system:
- 567 (A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
568 (B) Methamphetamine, its salts, isomers, and salts of its isomers;
569 (C) Phenmetrazine and its salts; and
570 (D) Methylphenidate.
- 571 (iv) Unless specifically excepted or unless listed in another schedule, any material,
572 compound, mixture, or preparation which contains any quantity of the following substances
573 having a depressant effect on the central nervous system, including its salts, isomers, and salts
574 of isomers when the existence of the salts, isomers, and salts of isomers is possible within the
575 specific chemical designation:
- 576 (A) Amobarbital;
577 (B) Glutethimide;
578 (C) Pentobarbital;
579 (D) Phencyclidine;
580 (E) Phencyclidine immediate precursors: 1-phenylcyclohexylamine and
581 1-piperidinocyclohexanecarbonitrile (PCC); and
582 (F) Secobarbital.
- 583 (v) Unless specifically excepted or unless listed in another schedule, any material,
584 compound, mixture, or preparation which contains any quantity of Phenylacetone.
- 585 Some of these substances may be known by trade or other names: phenyl-2-propanone,
586 P2P; benzyl methyl ketone, methyl benzyl ketone.
- 587 (vi) Nabilone, another name for nabilone:
588 (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,
589 6-dimethyl-9H-dibenzo[b,d]pyran-9-one.

590 (c) Schedule III:

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

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

602 (B) Benzphetamine;

603 (C) Chlorphentermine;

604 (D) Clortermine; and

605 (E) Phendimetrazine.

606 (ii) Unless specifically excepted or unless listed in another schedule, any material,
607 compound, mixture, or preparation which contains any quantity of the following substances
608 having a depressant effect on the central nervous system:

609 (A) Any compound, mixture, or preparation containing amobarbital, secobarbital,
610 pentobarbital, or any salt of any of them, and one or more other active medicinal ingredients
611 which are not listed in any schedule;

612 (B) Any suppository dosage form containing amobarbital, secobarbital, or
613 pentobarbital, or any salt of any of these drugs which is approved by the Food and Drug
614 Administration for marketing only as a suppository;

615 (C) Any substance which contains any quantity of a derivative of barbituric acid or any
616 salt of any of them;

617 (D) Chlorhexadol;

- 618 (E) Buprenorphine;
- 619 (F) Any drug product containing gamma hydroxybutyric acid, including its salts,
- 620 isomers, and salts of isomers, for which an application is approved under the federal Food,
- 621 Drug, and Cosmetic Act, Section 505;
- 622 (G) Ketamine, its salts, isomers, and salts of isomers, some other names for ketamine:
- 623 \pm -2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone[-];
- 624 (H) Lysergic acid;
- 625 (I) Lysergic acid amide;
- 626 (J) Methyprylon;
- 627 (K) Sulfondiethylmethane;
- 628 (L) Sulfonethylmethane;
- 629 (M) Sulfonmethane; and
- 630 (N) Tiletamine and zolazepam or any of their salts, some trade or other names for a
- 631 tiletamine-zolazepam combination product: Telazol, some trade or other names for tiletamine:
- 632 2-(ethylamino)-2-(2-thienyl)-cyclohexanone, some trade or other names for zolazepam:
- 633 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one,
- 634 flupyrzapon.
- 635 (iii) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a
- 636 U.S. Food and Drug Administration approved drug product, some other names for dronabinol:
- 637 (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or
- 638 (-)-delta-9-(trans)-tetrahydrocannabinol.
- 639 (iv) Nalorphine.
- 640 (v) Unless specifically excepted or unless listed in another schedule, any material,
- 641 compound, mixture, or preparation containing limited quantities of any of the following
- 642 narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid:
- 643 (A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90
- 644 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of
- 645 opium;

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

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

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

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

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

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

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

666 (vi) Unless specifically excepted or unless listed in another schedule, anabolic steroids
667 including any of the following or any isomer, ester, salt, or derivative of the following that
668 promotes muscle growth:

669 (A) Boldenone;

670 (B) Chlorotestosterone (4-chlortestosterone);

671 (C) Clostebol;

672 (D) Dehydrochlormethyltestosterone;

673 (E) Dihydrotestosterone (4-dihydrotestosterone);

- 674 (F) Drostanolone;
- 675 (G) Ethylestrenol;
- 676 (H) Fluoxymesterone;
- 677 (I) Formebolone (formebolone);
- 678 (J) Mesterolone;
- 679 (K) Methandienone;
- 680 (L) Methandranone;
- 681 (M) Methandriol;
- 682 (N) Methandrostenolone;
- 683 (O) Methenolone;
- 684 (P) Methyltestosterone;
- 685 (Q) Mibolerone;
- 686 (R) Nandrolone;
- 687 (S) Norethandrolone;
- 688 (T) Oxandrolone;
- 689 (U) Oxymesterone;
- 690 (V) Oxymetholone;
- 691 (W) Stanolone;
- 692 (X) Stanozolol;
- 693 (Y) Testolactone;
- 694 (Z) Testosterone; and
- 695 (AA) Trenbolone.

696 Anabolic steroids expressly intended for administration through implants to cattle or
697 other nonhuman species, and approved by the Secretary of Health and Human Services for use,
698 may not be classified as a controlled substance.

699 (d) Schedule IV:

700 (i) Unless specifically excepted or unless listed in another schedule, any material,
701 compound, mixture, or preparation containing not more than 1 milligram of difenoxin and not

702 less than 25 micrograms of atropine sulfate per dosage unit, or any salts of any of them.

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

- 707 (A) Alprazolam;
- 708 (B) Barbitol;
- 709 (C) Bromazepam;
- 710 (D) Butorphanol;
- 711 (E) Camazepam;
- 712 (F) Chloral betaine;
- 713 (G) Chloral hydrate;
- 714 (H) Chlordiazepoxide;
- 715 (I) Clobazam;
- 716 (J) Clonazepam;
- 717 (K) Clorazepate;
- 718 (L) Clotiazepam;
- 719 (M) Cloxazolam;
- 720 (N) Delorazepam;
- 721 (O) Diazepam;
- 722 (P) Dichloralphenazone;
- 723 (Q) Estazolam;
- 724 (R) Ethchlorvynol;
- 725 (S) Ethinamate;
- 726 (T) Ethyl loflazepate;
- 727 (U) Fludiazepam;
- 728 (V) Flunitrazepam;
- 729 (W) Flurazepam;

- 730 (X) Halazepam;
- 731 (Y) Haloxazolam;
- 732 (Z) Ketazolam;
- 733 (AA) Loprazolam;
- 734 (BB) Lorazepam;
- 735 (CC) Lormetazepam;
- 736 (DD) Mebutamate;
- 737 (EE) Medazepam;
- 738 (FF) Meprobamate;
- 739 (GG) Methohexital;
- 740 (HH) Methylphenobarbital (mephobarbital);
- 741 (II) Midazolam;
- 742 (JJ) Nimetazepam;
- 743 (KK) Nitrazepam;
- 744 (LL) Nordiazepam;
- 745 (MM) Oxazepam;
- 746 (NN) Oxazolam;
- 747 (OO) Paraldehyde;
- 748 (PP) Pentazocine;
- 749 (QQ) Petrichloral;
- 750 (RR) Phenobarbital;
- 751 (SS) Pinazepam;
- 752 (TT) Prazepam;
- 753 (UU) Quazepam;
- 754 (VV) Temazepam;
- 755 (WW) Tetrazepam;
- 756 (XX) Triazolam;
- 757 (YY) Zaleplon; and

758 (ZZ) Zolpidem.

759 (iii) Any material, compound, mixture, or preparation of fenfluramine which contains
760 any quantity of the following substances, including its salts, isomers whether optical, position,
761 or geometric, and salts of the isomers when the existence of the salts, isomers, and salts of
762 isomers is possible.

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

768 (A) Cathine ((+)-norpseudoephedrine);

769 (B) Diethylpropion;

770 (C) Fencamfamine;

771 (D) Fenproporex;

772 (E) Mazindol;

773 (F) Mefenorex;

774 (G) Modafinil;

775 (H) Pemoline, including organometallic complexes and chelates thereof;

776 (I) Phentermine;

777 (J) Pipradrol;

778 (K) Sibutramine; and

779 (L) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

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

783 (e) Schedule V: Any compound, mixture, or preparation containing any of the
784 following limited quantities of narcotic drugs, or their salts calculated as the free anhydrous
785 base or alkaloid, which includes one or more non-narcotic active medicinal ingredients in

786 sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal
787 qualities other than those possessed by the narcotic drug alone:

788 (i) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

789 (ii) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100
790 grams;

791 (iii) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100
792 grams;

793 (iv) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of
794 atropine sulfate per dosage unit;

795 (v) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

796 (vi) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of
797 atropine sulfate per dosage unit; and

798 (vii) unless specifically exempted or excluded or unless listed in another schedule, any
799 material, compound, mixture, or preparation which contains Pyrovalerone having a stimulant
800 effect on the central nervous system, including its salts, isomers, and salts of isomers.

801 Section 4. Section **58-37-8** is amended to read:

802 **58-37-8. Prohibited acts -- Penalties.**

803 (1) Prohibited acts A -- Penalties:

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

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

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

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

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

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

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

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

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

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

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

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

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

838 (2) Prohibited acts B -- Penalties:

839 (a) It is unlawful:

840 (i) for any person knowingly and intentionally to possess or use a controlled substance
841 analog or a controlled substance, unless it was obtained under a valid prescription or order,

842 directly from a practitioner while acting in the course of his professional practice, or as
843 otherwise authorized by this chapter;

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

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

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

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

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

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

858 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
859 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater
860 penalty than provided in this Subsection (2).

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

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

870 substances as listed in:

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

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

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

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

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

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

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

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

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

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

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

890 (3) Prohibited acts C -- Penalties:

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

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

897 (ii) to acquire or obtain possession of, to procure or attempt to procure the

898 administration of, to obtain a prescription for, to prescribe or dispense to any person known to
899 be attempting to acquire or obtain possession of, or to procure the administration of any
900 controlled substance by misrepresentation or failure by the person to disclose his receiving any
901 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a
902 prescription or written order for a controlled substance, or the use of a false name or address;

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

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

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

912 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

- 926 (v) in a public park, amusement park, arcade, or recreation center;
- 927 (vi) in or on the grounds of a house of worship as defined in Section 76-10-501;
- 928 (vii) in a shopping mall, sports facility, stadium, arena, theater, movie house,
- 929 playhouse, or parking lot or structure adjacent thereto;
- 930 (viii) in a public parking lot or structure;
- 931 (ix) within 1,000 feet of any structure, facility, or grounds included in Subsections
- 932 (4)(a)(i) through (viii);
- 933 (x) in the immediate presence of a person younger than 18 years of age, regardless of
- 934 where the act occurs; or
- 935 (xi) for the purpose of facilitating, arranging, or causing the transport, delivery, or
- 936 distribution of a substance in violation of this section to an inmate or on the grounds of any
- 937 correctional facility as defined in Section 76-8-311.3.
- 938 (b) A person convicted under this Subsection (4) is guilty of a first degree felony and
- 939 shall be imprisoned for a term of not less than five years if the penalty that would otherwise
- 940 have been established but for this subsection would have been a first degree felony. Imposition
- 941 or execution of the sentence may not be suspended, and the person is not eligible for probation.
- 942 (c) If the classification that would otherwise have been established would have been
- 943 less than a first degree felony but for this Subsection (4), a person convicted under Subsection
- 944 (2)(g) or this Subsection (4) is guilty of one degree more than the maximum penalty prescribed
- 945 for that offense.
- 946 (d) (i) If the violation is of Subsection (4)(a)(xi):
- 947 (A) the person may be sentenced to imprisonment for an indeterminate term as
- 948 provided by law, and the court shall additionally sentence the person convicted for a term of
- 949 one year to run consecutively and not concurrently; and
- 950 (B) the court may additionally sentence the person convicted for an indeterminate term
- 951 not to exceed five years to run consecutively and not concurrently; and
- 952 (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with
- 953 the mental state required for the commission of an offense, directly or indirectly solicits,

954 requests, commands, coerces, encourages, or intentionally aids another person to commit a
955 violation of Subsection (4)(a)(xi).

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

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

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

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

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

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

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

977 (a) any person registered under [~~the Controlled Substances Act~~] this chapter who
978 manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or
979 investigational new drug by a registered practitioner in the ordinary course of professional
980 practice or research; or

981 (b) any law enforcement officer acting in the course and legitimate scope of his

982 employment.

983 (10) (a) Civil or criminal liability may not be imposed under this section on any Indian,
984 as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide
985 traditional ceremonial purposes in connection with the practice of a traditional Indian religion
986 as defined in Subsection 58-37-2(1)(w).

987 (b) In a prosecution alleging violation of this section regarding peyote as defined in
988 Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used,
989 possessed, or transported by an Indian for bona fide traditional ceremonial purposes in
990 connection with the practice of a traditional Indian religion.

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

994 (ii) The notice shall include the specific claims of the affirmative defense.

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

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

1000 [~~10~~] (11) If any provision of this chapter, or the application of any provision to any
1001 person or circumstances, is held invalid, the remainder of this chapter shall be given effect
1002 without the invalid provision or application.