

1 **CONTROLLED SUBSTANCE AMENDMENTS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis Oda**

5 Senate Sponsor: Gregory S. Bell

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 in traditional Indian religion and
11 to provide an affirmative defense.

12 **Highlighted Provisions:**

13 This bill:

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

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **41-6a-517**, as renumbered and amended by Chapter 2 and last amended by Chapter



28 283, Laws of Utah 2005
 29 58-37-2, as last amended by Chapter 283, Laws of Utah 2005
 30 58-37-4, as last amended by Chapter 33, Laws of Utah 2003
 31 58-37-8, as last amended by Chapter 30, Laws of Utah 2005

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

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

35 **41-6a-517. Definitions -- Driving with any measurable controlled substance in the**
 36 **body -- Penalties -- Arrest without warrant.**

37 (1) As used in this section:

- 38 (a) "Controlled substance" means any substance scheduled under Section 58-37-4.
- 39 (b) "Practitioner" has the same meaning as provided in Section 58-37-2.
- 40 (c) "Prescribe" has the same meaning as provided in Section 58-37-2.
- 41 (d) "Prescription" has the same meaning as provided in Section 58-37-2.

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

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

- 47 (a) involuntarily ingested by the accused [or];
- 48 (b) prescribed by a practitioner for use by the accused[-]; or
- 49 (c) otherwise legally ingested.

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

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

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

58 (6) The Driver License Division shall:

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

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

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

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

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

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

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

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

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

76 **58-37-2. Definitions.**

77 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

120 (A) which has a stimulant, depressant, or hallucinogenic effect on the central nervous

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

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

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

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

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

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

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

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

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

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

149 (i) "Counterfeit substance" means:

150 (i) any substance or container or labeling of any substance that without authorization
151 bears the trademark, trade name, or other identifying mark, imprint, number, device, or any

152 likeness of them, of a manufacturer, distributor, or dispenser other than the person or persons
153 who in fact manufactured, distributed, or dispensed the substance which falsely purports to be a
154 controlled substance distributed by, any other manufacturer, distributor, or dispenser; or

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

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

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

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

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

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

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

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

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

168 (iii) lysergic acid diethylamide; or

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

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

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

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

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

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

183 (r) "Drug" means:

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

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

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

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

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

197 (t) "Food" means:

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

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

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

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

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

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

218 (ii) which is practiced by Indians.

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

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

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

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

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

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

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

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

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

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

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

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

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

275 ~~(gg)~~ (jj) "Practitioner" means a physician, dentist, veterinarian, pharmacist, scientific

276 investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted to
277 distribute, dispense, conduct research with respect to, administer, or use in teaching or
278 chemical analysis a controlled substance in the course of professional practice or research in
279 this state.

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

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

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

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

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

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

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

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

297 **58-37-4. Schedules of controlled substances -- Schedules I through V -- Findings**
298 **required -- Specific substances included in schedules.**

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

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

303 (a) Schedule I:

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

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

- 338 (Y) Dipipanone;
- 339 (Z) Ethylmethylthiambutene;
- 340 (AA) Etonitazene;
- 341 (BB) Etoxeridine;
- 342 (CC) Furethidine;
- 343 (DD) Hydroxypethidine;
- 344 (EE) Ketobemidone;
- 345 (FF) Levomoramide;
- 346 (GG) Levophenacylmorphane;
- 347 (HH) Morpheridine;
- 348 (II) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 349 (JJ) Noracymethadol;
- 350 (KK) Norlevorphanol;
- 351 (LL) Normethadone;
- 352 (MM) Norpipanone;
- 353 (NN) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]
354 propanamide;
- 355 (OO) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- 356 (PP) Phenadoxone;
- 357 (QQ) Phenampromide;
- 358 (RR) Phenomorphan;
- 359 (SS) Phenoperidine;
- 360 (TT) Pir tramide;
- 361 (UU) Proheptazine;
- 362 (VV) Properidine;
- 363 (WW) Propiram;
- 364 (XX) Racemoramide;
- 365 (YY) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]- propanamide;
- 366 (ZZ) Tilidine;
- 367 (AAA) Trimeperidine;
- 368 (BBB) 3-methylfentanyl, including the optical and geometric isomers

369 (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]- N-phenylpropanamide); and
370 (CCC) 3-methylthiofentanyl

371 (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).

372 (ii) Unless specifically excepted or unless listed in another schedule, any of the
373 following opium derivatives, their salts, isomers, and salts of isomers when the existence of the
374 salts, isomers, and salts of isomers is possible within the specific chemical designation:

- 375 (A) Acetorphine;
- 376 (B) Acetyldihydrocodeine;
- 377 (C) Benzylmorphine;
- 378 (D) Codeine methylbromide;
- 379 (E) Codeine-N-Oxide;
- 380 (F) Cyprenorphine;
- 381 (G) Desomorphine;
- 382 (H) Dihydromorphine;
- 383 (I) Drotebanol;
- 384 (J) Etorphine (except hydrochloride salt);
- 385 (K) Heroin;
- 386 (L) Hydromorphanol;
- 387 (M) Methyldesorphine;
- 388 (N) Methylhydromorphine;
- 389 (O) Morphine methylbromide;
- 390 (P) Morphine methylsulfonate;
- 391 (Q) Morphine-N-Oxide;
- 392 (R) Myrophine;
- 393 (S) Nicocodeine;
- 394 (T) Nicomorphine;
- 395 (U) Normorphine;
- 396 (V) Pholcodine; and
- 397 (W) Thebacon.

398 (iii) Unless specifically excepted or unless listed in another schedule, any material,
399 compound, mixture, or preparation which contains any quantity of the following hallucinogenic

400 substances, or which contains any of their salts, isomers, and salts of isomers when the
401 existence of the salts, isomers, and salts of isomers is possible within the specific chemical
402 designation; as used in this Subsection (2)(iii) only, "isomer" includes the optical, position, and
403 geometric isomers:

404 (A) Alpha-ethyltryptamine, some trade or other names: etryptamine; Monase;
405 α -ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; α -ET; and AET;

406 (B) 4-bromo-2,5-dimethoxy-amphetamine, some trade or other names:
407 4-bromo-2,5-dimethoxy- α -methylphenethylamine; 4-bromo-2,5-DMA;

408 (C) 4-bromo-2,5-dimethoxypenethylamine, some trade or other names:
409 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

410 (D) 2,5-dimethoxyamphetamine, some trade or other names:
411 2,5-dimethoxy- α -methylphenethylamine; 2,5-DMA;

412 (E) 2,5-dimethoxy-4-ethylamphetamine, some trade or other names: DOET;

413 (F) 4-methoxyamphetamine, some trade or other names:

414 4-methoxy- α -methylphenethylamine; paramethoxyamphetamine, PMA;

415 (G) 5-methoxy-3,4-methylenedioxyamphetamine;

416 (H) 4-methyl-2,5-dimethoxy-amphetamine, some trade and other names:

417 4-methyl-2,5-dimethoxy- α -methylphenethylamine; "DOM"; and "STP";

418 (I) 3,4-methylenedioxy amphetamine;

419 (J) 3,4-methylenedioxymethamphetamine (MDMA);

420 (K) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-
421 alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;

422 (L) N-hydroxy-3,4-methylenedioxyamphetamine, also known as
423 N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;

424 (M) 3,4,5-trimethoxy amphetamine;

425 (N) Bufotenine, some trade and other names:

426 3-(β -Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,
427 N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

428 (O) Diethyltryptamine, some trade and other names: N,N-Diethyltryptamine; DET;

429 (P) Dimethyltryptamine, some trade or other names: DMT;

430 (Q) Ibogaine, some trade and other names:

- 431 7-Ethyl-6,6 β ,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino
432 [5,4-b] indole; Tabernanthe iboga;
- 433 (R) Lysergic acid diethylamide;
- 434 (S) Marijuana;
- 435 (T) Mescaline;
- 436 (U) Parahexyl, some trade or other names:
- 437 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl;
- 438 (V) Peyote, meaning all parts of the plant presently classified botanically as
439 *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from
440 any part of such plant, and every compound, manufacture, salts, derivative, mixture, or
441 preparation of such plant, its seeds or extracts (Interprets 21 USC 812(c), Schedule I(c) (12));
- 442 (W) N-ethyl-3-piperidyl benzilate;
- 443 (X) N-methyl-3-piperidyl benzilate;
- 444 (Y) Psilocybin;
- 445 (Z) Psilocyn;
- 446 (AA) Tetrahydrocannabinols, synthetic equivalents of the substances contained in the
447 plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives,
448 and their isomers with similar chemical structure and pharmacological activity such as the
449 following: Δ 1 cis or trans tetrahydrocannabinol, and their optical isomers Δ 6 cis or trans
450 tetrahydrocannabinol, and their optical isomers Δ 3,4 cis or trans tetrahydrocannabinol, and its
451 optical isomers, and since nomenclature of these substances is not internationally standardized,
452 compounds of these structures, regardless of numerical designation of atomic positions
453 covered;
- 454 (BB) Ethylamine analog of phencyclidine, some trade or other names:
455 N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine,
456 N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE;
- 457 (CC) Pyrrolidine analog of phencyclidine, some trade or other names:
458 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;
- 459 (DD) Thiophene analog of phencyclidine, some trade or other names:
460 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TCP, TCP; and
461 (EE) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, some other names: TCPy.

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

467 (A) Mecloqualone; and

468 (B) Methaqualone.

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

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

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

476 (C) Fenethylamine;

477 (D) Methcathinone, some other names: 2-(methylamino)-propionophenone;

478 alpha-(methylamino)propionophenone; 2-(methylamino)-1-phenylpropan-1-one;

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

480 methylcathinone; AL-464; AL-422; AL-463 and UR1432, its salts, optical isomers, and salts of
481 optical isomers;

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

483 (F) N-ethylamphetamine; and

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

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

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

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

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

491 (vii) Unless specifically excepted or unless listed in another schedule, any material,
492 compound, mixture, or preparation which contains any quantity of gamma hydroxy butyrate

- 493 (gamma hydrobutyric acid), including its salts, isomers, and salts of isomers.
- 494 (b) Schedule II:
- 495 (i) Unless specifically excepted or unless listed in another schedule, any of the
- 496 following substances whether produced directly or indirectly by extraction from substances of
- 497 vegetable origin, or independently by means of chemical synthesis, or by a combination of
- 498 extraction and chemical synthesis:
- 499 (A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or
- 500 opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone,
- 501 and their respective salts, but including:
- 502 (I) Raw opium;
- 503 (II) Opium extracts;
- 504 (III) Opium fluid;
- 505 (IV) Powdered opium;
- 506 (V) Granulated opium;
- 507 (VI) Tincture of opium;
- 508 (VII) Codeine;
- 509 (VIII) Ethylmorphine;
- 510 (IX) Etorphine hydrochloride;
- 511 (X) Hydrocodone;
- 512 (XI) Hydromorphone;
- 513 (XII) Metopon;
- 514 (XIII) Morphine;
- 515 (XIV) Oxycodone;
- 516 (XV) Oxymorphone; and
- 517 (XVI) Thebaine;
- 518 (B) Any salt, compound, derivative, or preparation which is chemically equivalent or
- 519 identical with any of the substances referred to in Subsection (2)(b)(i)(A), except that these
- 520 substances may not include the isoquinoline alkaloids of opium;
- 521 (C) Opium poppy and poppy straw;
- 522 (D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and
- 523 any salt, compound, derivative, or preparation which is chemically equivalent or identical with

524 any of these substances, and includes cocaine and ecgonine, their salts, isomers, derivatives,
525 and salts of isomers and derivatives, whether derived from the coca plant or synthetically
526 produced, except the substances may not include decocainized coca leaves or extraction of coca
527 leaves, which extractions do not contain cocaine or ecgonine; and

528 (E) Concentrate of poppy straw, which means the crude extract of poppy straw in either
529 liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

530 (ii) Unless specifically excepted or unless listed in another schedule, any of the
531 following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and
532 ethers, when the existence of the isomers, esters, ethers, and salts is possible within the specific
533 chemical designation, except dextrorphan and levopropoxyphene:

534 (A) Alfentanil;

535 (B) Alphaprodine;

536 (C) Anileridine;

537 (D) Bezitramide;

538 (E) Bulk dextropropoxyphene (nondosage forms);

539 (F) Carfentanil;

540 (G) Dihydrocodeine;

541 (H) Diphenoxylate;

542 (I) Fentanyl;

543 (J) Isomethadone;

544 (K) Levo-alpha-acetylmethadol, some other names: levo-alpha-acetylmethadol,
545 levomethadyl acetate, or LAAM;

546 (L) Levomethorphan;

547 (M) Levorphanol;

548 (N) Metazocine;

549 (O) Methadone;

550 (P) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

551 (Q) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic
552 acid;

553 (R) Pethidine (meperidine);

554 (S) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

- 555 (T) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- 556 (U) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- 557 (V) Phenazocine;
- 558 (W) Piminodine;
- 559 (X) Racemethorphan;
- 560 (Y) Racemorphan;
- 561 (Z) Remifentanil; and
- 562 (AA) Sufentanil.
- 563 (iii) Unless specifically excepted or unless listed in another schedule, any material,
- 564 compound, mixture, or preparation which contains any quantity of the following substances
- 565 having a stimulant effect on the central nervous system:
- 566 (A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- 567 (B) Methamphetamine, its salts, isomers, and salts of its isomers;
- 568 (C) Phenmetrazine and its salts; and
- 569 (D) Methylphenidate.
- 570 (iv) Unless specifically excepted or unless listed in another schedule, any material,
- 571 compound, mixture, or preparation which contains any quantity of the following substances
- 572 having a depressant effect on the central nervous system, including its salts, isomers, and salts
- 573 of isomers when the existence of the salts, isomers, and salts of isomers is possible within the
- 574 specific chemical designation:
- 575 (A) Amobarbital;
- 576 (B) Glutethimide;
- 577 (C) Pentobarbital;
- 578 (D) Phencyclidine;
- 579 (E) Phencyclidine immediate precursors: 1-phenylcyclohexylamine and
- 580 1-piperidinocyclohexanecarbonitrile (PCC); and
- 581 (F) Secobarbital.
- 582 (v) Unless specifically excepted or unless listed in another schedule, any material,
- 583 compound, mixture, or preparation which contains any quantity of Phenylacetone.
- 584 Some of these substances may be known by trade or other names: phenyl-2-propanone,
- 585 P2P; benzyl methyl ketone, methyl benzyl ketone.

586 (vi) Nabilone, another name for nabilone:
587 (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,
588 6-dimethyl-9H-dibenzo[b,d]pyran-9-one.

589 (c) Schedule III:

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

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

601 (B) Benzphetamine;

602 (C) Chlorphentermine;

603 (D) Clortermine; and

604 (E) Phendimetrazine.

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

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

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

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

616 (D) Chlorhexadol;

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

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

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

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

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

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

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

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

668 (A) Boldenone;

669 (B) Chlorotestosterone (4-chlortestosterone);

670 (C) Clostebol;

671 (D) Dehydrochlormethyltestosterone;

672 (E) Dihydrotestosterone (4-dihydrotestosterone);

673 (F) Drostanolone;

674 (G) Ethylestrenol;

675 (H) Fluoxymesterone;

676 (I) Formebolone (formebolone);

677 (J) Mesterolone;

678 (K) Methandienone;

- 679 (L) Methandranone;
- 680 (M) Methandriol;
- 681 (N) Methandrostenolone;
- 682 (O) Methenolone;
- 683 (P) Methyltestosterone;
- 684 (Q) Mibolerone;
- 685 (R) Nandrolone;
- 686 (S) Norethandrolone;
- 687 (T) Oxandrolone;
- 688 (U) Oxymesterone;
- 689 (V) Oxymetholone;
- 690 (W) Stanolone;
- 691 (X) Stanozolol;
- 692 (Y) Testolactone;
- 693 (Z) Testosterone; and
- 694 (AA) Trenbolone.

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

698 (d) Schedule IV:

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

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

- 706 (A) Alprazolam;
- 707 (B) Barbital;
- 708 (C) Bromazepam;
- 709 (D) Butorphanol;

- 710 (E) Camazepam;
- 711 (F) Chloral betaine;
- 712 (G) Chloral hydrate;
- 713 (H) Chlordiazepoxide;
- 714 (I) Clobazam;
- 715 (J) Clonazepam;
- 716 (K) Clorazepate;
- 717 (L) Clotiazepam;
- 718 (M) Cloxazolam;
- 719 (N) Delorazepam;
- 720 (O) Diazepam;
- 721 (P) Dichloralphenazone;
- 722 (Q) Estazolam;
- 723 (R) Ethchlorvynol;
- 724 (S) Ethinamate;
- 725 (T) Ethyl loflazepate;
- 726 (U) Fludiazepam;
- 727 (V) Flunitrazepam;
- 728 (W) Flurazepam;
- 729 (X) Halazepam;
- 730 (Y) Haloxazolam;
- 731 (Z) Ketazolam;
- 732 (AA) Loprazolam;
- 733 (BB) Lorazepam;
- 734 (CC) Lormetazepam;
- 735 (DD) Mebutamate;
- 736 (EE) Medazepam;
- 737 (FF) Meprobamate;
- 738 (GG) Methohexital;
- 739 (HH) Methylphenobarbital (mephobarbital);
- 740 (II) Midazolam;

741 (JJ) Nimetazepam;
742 (KK) Nitrazepam;
743 (LL) Nordiazepam;
744 (MM) Oxazepam;
745 (NN) Oxazolam;
746 (OO) Paraldehyde;
747 (PP) Pentazocine;
748 (QQ) Petrichloral;
749 (RR) Phenobarbital;
750 (SS) Pinazepam;
751 (TT) Prazepam;
752 (UU) Quazepam;
753 (VV) Temazepam;
754 (WW) Tetrazepam;
755 (XX) Triazolam;
756 (YY) Zaleplon; and
757 (ZZ) Zolpidem.

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

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

767 (A) Cathine ((+)-norpseudoephedrine);
768 (B) Diethylpropion;
769 (C) Fencamfamine;
770 (D) Fenproporex;
771 (E) Mazindol;

- 772 (F) Mefenorex;
- 773 (G) Modafinil;
- 774 (H) Pemoline, including organometallic complexes and chelates thereof;
- 775 (I) Phentermine;
- 776 (J) Pipradrol;
- 777 (K) Sibutramine; and
- 778 (L) SPA ((-)-1-dimethylamino-1,2-diphenylethane).
- 779 (v) Unless specifically excepted or unless listed in another schedule, any material,
- 780 compound, mixture, or preparation which contains any quantity of dextropropoxyphene
- 781 (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane), including its salts.
- 782 (e) Schedule V: Any compound, mixture, or preparation containing any of the
- 783 following limited quantities of narcotic drugs, or their salts calculated as the free anhydrous
- 784 base or alkaloid, which includes one or more non-narcotic active medicinal ingredients in
- 785 sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal
- 786 qualities other than those possessed by the narcotic drug alone:
- 787 (i) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
- 788 (ii) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100
- 789 grams;
- 790 (iii) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100
- 791 grams;
- 792 (iv) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of
- 793 atropine sulfate per dosage unit;
- 794 (v) not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
- 795 (vi) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of
- 796 atropine sulfate per dosage unit; and
- 797 (vii) unless specifically exempted or excluded or unless listed in another schedule, any
- 798 material, compound, mixture, or preparation which contains Pyrovalerone having a stimulant
- 799 effect on the central nervous system, including its salts, isomers, and salts of isomers.

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

801 **58-37-8. Prohibited acts -- Penalties.**

802 (1) Prohibited acts A -- Penalties:

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

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

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

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

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

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

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

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

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

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

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

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

833 (d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree

834 felony punishable by imprisonment for an indeterminate term of not less than seven years and
835 which may be for life. Imposition or execution of the sentence may not be suspended, and the
836 person is not eligible for probation.

837 (2) Prohibited acts B -- Penalties:

838 (a) It is unlawful:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

889 (3) Prohibited acts C -- Penalties:

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

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

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

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

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

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

911 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

955 (e) It is not a defense to a prosecution under this Subsection (4) that the actor
956 mistakenly believed the individual to be 18 years of age or older at the time of the offense or
957 was unaware of the individual's true age; nor that the actor mistakenly believed that the

958 location where the act occurred was not as described in Subsection (4)(a) or was unaware that
959 the location where the act occurred was as described in Subsection (4)(a).

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

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

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

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

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

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

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

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

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

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

989 connection with the practice of a traditional Indian religion.

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

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

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

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

999 ~~[(10)]~~ (11) If any provision of this chapter, or the application of any provision to any
1000 person or circumstances, is held invalid, the remainder of this chapter shall be given effect
1001 without the invalid provision or application.

Legislative Review Note
as of 5-18-05 1:30 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