

**METHAMPHETAMINE - RESTRICTION ON
COMPONENTS**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: Carlene M. Walker

LONG TITLE

General Description:

This bill modifies Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, by amending the regulation of retail sales of products used to make methamphetamine.

Highlighted Provisions:

This bill:

- ▶ regulates the sale of products containing ephedrine and pseudoephedrine;
- ▶ requires a retail distributor to:
 - request that purchasers provide photo identification;
 - keep a written or electronic list of transactions for one year documenting:
 - name of purchaser;
 - date of transaction; and
 - name and amount of product purchased; and
 - display or store the product in a locked case or in an area not accessible to customers;
- ▶ restricts the purchaser to:
 - no more than 3.6 grams of product per transaction; and
 - possession of a total of no more than 9 grams of product at any time;
- ▶ makes exceptions for:
 - prescription medications; and



- 28 • products formulated to effectively prevent the conversion of the active
- 29 ingredient into methamphetamine, including liquid, liquid-filled capsules, and
- 30 pediatric forms of ephedrine or pseudoephedrine;
- 31 ▶ provides a sunset date for Section 58-37c-20.5 on June 30, 2010; and
- 32 ▶ provides a class B misdemeanor penalty for violations.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 This bill takes effect on January 1, 2007.

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **58-37c-8**, as last amended by Chapter 271, Laws of Utah 2000

40 **58-37c-20**, as last amended by Chapter 1, Laws of Utah 2000

41 **63-55-258**, as last amended by Chapters 51 and 86, Laws of Utah 2005

42 ENACTS:

43 **58-37c-20.5**, Utah Code Annotated 1953



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

46 Section 1. Section **58-37c-8** is amended to read:

47 **58-37c-8. License -- Exceptions from licensure or regulation.**

48 (1) Any person engaged in a regulated transaction must be appropriately licensed under
49 this chapter as a regulated distributor and regulated purchaser unless excepted from licensure
50 under this chapter.

51 (2) The division shall:

52 (a) establish the form of application for a license, the requirements for licensure, and
53 fees for initial licensure and renewal; and

54 (b) identify required information to be contained in the application as a condition of
55 licensure.

56 (3) A practitioner who holds a Utah Controlled Substance License and a Controlled
57 Substance Registration issued by the Drug Enforcement Administration of the U.S.

58 Government is excepted from licensure under this chapter.

59 (4) Any purchase, sale, transfer, furnishing, or receipt of any drug intended for lawful
60 use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other
61 animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or
62 phenylpropanolamine if ~~[such]~~ the drug is lawfully purchased, sold, transferred, or furnished as
63 an over-the-counter medication without prescription pursuant to the federal Food, Drug and
64 Cosmetic Act, 21 USC, Sec. 301 et seq., or regulations adopted thereunder are excepted from
65 licensure, reporting, and recordkeeping under this chapter, except that ephedrine and
66 pseudoephedrine are subject to Section 58-37c-20.5.

67 (5) Any purchase, sale, transfer, receipt, or manufacture of any dietary supplement,
68 vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which
69 are not otherwise prohibited by law, which may contain naturally occurring amounts of
70 chemicals or substances listed in this chapter, or in rules adopted pursuant to Title 63, Chapter
71 46a, Utah Administrative Rulemaking Act, are exempt from licensure under this chapter.

72 (6) A purchaser of two ounces or less of crystal iodine in a single transaction is not
73 required to be licensed as a regulated purchaser if the transaction complies with Section
74 58-37c-18.

75 (7) Any purchase, sale, transfer, receipt, or manufacture of any product that contains
76 any precursor chemical listed in Subsection 58-37c-3(2)(ff) or (gg) and that is not intended for
77 human consumption is exempt from licensure, regulation, or criminal penalties under this
78 chapter.

79 Section 2. Section **58-37c-20** is amended to read:

80 **58-37c-20. Possession of ephedrine or pseudoephedrine -- Penalties.**

81 (1) Any person who is not licensed to engage in regulated transactions and not
82 excepted from licensure who, under circumstances not amounting to a violation of Subsection
83 58-37c-3(12)(k) or Subsection 58-37d-4(1)(a), possesses more than ~~[12]~~ 9 grams of ephedrine
84 or pseudoephedrine, their salts, isomers, or salts of isomers, or a combination of any of these
85 substances, is guilty of a class A misdemeanor.

86 (2) (a) It is an affirmative defense to a charge under Subsection (1) that the person in
87 possession of ephedrine or pseudoephedrine, or a combination of these two substances:

88 (i) is a physician, pharmacist, retail distributor, wholesaler, manufacturer,
89 warehouseman, or common carrier, or an agent of any of these persons; and

90 (ii) possesses the substances in the regular course of lawful business activities.

91 (b) (i) The defendant shall provide written notice of intent to claim an affirmative
92 defense under this section as soon as practicable, but not later than ten days prior to trial. The
93 court may waive the notice requirement in the interest of justice for good cause shown, if the
94 prosecutor is not unfairly prejudiced by the lack of timely notice.

95 (ii) The notice shall include the specifics of the asserted defense.

96 (iii) The defendant shall establish the affirmative defense by a preponderance of the
97 evidence. If the defense is established, it is a complete defense to the charges.

98 (3) This section does not apply to dietary supplements, herbs, or other natural products,
99 including concentrates or extracts, which:

100 (a) are not otherwise prohibited by law; and

101 (b) may contain naturally occurring ephedrine, ephedrine alkaloids, or
102 pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these
103 substances, that:

104 (i) are contained in a matrix of organic material; and

105 (ii) do not exceed 15% of the total weight of the natural product.

106 Section 3. Section **58-37c-20.5** is enacted to read:

107 **58-37c-20.5. Pseudoephedrine products -- Limitations on retail sale.**

108 (1) Any retail distributor who sells any product, mixture, or preparation containing
109 ephedrine or pseudoephedrine, its salts or optical isomers, or salts of optical isomers, or a
110 combination of any of these substances to another person shall:

111 (a) store the product in an area not accessible to customers before the sale is made,
112 which may include a locked cabinet to display the product in an area accessible to customers, if
113 the locked cabinet may only be opened by the retail distributor or its employees;

114 (b) require the purchaser to produce photo identification issued by a governmental
115 agency that includes the purchaser's date of birth;

116 (c) maintain a written or electronic list of the sales under this section, documenting:

117 (i) name of the purchaser;

118 (ii) date of the transaction; and

119 (iii) name and amount of the product purchased; and

120 (d) maintain the records under Subsection (1)(c) for not less than one year.

121 (2) A person may not purchase more than 3.6 grams of any product or any combination
122 of products containing ephedrine or pseudoephedrine in one transaction.

123 (3) A person may not at any time possess, receive, or otherwise acquire a total of more
124 than 9 grams of any product or any combination of products containing ephedrine or
125 pseudoephedrine.

126 (4) Subsection (2) does not apply to any quantity of a product containing ephedrine or
127 pseudoephedrine dispensed under a valid prescription.

128 (5) This section does not apply to products formulated to effectively prevent the
129 conversion of the active ingredient into methamphetamine, including liquid, liquid-filled
130 capsules, and pediatric forms of ephedrine or pseudoephedrine.

131 (6) Any violation of this section is a class B misdemeanor.

132 (7) A local government entity may make no ordinance more restrictive than under this
133 section.

134 Section 4. Section **63-55-258** is amended to read:

135 **63-55-258. Repeal dates, Title 58.**

136 (1) Title 58, Chapter 9, Funeral Services Licensing Act, is repealed July 1, 2008.

137 (2) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is
138 repealed July 1, 2006.

139 (3) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2015.

140 (4) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2013.

141 (5) Section 58-37c-20.5 is repealed June 30, 2010.

142 [~~(5)~~] (6) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1,
143 2013.

144 [~~(6)~~] (7) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing
145 Act, is repealed July 1, 2009.

146 [~~(7)~~] (8) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1,
147 2015.

148 [~~(8)~~] (9) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is
149 repealed July 1, 2013.

150 [~~(9)~~] (10) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1,
151 2014.

152 [~~(10)~~] (11) Title 58, Chapter 49, Dietitian Certification Act, is repealed July 1, 2015.
153 [~~(11)~~] (12) Title 58, Chapter 59, Professional Employer Organization Registration Act,
154 is repealed July 1, 2007.
155 [~~(12)~~] (13) Title 58, Chapter 71, Naturopathic Physician Practice Act, is repealed July
156 1, 2006.
157 [~~(13)~~] (14) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2007.
158 Section 5. **Effective date.**
159 This bill takes effect on January 1, 2007.

Legislative Review Note
as of **2-7-06 9:21 AM**

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

Fiscal Note
Bill Number HB0429

Methamphetamine - Restriction on Components

10-Feb-06

4:36 PM

State Impact

Provisions of this bill can be implemented with existing resources.

Individual and Business Impact

Retail distributors will be required to record and maintain transactions records and make store space modifications to adhere to provisions of the bill.

Office of the Legislative Fiscal Analyst