

Representative David L. Hogue proposes the following substitute bill:

**METHAMPHETAMINE - RESTRICTION ON
COMPONENTS**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: _____

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 documenting:
 - name of purchaser;
 - date of transaction; and
 - name and amount of product purchased;
 - report transactions of products containing ephedrine and pseudoephedrine;
 - 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 day; and



- 26 • a total of no more than 9 grams of product in any 30-day period;
- 27 ▸ makes exceptions for:
 - 28 • prescription medications; and
 - 29 • products formulated to effectively prevent the conversion of the active ingredient
 - 30 into methamphetamine, including liquid, gel caps, and pediatric forms of
 - 31 ephedrine or pseudoephedrine; and
 - 32 ▸ provides a class B misdemeanor penalty for violations.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

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

40 **58-37c-10**, as repealed and reenacted by Chapter 155, Laws of Utah 1992

41 **58-37c-20**, as last amended by Chapter 1, Laws of Utah 2000

42 ENACTS:

43 **58-37c-20.1**, 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.

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

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

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

78 Section 2. Section **58-37c-10** is amended to read:

79 **58-37c-10. Reporting and recordkeeping.**

80 (1) Any person who engages in a regulated transaction[;] or a transaction under Section
81 58-37c-20.1, unless excepted under the provisions of Subsections 58-37c-8 (3) and (4), shall
82 submit a report with respect to [~~such~~] the transaction and shall maintain records of inventories
83 in accordance with rules adopted by the division.

84 (2) The division shall provide reporting forms upon which regulated transactions shall
85 be reported.

86 (3) The division shall furnish copies of reports of transactions under this section to
87 appropriate law enforcement agencies.

- 88 (4) The division shall adopt rules regulating:
- 89 (a) records which shall be maintained and reports which shall be submitted by
- 90 regulated distributors and regulated purchasers with respect to listed controlled substance
- 91 precursors obtained, distributed, and held in inventory;
- 92 (b) records which shall be maintained and reports which shall be submitted by
- 93 regulated distributors and regulated purchasers with respect to extraordinary or unusual
- 94 regulated transactions and a requirement that in [~~such~~] these cases the report must be received
- 95 at least three working days prior to transfer of the listed controlled substance precursor;
- 96 (c) identification which must be presented by a purchaser of any listed controlled
- 97 substance precursor before the sale or transfer can be completed and recordkeeping
- 98 requirements related to [~~such~~] the identification presented;
- 99 (d) filing by each licensee the identification of all locations where any listed controlled
- 100 substance precursor is held in inventory or stored and amending [~~such~~] the filing when any
- 101 change in location is made;
- 102 (e) reports and actions which must be taken by a regulated distributor or regulated
- 103 purchaser in the event of any theft, loss, or shortage of a listed controlled substance precursor;
- 104 (f) reports and actions which must be taken by a regulated distributor relating to a
- 105 regulated transaction with an out-of-state purchaser;
- 106 (g) reports and actions which must be taken by a regulated purchaser relating to a
- 107 regulated transaction with an out-of-state distributor; and
- 108 (h) regulated transactions to the extent [~~such~~] the regulation is reasonable and
- 109 necessary to protect the public health, safety, or welfare.

110 Section 3. Section **58-37c-20** is amended to read:

111 **58-37c-20. Possession of ephedrine or pseudoephedrine -- Penalties.**

112 (1) Any person who is not licensed to engage in regulated transactions and not

113 excepted from licensure who, under circumstances not amounting to a violation of Subsection

114 58-37c-3(12)(k) or Subsection 58-37d-4(1)(a), possesses more than [~~12~~] 9 grams of ephedrine

115 or pseudoephedrine, their salts, isomers, or salts of isomers, or a combination of any of these

116 substances, is guilty of a class A misdemeanor.

117 (2) (a) It is an affirmative defense to a charge under Subsection (1) that the person in

118 possession of ephedrine or pseudoephedrine, or a combination of these two substances:

119 (i) is a physician, pharmacist, retail distributor, wholesaler, manufacturer,
120 warehouseman, or common carrier, or an agent of any of these persons; and
121 (ii) possesses the substances in the regular course of lawful business activities.
122 (b) (i) The defendant shall provide written notice of intent to claim an affirmative
123 defense under this section as soon as practicable, but not later than ten days prior to trial. The
124 court may waive the notice requirement in the interest of justice for good cause shown, if the
125 prosecutor is not unfairly prejudiced by the lack of timely notice.

126 (ii) The notice shall include the specifics of the asserted defense.
127 (iii) The defendant shall establish the affirmative defense by a preponderance of the
128 evidence. If the defense is established, it is a complete defense to the charges.

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

131 (a) are not otherwise prohibited by law; and
132 (b) may contain naturally occurring ephedrine, ephedrine alkaloids, or
133 pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these
134 substances, that:

135 (i) are contained in a matrix of organic material; and
136 (ii) do not exceed 15% of the total weight of the natural product.

137 Section 4. Section **58-37c-20.1** is enacted to read:

138 **58-37c-20.1. Pseudoephedrine products -- Limitations on retail sale.**

139 (1) Any retail distributor who sells any product, mixture, or preparation containing any
140 detectable quantity of ephedrine or pseudoephedrine, its salts or optical isomers, or salts of
141 optical isomers, or a combination of any of these substances to another person shall:

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

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

147 (c) maintain, in accordance with Section 58-37c-10, a written or electronic list of the
148 sales under this section, documenting:

149 (i) name of the purchaser;

150 (ii) date of the transaction; and

151 (iii) name and amount of the product purchased.

152 (2) Notwithstanding the number of transactions, a person may not purchase more than

153 3.6 grams of any product or any combination of products containing ephedrine or

154 pseudoephedrine in a 24-hour period.

155 (3) A person may not purchase, receive, or otherwise acquire a total of more than 9

156 grams of any product or any combination of products containing ephedrine or pseudoephedrine

157 within any 30-day period.

158 (4) Subsection (2) does not apply to any quantity of a product containing ephedrine or

159 pseudoephedrine dispensed under a valid prescription.

160 (5) This section does not apply to products formulated to effectively prevent the

161 conversion of the active ingredient into methamphetamine, including liquid, gel caps, and

162 pediatric forms of ephedrine or pseudoephedrine.

163 (6) Any violation of this Section is a class B misdemeanor.