

1                                   **DRIVING WITH A CONTROLLED SUBSTANCE**

2                                   **IN THE BODY - AMENDMENTS**

3                                   2006 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Carlene M. Walker**

6                                   House Sponsor: Paul Ray

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8                                   **LONG TITLE**

9                                   **General Description:**

10                                  This bill modifies the Utah Controlled Substance Act regarding penalties for causing a  
11 serious injury while operating a vehicle and having a controlled substance in the body.

12                                  **Highlighted Provisions:**

13                                  This bill:

14                                  ▶ changes the penalty for causing a serious injury while operating a vehicle and also  
15 having marijuana or derivative equivalent substances in the body from the current  
16 class A misdemeanor to a third degree felony; and

17                                  ▶ revises language regarding the imposition of a second degree felony if the operator  
18 has a Schedule I or Schedule II substance, other than marijuana, in the body, but  
19 does not change these penalties.

20                                  **Monies Appropriated in this Bill:**

21                                  None

22                                  **Other Special Clauses:**

23                                  None

24                                  **Utah Code Sections Affected:**

25                                  AMENDS:

26                                  **58-37-8**, as last amended by Chapter 30, Laws of Utah 2005



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

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

30 **58-37-8. Prohibited acts -- Penalties.**

31 (1) Prohibited acts A -- Penalties:

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

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

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

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

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

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

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

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

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

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

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

54 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)  
55 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier  
56 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his  
57 person or in his immediate possession during the commission or in furtherance of the offense,  
58 the court shall additionally sentence the person convicted for a term of one year to run

59 consecutively and not concurrently; and the court may additionally sentence the person  
60 convicted for an indeterminate term not to exceed five years to run consecutively and not  
61 concurrently.

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

66 (2) Prohibited acts B -- Penalties:

67 (a) It is unlawful:

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

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

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

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

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

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

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

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

89 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled

90 substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one ounce of  
91 marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person is guilty  
92 of a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a  
93 third degree felony.

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

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

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

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

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

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

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

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

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

112 (g) A person is subject to the penalties under Subsection [~~(4)(c)~~] (2)(h) who, in an  
113 offense not amounting to a violation of Section 76-5-207:

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

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

118 (h) A person who violates Subsection (2)(g) by having in his body:

119 (i) a controlled substance classified under Schedule I, other than those described in

120 Subsection(2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second

121 degree felony;

122 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection

123 58-37-4(2)(a)(iii)(S) or (AA) is guilty of a third degree felony; or

124 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class

125 A misdemeanor.

126 (3) Prohibited acts C -- Penalties:

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

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

133 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
134 administration of, to obtain a prescription for, to prescribe or dispense to any person known to  
135 be attempting to acquire or obtain possession of, or to procure the administration of any  
136 controlled substance by misrepresentation or failure by the person to disclose his receiving any  
137 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
138 prescription or written order for a controlled substance, or the use of a false name or address;

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

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

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

148 (4) Prohibited acts D -- Penalties:

149 (a) Notwithstanding other provisions of this section, a person not authorized under this  
150 chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a,  
151 Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances

152 Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if  
153 the trier of fact finds the act is committed:

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

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

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

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

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

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

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

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

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

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

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

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

178 (c) If the classification that would otherwise have been established would have been  
179 less than a first degree felony but for this Subsection (4), a person convicted under [~~Subsection~~  
180 ~~(2)(g)~~ or] this Subsection (4) is guilty of one degree more than the maximum penalty  
181 prescribed for that offense. This Subsection (4)(c) does not apply to a violation of Subsection  
182 (2)(g).

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

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

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

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

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

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

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

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

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

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

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

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

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

220 (10) If any provision of this chapter, or the application of any provision to any person  
221 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the  
222 invalid provision or application.

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**Legislative Review Note**  
**as of 12-28-05 12:24 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**