

28 **58-37-8**, as last amended by Chapters 8 and 30, Laws of Utah 2006

29 **58-37a-3**, as enacted by Chapter 76, Laws of Utah 1981

30 **58-37a-5**, as enacted by Chapter 76, Laws of Utah 1981

31

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

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

34 **58-37-8. Prohibited acts -- Penalties.**

35 (1) Prohibited acts A -- Penalties:

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

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

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

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

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

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

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

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

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

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

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

58 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)

59 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier
60 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his
61 person or in his immediate possession during the commission or in furtherance of the offense,
62 the court shall additionally sentence the person convicted for a term of one year to run
63 consecutively and not concurrently; and the court may additionally sentence the person
64 convicted for an indeterminate term not to exceed five years to run consecutively and not
65 concurrently.

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

70 (2) Prohibited acts B -- Penalties:

71 (a) It is unlawful:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

116 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not
117 amounting to a violation of Section 76-5-207:

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

120 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,

121 causing serious bodily injury as defined in Section 76-1-601 or the death of another.

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

123 (i) a controlled substance classified under Schedule I, other than those described in
124 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second
125 degree felony;

126 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection
127 58-37-4(2)(a)(iii)(S) or (AA) is guilty of a third degree felony; or

128 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class
129 A misdemeanor.

130 (3) Prohibited acts C -- Penalties:

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

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

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

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

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

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

152 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

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

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

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

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

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

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

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

182 (c) If the classification that would otherwise have been established would have been

183 less than a first degree felony but for this Subsection (4), a person convicted under this
 184 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that
 185 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

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

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

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

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

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

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

203 (6) ~~Ĥ~~ → [As used in this section,] **For purposes of penalty enhancement under**
 203a **Subsections (1)(b) and (2)(c),** ~~←Ĥ~~ a plea of guilty or no contest to a violation of this section
 204 which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance. ~~Ĥ~~ → [is considered to be a
 205 **conviction for a violation of this section,]** **is the equivalent of a conviction,** ~~←Ĥ~~ even if the
 205a charge has been subsequently reduced or
 206 dismissed in accordance with the plea in abeyance agreement.

207 (7) A person may be charged and sentenced for a violation of this section,
 208 notwithstanding a charge and sentence for a violation of any other section of this chapter.

209 [(6)] (8) (a) Any penalty imposed for violation of this section is in addition to, and not
 210 in lieu of, any civil or administrative penalty or sanction authorized by law.

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

214 ~~[(7)]~~ (9) In any prosecution for a violation of this chapter, evidence or proof which
215 shows a person or persons produced, manufactured, possessed, distributed, or dispensed a
216 controlled substance or substances, is prima facie evidence that the person or persons did so
217 with knowledge of the character of the substance or substances.

218 ~~[(8)]~~ (10) This section does not prohibit a veterinarian, in good faith and in the course
219 of his professional practice only and not for humans, from prescribing, dispensing, or
220 administering controlled substances or from causing the substances to be administered by an
221 assistant or orderly under his direction and supervision.

222 ~~[(9)]~~ (11) Civil or criminal liability may not be imposed under this section on:

223 (a) any person registered under this chapter who manufactures, distributes, or possesses
224 an imitation controlled substance for use as a placebo or investigational new drug by a
225 registered practitioner in the ordinary course of professional practice or research; or

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

228 ~~[(10)]~~ (12) (a) Civil or criminal liability may not be imposed under this section on any
229 Indian, as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for
230 bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian
231 religion as defined in Subsection 58-37-2(1)(w).

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

236 (c) (i) The defendant shall provide written notice of intent to claim an affirmative
237 defense under this Subsection ~~[(10)]~~ (12) as soon as practicable, but not later than ten days
238 prior to trial.

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

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

242 (d) The defendant shall establish the affirmative defense under this Subsection ~~[(10)]~~
243 (12) by a preponderance of the evidence. If the defense is established, it is a complete defense
244 to the charges.

245 [(H)] (13) If any provision of this chapter, or the application of any provision to any
246 person or circumstances, is held invalid, the remainder of this chapter shall be given effect
247 without the invalid provision or application.

248 Section 2. Section **58-37a-3** is amended to read:

249 **58-37a-3. "Drug paraphernalia" defined.**

250 As used in this chapter:

251 "Drug paraphernalia" means any equipment, product, or material used, or intended for
252 use, to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,
253 process, prepare, test, analyze, package, repackage, store, contain, conceal, inject, ingest,
254 inhale, or to otherwise introduce a controlled substance into the human body in violation of
255 Title 58, Chapter 37, Utah Controlled Substances Act, and includes, but is not limited to:

256 (1) kits used, or intended for use, in planting, propagating, cultivating, growing, or
257 harvesting any species of plant which is a controlled substance or from which a controlled
258 substance can be derived;

259 (2) kits used, or intended for use, in manufacturing, compounding, converting,
260 producing, processing, or preparing a controlled substance;

261 (3) isomerization devices used, or intended for use, to increase the potency of any
262 species of plant which is a controlled substance;

263 (4) testing equipment used, or intended for use, to identify or to analyze the strength,
264 effectiveness, or purity of a controlled substance;

265 (5) scales and balances used, or intended for use, in weighing or measuring a controlled
266 substance;

267 (6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannited,
268 dextrose and lactose, used, or intended for use to cut a controlled substance;

269 (7) separation gins and sifters used, or intended for use to remove twigs, seeds, or other
270 impurities from marihuana;

271 (8) blenders, bowls, containers, spoons and mixing devices used, or intended for use to
272 compound a controlled substance;

273 (9) capsules, balloons, envelopes, and other containers used, or intended for use to
274 package small quantities of a controlled substance;

275 (10) containers and other objects used, or intended for use to store or conceal a

276 controlled substance;

277 (11) hypodermic syringes, needles, and other objects used, or intended for use to
278 parenterally inject a controlled substance into the human body; and

279 (12) objects used, or intended for use to ingest, inhale, or otherwise introduce
280 [~~marihuana, cocaine, hashish, or hashish oil~~] a controlled substance into the human body,
281 including but not limited to:

282 (a) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
283 screens, permanent screens, hashish heads, or punctured metal bowls;

284 (b) water pipes;

285 (C) carburetion tubes and devices;

286 (D) smoking and carburetion masks;

287 (E) roach clips: meaning objects used to hold burning material, such as a marihuana
288 cigarette, that has become too small or too short to be held in the hand;

289 (F) miniature cocaine spoons and cocaine vials;

290 (G) chamber pipes;

291 (H) carburetor pipes;

292 (I) electric pipes;

293 (J) air-driven pipes;

294 (K) chillums;

295 (L) bongs; and

296 (M) ice pipes or chillers.

297 Section 3. Section **58-37a-5** is amended to read:

298 **58-37a-5. Unlawful acts.**

299 (1) It is unlawful for any person to use, or to possess with intent to use, drug
300 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert,
301 produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,
302 inhale or otherwise introduce a controlled substance into the human body in violation of this
303 chapter. Any person who violates this subsection is guilty of a class B misdemeanor.

304 (2) It is unlawful for any person to deliver, possess with intent to deliver, or
305 manufacture with intent to deliver, any drug paraphernalia, knowing that the drug paraphernalia
306 will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert,

307 produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,
308 inhale, or otherwise introduce a controlled substance into the human body in violation of this
309 act. Any person who violates this subsection is guilty of a class A misdemeanor.

310 (3) Any person 18 years of age or over who delivers drug paraphernalia to a person
311 under 18 years of age who is three years or more younger than the person making the delivery
312 is guilty of a third degree felony.

313 (4) It is unlawful for any person to place in this state in any newspaper, magazine,
314 handbill, or other publication any advertisement, knowing that the purpose of the advertisement
315 is to promote the sale of drug paraphernalia. Any person who violates this subsection is guilty
316 of a class B misdemeanor.

317 (5) A person may be charged and sentenced for a violation of this section,
318 notwithstanding a charge and sentence for a violation of any other section of this chapter.

Legislative Review Note
as of 1-25-07 8:53 AM

Office of Legislative Research and General Counsel

H.B. 359 - Controlled Substance Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/30/2007, 2:19:44 PM, Lead Analyst: Ricks, G.

Office of the Legislative Fiscal Analyst