

1                                   **METHAMPHETAMINE PRECURSOR**

2                                   **ACCESS AMENDMENTS**

3                                   2007 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: D. Chris Buttars**

6                                   House Sponsor: Michael T. Morley

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8                                   **LONG TITLE**

9                                   **General Description:**

10                                  This bill modifies the Utah Controlled Substance Precursor Act regarding the quantity  
11 of products containing ephedrine, pseudoephedrine, or phenylpropanolamine that may  
12 be sold or possessed at one time, and requires that retail distributors limit customers'  
13 access to these products. This bill requires retail distributors to keep a log of purchasers  
14 of these products. This bill also imposes a specified penalty for offenses related to  
15 clandestine drug laboratories.

16                                  **Highlighted Provisions:**

17                                  This bill:

- 18                                  ▶ reduces the amount of products containing ephedrine, pseudoephedrine, or  
19 phenylpropanolamine that may be possessed at one time from 12 grams to 9 grams;
- 20                                  ▶ provides that products containing ephedrine, pseudoephedrine, or  
21 phenylpropanolamine may not be sold as over-the-counter medications and requires:
  - 22    • that any of these products sold in one day, regardless of the number of  
23 transactions, may not contain more than 3.6 grams of ephedrine,  
24 pseudoephedrine, or phenylpropanolamine;
  - 25    • that any of these products sold by mobile retail vendors within 30 days,  
26 regardless of the number of transactions, may not contain more than 7.5 grams  
27 of ephedrine, pseudoephedrine, or phenylpropanolamine;
  - 28    • that the retailer keep the products in an area not accessible to customers, such as  
29 in a locked cabinet;

- 30           • that the purchaser provide identification that includes a photo and birth date;
- 31           • that the purchaser write into the log his name, address, date of birth, and time of
- 32 transaction; and
- 33           • that the seller verify the information provided by the purchaser and enter the
- 34 brand name and quantity of the product; and
- 35           • that the retailer keep a log of the transactions, including the date, identification
- 36 of the purchaser, and the product purchased, for not less than two years;
- 37           ▸ provides that any violation of these provisions is a class B misdemeanor, and that
- 38 subsequent violations are class A misdemeanors; and
- 39           ▸ provides that specified offenses involving clandestine drug laboratories, which are
- 40 second degree felonies, are punishable by the specified penalty of imprisonment for
- 41 an indeterminate term of not less than 3 years nor more than 15 years.

42 **Monies Appropriated in this Bill:**

43           None

44 **Other Special Clauses:**

45           None

46 **Utah Code Sections Affected:**

47 AMENDS:

48           **58-37c-8**, as last amended by Chapter 271, Laws of Utah 2000

49           **58-37c-20**, as last amended by Chapter 1, Laws of Utah 2000

50           **58-37d-4**, as last amended by Chapter 90, Laws of Utah 2004

51 ENACTS:

52           **58-37c-20.5**, Utah Code Annotated 1953



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

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

56           **58-37c-8. License -- Exceptions from licensure or regulation.**

57           (1) Any person engaged in a regulated transaction must be appropriately licensed under

58 this chapter as a regulated distributor and regulated purchaser unless excepted from licensure  
59 under this chapter.

60 (2) The division shall:

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

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

65 (3) A practitioner who holds a Utah Controlled Substance License and a Controlled  
66 Substance Registration issued by the Drug Enforcement Administration of the U.S.  
67 Government is excepted from licensure under this chapter.

68 (4) Any purchase, sale, transfer, furnishing, or receipt of any drug intended for lawful  
69 use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other  
70 animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or  
71 phenylpropanolamine, if ~~[such]~~ the drug is lawfully purchased, sold, transferred, or furnished  
72 as an over-the-counter medication without prescription pursuant to the federal Food, Drug and  
73 Cosmetic Act, 21 USC, Sec. 301 et seq., or regulations adopted ~~[thereunder]~~ under that act, are  
74 excepted from licensure, reporting, and recordkeeping under this chapter, except that products  
75 containing ephedrine, pseudoephedrine, or phenylpropanolamine are subject to Section  
76 58-37c-20.5.

77 (5) Any purchase, sale, transfer, receipt, or manufacture of any dietary supplement,  
78 vitamins, minerals, herbs, or other similar substances, including concentrates or extracts, which  
79 are not otherwise prohibited by law, and which may contain naturally occurring amounts of  
80 chemicals or substances listed in this chapter, or in rules adopted pursuant to Title 63, Chapter  
81 46a, Utah Administrative Rulemaking Act, are exempt from licensure under this chapter.

82 (6) A purchaser of two ounces or less of crystal iodine in a single transaction is not  
83 required to be licensed as a regulated purchaser if the transaction complies with Section  
84 58-37c-18.

85 (7) Any purchase, sale, transfer, receipt, or manufacture of any product that contains

86 any precursor chemical listed in Subsection 58-37c-3(2)(ff) or (gg) and that is not intended for  
 87 human consumption is exempt from licensure[;] or regulation[; ~~or~~] and is not subject to  
 88 criminal penalties under this chapter.

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

90 **58-37c-20. Possession of ephedrine, pseudoephedrine, or phenylpropanolamine --**  
 91 **Penalties.**

92 (1) Any person is guilty of a class A misdemeanor:

93 (a) who is not licensed to engage in regulated transactions and is not excepted from  
 94 licensure; and

95 (b) who, under circumstances not amounting to a violation of Subsection  
 96 58-37c-3(12)(k) or Subsection 58-37d-4(1)(a), possesses more than [12] 9 grams of ephedrine  
 97 [~~or~~], pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a  
 98 combination of any of these substances[; ~~is guilty of a class A misdemeanor~~].

99 (2) [~~(a)~~] It is an affirmative defense to a charge under Subsection (1) that the person in  
 100 possession of ephedrine [~~or~~], pseudoephedrine, phenylpropanolamine, or a combination of  
 101 these two substances:

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

104 (ii) possesses the substances in the regular course of lawful business activities[;] or

105 (b) possesses the substance pursuant to a valid prescription as defined in Section  
 106 58-37-2.

107 [~~(b)(i)~~] (3)(a) The defendant shall provide written notice of intent to claim an  
 108 affirmative defense under this section as soon as practicable, but not later than ten days prior to  
 109 trial. The court may waive the notice requirement in the interest of justice for good cause  
 110 shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

111 [~~(i)~~] (b) The notice shall include the specifics of the asserted defense.

112 [~~(iii)~~] (c) The defendant shall establish the affirmative defense by a preponderance of  
 113 the evidence. If the defense is established, it is a complete defense to the charges.

114           ~~[(3)]~~ (4) This section does not apply to dietary supplements, herbs, or other natural  
115 products, including concentrates or extracts, which:

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

117           (b) may contain naturally occurring ephedrine, ephedrine alkaloids, or  
118 pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these  
119 substances, that:

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

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

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

123           **58-37c-20.5. Pseudoephedrine products -- Limitations on retail sale.**

124           (1) As used in this section:

125           (a) "Mobile retail vendor" means a person or entity that sells product at retail from a  
126 stand that is intended to be temporary, or that is capable of being moved from one location to  
127 another, whether the stand is located within or on the premises of a fixed facility or is located  
128 on unimproved real estate; and

129           (b) "Product" means any product, mixture, or preparation, or any combination of  
130 products that contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or  
131 isomers, or salts of optical isomers, or a combination of any of these substances.

132           (2) A retail distributor or a mobile retail vendor may not distribute or sell any product  
133 that exceeds the threshold amount of 3.6 grams of ephedrine, pseudoephedrine, or  
134 phenylpropanolamine, or any combination of these, regardless of the number of transactions,  
135 during any 24-hour period.

136           (3) A mobile retail vendor may not distribute or sell any product that exceeds the  
137 threshold amount of 7.5 grams of ephedrine, pseudoephedrine, or phenylpropanolamine,  
138 regardless of the number of transactions, during any 30-day period.

139           (4) A retail distributor or a mobile retail vendor may not distribute or sell any product,  
140 unless the retail distributor or mobile retail vendor:

141           (a) stores the product in an area not accessible to customers prior to the sale, which

142 area may include a locked cabinet to display the product in an area accessible to customers, if  
143 the locked cabinet may be opened only by the retail distributor or mobile retail vendor or its  
144 employees;

145 (b) stores all non-liquid scheduled listed chemical products in packaging containing  
146 blister packs, with each blister containing no more than two dosage units;

147 (c) requires the purchaser of the product to provide photo identification issued by a  
148 governmental agency and that includes the purchaser's date of birth;

149 (d) maintains a written or electronic log under Subsection (5) of the sales made under  
150 this section; and

151 (e) provides a notice concerning federal penalties for making false statements or  
152 misrepresentations, as provided in Subsection (5)(d).

153 (5) Each retail distributor or mobile retail vendor shall maintain an electronic or written  
154 log that contains the following information regarding each person to whom product is  
155 distributed or sold under this section. The log shall include:

156 (a) the following information, provided or written in the log by the purchaser:

157 (i) the purchaser's name, address, and date of birth, as demonstrated by a form of  
158 personal identification issued by the state or the federal government and that provides an  
159 identifying photograph of the person;

160 (ii) the date and time of the transaction; and

161 (iii) the purchaser's signature; and

162 (b) the following information verified or written in by the retail distributor or the  
163 mobile retail vendor:

164 (i) verification of the identity of the purchaser as indicated by the form of identification  
165 presented by the purchaser;

166 (ii) verification that the date and time of the transaction as entered in the log is correct;

167 and

168 (iii) entry of the brand name and the quantity of the product sold in the transaction.

169 (c) The retail distributor or the mobile retail vendor shall maintain the information

170 required to be recorded in a log under Subsections (5)(a) and (b) for not less than two years  
171 from the most recent date contained in the log.

172 (d) In addition to the log information required under this Subsection (5), the log, or a  
173 prominently displayed sign, shall contain the following statement verbatim which shall be  
174 visible to purchasers of product:

175 "WARNING: Section 1001 of Title 18, United States Code, states that whoever, with  
176 respect to the information to be provided in this log, knowingly and willfully falsifies,  
177 conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially  
178 false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or  
179 document, knowing the same to contain any materially false, fictitious, or fraudulent statement  
180 or entry, shall be fined not more than \$250,000 if an individual or \$500,000 if an organization,  
181 imprisoned for not more than five years, or both."

182 (6) (a) A person may not knowingly and intentionally use, release, publish, or  
183 otherwise make available to any person or entity any information in or obtained from a log  
184 maintained by a retail distributor or a mobile retail vendor under this section for any purpose  
185 other than those specified in Subsection (6)(b).

186 (b) The retail distributor or its designee shall make information in the log available  
187 only to:

188 (i) federal, state, and local law enforcement authorities engaged as a duty of their  
189 employment in enforcing laws regulating controlled substances; and

190 (ii) an individual:

191 (A) whose request is for records in the log of that individual's purchase or receipt of  
192 product; and

193 (B) who has provided evidence satisfactory to the retail distributor that the individual is  
194 in fact the person regarding whom the requested log entry is made.

195 (c) Any person who knowingly and intentionally releases or modifies any information  
196 in the log in violation of this Subsection (6) is guilty of a class B misdemeanor.

197 (7) (a) A person may not purchase product that exceeds the threshold amount of 3.6

198 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, or any combination of these,  
199 regardless of the number of transactions, during any 24-hour period.

200 (b) A person may not purchase product that exceeds the threshold amount of 9 grams  
201 of ephedrine, pseudoephedrine, or phenylpropanolamine, or any combination of these,  
202 regardless of the number of transactions, during any 30-day period.

203 (c) A violation of this Subsection (7) is a class B misdemeanor.

204 (8) This section does not apply to any quantity of product possessed by:

205 (a) a physician, pharmacist, veterinarian, retail distributor, wholesaler, manufacturer,  
206 warehouseman, or common carrier, or any agent of these persons, who possess the product in  
207 the regular course of lawful business activities; or

208 (b) a person who possesses the product pursuant to a valid prescription as defined in  
209 Section 58-37-2.

210 (9) This section does not apply to dietary supplements, herbs, or other natural products,  
211 including concentrates or extracts, which:

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

213 (b) may contain naturally occurring ephedrine, ephedrine alkaloids, or  
214 pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these  
215 substances, that:

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

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

218 (10) This section does not apply to an individual sales transaction in which the  
219 purchaser purchases a single package containing no more than 60 mg of pseudoephedrine.

220 (11) (a) A violation of this section is a class B misdemeanor, and a second or  
221 subsequent violation of this section is a class A misdemeanor.

222 (b) For purposes of this section, a plea of guilty or no contest to a violation of this  
223 section which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the  
224 equivalent of a conviction for a violation of this section, even if the charge has been  
225 subsequently reduced or dismissed in accordance with a plea in abeyance agreement.



226 Section 4. Section **58-37d-4** is amended to read:

227 **58-37d-4. Prohibited acts -- Second degree felony.**

228 (1) It is unlawful for any person to knowingly or intentionally:

229 (a) possess a controlled substance precursor with the intent to engage in a clandestine  
230 laboratory operation;

231 (b) possess laboratory equipment or supplies with the intent to engage in a clandestine  
232 laboratory operation;

233 (c) sell, distribute, or otherwise supply a precursor chemical, laboratory equipment, or  
234 laboratory supplies, knowing or having reasonable cause to believe ~~[it]~~ any of these items will  
235 be used for a clandestine laboratory operation;

236 (d) evade the recordkeeping provisions of Title 58, Chapter 37c, Utah Controlled  
237 Substance Precursor Act, or the ~~[regulations]~~ administrative rules issued under that ~~[act]~~  
238 chapter, knowing or having reasonable cause to believe that the material distributed or received  
239 will be used for a clandestine laboratory operation;

240 (e) conspire with or aid another to engage in a clandestine laboratory operation;

241 (f) produce or manufacture, or possess with intent to produce or manufacture a  
242 controlled or counterfeit substance except as authorized under Title 58, Chapter 37, Utah  
243 Controlled Substances Act;

244 (g) transport or convey a controlled or counterfeit substance with the intent to  
245 distribute or to be distributed by the person transporting or conveying the controlled or  
246 counterfeit substance or by any other person regardless of whether the final destination for the  
247 distribution is within this state or any other location; or

248 (h) engage in compounding, synthesis, concentration, purification, separation,  
249 extraction, or other physical or chemical processing of any substance, including a controlled  
250 substance precursor, or the packaging, repackaging, labeling, or relabeling of a container  
251 holding a substance that is a product of any of these activities, knowing or having reasonable  
252 cause to believe that the substance is a product of any of these activities and will be used in the  
253 illegal manufacture of specified controlled substances.

254           (2) A person who violates any provision of Subsection (1) is guilty of a second degree  
255 felony punishable by imprisonment for an indeterminate term of not less than 3 years nor more  
256 than 15 years.