

30 **58-37-8**, as last amended by Laws of Utah 2007, Chapter 374

31 **58-37a-3**, as enacted by Laws of Utah 1981, Chapter 76

32 **58-37a-5**, as enacted by Laws of Utah 1981, Chapter 76

33

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

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

36 **58-37-8. Prohibited acts -- Penalties.**

37 (1) Prohibited acts A -- Penalties:

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

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

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

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

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

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

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

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

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

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

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

60 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)
61 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier
62 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his
63 person or in his immediate possession during the commission or in furtherance of the offense,
64 the court shall additionally sentence the person convicted for a term of one year to run
65 consecutively and not concurrently; and the court may additionally sentence the person
66 convicted for an indeterminate term not to exceed five years to run consecutively and not
67 concurrently.

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

72 (2) Prohibited acts B -- Penalties:

73 (a) It is unlawful:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114 (f) Any person convicted of violating Subsection (2)(a)(ii) or (2)(a)(iii) is:
115 (i) on a first conviction, guilty of a class B misdemeanor;
116 (ii) on a second conviction, guilty of a class A misdemeanor; and
117 (iii) on a third or subsequent conviction, guilty of a third degree felony.

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

120 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in his body any
121 measurable amount of a controlled substance; and
122 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,
123 causing serious bodily injury as defined in Section 76-1-601 or the death of another.

124 (h) A person who violates Subsection (2)(g) by having in his body:
125 (i) a controlled substance classified under Schedule I, other than those described in
126 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second
127 degree felony;
128 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection
129 58-37-4(2)(a)(iii)(S) or (AA) is guilty of a third degree felony; or
130 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class
131 A misdemeanor.

132 (3) Prohibited acts C -- Penalties:
133 (a) It is unlawful for any person knowingly and intentionally:
134 (i) to use in the course of the manufacture or distribution of a controlled substance a
135 license number which is fictitious, revoked, suspended, or issued to another person or, for the
136 purpose of obtaining a controlled substance, to assume the title of, or represent himself to be, a
137 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
138 person;
139 (ii) to acquire or obtain possession of, to procure or attempt to procure the
140 administration of, to obtain a prescription for, to prescribe or dispense to any person known to
141 be attempting to acquire or obtain possession of, or to procure the administration of any

142 controlled substance by misrepresentation or failure by the person to disclose his receiving any
143 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a
144 prescription or written order for a controlled substance, or the use of a false name or address;

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

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

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

154 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

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

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

172 (viii) in or on the grounds of a library;

173 (ix) within any area that is within 1,000 feet of any structure, facility, or grounds
174 included in Subsections (4)(a)(i), (ii), (iv), (vi), and (vii);

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

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

180 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony and
181 shall be imprisoned for a term of not less than five years if the penalty that would otherwise
182 have been established but for this Subsection (4) would have been a first degree felony.

183 (ii) Imposition or execution of the sentence may not be suspended, and the person is not
184 eligible for probation.

185 (c) If the classification that would otherwise have been established would have been less
186 than a first degree felony but for this Subsection (4), a person convicted under this Subsection
187 (4) is guilty of one degree more than the maximum penalty prescribed for that offense. This
188 Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

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

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

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

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

198 violation of Subsection (4)(a)(xi).

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

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

206 (6) For purposes of penalty enhancement under Subsections (1)(b) and (2)(c), a plea of
207 guilty or no contest to a violation of this section which is held in abeyance under Title 77,
208 Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been
209 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

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

212 [~~(6)~~] (8) (a) Any penalty imposed for violation of this section is in addition to, and not
213 in lieu of, any civil or administrative penalty or sanction authorized by law.

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

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

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

225 [~~(9)~~] (11) Civil or criminal liability may not be imposed under this section on:

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

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

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

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

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

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

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

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

248 ~~[(11)]~~ (13) If any provision of this chapter, or the application of any provision to any
249 person or circumstances, is held invalid, the remainder of this chapter shall be given effect
250 without the invalid provision or application.

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

252 **58-37a-3. "Drug paraphernalia" defined.**

253 As used in this chapter~~["Drug]~~, "drug paraphernalia" means any equipment, product, or

254 material used, or intended for use, to plant, propagate, cultivate, grow, harvest, manufacture,
255 compound, convert, produce, process, prepare, test, analyze, package, repack, store,
256 contain, conceal, inject, ingest, inhale, or to otherwise introduce a controlled substance into the
257 human body in violation of Title 58, Chapter 37, Utah Controlled Substances Act, and includes,
258 but is not limited to:

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

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

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

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

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

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

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

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

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

278 (10) containers and other objects used, or intended for use to store or conceal a
279 controlled substance;

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

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

- 285 (a) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
286 screens, permanent screens, hashish heads, or punctured metal bowls;
- 287 (b) water pipes;
- 288 (c) carburetion tubes and devices;
- 289 (d) smoking and carburetion masks;
- 290 (e) roach clips: meaning objects used to hold burning material, such as a marihuana
291 cigarette, that has become too small or too short to be held in the hand;
- 292 (f) miniature cocaine spoons and cocaine vials;
- 293 (g) chamber pipes;
- 294 (h) carburetor pipes;
- 295 (i) electric pipes;
- 296 (j) air-driven pipes;
- 297 (k) chillums;
- 298 (l) bongs; and
- 299 (m) ice pipes or chillers.

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

301 **58-37a-5. Unlawful acts.**

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

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

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

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

316 (4) (a) It is unlawful for any person to place in this state in any newspaper, magazine,
317 handbill, or other publication any advertisement, knowing that the purpose of the advertisement
318 is to promote the sale of drug paraphernalia.

319 (b) Any person who violates this Subsection (4) is guilty of a class B misdemeanor.

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