

1 **CONTROLLED SUBSTANCE PENALTY AMENDMENT**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Lyle W. Hillyard**

5 House Sponsor: V. Lowry Snow

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah Controlled Substances Act regarding the increased penalty
10 for the offense of possession in specified circumstances.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides that increased penalties for the possession of a controlled substance in
14 certain circumstances may not result in an offense greater than a second degree
15 felony.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **58-37-8**, as last amended by Laws of Utah 2011, Chapter 12

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

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

26 **58-37-8. Prohibited acts -- Penalties.**

27 (1) Prohibited acts A -- Penalties:

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

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

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

34 (iii) possess a controlled or counterfeit substance with intent to distribute; or
35 (iv) engage in a continuing criminal enterprise where:

36 (A) the person participates, directs, or engages in conduct which results in any
37 violation of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and
38 (B) the violation is a part of a continuing series of two or more violations of Title 58,
39 Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with
40 five or more persons with respect to whom the person occupies a position of organizer,
41 supervisor, or any other position of management.

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

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

46 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or
47 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and
48 upon a second or subsequent conviction is guilty of a second degree felony; or

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

52 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)
53 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier
54 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his
55 person or in his immediate possession during the commission or in furtherance of the offense,
56 the court shall additionally sentence the person convicted for a term of one year to run
57 consecutively and not concurrently; and the court may additionally sentence the person

58 convicted for an indeterminate term not to exceed five years to run consecutively and not
59 concurrently.

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

64 (2) Prohibited acts B -- Penalties:

65 (a) It is unlawful:

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

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

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

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

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

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

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

84 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
85 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater

86 penalty than provided in this Subsection (2).

87 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled
88 substances not included in Subsection (2)(b)(i), (ii), or (iii), including a substance listed in
89 Section 58-37-4.2, or less than one ounce of marijuana, is guilty of a class B misdemeanor.
90 Upon a second conviction the person is guilty of a class A misdemeanor, and upon a third or
91 subsequent conviction the person is guilty of a third degree felony.

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

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

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

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

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

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

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

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

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

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

112 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's
113 body any measurable amount of a controlled substance; and

- 114 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,
115 causing serious bodily injury as defined in Section 76-1-601 or the death of another.
- 116 (h) A person who violates Subsection (2)(g) by having in the person's body:
- 117 (i) a controlled substance classified under Schedule I, other than those described in
118 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second
119 degree felony;
- 120 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection
121 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third
122 degree felony; or
- 123 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class
124 A misdemeanor.
- 125 (i) A person is guilty of a separate offense for each victim suffering serious bodily
126 injury or death as a result of the person's negligent driving in violation of Subsection
127 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.
- 128 (3) Prohibited acts C -- Penalties:
- 129 (a) It is unlawful for any person knowingly and intentionally:
- 130 (i) to use in the course of the manufacture or distribution of a controlled substance a
131 license number which is fictitious, revoked, suspended, or issued to another person or, for the
132 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a
133 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
134 person;
- 135 (ii) to acquire or obtain possession of, to procure or attempt to procure the
136 administration of, to obtain a prescription for, to prescribe or dispense to any person known to
137 be attempting to acquire or obtain possession of, or to procure the administration of any
138 controlled substance by misrepresentation or failure by the person to disclose receiving any
139 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a
140 prescription or written order for a controlled substance, or the use of a false name or address;
- 141 (iii) to make any false or forged prescription or written order for a controlled substance,

142 or to utter the same, or to alter any prescription or written order issued or written under the
143 terms of this chapter; or

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

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

150 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

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

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

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

169 (ix) within any area that is within 1,000 feet of any structure, facility, or grounds

170 included in Subsections (4)(a)(i), (ii), (iv), (vi), and (vii);

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

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

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

180 (ii) Imposition or execution of the sentence may not be suspended, and the person is
181 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) For purposes of penalty enhancement under Subsections (1)(b) and (2)(c), a plea of
204 guilty or no contest to a violation of this section which is held in abeyance under Title 77,
205 Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been
206 subsequently reduced or 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 (8) (a) Any penalty imposed for violation of this section is in addition to, and not in
210 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 (9) In any prosecution for a violation of this chapter, evidence or proof which shows a
215 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled
216 substance or substances, is prima facie evidence that the person or persons did so with
217 knowledge of the character of the substance or substances.

218 (10) This section does not prohibit a veterinarian, in good faith and in the course of the
219 veterinarian's 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 the veterinarian's direction and supervision.

222 (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 the
227 officer's employment.

228 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,
229 as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide
230 traditional ceremonial purposes in connection with the practice of a traditional Indian religion
231 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 (12) as soon as practicable, but not later than 10 days prior to
238 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 (12) by
243 a preponderance of the evidence. If the defense is established, it is a complete defense to the
244 charges.

245 (13) (a) It is an affirmative defense that the person produced, possessed, or
246 administered a controlled substance listed in Section 58-37-4.2 if the person:

247 (i) was engaged in medical research; and

248 (ii) was a holder of a valid license to possess controlled substances under Section
249 58-37-6.

250 (b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed
251 a controlled substance listed in Section 58-37-4.2.

252 (14) It is an affirmative defense that the person possessed, in the person's body, a
253 controlled substance listed in Section 58-37-4.2 if:

254 (a) the person was the subject of medical research conducted by a holder of a valid
255 license to possess controlled substances under Section 58-37-6; and

256 (b) the substance was administered to the person by the medical researcher.

257 (15) The application of any increase in penalty under this section to a violation of
258 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This
259 Subsection (15) takes precedence over any conflicting provision of this section.

260 [~~(15)~~] (16) If any provision of this chapter, or the application of any provision to any
261 person or circumstances, is held invalid, the remainder of this chapter shall be given effect
262 without the invalid provision or application.

263 [~~(16)~~] (17) A legislative body of a political subdivision may not enact an ordinance that
264 is less restrictive than any provision of this chapter.