

DRUG TESTING AND PARAPHERNALIA AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rosemary T. Lesser

Senate Sponsor: _____

LONG TITLE

General Description:

This bill concerns drug testing and paraphernalia.

Highlighted Provisions:

This bill:

▶ creates an exemption from liability under the Utah Controlled Substances Act for certain entities that temporarily possess a controlled or counterfeit substance in order to conduct a test on the substance for a certain reason;

▶ modifies the definition of "drug paraphernalia" to exclude:

- certain testing equipment; and
- an object used to parenterally inject a controlled substance into the human body;

and

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-37-8, as last amended by Laws of Utah 2021, Chapter 236

58-37a-3, as last amended by Laws of Utah 2011, Chapter 101



28 [58-37a-5](#), as last amended by Laws of Utah 2011, Chapter 101



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

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

32 **58-37-8. Prohibited acts -- Penalties.**

33 (1) Prohibited acts A -- Penalties and reporting:

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

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

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

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

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

42 (A) the person participates, directs, or engages in conduct that results in a violation of
43 Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act,
44 Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance
45 Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a felony; and

46 (B) the violation is a part of a continuing series of two or more violations of Chapter
47 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b,
48 Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act,
49 or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert
50 with 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) A person convicted of violating Subsection (1)(a) with respect to:

53 (i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled
54 substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second
55 degree felony, punishable by imprisonment for not more than 15 years, and upon a second or
56 subsequent conviction is guilty of a first degree felony;

57 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or
58 marijuana, or a substance listed in Section [58-37-4.2](#) is guilty of a third degree felony, and

59 upon a second or subsequent conviction is guilty of a second degree felony; or

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

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

71 (d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree
72 felony punishable by imprisonment for an indeterminate term of not less than:

73 (A) seven years and which may be for life; or

74 (B) 15 years and which may be for life if the trier of fact determined that the defendant
75 knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B)
76 was under 18 years old.

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

79 (iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the
80 offense, was under 18 years old.

81 (e) The Administrative Office of the Courts shall report to the Division of
82 Occupational and Professional Licensing the name, case number, date of conviction, and if
83 known, the date of birth of each person convicted of violating Subsection (1)(a).

84 (2) Prohibited acts B -- Penalties and reporting:

85 (a) It is unlawful:

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

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

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

96 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:

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

98 or

99 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty
100 of a class A misdemeanor on a first or second conviction, and on a third or subsequent
101 conviction if each prior offense was committed within seven years before the date of the
102 offense upon which the current conviction is based is guilty of a third degree felony.

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

106 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled
107 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section
108 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.

109 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each prior
110 offense was committed within seven years before the date of the offense upon which the
111 current conviction is based.

112 (ii) Upon a fourth or subsequent conviction the person is guilty of a third degree felony
113 if each prior offense was committed within seven years before the date of the offense upon
114 which the current conviction is based.

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

120 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an

121 indeterminate term as provided by law, and:

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

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

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

129 (f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:

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

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

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

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

135 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's
136 body any measurable amount of a controlled substance, except for

137 11-nor-9-carboxy-tetrahydrocannabinol; and

138 (ii) (A) if the controlled substance is not marijuana, operates a motor vehicle as defined
139 in Section 76-5-207 in a negligent manner, causing serious bodily injury as defined in Section
140 76-1-601 or the death of another; or

141 (B) if the controlled substance is marijuana, operates a motor vehicle as defined in
142 Section 76-5-207 in a criminally negligent manner, causing serious bodily injury as defined in
143 Section 76-1-601 or the death of another.

144 (h) A person who violates Subsection (2)(g) by having in the person's body:

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

148 (ii) except as provided in Subsection (2)(g)(ii)(B), marijuana, tetrahydrocannabinols, or
149 equivalents described in Subsection 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in
150 Section 58-37-4.2 is guilty of a third degree felony; or

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

152 misdemeanor.

153 (i) A person is guilty of a separate offense for each victim suffering serious bodily
154 injury or death as a result of the person's negligent driving in violation of Subsection(2)(g)
155 whether or not the injuries arise from the same episode of driving.

156 (j) The Administrative Office of the Courts shall report to the Division of Occupational
157 and Professional Licensing the name, case number, date of conviction, and if known, the date
158 of birth of each person convicted of violating Subsection (2)(a).

159 (3) Prohibited acts C -- Penalties:

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

161 (i) to use in the course of the manufacture or distribution of a controlled substance a
162 license number which is fictitious, revoked, suspended, or issued to another person or, for the
163 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a
164 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
165 person;

166 (ii) to acquire or obtain possession of, to procure or attempt to procure the
167 administration of, to obtain a prescription for, to prescribe or dispense to a person known to be
168 attempting to acquire or obtain possession of, or to procure the administration of a controlled
169 substance by misrepresentation or failure by the person to disclose receiving a controlled
170 substance from another source, fraud, forgery, deception, subterfuge, alteration of a
171 prescription or written order for a controlled substance, or the use of a false name or address;

172 (iii) to make a false or forged prescription or written order for a controlled substance,
173 or to utter the same, or to alter a prescription or written order issued or written under the terms
174 of this chapter; or

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

179 (b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A
180 misdemeanor.

181 (ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third
182 degree felony.

183 (c) A violation of Subsection (3)(a)(iv) is a third degree felony.

184 (4) Prohibited acts D -- Penalties:

185 (a) Notwithstanding other provisions of this section, a person not authorized under this
186 chapter who commits any act that is unlawful under Subsection (1)(a) or Section 58-37b-4 is
187 upon conviction subject to the penalties and classifications under this Subsection (4) if the trier
188 of fact finds the act is committed:

189 (i) in a public or private elementary or secondary school or on the grounds of any of
190 those schools during the hours of 6 a.m. through 10 p.m.;

191 (ii) in a public or private vocational school or postsecondary institution or on the
192 grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

193 (iii) in or on the grounds of a preschool or child-care facility during the preschool's or
194 facility's hours of operation;

195 (iv) in a public park, amusement park, arcade, or recreation center when the public or
196 amusement park, arcade, or recreation center is open to the public;

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

198 (vi) in or on the grounds of a library when the library is open to the public;

199 (vii) within an area that is within 100 feet of any structure, facility, or grounds included
200 in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);

201 (viii) in the presence of a person younger than 18 years of age, regardless of where the
202 act occurs; or

203 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or
204 distribution of a substance in violation of this section to an inmate or on the grounds of a
205 correctional facility as defined in Section 76-8-311.3.

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

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

212 (c) If the classification that would otherwise have been established would have been
213 less than a first degree felony but for this Subsection (4), a person convicted under this

214 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that
215 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

216 (d) (i) If the violation is of Subsection (4)(a)(ix):

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

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

222 (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with
223 the mental state required for the commission of an offense, directly or indirectly solicits,
224 requests, commands, coerces, encourages, or intentionally aids another person to commit a
225 violation of Subsection (4)(a)(ix).

226 (e) It is not a defense to a prosecution under this Subsection (4) that:

227 (i) the actor mistakenly believed the individual to be 18 years old or older at the time of
228 the offense or was unaware of the individual's true age; or

229 (ii) the actor mistakenly believed that the location where the act occurred was not as
230 described in Subsection (4)(a) or was unaware that the location where the act occurred was as
231 described in Subsection (4)(a).

232 (5) A violation of this chapter for which no penalty is specified is a class B
233 misdemeanor.

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

239 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a
240 conviction that is:

241 (i) from a separate criminal episode than the current charge; and

242 (ii) from a conviction that is separate from any other conviction used to enhance the
243 current charge.

244 (7) A person may be charged and sentenced for a violation of this section,

245 notwithstanding a charge and sentence for a violation of any other section of this chapter.

246 (8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu
247 of, a civil or administrative penalty or sanction authorized by law.

248 (b) When a violation of this chapter violates a federal law or the law of another state,
249 conviction or acquittal under federal law or the law of another state for the same act is a bar to
250 prosecution in this state.

251 (9) In any prosecution for a violation of this chapter, evidence or proof that shows a
252 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled
253 substance or substances, is prima facie evidence that the person or persons did so with
254 knowledge of the character of the substance or substances.

255 (10) This section does not prohibit a veterinarian, in good faith and in the course of the
256 veterinarian's professional practice only and not for humans, from prescribing, dispensing, or
257 administering controlled substances or from causing the substances to be administered by an
258 assistant or orderly under the veterinarian's direction and supervision.

259 (11) Civil or criminal liability may not be imposed under this section on:

260 (a) a person registered under this chapter who manufactures, distributes, or possesses
261 an imitation controlled substance for use as a placebo or investigational new drug by a
262 registered practitioner in the ordinary course of professional practice or research; [~~or~~]

263 (b) a law enforcement officer acting in the course and legitimate scope of the officer's
264 employment[~~;~~]; or

265 (c) a healthcare facility or drug addiction treatment facility that temporarily possesses a
266 controlled or counterfeit substance to conduct a test or analysis on the controlled or counterfeit
267 substance to identify or analyze the strength, effectiveness, or purity of the substance for a
268 public health or safety reason.

269 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,
270 as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide
271 traditional ceremonial purposes in connection with the practice of a traditional Indian religion
272 as defined in Section 58-37-2.

273 (b) In a prosecution alleging violation of this section regarding peyote as defined in
274 Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or transported
275 by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a

276 traditional Indian religion.

277 (c) (i) The defendant shall provide written notice of intent to claim an affirmative
278 defense under this Subsection (12) as soon as practicable, but not later than 10 days before
279 trial.

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

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

283 (d) The defendant shall establish the affirmative defense under this Subsection (12) by
284 a preponderance of the evidence. If the defense is established, it is a complete defense to the
285 charges.

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

288 (i) engaged in medical research; and

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

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

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

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

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

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

300 (16) (a) It is an affirmative defense to an allegation of the commission of an offense
301 listed in Subsection (16)(b) that the person or bystander:

302 (i) reasonably believes that the person or another person is experiencing an overdose
303 event due to the ingestion, injection, inhalation, or other introduction into the human body of a
304 controlled substance or other substance;

305 (ii) reports, or assists a person who reports, in good faith the overdose event to a
306 medical provider, an emergency medical service provider as defined in Section 26-8a-102, a

307 law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the
308 person is the subject of a report made under this Subsection (16);

309 (iii) provides in the report under Subsection (16)(a)(ii) a functional description of the
310 actual location of the overdose event that facilitates responding to the person experiencing the
311 overdose event;

312 (iv) remains at the location of the person experiencing the overdose event until a
313 responding law enforcement officer or emergency medical service provider arrives, or remains
314 at the medical care facility where the person experiencing an overdose event is located until a
315 responding law enforcement officer arrives;

316 (v) cooperates with the responding medical provider, emergency medical service
317 provider, and law enforcement officer, including providing information regarding the person
318 experiencing the overdose event and any substances the person may have injected, inhaled, or
319 otherwise introduced into the person's body; and

320 (vi) is alleged to have committed the offense in the same course of events from which
321 the reported overdose arose.

322 (b) The offenses referred to in Subsection (16)(a) are:

323 (i) the possession or use of less than 16 ounces of marijuana;

324 (ii) the possession or use of a scheduled or listed controlled substance other than
325 marijuana; and

326 (iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b,
327 Imitation Controlled Substances Act.

328 (c) As used in this Subsection (16) and in Section [76-3-203.11](#), "good faith" does not
329 include seeking medical assistance under this section during the course of a law enforcement
330 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

331 (17) If any provision of this chapter, or the application of any provision to any person
332 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the
333 invalid provision or application.

334 (18) A legislative body of a political subdivision may not enact an ordinance that is
335 less restrictive than any provision of this chapter.

336 (19) If a minor who is under 18 years old is found by a court to have violated this
337 section, the court may order the minor to complete:

- 338 (a) a screening as defined in Section 41-6a-501;
- 339 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an
- 340 assessment to be appropriate; and
- 341 (c) an educational series as defined in Section 41-6a-501 or substance use disorder
- 342 treatment as indicated by an assessment.

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

344 **58-37a-3. "Drug paraphernalia" defined.**

345 (1) As used in this chapter, "drug paraphernalia" means any equipment, product, or
346 material used, or intended for use, to plant, propagate, cultivate, grow, harvest, manufacture,
347 compound, convert, produce, process, prepare, ~~[test, analyze,]~~ package, repackage, store,
348 contain, conceal, ~~[inject,]~~ ingest, inhale, or to otherwise introduce a controlled substance into
349 the human body in violation of Title 58, Chapter 37, Utah Controlled Substances Act~~[-and~~
350 ~~includes, but is not limited to:].~~

351 (2) "Drug paraphernalia" includes:

352 ~~[(1)]~~ (a) kits used, or intended for use, in planting, propagating, cultivating, growing, or
353 harvesting any species of plant which is a controlled substance or from which a controlled
354 substance can be derived;

355 ~~[(2)]~~ (b) kits used, or intended for use, in manufacturing, compounding, converting,
356 producing, processing, or preparing a controlled substance;

357 ~~[(3)]~~ (c) isomerization devices used, or intended for use, to increase the potency of any
358 species of plant which is a controlled substance;

359 ~~[(4)]~~ ~~testing equipment used, or intended for use, to identify or to analyze the strength,~~
360 ~~effectiveness, or purity of a controlled substance;]~~

361 ~~[(5)]~~ (d) scales and balances used, or intended for use, in weighing or measuring a
362 controlled substance;

363 ~~[(6)]~~ (e) diluents and adulterants, such as quinine hydrochloride, mannitol, mannited,
364 dextrose and lactose, used, or intended for use to cut a controlled substance;

365 ~~[(7)]~~ (f) separation gins and sifters used, or intended for use to remove twigs, seeds, or
366 other impurities from marihuana;

367 ~~[(8)]~~ (g) blenders, bowls, containers, spoons and mixing devices used, or intended for
368 use to compound a controlled substance;

369 ~~[(9)]~~ (h) capsules, balloons, envelopes, and other containers used, or intended for use to
370 package small quantities of a controlled substance;

371 ~~[(10)]~~ (i) containers and other objects used, or intended for use to store or conceal a
372 controlled substance; and

373 ~~[(11) hypodermic syringes, needles, and other objects used, or intended for use to~~
374 ~~parenterally inject a controlled substance into the human body, except as provided in Section~~
375 ~~58-37a-5; and]~~

376 ~~[(12)]~~ (j) objects used, or intended for use to ingest, inhale, or otherwise introduce a
377 controlled substance into the human body, including but not limited to:

378 ~~[(a)]~~ (i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
379 screens, permanent screens, hashish heads, or punctured metal bowls;

380 ~~[(b)]~~ (ii) water pipes;

381 ~~[(c)]~~ (iii) carburetion tubes and devices;

382 ~~[(d)]~~ (iv) smoking and carburetion masks;

383 ~~[(e)]~~ (v) roach clips: meaning objects used to hold burning material, such as a
384 marihuana cigarette, that has become too small or too short to be held in the hand;

385 ~~[(f)]~~ (vi) miniature cocaine spoons and cocaine vials;

386 ~~[(g)]~~ (vii) chamber pipes;

387 ~~[(h)]~~ (viii) carburetor pipes;

388 ~~[(i)]~~ (ix) electric pipes;

389 ~~[(j)]~~ (x) air-driven pipes;

390 ~~[(k)]~~ (xi) chillums;

391 ~~[(l)]~~ (xii) bongs; and

392 ~~[(m)]~~ (xiii) ice pipes or chillers.

393 (3) "Drug paraphernalia" does not include:

394 (a) testing equipment, including a fentanyl test strip, used or intended for use to
395 identify or analyze the strength, effectiveness, or purity of a controlled substance; or

396 (b) a hypodermic syringe, needle, or other object used, or intended for use, to
397 parenterally inject a controlled substance into the human body.

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

399 **58-37a-5. Unlawful acts.**

400 (1) (a) It is unlawful for any person to use, or to possess with intent to use, drug
401 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert,
402 produce, process, prepare, [~~test, analyze,~~] pack, repack, store, contain, conceal, [~~inject,~~] ingest,
403 inhale or otherwise introduce a controlled substance into the human body in violation of this
404 chapter.

405 (b) Any person who violates Subsection (1)(a) is guilty of a class B misdemeanor.

406 (2) (a) It is unlawful for any person to deliver, possess with intent to deliver, or
407 manufacture with intent to deliver, any drug paraphernalia, knowing that the drug paraphernalia
408 will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert,
409 produce, process, prepare, [~~test, analyze,~~] pack, repack, store, contain, conceal, [~~inject,~~] ingest,
410 inhale, or otherwise introduce a controlled substance into the human body in violation of this
411 act.

412 (b) Any person who violates Subsection (2)(a) is guilty of a class A misdemeanor.

413 (3) Any person 18 years of age or older who delivers drug paraphernalia to a person
414 younger than 18 years of age and who is three years or more younger than the person making
415 the delivery is guilty of a third degree felony.

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

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

420 [~~(5) (a) A person may not be charged with distribution of hypodermic syringes as drug
421 paraphernalia if at the time of sale or distribution the syringes are in a sealed sterile package
422 and are for a legitimate medical purpose, including:]~~

423 [~~(i) injection of prescription medications as prescribed by a practitioner; or]~~

424 [~~(ii) the prevention of disease transmission.]~~

425 [~~(b) A person may not be charged with possession of hypodermic syringes as drug
426 paraphernalia if the syringe is unused and is in a sealed sterile package.]~~

427 [~~(6)~~] (5) A person may be charged and sentenced for a violation of this section,
428 notwithstanding a charge and sentence for a violation of any other section of this chapter.

429