

**DRUG TESTING AND PARAPHERNALIA AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jen Plumb**

House 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 products or 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 2022, Chapters 116, 415 and 430

**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

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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~~] this chapter, Chapter 37a, Utah Drug  
44 Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah  
45 Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a  
46 felony; and

47 (B) the violation is a part of a continuing series of two or more violations of [~~Chapter~~  
48 ~~37, Utah Controlled Substances Act~~] this chapter, Chapter 37a, Utah Drug Paraphernalia Act,  
49 Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance  
50 Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are  
51 undertaken in concert with five or more persons with respect to whom the person occupies a  
52 position of organizer, supervisor, or any other position of management.

53 (b) A person convicted of violating Subsection (1)(a) with respect to:

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

58 (ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or

59 marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and  
60 upon a second or subsequent conviction is guilty of a second degree felony; or

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

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

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

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

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

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

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

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

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

86 (a) It is unlawful:

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

90 otherwise authorized by this chapter;

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

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

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

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

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

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

107 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled  
108 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section  
109 [58-37-4.2](#), or marijuana, is guilty of a class B misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

134 (g) The Administrative Office of the Courts shall report to the Division of Professional  
135 Licensing the name, case number, date of conviction, and if known, the date of birth of each  
136 person convicted of violating Subsection (2)(a).

137 (3) Prohibited acts C -- Penalties:

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

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

144 (ii) to acquire or obtain possession of, to procure or attempt to procure the  
145 administration of, to obtain a prescription for, to prescribe or dispense to a person known to be  
146 attempting to acquire or obtain possession of, or to procure the administration of a controlled  
147 substance by misrepresentation or failure by the person to disclose receiving a controlled  
148 substance from another source, fraud, forgery, deception, subterfuge, alteration of a  
149 prescription or written order for a controlled substance, or the use of a false name or address;

150 (iii) to make a false or forged prescription or written order for a controlled substance,  
151 or to utter the same, or to alter a prescription or written order issued or written under the terms

152 of this chapter; or

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

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

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

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

162 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

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

177 (vii) within an area that is within 100 feet of any structure, facility, or grounds included  
178 in Subsections [~~(4)(a)(i), (ii), (iii), (iv), (v), and~~] through (vi);

179 (viii) in the presence of a person younger than 18 years old, regardless of where the act  
180 occurs; or

181 (ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or  
182 distribution of a substance in violation of this section to an inmate or on the grounds of a

183 correctional facility as defined in Section 76-8-311.3.

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

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

190 (c) If the classification that would otherwise have been established would have been  
191 less than a first degree felony but for this Subsection (4), a person convicted under this  
192 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that  
193 offense.

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

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

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

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

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

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

207 (ii) the actor mistakenly believed that the location where the act occurred was not as  
208 described in Subsection (4)(a) or was unaware that the location where the act occurred was as  
209 described in Subsection (4)(a).

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

212 (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of  
213 guilty or no contest to a violation or attempted violation of this section or a plea which is held

214 in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction,  
215 even if the charge has been subsequently reduced or dismissed in accordance with the plea in  
216 abeyance agreement.

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

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

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

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

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

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

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

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

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

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

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

243 (c) a healthcare facility, substance use harm reduction services program, or drug  
244 addiction treatment facility that temporarily possesses a controlled or counterfeit substance to



245 conduct a test or analysis on the controlled or counterfeit substance to identify or analyze the  
246 strength, effectiveness, or purity of the substance for a public health or safety reason.

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

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

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

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

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

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

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

266 (i) engaged in medical research; and

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

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

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

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

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

275 (15) The application of any increase in penalty under this section to a violation of

276 Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This  
277 Subsection (15) takes precedence over any conflicting provision of this section.

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

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

283 (ii) reports, or assists a person who reports, in good faith the overdose event to a  
284 medical provider, an emergency medical service provider as defined in Section [26-8a-102](#), a  
285 law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the  
286 person is the subject of a report made under this Subsection (16);

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

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

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

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

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

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

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

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

306 (c) As used in this Subsection (16) and in Section [76-3-203.11](#), "good faith" does not

307 include seeking medical assistance under this section during the course of a law enforcement  
308 agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

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

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

314 (19) If a minor who is under 18 years old is found by a court to have violated this  
315 section or Subsection 76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to  
316 complete:

317 (a) a screening as defined in Section 41-6a-501;

318 (b) an assessment as defined in Section 41-6a-501 if the screening indicates an  
319 assessment to be appropriate; and

320 (c) an educational series as defined in Section 41-6a-501 or substance use disorder  
321 treatment as indicated by an assessment.

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

323 **58-37a-3. "Drug paraphernalia" defined.**

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

330 [~~(1)~~] (2) "Drug paraphernalia" includes:

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

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

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

338            ~~[(4)]~~ (d) except as provided in Subsection (3)(a), testing equipment used, or intended  
339 for use, to identify or to analyze the strength, effectiveness, or purity of a controlled substance;

340            ~~[(5)]~~ (e) scales and balances used, or intended for use, in weighing or measuring a  
341 controlled substance;

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

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

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

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

350            ~~[(10)]~~ (j) containers and other objects used, or intended for use to store or conceal a  
351 controlled substance; and

352            ~~[(11) hypodermic syringes, needles, and other objects used, or intended for use to~~  
353 ~~parenterally inject a controlled substance into the human body, except as provided in Section~~  
354 ~~58-37a-5; and]~~

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

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

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

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

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

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

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

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

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

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

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

369           ~~[(k)]~~ (xi) chillums;  
370           ~~[(h)]~~ (xii) bongos; and  
371           ~~[(m)]~~ (xiii) ice pipes or chillers.  
372           (3) "Drug paraphernalia" does not include:  
373           (a) a testing product or equipment, including a fentanyl test strip, used or intended for  
374 use to determine whether a substance contains:  
375           (i) a controlled substance that can cause physical harm or death; or  
376           (ii) a chemical or compound that can cause physical harm or death; or  
377           (b) a hypodermic syringe, needle, or other object used, or intended for use, to  
378 parenterally inject a controlled substance into the human body.

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

380           **58-37a-5. Unlawful acts.**

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

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

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

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

394           (3) Any person 18 years ~~[of age]~~ old or older who delivers drug paraphernalia to a  
395 person younger than 18 years ~~[of age]~~ old and who is three years or more younger than the  
396 person making the delivery is guilty of a third degree felony.

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

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

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

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

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

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

408 [(6)] (5) A person may be charged and sentenced for a violation of this section,  
409 notwithstanding a charge and sentence for a violation of any other section of this chapter.