

**CONTROLLED SUBSTANCE PENALTY AMENDMENT**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

**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 2011, Chapter 12

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

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

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

(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.

**Legislative Review Note**  
 as of 2-18-14 3:50 PM

**Office of Legislative Research and General Counsel**