

DRUG TESTING AND PARAPHERNALIA AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jen Plumb

House Sponsor: Steve Eliason

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

- ▶ 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

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

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

29 **58-37-8. Prohibited acts -- Penalties.**

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

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

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

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

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

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

39 (A) the person participates, directs, or engages in conduct that results in a violation of
40 [~~Chapter 37, Utah Controlled Substances Act~~] this chapter, Chapter 37a, Utah Drug
41 Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah
42 Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a
43 felony; and

44 (B) the violation is a part of a continuing series of two or more violations of [~~Chapter~~
45 ~~37, Utah Controlled Substances Act~~] this chapter, Chapter 37a, Utah Drug Paraphernalia Act,
46 Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance
47 Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are
48 undertaken in concert with five or more persons with respect to whom the person occupies a
49 position of organizer, supervisor, or any other position of management.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 83 (a) It is unlawful:
- 84 (i) for a person knowingly and intentionally to possess or use a controlled substance
- 85 analog or a controlled substance, unless it was obtained under a valid prescription or order,
- 86 directly from a practitioner while acting in the course of the person's professional practice, or as
- 87 otherwise authorized by this chapter;
- 88 (ii) for an owner, tenant, licensee, or person in control of a building, room, tenement,
- 89 vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied
- 90 by persons unlawfully possessing, using, or distributing controlled substances in any of those
- 91 locations; or
- 92 (iii) for a person knowingly and intentionally to possess an altered or forged
- 93 prescription or written order for a controlled substance.
- 94 (b) A person convicted of violating Subsection (2)(a)(i) with respect to:
- 95 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;
- 96 or
- 97 (ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty
- 98 of a class A misdemeanor on a first or second conviction, and on a third or subsequent
- 99 conviction if each prior offense was committed within seven years before the date of the
- 100 offense upon which the current conviction is based is guilty of a third degree felony.
- 101 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
- 102 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater
- 103 penalty than provided in this Subsection (2).
- 104 (d) A person who violates Subsection (2)(a)(i) with respect to all other controlled
- 105 substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section
- 106 [58-37-4.2](#), or marijuana, is guilty of a class B misdemeanor.
- 107 (i) Upon a third conviction the person is guilty of a class A misdemeanor, if each prior
- 108 offense was committed within seven years before the date of the offense upon which the
- 109 current conviction is based.

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

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

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

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

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

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

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

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

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

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

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

134 (3) Prohibited acts C -- Penalties:

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

136 (i) to use in the course of the manufacture or distribution of a controlled substance a

137 license number which is fictitious, revoked, suspended, or issued to another person or, for the
138 purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a
139 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
140 person;

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

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

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

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

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

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

159 (4) Prohibited acts D -- Penalties:

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

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

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

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

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

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

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

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

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

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

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

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

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

191 (d) (i) If the violation is of Subsection (4)(a)(ix):
192 (A) the person may be sentenced to imprisonment for an indeterminate term as
193 provided by law, and the court shall additionally sentence the person convicted for a term of
194 one year to run consecutively and not concurrently; and
195 (B) the court may additionally sentence the person convicted for an indeterminate term
196 not to exceed five years to run consecutively and not concurrently; and
197 (ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with
198 the mental state required for the commission of an offense, directly or indirectly solicits,
199 requests, commands, coerces, encourages, or intentionally aids another person to commit a
200 violation of Subsection (4)(a)(ix).
201 (e) It is not a defense to a prosecution under this Subsection (4) that:
202 (i) the actor mistakenly believed the individual to be 18 years old or older at the time of
203 the offense or was unaware of the individual's true age; or
204 (ii) the actor mistakenly believed that the location where the act occurred was not as
205 described in Subsection (4)(a) or was unaware that the location where the act occurred was as
206 described in Subsection (4)(a).
207 (5) A violation of this chapter for which no penalty is specified is a class B
208 misdemeanor.
209 (6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of
210 guilty or no contest to a violation or attempted violation of this section or a plea which is held
211 in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction,
212 even if the charge has been subsequently reduced or dismissed in accordance with the plea in
213 abeyance agreement.
214 (b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a
215 conviction that is:
216 (i) from a separate criminal episode than the current charge; and
217 (ii) from a conviction that is separate from any other conviction used to enhance the

218 current charge.

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

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

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

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

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

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

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

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

240 (c) a healthcare facility, substance use harm reduction services program, or drug
241 addiction treatment facility that temporarily possesses a controlled or counterfeit substance to
242 conduct a test or analysis on the controlled or counterfeit substance to identify or analyze the
243 strength, effectiveness, or purity of the substance for a public health or safety reason.

244 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,

245 as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide
246 traditional ceremonial purposes in connection with the practice of a traditional Indian religion
247 as defined in Section 58-37-2.

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

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

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

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

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

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

263 (i) engaged in medical research; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

320 **58-37a-3. "Drug paraphernalia" defined.**

321 (1) As used in this chapter, "drug paraphernalia" means any equipment, product, or
322 material used, or intended for use, to plant, propagate, cultivate, grow, harvest, manufacture,
323 compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain,
324 conceal, inject, ingest, inhale, or to otherwise introduce a controlled substance into the human
325 body in violation of [~~Title 58, Chapter 37, Utah Controlled Substances Act, and includes, but is~~

326 ~~not limited to:~~ Chapter 37, Utah Controlled Substances Act.

327 [~~1~~] (2) "Drug paraphernalia" includes:

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

331 [~~2~~] (b) kits used, or intended for use, in manufacturing, compounding, converting,
332 producing, processing, or preparing a controlled substance;

333 [~~3~~] (c) isomerization devices used, or intended for use, to increase the potency of any
334 species of plant which is a controlled substance;

335 [~~4~~] (d) except as provided in Subsection (3), testing equipment used, or intended for
336 use, to identify or to analyze the strength, effectiveness, or purity of a controlled substance;

337 [~~5~~] (e) scales and balances used, or intended for use, in weighing or measuring a
338 controlled substance;

339 [~~6~~] (f) diluents and adulterants, such as quinine hydrochloride, mannitol, mannited,
340 dextrose and lactose, used, or intended for use to cut a controlled substance;

341 [~~7~~] (g) separation gins and sifters used, or intended for use to remove twigs, seeds, or
342 other impurities from marihuana;

343 [~~8~~] (h) blenders, bowls, containers, spoons and mixing devices used, or intended for
344 use to compound a controlled substance;

345 [~~9~~] (i) capsules, balloons, envelopes, and other containers used, or intended for use to
346 package small quantities of a controlled substance;

347 [~~10~~] (j) containers and other objects used, or intended for use to store or conceal a
348 controlled substance;

349 [~~11~~] (k) hypodermic syringes, needles, and other objects used, or intended for use to
350 parenterally inject a controlled substance into the human body, except as provided in Section
351 [58-37a-5](#); and

352 [~~12~~] (l) objects used, or intended for use to ingest, inhale, or otherwise introduce a

353 controlled substance into the human body, including but not limited to:
354 ~~[(a)]~~ (i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
355 screens, permanent screens, hashish heads, or punctured metal bowls;
356 ~~[(b)]~~ (ii) water pipes;
357 ~~[(c)]~~ (iii) carburetion tubes and devices;
358 ~~[(d)]~~ (iv) smoking and carburetion masks;
359 ~~[(e)]~~ (v) roach clips: meaning objects used to hold burning material, such as a
360 marihuana cigarette, that has become too small or too short to be held in the hand;
361 ~~[(f)]~~ (vi) miniature cocaine spoons and cocaine vials;
362 ~~[(g)]~~ (vii) chamber pipes;
363 ~~[(h)]~~ (viii) carburetor pipes;
364 ~~[(i)]~~ (ix) electric pipes;
365 ~~[(j)]~~ (x) air-driven pipes;
366 ~~[(k)]~~ (xi) chillums;
367 ~~[(l)]~~ (xii) bongs; and
368 ~~[(m)]~~ (xiii) ice pipes or chillers.
369 (3) "Drug paraphernalia" does not include a testing product or equipment, including a
370 fentanyl test strip, used or intended for use to determine whether a substance contains:
371 (a) a controlled substance that can cause physical harm or death; or
372 (b) a chemical or compound that can cause physical harm or death.