METHAMPHETAMINE - RESTRICTION ON COMPONENTS

2006 GENERAL SESSION
STATE OF UTAH

Chief Sponsor: Michael T. Morley
Senate Sponsor: Carlene M. Walker

LONG TITLE

General Description: This bill modifies Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, by amending the regulation of retail sales of products used to make methamphetamine.

Highlighted Provisions:
This bill:

- regulates the sale of products containing ephedrine and pseudoephedrine;
- requires a retail distributor to:
  - request that purchasers provide photo identification;
  - keep a written or electronic list of transactions for one year documenting:
    - name of purchaser;
    - date of transaction; and
    - name and amount of product purchased; and
  - display or store the product in a locked case or in an area not accessible to customers;
- restricts the purchaser to:
  - no more than 3.6 grams of product per transaction; and
  - possession of a total of no more than 9 grams of product at any time;
- makes exceptions for:
  - prescription medications; and
products formulated to effectively prevent the conversion of the active ingredient into methamphetamine, including liquid, liquid-filled capsules, and pediatric forms of ephedrine or pseudoephedrine;
- provides a sunset date for Section 58-37c-20.5 on June 30, 2010; and
- provides a class B misdemeanor penalty for violations.

Monies Appropriated in this Bill:
None

Other Special Clauses:
This bill takes effect on January 1, 2007.

Utah Code Sections Affected:

AMENDS:
58-37c-8, as last amended by Chapter 271, Laws of Utah 2000
58-37c-20, as last amended by Chapter 1, Laws of Utah 2000
63-55-258, as last amended by Chapters 51 and 86, Laws of Utah 2005

ENACTS:
58-37c-20.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:
Section 1.  Section 58-37c-8 is amended to read:

58-37c-8. License -- Exceptions from licensure or regulation.
(1) Any person engaged in a regulated transaction must be appropriately licensed under this chapter as a regulated distributor and regulated purchaser unless excepted from licensure under this chapter.
(2) The division shall:
(a) establish the form of application for a license, the requirements for licensure, and fees for initial licensure and renewal; and
(b) identify required information to be contained in the application as a condition of licensure.
(3) A practitioner who holds a Utah Controlled Substance License and a Controlled Substance Registration issued by the Drug Enforcement Administration of the U.S. Government is excepted from licensure under this chapter.
(4) Any purchase, sale, transfer, furnishing, or receipt of any drug intended for lawful
use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other
animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or
phenylpropanolamine if such the drug is lawfully purchased, sold, transferred, or furnished as
an over-the-counter medication without prescription pursuant to the federal Food, Drug and
Cosmetic Act, 21 USC, Sec. 301 et seq., or regulations adopted thereunder are excepted from
licensure, reporting, and recordkeeping under this chapter, except that ephedrine and
pseudoephedrine are subject to Section 58-37c-20.5.

(5) Any purchase, sale, transfer, receipt, or manufacture of any dietary supplement,
vitamins, minerals, herbs, or other similar substances including concentrates or extracts, which
are not otherwise prohibited by law, which may contain naturally occurring amounts of
chemicals or substances listed in this chapter, or in rules adopted pursuant to Title 63, Chapter
46a, Utah Administrative Rulemaking Act, are exempt from licensure under this chapter.

(6) A purchaser of two ounces or less of crystal iodine in a single transaction is not
required to be licensed as a regulated purchaser if the transaction complies with Section
58-37c-18.

(7) Any purchase, sale, transfer, receipt, or manufacture of any product that contains
any precursor chemical listed in Subsection 58-37c-3(2)(ff) or (gg) and that is not intended for
human consumption is exempt from licensure, regulation, or criminal penalties under this
chapter.

Section 2. Section 58-37c-20 is amended to read:

58-37c-20. Possession of ephedrine or pseudoephedrine -- Penalties.

(1) Any person who is not licensed to engage in regulated transactions and not
excepted from licensure who, under circumstances not amounting to a violation of Subsection
58-37c-3(12)(k) or Subsection 58-37d-4(1)(a), possesses more than 9 grams of ephedrine
or pseudoephedrine, their salts, isomers, or salts of isomers, or a combination of any of these
substances, is guilty of a class A misdemeanor.

(2) (a) It is an affirmative defense to a charge under Subsection (1) that the person in
possession of ephedrine or pseudoephedrine, or a combination of these two substances:

(i) is a physician, pharmacist, retail distributor, wholesaler, manufacturer,
warehouseman, or common carrier, or an agent of any of these persons; and
(ii) possesses the substances in the regular course of lawful business activities.

(b) (i) The defendant shall provide written notice of intent to claim an affirmative defense under this section as soon as practicable, but not later than ten days prior to trial. The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

(ii) The notice shall include the specifics of the asserted defense.

(iii) The defendant shall establish the affirmative defense by a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.

(3) This section does not apply to dietary supplements, herbs, or other natural products, including concentrates or extracts, which:

(a) are not otherwise prohibited by law; and

(b) may contain naturally occurring ephedrine, ephedrine alkaloids, or pseudoephedrine, or their salts, isomers, or salts of isomers, or a combination of these substances, that:

(i) are contained in a matrix of organic material; and

(ii) do not exceed 15% of the total weight of the natural product.

Section 3. Section 58-37c-20.5 is enacted to read:

58-37c-20.5. Pseudoephedrine products -- Limitations on retail sale.

(1) Any retail distributor who sells any product, mixture, or preparation containing ephedrine or pseudoephedrine, its salts or optical isomers, or salts of optical isomers, or a combination of any of these substances to another person shall:

(a) store the product in an area not accessible to customers before the sale is made, which may include a locked cabinet to display the product in an area accessible to customers, if the locked cabinet may only be opened by the retail distributor or its employees;

(b) require the purchaser to produce photo identification issued by a governmental agency that includes the purchaser's date of birth;

(c) maintain a written or electronic list of the sales under this section, documenting:

(i) name of the purchaser;

(ii) date of the transaction; and

(iii) name and amount of the product purchased; and

(d) maintain the records under Subsection (1)(c) for not less than one year.
(2) A person may not purchase more than 3.6 grams of any product or any combination of products containing ephedrine or pseudoephedrine in one transaction.

(3) A person may not at any time possess, receive, or otherwise acquire a total of more than 9 grams of any product or any combination of products containing ephedrine or pseudoephedrine.

(4) Subsection (2) does not apply to any quantity of a product containing ephedrine or pseudoephedrine dispensed under a valid prescription.

(5) This section does not apply to products formulated to effectively prevent the conversion of the active ingredient into methamphetamine, including liquid, liquid-filled capsules, and pediatric forms of ephedrine or pseudoephedrine.

(6) Any violation of this section is a class B misdemeanor.

(7) A local government entity may make no ordinance more restrictive than under this section.

Section 4. Section 63-55-258 is amended to read:

63-55-258. Repeal dates, Title 58.

(1) Title 58, Chapter 9, Funeral Services Licensing Act, is repealed July 1, 2008.

(2) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is repealed July 1, 2006.

(3) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2015.

(4) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2013.

(5) Section 58-37c-20.5 is repealed June 30, 2010.

[4(5)] (6) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2013.

[4(6)] (7) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act, is repealed July 1, 2009.

[4(7)] (8) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2015.

[4(8)] (9) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July 1, 2013.

[4(9)] (10) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2014.
Title 58, Chapter 49, Dietitian Certification Act, is repealed July 1, 2015.

Title 58, Chapter 59, Professional Employer Organization Registration Act, is repealed July 1, 2007.

Title 58, Chapter 71, Naturopathic Physician Practice Act, is repealed July 1, 2006.

Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2007.

Section 5. **Effective date.**

This bill takes effect on January 1, 2007.

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Legislative Review Note

*as of 2-7-06 9:21 AM*

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel
State Impact

Provisions of this bill can be implemented with existing resources.

Individual and Business Impact

Retail distributors will be required to record and maintain transactions records and make store space modifications to adhere to provisions of the bill.

Office of the Legislative Fiscal Analyst