

## CHAPTER 145

S.B. No. 101

(Passed March 11, 1971. In effect January 1, 1972)

## UTAH CONTROLLED SUBSTANCES ACT

**An Act Relating to Controlled Substances; Providing for Definitions; Providing for the Regulation of the Manufacture, Production, Distribution, Dispensation and Administration of Controlled Substances; Providing Authority for the Attorney General to Establish Schedules and Otherwise Set Standards and Procedures for the Control of Substances; Providing for the Licensing of Practitioners, Manufacturers, Producers and Research Analysts by the Department of Business Regulation; Providing for the Use and Regulation of Prescriptions to Obtain Certain Substances and Regulations for the Packaging and Labeling of Substances; Providing for the Administration of this Act by State and Local Law Enforcement Agencies and Judges; Providing Penalties; Providing for the Repeal of Chapter 13a, Title 58 and Chapter 33, Title 58, Utah Code Annotated 1953, and Section 76-42-1, 76-42-2, 76-42-3, Utah Code Annotated 1953, as Amended by Chapter 167, Laws of Utah 1957, and Sections 76-42-7, 76-42-8, and 76-42-9, Utah Code Annotated 1953, as Enacted by Chapter 168, Laws of Utah 1957.**

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

**Section 1. Title of act.**

This act shall be known and may be cited as the "Utah Controlled Substances Act."

**Section 2. Definitions.**

As used in this act:

(1) The word "administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner or, in his presence, by his authorized agent, or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(2) The word "agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or practitioner but does not include a common or contract carrier, public warehouseman, or employee thereof.

(3) The words "drug dependent person" mean any individual who unlawfully and habitually uses any controlled substance to endanger the public morals, health, safety, or welfare, or who is so far dependent upon the use of controlled substances as to have lost the power of self-control with reference to his dependency.

(4) The word "control" means to add, remove, or change the placement of a drug, substance, or immediate precursor under section 3.

(5) The words "controlled substance" mean a drug, substance, or immediate precursor in schedules I, II, III, IV, or V of section 4. The words do not include distilled spirits, wine, or malt beverages, as those terms are defined or used in Title 32, tobacco or food.

(6) The word "deliver" or "delivery" means the actual, constructive, or attempted transfer of a controlled substance, whether or not there exists an agency relationship.

(7) The word "dispense" means the delivery of a controlled substance by a pharmacist to an ultimate user pursuant to the lawful order of a practitioner, and the term includes the packaging, labeling, or compounding necessary to prepare the substance for delivery. The word "dispenser" means a pharmacist who dispenses a controlled substance.

(8) The word "distribute" means to deliver other than by administering or dispensing a controlled substance. "Distribute for value" means to deliver a controlled substance in exchange for compensation, consideration, or item of value, or a promise therefor. The word "distributor" means a person who distributes controlled substances.

(9) The word "department" means the department of business regulation.

(10) The word "manufacture" means the production, preparation, propagation, compounding, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. The word "manufacturer" includes any person who packages, repackages, or labels any container of any controlled substance, except pharmacists who dispense or compound prescription orders for delivery to the ultimate consumer.

(11) The word "production" means the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(12) The word "practitioner" means a physician, dentist, veterinarian, pharmacist, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise wise permitted to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(13) The words "ultimate user" mean any person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administration to an animal owned by him or a member of his household.

(14) The word "state" means the State of Utah.

(15) The words "attorney general" mean the attorney general of the State of Utah.

(16) The word "person" means any corporation, association, partnership, trust, other institution or entity or one or more individuals.

(17) The word "drug" means:

(a) Articles recognized in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Articles, other than food, intended to affect the structure or function of man or other animals;

(d) Articles intended for use as a component of any articles specified in clause (a), (b), or (c) of this paragraph; but does not include devices

or their components, parts, or accessories.

(18) The words "depressant or stimulant substance" mean:

(a) A drug which contains any quantity of:

- (i) Barbituric acid or any of the salts of barbituric acid; or
- (ii) Any derivative of barbituric acid which has been designated by the secretary as habit-forming under section 502(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352 (d)).

(b) A drug which contains any quantity of:

- (i) Amphetamine or any of its optical isomers; or
- (ii) Any salt of amphetamine or any salt of an optical isomer of amphetamine; or
- (iii) Any substance which the Secretary of Health, Education and Welfare or the Attorney General of the United States after investigation has found any by regulation designated habit-forming because of its stimulant effect on the central nervous system; or

(c) Lysergic acid diethylamide; or

(d) Any drug which contains any quantity of a substance which the Secretary of Health, Education and Welfare or the Attorney General of the United States after investigation has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(19) The words "narcotic drug" mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium, coca leaves, and opiates;

(b) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;

(c) Opium poppy and poppy straw;

(d) A substance (and any compound, manufacture, salt, derivative, or preparation of the substance) which is chemically identical with any of the substances referred to clause (a), (b), or (c), except the words "narcotic drugs" do not include decocainized coca leaves or extracts of coca leaves which do not contain cocaine or ecgonine.

(20) The word "opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.

(21) The words "opium poppy" means the plant of the species *papaver somniferum* L., except the seeds thereof.

(22) The words "poppy straw" mean all parts, except the seeds, of the opium poppy, after mowing.

(23) The words "immediate precursor" means a substance which the Attorney General of the United States or the attorney general of the State of Utah has found to be, and by regulation designated as being, the principal compound used or produced primarily for use in the manufacture of a controlled substance; or which is an immediate chemical in-

termediary used or likely to be used in the manufacture of a controlled substance; and the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

(24) The words "counterfeit substance" mean any controlled substance or container or labeling of any controlled substance that, without authorization bears the trademark, trade name, or other identifying mark, imprint, number, or device or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed the substance which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

(25) The words "cannabis" or "marihuana" mean all parts of the plants *cannabis sativa* L. and *cannabis indica*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin. Any synthetic equivalents of the substances contained in the plants *cannabis sativa* or *cannabis indica*, or in the resinous extractives of the *cannabis* species or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity shall also be included.

(26) The word "possession" or "use" means the joint or individual ownership, control, occupancy, holding retaining, belonging, maintaining, obtaining, or the application, inhalation, swallowing, injection, or consumption, as distinguished from distribution, of controlled substances and is intended to include individual, joint or group possession or use of controlled substances. For a person to be a possessor or user of a controlled substance, it is not required that he be shown to have individually possessed, used, or controlled the substance, but it is sufficient if it is shown that he jointly participated with one or more persons in the use, possession, or control of any substances with knowledge that such activity was occurring.

(27) The word "food" shall mean:

(a) Any nutrient or substance of plant, mineral or animal origin other than a drug as specified in this act normally injected by human beings, and

(b) Foods for special dietary uses such as shall exist by reason of a physical, physiological, pathological or other condition including but not limited to the conditions of disease, convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight and overweight; uses for supplying a particular dietary need which shall exist by reason of age including but not limited to the ages of infancy and childbirth, and also uses for supplementing and for fortifying the ordinary or unusual diet with any vitamin, mineral or other dietary property for use of a food. Any such particular use of a food is a special dietary use regardless of the nutritional purposes.

(28) This bill does not infringe upon the rights of citizens to purchase and use herbs and food supplements of vegetable origin and does not restrict the non-allopathic practitioners, the herbalist, the massage therapists.

**Section 3. Powers of attorney general—Guidelines—Federal law—Responsibilities of department of business regulation.**

(1) All controlled substances listed in section 4 are hereby controlled.

(2) The attorney general of the State of Utah shall administer the provisions of this act and may add or delete substances or reschedule all substances enumerated in the schedules in section 4. In determining whether to control a substance, the attorney general shall consider the following:

- (a) Its actual or relative potential for abuse;
  - (b) Scientific evidence of its pharmacological effect, if known;
  - (c) State of current scientific knowledge regarding the substance;
  - (d) Its history and current pattern of abuse;
  - (e) The scope, duration, and significance of abuse;
  - (f) What, if any, risk there is to the public health;
  - (g) Its psychic or psychological dependence liability;
  - (h) Whether the substance is an immediate precursor of a substance already controlled under this act;
  - (i) Whether the substance has been controlled under federal law.
- After considering the above factors, the attorney general shall make findings with respect thereto and issue an order controlling the substance if he finds it has a potential for abuse.

(3) The attorney general may, without regard to the findings required by paragraph (2) of this section, place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any other schedule with a higher numerical designation. If the attorney general designates a substance as an immediate precursor and places it in the schedule, other substances shall not be placed in the schedule solely because they are its precursors.

(4) Whenever any substance is designated, rescheduled, or deleted as a controlled substance under federal law, and notice thereof is given to the attorney general, the attorney general shall similarly control the substance under this act after the expiration of 30 days from publication in the Federal Register of a final order designating a substance as a controlled substance, or rescheduling or deleting any substance previously controlled, and the designation of the attorney general shall be made public and filed with the secretary of state. However, if the attorney general within 30 days after publication of a final federal decision objects to the inclusion, rescheduling, or deletion, the attorney general shall publish and make public his reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of any such hearing, the attorney general shall publish and make public his decision, which shall be final, until further modified by the attorney general or by the legislature. Upon publication of an objection to the inclusion, rescheduling, or deletion under this subpart of any substance scheduled by federal decision, control within this state of the substance questioned shall be stayed for a period of 90 days or until after the attorney general makes public his decision, whichever occurs first.

(5) (a) The attorney general shall by regulation exclude any non-narcotic substance from a schedule if the substance, may, under the provisions of federal or state law, be lawfully sold over the counter with-

out a prescription.

(b) Dextromethorphan shall not be deemed to be included in any schedule by reason of enactment of this act unless controlled after the date of such enactment pursuant to the provisions of this section.

(6) The department of business regulation shall make recommendations to the attorney general of the State of Utah relating to the scheduling of substances. The department shall make or provide for scientific investigation, research, and analysis relative to the scheduling of substances based upon standards set forth by this act and shall report its findings and conclusions to the attorney general for his determination of the scheduling of substances. The director of the department shall utilize the services, advice, and expertise of the state board of pharmacy and the state board of medical examiners within the supervision of the department and the division of drugs of the department of social services in preparing a report to the attorney general for his determination of the scheduling of substances; furthermore it shall be necessary for the attorney general to have the advice and consent of the division of drugs, state board of pharmacy and the state board of medical examiners before amending the schedules.

(7) The attorney general shall make his determination with respect to scheduling substances in accordance with the procedures set forth in section 5.

#### **Section 4. Schedules of controlled substances—Findings required for scheduling.**

(1) There are established five schedules of controlled substances to be known as schedules I, II, III, IV, and V. Schedules shall initially consist of substances listed in this section. The schedules established by this section shall be updated at least annually or as often as deemed necessary by the attorney general of the State of Utah. However, a failure of the attorney general to update the established schedules on an annual basis shall not constitute a suspension of any of the provisions of this act.

(2) The findings required for each of the schedules are as follows:

(a) Schedule I:

- (i) The drug or other substance has a high potential for abuse.
- (ii) The drug or other substance has a currently accepted medical use in treatment in the United States.
- (iii) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(b) Schedule II:

- (i) The drug or other substance has a high potential for abuse.
- (ii) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.
- (iii) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(c) Schedule III:

- (i) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.
- (ii) The drug or other substance has a currently accepted medical use in treatment in the United States.

- (iii) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.
  - (d) Schedule IV:
    - (i) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.
    - (ii) The drug or other substance has a currently accepted medical use in treatment in the United States.
    - (iii) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.
  - (e) Schedule V.
    - (i) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.
    - (ii) The drug or other substance has a currently accepted medical use in treatment in the United States.
    - (iii) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.
- (3) Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 1, chapter 2, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name or brand name designated:
- (a) Schedule I:
    - (i) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:
      - (A) Acetylmethadol
      - (B) Allylprodine
      - (C) Alphacetylmethadol
      - (D) Alphameprodine
      - (E) Alphamethadol
      - (F) Benzethidine
      - (G) Betacetylmethadol
      - (H) Betameprodine
      - (I) Betamethadol
      - (J) Betaprodine
      - (K) Clonitazene
      - (L) Dextromoramide
      - (M) Dextrorphan
      - (N) Diampromide
      - (O) Diethylthiambutene
      - (P) Dimenoxadol
      - (Q) Dimepheptanol
      - (R) Dimethylthiambutene
      - (S) Dioxaphetyl butyrate
      - (T) Dipipanone
      - (U) Ethylmethylthiambutene

- (V) Etonitazene
- (W) Etoxidine
- (X) Furethidine
- (Y) Hydroxypethidine
- (Z) Ketobemidone
- (AA) Levomoramide
- (BB) Levophenacymorphan
- (CC) Morpheridine
- (DD) Noracymethadol
- (EE) Norlevorphanol
- (FF) Normethadone
- (GG) Norpipanone
- (HH) Phenadoxone
- (II) Phenampromide
- (JJ) Phenomorphan
- (KK) Phenoperidine
- (LL) Piritramide
- (MM) Proheptazine
- (NN) Properidine
- (OO) Racemoramide
- (PP) Trimeperidine

(ii) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Acetorphine
- (B) Acetyldihydrocodeine
- (C) Benzylmorphine
- (D) Codeine methylbromide
- (E) Codeine-N-Oxide
- (F) Cyprenorphine
- (G) Desomorphine
- (H) Dihydromorphine
- (I) Etorphine
- (J) Heroin
- (K) Hydromorphanol
- (L) Methyldesorphine
- (M) Methylhydromorphine
- (N) Morphine methylbromide
- (O) Morphine methylsulfonate
- (P) Morphine-N-Oxide
- (Q) Myrophine
- (R) Nicocodeine
- (S) Nicomorphine
- (T) Normorphine
- (U) Pholocodine
- (V) Thebacon

(iii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances,

or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) 3,4-methylenedioxy amphetamine
  - (B) 5-methoxy-3,4-methylenedioxy amphetamine
  - (C) 3,4,5-trimethoxy amphetamine
  - (D) Bufotenine
  - (E) Diethyltryptamine
  - (F) Dimethyltryptamine
- (G) 4-methyl-2,5-dimethoxyamphetamine
- (H) Ibogaine
  - (I) Lysergic acid diethylamide
  - (J) Marihuana
  - (K) Mescaline
  - (L) Peyote
  - (M) N-ethyl-3-piperidyl benzilate
  - (N) N-methyl-3-piperidyl benzilate
  - (O) Psilocybin
  - (P) Psilocyn
  - (Q) Tetrahydrocannabinols
- (b) Schedule II:
- (i) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
  - (B) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (A), except that these substances shall not include the isoquinoline alkaloids of opium.
  - (C) Opium poppy and poppy straw.
  - (D) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.
- (ii) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:
- (A) Alphaprodine
  - (B) Anileridine

- (C) Bezitramide
- (D) Dihydrocodeine
- (E) Diphenoxylate
- (F) Fentanyl
- (G) Isomethadone
- (H) Levomethorphan
- (I) Levorphanol
- (J) Metazocine
- (K) Methadone
- (L) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane
- (M) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid
- (N) Pethidine
- (O) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine
- (P) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate
- (Q) Pethidine-Intermediate-C, 1 methyl-4-phenylpiperidine-4-carboxylic acid
- (R) Phenazocine
- (S) Piminodine
- (T) Racemethorphan
- (U) Racemorphan

(iii) Any material, compound, mixture or preparation which contains any quantity of the following substances:

- (A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (B) Any substance which contains any quantity of methamphetamine including its salts, isomers, and salts of isomers.

(c) Schedule III:

(i) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following stimulant substances:

- (A) Phenmetrazine and its salts
- (B) Methylphenidate

(ii) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following depressant substances:

- (A) Any substance which contains any quantity of derivative of barbituric acid or any salt of a derivative of barbituric acid
- (B) Chorhexadol
- (C) Glutethimide
- (D) Lysergic acid
- (E) Lysergic acid amide
- (F) Methyprylon
- (G) Phencyclidine

- (H) Sulfondiethylmethane
- (I) Sulfonethylmethane
- (J) Sulfonmethane

(iii) Nalorphine

(iv) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts.

(C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(D) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(E) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts.

(F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(d) Schedule IV: Any material, compound, mixture, or preparation which contains any quantity of the following depressant substances:

- (i) Barbital
- (ii) Chloral betaine
- (iii) Chloral hydrate
- (iv) Ethchlorvynol
- (v) Ethinamate
- (vi) Methohexital
- (vii) Meprobamate
- (viii) Methylphenobarbital

- (ix) Paraldehyde
- (x) Petrichloral
- (xi) Phenobarbital

(e) Schedule V: Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (i) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
- (ii) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
- (iii) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
- (iv) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- (v) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(4) The attorney general may be regulation except any compound, mixture, or preparation containing any depressant or stimulant substance in paragraph (i) or (ii) of schedule III or in schedule IV or V from the application of all or any part of this title if:

(a) The compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and

(b) The ingredients are included in such combination, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

**Section 5. Provisions regarding naming of a substance controlled—Secretary of state to keep permanent register and compile rules—Declaratory relief for affected parties.**

(1) Whenever the attorney general declares a substance to be controlled or whenever the department or other agency promulgates rules or regulations pursuant to this act, they shall be handled in accordance with the following provisions:

(a) At least 20 days prior to adoption of any rule or the controlling of any substance, notice of the proposed action shall be filed with the secretary of state. The notice shall include:

- (i) A statement of the time, place, and nature of the proceedings for the adoption of a rule or substance to be controlled;
- (ii) Reference to the authority under which the rule is proposed to be adopted;
- (iii) Either an informative summary of the proposed rule or its express terms, and with respect to a controlled substance, the substance to be controlled and the schedule into which it is to be placed shall be specified;

(iv) Any other matters prescribed by statute applicable to the specific state agency or any specific rule or class of rules.

(b) On the date and at the time designated in the notice, the attorney general or appropriate agency shall afford any interested person, his duly authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing with or without an opportunity to present them orally.

(2) Notice required by paragraph (1) (a) of this section shall not be required when the attorney general, in controlling substances, or a state agency, with rule-making power under this act, in adopting a rule, finds that control of a particular substance or adoption of a particular rule is necessary for immediate preservation of the public peace, health, or safety and that notice and public procedure thereon are impracticable, unnecessary, or contrary to public interest.

(3) Every rule adopted by an agency and every substance controlled by the attorney general to have effect shall be certified and filed with the office of the secretary of state. The secretary of state shall keep a permanent register of the rules or controls certified.

(4) Nothing in this act shall be construed to require filing with the secretary of state any rule which establishes or fixes rates, prices, or tariffs or which is promulgated for the internal control of the affairs of any agency.

(5) No rule or regulation promulgated by any agency or the control of any substance specified by the attorney general shall become effective until a certified copy has been filed in the office of the secretary of state unless:

(a) Otherwise specifically provided by statute; or

(b) A later date is prescribed by the agency or attorney general filed with or as part of the rule.

(6) The secretary of state shall periodically compile rules filed in his office by each agency and all designations of controlled substances filed by the attorney general. The compilation shall be made as often as necessary and at least every two years. Copies shall be available to interested persons on request at a price fixed to cover the cost of the copy.

(7) Any person who is or may be affected by a rule or designation for control of a substance may obtain a judicial declaration of the validity of the rule or control by filing an action for declaratory relief in the district court of Salt Lake County. In addition, any rule may be declared invalid for substantial failure to comply with the provisions of this act or in case of an emergency rule, upon the ground that the findings and statement of emergency do not constitute an emergency.

(8) This section shall not exclude any other remedies available for testing the legality of any rule.

(9) Except as otherwise specifically provided this act shall not change any other rule-making authority established by law.

## **Section 6. Responsibilities and rights of department—Licenses.**

(1) The department is authorized to promulgate rules and regulations relating to the licensing and control of the manufacture, distribution, production and dispensing of controlled substances within this state.

The department may assess reasonable fees to defray the costs of issuing licenses within this act. The director of the department may delegate to any division or agency created within the department, authority to perform the responsibilities and functions prescribed to the department under this act; provided such delegated authority is consistent with the function of the division or agency provided by law.

(2) (a) Every person who manufactures, produces, distributes, dispenses, administers, or conducts research with any controlled substance within this state or who proposes to engage in manufacturing, producing, distributing, dispensing, administering, or conducting research with controlled substances within this state shall obtain annually a license issued by the department.

(b) Persons licensed to manufacture, produce, distribute, dispense, administer, or conduct research with controlled substances are authorized to possess, manufacture, produce, distribute, dispense, administer, or conduct research with those substances to the extent authorized by their license and in conformity with this act.

(c) The following persons shall not be required to obtain a license and may lawfully possess controlled substances under the provisions of this section:

(i) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if the agent or employee is acting in the usual course of his business or employment;

(ii) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of his business or employment;

(iii) An ultimate user or person in possession of any controlled substance pursuant to a lawful order of a practitioner.

(d) The department by regulation may waive the requirement for licensing of certain manufacturers, producers, distributors, dispensers, administrators, or research practitioners if consistent with the public health and safety.

(e) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, administers, or conducts research with controlled substances.

(f) The department is authorized to inspect the establishment of a licensee or applicant for licensing in accordance with the rules and regulations promulgated by it.

(3) (a) The department shall license an applicant to manufacture, produce, or distribute controlled substances included in schedules I through V of section 4, unless it determines that issuance of a license is inconsistent with the public interest. In determining public interest, the following factors shall be considered:

(i) Maintenance of effective controls against diversion of controlled substances and any schedule I or II substance compounded therefrom into other than legitimate medical, scientific, or industrial channels;

- (ii) Compliance with applicable state and local law;
- (iii) Prior conviction of applicant under federal or state laws relating to the manufacture, distribution, or dispensing of substances;
- (iv) Past experience in the manufacture of controlled dangerous substances and the existence in the establishment of effective controls against diversion;
- (v) Any other factors relevant and consistent with the public health and safety.

(b) Licenses granted under subsection (a) of this section shall not entitle a licensee to manufacture or distribute controlled substances in schedule I or II other than those specified in the license.

(c) Practitioners shall be licensed to administer, dispense, or conduct research with substances in schedules II through V if they are authorized to administer, dispense, or conduct research under the laws of this state. The department need not require a separate license for practitioners engaging in research with non-narcotic controlled substances in schedules II through V where the licensee is already licensed under this act in another capacity. However, with respect to research involving narcotic substances in schedules II through V, or where the department by regulation requires a separate license for research of non-narcotic substances in schedules II through V, a practitioner prior to conducting research shall make application to the department. Licensing for purposes of bona fide research with controlled substances by a practitioner deemed qualified may be denied only on a ground specified in paragraph (4) or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard adequately his supply of substances against diversion from medical or scientific use. Practitioners registered under federal law to conduct research in schedule I substances may conduct research in schedule I substances within this state upon furnishing the department evidence of federal registration.

(d) Compliance by manufacturers, producers, and distributors with the provisions of federal law respecting registration, excluding fees, entitles them to be licensed under this act.

(e) The department shall initially license those persons who own or operate an establishment engaged in the manufacture, production, distribution, dispensation, or administration of controlled substances prior to the effective date of this act and who are licensed by the state.

(4) (a) A license pursuant to subsection (2) of this section to manufacture, produce, distribute, dispense, administer, or conduct research with a controlled substance may be denied, suspended, or revoked by the department upon finding that the applicant:

- (i) Has materially falsified any application filed or required pursuant to this act; or
- (ii) Has been convicted of an offense under this act or any law of the United States, or any state, relating to any substances defined as a controlled substance; or
- (iii) Has been convicted of a felony under any other law of the United States or any state within five years of the date of the issuance of the license; or

(iv) Has had a federal license suspended or revoked by competent federal authority and is no longer authorized to engage in the manufacturing, distribution, or dispensing of controlled substances; or

(v) Has had his license suspended or revoked by competent authority of another state for violation of laws or regulations comparable to those of this state relating to the manufacture, distribution, or dispensing of controlled substances; or

(vi) Has violated any duly promulgated regulation of the department which reflects adversely on the licensee's reliability and integrity with respect to controlled substances; or

(vii) Has refused inspection of records required to be maintained under this act by a person authorized to inspect them.

(b) The department may limit revocation or suspension of a license to a particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this section and in accordance with the procedure set forth in section 58-1-26 through 58-1-36, and conducted in conjunction with the appropriate representative committee designated by the director of the department. Nothing in this provision shall give the department of business registration exclusive authority in proceedings to deny, revoke, or suspend licenses, except where the department is designated by law to perform such functions or when not so designated by law, said department of registration is designated by the director of business regulation to conduct such proceedings.

(d) The department may, in its discretion, suspend any license simultaneously with the institution of proceedings under this section if it finds there is an imminent danger to the public health or safety. Suspension shall continue in effect until the conclusion of proceedings including judicial review, unless sooner withdrawn by the department or dissolved by a court of competent jurisdiction.

(e) If a license granted under paragraph (4) of this section is suspended or revoked, all controlled substances owned or possessed by the licensee may be placed under seal in the discretion of the department. No disposition may be made of substances under seal until the time for taking an appeal has lapsed or until all appeals have been concluded unless a court upon application orders the sale of perishable substances and the proceeds deposited with the court. If a revocation order becomes final, all controlled substances shall be forfeited.

(f) The Bureau of Narcotics and Dangerous Drugs shall be notified promptly by the department of all orders suspending or revoking a license and all forfeitures of controlled substances.

(5) Persons licensed to manufacture, produce, distribute, dispense, administer, or conduct research with controlled substances shall maintain records and inventories in conformance with the record keeping and inventory requirements of federal and state law and any additional rules issued by the department.

(6) Controlled substances in schedules I through V shall be distributed only by a licensee and pursuant to an order form prepared in com-

pliance with department regulations or a lawful order under the rules and regulations of the United States.

(7) (a) No person shall write or authorize a prescription for a controlled substance unless:

- (i) He is a practitioner authorized to prescribe drugs and medicine under the laws of this state, and
- (ii) He is licensed under this act.

(b) No person other than a pharmacist licensed under the laws of this state, or his licensed intern, as required by section 58-17-10, shall dispense a controlled substance.

(c) No controlled substance may be dispensed without the written prescription of a practitioner, if such written prescription is required by the federal "Controlled Substances Act." Such written prescription shall be made in accordance with subsection (7) (a) of this section and in conformity with subsection (7) (d) of this section; provided, that in emergency situations as defined by rule of the department, controlled substances may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms designated by the department and filed by the pharmacy. Prescriptions reduced to writing by a pharmacist shall be in conformity with subsection (7) (d) of this section.

(d) Except for emergency situations designated by the department, no person shall issue, fill, compound, or dispense a prescription for a controlled substance unless the prescription is signed in ink or indelible pencil by the prescriber and contains the following information:

- (i) The name, address, and registry number of the prescriber;
- (ii) The name, address, and age of the person to whom or for whom the prescription is issued;
- (iii) The date of issuance of the prescription; and
- (iv) The name, quantity, and specific directions for use by the ultimate user of the controlled substance.

(e) No prescription shall be written, issued, filled, or dispensed for a schedule I controlled substance.

(f) Except when administered directly to an ultimate user by a licensed practitioner, controlled substances are subject to the following restrictions:

- (i) A prescription for a schedule II substance may be refilled only upon the written prescription of an authorized practitioner and no prescription for a schedule II controlled substance shall be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate of the prescriptions;
- (ii) A schedule III or IV controlled substance may not be refilled more than six months after the date of its original issuance or be refilled more than five times after the date of the prescription unless renewed by the practitioner.
- (iii) All other controlled substances in schedule V may be refilled as the prescriber's prescription shall direct, but in no event shall they be refilled one year after the date the prescription was issued unless renewed by the practitioner.

- (iv) Any prescription for a schedule II, III, and IV substance which is not presented to a pharmacist for dispensing by a pharmacist or if an oral prescription, which is not obtained within ten days of the date the prescription was written or authorized, shall not be filled or dispensed.
- (h) An order for a controlled substance in schedules II through V for use by a patient in a licensed hospital shall be exempt from all requirements of subsection (7) of this section, provided:
- (i) The order is authorized by the physician treating the patient and designates the quantity ordered;
  - (ii) The order is duly entered upon the record of the patient and the record is signed by the prescriber affirming his authorization of the order within 48 hours after the filling or administering the order and the patient's record reflects the quantity actually administered;
  - (iii) The order is filled and dispensed by a pharmacist practicing his profession within the physical structure of the hospital or the order is taken from a supply lawfully maintained by the hospital and the amount taken from the supply is administered directly to the patient authorized to receive it.

#### **Section 7. Packaging and labeling requirements.**

(1) No person licensed pursuant to this act shall distribute a controlled substance unless it is packaged and labeled in compliance with the requirements of section 305 of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(2) No person except a pharmacist for the purpose of filling a prescription shall alter, deface, or remove any label affixed by the manufacturer.

(3) Whenever a pharmacist sells or dispenses any controlled substance on a prescription issued by a practitioner, he shall affix to the container in which the substance is sold or dispensed a label showing his own name, address, and registry number, or the name, address, and registry number of the pharmacist or pharmacy owner for whom he is lawfully acting; the prescription number, the name of the patient, or if the patient is an animal, the name of the owner of the animal and the species of the animal; the name and registry number of the practitioner by whom the prescription was written; any directions stated on the prescription and any directions required by rules and regulations promulgated by the department.

No person shall alter the face or remove any label so long as any of the original contents remain.

(4) An individual to whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner and the owner of any animal for which any substance has been prescribed, sold, or dispensed by a veterinarian may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same.

#### **Section 8. Prohibited acts—Penalties.**

- (1) Prohibited acts A—Penalties:

(a) Except as authorized by this act, it shall be unlawful for any person knowingly and intentionally:

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

(ii) To distribute for value or possess with intent to distribute for value a controlled or counterfeit substance;

(iii) To possess a controlled substance enumerated in section 4 in the course of his business as a sales representative of a manufacturer or distributor of substances enumerated in schedules II through V of section 4 except pursuant to an order or prescription;

(iv) To agree, consent, offer, or arrange to distribute or dispense a controlled substance for value or to negotiate to have a controlled substance distributed or dispensed for value and distribute, dispense, or negotiate the distribution or dispensing of any other liquid, substance, or material in lieu of the specific controlled substance so offered, agreed, consented, arranged, or negotiated.

(b) Any person who violates subsection (a) of this section with respect to:

(i) A substance classified in schedules I or II which is a narcotic drug, upon conviction, shall be sentenced to a term of imprisonment for not more than 15 years or pay a fine of not more than \$15,000, or both.

(ii) Any other controlled substance classified in schedules I, II, or III, except marihuana, shall, upon conviction, be sentenced to a term of imprisonment for not more than 10 years or pay a fine of not more than \$10,000, or both.

(iii) A substance classified in schedule IV or marihuana shall, upon conviction, be sentenced to a term of imprisonment for not more than five years or pay a fine of not more than \$5,000, or both.

(iv) A substance classified in schedule V shall, upon conviction, be sentenced to one year in the county jail or pay a fine of not more than \$1,000, or both.

(c) Except as authorized by this act, any person who knowingly and intentionally distributes a controlled substance, wherein nothing of value is exchanged for such distribution, shall be punished by not more than one-half the maximum penalty or fine, or both, imposed under section (1) (b) of this section for distribution for value, or five years in the Utah state prison or \$1,000 fine, or both, whichever penalty, fine, or both, is less.

(2) Prohibited acts B—Penalties:

(a) It shall be unlawful:

(i) For any person knowingly and intentionally to possess or use a controlled substance, unless it was obtained pursuant to a valid prescription or order or directly from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this subsection.

(ii) For any owner, tenant, licensee, or person in control of any building, room, tenement, vehicle, boat, aircraft, or other place, knowingly and intentionally to permit the same to be occupied by persons unlawfully possessing, using, or distributing controlled substances therein.

(iii) For any person knowingly and intentionally to be present where controlled substances are being used or possessed in violation of this act and the use or possession is open, obvious, apparent, and not concealed from those present. No person shall be convicted under this subsection if the evidence shows that he did not use the substance himself or advise, encourage, or assist anyone else to do so; provided, any incidence of prior unlawful use of controlled substances by the defendant may be admitted to rebut this defense.

(iv) For any person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.

(v) For a practitioner licensed in accordance with this act knowingly and intentionally to prescribe or administer a controlled substance to a juvenile without first obtaining the consent of a parent or guardian of the juvenile except in cases of an emergency. For purposes of this subsection, a juvenile is a "child" as defined in section 55-10-64 (3), and "emergency" shall mean any physical condition requiring the administration of a controlled substance for immediate relief of pain or suffering.

(vi) For a practitioner licensed in accordance with this act knowingly and intentionally to prescribe or administer dosages of a controlled substance in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user.

(b) Any person who violates subsection (2) (a) of this section shall:

(i) On a first conviction be fined not more than \$299 or imprisoned in the county jail for not more than six months, or both.

(ii) On a second conviction be fined not more than \$1,000 or imprisoned in the county jail for not more than one year, or both.

(iii) On a third or subsequent conviction be sentenced to imprisonment in the Utah state prison for not more than five years.

(3) Prohibited acts C—Penalties:

(a) It shall be unlawful for any person:

(i) Who is subject to the requirements of this act to distribute or dispense a controlled substance in violation of this act;

(ii) Who is a licensee to manufacture, distribute, or dispense a controlled substance to another licensee or other authorized person not authorized by his license;

(iii) To omit, remove, alter, or obliterate a symbol required by this act or a regulation issued pursuant to this act;

(iv) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information re-

quired under this act;

(v) To refuse entry into any premises for inspection as authorized by this act.

(b) Any person who violates subsection (3) (a) of this section shall upon conviction be punished by a civil fine of not more than \$5,000. Such proceedings shall be independent of, and not in lieu of, criminal proceedings under this act or any other law of this state. If the violation is prosecuted by information or indictment which alleges the violation was committed knowingly or intentionally, such person, upon conviction, shall be punished by imprisonment for not more than five years or a fine of not more than \$5,000, or both.

(4) Prohibited acts D—Penalties:

(a) It shall be unlawful for any person knowingly and intentionally:

(i) To use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person.

(ii) To acquire or obtain possession or the administration of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

(iii) To make any false or forged prescription or written order for a controlled substance, or to utter the same or alter any prescription or written order issued or written pursuant to the terms of this act.

(iv) To furnish false or fraudulent material information in any application, report, or other document required to be kept by this act.

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

(b) Any person who violates subsection (4) (a) of this section, upon conviction, shall be punished by imprisonment for not more than five years or by a fine of not more than \$5,000, or both.

(5) Prohibited acts E—Penalties:

(a) Notwithstanding other provisions of this section, it shall be unlawful for any person not authorized by the provisions of this act to distribute for value a controlled substance to a person under 21 years of age.

(b) Any person who violates subsection (a) of this section with respect to:

(i) A substance classified in schedules I or II which is a narcotic drug, upon conviction, shall be sentenced to a term of imprisonment for not more than 20 years or pay a fine of not more than \$15,000, or both.

(ii) Any other controlled substance classified in schedules I, II, or III, except marihuana, shall, upon conviction, be sentenced to imprisonment for not more than 15 years or pay a fine of

not more than \$10,000, or both.

(iii) A substance classified in schedules IV or V or marihuana shall, upon conviction, be sentenced to a term of imprisonment for not more than 10 years or pay a fine of not more than \$5,000, or both.

(6) Any violation of this act for which no penalty is specifically prescribed shall be deemed a misdemeanor.

(7) Any person who attempts or conspires to commit any offense made unlawful by this act shall, upon conviction, be punished by a fine or imprisonment, or both, not to exceed one-half of the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(8) Any penalty imposed for violation of this section shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law. Where violation of this act violates a federal law or the law of another state, conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

(9) (a) Whenever it appears to the court at the time of sentencing any person convicted under this act that the person has previously been convicted of an offense under the laws of this state, the United States, or another state, which if committed in this state would be an offense within this act and it appears that probation would not be helpful to the defendant or that probation would be contrary to the interest, welfare, or protection of society, the court, notwithstanding the provisions of section 77-25-20, may, providing compliance with subsection (9) (b) of this section has been met, impose a minimum term to be served by the defendant up to one-half the maximum sentence imposed by law for the offense so committed.

(b) Before any person may be sentenced to a minimum term as provided in subsection (9) (a) of this section, the prosecuting attorney or grand jury, if an indictment, shall cause to be subscribed upon the complaint, in misdemeanor cases, or the information or indictment, in addition to the substantive offense charged, a statement setting forth the alleged past conviction of the defendant and specifically stating the date and place of conviction and the offense of which the defendant was convicted. The allegation shall be presented to the defendant at the time of his arraignment, or thereafter by leave of court, but in no event later than two days prior to the trial of the offense charged or the defendant's entering a plea of guilty. At the time of arraignment or later date when granted by the court, the court shall read the allegation of the previous conviction to the defendant and provide him or his counsel with a copy of the same and explain to the defendant the consequences of the allegation pursuant to subsection (9) (a) of this section. The allegation of the past conviction of the defendant shall not be admissible in a jury trial, except where the admissibility in evidence of a previous conviction is otherwise recognized as admissible by law.

The court following conviction of the defendant of the substantive offense charged and prior to imposing sentence shall inform the defendant of its decision to impose a minimum sentence within subsection (9) (a) of this section and inquire as to whether the defendant admits or denies

the previous conviction. If the defendant denies the previous conviction, the court shall afford him an opportunity to present evidence showing that the allegation of the past conviction is erroneous or the conviction was lawfully vacated or the defendant was pardoned. Such evidence shall be made a matter of record and following the evidence the court shall make a finding as to whether the defendant has a previous conviction which shall be final, except for a showing of abuse of discretion. Following the findings by the court the defendant shall be sentenced in accordance with subsection (9) (a) of this section or under the appropriate penalty provided by law, as the court in its discretion shall determine.

(c) Any person sentenced on a second offense to probation who violates that probation shall be subject to the provisions of subsections (9) (a) and (9) (b) of this section.

(d) Nothing in this section shall in any way limit or restrict the provision of sections 76-1-18 and 76-1-19.

(10) Whenever any person who has not been previously convicted of an offense under this subsection relating to the unlawful use, possession, production, manufacture, distribution, or dispensation of any controlled substance pleads guilty or is found guilty of possession of a controlled substance under subsection (2) (a) (i) of this section, the court may, without entering a judgment of guilt and with the consent of the person, defer further proceedings and place him on probation upon any reasonable terms and conditions as it may require. If the person violates any term or condition of probation, the court may enter an adjudication of guilt and impose the sentence of the court for the offense committed. Upon fulfillment of the terms and conditions of probation, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law for conviction of a crime including the additional penalties imposed for second or subsequent convictions under subsection (9) (a) of this section. Discharge and dismissal under this section may occur only once with respect to any person.

(11) In any prosecution for a violation of this act, evidence or proof shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, shall be prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances.

#### **Section 9. Agencies responsible for enforcement of act—Authorized procedures.**

(1) It is the duty of all state and local law enforcement agencies or officers including designated officers of the department of business regulation and the liquor division of the state department of public safety, to enforce this act.

(2) Any officer designated and responsible for the enforcement of this act may:

(a) Carry firearms in the performance of his official duties.

(b) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summons issued under the authority of this state.

(c) Make arrests without warrant for any offense under this act when there is probable cause to believe that such an offense has been committed and that the person to be arrested committed it.

(d) Make seizures of property pursuant to this act.

(e) Perform any other law enforcement duties as designated by the head of any law enforcement authority charged with the responsibility of enforcing this act.

#### **Section 10. Search warrants—Inspection warrants.**

(1) Search warrants relating to offenses involving controlled substances may be authorized in the same manner as provided in chapter 54, Title 77.

(2) Issuance and execution of administrative inspection warrants shall be as follows:

(a) Any judge or magistrate of this state within his jurisdiction upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this act or regulations thereunder and seizures of property appropriate to such inspections. Probable cause for purposes of this act exists upon showing a valid public interest in the effective enforcement of the act or rules promulgated thereunder sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant.

(b) A warrant shall issue only upon an affidavit of an officer or employee duly designated and having knowledge of the facts alleged sworn to before a judge or magistrate which establish the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant indentifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and if appropriate, the type of property to be inspected, if any. The warrant shall:

(i) State the grounds for its issuance and the name of each person whose affidavit has been taken to support it;

(ii) Be directed to a person authorized by section 9 of this act to execute it;

(iii) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and if appropriate, direct the seizure of the property specified;

(iv) Identify the item or types of property to be seized, if any;

(v) Direct that it be served during normal business hours and designate the judge or magistrate to whom it shall be returned.

(c) A warrant issued pursuant to section 10 of this act must be executed and returned within 10 days after its date unless, upon a showing of a need for additional time, the court instructs otherwise in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or leave the copy and receipt at the place where the property was taken. Return of the warrant shall be made promptly and be accompanied

by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(d) The judge or magistrate who issued the warrant under section 10 of this act shall attach a copy of the return and all other papers to the warrant and file them with the court.

(3) The department is authorized to make administrative inspections of controlled premises in accordance with the following provisions:

(a) For purposes of this section only, the words "controlled premises" mean:

(i) Places where persons licensed or exempted from licensing requirements under this act are required to keep records.

(ii) Places including factories, warehouses, establishments, and conveyances where persons licensed or exempted from licensing requirements are permitted to possess, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(b) When authorized by an administrative inspection warrant a law enforcement officer or employee designated in section 9 of this act, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, has the right to enter controlled premises for the purpose of conducting an administrative inspection.

(c) When authorized by an administrative inspection warrant, a law enforcement officer or employee designated in section 9 of this act has the right:

(i) To inspect and copy records required by this act.

(ii) To inspect within reasonable limits and a reasonable manner, the controlled premises and all pertinent equipment, finished and unfinished material, containers, and labeling found, and except as provided in subsection (3) (e) of this section, all other things including records, files, papers, processes, controls, and facilities subject to regulation and control by this act or by regulations promulgated by the department.

(iii) To inventory and stock of any controlled substance and obtain samples of any substance.

(d) This section shall not be construed to prevent the inspection of books and records without a warrant pursuant to an administrative subpoena issued by a court or the department nor shall it be construed to prevent entries and administrative inspections including seizures of property without a warrant:

(i) With the consent of the owner, operator, or agent in charge of the controlled premises;

(ii) In situations presenting imminent danger to health or safety;

- (iii) In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;
- (iv) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and
- (v) In all other situations where a warrant is not constitutionally required.

(e) No inspection authorized by this section shall extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

#### **Section 11. Court jurisdiction—Jury trial.**

(1) The district courts of this state shall have jurisdiction in proceedings in accordance with the rules of those courts to enjoin violations of this act.

(2) If an alleged violation of an injunction or restraining order issued under this section occurs, the accused may demand a jury trial in accordance with the rules of the district courts.

#### **Section 12. Cooperation with other enforcement agencies.**

(1) The department and all law enforcement agencies charged with enforcing this act shall cooperate with federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they are authorized to:

(a) Arrange for the exchange of information between governmental officials concerning the use and abuse of dangerous substances.

(b) Coordinate and cooperate in training programs in controlled substance law enforcement at the local and state levels.

(c) Cooperate with the Federal Bureau of Narcotics and Dangerous Drugs and the Utah bureau of investigation by establishing a centralized unit which will receive, catalog, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state, and local law enforcement purposes.

(d) Conduct programs of eradication aimed at destroying the wild or illicit growth of plant species from which controlled substances may be extracted.

#### **Section 13. Property subject to forfeiture.**

(1) The following shall be subject to forfeiture and no property right shall exist in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this act;

(b) All raw materials, products, and equipment of any kind used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this act;

(c) All property used or intended for use as a container for property described in subsections (1) (a) and (1) (b) of this section;

(d) All hypodermic needles, syringes, and other paraphernalia, not to include capsules used with health food supplements and herbs, used or intended for use to administer controlled substances in violation of this act;

(e) All conveyances including aircraft, vehicles or vessels used or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, possession, or concealment of property described in (1) (a) or (1) (b) of this section, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under this section unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to violation of this act; and

(ii) No conveyance shall be forfeited under this section by reason of any act or omission established by the owner to have been committed or omitted without his knowledge or consent; and

(iii) Any forfeiture of a conveyance subject to a bona fide security interests shall be subject to the interest of the secured party upon the party's showing he could not have known in the exercise of reasonable diligence that a violation would take place in the use of the conveyance.

(f) All books, records, and research, including formulas, microfilm, tapes, and data used or intended for use, in violation of this act.

(2) Any property subject to forfeiture under this act may be seized by any peace officer of this state upon process issued by any court having jurisdiction over the property. However, seizure without process may be made when:

(a) The seizure is incident to an arrest or search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this act;

(c) The peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The peace officer has probable cause to believe that the property has been used or intended to be used in violation of this act.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings under subsection (4) of this section shall be instituted promptly.

(4) Promptly taken or detained under this section shall not be repleviable but shall be deemed to be in custody of the law enforcement agency making the seizure subject only to the orders and decrees of the court or the official having jurisdiction. Whenever property is seized under the provisions of this act the appropriate person or agency may:

(a) Place the property under seal;

(b) Remove the property to a place designated by it or the warrant under which it was seized;

(c) Take custody of the property and remove it to an appropriate

location for disposition in accordance with law.

(5) All substances listed in schedule I that are possessed, transferred, distributed, or offered for distribution in violation of this act shall be deemed contraband and seized and summarily forfeited to the state. Similarly, all substances listed in schedule I which are seized or come into the possession of the state shall be deemed contraband and summarily forfeited to the state if the owners are unknown.

(6) All species of plants from which controlled substances in schedules I and II are derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or are wild growths, may be seized and summarily forfeited to the state.

(7) Failure, upon demand by the department or its duly authorized agent, of any person in occupancy or in control of land or premises upon which species of plants are growing or being stored, to produce an appropriate license or proof that he is the holder of a license, shall constitute authority for the seizure and forfeiture of the plants.

(8) Whenever any property, including motor vehicles and other conveyances, is forfeited pursuant to this act by a finding of the court that no person is entitled to recover such property, the property, if a motor vehicle or other conveyance, shall be deposited in the custody of the department of finance. Property other than motor vehicles and conveyances shall be deposited with the department. Disposition of all property shall be as follows:

(a) Any state agency, bureau, county, or municipality, which demonstrates a need for specific property or classes of property subject to forfeiture shall make application for such property to the director of the department of finance, in cases involving motor vehicles and conveyances, or the department, in cases of other property, and shall clearly set forth in the application his or its need for the property and the use to which the property will be put.

(b) The director of the department of finance or business regulation shall review all applications for property submitted pursuant to subsection (8) (a) of this section and make a determination based on necessity and advisability as to final disposition and shall so notify the designated applicant who may obtain the property upon payment of all costs to the appropriate department. The department of finance or business regulation shall in turn reimburse the seizing agency or agencies for costs expended in seizing, storing, and obtaining forfeiture of said property.

(c) If no disposition is made upon an application under subsection (8) (a) of this section, the director of the department of finance or business regulation shall dispose of the property by public bidding or where deemed appropriate by the director of the department having charge of the property, by destruction. Proof of destruction shall be upon oath of two officers or employees of the department having charge of the property verified by the director of the department or his designated agent.

(9) Whenever any property is subject to forfeiture, a determination for forfeiture to the state shall be made in the following manner:

(a) A complaint verified on oath or affirmation shall be prepared by the county attorney where the property was seized or is to be seized and filed in the district court. The complaint shall describe with reasonable particularity:

- (i) The property which is the subject matter of the proceeding;
- (ii) The date and place of seizure, if known;
- (iii) The allegations which constitute a basis for forfeiture.

(b) Upon filing the complaint, the clerk of the district court shall forthwith issue a warrant for seizure of the property which is the subject matter of the action and deliver it to the sheriff for service, unless the property has previously been seized without a warrant, pursuant to section 13 (2).

(c) Notice of the seizure and intended forfeiture shall be filed with the county clerk, and served together with a copy of the complaint, upon all persons known to the county attorney to have a claim in the property by one of the following methods:

- (i) Upon each claimant whose name and address is known at the last known address of the claimant; or
- (ii) Upon each owner whose right, title or interest is of record in the motor vehicle division, by mailing a copy of the notice and complaint by registered mail to the address given upon the records of the motor vehicle division; and
- (iii) Upon all other claimants whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county where the seizure was made.

(d) Except as provided in subsection (8) (e) of this section any claimant or interested party shall file with the court a verified answer to the complaint within 20 days after service has been obtained.

(e) Whenever property is seized pursuant to this act, any interested person or claimant of the property, prior to being served with a complaint under this section, may file a petition in the district court for release of his interest in the property. The petition shall specify the claimant's interest in the property and his right to have it released. A copy shall be served upon the county attorney in the county of the seizure who shall answer the petition within 20 days. Any person petitioning shall not be required to answer a complaint of forfeiture.

(f) After 20 days following service of a complaint or petition for release, the court shall examine the record and if no answer is on file, the court shall allow the complainant or petitioner an opportunity to present evidence in support of his claim and order forfeiture or release of the property as the court may determine. If the county attorney has not filed an answer to the petition for release and the court determines from the evidence that the petitioner is not entitled to recovery of the property it shall enter an order directing the county attorney to answer the petition within 10 days, and if no answer is filed within that period, the court shall order the release of the property to the petitioner entitled to receive it.

(g) Whenever an answer to a complaint or petition appears of record at the end of 20 days, the court shall set the matter for hearing within 20 days at which all interested parties may present evidence of their right of release of the property following the state's evidence for forfeiture. The court shall determine by a preponderance of the evidence the issues in the case and order forfeiture or release of the property as it shall de-

termine.

(h) Proceedings of this section shall be independent of any other proceedings, whether civil or criminal, under this act or the laws of this state.

(i) Whenever the court determines that claimants have no right in the property in whole or in part, it shall declare the property to be forfeited and direct it to be delivered to the custody of the department of finance; in cases involving motor vehicles or conveyances, or to the department of business regulation in other cases, and such department shall dispose of the property as provided in subsection (8) of this section.

(j) Whenever the court determines that property, in whole or in part, is not subject to forfeiture, it shall order release of the property to the proper claimant. If the court determines that the property is subject to forfeiture and release in part, it shall order partial release and partial forfeiture. When the property cannot be properly divided for partial forfeiture and release, the court shall order it sold and the proceeds distributed as follows:

(i) First, proportionally among the legitimate claimants;

(ii) Second, to defray the costs of the action, including seizure, storage of the property, and costs of sale, and

(iii) Third, to the department of finance for the state general fund.

(k) In any proceeding under this section where forfeiture is declared, in whole or in part, the court shall assess all costs of the forfeiture proceeding, including seizure and storage of the property, against the individual or individuals whose conduct was the basis of the forfeiture, and may assess costs against any other claimant or claimants to the property as the court deems just.

#### **Section 14. Common nuisance.**

(1) Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or other place to which users or possessors of any controlled substances, listed in scheduled I through V, resort or where use or possession of any substances violates this act, or which is used for illegal keeping, storing, or selling any substances listed as controlled substances in schedules I through V shall be deemed a common nuisance. No person shall open, keep, or maintain any such place.

(2) The district court has the power to make any order necessary or reasonable to suppress any nuisance and to enjoin any person or persons from doing any act calculated to cause, or permit the continuation of a nuisance.

#### **Section 15. Burden of proof of exemption or exception on accused— Limit of law enforcement agents liability.**

(1) It is not necessary for the state to negate any exemption or exception set forth in this act in any complaint, information, indictment or other pleading or trial, hearing, or other proceeding under this act, and the burden of proof of any exemption or exception is upon the person claiming its benefit.

(2) In absence of proof that a person is the duly authorized holder of an appropriate license, registration, order form, or prescription issued under this act, he shall be presumed not to be the holder of a license,

registration, order form, or prescription, and the burden of proof is upon him to rebut the presumption.

(3) No liability shall be imposed upon any duly authorized state or federal officer engaged in the enforcement of this act who is engaged in the enforcement of any law, municipal ordinance, or regulation relating to controlled substances.

#### **Section 16. Provisions regarding self incrimination.**

If the prosecuting attorney or attorney general of the State of Utah determines that the testimony of any witness or the production of any book, paper, or other evidence by any witness before a grand jury or court of the State of Utah involving any violation of this chapter is necessary, he shall make application to the court that the witness be instructed to testify or produce evidence subject to the provisions of this section and upon order of the court the witness shall not be excused from testifying or producing books, papers, or other evidence on the ground that the testimony or evidence may tend to incriminate him or subject him to forfeiture. No witness shall be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter, or thing concerning which he is compelled to testify after having claimed his privilege against self incrimination or produce evidence nor shall any such evidence be used in any criminal proceeding against him in any court except prosecutions described in this section. No witness is exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion.

#### **Section 17. Final determinations—Judicial review.**

All final determinations, findings, and conclusions are final and conclusive decisions of the matter involved, except that any aggrieved person may obtain review of the decision in the appropriate court. Findings of fact by the department, if supported by substantial evidence, shall be conclusive. Any court review of a substance controlled by the attorney general under section 3 of this act shall be heard in the district court of Salt Lake County.

#### **Section 18. Effect of act on offenses committed prior to effective date.**

(1) (a) Prosecution for violation of any law or offense occurring prior to the effective date of this act shall not be affected by this act; provided, that sentences imposed after the effective date of this act may not exceed the maximum terms specified and the judge has discretion to impose any minimum sentence.

(b) Civil seizures, forfeitures, and injunctive proceedings commenced prior to the effective date of this act shall not be affected by this act.

(c) All administrative proceedings pending before any agency or court on the effective date of this act shall be continued and brought to final determination in accordance with laws and regulations in effect prior to the effective date of this act. Drugs placed under control prior to enactment of this act which are not listed within schedules I through V shall be automatically controlled and listed in the appropriate schedule without further proceedings.

(2) This act does not affect rights and duties that mature, penalties that are incurred, and proceedings that are begun before its effective date.

(3) This act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it where laws are similar to this act.

**Section 19. Severability clause.**

If any provision of this act, or the application to any person or circumstance, is held invalid the remainder of this act shall not be affected.

**Section 20. Provisions of act controlling when in conflict with prior legislation.**

It is the purpose of this act to regulate and control the substances designated within section 4 of this act, and whenever the requirements prescribed, the offenses defined or the penalties imposed relating to substances controlled by this act shall be or appear to be in conflict with titled 58, chapter 17 or any other laws of this state, the provisions of this act shall be controlling.

**Section 21. Sections repealed.**

Chapter 13a and 33 of Title 58, Utah Code Annotated 1953; and Sections 76-42-1, 76-42-2, and 76-42-3, Utah Code Annotated 1953, as amended by Chapter 167, Laws of Utah 1957; and Section 76-42-7, 76-42-8, and 76-42-9, Utah Code Annotated 1953, as enacted by Chapter 168, Laws of Utah 1957, are hereby repealed.

**Section 22. Effective date.**

This act shall take effect on January 1, 1972.

Approved March 23, 1971.

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## REVENUE AND TAXATION

### CHAPTER 146

H. B. No. 108

(Passed March 10, 1971. In effect May 11, 1971)

#### VETERANS' TAX EXEMPTION

**An Act Amending Section 59-2-5 and 59-2-6, Utah Code Annotated 1953, and Enacting Sections 59-2-6.5, 59-2-6.6 and 59-2-6.7, Utah Code Annotated 1953, Relating to Tax Exemptions for Veterans; and Providing for Qualifications and Procedures for Receiving Exemptions.**

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

**Section 1. Section amended.**

Section 59-2-5, and 59-2-6, Utah Code Annotated 1953, are amended to read:

**59-2-5. Tax exemptions for disabled veterans.**

The real and personal tangible property situated in this state owned by disabled persons who served in any armed conflict in the military serv-