

DRUG PARAPHERNALIA DEFINITION AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Evan J. Vickers

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Drug Paraphernalia Act regarding some exemptions for syringes used for a legitimate medical purpose.

Highlighted Provisions:

This bill:

► provides that a person may not be charged with possession or distribution of hypodermic syringes as drug paraphernalia if:

• at the time of sale or distribution the syringes are in a sterile package and are to be used for a legitimate medical purpose, including:

- injection of prescription medications as prescribed by a practitioner; and
- the prevention of disease transmission; or
- the syringe:
 - was previously used but is in a puncture resistant container; or
 - is unused and is in a sterile package.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 **58-37a-3**, as last amended by Laws of Utah 2008, Chapter 295
29 **58-37a-4**, as enacted by Laws of Utah 1981, Chapter 76
30 **58-37a-5**, as last amended by Laws of Utah 2008, Chapter 295



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

33 Section 1. Section **58-37a-3** is amended to read:

34 **58-37a-3. "Drug paraphernalia" defined.**

35 As used in this chapter, "drug paraphernalia" means any equipment, product, or material
36 used, or intended for use, to plant, propagate, cultivate, grow, harvest, manufacture, compound,
37 convert, produce, process, prepare, test, analyze, package, repackage, store, contain, conceal,
38 inject, ingest, inhale, or to otherwise introduce a controlled substance into the human body in
39 violation of Title 58, Chapter 37, Utah Controlled Substances Act, and includes, but is not
40 limited to:

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

44 (2) kits used, or intended for use, in manufacturing, compounding, converting,
45 producing, processing, or preparing a controlled substance;

46 (3) isomerization devices used, or intended for use, to increase the potency of any
47 species of plant which is a controlled substance;

48 (4) testing equipment used, or intended for use, to identify or to analyze the strength,
49 effectiveness, or purity of a controlled substance;

50 (5) scales and balances used, or intended for use, in weighing or measuring a controlled
51 substance;

52 (6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannited,
53 dextrose and lactose, used, or intended for use to cut a controlled substance;

54 (7) separation gins and sifters used, or intended for use to remove twigs, seeds, or other
55 impurities from marihuana;

56 (8) blenders, bowls, containers, spoons and mixing devices used, or intended for use to
57 compound a controlled substance;

58 (9) capsules, balloons, envelopes, and other containers used, or intended for use to

59 package small quantities of a controlled substance;

60 (10) containers and other objects used, or intended for use to store or conceal a
61 controlled substance;

62 (11) hypodermic syringes, needles, and other objects used, or intended for use to
63 parenterally inject a controlled substance into the human body, except as provided in Section
64 58-37a-5; and

65 (12) objects used, or intended for use to ingest, inhale, or otherwise introduce a
66 controlled substance into the human body, including but not limited to:

67 (a) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
68 screens, permanent screens, hashish heads, or punctured metal bowls;

69 (b) water pipes;

70 (c) carburetion tubes and devices;

71 (d) smoking and carburetion masks;

72 (e) roach clips: meaning objects used to hold burning material, such as a marijuana
73 cigarette, that has become too small or too short to be held in the hand;

74 (f) miniature cocaine spoons and cocaine vials;

75 (g) chamber pipes;

76 (h) carburetor pipes;

77 (i) electric pipes;

78 (j) air-driven pipes;

79 (k) chillums;

80 (l) bongs; and

81 (m) ice pipes or chillers.

82 Section 2. Section **58-37a-4** is amended to read:

83 **58-37a-4. Considerations in determining whether object is drug paraphernalia.**

84 In determining whether an object is drug paraphernalia, the trier of fact, in addition to
85 all other logically relevant factors, should consider:

86 (1) statements by an owner or by anyone in control of the object concerning its use;

87 (2) prior convictions, if any, of an owner, or of anyone in control of the object, under
88 any state or federal law relating to a controlled substance;

89 (3) the proximity of the object, in time and space, to a direct violation of this chapter;

- 90 (4) the proximity of the object to a controlled substance;
- 91 (5) the existence of any residue of a controlled substance on the object;
- 92 (6) instructions whether oral or written, provided with the object concerning its use;
- 93 (7) descriptive materials accompanying the object which explain or depict its use;
- 94 (8) national and local advertising concerning its use;
- 95 (9) the manner in which the object is displayed for sale;
- 96 (10) whether the owner or anyone in control of the object is a legitimate supplier of
- 97 like or related items to the community, such as a licensed distributor or dealer of tobacco
- 98 products;
- 99 (11) direct or circumstantial evidence of the ratio of sales of the object to the total sales
- 100 of the business enterprise;
- 101 (12) the existence and scope of legitimate uses of the object in the community; ~~and~~
- 102 (13) whether the object is subject to Section 58-37a-5; and
- 103 ~~[(13)]~~ (14) expert testimony concerning its use.

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

58-37a-5. Unlawful acts.

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

(b) Any person who violates ~~[this]~~ Subsection (1)(a) is guilty of a class B misdemeanor.

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

(b) Any person who violates ~~[this]~~ Subsection (2)(a) is guilty of a class A misdemeanor.

121 (3) Any person 18 years of age or ~~[over]~~ older who delivers drug paraphernalia to a
122 person ~~[under]~~ younger than 18 years of age and who is three years or more younger than the
123 person making the delivery is guilty of a third degree felony.

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

127 (b) Any person who violates ~~[this]~~ Subsection (4)(a) is guilty of a class B
128 misdemeanor.

129 (5) A person may not be charged with possession or distribution of hypodermic
130 syringes as drug paraphernalia if:

131 (a) at the time of sale or distribution the syringes are in a sealed sterile package and are
132 for a legitimate medical purpose, including:

133 (i) injection of prescription medications as prescribed by a practitioner; or

134 (ii) the prevention of disease transmission; or

135 (b) the syringe:

136 (i) was previously used but is in a puncture resistant container; or

137 (ii) is unused and is in a sealed sterile package.

138 ~~[(5)]~~ (6) A person may be charged and sentenced for a violation of this section,
139 notwithstanding a charge and sentence for a violation of any other section of this chapter.

Legislative Review Note
as of 1-21-11 1:10 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 232

SHORT TITLE: **Drug Paraphernalia Definition Amendments**

SPONSOR: **Vickers, E.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.