

**DRUG PARAPHERNALIA DEFINITION AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Evan J. Vickers**

Senate Sponsor: Patricia W. Jones

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**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 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; and

► provides that a person may not be charged with possession of hypodermic syringes as drug paraphernalia if the syringe is unused and is in a sterile package.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**58-37a-3**, as last amended by Laws of Utah 2008, Chapter 295

**58-37a-4**, as enacted by Laws of Utah 1981, Chapter 76

**58-37a-5**, as last amended by Laws of Utah 2008, Chapter 295

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

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

32 **58-37a-3. "Drug paraphernalia" defined.**

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

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

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

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

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

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

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

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

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

56 (9) capsules, balloons, envelopes, and other containers used, or intended for use to  
57 package small quantities of a controlled substance;

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

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

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

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

67 (b) water pipes;

68 (c) carburetion tubes and devices;

69 (d) smoking and carburetion masks;

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

72 (f) miniature cocaine spoons and cocaine vials;

73 (g) chamber pipes;

74 (h) carburetor pipes;

75 (i) electric pipes;

76 (j) air-driven pipes;

77 (k) chillums;

78 (l) bongs; and

79 (m) ice pipes or chillers.

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

81 **58-37a-4. Considerations in determining whether object is drug paraphernalia.**

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

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

85 (2) prior convictions, if any, of an owner, or of anyone in control of the object, under

86 any state or federal law relating to a controlled substance;

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

88 (4) the proximity of the object to a controlled substance;

89 (5) the existence of any residue of a controlled substance on the object;

90 (6) instructions whether oral or written, provided with the object concerning its use;

91 (7) descriptive materials accompanying the object which explain or depict its use;

92 (8) national and local advertising concerning its use;

93 (9) the manner in which the object is displayed for sale;

94 (10) whether the owner or anyone in control of the object is a legitimate supplier of

95 like or related items to the community, such as a licensed distributor or dealer of tobacco

96 products;

97 (11) direct or circumstantial evidence of the ratio of sales of the object to the total sales

98 of the business enterprise;

99 (12) the existence and scope of legitimate uses of the object in the community; ~~and~~

100 (13) whether the object is subject to Section 58-37a-5; and

101 ~~[(13)]~~ (14) expert testimony concerning its use.

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

103 **58-37a-5. Unlawful acts.**

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

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

111 (2) (a) It is unlawful for any person to deliver, possess with intent to deliver, or  
112 manufacture with intent to deliver, any drug paraphernalia, knowing that the drug paraphernalia  
113 will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert,

114 produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,  
115 inhale, or otherwise introduce a controlled substance into the human body in violation of this  
116 act.

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

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

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

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

127 (5) (a) A person may not be charged with distribution of hypodermic syringes as drug  
128 paraphernalia if at the time of sale or distribution the syringes are in a sealed sterile package  
129 and are for a legitimate medical purpose, including:

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

131 (ii) the prevention of disease transmission.

132 (b) A person may not be charged with possession of hypodermic syringes as drug  
133 paraphernalia if the syringe is unused and is in a sealed sterile package.

134 [~~(5)~~] (6) A person may be charged and sentenced for a violation of this section,  
135 notwithstanding a charge and sentence for a violation of any other section of this chapter.