

1 **CONTROLLED SUBSTANCE DATABASE**

2 **AMENDMENTS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Bradley M. Daw**

6 Senate Sponsor: _____

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions of the Utah Controlled Substances Act relating to the
11 controlled substance database and establishes a pilot program for real-time reporting of
12 data to, and access from, the controlled substance database.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ makes it a third degree felony to obtain or attempt to obtain information from the
17 controlled substances database for a purpose other than a purpose authorized by
18 statute or rule;
- 19 ▶ prohibits access to, and use of, identifying information in the controlled substance
20 database, by discovery, subpoena, or similar process, in certain civil, judicial,
21 administrative, or legislative proceedings;
- 22 ▶ establishes a pilot program, beginning on July 1, 2008, and ending on December 1,
23 2009, in Davis, Salt Lake, Utah, and Weber counties, for the real-time reporting of,
24 and access to, controlled substance database information by pharmacies,
25 pharmaceutical facilities, and physicians;
- 26 ▶ grants rulemaking authority to the Division of Occupational and Professional
27 Licensing in relation to the pilot program;



28 ▶ requires the Division of Occupational and Professional Licensing to report on the
29 pilot program and the advisability and cost of implementing the pilot program on a
30 statewide basis;

31 ▶ requires the Division of Occupational and Professional Licensing to implement the
32 pilot program established in this bill on a statewide basis on or before December 1,
33 2009, and provides that the division may implement the pilot program on a
34 statewide basis at anytime after July 1, 2008, if the division and the Utah State
35 Board of Pharmacy determine that the pilot program is successful; and

36 ▶ makes technical changes.

37 **Monies Appropriated in this Bill:**

38 This bill appropriates:

39 ▶ \$175,000 as an ongoing appropriation from the General Fund, for the fiscal year
40 2008-09, to the Division of Occupational and Professional Licensing; and

41 ▶ \$650,000 in nonlapsing funds from the General Fund, for the fiscal year 2008-09
42 only, to the Division of Occupational and Professional Licensing.

43 **Other Special Clauses:**

44 This bill takes effect on July 1, 2008.

45 **Utah Code Sections Affected:**

46 AMENDS:

47 **58-37-7.5**, as last amended by Laws of Utah 2007, Chapter 293

48 ENACTS:

49 **58-37-7.8**, Utah Code Annotated 1953



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

52 Section 1. Section **58-37-7.5** is amended to read:

53 **58-37-7.5. Controlled substance database -- Pharmacy reporting requirements --**
54 **Access -- Penalties.**

55 (1) As used in this section:

56 (a) "Board" means the Utah State Board of Pharmacy created in Section 58-17b-201.

57 [~~(a)~~] (b) "Database" means the controlled substance database created in this section.

58 [~~(b)~~] (c) "Database manager" means the person responsible for operating the database,

59 or ~~his~~ the person's designee.

60 ~~(e)~~ (d) "Division" means the Division of Occupational and Professional Licensing
61 created in Section 58-1-103.

62 ~~(d)~~ (e) "Health care facility" ~~[has the same definition as]~~ is as defined in Section
63 26-21-2.

64 ~~(e)~~ (f) "Pharmacy" or "pharmaceutical facility" ~~[has the same definition as]~~ is as
65 defined in Section 58-17b-102.

66 (2) (a) There is created within the division a controlled substance database.

67 (b) The division shall administer and direct the functioning of the database in
68 accordance with this section. The division may under state procurement laws contract with
69 another state agency or private entity to establish, operate, or maintain the database. The
70 division in collaboration with the board shall determine whether to operate the database within
71 the division or contract with another entity to operate the database, based on an analysis of
72 costs and benefits.

73 (c) The purpose of the database is to contain data as described in this section regarding
74 every prescription for a controlled substance dispensed in the state to any person other than an
75 inpatient in a licensed health care facility.

76 (d) Data required by this section shall be submitted in compliance with this section to
77 the manager of the database by the pharmacist in charge of the drug outlet where the controlled
78 substance is dispensed.

79 (3) The ~~[Utah State Board of Pharmacy created in Section 58-17b-201]~~ board shall
80 advise the division regarding:

81 (a) establishing, maintaining, and operating the database;

82 (b) access to the database and how access is obtained; and

83 (c) control of information contained in the database.

84 (4) The pharmacist in charge shall, regarding each controlled substance dispensed by a
85 pharmacist under ~~his~~ the pharmacist's supervision other than those dispensed for an inpatient
86 at a health care facility, submit to the manager of the database the following information, by a
87 procedure and in a format established by the division:

88 (a) name of the prescribing practitioner;

89 (b) date of the prescription;

- 90 (c) date the prescription was filled;
- 91 (d) name of the person for whom the prescription was written;
- 92 (e) positive identification of the person receiving the prescription, including the type of
93 identification and any identifying numbers on the identification;
- 94 (f) name of the controlled substance;
- 95 (g) quantity of controlled substance prescribed;
- 96 (h) strength of controlled substance;
- 97 (i) quantity of controlled substance dispensed;
- 98 (j) dosage quantity and frequency as prescribed;
- 99 (k) name of drug outlet dispensing the controlled substance;
- 100 (l) name of pharmacist dispensing the controlled substance; and
- 101 (m) other relevant information as required by division rule.
- 102 (5) The division shall maintain the database in an electronic file or by other means
103 established by the division to facilitate use of the database for identification of:
 - 104 (a) prescribing practices and patterns of prescribing and dispensing controlled
105 substances;
 - 106 (b) practitioners prescribing controlled substances in an unprofessional or unlawful
107 manner;
 - 108 (c) individuals receiving prescriptions for controlled substances from licensed
109 practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet
110 in quantities or with a frequency inconsistent with generally recognized standards of dosage for
111 that controlled substance; and
 - 112 (d) individuals presenting forged or otherwise false or altered prescriptions for
113 controlled substances to a pharmacy.
- 114 (6) (a) The division shall by rule establish the electronic format in which the
115 information required under this section shall be submitted to the administrator of the database.
- 116 (b) The division shall ensure the database system records and maintains for reference:
 - 117 (i) identification of each person who requests or receives information from the
118 database;
 - 119 (ii) the information provided to each person; and
 - 120 (iii) the date and time the information is requested or provided.

121 (7) The division shall make rules to:

122 (a) effectively enforce the limitations on access to the database as described in

123 Subsection (8); and

124 (b) establish standards and procedures to ensure accurate identification of individuals

125 requesting information or receiving information without request from the database.

126 (8) The manager of the database shall make information in the database available only

127 to the following persons, and in accordance with the limitations stated and division rules:

128 (a) personnel of the division specifically assigned to conduct investigations related to

129 controlled substances laws under the jurisdiction of the division;

130 (b) authorized division personnel engaged in analysis of controlled substance

131 prescription information as a part of the assigned duties and responsibilities of their

132 employment;

133 (c) employees of the Department of Health whom the director of the Department of

134 Health assigns to conduct scientific studies regarding the use or abuse of controlled substances,

135 provided that the identity of the individuals and pharmacies in the database are confidential and

136 are not disclosed in any manner to any individual who is not directly involved in the scientific

137 studies;

138 (d) a licensed practitioner having authority to prescribe controlled substances, to the

139 extent:

140 (i) the information relates specifically to a current patient of the practitioner, to whom

141 the practitioner is prescribing or considering prescribing any controlled substance;

142 (ii) the information relates specifically to an individual who has access to the

143 practitioner's Drug Enforcement Administration number, and the practitioner suspects that the

144 individual may have used the practitioner's Drug Enforcement Administration identification

145 number to fraudulently acquire or prescribe controlled substances; or

146 (iii) the information relates to the practitioner's own prescribing practices, except when

147 specifically prohibited by the division by administrative rule;

148 (e) a licensed pharmacist having authority to dispense controlled substances to the

149 extent the information relates specifically to a current patient to whom that pharmacist is

150 dispensing or considering dispensing any controlled substance;

151 (f) federal, state, and local law enforcement authorities engaged as a specified duty of

152 their employment in enforcing laws:

153 (i) regulating controlled substances; or

154 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud; and

155 (g) an individual who is the recipient of a controlled substance prescription entered into
156 the database, upon providing evidence satisfactory to the database manager that the individual
157 requesting the information is in fact the person about whom the data entry was made.

158 (9) Any person who knowingly and intentionally releases any information in the
159 database in violation of the limitations under Subsection (8) is guilty of a third degree felony.

160 (10) (a) Any person who obtains or attempts to obtain information from the database
161 by misrepresentation or fraud is guilty of a third degree felony.

162 (b) Any person who obtains or attempts to obtain information from the database for a
163 purpose other than a purpose authorized by this section or by rule is guilty of a third degree
164 felony.

165 (11) (a) A person may not knowingly and intentionally use, release, publish, or
166 otherwise make available to any other person or entity any information obtained from the
167 database for any purpose other than those specified in Subsection (8). Each separate violation
168 of this Subsection (11) is a third degree felony and is also subject to a civil penalty not to
169 exceed \$5,000.

170 (b) The procedure for determining a civil violation of this Subsection (11) shall be in
171 accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

172 (c) Civil penalties assessed under this Subsection (11) shall be deposited in the General
173 Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

174 (12) (a) The failure of a pharmacist in charge to submit information to the database as
175 required under this section after the division has submitted a specific written request for the
176 information or when the division determines the individual has a demonstrable pattern of
177 failing to submit the information as required is grounds for the division to take the following
178 actions in accordance with Section 58-1-401:

179 (i) refuse to issue a license to the individual;

180 (ii) refuse to renew the individual's license;

181 (iii) revoke, suspend, restrict, or place on probation the license;

182 (iv) issue a public or private reprimand to the individual;

183 (v) issue a cease and desist order; and
184 (vi) impose a civil penalty of not more than \$1,000 for each dispensed prescription
185 regarding which the required information is not submitted.

186 (b) Civil penalties assessed under Subsection (12)(a)(vi) shall be deposited in the
187 General Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

188 (c) The procedure for determining a civil violation of this Subsection (12) shall be in
189 accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

190 (13) An individual who has submitted information to the database in accordance with
191 this section may not be held civilly liable for having submitted the information.

192 (14) All department and the division costs necessary to establish and operate the
193 database shall be funded by appropriations from:

194 (a) the Commerce Service Fund; and

195 (b) the General Fund.

196 (15) All costs associated with recording and submitting data as required in this section
197 shall be assumed by the submitting pharmacy.

198 (16) (a) Except as provided in Subsection (16)(b), data provided to, maintained in, or
199 accessed from the database that may be identified to, or with, a particular person is not subject
200 to discovery, subpoena, or similar compulsory process in any civil, judicial, administrative, or
201 legislative proceeding, nor shall any individual or organization with lawful access to the data
202 be compelled to testify with regard to the data.

203 (b) The restrictions in Subsection (16)(a) do not apply to:

204 (i) a criminal proceeding; or

205 (ii) a civil, judicial, or administrative action brought to enforce the provisions of this
206 section, Section 58-37-7.7, or Section 58-37-7.8.

207 Section 2. Section **58-37-7.8** is enacted to read:

208 **58-37-7.8. Pilot program for real time reporting for controlled substance database**
209 **statewide implementation.**

210 (1) (a) As used in this section:

211 (i) "Pilot area" means:

212 (A) Davis County;

213 (B) Salt Lake County;

214 (C) Utah County; and

215 (D) Weber County.

216 (ii) "Pilot program" means the pilot program described in this section.

217 (b) The definitions in Subsection 58-37-7.5(1) apply to this section.

218 (2) There is established a pilot program for real-time reporting of data to, and access to
219 data from, the database by a pharmacy, a pharmaceutical facility, or a physician beginning on
220 July 1, 2008, and ending on December 1, 2009.

221 (3) In addition to fulfilling the requirements of Sections 58-37-7.5 and 58-37-7.7 on a
222 statewide basis, the division shall upgrade, administer, and direct the functioning of the
223 database in the pilot area in a manner that provides for real-time reporting of information
224 entered into, and accessed from, the database by a pharmacy or pharmaceutical facility.

225 (4) (a) The division may, under state procurement laws, contract with another state
226 agency or private entity to upgrade, operate, or maintain the database in the pilot area.

227 (b) The division shall collaborate with the board to determine whether to enter into a
228 contract under Subsection (4)(a), or to provide the services described in Subsection (4)(a)
229 within the division.

230 (c) The division and the board shall make the determination described in Subsection
231 (4)(b) based on an analysis of costs and benefits.

232 (5) (a) All provisions and requirements of the state-wide database, described in
233 Sections 58-37-7.5 and 58-37-7.7, are applicable to the database in the pilot area, to the extent
234 that they do not conflict with the requirements of this section.

235 (b) For purposes of Section 58-37-7.5, Section 58-37-7.7, and this section, the database
236 in the pilot area is considered part of the statewide database.

237 (6) A pharmacy or pharmaceutical facility shall cooperate with the division, or the
238 division's designee, to provide real-time submission of, and access to, information for the
239 database in the pilot area.

240 (7) The penalties and enforcement provisions described in Sections 58-37-7.5 and
241 58-37-7.7 apply to enforce the provisions of this section in relation to a pharmacy or
242 pharmaceutical facility that is located in, or operates in, the pilot area.

243 (8) The division may make rules, in accordance with Title 63, Chapter 46a, Utah
244 Administrative Rulemaking Act, to provide for the real-time reporting of, and access to,

245 information in accordance with the requirements of this section.

246 (9) During the Legislature's 2009 interim, the division shall report to the Health and
247 Human Services Interim Committee regarding:

248 (a) the implementation, operation, and impact of the pilot program established in this
249 section;

250 (b) the progress made by the division in implementing the pilot program on a statewide
251 basis; and

252 (c) the advisability of, and projected costs of, implementing the pilot program on a
253 statewide basis.

254 (10) (a) The division shall, on or before December 1, 2009, implement the pilot
255 program on a statewide basis.

256 (b) The division may implement the pilot program on a statewide basis at anytime after
257 July 1, 2008, if the division and the board determine that the pilot program is successful.

258 **Section 3. Appropriation.**

259 There is appropriated:

260 (1) as an ongoing appropriation, subject to future budget constraints, \$175,000 from
261 the General Fund for the fiscal year 2008-09, to the Division of Occupational and Professional
262 Licensing to maintain and operate the controlled substance database; and

263 (2) \$650,000 in nonlapsing funds from the General Fund, for the fiscal year 2008-09
264 only, to the Division of Occupational and Professional Licensing to implement and operate the
265 pilot program described in this bill.

266 **Section 4. Effective date.**

267 This bill takes effect on July 1, 2008.

Legislative Review Note
as of 1-4-08 6:49 AM

Office of Legislative Research and General Counsel

H.B. 119 - Controlled Substance Database Amendments

Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill appropriates \$650,000 one-time and \$175,000 ongoing from the General Fund to develop a real time controlled substance database in Salt Lake, Weber, and Davis counties.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$175,000	\$175,000	\$0	\$0	\$0
General Fund, One-Time	\$0	\$650,000	\$0	\$0	\$0	\$0
Total	\$0	\$825,000	\$175,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Some businesses may be affect due to increased requirements for software and computer hardware.