

ELECTRONIC PRESCRIBING ACT

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill enacts the Electronic Prescribing Act within Title 58, Occupations and Professions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a practitioner to provide each existing patient of the practitioner with the option to participate in electronic prescribing;
- ▶ provides that a practitioner may not issue a prescription through electronic prescribing for a drug or device that the practitioner is prohibited by federal law or federal rule from issuing through electronic prescribing;
- ▶ requires a pharmacy to accept and comply with an electronic prescription that is transmitted in accordance with the requirements of this section and rules made by the Division of Occupational and Professional Licensing; and
- ▶ grants rulemaking authority to the Division of Occupational and Professional Licensing to:
 - enforce the provisions of this bill;
 - ensure that electronic prescribing is done in a secure manner;
 - ensure that each patient is fully informed of the patient's rights, restrictions, and obligations pertaining to electronic prescribing; and



28 • grant a hardship exemption to a pharmacy, to the extent that the requirements of
29 this bill would impose an extreme financial hardship on the pharmacy.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 ENACTS:

36 **58-78-101**, Utah Code Annotated 1953

37 **58-78-102**, Utah Code Annotated 1953

38 **58-78-201**, Utah Code Annotated 1953



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

41 Section 1. Section **58-78-101** is enacted to read:

42 **CHAPTER 78. ELECTRONIC PRESCRIBING ACT**

43 **Part 1. General Provisions**

44 **58-78-101. Title.**

45 This chapter is known as the "Electronic Prescribing Act."

46 Section 2. Section **58-78-102** is enacted to read:

47 **58-78-102. Definitions.**

48 As used in this chapter:

49 (1) "Drug" is as defined in Section 58-37-2.

50 (2) "Electronic prescribing" means the electronic generation and transmission of a
51 prescription between a practitioner and a pharmacy.

52 (3) "Existing patient" means a person who a practitioner has:

53 (a) obtained information regarding, in the usual course of professional practice, that is
54 sufficient to:

55 (i) establish a diagnoses;

56 (ii) identify conditions; and

57 (iii) identify contraindications to potential treatment; and

58 (b) accepted as a patient.

59 (4) (a) "Federal controlled substance" means a drug or substance included in Schedules
60 I, II, III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513, or any federal
61 controlled substance analog.

62 (b) "Federal controlled substance" does not include:

63 (i) distilled spirits, wine, or malt beverages, as those terms are defined or used in Title
64 32A, Alcoholic Beverage Control Act, regarding tobacco or food;

65 (ii) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or
66 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,
67 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold,
68 transferred, or furnished as an over-the-counter medication without prescription; or

69 (iii) dietary supplements, vitamins, minerals, herbs, or other similar substances
70 including concentrates or extracts, which are not otherwise regulated by law, which may
71 contain naturally occurring amounts of chemicals or substances listed in this chapter, or in rules
72 adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

73 (5) (a) "Federal Controlled substance analog" means a substance the chemical structure
74 of which is substantially similar to the chemical structure of a controlled substance listed in
75 Schedules I and II of the federal Controlled Substances Act, Title II, P.L. 91-513:

76 (i) which has a stimulant, depressant, or hallucinogenic effect on the central nervous
77 system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central
78 nervous system of controlled substances in the schedules set forth in Subsection (4); or

79 (ii) which, with respect to a particular individual, is represented or intended to have a
80 stimulant, depressant, or hallucinogenic effect on the central nervous system substantially
81 similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of
82 controlled substances in the schedules set forth in Subsection (4).

83 (b) "Federal controlled substance analog" does not include:

84 (i) a controlled substance currently scheduled in Schedules I through V of Section
85 58-37-4;

86 (ii) a substance for which there is an approved new drug application;

87 (iii) a substance with respect to which an exemption is in effect for investigational use
88 by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 355,
89 to the extent the conduct with respect to the substance is permitted by the exemption;

90 (iv) any substance to the extent not intended for human consumption before an
91 exemption takes effect with respect to the substance;

92 (v) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or
93 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,
94 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold,
95 transferred, or furnished as an over-the-counter medication without prescription; or

96 (vi) dietary supplements, vitamins, minerals, herbs, or other similar substances
97 including concentrates or extracts, which are not otherwise regulated by law, which may
98 contain naturally occurring amounts of chemicals or substances listed in this chapter, or in rules
99 adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

100 (6) "Pharmacy" is as defined in Section 58-17b-102.

101 (7) "Practitioner" means an individual currently licensed, registered, or otherwise
102 authorized by the state to prescribe and administer a drug in the course of professional practice.

103 (8) "Prescription" is as defined in Section 58-37-2.

104 Section 3. Section **58-78-201** is enacted to read:

105 **Part 2. Electronic Prescribing**

106 **58-78-201. Electronic prescriptions -- Restrictions -- Rulemaking authority.**

107 (1) Subject to the provisions of this section, a practitioner shall provide each existing
108 patient of the practitioner with the option of participating in electronic prescribing for
109 prescriptions issued for the patient.

110 (2) A practitioner may not issue a prescription through electronic prescribing for a
111 drug, device, or federal controlled substance that the practitioner is prohibited by federal law or
112 federal rule from issuing through electronic prescribing.

113 (3) A pharmacy shall:

114 (a) accept an electronic prescription that is transmitted in accordance with the
115 requirements of this section and division rules; and

116 (b) dispense a drug or device as directed in an electronic prescription described in
117 Subsection (3)(a).

118 (4) The division shall make rules to ensure that:

119 (a) except as provided in Subsection (5), practitioners and pharmacies comply with this
120 section;

121 (b) electronic prescribing is conducted in a secure manner; and

122 (c) each patient is fully informed of the patient's rights, restrictions, and obligations
123 pertaining to electronic prescribing.

124 (5) The division may, by rule, grant an exemption from the requirements of this section
125 to a pharmacy to the extent that the pharmacy can establish, to the satisfaction of the division,
126 that compliance with the requirements of this section would impose an extreme financial
127 hardship on the pharmacy.

Legislative Review Note
as of 1-26-09 1:06 PM

Office of Legislative Research and General Counsel

H.B. 128 - Electronic Prescribing Act

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Local governments and businesses may be impacted due to additional requirements for upgrades to computer hardware and software for electronic prescribing. Individuals may be impacted due to increased costs that may be passed on to the consumer.
