

1 **CONTROLLED SUBSTANCE DATABASE - LICENSING**

2 **AMENDMENTS**

3 2011 GENERAL SESSION

4 STATE OF UTAH

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

6 Senate Sponsor: _____

7
8 **LONG TITLE**

9 **Committee Note:**

10 The Health and Human Services Interim Committee recommended this bill.

11 **General Description:**

12 This bill amends licensing provisions in the Controlled Substance Database Act.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ provides that an individual who is not a veterinarian, who obtains a new license to
16 prescribe a controlled substance, shall, within 30 days after the day on which the
17 individual obtains a license to prescribe a controlled substance from the Drug
18 Enforcement Administration, register with the division to use the Controlled
19 Substance Database; ~~H→~~ [and]

19a ▶ reinstates authority of the Division of Occupational and Professional Licensing to
19b take administrative action, under the Pharmacy Practice Act, for a violation of the Controlled
19c Substance Database Act; and ~~H←~~

20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 ~~H→~~ [None] This bill provides an immediate effective date. ~~H←~~

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **58-37f-401**, as enacted by Laws of Utah 2010, Chapter 287

27a ~~H→~~ **58-17b-504**, as last amended by Laws of Utah 2008, Chapter 382 ~~H←~~



H.B. 15

28

29 *Be it enacted by the Legislature of the state of Utah:*29a **Ĥ→ Section 1. Section 58-17B-504 is amended to read:**29b **58-17b-504. Penalty for unlawful or unprofessional conduct -- Fines -- Citations.**29c **(1) Any person who violates any of the unlawful conduct provisions of Subsection**
29d **58-1-501(1)(a)(i) and Subsections 58-17b-501(7) and (11) is guilty of a third degree felony.**29e **(2) Any person who violates any of the unlawful conduct provisions of Subsection**
29f **58-1-501(1)(a)(ii), Subsections 58-1-501(1)(b) through (e), and Section 58-17b-501, except Subsections**
29g **58-17b-501(7) and (11), is guilty of a class A misdemeanor.**29h **(3) (a) Subject to Subsection (5) and in accordance with Section 58-17b-401, for acts of**
29i **unprofessional or unlawful conduct, the division may:**29j **(i) assess administrative penalties; and**29k **(ii) take any other appropriate administrative action.**29l **(b) An administrative penalty imposed pursuant to this section shall be deposited in the**
29m **General Fund as a dedicated credit to be used by the division for pharmacy licensee education and**
29n **enforcement as provided in Section 58-17b-505.**29o **(4) If a licensee has been convicted of violating Section 58-17b-501 prior to an administrative**
29p **finding of a violation of the same section, the licensee may not be assessed an administrative fine under**
29q **this chapter for the same offense for which the conviction was obtained.**29r **(5) (a) If upon inspection or investigation, the division concludes that a person has violated the**
29s **provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter**
29t **37f, Controlled Substance Database Act, Chapter 1, Division of Occupational and Professional**
29u **Licensing Act, or any rule or order issued with respect to these provisions, and that disciplinary action**
29v **is appropriate, the director or the director's designee from within the division shall promptly issue a**
29w **citation to the person according to this chapter and any pertinent rules, attempt to negotiate a**
29x **stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted**
29y **under Title 63G, Chapter 4, Administrative Procedures Act.**29z **(b) Any person who is in violation of the provisions of Section 58-17b-501 or 58-17b-502,**
29aa **Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance Database Act,**
29ab **Chapter 1, Division of Occupational and Professional Licensing Act, or any rule or order issued with**
29ac **respect to these provisions, as evidenced by an uncontested citation, a stipulated settlement, or a**
29ad **finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection**
29ae **(5) of up to \$10,000 per single violation or up to \$2,000 per day of ongoing violation, whichever is**
29af **greater, in accordance with a fine schedule established by rule, and may, in addition to or in lieu of, be**
29ag **ordered to cease and desist from violating the provisions of Section 58-17b-501 or 58-17b-502, Chapter**
29ah **37, Utah Controlled Substances Act, Chapter 1, Division of Occupational and Professional Licensing**
29ai **Act, or any rule or order issued with respect to these provisions. ←Ĥ**

29aj (c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited
 29ak in Section 58-17b-401 may not be assessed through a citation.

29al (d) Each citation shall be in writing and specifically describe with particularity the nature of
 29am the violation, including a reference to the provision of the chapter, rule, or order alleged to have been
 29an violated. The citation shall clearly state that the recipient must notify the division in writing within 20
 29ao calendar days of service of the citation in order to contest the citation at a hearing conducted under
 29ap Title 63G, Chapter 4, Administrative Procedures Act. The citation shall clearly explain the
 29aq consequences of failure to timely contest the citation or to make payment of any fines assessed by the
 29ar citation within the time specified in the citation.

29as (e) Each citation issued under this section, or a copy of each citation, may be served upon any
 29at person upon whom a summons may be served:

29au (i) in accordance with the Utah Rules of Civil Procedure;

29av (ii) personally or upon the person's agent by a division investigator or by any person specially
 29aw designated by the director; or

29ax (iii) by mail.

29ay (f) If within 20 calendar days from the service of a citation, the person to whom the citation
 29az was issued fails to request a hearing to contest the citation, the citation becomes the final order of the
 29ba division and is not subject to further agency review. The period to contest the citation may be
 29bb extended by the division for cause.

29bc (g) The division may refuse to issue or renew, suspend, revoke, or place on probation the
 29bd license of a licensee who fails to comply with the citation after it becomes final.

29be (h) The failure of an applicant for licensure to comply with a citation after it becomes final is a
 29bf ground for denial of license.

29bg (i) No citation may be issued under this section after the expiration of six months following the
 29bh occurrence of any violation. ←H

30 Section H→ [±] 2 ←H . Section 58-37f-401 is amended to read:

31 **58-37f-401. Database registration required -- Penalties for failure to register.**

32 (1) Each individual, other than a veterinarian, who, on June 30, 2010, has a license to
 33 prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, but is not
 34 registered with the division to use the database shall, on or before September 30, 2010, register
 35 with the division to use the database.

36 (2) Each individual who, on November 1, 2012, is registered with the division to use
 37 the database shall, on or before January 1, 2013, participate in the online tutorial and pass the
 38 online test described in Section 58-37f-402.

39 (3) (a) An individual who is not a veterinarian, who obtains a new license to prescribe
 40 a controlled substance under Chapter 37, Utah Controlled Substances Act, shall, within 30 days

41 after the day on which the individual obtains a license to prescribe a controlled substance from
 42 the Drug Enforcement Administration, register with the division to use the database.

43 ~~[(3)]~~ (b) ~~[Beginning on July 1, 2010, an]~~ An individual who is not a veterinarian may
 44 not ~~[obtain or]~~ renew a license to prescribe a controlled substance under Chapter 37, Utah
 45 Controlled Substances Act, unless the individual registers with the division to use the database.

46 (4) Beginning on November 2, 2012, in order to register to use the database, the
 47 individual registering must participate in the online tutorial and pass the online test described
 48 in Section 58-37f-402.

49 (5) Failure by an individual to comply with the requirements of this section is grounds
 50 for the division to take the following actions in accordance with Section 58-1-401:

51 (a) refuse to issue a license to the individual;

52 (b) refuse to renew the individual's license; or

53 (c) revoke, suspend, restrict, or place on probation the license.

54 (6) Beginning on July 1, 2010, the division shall, in accordance with Section
 55 63J-1-504, impose an annual database registration fee on an individual who registers to use the
 56 database, to pay the startup and ongoing costs of the division for complying with the
 57 requirements of this section and Section 58-37f-402.

57a **H→ Section [5] 3 . Effective date.**

57b **If approved by two-thirds of all the members elected to each house, this bill takes effect**
 57c **upon approval by the governor, or the day following the constitutional time limit of Utah**
 57d **Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,**
 57e **the date of veto override. ←H**