

1                   **ACCESS TO CONTROLLED SUBSTANCE DATABASE**

2                                   **REVISIONS**

3   2011 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Steve Eliason**

6                                   Senate Sponsor: Wayne L. Niederhauser

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8   **LONG TITLE**

9   **General Description:**

10           This bill modifies the Controlled Substance Database Act regarding parties who have  
11 access to the database.

12 **Highlighted Provisions:**

13           This bill:

14           ▶ provides controlled substance database access to employees of the Office of Internal  
15 Audit and Program Integrity within the Department of Health who are engaged in  
16 their specified duty of ensuring Medicaid program integrity.

17 **Money Appropriated in this Bill:**

18           None

19 **Other Special Clauses:**

20           None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23           **58-37f-301**, as enacted by Laws of Utah 2010, Chapter 287 and last amended by  
24 Coordination Clause, Laws of Utah 2010, Chapter 312

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

27           Section 1. Section **58-37f-301** is amended to read:



28           **58-37f-301. Access to database.**

29           (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah  
30 Administrative Rulemaking Act, to:

31           (a) effectively enforce the limitations on access to the database as described in this  
32 part; and

33           (b) establish standards and procedures to ensure accurate identification of individuals  
34 requesting information or receiving information without request from the database.

35           (2) The division shall make information in the database available only to the following  
36 individuals, in accordance with the requirements of this chapter and division rules:

37           (a) personnel of the division specifically assigned to conduct investigations related to  
38 controlled substance laws under the jurisdiction of the division;

39           (b) authorized division personnel engaged in analysis of controlled substance  
40 prescription information as a part of the assigned duties and responsibilities of their  
41 employment;

42           (c) in accordance with a written agreement entered into with the department,  
43 employees of the Department of Health:

44           (i) whom the director of the Department of Health assigns to conduct scientific studies  
45 regarding the use or abuse of controlled substances, provided that the identity of the individuals  
46 and pharmacies in the database are confidential and are not disclosed in any manner to any  
47 individual who is not directly involved in the scientific studies; or

48           (ii) when the information is requested by the Department of Health in relation to a  
49 person or provider whom the Department of Health suspects may be improperly obtaining or  
50 providing a controlled substance;

51           (d) a licensed practitioner having authority to prescribe controlled substances, to the  
52 extent the information:

53           (i) (A) relates specifically to a current or prospective patient of the practitioner; and

54           (B) is sought by the practitioner for the purpose of:

55           (I) prescribing or considering prescribing any controlled substance to the current or  
56 prospective patient;

57           (II) diagnosing the current or prospective patient;

58           (III) providing medical treatment or medical advice to the current or prospective

59 patient; or  
60 (IV) determining whether the current or prospective patient:  
61 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;  
62 or  
63 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled  
64 substance from the practitioner;  
65 (ii) (A) relates specifically to a former patient of the practitioner; and  
66 (B) is sought by the practitioner for the purpose of determining whether the former  
67 patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled  
68 substance from the practitioner;  
69 (iii) relates specifically to an individual who has access to the practitioner's Drug  
70 Enforcement Administration identification number, and the practitioner suspects that the  
71 individual may have used the practitioner's Drug Enforcement Administration identification  
72 number to fraudulently acquire or prescribe a controlled substance;  
73 (iv) relates to the practitioner's own prescribing practices, except when specifically  
74 prohibited by the division by administrative rule;  
75 (v) relates to the use of the controlled substance database by an employee of the  
76 practitioner, described in Subsection (2)(e); or  
77 (vi) relates to any use of the practitioner's Drug Enforcement Administration  
78 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a  
79 controlled substance;  
80 (e) in accordance with Subsection (3)(a), an employee of a practitioner described in  
81 Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:  
82 (i) the employee is designated by the practitioner as an individual authorized to access  
83 the information on behalf of the practitioner;  
84 (ii) the practitioner provides written notice to the division of the identity of the  
85 employee; and  
86 (iii) the division:  
87 (A) grants the employee access to the database; and  
88 (B) provides the employee with a password that is unique to that employee to access  
89 the database in order to permit the division to comply with the requirements of Subsection

90 58-37f-203(3)(b) with respect to the employee;

91 (f) a licensed pharmacist having authority to dispense a controlled substance to the  
92 extent the information is sought for the purpose of:

93 (i) dispensing or considering dispensing any controlled substance; or

94 (ii) determining whether a person:

95 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

96 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled  
97 substance from the pharmacist;

98 (g) federal, state, and local law enforcement authorities, and state and local  
99 prosecutors, engaged as a specified duty of their employment in enforcing laws:

100 (i) regulating controlled substances; or

101 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud;

102 (h) employees of the Office of Internal Audit and Program Integrity within the  
103 Department of Health who are engaged in their specified duty of ensuring Medicaid program  
104 integrity under Section 26-18-2.3;

105 [~~(h)~~] (i) a mental health therapist, if:

106 (i) the information relates to a patient who is:

107 (A) enrolled in a licensed substance abuse treatment program; and

108 (B) receiving treatment from, or under the direction of, the mental health therapist as  
109 part of the patient's participation in the licensed substance abuse treatment program described  
110 in Subsection (2)[~~(h)~~](i)(A);

111 (ii) the information is sought for the purpose of determining whether the patient is  
112 using a controlled substance while the patient is enrolled in the licensed substance abuse  
113 treatment program described in Subsection (2)[~~(h)~~](i)(A); and

114 (iii) the licensed substance abuse treatment program described in Subsection  
115 (2)[~~(h)~~](i)(A) is associated with a practitioner who:

116 (A) is a physician, a physician assistant, an advance practice registered nurse, or a  
117 pharmacist; and

118 (B) is available to consult with the mental health therapist regarding the information  
119 obtained by the mental health therapist, under this Subsection (2)[~~(h)~~](i), from the database;  
120 and

121            [(†)] (j) an individual who is the recipient of a controlled substance prescription entered  
122 into the database, upon providing evidence satisfactory to the division that the individual  
123 requesting the information is in fact the individual about whom the data entry was made.

124            (3) (a) A practitioner described in Subsection (2)(d) may designate up to three  
125 employees to access information from the database under Subsection (2)(e).

126            (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah  
127 Administrative Rulemaking Act, to establish background check procedures to determine  
128 whether an employee designated under Subsection (2)(e)(i) should be granted access to the  
129 database.

130            (c) The division shall grant an employee designated under Subsection (2)(e)(i) access  
131 to the database, unless the division determines, based on a background check, that the  
132 employee poses a security risk to the information contained in the database.

133            (d) The division may impose a fee, in accordance with Section 63J-1-504, on a  
134 practitioner who designates an employee under Subsection (2)(e)(i), to pay for the costs  
135 incurred by the division to conduct the background check and make the determination  
136 described in Subsection (3)(b).

137            (4) (a) An individual who is granted access to the database based on the fact that the  
138 individual is a licensed practitioner or a mental health therapist shall be denied access to the  
139 database when the individual is no longer licensed.

140            (b) An individual who is granted access to the database based on the fact that the  
141 individual is a designated employee of a licensed practitioner shall be denied access to the  
142 database when the practitioner is no longer licensed.

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**Legislative Review Note**  
as of 2-7-11 3:33 PM

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 358

SHORT TITLE: Access to Controlled Substance Database Revisions

SPONSOR: Eliason, S.

2011 GENERAL SESSION, STATE OF UTAH

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

The bill costs the Department of Commerce \$5,000 one-time in FY 2011 for programming expenses. Commerce Service Fund expenditures impact annual deposits to the General Fund.

### STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
<b>Revenue:</b>			
General Fund, One-Time	(\$5,000)	\$0	\$0
Commerce Service, One-time	\$5,000	\$0	\$0
Total Revenue	\$0	\$0	\$0
<b>Expenditure:</b>			
Commerce Service, One-time	\$5,000	\$0	\$0
Total Expenditure	\$5,000	\$0	\$0
Net Impact, All Funds (Rev.-Exp.)	(\$5,000)	\$0	\$0
Net Impact, General/Education Funds	(\$5,000)	\$0	\$0

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

Enactment of this bill likely will not result in direct, measurable costs 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.