

Representative Bradley M. Daw proposes the following substitute bill:

CONTROLLED SUBSTANCE DATABASE

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley M. Daw

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ makes it a third degree felony to obtain or attempt to obtain information from the controlled substances database for a purpose other than a purpose authorized by statute or rule;
- ▶ prohibits access to, and use of, identifying information in the controlled substance database, by discovery, subpoena, or similar process, in certain civil, judicial, administrative, or legislative proceedings;
- ▶ establishes a pilot program, beginning on July 1, 2008, and ending on July 1, 2010, for the real-time reporting of, and access to, controlled substance database information by pharmacies, pharmaceutical facilities, and physicians;
- ▶ grants rulemaking authority to the Division of Occupational and Professional



26 Licensing in relation to the pilot program;

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

30 ▶ requires the Division of Occupational and Professional Licensing to implement the
31 pilot program established in this bill as a permanent program on a statewide basis,
32 on or before July 1, 2010; and

33 ▶ makes technical changes.

34 **Monies Appropriated in this Bill:**

35 This bill appropriates:

36 ▶ \$175,000 as an ongoing appropriation from the General Fund, for the fiscal year
37 2008-09, to the Division of Occupational and Professional Licensing; and

38 ▶ \$650,000 from the General Fund, for the fiscal year 2008-09 only, to the Division of
39 Occupational and Professional Licensing, as nonlapsing funds.

40 **Other Special Clauses:**

41 This bill takes effect on July 1, 2008.

42 **Utah Code Sections Affected:**

43 AMENDS:

44 **58-37-7.5**, as last amended by Laws of Utah 2007, Chapter 293

45 ENACTS:

46 **58-37-7.8**, Utah Code Annotated 1953



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

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

50 **58-37-7.5. Controlled substance database -- Pharmacy reporting requirements --**
51 **Access -- Penalties.**

52 (1) As used in this section:

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

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

55 [~~(b)~~] (c) "Database manager" means the person responsible for operating the database,
56 or [~~his~~] the person's designee.

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

59 ~~[(d)]~~ (e) "Health care facility" ~~[has the same definition as]~~ is as defined in Section
60 26-21-2.

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

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

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

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

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

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

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

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

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

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

85 (a) name of the prescribing practitioner;

86 (b) date of the prescription;

87 (c) date the prescription was filled;

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

- 119 (a) effectively enforce the limitations on access to the database as described in
120 Subsection (8); and
- 121 (b) establish standards and procedures to ensure accurate identification of individuals
122 requesting information or receiving information without request from the database.
- 123 (8) The manager of the database shall make information in the database available only
124 to the following persons, and in accordance with the limitations stated and division rules:
- 125 (a) personnel of the division specifically assigned to conduct investigations related to
126 controlled substances laws under the jurisdiction of the division;
- 127 (b) authorized division personnel engaged in analysis of controlled substance
128 prescription information as a part of the assigned duties and responsibilities of their
129 employment;
- 130 (c) employees of the Department of Health whom the director of the Department of
131 Health assigns to conduct scientific studies regarding the use or abuse of controlled substances,
132 provided that the identity of the individuals and pharmacies in the database are confidential and
133 are not disclosed in any manner to any individual who is not directly involved in the scientific
134 studies;
- 135 (d) a licensed practitioner having authority to prescribe controlled substances, to the
136 extent:
- 137 (i) the information relates specifically to a current patient of the practitioner, to whom
138 the practitioner is prescribing or considering prescribing any controlled substance;
- 139 (ii) the information relates specifically to an individual who has access to the
140 practitioner's Drug Enforcement Administration number, and the practitioner suspects that the
141 individual may have used the practitioner's Drug Enforcement Administration identification
142 number to fraudulently acquire or prescribe controlled substances; or
- 143 (iii) the information relates to the practitioner's own prescribing practices, except when
144 specifically prohibited by the division by administrative rule;
- 145 (e) a licensed pharmacist having authority to dispense controlled substances to the
146 extent the information relates specifically to a current patient to whom that pharmacist is
147 dispensing or considering dispensing any controlled substance;
- 148 (f) federal, state, and local law enforcement authorities, and state and local prosecutors,
149 engaged as a specified duty of their employment in enforcing laws:

- 150 (i) regulating controlled substances; or
- 151 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud; and
- 152 (g) an individual who is the recipient of a controlled substance prescription entered into
- 153 the database, upon providing evidence satisfactory to the database manager that the individual
- 154 requesting the information is in fact the person about whom the data entry was made.

155 (9) Any person who knowingly and intentionally releases any information in the

156 database in violation of the limitations under Subsection (8) is guilty of a third degree felony.

157 (10) (a) Any person who obtains or attempts to obtain information from the database

158 by misrepresentation or fraud is guilty of a third degree felony.

159 (b) Any person who obtains or attempts to obtain information from the database for a

160 purpose other than a purpose authorized by this section or by rule is guilty of a third degree

161 felony.

162 (11) (a) A person may not knowingly and intentionally use, release, publish, or

163 otherwise make available to any other person or entity any information obtained from the

164 database for any purpose other than those specified in Subsection (8). Each separate violation

165 of this Subsection (11) is a third degree felony and is also subject to a civil penalty not to

166 exceed \$5,000.

167 (b) The procedure for determining a civil violation of this Subsection (11) shall be in

168 accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

169 (c) Civil penalties assessed under this Subsection (11) shall be deposited in the General

170 Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

171 (12) (a) The failure of a pharmacist in charge to submit information to the database as

172 required under this section after the division has submitted a specific written request for the

173 information or when the division determines the individual has a demonstrable pattern of

174 failing to submit the information as required is grounds for the division to take the following

175 actions in accordance with Section 58-1-401:

- 176 (i) refuse to issue a license to the individual;
- 177 (ii) refuse to renew the individual's license;
- 178 (iii) revoke, suspend, restrict, or place on probation the license;
- 179 (iv) issue a public or private reprimand to the individual;
- 180 (v) issue a cease and desist order; and

181 (vi) impose a civil penalty of not more than \$1,000 for each dispensed prescription
182 regarding which the required information is not submitted.

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

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

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

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

191 (a) the Commerce Service Fund; and

192 (b) the General Fund.

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

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

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

201 (i) a criminal proceeding; or

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

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

205 **58-37-7.8. Pilot program for real time reporting for controlled substance database**
206 **-- Statewide implementation.**

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

208 (i) "Pilot area" means the areas of the state that the division determines to operate the
209 pilot program in, under Subsection (3), which may include:

210 (A) the entire state; or

211 (B) geographical areas within the state.

- 212 (ii) "Pilot program" means the pilot program described in this section.
213 (b) The definitions in Subsection 58-37-7.5(1) apply to this section.
214 (2) There is established a pilot program for real-time reporting of data to, and access to
215 data from, the database by a pharmacy, a pharmaceutical facility, or a physician beginning on
216 July 1, 2008, and ending on July 1, 2010.
217 (3) In addition to fulfilling the requirements of Sections 58-37-7.5 and 58-37-7.7 on a
218 statewide basis, the division shall, in accordance with Subsection (4), upgrade, administer, and
219 direct the functioning of the database in geographical areas specified by the division, or on a
220 statewide basis, in a manner that provides for real-time reporting of information entered into,
221 and accessed from, the database by a pharmacy or pharmaceutical facility.
222 (4) The division shall, under state procurement laws, and with the technical assistance
223 of the Department of Technology Services, contract with a private entity to upgrade, operate,
224 and maintain the database in the pilot area.
225 (5) (a) All provisions and requirements of the state-wide database, described in
226 Sections 58-37-7.5 and 58-37-7.7, are applicable to the database in the pilot area, to the extent
227 that they do not conflict with the requirements of this section.
228 (b) For purposes of Section 58-37-7.5, Section 58-37-7.7, and this section, the database
229 in the pilot area is considered part of the statewide database.
230 (6) A pharmacy or pharmaceutical facility shall cooperate with the division, or the
231 division's designee, to provide real-time submission of, and access to, information for the
232 database:
233 (a) in the pilot area; and
234 (b) when the division implements the pilot program as a permanent program under
235 Subsection (10), on a statewide basis.
236 (7) The penalties and enforcement provisions described in Sections 58-37-7.5 and
237 58-37-7.7 apply to enforce the provisions of this section in relation to a pharmacy or
238 pharmaceutical facility that is located in, or operates in, the pilot area.
239 (8) The division may make rules, in accordance with Title 63, Chapter 46a, Utah
240 Administrative Rulemaking Act, to provide for the real-time reporting of, and access to,
241 information in accordance with the requirements of this section.
242 (9) During the Legislature's 2009 interim, the division shall report to the Health and

243 Human Services Interim Committee regarding:

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

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

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

250 (10) The division shall, on or before July 1, 2010, implement the pilot program as a
251 permanent program on a statewide basis.

252 (11) (a) The division shall, through the private entity contracted with under Subsection
253 (4), provide, free of charge, to a pharmacy or pharmaceutical facility that is required to comply
254 with Subsection (6), software, software installation assistance, and training, that will enable the
255 pharmacy or pharmaceutical facility to comply with Subsection (6).

256 (b) Notwithstanding Subsection (11)(a), a pharmacy or pharmaceutical facility required
257 to comply with Subsection (6) may, instead of accepting installation of the software provided
258 by the division under Subsection (11)(a), modify its own software in order to comply with the
259 requirements of Subsection (6), if the modification is made:

260 (i) at the expense of the pharmacy or pharmaceutical facility;

261 (ii) in consultation with the division; and

262 (iii) within six months after the division notifies the pharmacy or pharmaceutical
263 facility, in writing, of the division's intention to install the software described in Subsection
264 (11)(a).

265 (c) The division shall, through the private entity contracted with under Subsection (4),
266 cooperate with a pharmacy or pharmaceutical facility that is required to comply with
267 Subsection (6), to ensure that the installation and operation of the software described in
268 Subsection (11)(a), or the provision of information from the pharmacy or pharmaceutical
269 facility to the database:

270 (i) is secure; and

271 (ii) does not interfere with the proper functioning of the pharmacy's or pharmaceutical
272 facility's software or computer system.

273 **Section 3. Appropriation.**

274 There is appropriated:

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

278 (2) \$650,000 from the General Fund, for the fiscal year 2008-09 only, to the Division
279 of Occupational and Professional Licensing to implement and operate the pilot program
280 described in this bill.

281 (3) The \$650,000 appropriated from the General Fund, under Subsection (2), shall be
282 nonlapsing.

283 Section 4. **Effective date.**

284 This bill takes effect on July 1, 2008.

H.B. 119 1st Sub. (Buff) - 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 on a statewide basis.

	<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 affected due to increased requirements for software and computer hardware