

**CONTROLLED SUBSTANCE DATABASE**

**AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Bradley M. Daw**

Senate Sponsor: Curtis S. Bramble

Cosponsors:  
Trisha S. Beck

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**LONG TITLE**

**General Description:**

This bill recodifies and amends provisions relating to the Controlled Substance Database and requires an individual, other than a veterinarian, who is licensed to prescribe a controlled substance, who is applying for a license, or who is renewing a license, to register to use the database and to take a tutorial and pass a test relating to the database and the prescribing of a controlled substance.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ recodifies provisions relating to the Controlled Substance Database into a new chapter known as the Controlled Substance Database Act;
- ▶ modifies provisions relating to accessing database information for certain legal proceedings;
- ▶ requires an individual, other than a veterinarian, who is licensed to prescribe a controlled substance, who is applying for a license, or who is renewing a license to:
  - register to use the database; and
  - take a tutorial and pass a test relating to the database and the prescribing of controlled substances;
- ▶ requires the division to impose an annual database registration fee on an individual

30 who registers to use the database, to pay the startup and ongoing costs of the division for  
31 complying with the requirements of the preceding paragraph;

32       ▶ describes the penalties that may be imposed by Division of Occupational and  
33 Professional Licensing (DOPL) on an individual who fails to comply with the  
34 requirements described in the preceding paragraph;

35       ▶ requires DOPL to develop an online tutorial and test relating to the use of the  
36 database and the prescribing of a controlled substance;

37       ▶ requires DOPL to impose a fee on an individual who takes the test described in this  
38 bill to pay the costs incurred by DOPL to fulfill the requirements described in this  
39 bill;

40       ▶ grants rulemaking authority to DOPL; and

41       ▶ makes technical changes.

42 **Monies Appropriated in this Bill:**

43       None

44 **Other Special Clauses:**

45       This bill coordinates with S.B. 191, Governmental Accounting Amendments, by  
46 providing technical amendments.

47 **Utah Code Sections Affected:**

48 AMENDS:

49       **26-1-36**, as last amended by Laws of Utah 2008, Chapter 313

50       **58-17b-201**, as last amended by Laws of Utah 2005, Chapter 248

51       **58-37-6**, as last amended by Laws of Utah 2009, Chapters 42 and 183

52       **63J-1-602**, as enacted by Laws of Utah 2009, Chapter 368

53 ENACTS:

54       **58-37f-101**, Utah Code Annotated 1953

55       **58-37f-102**, Utah Code Annotated 1953

56       **58-37f-201**, Utah Code Annotated 1953

57       **58-37f-202**, Utah Code Annotated 1953

- 58           **58-37f-203**, Utah Code Annotated 1953
- 59           **58-37f-301**, Utah Code Annotated 1953
- 60           **58-37f-302**, Utah Code Annotated 1953
- 61           **58-37f-401**, Utah Code Annotated 1953
- 62           **58-37f-402**, Utah Code Annotated 1953
- 63           **58-37f-501**, Utah Code Annotated 1953
- 64           **58-37f-601**, Utah Code Annotated 1953
- 65           **58-37f-602**, Utah Code Annotated 1953
- 66           **58-37f-701**, Utah Code Annotated 1953

67 RENUMBERS AND AMENDS:

- 68           **58-37f-502**, (Renumbered from 58-37-7.7, as last amended by Laws of Utah 2006,
- 69 Chapter 46)
- 70           **58-37f-801**, (Renumbered from 58-37-7.8, as enacted by Laws of Utah 2008, Chapter
- 71 313)

72 REPEALS:

- 73           **58-37-7.5**, as last amended by Laws of Utah 2009, Chapter 41

74 **Utah Code Sections Affected by Coordination Clause:**

- 75           **58-37f-501**, Utah Code Annotated 1953



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

78           Section 1. Section **26-1-36** is amended to read:

79           **26-1-36. Duty to establish program to reduce deaths and other harm from**  
80 **prescription opiates used for chronic noncancer pain.**

81           (1) As used in this section, "opiate" means any drug or other substance having an  
82 addiction-forming or addiction-sustaining liability similar to morphine or being capable of  
83 conversion into a drug having addiction-forming or addiction-sustaining liability.

84           (2) In addition to the duties listed in Section 26-1-30, the department shall develop  
85 and implement a two-year program in coordination with the Division of Professional

86 Licensing, the Utah Labor Commission, and the Utah attorney general, to:

87 (a) investigate the causes of and risk factors for death and nonfatal complications of  
88 prescription opiate use and misuse in Utah for chronic pain by utilizing the Utah Controlled  
89 Substance Database created in Section [~~58-37-7.5~~] 58-37f-201;

90 (b) study the risks, warning signs, and solutions to the risks associated with  
91 prescription opiate medications for chronic pain, including risks and prevention of misuse and  
92 diversion of those medications;

93 (c) provide education to health care providers, patients, insurers, and the general  
94 public on the appropriate management of chronic pain, including the effective use of medical  
95 treatment and quality care guidelines that are scientifically based and peer reviewed; and

96 (d) educate the public regarding:

97 (i) the purpose of the Controlled Substance Database established in Section  
98 [~~58-37-7.5~~] 58-37f-201; and

99 (ii) the requirement that a person's name and prescription information be recorded on  
100 the database when the person fills a prescription for a schedule II, III, IV, or V controlled  
101 substance.

102 (3) The department shall report on the development and implementation of the  
103 program required in Subsection (2) to the legislative Health and Human Services Interim  
104 Committee and the legislative Business and Labor Interim Committee no later than the  
105 November interim meetings in 2008 and 2009. Each report shall include:

106 (a) recommendations on:

107 (i) use of the Utah Controlled Substance Database created in Section [~~58-37-7.5~~]  
108 58-37f-201 to identify and prevent:

109 (A) misuse of opiates;

110 (B) inappropriate prescribing; and

111 (C) adverse outcomes of prescription opiate medications;

112 (ii) interventions to prevent the diversion of prescription opiate medications; and

113 (iii) medical treatment and quality care guidelines that are:

- 114 (A) scientifically based; and
- 115 (B) peer reviewed; and
- 116 (b) (i) a measure of results against expectations under the program as of the date of the
- 117 report; and
- 118 (ii) an analysis of the application of the program, use of the appropriated funds, and
- 119 the impact and results of the use of the funds.
- 120 (4) The report provided under Subsection (3) for the 2008 interim shall also provide a
- 121 final cumulative analysis of the measurable effectiveness of the program implemented under
- 122 this section.

123 Section 2. Section **58-17b-201** is amended to read:

124 **58-17b-201. Board -- Membership -- Qualifications -- Terms.**

125 (1) There is created the Utah State Board of Pharmacy consisting of five pharmacists,

126 one pharmacy technician, and one member of the general public.

127 (a) The public member of the board shall be a Utah resident who:

- 128 (i) is 21 years of age or older;
- 129 (ii) has never been licensed to engage in the practice of pharmacy;
- 130 (iii) has never been the spouse of a person licensed to engage in the practice of
- 131 pharmacy;
- 132 (iv) has never held any material financial interest in pharmacy practice; and
- 133 (v) has never engaged in any activity directly related to the practice of pharmacy.

134 (b) The licensed pharmacist and licensed pharmacy technician members of the board

135 shall:

- 136 (i) have been Utah residents continuously for at least three years;
- 137 (ii) have at least five years experience in the practice of pharmacy in good standing
- 138 with the division in Utah after licensure; and
- 139 (iii) maintain licensure in good standing to engage in the practice of pharmacy or
- 140 practice as a pharmacy technician in Utah for the duration of the appointment.

141 (2) The board shall be appointed and serve in accordance with Section 58-1-201.

142 (3) The duties and responsibilities of the board are in accordance with Sections  
143 58-1-202 and 58-1-203, and as required under Section [~~58-37-7.5~~] 58-37f-202 regarding the  
144 controlled substance database. In addition, the board shall designate an appropriate member  
145 on a permanent or rotating basis to:

146 (a) assist the division in reviewing complaints concerning the unlawful or  
147 unprofessional conduct of a licensee; and

148 (b) advise the division in its investigation of these complaints.

149 (4) A board member who has, under Subsection (3), reviewed a complaint or advised  
150 in its investigation may be disqualified from participating with the board when the board  
151 serves as a presiding officer in an adjudicative proceeding concerning the complaint.

152 (5) A board member may be removed in accordance with Subsection 58-1-201(2)(e)  
153 or upon one of the following grounds:

154 (a) refusal or inability for any reason of a board member to perform his duties as a  
155 member of the Board in an efficient, responsible, and professional manner;

156 (b) misuse of appointment to obtain personal, pecuniary, or material gain or advantage  
157 for himself or another through such appointment; or

158 (c) violation of the laws governing the practice of pharmacy or Chapter 37, Utah  
159 Controlled Substances Act.

160 Section 3. Section ~~58-37-6~~ is amended to read:

161 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**  
162 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**  
163 **required -- Prescriptions.**

164 (1) (a) The division may adopt rules relating to the licensing and control of the  
165 manufacture, distribution, production, prescription, administration, dispensing, conducting of  
166 research with, and performing of laboratory analysis upon controlled substances within this  
167 state.

168 (b) The division may assess reasonable fees to defray the cost of issuing original and  
169 renewal licenses under this chapter pursuant to Section 63J-1-504.

170 (2) (a) (i) Every person who manufactures, produces, distributes, prescribes,  
171 dispenses, administers, conducts research with, or performs laboratory analysis upon any  
172 controlled substance in Schedules II through V within this state, or who proposes to engage in  
173 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting  
174 research with, or performing laboratory analysis upon controlled substances included in  
175 Schedules II through V within this state shall obtain a license issued by the division.

176 (ii) The division shall issue each license under this chapter in accordance with a  
177 two-year renewal cycle established by rule. The division may by rule extend or shorten a  
178 renewal period by as much as one year to stagger the renewal cycles it administers.

179 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,  
180 administer, conduct research with, or perform laboratory analysis upon controlled substances  
181 in Schedules II through V within this state may possess, manufacture, produce, distribute,  
182 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon  
183 those substances to the extent authorized by their license and in conformity with this chapter.

184 (c) The following persons are not required to obtain a license and may lawfully  
185 possess controlled substances under this section:

186 (i) an agent or employee, except a sales representative, of any registered manufacturer,  
187 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the  
188 usual course of the person's business or employment; however, nothing in this subsection shall  
189 be interpreted to permit an agent, employee, sales representative, or detail man to maintain an  
190 inventory of controlled substances separate from the location of the person's employer's  
191 registered and licensed place of business;

192 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or  
193 warehouseman, who possesses any controlled substance in the usual course of the person's  
194 business or employment; and

195 (iii) an ultimate user, or any person who possesses any controlled substance pursuant  
196 to a lawful order of a practitioner.

197 (d) The division may enact rules waiving the license requirement for certain

198 manufacturers, producers, distributors, prescribers, dispensers, administrators, research  
199 practitioners, or laboratories performing analysis if consistent with the public health and  
200 safety.

201 (e) A separate license is required at each principal place of business or professional  
202 practice where the applicant manufactures, produces, distributes, dispenses, conducts research  
203 with, or performs laboratory analysis upon controlled substances.

204 (f) The division may enact rules providing for the inspection of a licensee or  
205 applicant's establishment, and may inspect the establishment according to those rules.

206 (3) (a) Upon proper application, the division shall license a qualified applicant to  
207 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon  
208 controlled substances included in Schedules I through V, unless it determines that issuance of  
209 a license is inconsistent with the public interest. The division shall not issue a license to any  
210 person to prescribe, dispense, or administer a Schedule I controlled substance. In determining  
211 public interest, the division shall consider whether or not the applicant has:

212 (i) maintained effective controls against diversion of controlled substances and any  
213 Schedule I or II substance compounded from any controlled substance into other than  
214 legitimate medical, scientific, or industrial channels;

215 (ii) complied with applicable state and local law;

216 (iii) been convicted under federal or state laws relating to the manufacture,  
217 distribution, or dispensing of substances;

218 (iv) past experience in the manufacture of controlled dangerous substances;

219 (v) established effective controls against diversion; and

220 (vi) complied with any other factors that the division establishes that promote the  
221 public health and safety.

222 (b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture,  
223 produce, distribute, conduct research with, or perform laboratory analysis upon controlled  
224 substances in Schedule I other than those specified in the license.

225 (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with



226 substances in Schedules II through V if they are authorized to administer, dispense, or conduct  
227 research under the laws of this state.

228 (ii) The division need not require a separate license for practitioners engaging in  
229 research with nonnarcotic controlled substances in Schedules II through V where the licensee  
230 is already licensed under this [act] chapter in another capacity.

231 (iii) With respect to research involving narcotic substances in Schedules II through V,  
232 or where the division by rule requires a separate license for research of nonnarcotic substances  
233 in Schedules II through V, a practitioner shall apply to the division prior to conducting  
234 research.

235 (iv) Licensing for purposes of bona fide research with controlled substances by a  
236 practitioner considered qualified may be denied only on a ground specified in Subsection (4),  
237 or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard  
238 adequately the practitioner's supply of substances against diversion from medical or scientific  
239 use.

240 (v) Practitioners registered under federal law to conduct research in Schedule I  
241 substances may conduct research in Schedule I substances within this state upon furnishing  
242 the division evidence of federal registration.

243 (d) Compliance by manufacturers, producers, and distributors with the provisions of  
244 federal law respecting registration, excluding fees, entitles them to be licensed under this  
245 chapter.

246 (e) The division shall initially license those persons who own or operate an  
247 establishment engaged in the manufacture, production, distribution, dispensation, or  
248 administration of controlled substances prior to April 3, 1980, and who are licensed by the  
249 state.

250 (4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed  
251 on probation, or revoked by the division upon finding that the applicant or licensee has:

252 (i) materially falsified any application filed or required pursuant to this chapter;

253 (ii) been convicted of an offense under this chapter or any law of the United States, or

254 any state, relating to any substance defined as a controlled substance;

255 (iii) been convicted of a felony under any other law of the United States or any state  
256 within five years of the date of the issuance of the license;

257 (iv) had a federal license denied, suspended, or revoked by competent federal authority  
258 and is no longer authorized to engage in the manufacturing, distribution, or dispensing of  
259 controlled substances;

260 (v) had the licensee's license suspended or revoked by competent authority of another  
261 state for violation of laws or regulations comparable to those of this state relating to the  
262 manufacture, distribution, or dispensing of controlled substances;

263 (vi) violated any division rule that reflects adversely on the licensee's reliability and  
264 integrity with respect to controlled substances;

265 (vii) refused inspection of records required to be maintained under this chapter by a  
266 person authorized to inspect them; or

267 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the  
268 purpose of manipulating human hormonal structure so as to:

269 (A) increase muscle mass, strength, or weight without medical necessity and without a  
270 written prescription by any practitioner in the course of the practitioner's professional practice;

271 or

272 (B) improve performance in any form of human exercise, sport, or game.

273 (b) The division may limit revocation or suspension of a license to a particular  
274 controlled substance with respect to which grounds for revocation or suspension exist.

275 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant  
276 to this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division  
277 of Occupational and Professional Licensing Act, and conducted in conjunction with the  
278 appropriate representative committee designated by the director of the department.

279 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and  
280 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,  
281 except where the division is designated by law to perform those functions, or, when not

282 designated by law, is designated by the executive director of the Department of Commerce to  
283 conduct the proceedings.

284 (d) (i) The division may suspend any license simultaneously with the institution of  
285 proceedings under this section if it finds there is an imminent danger to the public health or  
286 safety.

287 (ii) Suspension shall continue in effect until the conclusion of proceedings, including  
288 judicial review, unless withdrawn by the division or dissolved by a court of competent  
289 jurisdiction.

290 (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled  
291 substances owned or possessed by the licensee may be placed under seal in the discretion of  
292 the division.

293 (ii) Disposition may not be made of substances under seal until the time for taking an  
294 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,  
295 orders the sale of perishable substances and the proceeds deposited with the court.

296 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

297 (f) The division shall notify promptly the Drug Enforcement Administration of all  
298 orders suspending or revoking a license and all forfeitures of controlled substances.

299 (5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and  
300 inventories in conformance with the record keeping and inventory requirements of federal and  
301 state law and any additional rules issued by the division.

302 (b) (i) Every physician, dentist, naturopathic physician, veterinarian, practitioner, or  
303 other person who is authorized to administer or professionally use a controlled substance shall  
304 keep a record of the drugs received by him and a record of all drugs administered, dispensed,  
305 or professionally used by him otherwise than by a prescription.

306 (ii) A person using small quantities or solutions or other preparations of those drugs  
307 for local application has complied with this Subsection (5)(b) if the person keeps a record of  
308 the quantity, character, and potency of those solutions or preparations purchased or prepared  
309 by him, and of the dates when purchased or prepared.

310 (6) Controlled substances in Schedules I through V may be distributed only by a  
311 licensee and pursuant to an order form prepared in compliance with division rules or a lawful  
312 order under the rules and regulations of the United States.

313 (7) (a) A person may not write or authorize a prescription for a controlled substance  
314 unless the person is:

315 (i) a practitioner authorized to prescribe drugs and medicine under the laws of this  
316 state or under the laws of another state having similar standards; and

317 (ii) licensed under this chapter or under the laws of another state having similar  
318 standards.

319 (b) A person other than a pharmacist licensed under the laws of this state, or the  
320 pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not  
321 dispense a controlled substance.

322 (c) (i) A controlled substance may not be dispensed without the written prescription of  
323 a practitioner, if the written prescription is required by the federal Controlled Substances Act.

324 (ii) That written prescription shall be made in accordance with Subsection (7)(a) and  
325 in conformity with Subsection (7)(d).

326 (iii) In emergency situations, as defined by division rule, controlled substances may be  
327 dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms  
328 designated by the division and filed by the pharmacy.

329 (iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with  
330 Subsection (7)(d).

331 (d) Except for emergency situations designated by the division, a person may not  
332 issue, fill, compound, or dispense a prescription for a controlled substance unless the  
333 prescription is signed by the prescriber in ink or indelible pencil or is signed with an electronic  
334 signature of the prescriber as authorized by division rule, and contains the following  
335 information:

336 (i) the name, address, and registry number of the prescriber;

337 (ii) the name, address, and age of the person to whom or for whom the prescription is

338 issued;

339 (iii) the date of issuance of the prescription; and

340 (iv) the name, quantity, and specific directions for use by the ultimate user of the  
341 controlled substance.

342 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I  
343 controlled substance.

344 (f) Except when administered directly to an ultimate user by a licensed practitioner,  
345 controlled substances are subject to the following restrictions:

346 (i) (A) A prescription for a Schedule II substance may not be refilled.

347 (B) A Schedule II controlled substance may not be filled in a quantity to exceed a  
348 one-month's supply, as directed on the daily dosage rate of the prescriptions.

349 (ii) A Schedule III or IV controlled substance may be filled only within six months of  
350 issuance, and may not be refilled more than six months after the date of its original issuance or  
351 be refilled more than five times after the date of the prescription unless renewed by the  
352 practitioner.

353 (iii) All other controlled substances in Schedule V may be refilled as the prescriber's  
354 prescription directs, but they may not be refilled one year after the date the prescription was  
355 issued unless renewed by the practitioner.

356 (iv) Any prescription for a Schedule II substance may not be dispensed if it is not  
357 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days  
358 after the date the prescription was issued, or 30 days after the dispensing date, if that date is  
359 specified separately from the date of issue.

360 (v) A practitioner may issue more than one prescription at the same time for the same  
361 Schedule II controlled substance, but only under the following conditions:

362 (A) no more than three prescriptions for the same Schedule II controlled substance  
363 may be issued at the same time;

364 (B) no one prescription may exceed a 30-day supply;

365 (C) a second or third prescription shall include the date of issuance and the date for

366 dispensing; and

367 (D) unless the practitioner determines there is a valid medical reason to the contrary,  
368 the date for dispensing a second or third prescription may not be fewer than 30 days from the  
369 dispensing date of the previous prescription.

370 (vi) Each prescription for a controlled substance may contain only one controlled  
371 substance per prescription form and may not contain any other legend drug or prescription  
372 item.

373 (g) An order for a controlled substance in Schedules II through V for use by an  
374 inpatient or an outpatient of a licensed hospital is exempt from all requirements of this  
375 Subsection (7) if the order is:

376 (i) issued or made by a prescribing practitioner who holds an unrestricted registration  
377 with the federal Drug Enforcement Administration, and an active Utah controlled substance  
378 license in good standing issued by the division under this section, or a medical resident who is  
379 exempted from licensure under Subsection 58-1-307(1)(c);

380 (ii) authorized by the prescribing practitioner treating the patient and the prescribing  
381 practitioner designates the quantity ordered;

382 (iii) entered upon the record of the patient, the record is signed by the prescriber  
383 affirming the prescriber's authorization of the order within 48 hours after filling or  
384 administering the order, and the patient's record reflects the quantity actually administered;  
385 and

386 (iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within  
387 the physical structure of the hospital, or the order is taken from a supply lawfully maintained  
388 by the hospital and the amount taken from the supply is administered directly to the patient  
389 authorized to receive it.

390 (h) A practitioner licensed under this chapter may not prescribe, administer, or  
391 dispense a controlled substance to a child, without first obtaining the consent required in  
392 Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child  
393 except in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same

394 meaning as defined in Section 78A-6-105, and "emergency" means any physical condition  
395 requiring the administration of a controlled substance for immediate relief of pain or suffering.

396 (i) A practitioner licensed under this chapter may not prescribe or administer dosages  
397 of a controlled substance in excess of medically recognized quantities necessary to treat the  
398 ailment, malady, or condition of the ultimate user.

399 (j) A practitioner licensed under this chapter may not prescribe, administer, or  
400 dispense any controlled substance to another person knowing that the other person is using a  
401 false name, address, or other personal information for the purpose of securing the controlled  
402 substance.

403 (k) A person who is licensed under this chapter to manufacture, distribute, or dispense  
404 a controlled substance may not manufacture, distribute, or dispense a controlled substance to  
405 another licensee or any other authorized person not authorized by this license.

406 (l) A person licensed under this chapter may not omit, remove, alter, or obliterate a  
407 symbol required by this chapter or by a rule issued under this chapter.

408 (m) A person licensed under this chapter may not refuse or fail to make, keep, or  
409 furnish any record notification, order form, statement, invoice, or information required under  
410 this chapter.

411 (n) A person licensed under this chapter may not refuse entry into any premises for  
412 inspection as authorized by this chapter.

413 (o) A person licensed under this chapter may not furnish false or fraudulent material  
414 information in any application, report, or other document required to be kept by this chapter or  
415 willfully make any false statement in any prescription, order, report, or record required by this  
416 chapter.

417 (8) (a) (i) Any person licensed under this chapter who is found by the division to have  
418 violated any of the provisions of Subsections (7)(k) through (7)(o) is subject to a penalty not to  
419 exceed \$5,000. The division shall determine the procedure for adjudication of any violations  
420 in accordance with Sections 58-1-106 and 58-1-108.

421 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the

422 General Fund as a dedicated credit to be used by the division under Subsection [~~58-37-7.7~~]  
423 58-37f-502(1).

424 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through  
425 (7)(j) is:

- 426 (i) upon first conviction, guilty of a class B misdemeanor;
- 427 (ii) upon second conviction, guilty of a class A misdemeanor; and
- 428 (iii) on third or subsequent conviction, guilty of a third degree felony.

429 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through  
430 (7)(o) shall upon conviction be guilty of a third degree felony.

431 (9) Any information communicated to any licensed practitioner in an attempt to  
432 unlawfully procure, or to procure the administration of, a controlled substance is not  
433 considered to be a privileged communication.

434 Section 4. Section **58-37f-101** is enacted to read:

435 **CHAPTER 37f. CONTROLLED SUBSTANCE DATABASE ACT**

436 **Part 1. General Provisions**

437 **58-37f-101. Title.**

438 This chapter is known as the "Controlled Substance Database Act."

439 Section 5. Section **58-37f-102** is enacted to read:

440 **58-37f-102. Definitions.**

441 (1) The definitions in Section 58-37-2 apply to this chapter.

442 (2) As used in this chapter:

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

444 (b) "Database" means the controlled substance database created in this section.

445 (c) "Health care facility" is as defined in Section 26-21-2.

446 (d) "Mental health therapist" is as defined in Section 58-60-102.

447 (e) "Pharmacy" or "pharmaceutical facility" is as defined in Section 58-17b-102.

448 (f) "Prospective patient" means an individual who:

449 (i) is seeking medical advice, medical treatment, or medical services from a



450 practitioner; and

451 (ii) the practitioner described in Subsection (2)(f)(i) is considering accepting as a  
452 patient.

453 (g) "Substance abuse treatment program" is as defined in Section 62A-2-101.

454 Section 6. Section **58-37f-201** is enacted to read:

455 **Part 2. Controlled Substance Database**

456 **58-37f-201. Controlled substance database -- Creation -- Purpose.**

457 (1) There is created within the division a controlled substance database.

458 (2) The division shall administer and direct the functioning of the database in  
459 accordance with this chapter.

460 (3) The division may, under state procurement laws, contract with another state  
461 agency or a private entity to establish, operate, or maintain the database.

462 (4) The division shall, in collaboration with the board, determine whether to operate  
463 the database within the division or contract with another entity to operate the database, based  
464 on an analysis of costs and benefits.

465 (5) The purpose of the database is to contain the data described in Section 58-37f-203  
466 regarding every prescription for a controlled substance dispensed in the state to any individual  
467 other than an inpatient in a licensed health care facility.

468 (6) The division shall maintain the database in an electronic file or by other means  
469 established by the division to facilitate use of the database for identification of:

470 (a) prescribing practices and patterns of prescribing and dispensing controlled  
471 substances;

472 (b) practitioners prescribing controlled substances in an unprofessional or unlawful  
473 manner;

474 (c) individuals receiving prescriptions for controlled substances from licensed  
475 practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet  
476 in quantities or with a frequency inconsistent with generally recognized standards of dosage  
477 for that controlled substance; and

478 (d) individuals presenting forged or otherwise false or altered prescriptions for  
479 controlled substances to a pharmacy.

480 Section 7. Section **58-37f-202** is enacted to read:

481 **58-37f-202. Duties of board in relation to the database.**

482 The board shall advise the division regarding:

483 (1) establishing, maintaining, and operating the database;

484 (2) access to the database and how access is obtained; and

485 (3) control of information contained in the database.

486 Section 8. Section **58-37f-203** is enacted to read:

487 **58-37f-203. Submission, collection, and maintenance of data.**

488 (1) The pharmacist in charge of the drug outlet where a controlled substance is  
489 dispensed shall submit the data described in this section to the division:

490 (a) in accordance with the requirements of this section;

491 (b) in accordance with the procedures established by the division; and

492 (c) in the format established by the division.

493 (2) The pharmacist described in Subsection (1) shall, for each controlled substance  
494 dispensed by a pharmacist under the pharmacist's supervision other than those dispensed for  
495 an inpatient at a health care facility, submit to the division the following information:

496 (a) the name of the prescribing practitioner;

497 (b) the date of the prescription;

498 (c) the date the prescription was filled;

499 (d) the name of the individual for whom the prescription was written;

500 (e) positive identification of the individual receiving the prescription, including the  
501 type of identification and any identifying numbers on the identification;

502 (f) the name of the controlled substance;

503 (g) the quantity of the controlled substance prescribed;

504 (h) the strength of the controlled substance;

505 (i) the quantity of the controlled substance dispensed;

- 506           (j) the dosage quantity and frequency as prescribed;
- 507           (k) the name of the drug outlet dispensing the controlled substance;
- 508           (l) the name of the pharmacist dispensing the controlled substance; and
- 509           (m) other relevant information as required by division rule.
- 510           (3) (a) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
- 511 Administrative Rulemaking Act, to establish the electronic format in which the information
- 512 required under this section shall be submitted to the division.
- 513           (b) The division shall ensure that the database system records and maintains for
- 514 reference:
- 515           (i) the identification of each individual who requests or receives information from the
- 516 database;
- 517           (ii) the information provided to each individual; and
- 518           (iii) the date and time that the information is requested or provided.
- 519           Section 9. Section **58-37f-301** is enacted to read:

**Part 3. Access**

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

- 522           (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
- 523 Administrative Rulemaking Act, to:
- 524           (a) effectively enforce the limitations on access to the database as described in this
- 525 part; and
- 526           (b) establish standards and procedures to ensure accurate identification of individuals
- 527 requesting information or receiving information without request from the database.
- 528           (2) The division shall make information in the database available only to the following
- 529 individuals, in accordance with the requirements of this chapter and division rules:
- 530           (a) personnel of the division specifically assigned to conduct investigations related to
- 531 controlled substance laws under the jurisdiction of the division;
- 532           (b) authorized division personnel engaged in analysis of controlled substance
- 533 prescription information as a part of the assigned duties and responsibilities of their

534 employment;

535 (c) employees of the Department of Health whom the director of the Department of  
536 Health assigns to conduct scientific studies regarding the use or abuse of controlled  
537 substances, provided that the identity of the individuals and pharmacies in the database are  
538 confidential and are not disclosed in any manner to any individual who is not directly involved  
539 in the scientific studies;

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

542 (i) (A) relates specifically to a current or prospective patient of the practitioner; and  
543 (B) is sought by the practitioner for the purpose of:

544 (I) prescribing or considering prescribing any controlled substance to the current or  
545 prospective patient;

546 (II) diagnosing the current or prospective patient;

547 (III) providing medical treatment or medical advice to the current or prospective  
548 patient; or

549 (IV) determining whether the current or prospective patient:

550 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;

551 or

552 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled  
553 substance from the practitioner;

554 (ii) (A) relates specifically to a former patient of the practitioner; and

555 (B) is sought by the practitioner for the purpose of determining whether the former  
556 patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled  
557 substance from the practitioner;

558 (iii) relates specifically to an individual who has access to the practitioner's Drug  
559 Enforcement Administration identification number, and the practitioner suspects that the  
560 individual may have used the practitioner's Drug Enforcement Administration identification  
561 number to fraudulently acquire or prescribe a controlled substance;

562 (iv) relates to the practitioner's own prescribing practices, except when specifically  
563 prohibited by the division by administrative rule;

564 (v) relates to the use of the controlled substance database by an employee of the  
565 practitioner, described in Subsection (2)(e); or

566 (vi) relates to any use of the practitioner's Drug Enforcement Administration  
567 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a  
568 controlled substance;

569 (e) in accordance with Subsection (3)(a), an employee of a practitioner described in  
570 Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:

571 (i) the employee is designated by the practitioner as an individual authorized to access  
572 the information on behalf of the practitioner;

573 (ii) the practitioner provides written notice to the division of the identity of the  
574 employee; and

575 (iii) the division:

576 (A) grants the employee access to the database; and

577 (B) provides the employee with a password that is unique to that employee to access  
578 the database in order to permit the division to comply with the requirements of Subsection  
579 58-37f-203(3)(b) with respect to the employee;

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

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

583 (ii) determining whether a person:

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

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

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

589 (i) regulating controlled substances; or

590 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud;  
591 (h) a mental health therapist, if:  
592 (i) the information relates to a patient who is:  
593 (A) enrolled in a licensed substance abuse treatment program; and  
594 (B) receiving treatment from, or under the direction of, the mental health therapist as  
595 part of the patient's participation in the licensed substance abuse treatment program described  
596 in Subsection (2)(h)(i)(A);  
597 (ii) the information is sought for the purpose of determining whether the patient is  
598 using a controlled substance while the patient is enrolled in the licensed substance abuse  
599 treatment program described in Subsection (2)(h)(i)(A); and  
600 (iii) the licensed substance abuse treatment program described in Subsection  
601 (2)(h)(i)(A) is associated with a practitioner who:  
602 (A) is a physician, a physician assistant, an advance practice registered nurse, or a  
603 pharmacist; and  
604 (B) is available to consult with the mental health therapist regarding the information  
605 obtained by the mental health therapist, under this Subsection (2)(h), from the database; and  
606 (i) an individual who is the recipient of a controlled substance prescription entered  
607 into the database, upon providing evidence satisfactory to the division that the individual  
608 requesting the information is in fact the individual about whom the data entry was made.  
609 (3) (a) A practitioner described in Subsection (2)(d) may designate up to three  
610 employees to access information from the database under Subsection (2)(e).  
611 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah  
612 Administrative Rulemaking Act, to establish background check procedures to determine  
613 whether an employee designated under Subsection (2)(e)(i) should be granted access to the  
614 database.  
615 (c) The division shall grant an employee designated under Subsection (2)(e)(i) access  
616 to the database, unless the division determines, based on a background check, that the  
617 employee poses a security risk to the information contained in the database.

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

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

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

628 Section 10. Section **58-37f-302** is enacted to read:

629 **58-37f-302. Other restrictions on access to database.**

630 (1) A person who is a relative of a deceased individual is not entitled to access  
631 information from the database relating to the deceased individual based on the fact or claim  
632 that the person is:

- 633 (a) related to the deceased individual; or
- 634 (b) subrogated to the rights of the deceased individual.

635 (2) Except as provided in Subsection (3), data provided to, maintained in, or accessed  
636 from the database that may be identified to, or with, a particular person is not subject to  
637 discovery, subpoena, or similar compulsory process in any civil, judicial, administrative, or  
638 legislative proceeding, nor shall any individual or organization with lawful access to the data  
639 be compelled to testify with regard to the data.

640 (3) The restrictions described in Subsection (2) do not apply to a civil, judicial, or  
641 administrative action brought to enforce the provisions of this chapter.

642 Section 11. Section **58-37f-401** is enacted to read:

643 **Part 4. Registration and Training**

644 **58-37f-401. Database registration required -- Penalties for failure to register.**

645 (1) Each individual, other than a veterinarian, who, on June 30, 2010, has a license to

646 prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, but is not  
647 registered with the division to use the database shall, on or before September 30, 2010, register  
648 with the division to use the database.

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

652 (3) Beginning on July 1, 2010, an individual who is not a veterinarian may not obtain  
653 or renew a license to prescribe a controlled substance under Chapter 37, Utah Controlled  
654 Substances Act, unless the individual registers with the division to use the database.

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

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

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

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

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

663 (6) Beginning on July 1, 2010, the division shall, in accordance with Section  
664 63J-1-504, impose an annual database registration fee on an individual who registers to use  
665 the database, to pay the startup and ongoing costs of the division for complying with the  
666 requirements of this section and Section 58-37f-402.

667 Section 12. Section **58-37f-402** is enacted to read:

668 **58-37f-402. Online tutorial and test relating to the database -- Fees -- Rulemaking**  
669 **authority.**

670 (1) The division shall develop an online tutorial and an online test for registration to  
671 use the database that provides instruction regarding, and tests, the following:

672 (a) the purpose of the database;

673 (b) how to access and use the database;



674 (c) the law relating to:  
675 (i) the use of the database; and  
676 (ii) the information submitted to, and obtained from, the database; and  
677 (d) basic knowledge that is important for all people who prescribe controlled  
678 substances to know in order to help ensure the health and safety of an individual to whom a  
679 controlled substance is prescribed.  
680 (2) The division shall design the test described in this section as follows:  
681 (a) an individual shall answer all of the questions correctly in order to pass the test;  
682 (b) an individual shall be permitted to immediately retake the portion of the test that  
683 the individual answers incorrectly as many times as necessary for the individual to pass the  
684 test; and  
685 (c) after an individual takes the test, the test software shall:  
686 (i) immediately inform the individual of the number of questions that were answered  
687 incorrectly;  
688 (ii) provide the correct answers;  
689 (iii) replay the portion of the tutorial that relates to the incorrectly answered questions;  
690 and  
691 (iv) ask the individual the incorrectly answered questions again.  
692 (3) The division shall design the tutorial and test so that it is possible to take the  
693 tutorial and complete the test in 20 minutes or less, if the individual answers all of the  
694 questions correctly on the first attempt.  
695 (4) The division shall ensure that the tutorial and test described in this section are fully  
696 functional and available for use online on or before November 1, 2010.  
697 (5) The division shall impose a fee, in accordance with Section 63J-1-504, on an  
698 individual who takes the test described in this section, to pay the costs incurred by the division  
699 to:  
700 (a) develop, implement, and administer the tutorial and test described in this section;  
701 and

- 702 (b) fulfill the other duties imposed on the division under this part.
- 703 (6) The division may make rules, in accordance with Title 63G, Chapter 3, Utah
- 704 Administrative Rulemaking Act, to:
- 705 (a) develop, implement, and administer the tutorial and test described in this
- 706 section; and
- 707 (b) fulfill the other duties imposed on the division under this part.
- 708 (7) The Department of Health shall assist the division in developing the portion of the
- 709 test described in Subsection (1)(d).

Section 13. Section **58-37f-501** is enacted to read:

**Part 5. Costs and Funding**

**58-37f-501. Costs of operating database and recording and submitting data.**

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

- 715 (a) the Commerce Service Fund; and
- 716 (b) the General Fund.

(2) All costs associated with recording and submitting data as required in this chapter shall be assumed by the submitting pharmacy.

Section 14. Section **58-37f-502**, which is renumbered from Section 58-37-7.7 is renumbered and amended to read:

**[58-37-7.7]. 58-37f-502. Use of dedicated credits -- Controlled Substance Database -- Collection of penalties.**

(1) The director may use the monies deposited in the General Fund as a dedicated credit under Subsections 58-37-6(8)(a), ~~[58-37-7.5(11)(c), and 58-37-7.5(12)(b)]~~ 58-37f-601(3)(d), and 58-37f-602(2) for the following purposes:

- 726 (a) maintenance and replacement of the database equipment, including hardware and
- 727 software;
- 728 (b) training of staff; and
- 729 (c) pursuit of external grants and matching funds.

730 (2) The director of the division may collect any penalty imposed under Subsections  
731 58-37-6(8)(a), [~~58-37-7.5(11)(c), and 58-37-7.5(12)(b)~~] 58-37f-601(3)(d), and 58-37f-602(2)  
732 and which is not paid by:

733 (a) referring the matter to the Office of State Debt Collection or a collection agency; or

734 (b) bringing an action in the district court of the county in which the person owing the  
735 debt resides or in the county where the office of the director is located.

736 (3) The director may seek legal assistance from the attorney general or the county or  
737 district attorney of the district in which the action is brought to collect the fine.

738 (4) The court shall award reasonable [~~attorney's~~] attorney fees and costs to the division  
739 for successful collection actions under Subsection (2)(b).

740 (5) All funding of the [~~controlled substance~~] database [~~as defined under Section~~  
741 ~~58-37-7.5~~] is nonlapsing.

742 Section 15. Section **58-37f-601** is enacted to read:

743 **Part 6. Penalties**

744 **58-37f-601. Unlawful release or use of database information -- Criminal and**  
745 **Civil Penalties.**

746 (1) Any person who knowingly and intentionally releases any information in the  
747 database in violation of the limitations under Part 3, Access, is guilty of a third degree felony.

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

750 (b) Any person who obtains or attempts to obtain information from the database for a  
751 purpose other than a purpose authorized by this chapter or by rule is guilty of a third degree  
752 felony.

753 (3) (a) Except as provided in Subsection (3)(e), a person may not knowingly and  
754 intentionally use, release, publish, or otherwise make available to any other person any  
755 information obtained from the database for any purpose other than those specified in Part 3,  
756 Access.

757 (b) Each separate violation of this Subsection (3) is a third degree felony and is also

758 subject to a civil penalty not to exceed \$5,000.

759 (c) The procedure for determining a civil violation of this Subsection (3) shall be in  
760 accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

761 (d) Civil penalties assessed under this Subsection (3) shall be deposited in the General  
762 Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

763 (e) Nothing in this Subsection (3) prohibits a person who obtains information from the  
764 database under Subsection 58-37f-301(2)(d) or (e) from:

765 (i) including the information in the person's medical chart or file for access by a  
766 person authorized to review the medical chart or file; or

767 (ii) providing the information to a person in accordance with the requirements of the  
768 Health Insurance Portability and Accountability Act of 1996.

769 Section 16. Section **58-37f-602** is enacted to read:

770 **58-37f-602. Failure by pharmacist to submit information -- Penalties.**

771 (1) The failure of a pharmacist in charge to submit information to the database as  
772 required under Section 58-37f-203, after the division has submitted a specific written request  
773 for the information or when the division determines the individual has a demonstrable pattern  
774 of failing to submit the information as required, is grounds for the division to take the  
775 following actions in accordance with Section 58-1-401:

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

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

778 (c) revoke, suspend, restrict, or place on probation the license;

779 (d) issue a public reprimand to the individual;

780 (e) issue a cease and desist order; and

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

783 (2) Civil penalties assessed under Subsection (1)(f) shall be deposited in the General  
784 Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

785 (3) The procedure for determining a civil violation of this section shall be in

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

787 Section 17. Section **58-37f-701** is enacted to read:

788 **Part 7. Miscellaneous**

789 **58-37f-701. Immunity from liability.**

790 An individual who has submitted information to the database in accordance with this  
791 section may not be held civilly liable for having submitted the information.

792 Section 18. Section **58-37f-801**, which is renumbered from Section 58-37-7.8 is  
793 renumbered and amended to read:

794 **Part 8. Pilot Program**

795 ~~[58-37-7.8].~~ **58-37f-801. Pilot program for real-time reporting for controlled**  
796 **substance database -- Statewide implementation.**

797 (1) ~~[(a)]~~ As used in this section:

798 ~~[(i)]~~ (a) "Pilot area" means the areas of the state that the division determines to operate  
799 the pilot program in, under Subsection (3), which may include:

800 ~~[(A)]~~ (i) the entire state; or

801 ~~[(B)]~~ (ii) geographical areas within the state.

802 ~~[(ii)]~~ (b) "Pilot program" means the pilot program described in this section.

803 ~~[(b) The definitions in Subsection 58-37-7.5(1) apply to this section.]~~

804 (2) There is established a pilot program for real-time reporting of data to, and access to  
805 data from, the database by a pharmacy, a pharmaceutical facility, or a prescribing practitioner  
806 beginning on July 1, ~~[2008]~~ 2010, and ending on July 1, ~~[2010]~~ 2012.

807 (3) In addition to fulfilling the requirements ~~[of Sections 58-37-7.5 and 58-37-7.7]~~  
808 relating to the database on a statewide basis, the division shall, in accordance with Subsection  
809 (4), upgrade, administer, and direct the functioning of the database in geographical areas  
810 specified by the division, or on a statewide basis, in a manner that provides for real-time  
811 reporting of information entered into, and accessed from, the database by a pharmacy or  
812 pharmaceutical facility.

813 (4) The division shall, under state procurement laws, and with the technical assistance

814 of the Department of Technology Services, contract with a private entity to upgrade, operate,  
815 and maintain the database in the pilot area.

816 (5) (a) All provisions and requirements of the statewide database, described in  
817 [~~Sections 58-37-7.5 and 58-37-7.7~~] the other parts of this chapter, are applicable to the  
818 database in the pilot area, to the extent that they do not conflict with the requirements of this  
819 section.

820 (b) For purposes of [~~Section 58-37-7.5, Section 58-37-7.7~~] the other parts of this  
821 chapter, and this section, the database in the pilot area is considered part of the statewide  
822 database.

823 (6) A pharmacy or pharmaceutical facility shall cooperate with the division, or the  
824 division's designee, to provide real-time submission of, and access to, information for the  
825 database:

826 (a) in the pilot area; and

827 (b) when the division implements the pilot program as a permanent program under  
828 Subsection (10), on a statewide basis.

829 (7) The penalties and enforcement provisions described in [~~Sections 58-37-7.5 and~~  
830 ~~58-37-7.7~~] the other parts of this chapter apply to enforce the provisions of this section in  
831 relation to a pharmacy or pharmaceutical facility that is located in, or operates in, the pilot  
832 area.

833 (8) The division may make rules, in accordance with Title 63G, Chapter 3, Utah  
834 Administrative Rulemaking Act, to provide for the real-time reporting of, and access to,  
835 information in accordance with the requirements of this section.

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

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

840 (b) the progress made by the division in implementing the pilot program on a  
841 statewide basis;

842 (c) the advisability of, and projected costs of, implementing the pilot program on a  
843 statewide basis; and

844 (d) the use of the database by prescribing practitioners.

845 (10) The division shall, on or before July 1, [~~2010~~] 2012, implement the pilot program  
846 as a permanent program on a statewide basis.

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

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

855 (i) except as provided in Subsection (11)(d), at the expense of the pharmacy or  
856 pharmaceutical facility;

857 (ii) in consultation with the division; and

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

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

866 (i) complies with the security standards described in 45 C.F.R. Parts 160, 162, and  
867 164, Health Insurance Reform: Security Standards;

868 (ii) does not interfere with the proper functioning of the pharmacy's or pharmaceutical  
869 facility's software or computer system; and

870 (iii) in order to minimize changes in existing protocols, provides, to the extent  
871 practicable, for the transmission of data in the same manner that pharmacies currently transmit  
872 information to insurance companies.

873 (d) The division may, within funds appropriated by the Legislature for this purpose,  
874 reimburse a pharmacy for all or part of the costs of the in-house programing described in  
875 Subsection (11)(b), if:

876 (i) the pharmacy requests the reimbursement, in writing;

877 (ii) the pharmacy provides proof of the costs for the in-house programming to the  
878 division;

879 (iii) the pharmacy requests the reimbursement prior to a deadline established by the  
880 division; and

881 (iv) except as provided in Subsection (11)(e), the division pays an equal  
882 reimbursement amount to each pharmacy that complies with Subsections (11)(d)(i) through  
883 (iii).

884 (e) The division may reimburse a pharmacy described in Subsection (11)(d)(iv) for an  
885 amount that is less than the reimbursement paid to other pharmacies described in Subsection  
886 (11)(d)(iv), if:

887 (i) the proof of costs for in-house programming provided by the pharmacy establishes  
888 a cost less than the amount reimbursed to the other pharmacies; and

889 (ii) the amount reimbursed to the pharmacy is equal to the amount established by the  
890 proof of costs for in-house programming submitted by the pharmacy.

891 (f) Notwithstanding any other provision of this section, the division may, by rule,  
892 allow up to 24 hours for the reporting of data to the database by a non-resident pharmacy, as  
893 defined in Section 58-17b-102.

894 Section 19. Section **63J-1-602** is amended to read:

895 **63J-1-602. Nonlapsing accounts and funds.**

896 (1) The following revenue collections, appropriations from a fund or account, and  
897 appropriations to a program are nonlapsing:



- 898 (a) appropriations made to the Legislature and its committees;
- 899 (b) funds collected by the grain grading program, as provided in Section 4-2-2;
- 900 (c) the Salinity Offset Fund created in Section 4-2-8.5;
- 901 (d) the Invasive Species Mitigation Fund created in Section 4-2-8.7;
- 902 (e) funds collected by pesticide dealer license registration fees, as provided in Section
- 903 4-14-3;
- 904 (f) funds collected by pesticide applicator business registration fees, as provided in
- 905 Section 4-14-13;
- 906 (g) the Rangeland Improvement Fund created in Section 4-20-2;
- 907 (h) funds deposited as dedicated credits under the Insect Infestation Emergency
- 908 Control Act, as provided in Section 4-35-6;
- 909 (i) the Percent-for-Art Program created in Section 9-6-404;
- 910 (j) the Centennial History Fund created in Section 9-8-604;
- 911 (k) the Uintah Basin Revitalization Fund, as provided in Section 9-10-108;
- 912 (l) the Navajo Revitalization Fund created in Section 9-11-104;
- 913 (m) the LeRay McAllister Critical Land Conservation Program created in Section
- 914 11-38-301;
- 915 (n) the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403;
- 916 (o) fees deposited as dedicated credits for hazardous waste plan reviews, as provided
- 917 in Section 19-6-120;
- 918 (p) an appropriation made to the Division of Wildlife Resources for the appraisal and
- 919 purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6;
- 920 (q) award monies under the Crime Reduction Assistance Program, as provided under
- 921 Section 24-1-19;
- 922 (r) funds collected from the emergency medical services grant program, as provided in
- 923 Section 26-8a-207;
- 924 (s) fees and other funding available to purchase training equipment and to administer
- 925 tests and conduct quality assurance reviews, as provided in Section 26-8a-208;

- 926 (t) funds collected as a result of a sanction under Section 1919 of Title XIX of the  
927 federal Social Security Act, as provided in Section 26-18-3;
- 928 (u) the Utah Health Care Workforce Financial Assistance Program created in Section  
929 26-46-102;
- 930 (v) monies collected from subscription fees for publications prepared or distributed by  
931 the insurance commissioner, as provided in Section 31A-2-208;
- 932 (w) monies received by the Insurance Department for administering, investigating  
933 under, and enforcing the Insurance Fraud Act, as provided in Section 31A-31-108;
- 934 (x) certain monies received for penalties paid under the Insurance Fraud Act, as  
935 provided in Section 31A-31-109;
- 936 (y) the fund for operating the state's Federal Health Care Tax Credit Program, as  
937 provided in Section 31A-38-104;
- 938 (z) certain funds in the Department of Workforce Services' program for the education,  
939 training, and transitional counseling of displaced homemakers, as provided in Section  
940 35A-3-114;
- 941 (aa) the Employment Security Administration Fund created in Section 35A-4-505;
- 942 (bb) the Special Administrative Expense Fund created in Section 35A-4-506;
- 943 (cc) funding for a new program or agency that is designated as nonlapsing under  
944 Section 36-24-101;
- 945 (dd) the Oil and Gas Conservation Account created in Section 40-6-14.5;
- 946 (ee) funds available to the State Tax Commission for purchase and distribution of  
947 license plates and decals, as provided in Section 41-1a-1201;
- 948 (ff) certain fees for the cost of electronic payments under the Motor Vehicle Act, as  
949 provided in Section 41-1a-1221;
- 950 (gg) certain fees collected for administering and enforcing the Motor Vehicle Business  
951 Regulation Act, as provided in Section 41-3-601;
- 952 (hh) certain fees for the cost of electronic payments under the Motor Vehicle Business  
953 Regulation Act, as provided in Section 41-3-604;

- 954 (ii) the Off-Highway Access and Education Restricted Account created in Section  
955 41-22-19.5;
- 956 (jj) certain fees for the cost of electronic payments under the Motor Vehicle Act, as  
957 provided in Section 41-22-36;
- 958 (kk) monies collected under the Notaries Public Reform Act, as provided under  
959 46-1-23;
- 960 (ll) certain funds associated with the Law Enforcement Operations Account, as  
961 provided in Section 51-9-411;
- 962 (mm) the Public Safety Honoring Heroes Restricted Account created in Section  
963 53-1-118;
- 964 (nn) funding for the Search and Rescue Financial Assistance Program, as provided in  
965 Section 53-2-107;
- 966 (oo) appropriations made to the Department of Public Safety from the Department of  
967 Public Safety Restricted Account, as provided in Section 53-3-106;
- 968 (pp) appropriations to the Motorcycle Rider Education Program, as provided in  
969 Section 53-3-905;
- 970 (qq) fees collected by the State Fire Marshal Division under the Utah Fire Prevention  
971 and Safety Act, as provided in Section 53-7-314;
- 972 (rr) the DNA Specimen Restricted Account created in Section 53-10-407;
- 973 (ss) the minimum school program, as provided in Section 53A-17a-105;
- 974 (tt) certain funds appropriated from the Uniform School Fund to the State Board of  
975 Education for new teacher bonus and performance-based compensation plans, as provided in  
976 Section 53A-17a-148;
- 977 (uu) certain funds appropriated from the Uniform School Fund to the State Board of  
978 Education for implementation of proposals to improve mathematics achievement test scores,  
979 as provided in Section 53A-17a-152;
- 980 (vv) the School Building Revolving Account created in Section 53A-21-401;
- 981 (ww) monies received by the State Office of Rehabilitation for the sale of certain

982 products or services, as provided in Section 53A-24-105;

983       (xx) the State Board of Regents, as provided in Section 53B-6-104;

984       (yy) certain funds appropriated from the General Fund to the State Board of Regents

985 for teacher preparation programs, as provided in Section 53B-6-104;

986       (zz) a certain portion of monies collected for administrative costs under the School

987 Institutional Trust Lands Management Act, as provided under Section 53C-3-202;

988       (aaa) certain surcharges on residence and business telecommunications access lines

989 imposed by the Public Service Commission, as provided in Section 54-8b-10;

990       (bbb) certain fines collected by the Division of Occupational and Professional

991 Licensing for violation of unlawful or unprofessional conduct that are used for education and

992 enforcement purposes, as provided in Section 58-17b-505;

993       (ccc) the Nurse Education and Enforcement Fund created in Section 58-31b-103;

994       (ddd) funding of the controlled substance database, as provided in Section [~~58-37-7.7~~]

995 58-37f-502;

996       (eee) the Certified Nurse Midwife Education and Enforcement Fund created in Section

997 58-44a-103;

998       (fff) funding for the building inspector's education program, as provided in Section

999 58-56-9;

1000       (ggg) certain fines collected by the Division of Occupational and Professional

1001 Licensing for use in education and enforcement of the Security Personnel Licensing Act, as

1002 provided in Section 58-63-103;

1003       (hhh) the Professional Geologist Education and Enforcement Fund created in Section

1004 58-76-103;

1005       (iii) certain monies in the Water Resources Conservation and Development Fund, as

1006 provided in Section 59-12-103;

1007       (jjj) funds paid to the Division of Real Estate for the cost of a criminal background

1008 check for broker and sales agent licenses, as provided in Section 61-2-9;

1009       (kkk) the Utah Housing Opportunity Restricted Account created in Section 61-2-28;

1010 (lll) funds paid to the Division of Real Estate for the cost of a criminal background  
1011 check for a mortgage loan license, as provided in Section 61-2c-202;

1012 (mmm) funds paid to the Division of Real Estate in relation to examination of records  
1013 in an investigation, as provided in Section 61-2c-401;

1014 (nnn) certain funds donated to the Department of Human Services, as provided in  
1015 Section 62A-1-111;

1016 (ooo) certain funds donated to the Division of Child and Family Services, as provided  
1017 in Section 62A-4a-110;

1018 (ppp) the Mental Health Therapist Grant and Scholarship Program, as provided in  
1019 Section 62A-13-109;

1020 (qqq) assessments for DUI violations that are forwarded to an account created by a  
1021 county treasurer, as provided in Section 62A-15-503;

1022 (rrr) appropriations to the Division of Services for People with Disabilities, as  
1023 provided in Section 62A-5-102;

1024 (sss) certain donations to the Division of Substance Abuse and Mental Health, as  
1025 provided in Section 62A-15-103;

1026 (ttt) certain funds received by the Division of Parks and Recreation from the sale or  
1027 disposal of buffalo, as provided under Section 63-11-19.2;

1028 (uuu) revenue for golf user fees at the Wasatch Mountain State Park, Palisades State  
1029 Park, or Jordan River State Park, as provided under Section 63-11-19.5;

1030 (vvv) revenue for golf user fees at the Green River State Park, as provided under  
1031 Section 63-11-19.6;

1032 (www) the Centennial Nonmotorized Paths and Trail Crossings Program created under  
1033 Section 63-11a-503;

1034 (xxx) the Bonneville Shoreline Trail Program created under Section 63-11a-504;

1035 (yyy) the account for the Utah Geological Survey, as provided in Section 63-73-10;

1036 (zzz) the Risk Management Fund created under Section 63A-4-201;

1037 (aaaa) the Child Welfare Parental Defense Fund created in Section 63A-11-203;

1038 (bbbb) the Constitutional Defense Restricted Account created in Section 63C-4-103;  
1039 (cccc) a portion of the funds appropriated to the Utah Seismic Safety Commission, as  
1040 provided in Section 63C-6-104;  
1041 (dddd) funding for the Medical Education Program administered by the Medical  
1042 Education Council, as provided in Section 63C-8-102;  
1043 (eeee) certain monies payable for commission expenses of the Pete Suazo Utah  
1044 Athletic Commission, as provided under Section 63C-11-301;  
1045 (ffff) funds collected for publishing the Division of Administrative Rules'  
1046 publications, as provided in Section 63G-3-402;  
1047 (gggg) the appropriation to fund the Governor's Office of Economic Development's  
1048 Enterprise Zone Act, as provided in Section 63M-1-416;  
1049 (hhhh) the Tourism Marketing Performance Account, as provided in Section  
1050 63M-1-1406;  
1051 (iiii) certain funding for rural development provided to the Office of Rural  
1052 Development in the Governor's Office of Economic Development, as provided in Section  
1053 63M-1-1604;  
1054 (jjjj) certain monies in the Development for Disadvantaged Rural Communities  
1055 Restricted Account, as provided in Section 63M-1-2003;  
1056 (kkkk) appropriations to the Utah Science Technology and Research Governing  
1057 Authority, created under Section 63M-2-301, as provided under Section 63M-3-302;  
1058 (llll) certain monies in the Rural Broadband Service Fund, as provided in Section  
1059 63M-1-2303;  
1060 (mmmm) funds collected from monthly offender supervision fees, as provided in  
1061 Section 64-13-21.2;  
1062 (nnnn) funds collected by the housing of state probationary inmates or state parole  
1063 inmates, as provided in Subsection 64-13e-104(2);  
1064 (oooo) the Sovereign Lands Management account created in Section 65A-5-1;  
1065 (pppp) certain forestry and fire control funds utilized by the Division of Forestry, Fire,

1066 and State Lands, as provided in Section 65A-8-103;  
1067 (qqqq) the Department of Human Resource Management user training program, as  
1068 provided in Section 67-19-6;  
1069 (rrrr) funds for the University of Utah Poison Control Center program, as provided in  
1070 Section 69-2-5.5;  
1071 (ssss) appropriations to the Transportation Corridor Preservation Revolving Loan  
1072 Fund, as provided in Section 72-2-117;  
1073 (tttt) appropriations to the Local Transportation Corridor Preservation Fund, as  
1074 provided in Section 72-2-117.5;  
1075 (uuuu) appropriations to the Tollway Restricted Special Revenue Fund, as provided in  
1076 Section 77-2-120;  
1077 (vvvv) appropriations to the Aeronautics Construction Revolving Loan Fund, as  
1078 provided in Section 77-2-122;  
1079 (wwww) appropriations to the State Park Access Highways Improvement Program, as  
1080 provided in Section 72-3-207;  
1081 (xxxx) the Traffic Noise Abatement Program created in Section 72-6-112;  
1082 (yyyy) certain funds received by the Office of the State Engineer for well drilling fines  
1083 or bonds, as provided in Section 73-3-25;  
1084 (zzzz) certain monies appropriated to increase the carrying capacity of the Jordan  
1085 River that are transferred to the Division of Parks and Recreation, as provided in Section  
1086 73-10e-1;  
1087 (aaaa) certain fees for the cost of electronic payments under the State Boating Act, as  
1088 provided in Section 73-18-25;  
1089 (bbbb) certain monies appropriated from the Water Resources Conservation and  
1090 Development Fund, as provided in Section 73-23-2;  
1091 (cccc) the Lake Powell Pipeline Project Operation and Maintenance Fund created in  
1092 Section 73-28-404;  
1093 (dddd) certain funds in the Water Development and Flood Mitigation Reserve

1094 Account, as provided in Section 73-103-1;  
1095 (eeee) certain funds appropriated for compensation for special prosecutors, as  
1096 provided in Section 77-10a-19;  
1097 (ffff) the Indigent Aggravated Murder Defense Trust Fund created in Section  
1098 77-32-601;  
1099 (ggggg) the Indigent Felony Defense Trust Fund created in Section 77-32-701;  
1100 (hhhhh) funds donated or paid to a juvenile court by private sources, as provided in  
1101 Subsection 78A-6-203(c);  
1102 (iiii) a state rehabilitative employment program, as provided in Section 78A-6-210;  
1103 and  
1104 (jjjj) fees from the issuance and renewal of licenses for certified court interpreters, as  
1105 provided in Section 78B-1-146.  
1106 (2) No revenue collection, appropriation from a fund or account, or appropriation to a  
1107 program may be treated as nonlapsing unless:  
1108 (a) it is expressly referenced by this section;  
1109 (b) it is designated in a condition of appropriation in the appropriations bill; or  
1110 (c) nonlapsing authority is granted under Section 63J-1-603.  
1111 (3) Each legislative appropriations subcommittee shall review the accounts and funds  
1112 that have been granted nonlapsing authority under this section or Section 63J-1-603.  
1113 **Section 20. Repealer.**  
1114 This bill repeals:  
1115 **Section 58-37-7.5, Controlled substance database -- Pharmacy reporting**  
1116 **requirements -- Access -- Penalties.**  
1117 **Section 21. Coordinating H.B. 28 with S.B. 191 -- Technical amendments.**  
1118 If this H.B. 28 and S.B. 191, Governmental Accounting Amendments, both pass, it is  
1119 the intent of the Legislature that the Office of Legislative Research and General Counsel shall  
1120 prepare the Utah Code database for publication by amending Subsection 58-37f-501(1)(a) to  
1121 read as follows:



1122

"(a) the Commerce Service Account;"