

1 **CONTROLLED SUBSTANCE DATABASE**

2 **AMENDMENTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

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

6 Senate Sponsor: Curtis S. Bramble

7

8 **LONG TITLE**

9 **Committee Note:**

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

11 **General Description:**

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

17 **Highlighted Provisions:**

18 This bill:

- 19 ▶ defines terms;
- 20 ▶ recodifies provisions relating to the Controlled Substance Database into a new
21 chapter known as the Controlled Substance Database Act;
- 22 ▶ modifies provisions relating to accessing database information for certain legal
23 proceedings;
- 24 ▶ requires an individual who is licensed to prescribe a controlled substance, who is
25 applying for a license, or who is renewing a license to:
- 26 • register to use the database; and
 - 27 • take a tutorial and pass a test relating to the database and the prescribing of



28 controlled substances;

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

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

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

37 ▶ grants rulemaking authority to DOPL; and

38 ▶ makes technical changes.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 None

43 **Utah Code Sections Affected:**

44 **AMENDS:**

45 **26-1-36**, as last amended by Laws of Utah 2008, Chapter 313

46 **58-17b-201**, as last amended by Laws of Utah 2005, Chapter 248

47 **58-37-6**, as last amended by Laws of Utah 2009, Chapters 42 and 183

48 **63J-1-602**, as enacted by Laws of Utah 2009, Chapter 368

49 **ENACTS:**

50 **58-37f-101**, Utah Code Annotated 1953

51 **58-37f-102**, Utah Code Annotated 1953

52 **58-37f-201**, Utah Code Annotated 1953

53 **58-37f-202**, Utah Code Annotated 1953

54 **58-37f-203**, Utah Code Annotated 1953

55 **58-37f-301**, Utah Code Annotated 1953

56 **58-37f-302**, Utah Code Annotated 1953

57 **58-37f-401**, Utah Code Annotated 1953

58 **58-37f-402**, Utah Code Annotated 1953

59 **58-37f-501**, Utah Code Annotated 1953

60 **58-37f-601**, Utah Code Annotated 1953

61 **58-37f-602**, Utah Code Annotated 1953

62 **58-37f-701**, Utah Code Annotated 1953

63 RENUMBERS AND AMENDS:

64 **58-37f-502**, (Renumbered from 58-37-7.7, as last amended by Laws of Utah 2006,
65 Chapter 46)

66 **58-37f-801**, (Renumbered from 58-37-7.8, as enacted by Laws of Utah 2008, Chapter
67 313)

68 REPEALS:

69 **58-37-7.5**, as last amended by Laws of Utah 2009, Chapter 41



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

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

73 **26-1-36. Duty to establish program to reduce deaths and other harm from**
74 **prescription opiates used for chronic noncancer pain.**

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

78 (2) In addition to the duties listed in Section 26-1-30, the department shall develop and
79 implement a two-year program in coordination with the Division of Professional Licensing, the
80 Utah Labor Commission, and the Utah attorney general, to:

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

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

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

90 (d) educate the public regarding:

91 (i) the purpose of the Controlled Substance Database established in Section [~~58-37-7.5~~]
92 58-37f-201; and

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

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

100 (a) recommendations on:

101 (i) use of the Utah Controlled Substance Database created in Section [~~58-37-7.5~~]
102 58-37f-201 to identify and prevent:

103 (A) misuse of opiates;

104 (B) inappropriate prescribing; and

105 (C) adverse outcomes of prescription opiate medications;

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

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

108 (A) scientifically based; and

109 (B) peer reviewed; and

110 (b) (i) a measure of results against expectations under the program as of the date of the
111 report; and

112 (ii) an analysis of the application of the program, use of the appropriated funds, and the
113 impact and results of the use of the funds.

114 (4) The report provided under Subsection (3) for the 2008 interim shall also provide a
115 final cumulative analysis of the measurable effectiveness of the program implemented under
116 this section.

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

118 **58-17b-201. Board -- Membership -- Qualifications -- Terms.**

119 (1) There is created the Utah State Board of Pharmacy consisting of five pharmacists,
120 one pharmacy technician, and one member of the general public.

- 121 (a) The public member of the board shall be a Utah resident who:
- 122 (i) is 21 years of age or older;
- 123 (ii) has never been licensed to engage in the practice of pharmacy;
- 124 (iii) has never been the spouse of a person licensed to engage in the practice of
- 125 pharmacy;
- 126 (iv) has never held any material financial interest in pharmacy practice; and
- 127 (v) has never engaged in any activity directly related to the practice of pharmacy.
- 128 (b) The licensed pharmacist and licensed pharmacy technician members of the board
- 129 shall:
- 130 (i) have been Utah residents continuously for at least three years;
- 131 (ii) have at least five years experience in the practice of pharmacy in good standing
- 132 with the division in Utah after licensure; and
- 133 (iii) maintain licensure in good standing to engage in the practice of pharmacy or
- 134 practice as a pharmacy technician in Utah for the duration of the appointment.
- 135 (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- 136 (3) The duties and responsibilities of the board are in accordance with Sections
- 137 58-1-202 and 58-1-203, and as required under Section [~~58-37-7.5~~] 58-37f-202 regarding the
- 138 controlled substance database. In addition, the board shall designate an appropriate member on
- 139 a permanent or rotating basis to:
- 140 (a) assist the division in reviewing complaints concerning the unlawful or
- 141 unprofessional conduct of a licensee; and
- 142 (b) advise the division in its investigation of these complaints.
- 143 (4) A board member who has, under Subsection (3), reviewed a complaint or advised
- 144 in its investigation may be disqualified from participating with the board when the board serves
- 145 as a presiding officer in an adjudicative proceeding concerning the complaint.
- 146 (5) A board member may be removed in accordance with Subsection 58-1-201(2)(e) or
- 147 upon one of the following grounds:
- 148 (a) refusal or inability for any reason of a board member to perform his duties as a
- 149 member of the Board in an efficient, responsible, and professional manner;
- 150 (b) misuse of appointment to obtain personal, pecuniary, or material gain or advantage
- 151 for himself or another through such appointment; or

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

154 Section 3. Section **58-37-6** is amended to read:

155 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**
156 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**
157 **required -- Prescriptions.**

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

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

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

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

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

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

180 (i) an agent or employee, except a sales representative, of any registered manufacturer,
181 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the
182 usual course of the person's business or employment; however, nothing in this subsection shall

183 be interpreted to permit an agent, employee, sales representative, or detail man to maintain an
184 inventory of controlled substances separate from the location of the person's employer's
185 registered and licensed place of business;

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

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

191 (d) The division may enact rules waiving the license requirement for certain
192 manufacturers, producers, distributors, prescribers, dispensers, administrators, research
193 practitioners, or laboratories performing analysis if consistent with the public health and safety.

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

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

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

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

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

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

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

212 (v) established effective controls against diversion; and

213 (vi) complied with any other factors that the division establishes that promote the

214 public health and safety.

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

218 (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with
219 substances in Schedules II through V if they are authorized to administer, dispense, or conduct
220 research under the laws of this state.

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

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

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

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

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

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

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

- 245 (i) materially falsified any application filed or required pursuant to this chapter;
- 246 (ii) been convicted of an offense under this chapter or any law of the United States, or
247 any state, relating to any substance defined as a controlled substance;
- 248 (iii) been convicted of a felony under any other law of the United States or any state
249 within five years of the date of the issuance of the license;
- 250 (iv) had a federal license denied, suspended, or revoked by competent federal authority
251 and is no longer authorized to engage in the manufacturing, distribution, or dispensing of
252 controlled substances;
- 253 (v) had the licensee's license suspended or revoked by competent authority of another
254 state for violation of laws or regulations comparable to those of this state relating to the
255 manufacture, distribution, or dispensing of controlled substances;
- 256 (vi) violated any division rule that reflects adversely on the licensee's reliability and
257 integrity with respect to controlled substances;
- 258 (vii) refused inspection of records required to be maintained under this chapter by a
259 person authorized to inspect them; or
- 260 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the
261 purpose of manipulating human hormonal structure so as to:
- 262 (A) increase muscle mass, strength, or weight without medical necessity and without a
263 written prescription by any practitioner in the course of the practitioner's professional practice;
264 or
- 265 (B) improve performance in any form of human exercise, sport, or game.
- 266 (b) The division may limit revocation or suspension of a license to a particular
267 controlled substance with respect to which grounds for revocation or suspension exist.
- 268 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to
269 this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of
270 Occupational and Professional Licensing Act, and conducted in conjunction with the
271 appropriate representative committee designated by the director of the department.
- 272 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and
273 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,
274 except where the division is designated by law to perform those functions, or, when not
275 designated by law, is designated by the executive director of the Department of Commerce to

276 conduct the proceedings.

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

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

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

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

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

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

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

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

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

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

306 (7) (a) A person may not write or authorize a prescription for a controlled substance

307 unless the person is:

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

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

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

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

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

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

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

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

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

329 (ii) the name, address, and age of the person to whom or for whom the prescription is
330 issued;

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

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

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

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

- 338 (i) (A) A prescription for a Schedule II substance may not be refilled.
339 (B) A Schedule II controlled substance may not be filled in a quantity to exceed a
340 one-month's supply, as directed on the daily dosage rate of the prescriptions.
341 (ii) A Schedule III or IV controlled substance may be filled only within six months of
342 issuance, and may not be refilled more than six months after the date of its original issuance or
343 be refilled more than five times after the date of the prescription unless renewed by the
344 practitioner.
345 (iii) All other controlled substances in Schedule V may be refilled as the prescriber's
346 prescription directs, but they may not be refilled one year after the date the prescription was
347 issued unless renewed by the practitioner.
348 (iv) Any prescription for a Schedule II substance may not be dispensed if it is not
349 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days
350 after the date the prescription was issued, or 30 days after the dispensing date, if that date is
351 specified separately from the date of issue.
352 (v) A practitioner may issue more than one prescription at the same time for the same
353 Schedule II controlled substance, but only under the following conditions:
354 (A) no more than three prescriptions for the same Schedule II controlled substance may
355 be issued at the same time;
356 (B) no one prescription may exceed a 30-day supply;
357 (C) a second or third prescription shall include the date of issuance and the date for
358 dispensing; and
359 (D) unless the practitioner determines there is a valid medical reason to the contrary,
360 the date for dispensing a second or third prescription may not be fewer than 30 days from the
361 dispensing date of the previous prescription.
362 (vi) Each prescription for a controlled substance may contain only one controlled
363 substance per prescription form and may not contain any other legend drug or prescription
364 item.
365 (g) An order for a controlled substance in Schedules II through V for use by an
366 inpatient or an outpatient of a licensed hospital is exempt from all requirements of this
367 Subsection (7) if the order is:
368 (i) issued or made by a prescribing practitioner who holds an unrestricted registration

369 with the federal Drug Enforcement Administration, and an active Utah controlled substance
370 license in good standing issued by the division under this section, or a medical resident who is
371 exempted from licensure under Subsection 58-1-307(1)(c);

372 (ii) authorized by the prescribing practitioner treating the patient and the prescribing
373 practitioner designates the quantity ordered;

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

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

381 (h) A practitioner licensed under this chapter may not prescribe, administer, or
382 dispense a controlled substance to a child, without first obtaining the consent required in
383 Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except
384 in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same
385 meaning as defined in Section 78A-6-105, and "emergency" means any physical condition
386 requiring the administration of a controlled substance for immediate relief of pain or suffering.

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

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

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

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

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

400 this chapter.

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

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

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

411 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the
412 General Fund as a dedicated credit to be used by the division under Subsection [~~58-37-7.7~~]
413 58-37f-502(1).

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

416 (i) upon first conviction, guilty of a class B misdemeanor;

417 (ii) upon second conviction, guilty of a class A misdemeanor; and

418 (iii) on third or subsequent conviction, guilty of a third degree felony.

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

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

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

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

426 **Part 1. General Provisions**

427 **58-37f-101. Title.**

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

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

430 **58-37f-102. Definitions.**

- 431 (1) The definitions in Section 58-37-2 apply to this chapter.
432 (2) As used in this chapter:
433 (a) "Board" means the Utah State Board of Pharmacy created in Section 58-17b-201.
434 (b) "Database" means the controlled substance database created in this section.
435 (c) "Database manager" means the person responsible for operating the database, or the
436 person's designee.
437 (d) "Health care facility" is as defined in Section 26-21-2.
438 (e) "Mental health therapist" is as defined in Section 58-60-102.
439 (f) "Pharmacy" or "pharmaceutical facility" is as defined in Section 58-17b-102.
440 (g) "Prospective patient" means an individual who:
441 (i) is seeking medical advice, medical treatment, or medical services from a
442 practitioner; and
443 (ii) the practitioner described in Subsection (2)(g)(i) is considering accepting as a
444 patient.
445 (h) "Substance abuse treatment program" is as defined in Section 62A-2-101.
446 Section 6. Section **58-37f-201** is enacted to read:

Part 2. Controlled Substance Database

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

- 449 (1) There is created within the division a controlled substance database.
450 (2) The division shall administer and direct the functioning of the database in
451 accordance with this chapter.
452 (3) The division may, under state procurement laws, contract with another state agency
453 or a private entity to establish, operate, or maintain the database.
454 (4) The division shall, in collaboration with the board, determine whether to operate
455 the database within the division or contract with another entity to operate the database, based
456 on an analysis of costs and benefits.
457 (5) The purpose of the database is to contain the data described in Section 58-37f-203
458 regarding every prescription for a controlled substance dispensed in the state to any individual
459 other than an inpatient in a licensed health care facility.
460 (6) The division shall maintain the database in an electronic file or by other means
461 established by the division to facilitate use of the database for identification of:

- 462 (a) prescribing practices and patterns of prescribing and dispensing controlled
- 463 substances;
- 464 (b) practitioners prescribing controlled substances in an unprofessional or unlawful
- 465 manner;
- 466 (c) individuals receiving prescriptions for controlled substances from licensed
- 467 practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet
- 468 in quantities or with a frequency inconsistent with generally recognized standards of dosage for
- 469 that controlled substance; and
- 470 (d) individuals presenting forged or otherwise false or altered prescriptions for
- 471 controlled substances to a pharmacy.

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

473 **58-37f-202. Duties of board in relation to the database.**

474 The board shall advise the division regarding:

- 475 (1) establishing, maintaining, and operating the database;
- 476 (2) access to the database and how access is obtained; and
- 477 (3) control of information contained in the database.

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

479 **58-37f-203. Submission, collection, and maintenance of data.**

480 (1) The pharmacist in charge of the drug outlet where a controlled substance is

481 dispensed shall submit the data described in this section to the manager of the database:

- 482 (a) in accordance with the requirements of this section;
- 483 (b) in accordance with the procedures established by the division; and
- 484 (c) in the format established by the division.

485 (2) The pharmacist described in Subsection (1) shall, for each controlled substance

486 dispensed by a pharmacist under the pharmacist's supervision other than those dispensed for an

487 inpatient at a health care facility, submit to the manager of the database the following

488 information:

- 489 (a) the name of the prescribing practitioner;
- 490 (b) the date of the prescription;
- 491 (c) the date the prescription was filled;
- 492 (d) the name of the individual for whom the prescription was written;

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

495 (f) the name of the controlled substance;

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

497 (h) the strength of the controlled substance;

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

499 (j) the dosage quantity and frequency as prescribed;

500 (k) the name of the drug outlet dispensing the controlled substance;

501 (l) the name of the pharmacist dispensing the controlled substance; and

502 (m) other relevant information as required by division rule.

503 (3) (a) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
504 Administrative Rulemaking Act, to establish the electronic format in which the information
505 required under this section shall be submitted to the database manager.

506 (b) The division shall ensure that the database system records and maintains for
507 reference:

508 (i) the identification of each individual who requests or receives information from the
509 database;

510 (ii) the information provided to each individual; and

511 (iii) the date and time that the information is requested or provided.

512 Section 9. Section **58-37f-301** is enacted to read:

513 **Part 3. Access**

514 **58-37f-301. Access to database.**

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

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

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

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

523 (a) personnel of the division specifically assigned to conduct investigations related to

524 controlled substance laws under the jurisdiction of the division;

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

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

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

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

537 (I) prescribing or considering prescribing any controlled substance to the current or
538 prospective patient;

539 (II) diagnosing the current or prospective patient;

540 (III) providing medical treatment or medical advice to the current or prospective
541 patient; or

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

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

544 or

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

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

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

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

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

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

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

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

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

566 (ii) the practitioner provides written notice to the division of the identity of the
567 employee; and

568 (iii) the division:

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

570 (B) provides the employee with a password that is unique to that employee to access
571 the database in order to permit the division to comply with the requirements of Subsection
572 58-37f-203(3)(b) with respect to the employee;

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

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

576 (ii) determining whether a person:

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

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

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

582 (i) regulating controlled substances; or

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

584 (h) a mental health therapist, if:

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

586 (A) enrolled in a licensed substance abuse treatment program; and
587 (B) receiving treatment from, or under the direction of, the mental health therapist as
588 part of the patient's participation in the licensed substance abuse treatment program described
589 in Subsection (2)(h)(i)(A);

590 (ii) the information is sought for the purpose of determining whether the patient is
591 using a controlled substance while the patient is enrolled in the licensed substance abuse
592 treatment program described in Subsection (2)(h)(i)(A); and

593 (iii) the licensed substance abuse treatment program described in Subsection
594 (2)(h)(i)(A) is associated with a practitioner who:

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

597 (B) is available to consult with the mental health therapist regarding the information
598 obtained by the mental health therapist, under this Subsection (2)(h), from the database; and

599 (i) an individual who is the recipient of a controlled substance prescription entered into
600 the database, upon providing evidence satisfactory to the database manager that the individual
601 requesting the information is in fact the individual about whom the data entry was made.

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

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

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

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

615 (4) (a) An individual who is granted access to the database based on the fact that the
616 individual is a licensed practitioner or a mental health therapist shall be denied access to the

617 database when the individual is no longer licensed.

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

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

622 **58-37f-302. Other restrictions on access to database.**

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

626 (a) related to the deceased individual; or

627 (b) subrogated to the rights of the deceased individual.

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

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

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

636 **Part 4. Registration and Training**

637 **58-37f-401. Database registration required -- Penalties for failure to register.**

638 (1) Each individual who, on July 1, 2010, has a license to prescribe a controlled
639 substance under Chapter 37, Utah Controlled Substances Act, but is not registered with the
640 division to use the database shall, on or before September 30, 2010:

641 (a) register with the division to use the database; and

642 (b) participate in the online tutorial and pass the online test described in Section
643 58-37f-402.

644 (2) Each individual who, on July 1, 2010, is registered with the division to use the
645 database shall, on or before September 30, 2010, participate in the online tutorial and pass the
646 online test described in Section 58-37f-402.

647 (3) An individual may not obtain or renew a license to prescribe a controlled substance

648 under Chapter 37, Utah Controlled Substances Act, unless the individual registers with the
649 division to use the database.

650 (4) Beginning on July 1, 2010, in order to register to use the database, the individual
651 registering must participate in the online tutorial and pass the online test described in Section
652 58-37f-402.

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

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

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

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

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

659 **58-37f-402. Online tutorial and test relating to the database -- Fees -- Rulemaking**
660 **authority.**

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

663 (a) the purpose of the database;

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

665 (c) the law relating to:

666 (i) the use of the database; and

667 (ii) the information submitted to, and obtained from, the database; and

668 (d) basic knowledge that is important for all people who prescribe controlled

669 substances to know in order to help ensure the health and safety of an individual to whom a
670 controlled substance is prescribed.

671 (2) The division shall design the test described in this section as follows:

672 (a) an individual shall answer all of the questions correctly in order to pass the test;

673 (b) an individual shall be permitted to immediately retake the portion of the test that

674 the individual answers incorrectly as many times as necessary for the individual to pass the test;

675 and

676 (c) after an individual takes the test, the test software shall:

677 (i) immediately inform the individual of the number of questions that were answered

678 incorrectly;

679 (ii) provide the correct answers;
680 (iii) replay the portion of the tutorial that relates to the incorrectly answered questions;
681 and
682 (iv) ask the individual the incorrectly answered questions again.
683 (3) The division shall design the tutorial and test so that it is possible to take the
684 tutorial and complete the test in 20 minutes or less, if the individual answers all of the
685 questions correctly on the first attempt.
686 (4) The division shall ensure that the tutorial and test described in this section are fully
687 functional and available for use online on or before July 1, 2010.
688 (5) The division shall impose a fee, in accordance with Section 63J-1-504, on an
689 individual who takes the test described in this section, to pay the costs incurred by the division
690 to:
691 (a) develop, implement, and administer the tutorial and test described in this section;
692 and
693 (b) fulfill the other duties imposed on the division under this part.
694 (6) The division may make rules, in accordance with Title 63G, Chapter 3, Utah
695 Administrative Rulemaking Act, to:
696 (a) develop, implement, and administer the tutorial and test described in this
697 section; and
698 (b) fulfill the other duties imposed on the division under this part.
699 Section 13. Section **58-37f-501** is enacted to read:
700 **Part 5. Costs and Funding**
701 **58-37f-501. Costs of operating database and recording and submitting data.**
702 (1) All department and division costs necessary to establish and operate the database
703 shall be funded by appropriations from:
704 (a) the Commerce Service Fund; and
705 (b) the General Fund.
706 (2) All costs associated with recording and submitting data as required in this chapter
707 shall be assumed by the submitting pharmacy.
708 Section 14. Section **58-37f-502**, which is renumbered from Section 58-37-7.7 is
709 renumbered and amended to read:

710 ~~[58-37-7.7].~~ **58-37f-502. Use of dedicated credits -- Controlled Substance**
 711 **Database -- Collection of penalties.**

712 (1) The director may use the monies deposited in the General Fund as a dedicated
 713 credit under Subsections 58-37-6(8)(a), ~~[58-37-7.5(11)(c), and 58-37-7.5(12)(b)]~~
 714 58-37f-601(3)(d), and 58-37f-602(2) for the following purposes:

715 (a) maintenance and replacement of the database equipment, including hardware and
 716 software;

717 (b) training of staff; and

718 (c) pursuit of external grants and matching funds.

719 (2) The director of the division may collect any penalty imposed under Subsections
 720 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)
 721 and which is not paid by:

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

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

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

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

729 (5) All funding of the ~~[controlled substance]~~ database ~~[as defined under Section~~
 730 ~~58-37-7.5]~~ is nonlapsing.

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

732 **Part 6. Penalties**

733 **58-37f-601. Unlawful release or use of database information -- Criminal and Civil**
 734 **Penalties.**

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

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

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

741 felony.

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

746 (b) Each separate violation of this Subsection (3) is a third degree felony and is also
747 subject to a civil penalty not to exceed \$5,000.

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

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

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

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

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

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

759 **58-37f-602. Failure by pharmacist to submit information -- Penalties.**

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

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

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

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

768 (d) issue a public or private reprimand to the individual;

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

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

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

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

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

777 **Part 7. Miscellaneous**

778 **58-37f-701. Immunity from liability.**

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

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

783 **Part 8. Pilot Program**

784 **[58-37-7.8]. 58-37f-801. Pilot program for real-time reporting for controlled**
785 **substance database -- Statewide implementation.**

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

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

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

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

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

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

793 (2) There is established a pilot program for real-time reporting of data to, and access to
794 data from, the database by a pharmacy, a pharmaceutical facility, or a prescribing practitioner
795 beginning on July 1, 2008, and ending on July 1, 2010.

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

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

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

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

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

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

815 (a) in the pilot area; and

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

818 (7) The penalties and enforcement provisions described in [~~Sections 58-37-7.5 and~~
819 ~~58-37-7.7~~] the other parts of this chapter apply to enforce the provisions of this section in
820 relation to a pharmacy or pharmaceutical facility that is located in, or operates in, the pilot area.

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

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

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

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

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

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

833 (10) The division shall, on or before July 1, 2010, implement the pilot program as a

834 permanent program on a statewide basis.

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

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

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

845 (ii) in consultation with the division; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

882 **63J-1-602. Nonlapsing accounts and funds.**

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

885 (a) appropriations made to the Legislature and its committees;

886 (b) funds collected by the grain grading program, as provided in Section 4-2-2;

887 (c) the Salinity Offset Fund created in Section 4-2-8.5;

888 (d) the Invasive Species Mitigation Fund created in Section 4-2-8.7;

889 (e) funds collected by pesticide dealer license registration fees, as provided in Section
890 4-14-3;

891 (f) funds collected by pesticide applicator business registration fees, as provided in
892 Section 4-14-13;

893 (g) the Rangeland Improvement Fund created in Section 4-20-2;

894 (h) funds deposited as dedicated credits under the Insect Infestation Emergency Control
895 Act, as provided in Section 4-35-6;

- 896 (i) the Percent-for-Art Program created in Section 9-6-404;
- 897 (j) the Centennial History Fund created in Section 9-8-604;
- 898 (k) the Uintah Basin Revitalization Fund, as provided in Section 9-10-108;
- 899 (l) the Navajo Revitalization Fund created in Section 9-11-104;
- 900 (m) the LeRay McAllister Critical Land Conservation Program created in Section
- 901 11-38-301;
- 902 (n) the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403;
- 903 (o) fees deposited as dedicated credits for hazardous waste plan reviews, as provided in
- 904 Section 19-6-120;
- 905 (p) an appropriation made to the Division of Wildlife Resources for the appraisal and
- 906 purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6;
- 907 (q) award monies under the Crime Reduction Assistance Program, as provided under
- 908 Section 24-1-19;
- 909 (r) funds collected from the emergency medical services grant program, as provided in
- 910 Section 26-8a-207;
- 911 (s) fees and other funding available to purchase training equipment and to administer
- 912 tests and conduct quality assurance reviews, as provided in Section 26-8a-208;
- 913 (t) funds collected as a result of a sanction under Section 1919 of Title XIX of the
- 914 federal Social Security Act, as provided in Section 26-18-3;
- 915 (u) the Utah Health Care Workforce Financial Assistance Program created in Section
- 916 26-46-102;
- 917 (v) monies collected from subscription fees for publications prepared or distributed by
- 918 the insurance commissioner, as provided in Section 31A-2-208;
- 919 (w) monies received by the Insurance Department for administering, investigating
- 920 under, and enforcing the Insurance Fraud Act, as provided in Section 31A-31-108;
- 921 (x) certain monies received for penalties paid under the Insurance Fraud Act, as
- 922 provided in Section 31A-31-109;
- 923 (y) the fund for operating the state's Federal Health Care Tax Credit Program, as
- 924 provided in Section 31A-38-104;
- 925 (z) certain funds in the Department of Workforce Services' program for the education,
- 926 training, and transitional counseling of displaced homemakers, as provided in Section

927 35A-3-114;

928 (aa) the Employment Security Administration Fund created in Section 35A-4-505;

929 (bb) the Special Administrative Expense Fund created in Section 35A-4-506;

930 (cc) funding for a new program or agency that is designated as nonlapsing under

931 Section 36-24-101;

932 (dd) the Oil and Gas Conservation Account created in Section 40-6-14.5;

933 (ee) funds available to the State Tax Commission for purchase and distribution of

934 license plates and decals, as provided in Section 41-1a-1201;

935 (ff) certain fees for the cost of electronic payments under the Motor Vehicle Act, as

936 provided in Section 41-1a-1221;

937 (gg) certain fees collected for administering and enforcing the Motor Vehicle Business

938 Regulation Act, as provided in Section 41-3-601;

939 (hh) certain fees for the cost of electronic payments under the Motor Vehicle Business

940 Regulation Act, as provided in Section 41-3-604;

941 (ii) the Off-Highway Access and Education Restricted Account created in Section

942 41-22-19.5;

943 (jj) certain fees for the cost of electronic payments under the Motor Vehicle Act, as

944 provided in Section 41-22-36;

945 (kk) monies collected under the Notaries Public Reform Act, as provided under

946 46-1-23;

947 (ll) certain funds associated with the Law Enforcement Operations Account, as

948 provided in Section 51-9-411;

949 (mm) the Public Safety Honoring Heroes Restricted Account created in Section

950 53-1-118;

951 (nn) funding for the Search and Rescue Financial Assistance Program, as provided in

952 Section 53-2-107;

953 (oo) appropriations made to the Department of Public Safety from the Department of

954 Public Safety Restricted Account, as provided in Section 53-3-106;

955 (pp) appropriations to the Motorcycle Rider Education Program, as provided in Section

956 53-3-905;

957 (qq) fees collected by the State Fire Marshal Division under the Utah Fire Prevention

958 and Safety Act, as provided in Section 53-7-314;

959 (rr) the DNA Specimen Restricted Account created in Section 53-10-407;

960 (ss) the minimum school program, as provided in Section 53A-17a-105;

961 (tt) certain funds appropriated from the Uniform School Fund to the State Board of

962 Education for new teacher bonus and performance-based compensation plans, as provided in

963 Section 53A-17a-148;

964 (uu) certain funds appropriated from the Uniform School Fund to the State Board of

965 Education for implementation of proposals to improve mathematics achievement test scores, as

966 provided in Section 53A-17a-152;

967 (vv) the School Building Revolving Account created in Section 53A-21-401;

968 (ww) monies received by the State Office of Rehabilitation for the sale of certain

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

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

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

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

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

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

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

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

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

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

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

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

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

982 58-37f-502;

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

984 58-44a-103;

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

986 58-56-9;

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

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

989 provided in Section 58-63-103;

990 (hhh) the Professional Geologist Education and Enforcement Fund created in Section
991 58-76-103;

992 (iii) certain monies in the Water Resources Conservation and Development Fund, as
993 provided in Section 59-12-103;

994 (jjj) funds paid to the Division of Real Estate for the cost of a criminal background
995 check for broker and sales agent licenses, as provided in Section 61-2-9;

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

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

999 (mmm) funds paid to the Division of Real Estate in relation to examination of records
1000 in an investigation, as provided in Section 61-2c-401;

1001 (nnn) certain funds donated to the Department of Human Services, as provided in
1002 Section 62A-1-111;

1003 (ooo) certain funds donated to the Division of Child and Family Services, as provided
1004 in Section 62A-4a-110;

1005 (ppp) the Mental Health Therapist Grant and Scholarship Program, as provided in
1006 Section 62A-13-109;

1007 (qqq) assessments for DUI violations that are forwarded to an account created by a
1008 county treasurer, as provided in Section 62A-15-503;

1009 (rrr) appropriations to the Division of Services for People with Disabilities, as provided
1010 in Section 62A-5-102;

1011 (sss) certain donations to the Division of Substance Abuse and Mental Health, as
1012 provided in Section 62A-15-103;

1013 (ttt) certain funds received by the Division of Parks and Recreation from the sale or
1014 disposal of buffalo, as provided under Section 63-11-19.2;

1015 (uuu) revenue for golf user fees at the Wasatch Mountain State Park, Palisades State
1016 Park, or Jordan River State Park, as provided under Section 63-11-19.5;

1017 (vvv) revenue for golf user fees at the Green River State Park, as provided under
1018 Section 63-11-19.6;

1019 (www) the Centennial Nonmotorized Paths and Trail Crossings Program created under

1020 Section 63-11a-503;

1021 (xxx) the Bonneville Shoreline Trail Program created under Section 63-11a-504;

1022 (yyy) the account for the Utah Geological Survey, as provided in Section 63-73-10;

1023 (zzz) the Risk Management Fund created under Section 63A-4-201;

1024 (aaaa) the Child Welfare Parental Defense Fund created in Section 63A-11-203;

1025 (bbbb) the Constitutional Defense Restricted Account created in Section 63C-4-103;

1026 (cccc) a portion of the funds appropriated to the Utah Seismic Safety Commission, as

1027 provided in Section 63C-6-104;

1028 (dddd) funding for the Medical Education Program administered by the Medical

1029 Education Council, as provided in Section 63C-8-102;

1030 (eeee) certain monies payable for commission expenses of the Pete Suazo Utah

1031 Athletic Commission, as provided under Section 63C-11-301;

1032 (ffff) funds collected for publishing the Division of Administrative Rules' publications,

1033 as provided in Section 63G-3-402;

1034 (gggg) the appropriation to fund the Governor's Office of Economic Development's

1035 Enterprise Zone Act, as provided in Section 63M-1-416;

1036 (hhhh) the Tourism Marketing Performance Account, as provided in Section

1037 63M-1-1406;

1038 (iiii) certain funding for rural development provided to the Office of Rural

1039 Development in the Governor's Office of Economic Development, as provided in Section

1040 63M-1-1604;

1041 (jjjj) certain monies in the Development for Disadvantaged Rural Communities

1042 Restricted Account, as provided in Section 63M-1-2003;

1043 (kkkk) appropriations to the Utah Science Technology and Research Governing

1044 Authority, created under Section 63M-2-301, as provided under Section 63M-3-302;

1045 (llll) certain monies in the Rural Broadband Service Fund, as provided in Section

1046 63M-1-2303;

1047 (mmmm) funds collected from monthly offender supervision fees, as provided in

1048 Section 64-13-21.2;

1049 (nnnn) funds collected by the housing of state probationary inmates or state parole

1050 inmates, as provided in Subsection 64-13e-104(2);

1051 (oooo) the Sovereign Lands Management account created in Section 65A-5-1;
1052 (pppp) certain forestry and fire control funds utilized by the Division of Forestry, Fire,
1053 and State Lands, as provided in Section 65A-8-103;
1054 (qqqq) the Department of Human Resource Management user training program, as
1055 provided in Section 67-19-6;
1056 (rrrr) funds for the University of Utah Poison Control Center program, as provided in
1057 Section 69-2-5.5;
1058 (ssss) appropriations to the Transportation Corridor Preservation Revolving Loan
1059 Fund, as provided in Section 72-2-117;
1060 (tttt) appropriations to the Local Transportation Corridor Preservation Fund, as
1061 provided in Section 72-2-117.5;
1062 (uuuu) appropriations to the Tollway Restricted Special Revenue Fund, as provided in
1063 Section 77-2-120;
1064 (vvvv) appropriations to the Aeronautics Construction Revolving Loan Fund, as
1065 provided in Section 77-2-122;
1066 (wwww) appropriations to the State Park Access Highways Improvement Program, as
1067 provided in Section 72-3-207;
1068 (xxxx) the Traffic Noise Abatement Program created in Section 72-6-112;
1069 (yyyy) certain funds received by the Office of the State Engineer for well drilling fines
1070 or bonds, as provided in Section 73-3-25;
1071 (zzzz) certain monies appropriated to increase the carrying capacity of the Jordan River
1072 that are transferred to the Division of Parks and Recreation, as provided in Section 73-10e-1;
1073 (aaaa) certain fees for the cost of electronic payments under the State Boating Act, as
1074 provided in Section 73-18-25;
1075 (bbbb) certain monies appropriated from the Water Resources Conservation and
1076 Development Fund, as provided in Section 73-23-2;
1077 (cccc) the Lake Powell Pipeline Project Operation and Maintenance Fund created in
1078 Section 73-28-404;
1079 (dddd) certain funds in the Water Development and Flood Mitigation Reserve
1080 Account, as provided in Section 73-103-1;
1081 (eeee) certain funds appropriated for compensation for special prosecutors, as

1082 provided in Section 77-10a-19;
1083 (ffff) the Indigent Aggravated Murder Defense Trust Fund created in Section
1084 77-32-601;
1085 (ggggg) the Indigent Felony Defense Trust Fund created in Section 77-32-701;
1086 (hhhhh) funds donated or paid to a juvenile court by private sources, as provided in
1087 Subsection 78A-6-203(c);
1088 (iiii) a state rehabilitative employment program, as provided in Section 78A-6-210;
1089 and
1090 (jjjj) fees from the issuance and renewal of licenses for certified court interpreters, as
1091 provided in Section 78B-1-146.
1092 (2) No revenue collection, appropriation from a fund or account, or appropriation to a
1093 program may be treated as nonlapsing unless:
1094 (a) it is expressly referenced by this section;
1095 (b) it is designated in a condition of appropriation in the appropriations bill; or
1096 (c) nonlapsing authority is granted under Section 63J-1-603.
1097 (3) Each legislative appropriations subcommittee shall review the accounts and funds
1098 that have been granted nonlapsing authority under this section or Section 63J-1-603.
1099 Section 20. **Repealer.**
1100 This bill repeals:
1101 Section **58-37-7.5, Controlled substance database -- Pharmacy reporting**
1102 **requirements -- Access -- Penalties.**

Legislative Review Note
as of 11-18-09 1:19 PM

Office of Legislative Research and General Counsel

H.B. 28 - Controlled Substance Database Amendments

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will require an additional appropriation from the Commerce Service Fund of \$29,000 in FY 2010 and \$4,000 in FY 2011. Commerce Service Fund spending affects the annual transfer to the General Fund. The bill would require a one-time appropriation of \$5,700 from the General Fund to the Department of Corrections in FY 2011 to cover costs associated with reporting requirements contained in the bill. Fees authorized by the bill will generate \$38,400 in offsetting revenue in FY 2011 and \$1,500 in FY 2012 for a net General Fund cost of \$3,100 over three years.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	\$0	\$34,400	(\$2,800)
General Fund, One-Time	\$0	\$5,700	\$0	(\$29,000)	\$0	\$0
Commerce Service Fund	\$0	\$4,300	\$4,300	\$0	\$0	\$0
Commerce Service, One-time	\$29,000	(\$300)	\$0	\$0	\$0	\$0
Total	\$29,000	\$9,700	\$4,300	(\$29,000)	\$34,400	(\$2,800)

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
