

Representative Ronda Rudd Menlove proposes the following substitute bill:

CONTROLLED SUBSTANCE DATABASE

REVISIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends access provisions relating to the controlled substance database.

Highlighted Provisions:

This bill:

- ▶ permits employees of the Department of Health to have access to information in the controlled substance database in relation to a person whom the Department of Health suspects may be improperly obtaining or providing a controlled substance;
- and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with H.B. 28, Controlled Substance Database Amendments, by providing technical amendments.

Utah Code Sections Affected:

AMENDS:

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



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

27 **58-37f-301**, Utah Code Annotated 1953



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

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

31 **58-37-7.5. Controlled substance database -- Pharmacy reporting requirements --**

32 **Access -- Penalties.**

33 (1) As used in this section:

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

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

36 (c) "Database manager" means the person responsible for operating the database, or the
37 person's designee.

38 (d) "Division" means the Division of Occupational and Professional Licensing created
39 in Section 58-1-103.

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

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

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

43 (h) "Prospective patient" means a person who:

44 (i) is seeking medical advice, medical treatment, or medical services from a
45 practitioner; and

46 (ii) the practitioner described in Subsection (1)(h)(i) is considering accepting as a
47 patient.

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

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

50 (b) The division shall administer and direct the functioning of the database in
51 accordance with this section. The division may under state procurement laws contract with
52 another state agency or private entity to establish, operate, or maintain the database. The
53 division in collaboration with the board shall determine whether to operate the database within
54 the division or contract with another entity to operate the database, based on an analysis of
55 costs and benefits.

56 (c) The purpose of the database is to contain data as described in this section regarding

57 every prescription for a controlled substance dispensed in the state to any person other than an
58 inpatient in a licensed health care facility.

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

62 (3) The board shall advise the division regarding:

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

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

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

66 (4) The pharmacist in charge shall, regarding each controlled substance dispensed by a
67 pharmacist under the pharmacist's supervision other than those dispensed for an inpatient at a
68 health care facility, submit to the manager of the database the following information, by a
69 procedure and in a format established by the division:

70 (a) name of the prescribing practitioner;

71 (b) date of the prescription;

72 (c) date the prescription was filled;

73 (d) name of the person for whom the prescription was written;

74 (e) positive identification of the person receiving the prescription, including the type of
75 identification and any identifying numbers on the identification;

76 (f) name of the controlled substance;

77 (g) quantity of controlled substance prescribed;

78 (h) strength of controlled substance;

79 (i) quantity of controlled substance dispensed;

80 (j) dosage quantity and frequency as prescribed;

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

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

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

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

86 (a) prescribing practices and patterns of prescribing and dispensing controlled
87 substances;

88 (b) practitioners prescribing controlled substances in an unprofessional or unlawful
89 manner;

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

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

96 (6) (a) The division shall by rule establish the electronic format in which the
97 information required under this section shall be submitted to the administrator of the database.

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

99 (i) identification of each person who requests or receives information from the
100 database;

101 (ii) the information provided to each person; and

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

103 (7) The division shall make rules to:

104 (a) effectively enforce the limitations on access to the database as described in
105 Subsection (8); and

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

108 (8) The manager of the database shall make information in the database available only
109 to the following persons, in accordance with the requirements of this section and division rules:

110 (a) personnel of the division specifically assigned to conduct investigations related to
111 controlled substances laws under the jurisdiction of the division;

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

115 (c) in accordance with a written agreement entered into with the department,
116 employees of the Department of Health;

117 (i) whom the director of the Department of Health assigns to conduct scientific studies
118 regarding the use or abuse of controlled substances, provided that the identity of the individuals

119 and pharmacies in the database are confidential and are not disclosed in any manner to any
120 individual who is not directly involved in the scientific studies; or

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

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

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

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

128 (I) prescribing or considering prescribing any controlled substance to the current or
129 prospective patient;

130 (II) diagnosing the current or prospective patient;

131 (III) providing medical treatment or medical advice to the current or prospective
132 patient; or

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

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

135 or

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

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

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

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

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

148 (v) relates to the use of the controlled substance database by an employee of the
149 practitioner, described in Subsection (8)(e); or

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

153 (e) in accordance with Subsection (17), an employee of a practitioner described in
154 Subsection (8)(d), for a purpose described in Subsection (8)(d)(i) or (ii), if:

155 (i) the employee is designated by the practitioner as a person authorized to access the
156 information on behalf of the practitioner;

157 (ii) the practitioner provides written notice to the division of the identity of the
158 employee; and

159 (iii) the division:

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

161 (B) provides the employee with a password that is unique to that employee to access
162 the database in order to permit the division to comply with the requirements of Subsection
163 (6)(b) with respect to the employee;

164 (f) a licensed pharmacist having authority to dispense controlled substances to the
165 extent the information is sought for the purpose of:

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

167 (ii) determining whether a person:

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

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

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

173 (i) regulating controlled substances; or

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

175 (h) a mental health therapist, if:

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

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

178 (B) receiving treatment from, or under the direction of, the mental health therapist as
179 part of the patient's participation in the licensed substance abuse treatment program described
180 in Subsection (8)(h)(i)(A);

181 (ii) the information is sought for the purpose of determining whether the patient is
182 using a controlled substance while the patient is enrolled in the licensed substance abuse
183 treatment program described in Subsection (8)(h)(i)(A); and

184 (iii) the licensed substance abuse treatment program described in Subsection
185 (8)(h)(i)(A) is associated with a practitioner who:

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

188 (B) is available to consult with the mental health therapist regarding the information
189 obtained by the mental health therapist, under this Subsection (8)(h), from the database; and

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

193 (9) Any person who knowingly and intentionally releases any information in the
194 database in violation of the limitations under Subsection (8) is guilty of a third degree felony.

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

197 (b) Any person who obtains or attempts to obtain information from the database for a
198 purpose other than a purpose authorized by this section or by rule is guilty of a third degree
199 felony.

200 (11) (a) Except as provided in Subsection (11)(d), a person may not knowingly and
201 intentionally use, release, publish, or otherwise make available to any other person or entity any
202 information obtained from the database for any purpose other than those specified in
203 Subsection (8). Each separate violation of this Subsection (11) is a third degree felony and is
204 also subject to a civil penalty not to exceed \$5,000.

205 (b) The procedure for determining a civil violation of this Subsection (11) shall be in
206 accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

207 (c) Civil penalties assessed under this Subsection (11) shall be deposited in the General
208 Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

209 (d) Nothing in this Subsection (11) prohibits a person who obtains information from
210 the database under Subsection (8)(d) or (e) from:

211 (i) including the information in the person's medical chart or file for access by a person

212 authorized to review the medical chart or file; or

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

215 (12) (a) The failure of a pharmacist in charge to submit information to the database as
216 required under this section after the division has submitted a specific written request for the
217 information or when the division determines the individual has a demonstrable pattern of
218 failing to submit the information as required is grounds for the division to take the following
219 actions in accordance with Section 58-1-401:

220 (i) refuse to issue a license to the individual;

221 (ii) refuse to renew the individual's license;

222 (iii) revoke, suspend, restrict, or place on probation the license;

223 (iv) issue a public or private reprimand to the individual;

224 (v) issue a cease and desist order; and

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

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

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

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

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

235 (a) the Commerce Service Fund; and

236 (b) the General Fund.

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

239 (16) (a) Except as provided in Subsection (16)(b), data provided to, maintained in, or
240 accessed from the database that may be identified to, or with, a particular person is not subject
241 to discovery, subpoena, or similar compulsory process in any civil, judicial, administrative, or
242 legislative proceeding, nor shall any individual or organization with lawful access to the data

243 be compelled to testify with regard to the data.

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

245 (i) a criminal proceeding; or

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

248 (17) (a) A practitioner described in Subsection (8)(d) may designate up to three
249 employees to access information from the database under Subsection (8)(e).

250 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
251 Administrative Rulemaking Act, to establish background check procedures to determine
252 whether an employee designated under Subsection (8)(e)(i) should be granted access to the
253 database.

254 (c) The division shall grant an employee designated under Subsection (8)(e)(i) access
255 to the database, unless the division determines, based on a background check, that the
256 employee poses a security risk to the information contained in the database.

257 (d) The division may impose a fee, in accordance with Section 63J-1-504, on a
258 practitioner who designates an employee under Subsection (8)(e)(i), to pay for the costs
259 incurred by the division to conduct the background check and make the determination
260 described in Subsection (17)(c).

261 (18) (a) A person who is granted access to the database based on the fact that the
262 person is a licensed practitioner or a mental health therapist shall be denied access to the
263 database when the person is no longer licensed.

264 (b) A person who is granted access to the database based on the fact that the person is a
265 designated employee of a licensed practitioner shall be denied access to the database when the
266 practitioner is no longer licensed.

267 (19) A person who is a relative of a deceased individual is not entitled to access
268 information from the database relating to the deceased individual based on the fact or claim
269 that the person is:

270 (a) related to the deceased individual; or

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

272 Section 2. **Coordinating H.B. 186 with H.B. 28 -- Technical amendments.**

273 If this H.B. 186 and H.B. 28, Controlled Substance Database Amendments, both pass, it

274 is the intent of the Legislature that the Office of Legislative Research and General Counsel
275 shall prepare the Utah Code database for publication by modifying Subsection 58-37f-301(2)(c)
276 in H.B. 28, to read as follows:

277 "(c) in accordance with a written agreement entered into with the department,
278 employees of the Department of Health:

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

283 (ii) when the information is requested by the Department of Health in relation to a
284 person whom the Department of Health suspects may be improperly obtaining or providing a
285 controlled substance;".