

1                   **CONTROLLED SUBSTANCE DATABASE - LICENSING**

2                                   **AMENDMENTS**

3   2011 GENERAL SESSION

4   STATE OF UTAH

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

6                                   Senate Sponsor: Curtis S. Bramble

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8   **LONG TITLE**

9   **General Description:**

10           This bill amends licensing provisions in the Controlled Substance Database Act.

11   **Highlighted Provisions:**

12           This bill:

13           ▶ provides that an individual who is not a veterinarian, who obtains a new license to  
14 prescribe a controlled substance, shall, within 30 days after the day on which the  
15 individual obtains a license to prescribe a controlled substance from the Drug  
16 Enforcement Administration, register with the division to use the Controlled  
17 Substance Database;

18           ▶ reinstates authority of the Division of Occupational and Professional Licensing to  
19 take administrative action, under the Pharmacy Practice Act, for a violation of the  
20 Controlled Substance Database Act; and

21           ▶ makes technical changes.

22   **Money Appropriated in this Bill:**

23           None

24   **Other Special Clauses:**

25           This bill provides an immediate effective date.

26   **Utah Code Sections Affected:**

27   AMENDS:

28           **58-37f-401**, as enacted by Laws of Utah 2010, Chapter 287

29           **58-17b-504**, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section **58-17b-504** is amended to read:

**58-17b-504. Penalty for unlawful or unprofessional conduct -- Fines -- Citations.**

(1) Any person who violates any of the unlawful conduct provisions of Subsection 58-1-501(1)(a)(i) and Subsections 58-17b-501(7) and (11) is guilty of a third degree felony.

(2) Any person who violates any of the unlawful conduct provisions of Subsection 58-1-501(1)(a)(ii), Subsections 58-1-501(1)(b) through (e), and Section 58-17b-501, except Subsections 58-17b-501(7) and (11), is guilty of a class A misdemeanor.

(3) (a) Subject to Subsection (5) and in accordance with Section 58-17b-401, for acts of unprofessional or unlawful conduct, the division may:

- (i) assess administrative penalties; and
- (ii) take any other appropriate administrative action.

(b) An administrative penalty imposed pursuant to this section shall be deposited in the General Fund as a dedicated credit to be used by the division for pharmacy licensee education and enforcement as provided in Section 58-17b-505.

(4) If a licensee has been convicted of violating Section 58-17b-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed an administrative fine under this chapter for the same offense for which the conviction was obtained.

(5) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance Database Act, Chapter 1, Division of Occupational and Professional Licensing Act, or any rule or order issued with respect to these provisions, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4,

58 Administrative Procedures Act.

59 (b) Any person who is in violation of the provisions of Section 58-17b-501 or  
60 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 37f, Controlled Substance  
61 Database Act, Chapter 1, Division of Occupational and Professional Licensing Act, or any rule  
62 or order issued with respect to these provisions, as evidenced by an uncontested citation, a  
63 stipulated settlement, or a finding of violation in an adjudicative proceeding, may be assessed a  
64 fine pursuant to this Subsection (5) of up to \$10,000 per single violation or up to \$2,000 per  
65 day of ongoing violation, whichever is greater, in accordance with a fine schedule established  
66 by rule, and may, in addition to or in lieu of, be ordered to cease and desist from violating the  
67 provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled Substances Act,  
68 Chapter 1, Division of Occupational and Professional Licensing Act, or any rule or order issued  
69 with respect to these provisions.

70 (c) Except for an administrative fine and a cease and desist order, the licensure  
71 sanctions cited in Section 58-17b-401 may not be assessed through a citation.

72 (d) Each citation shall be in writing and specifically describe with particularity the  
73 nature of the violation, including a reference to the provision of the chapter, rule, or order  
74 alleged to have been violated. The citation shall clearly state that the recipient must notify the  
75 division in writing within 20 calendar days of service of the citation in order to contest the  
76 citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.  
77 The citation shall clearly explain the consequences of failure to timely contest the citation or to  
78 make payment of any fines assessed by the citation within the time specified in the citation.

79 (e) Each citation issued under this section, or a copy of each citation, may be served  
80 upon any person upon whom a summons may be served:

81 (i) in accordance with the Utah Rules of Civil Procedure;

82 (ii) personally or upon the person's agent by a division investigator or by any person  
83 specially designated by the director; or

84 (iii) by mail.

85 (f) If within 20 calendar days from the service of a citation, the person to whom the

86 citation was issued fails to request a hearing to contest the citation, the citation becomes the  
87 final order of the division and is not subject to further agency review. The period to contest the  
88 citation may be extended by the division for cause.

89 (g) The division may refuse to issue or renew, suspend, revoke, or place on probation  
90 the license of a licensee who fails to comply with the citation after it becomes final.

91 (h) The failure of an applicant for licensure to comply with a citation after it becomes  
92 final is a ground for denial of license.

93 (i) No citation may be issued under this section after the expiration of six months  
94 following the occurrence of any violation.

95 Section 2. Section **58-37f-401** is amended to read:

96 **58-37f-401. Database registration required -- Penalties for failure to register.**

97 (1) Each individual, other than a veterinarian, who, on June 30, 2010, has a license to  
98 prescribe a controlled substance under Chapter 37, Utah Controlled Substances Act, but is not  
99 registered with the division to use the database shall, on or before September 30, 2010, register  
100 with the division to use the database.

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

104 (3) (a) An individual who is not a veterinarian, who obtains a new license to prescribe  
105 a controlled substance under Chapter 37, Utah Controlled Substances Act, shall, within 30 days  
106 after the day on which the individual obtains a license to prescribe a controlled substance from  
107 the Drug Enforcement Administration, register with the division to use the database.

108 [~~(3)~~] (b) [~~Beginning on July 1, 2010, an~~] An individual who is not a veterinarian may  
109 not [~~obtain or~~] renew a license to prescribe a controlled substance under Chapter 37, Utah  
110 Controlled Substances Act, unless the individual registers with the division to use the database.

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

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

- 116 (a) refuse to issue a license to the individual;
- 117 (b) refuse to renew the individual's license; or
- 118 (c) revoke, suspend, restrict, or place on probation the license.

119 (6) Beginning on July 1, 2010, the division shall, in accordance with Section  
120 63J-1-504, impose an annual database registration fee on an individual who registers to use the  
121 database, to pay the startup and ongoing costs of the division for complying with the  
122 requirements of this section and Section 58-37f-402.

123 **Section 3. Effective date.**

124 If approved by two-thirds of all the members elected to each house, this bill takes effect  
125 upon approval by the governor, or the day following the constitutional time limit of Utah  
126 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
127 the date of veto override.