

REGULATORY AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill amends the Pharmacy Practice Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions related to exemptions from licensure;
- ▶ exempts advanced practice registered nurses and physician assistants from licensure under the Pharmacy Practice Act to dispense a cosmetic drug or injectable weight loss drug to a patient; and
- ▶ exempts optometrists from licensure under the Pharmacy Practice Act to dispense a cosmetic drug to a patient.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-17b-309, as last amended by Laws of Utah 2010, Chapter 213

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



28 Section 1. Section **58-17b-309** is amended to read:

29 **58-17b-309. Exemptions from licensure.**

30 (1) For purposes of this section:

31 (a) "Cosmetic drug":

32 (i) means a prescription drug that is:

33 (A) for the purpose of promoting attractiveness or altering the appearance of an
34 individual; and

35 (B) listed as a cosmetic drug subject to the exemption under this section by the division
36 by administrative rule; and

37 (ii) does not include a prescription drug that is:

38 (A) a controlled substance;

39 (B) compounded by the physician; or

40 (C) prescribed or used for the patient for the purpose of diagnosing, curing, mitigating,
41 treating, or preventing a disease.

42 (b) "Injectable weight loss drug":

43 (i) means an injectable prescription drug:

44 (A) prescribed to promote weight loss; and

45 (B) listed as an injectable prescription drug subject to exemption under this section by
46 the division by administrative rule; and

47 (ii) does not include a prescription drug that is a controlled substance.

48 (c) [~~"Physician"~~] "Prescribing practitioner" means an individual licensed under [~~either~~]:

49 (i) Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse with
50 prescriptive practice;

51 (ii) Chapter 67, Utah Medical Practice Act[~~, or~~];

52 (iii) Chapter 68, Utah Osteopathic Medical Practice Act[~~;~~]; or

53 (iv) Chapter 70a, Physician Assistant Act.

54 (2) In addition to the exemptions from licensure in Section 58-1-307, the following
55 individuals may engage in the acts or practices described in this [~~Subsection (2)~~] section
56 without being licensed under this chapter:

57 (a) a person selling or providing contact lenses in accordance with Section 58-16a-801;

58 (b) an individual engaging in the practice of pharmacy technician under the direct

59 personal supervision of a pharmacist while making satisfactory progress in an approved
60 program as defined in division rule; ~~and~~

61 (c) a ~~physician~~ prescribing practitioner who prescribes and dispenses a cosmetic drug
62 or an injectable weight loss drug to the ~~physician's~~ prescribing practitioner's patient in
63 accordance with Subsection (4)~~;~~ and

64 (d) an optometrist, as defined in Section 58-16a-102, acting within the optometrist's
65 scope of practice as defined in Section 58-16a-601, who prescribes and dispenses a cosmetic
66 drug to the optometrist's patient in accordance with Subsection (4).

67 (3) In accordance with Subsection 58-1-303(1)(a), an individual exempt under
68 Subsection (2)(b) must take all examinations as required by division rule following completion
69 of an approved curriculum of education, within the required time frame. This exemption
70 expires immediately upon notification of a failing score of an examination, and the individual
71 may not continue working as a pharmacy technician even under direct supervision.

72 (4) A ~~physician~~ prescribing practitioner or optometrist is exempt from licensing
73 under the provisions of ~~Subsection (2)(c)~~ this part if the ~~physician~~ prescribing practitioner
74 or optometrist:

75 (a) (i) writes a prescription for a ~~§~~ → [cosmetic drug or injectable weight loss] ~~←~~ §
75a § → the prescribing practitioner or optometrist has the authority to dispense under Subsection
75b (4)(b) ~~←~~ § drug; and

76 (ii) informs the patient:

77 (A) that the prescription may be filled at a pharmacy or dispensed in the ~~physician's~~
78 prescribing practitioner's or optometrist's office;

79 (B) of the directions for appropriate use of the drug;

80 (C) of potential side-effects to the use of the drug; and

81 (D) how to contact the ~~physician~~ prescribing practitioner or optometrist if the patient
82 has questions or concerns regarding the drug;

83 (b) dispenses a cosmetic drug or injectable weight loss drug only to the ~~physician's~~
84 prescribing practitioner's patients or for an optometrist, dispenses a cosmetic drug only to the
85 optometrist's patients; and

86 (c) follows labeling, record keeping, patient counseling, and storage requirements
87 established by administrative rule adopted by the division in consultation with the boards listed
88 in Subsection (5)(a).

89 (5) (a) The division, in consultation with the board under this chapter, the Physician

90 Licensing Board, ~~and~~ the Osteopathic Physician Licensing Board, the Physician Assistant
91 Licensing Board, the Board of Nursing, and the Optometrist Licensing Board shall adopt
92 administrative rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act to
93 designate:

94 (i) the prescription drugs that may be dispensed as a cosmetic drug or weight loss drug
95 under this section; and

96 (ii) the requirements under Subsection (4)(c).

97 (b) When making a determination under Subsection (1)(a), the division and boards
98 listed in Subsection (5)(a), may consider any federal Food and Drug Administration indications
99 or approval associated with a drug when adopting a rule to designate a prescription drug that
100 may be dispensed under this section.

101 (c) The division may inspect the office of a ~~physician~~ prescribing practitioner or
102 optometrist who is dispensing under the provisions of this section, in order to determine
103 whether the ~~physician~~ prescribing practitioner or optometrist is in compliance with the
104 provisions of this section. If a ~~physician~~ prescribing practitioner or optometrist chooses to
105 dispense under the provisions of this section, the ~~physician~~ prescribing practitioner or
106 optometrist consents to the jurisdiction of the division to inspect the ~~physician's~~ prescribing
107 practitioner's or optometrist's office and determine if the provisions of this section are being
108 met by the ~~physician~~ prescribing practitioner and optometrist.

109 (d) If a ~~physician~~ prescribing practitioner or optometrist violates a provision of this
110 section, the ~~physician~~ prescribing practitioner or optometrist may be subject to discipline
111 under:

112 (i) this chapter; and

113 (ii) (A) Chapter 16a, Utah Optometry Practice Act;

114 (B) Chapter 31b, Nurse Practice Act;

115 ~~(ii) (A) (C) Chapter 67, Utah Medical Practice Act; [or]~~

116 ~~(B) (D) Chapter 68, Utah Osteopathic Medical Practice Act[.]; or~~

117 (E) Chapter 70a, Physician Assistant Act.

118 (6) ~~[This]~~ Except as provided in Subsection (2)(d), this section does not restrict or limit
119 the scope of practice of an optometrist or optometric physician licensed under Chapter 16a,
120 Utah Optometry Practice Act.

Legislative Review Note
as of 1-25-11 1:35 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 128

SHORT TITLE: **Regulatory Amendments**

SPONSOR: **Bramble, C.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

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

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.