

PHARMACY DISTRIBUTION AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Bradley M. Daw

LONG TITLE

General Description:

This bill amends Title 58, Chapter 17b, Pharmacy Practice Act, by amending the definition of a cosmetic drug.

Highlighted Provisions:

This bill:

- ▶ amends the definition of a "cosmetic drug;"
- ▶ states that the Division of Occupational and Professional Licensing shall consult with the Utah State Board of Pharmacy and the Online, Prescribing, Dispensing, and Facilitation Board to adopt administrative rules to regulate:
 - labeling, record keeping, patient counseling, and storage requirements; and
 - which prescription drugs may be dispensed as a cosmetic drug or weight loss drug without licensure;
- ▶ states that an individual who violates a provision of the section may be subject to discipline under the Online Prescribing, Dispensing, and Facilitation Act; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **58-17b-309**, as last amended by Laws of Utah 2011, Chapter 76

29a **Ĥ→ 58-83-502, as enacted by Laws of Utah 2010, Chapter 180 ←Ĥ**

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

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

33 **58-17b-309. Exemptions from licensure.**

34 (1) For purposes of this section:

35 (a) "Cosmetic drug":

36 (i) means a prescription drug that is:

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

39 (B) listed as a cosmetic drug subject to the exemption under this section by the division
40 by administrative rule~~[-and]~~ or has been expressly approved for online dispensing, whether or
41 not it is dispensed online or through a physician's office; and

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

43 (A) a controlled substance; **Ŝ→ [or] ←Ŝ**

44 (B) compounded by the physician **Ŝ→ [f]←Ŝ** ; or **Ŝ→[i] [e] ←Ŝ**

45 **Ŝ→ [f] ←Ŝ** (C) prescribed or used for the patient for the purpose of diagnosing, curing,

45a **Ŝ→ } ←Ŝ** [~~mitigating,~~

46 ~~treating;~~ **Ŝ→ [f] ←Ŝ** or preventing a disease. **Ŝ→ [i] ←Ŝ**

47 (b) "Injectable weight loss drug":

48 (i) means an injectable prescription drug:

49 (A) prescribed to promote weight loss; and

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

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

53 (c) "Prescribing practitioner" means an individual licensed under:

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

56 (ii) Chapter 67, Utah Medical Practice Act;

57 (iii) Chapter 68, Utah Osteopathic Medical Practice Act; or

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

59 (2) In addition to the exemptions from licensure in Section 58-1-307, the following
60 individuals may engage in the acts or practices described in this section without being licensed
61 under this chapter:

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

63 (b) an individual engaging in the practice of pharmacy technician under the direct
64 personal supervision of a pharmacist while making satisfactory progress in an approved
65 program as defined in division rule;

66 (c) a prescribing practitioner who prescribes and dispenses a cosmetic drug or an
67 injectable weight loss drug to the prescribing practitioner's patient in accordance with
68 Subsection (4); and

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

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

77 (4) A prescribing practitioner or optometrist is exempt from licensing under the
78 provisions of this part if the prescribing practitioner or optometrist:

79 (a) (i) writes a prescription for a drug the prescribing practitioner or optometrist has the
80 authority to dispense under Subsection (4)(b); and

81 (ii) informs the patient:

82 (A) that the prescription may be filled at a pharmacy or dispensed in the prescribing
83 practitioner's or optometrist's office;

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

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

86 (D) how to contact the prescribing practitioner or optometrist if the patient has
87 questions or concerns regarding the drug;

88 (b) dispenses a cosmetic drug or injectable weight loss drug only to the prescribing
89 practitioner's patients or for an optometrist, dispenses a cosmetic drug only to the optometrist's

90 patients; and

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

94 (5) (a) The division, in consultation with the board under this chapter[;] and the
95 relevant professional board, including the Physician Licensing Board, the Osteopathic
96 Physician Licensing Board, the Physician Assistant Licensing Board, the Board of Nursing,
97 [and] the Optometrist Licensing Board, or the Online Prescribing, Dispensing, and Facilitation
98 Board. shall adopt administrative rules pursuant to Title 63G, Chapter 3, Utah Administrative
99 Rulemaking Act to designate:

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

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

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

107 (c) The division may inspect the office of a prescribing practitioner or optometrist who
108 is dispensing under the provisions of this section, in order to determine whether the prescribing
109 practitioner or optometrist is in compliance with the provisions of this section. If a prescribing
110 practitioner or optometrist chooses to dispense under the provisions of this section, the
111 prescribing practitioner or optometrist consents to the jurisdiction of the division to inspect the
112 prescribing practitioner's or optometrist's office and determine if the provisions of this section
113 are being met by the prescribing practitioner and optometrist.

114 (d) If a prescribing practitioner or optometrist violates a provision of this section, the
115 prescribing practitioner or optometrist may be subject to discipline under:

116 (i) this chapter; and

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

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

119 (C) Chapter 67, Utah Medical Practice Act;

120 (D) Chapter 68, Utah Osteopathic Medical Practice Act; [or]

121 (E) Chapter 70a, Physician Assistant Act[-]; or

122 (F) Chapter 83, Online Prescribing, Dispensing, and Facilitation Act.

123 (6) Except as provided in Subsection (2)(d), this section does not restrict or limit the
124 scope of practice of an optometrist or optometric physician licensed under Chapter 16a, Utah
125 Optometry Practice Act.

125a **Ĥ→ Section 2. Section 58-83-502 is amended to read:**

125b **58-83-502. Unprofessional conduct.**

125c **"Unprofessional conduct" includes, in addition to the definition in Section 58-1-501 and as may**
125d **be further defined by administrative rule:**

125e **(1) online prescribing, dispensing, or facilitation with respect to a person under the age of 18**
125f **years;**

125g **(2) using the name or official seal of the state, the Utah Department of Commerce, or the Utah**
125h **Division of Occupational and Professional Licensing, or their boards, in an unauthorized manner;**

125i **(3) failing to respond promptly to a request by the division for information including:**

125j **(a) an audit of the website; or**

125k **(b) records of the online prescriber, the Internet facilitator, or the online contract pharmacy;**

125l **(4) using an online prescriber, online contract pharmacy, or Internet facilitator without**
125m **approval of the division;**

125n **(5) failing to inform a patient of the patient's freedom of choice in selecting who will dispense a**
125o **prescription in accordance with Subsection 58-83-305(1)(n); [and]**

125p **(6) failing to keep the division informed of the name and contact information of the Internet**
125q **facilitator or online contract pharmacy [-] ; and**

125r **(7) violating the dispensing and labeling requirements of Section 58-17b-309. ←Ĥ**

Legislative Review Note
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Office of Legislative Research and General Counsel