

**Representative Justin L. Fawson** proposes the following substitute bill:

**CONTROLLED SUBSTANCE DATABASE ACT AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Justin L. Fawson**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill amends portions of the Controlled Substance Database Act.

**Highlighted Provisions:**

This bill:

- ▶ changes the requirements for checking the controlled substance database;
- ▶ modifies enforcement provisions; and
- ▶ delays enforcement of the requirements in this bill.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**58-37f-304**, as last amended by Laws of Utah 2017, Chapters 181 and 237

**58-37f-701**, as last amended by Laws of Utah 2016, Chapter 275

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

Section 1. Section **58-37f-304** is amended to read:



26 **58-37f-304. Database utilization.**

27 (1) As used in this section:

28 (a) "Dispenser" means a licensed pharmacist, as described in Section 58-17b-303, or  
29 the pharmacist's licensed intern, as described in Section 58-17b-304, who is also licensed to  
30 dispense a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.31 (b) "Outpatient" means a setting in which an individual visits a licensed healthcare  
32 facility or a healthcare provider's office for a diagnosis or treatment but is not admitted to a  
33 licensed healthcare facility for an overnight stay.34 (c) "Prescriber" means an individual authorized to prescribe a controlled substance  
35 under Title 58, Chapter 37, Utah Controlled Substances Act.36 (d) "Schedule II opioid" means those substances listed in Subsection 58-37-4(2)(b)(i)  
37 or (2)(b)(ii).38 (e) "Schedule III opioid" means those substances listed in Subsection 58-37-4(2)(c)  
39 that are opioids.40 [~~(2)(a) A prescriber shall substantially comply with this Subsection (2).~~]41 [~~(b) Except as provided in Subsection (2)(b), a]~~42 (2)(a) A prescriber shall check the database for information about a patient before the  
43 first time the prescriber gives a prescription to a patient for a Schedule II opioid or a Schedule  
44 III opioid.45 [~~(c) A prescriber is not required to check the database under Subsection (2)(b) if:~~]46 [~~(i) the prescription for a Schedule II opioid or a Schedule III opioid is for three days or~~  
47 ~~fewer on the daily dosage instructions on the prescription;~~]48 [~~(ii) the prescriber has prior knowledge of the patient's prescription history based on~~  
49 ~~the prescriber's review of the patient's health record; or]~~50 [~~(iii) the prescription for a Schedule II opioid or a Schedule III opioid is a post-surgical~~  
51 ~~prescription and the total duration of opioid written after the surgery has been for 30 days or~~  
52 ~~fewer.]~~53 [~~(d)~~] (b) If a prescriber is repeatedly prescribing a Schedule II opioid or Schedule III  
54 opioid to a patient, the prescriber shall periodically review information about the patient in:

55 (i) the database; or

56 (ii) other similar records of controlled substances the patient has filled.

57 ~~[(e)]~~ (c) A prescriber may assign the access and review required under ~~[Subsections~~  
58 ~~(2)(b) and (2)(c)]~~ Subsection (2)(a) to one or more employees in accordance with Subsections  
59 58-37f-301(2)(i) and (j).

60 ~~[(f) The division shall not take action against the license of a prescriber for failure to~~  
61 ~~follow this Subsection (2) if the prescriber demonstrates substantial compliance with the~~  
62 ~~requirements of this Subsection (2).]~~

63 (d) (i) A prescriber may comply with the requirements in Subsections (2)(a) and (b) by  
64 checking an electronic health record system if the electronic health record system:

65 (A) is connected to the database through a connection that has been approved by the  
66 division; and

67 (B) displays the information from the database in a prominent manner for the  
68 prescriber.

69 (ii) The division may not approve a connection to the database if the connection does  
70 not satisfy the requirements established by the division under Section 58-37f-301.

71 (e) A prescriber is not in violation of the requirements of Subsection (2)(a) or (b) if the  
72 failure to comply with Subsection (2)(a) or (b):

73 (i) is necessary due to an emergency situation;

74 (ii) is caused by a suspension or disruption in the operation of the database; or

75 (iii) is caused by a failure in the operation or availability of the Internet.

76 (f) The division may not take action against the license of a prescriber for failure to  
77 comply with this Subsection (2) unless the failure occurs after the earlier of:

78 (i) December 31, 2018; or

79 (ii) the date that the division has the capability to establish a connection that meets the  
80 requirements established by the division under Section 58-37f-301 between the database and an  
81 electronic health record system.

82 (3) The division shall, in collaboration with the licensing boards for prescribers and  
83 dispensers:

84 (a) develop a system that gathers and reports to prescribers and dispensers the progress  
85 and results of the prescriber's and dispenser's individual access and review of the database, as  
86 provided in this section; and

87 (b) reduce or waive the division's continuing education requirements regarding opioid

88 prescriptions, described in Section 58-37-6.5, including the online tutorial and test relating to  
89 the database, for prescribers and dispensers whose individual utilization of the database, as  
90 determined by the division, demonstrates substantial compliance with this section.

91 (4) If the dispenser's access and review of the database suggest that the individual  
92 seeking an opioid may be obtaining opioids in quantities or frequencies inconsistent with  
93 generally recognized standards as provided in this section and Section 58-37f-201, the  
94 dispenser shall reasonably attempt to contact the prescriber to obtain the prescriber's informed,  
95 current, and professional decision regarding whether the prescribed opioid is medically  
96 justified, notwithstanding the results of the database search.

97 Section 2. Section 58-37f-701 is amended to read:

98 **58-37f-701. Immunity from liability.**

99 (1) An individual who has submitted information to or accessed and reviewed the  
100 database in accordance with this chapter may not be held civilly liable, including under Title  
101 78B, Chapter 3, Part 4, Utah Health Care Malpractice Act, for such actions, or a lack of action,  
102 which are protected and are not subject to civil discovery, as provided in Section 58-37f-302.

103 [~~(2) Notwithstanding any other provision of law, any action or lack of action by a  
104 prescriber or dispenser to meet the requirements of Section 58-37f-304 may not be used by the  
105 division in any action against the prescriber or dispenser.~~]

106 [(~~3~~)] (2) Nothing in Section 58-37f-304 establishes a minimum standard of care for  
107 prescribers and dispensers.