

Senator Curtis S. Bramble 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

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;
- ▶ delays enforcement of the requirements in this bill to check the controlled substance database;
- ▶ modifies the authority of the Division of Occupational and Professional Licensing to review the controlled substance database to identify any prescriber who may be overprescribing opioids;
- ▶ grants the Division of Occupational and Professional Licensing the authority to provide education or training to certain prescribers and to take other enforcement action; and
- ▶ modifies enforcement provisions.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **58-37f-304**, as last amended by Laws of Utah 2017, Chapters 181 and 237

29 **58-37f-701**, as last amended by Laws of Utah 2016, Chapter 275

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

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

33 **58-37f-304. Database utilization.**

34 (1) As used in this section:

35 (a) "Dispenser" means a licensed pharmacist, as described in Section **58-17b-303**, or
36 the pharmacist's licensed intern, as described in Section **58-17b-304**, who is also licensed to
37 dispense a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

38 (b) "Outpatient" means a setting in which an individual visits a licensed healthcare
39 facility or a healthcare provider's office for a diagnosis or treatment but is not admitted to a
40 licensed healthcare facility for an overnight stay.

41 (c) "Prescriber" means an individual authorized to prescribe a controlled substance
42 under Title 58, Chapter 37, Utah Controlled Substances Act.

43 (d) "Schedule II opioid" means those substances listed in Subsection **58-37-4(2)(b)(i)**
44 or **(2)(b)(ii)**.

45 (e) "Schedule III opioid" means those substances listed in Subsection **58-37-4(2)(c)**
46 that are opioids.

47 [~~(2) (a) A prescriber shall substantially comply with this Subsection (2).~~]

48 [~~(b) Except as provided in Subsection (2)(b), a]~~

49 (2) (a) A prescriber shall check the database for information about a patient before the
50 first time the prescriber gives a prescription to a patient for a Schedule II opioid or a Schedule
51 III opioid.

52 [~~(c) A prescriber is not required to check the database under Subsection (2)(b) if:~~]

53 [~~(i) the prescription for a Schedule II opioid or a Schedule III opioid is for three days or
54 fewer on the daily dosage instructions on the prescription;~~]

55 [~~(ii) the prescriber has prior knowledge of the patient's prescription history based on
56 the prescriber's review of the patient's health record; or]~~

57 ~~[(iii) the prescription for a Schedule II opioid or a Schedule III opioid is a post surgical~~
58 ~~prescription and the total duration of opioid written after the surgery has been for 30 days or~~
59 ~~fewer.]~~

60 ~~[(d)]~~ (b) If a prescriber is repeatedly prescribing a Schedule II opioid or Schedule III
61 opioid to a patient, the prescriber shall periodically review information about the patient in:

62 (i) the database; or

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

64 ~~[(e)]~~ (c) A prescriber may assign the access and review required under ~~[Subsections~~
65 ~~(2)(b) and (2)(c)]~~ Subsection (2)(a) to one or more employees in accordance with Subsections
66 58-37f-301(2)(i) and (j).

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

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

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

74 (B) displays the information from the database in a prominent manner for the
75 prescriber.

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

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

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

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

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

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

85 (i) December 31, 2018; or

86 (ii) the date that the division has the capability to establish a connection that meets the
87 requirements established by the division under Section 58-37f-301 between the database and an

88 electronic health record system.

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

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

94 (b) reduce or waive the division's continuing education requirements regarding opioid
95 prescriptions, described in Section 58-37-6.5, including the online tutorial and test relating to
96 the database, for prescribers and dispensers whose individual utilization of the database, as
97 determined by the division, demonstrates substantial compliance with this section.

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

104 (5) (a) The division shall review the database to identify any prescriber who has a
105 pattern of prescribing opioids not in accordance with the recommendations of:

106 (i) the CDC Guideline for Prescribing Opioids for Chronic Pain, published by the
107 Centers for Disease Control and Prevention;

108 (ii) the Utah Clinical Guidelines on Prescribing Opioids for Treatment of Pain,
109 published by the Utah Department of Health; or

110 (iii) other publications describing best practices related to prescribing opioids as
111 identified by division rule in accordance with Title 63G, Chapter 3, Utah Administrative
112 Rulemaking Act, and in consultation with the Physicians Licensing Board.

113 (b) The division shall offer education to a prescriber identified under this Subsection
114 (5) regarding best practices in the prescribing of opioids.

115 (c) A decision by a prescriber to accept or not accept the education offered by the
116 division under this Subsection (5) is voluntary.

117 (d) The division may not use an identification the division has made under this
118 Subsection (5) or the decision by a prescriber to accept or not accept education offered by the

119 division under this Subsection (5) in a licensing investigation or action by the division.

120 (e) Any record created by the division as a result of this Subsection (5) is a protected
121 record under Section [63G-2-305](#).

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

123 **58-37f-701. Immunity from liability.**

124 (1) An individual who has submitted information to or accessed and reviewed the
125 database in accordance with this chapter may not be held civilly liable, including under Title
126 78B, Chapter 3, Part 4, Utah Health Care Malpractice Act, for such actions, or a lack of action,
127 which are protected and are not subject to civil discovery, as provided in Section [58-37f-302](#).

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

131 [~~(3)~~ (2) Nothing in Section [58-37f-304](#) establishes a minimum standard of care for
132 prescribers and dispensers.]