

HB0127S02 compared with HB0127S01

~~{deleted text}~~ shows text that was in HB0127S01 but was deleted in HB0127S02.

Inserted text shows text that was not in HB0127S01 but was inserted into HB0127S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{Representative Justin L. Fawson}~~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;
- ▶ ~~{modifies enforcement provisions; and~~

~~→~~ 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;

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- ▶ 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

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

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

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

58-37f-304. Database utilization.

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the database; or

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

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

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

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

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

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

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

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

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(i) is necessary due to an emergency situation;

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

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

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

(i) December 31, 2018; or

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

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

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

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

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

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

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

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

(iii) other publications describing best practices related to prescribing opioids as

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identified by division rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in consultation with the Physicians Licensing Board.

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

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

(d) The division may not use an identification the division has made under this Subsection (5) or the decision by a prescriber to accept or not accept education offered by the division under this Subsection (5) in a licensing investigation or action by the division.

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

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

58-37f-701. Immunity from liability.

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

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

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