

CONTROLLED SUBSTANCE DATABASE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Adam Robertson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of the Controlled Substance Database Act.

Highlighted Provisions:

This bill:

- ▶ modifies access to information from the controlled substance database for certain law enforcement officers; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-37f-301, as last amended by Laws of Utah 2018, Chapter 123

58-37f-304, as last amended by Laws of Utah 2019, Chapter 128

58-37f-601, as last amended by Laws of Utah 2016, Chapters 112 and 238

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

Section 1. Section **58-37f-301** is amended to read:

58-37f-301. Access to database.



28 (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
29 Administrative Rulemaking Act, to:

30 (a) administer the provisions of this part;

31 ~~[(a)]~~ (b) effectively enforce the limitations on access to the database as described in
32 this part; and

33 ~~[(b)]~~ (c) establish standards and procedures to ensure accurate identification of
34 individuals requesting information or receiving information without request from the database.

35 (2) The division shall make information in the database and information obtained from
36 other state or federal prescription monitoring programs by means of the database available only
37 to the following individuals, in accordance with the requirements of this chapter and division
38 rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

39 (a) ~~[(i)]~~ personnel of the division specifically assigned to conduct investigations related
40 to controlled substance laws under the jurisdiction of the division; [and]

41 ~~[(ii) the following law enforcement officers, but the division may only provide~~
42 ~~nonidentifying information, limited to gender, year of birth, and postal ZIP code, regarding~~
43 ~~individuals for whom a controlled substance has been prescribed or to whom a controlled~~
44 ~~substance has been dispensed:]~~

45 ~~[(A) a law enforcement agency officer who is engaged in a joint investigation with the~~
46 ~~division; and]~~

47 ~~[(B) a law enforcement agency officer to whom the division has referred a suspected~~
48 ~~criminal violation of controlled substance laws;]~~

49 (b) a federal, state, or local law enforcement officer who is engaged in a joint
50 investigation with the division;

51 (c) a federal, state, or local law enforcement officer to whom the division has referred a
52 suspected criminal violation of controlled substance laws;

53 (d) a federal, state, or local law enforcement officer if:

54 (i) the officer is appointed by the officer's law enforcement agency or department as a
55 designated officer assigned to investigate legally prescribed controlled substances cases;

56 (ii) the officer is registered with the division as a designated officer assigned to
57 investigate legally prescribed controlled substances cases;

58 (iii) the designated officer's law enforcement agency or department has entered into a

59 memorandum of understanding with the division that:

60 (A) is executed by the designated officer's chief, sheriff, or law enforcement chief
61 executive officer;

62 (B) notifies the law enforcement agency or department that the division may audit at
63 any time the designated officer's and the law enforcement agency's or department's use of
64 information from the database; and

65 (C) allows the division to immediately suspend access to the database by a designated
66 officer for any reason; and

67 (iv) the designated officer and the officer's agency or department meet the requirements
68 of any rules made by the division related to the requirements of this Subsection (2);

69 ~~[(b)]~~ (e) authorized division personnel engaged in analysis of controlled substance
70 prescription information as a part of the assigned duties and responsibilities of their
71 employment;

72 ~~[(c)]~~ (f) a board member if:

73 (i) the board member is assigned to monitor a licensee on probation; and

74 (ii) the board member is limited to obtaining information from the database regarding
75 the specific licensee on probation;

76 ~~[(d)]~~ (g) a member of a diversion committee established in accordance with Subsection
77 [58-1-404\(2\)](#) if:

78 (i) the diversion committee member is limited to obtaining information from the
79 database regarding the person whose conduct is the subject of the committee's consideration;
80 and

81 (ii) the conduct that is the subject of the committee's consideration includes a violation
82 or a potential violation of Chapter 37, Utah Controlled Substances Act, or another relevant
83 violation or potential violation under this title;

84 ~~[(e)]~~ (h) in accordance with a written agreement entered into with the department,
85 employees of the Department of Health:

86 (i) whom the director of the Department of Health assigns to conduct scientific studies
87 regarding the use or abuse of controlled substances, if the identity of the individuals and
88 pharmacies in the database are confidential and are not disclosed in any manner to any
89 individual who is not directly involved in the scientific studies;

90 (ii) when the information is requested by the Department of Health in relation to a
91 person or provider whom the Department of Health suspects may be improperly obtaining or
92 providing a controlled substance; or

93 (iii) in the medical examiner's office;

94 ~~[(f)]~~ (i) in accordance with a written agreement entered into with the department, a
95 designee of the director of the Department of Health, who is not an employee of the
96 Department of Health, whom the director of the Department of Health assigns to conduct
97 scientific studies regarding the use or abuse of controlled substances pursuant to an application
98 process established in rule by the Department of Health, if:

99 (i) the designee provides explicit information to the Department of Health regarding
100 the purpose of the scientific studies;

101 (ii) the scientific studies to be conducted by the designee:

102 (A) fit within the responsibilities of the Department of Health for health and welfare;

103 (B) are reviewed and approved by an Institutional Review Board that is approved for
104 human subject research by the United States Department of Health and Human Services; ~~[and]~~

105 (C) are not conducted for profit or commercial gain; and

106 (D) are conducted in a research facility, as defined by division rule, that is associated
107 with a university or college accredited by one or more regional or national accrediting agencies
108 recognized by the United States Department of Education;

109 (iii) the designee protects the information as a business associate of the Department of
110 Health; and

111 (iv) the identity of the prescribers, patients, and pharmacies in the database are
112 de-identified, confidential, not disclosed in any manner to the designee or to any individual
113 who is not directly involved in the scientific studies;

114 ~~[(g)]~~ (j) in accordance with the written agreement entered into with the department and
115 the Department of Health, authorized employees of a managed care organization, as defined in
116 42 C.F.R. Sec. 438, if:

117 (i) the managed care organization contracts with the Department of Health under the
118 provisions of Section 26-18-405 and the contract includes provisions that:

119 (A) require a managed care organization employee who will have access to information
120 from the database to submit to a criminal background check; and

121 (B) limit the authorized employee of the managed care organization to requesting
122 either the division or the Department of Health to conduct a search of the database regarding a
123 specific Medicaid enrollee and to report the results of the search to the authorized employee;
124 and

125 (ii) the information is requested by an authorized employee of the managed care
126 organization in relation to a person who is enrolled in the Medicaid program with the managed
127 care organization, and the managed care organization suspects the person may be improperly
128 obtaining or providing a controlled substance;

129 [~~(h)~~] (k) a licensed practitioner having authority to prescribe controlled substances, to
130 the extent the information:

131 (i) (A) relates specifically to a current or prospective patient of the practitioner; and

132 (B) is provided to or sought by the practitioner for the purpose of:

133 (I) prescribing or considering prescribing any controlled substance to the current or
134 prospective patient;

135 (II) diagnosing the current or prospective patient;

136 (III) providing medical treatment or medical advice to the current or prospective
137 patient; or

138 (IV) determining whether the current or prospective patient:

139 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;

140 or

141 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
142 substance from the practitioner;

143 (ii) (A) relates specifically to a former patient of the practitioner; and

144 (B) is provided to or sought by the practitioner for the purpose of determining whether
145 the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a
146 controlled substance from the practitioner;

147 (iii) relates specifically to an individual who has access to the practitioner's Drug
148 Enforcement Administration identification number, and the practitioner suspects that the
149 individual may have used the practitioner's Drug Enforcement Administration identification
150 number to fraudulently acquire or prescribe a controlled substance;

151 (iv) relates to the practitioner's own prescribing practices, except when specifically

152 prohibited by the division by administrative rule;

153 (v) relates to the use of the controlled substance database by an employee of the
154 practitioner, described in Subsection (2)(i); or

155 (vi) relates to any use of the practitioner's Drug Enforcement Administration
156 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a
157 controlled substance;

158 ~~(j)~~ (l) in accordance with Subsection (3)(a), an employee of a practitioner described
159 in Subsection (2)~~(h)~~(k), for a purpose described in Subsection (2)~~(h)~~(k)(i) or (ii), if:

160 (i) the employee is designated by the practitioner as an individual authorized to access
161 the information on behalf of the practitioner;

162 (ii) the practitioner provides written notice to the division of the identity of the
163 employee; and

164 (iii) the division:

165 (A) grants the employee access to the database; and

166 (B) provides the employee with a password that is unique to that employee to access
167 the database in order to permit the division to comply with the requirements of Subsection
168 58-37f-203(5) with respect to the employee;

169 ~~(j)~~ (m) an employee of the same business that employs a licensed practitioner under
170 Subsection (2)~~(h)~~(k) if:

171 (i) the employee is designated by the practitioner as an individual authorized to access
172 the information on behalf of the practitioner;

173 (ii) the practitioner and the employing business provide written notice to the division of
174 the identity of the designated employee; and

175 (iii) the division:

176 (A) grants the employee access to the database; and

177 (B) provides the employee with a password that is unique to that employee to access
178 the database in order to permit the division to comply with the requirements of Subsection
179 58-37f-203(5) with respect to the employee;

180 ~~(k)~~ (n) a licensed pharmacist having authority to dispense a controlled substance to
181 the extent the information is provided or sought for the purpose of:

182 (i) dispensing or considering dispensing any controlled substance; or

183 (ii) determining whether a person:
184 (A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or
185 (B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
186 substance from the pharmacist;
187 ~~(f)~~ (o) in accordance with Subsection (3)(a), a licensed pharmacy technician and
188 pharmacy intern who is an employee of a pharmacy as defined in Section 58-17b-102, for the
189 purposes described in Subsection (2)~~(f)~~~~(m)~~(i) or (ii), if:
190 (i) the employee is designated by the pharmacist-in-charge as an individual authorized
191 to access the information on behalf of a licensed pharmacist employed by the pharmacy;
192 (ii) the pharmacist-in-charge provides written notice to the division of the identity of
193 the employee; and
194 (iii) the division:
195 (A) grants the employee access to the database; and
196 (B) provides the employee with a password that is unique to that employee to access
197 the database in order to permit the division to comply with the requirements of Subsection
198 58-37f-203(5) with respect to the employee;
199 ~~(m)~~ (p) pursuant to a valid search warrant, federal, state, and local law enforcement
200 officers and state and local prosecutors who are engaged in an investigation related to:
201 (i) one or more controlled substances; and
202 (ii) a specific person who is a subject of the investigation;
203 ~~(n)~~ (q) subject to Subsection (7), a probation or parole officer, employed by the
204 Department of Corrections or by a political subdivision, to gain access to database information
205 necessary for the officer's supervision of a specific probationer or parolee who is under the
206 officer's direct supervision;
207 ~~(o)~~ (r) employees of the Office of Internal Audit and Program Integrity within the
208 Department of Health who are engaged in their specified duty of ensuring Medicaid program
209 integrity under Section 26-18-2.3;
210 ~~(p)~~ (s) a mental health therapist, if:
211 (i) the information relates to a patient who is:
212 (A) enrolled in a licensed substance abuse treatment program; and
213 (B) receiving treatment from, or under the direction of, the mental health therapist as

214 part of the patient's participation in the licensed substance abuse treatment program described
215 in Subsection (2)[(p)](s)(i)(A);

216 (ii) the information is sought for the purpose of determining whether the patient is
217 using a controlled substance while the patient is enrolled in the licensed substance abuse
218 treatment program described in Subsection (2)[(p)](s)(i)(A); and

219 (iii) the licensed substance abuse treatment program described in Subsection
220 (2)[(p)](s)(i)(A) is associated with a practitioner who:

221 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
222 pharmacist; and

223 (B) is available to consult with the mental health therapist regarding the information
224 obtained by the mental health therapist, under this Subsection (2)[(p)](s), from the database;

225 [(q)] (t) an individual who is the recipient of a controlled substance prescription
226 entered into the database, upon providing evidence satisfactory to the division that the
227 individual requesting the information is in fact the individual about whom the data entry was
228 made;

229 [(r)] (u) an individual under Subsection (2)[(q)](t) for the purpose of obtaining a list of
230 the persons and entities that have requested or received any information from the database
231 regarding the individual, except if the individual's record is subject to a pending or current
232 investigation as authorized under this Subsection (2);

233 [(s)] (v) the inspector general, or a designee of the inspector general, of the Office of
234 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
235 Title 63A, Chapter 13, Part 2, Office and Powers;

236 [(t)] (w) the following licensed physicians for the purpose of reviewing and offering an
237 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
238 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

239 (i) a member of the medical panel described in Section [34A-2-601](#);

240 (ii) a physician employed as medical director for a licensed workers' compensation
241 insurer or an approved self-insured employer; or

242 (iii) a physician offering a second opinion regarding treatment; and

243 [(u)] (x) members of Utah's Opioid Fatality Review Committee, for the purpose of
244 reviewing a specific fatality due to opioid use and recommending policies to reduce the

245 frequency of opioid use fatalities.

246 (3) (a) (i) A practitioner described in Subsection (2)[~~(k)~~](k) may designate one or more
247 employees to access information from the database under Subsection (2)[~~(l)~~](l), (2)[~~(m)~~](m), or
248 (4)(c).

249 (ii) A pharmacist described in Subsection (2)[~~(n)~~](n) who is a pharmacist-in-charge
250 may designate up to five employees to access information from the database under Subsection
251 (2)[~~(o)~~](o).

252 (b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
253 Administrative Rulemaking Act, to:

254 (i) establish background check procedures to determine whether an employee
255 designated under Subsection (2)[~~(l)~~](l), (2)[~~(m)~~](m), or (4)(c) should be granted access to the
256 database; and

257 (ii) establish the information to be provided by an emergency department employee
258 under Subsection (4); and

259 (iii) facilitate providing controlled substance prescription information to a third party
260 under Subsection (5).

261 (c) The division shall grant an employee designated under Subsection (2)[~~(l)~~](l),
262 (2)[~~(m)~~](m), or (4)(c) access to the database, unless the division determines, based on a
263 background check, that the employee poses a security risk to the information contained in the
264 database.

265 (4) (a) An individual who is employed in the emergency department of a hospital may
266 exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if
267 the individual is designated under Subsection (4)(c) and the licensed practitioner:

268 (i) is employed in the emergency department;

269 (ii) is treating an emergency department patient for an emergency medical condition;

270 and

271 (iii) requests that an individual employed in the emergency department and designated
272 under Subsection (4)(c) obtain information regarding the patient from the database as needed in
273 the course of treatment.

274 (b) The emergency department employee obtaining information from the database
275 shall, when gaining access to the database, provide to the database the name and any additional

276 identifiers regarding the requesting practitioner as required by division administrative rule
277 established under Subsection (3)(b).

278 (c) An individual employed in the emergency department under this Subsection (4)
279 may obtain information from the database as provided in Subsection (4)(a) if:

280 (i) the employee is designated by the practitioner as an individual authorized to access
281 the information on behalf of the practitioner;

282 (ii) the practitioner and the hospital operating the emergency department provide
283 written notice to the division of the identity of the designated employee; and

284 (iii) the division:

285 (A) grants the employee access to the database; and

286 (B) provides the employee with a password that is unique to that employee to access
287 the database in order to permit the division to comply with the requirements of Subsection
288 58-37f-203(5) with respect to the employee.

289 (d) The division may impose a fee, in accordance with Section 63J-1-504, on a
290 practitioner who designates an employee under Subsection (2)(~~+~~)(l), (2)(~~+~~)(m), or (4)(c) to
291 pay for the costs incurred by the division to conduct the background check and make the
292 determination described in Subsection (3)(b).

293 (5) (a) (i) An individual may request that the division provide the information under
294 Subsection (5)(b) to a third party who is designated by the individual each time a controlled
295 substance prescription for the individual is dispensed.

296 (ii) The division shall upon receipt of the request under this Subsection (5)(a) advise
297 the individual in writing that the individual may direct the division to discontinue providing the
298 information to a third party and that notice of the individual's direction to discontinue will be
299 provided to the third party.

300 (b) The information the division shall provide under Subsection (5)(a) is:

301 (i) the fact a controlled substance has been dispensed to the individual, but without
302 identifying the controlled substance; and

303 (ii) the date the controlled substance was dispensed.

304 (c) (i) An individual who has made a request under Subsection (5)(a) may direct that
305 the division discontinue providing information to the third party.

306 (ii) The division shall:

307 (A) notify the third party that the individual has directed the division to no longer
308 provide information to the third party; and

309 (B) discontinue providing information to the third party.

310 (6) (a) An individual who is granted access to the database based on the fact that the
311 individual is a licensed practitioner or a mental health therapist shall be denied access to the
312 database when the individual is no longer licensed.

313 (b) An individual who is granted access to the database based on the fact that the
314 individual is a designated employee of a licensed practitioner shall be denied access to the
315 database when the practitioner is no longer licensed.

316 (7) A probation or parole officer is not required to obtain a search warrant to access the
317 database in accordance with Subsection (2)[(n)](q).

318 (8) The division shall review and adjust the database programming which
319 automatically logs off an individual who is granted access to the database under Subsections
320 (2)[(n)](k), (2)[(n)](l), (2)[(n)](m), and (4)(c) to maximize the following objectives:

321 (a) to protect patient privacy;

322 (b) to reduce inappropriate access; and

323 (c) to make the database more useful and helpful to a person accessing the database
324 under Subsections (2)[(n)](k), (2)[(n)](l), (2)[(n)](m), and (4)(c), especially in high usage
325 locations such as an emergency department.

326 Section 2. Section **58-37f-304** is amended to read:

327 **58-37f-304. Database utilization.**

328 (1) As used in this section:

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

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

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

337 (d) "Schedule II opioid" means those substances listed in Subsection [58-37-4\(2\)\(b\)\(i\)](#)

338 or (2)(b)(ii).

339 (e) "Schedule III opioid" means those substances listed in Subsection [58-37-4\(2\)\(c\)](#)
340 that are opioids.

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

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

346 (i) the database; or

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

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

350 [58-37f-301\(2\)\(l\) and \(m\)](#).

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

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

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

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

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

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

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

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

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

366 (i) December 31, 2018; or

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

369 electronic health record system.

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

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

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

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

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

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

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

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

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

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

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

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

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

403 (6) The division may consult with a prescriber or health care system to assist the
404 prescriber or health care system in following evidence-based guidelines regarding the
405 prescribing of controlled substances, including the recommendations listed in Subsection
406 (5)(a).

407 Section 3. Section 58-37f-601 is amended to read:

408 **58-37f-601. Unlawful release or use of database information -- Criminal and civil**
409 **penalties.**

410 (1) (a) Any person who knowingly and intentionally releases:

411 (i) any information in the database or any information obtained from other state or
412 federal prescription monitoring programs by means of the database in violation of the
413 limitations under Part 3, Access and Utilization, is guilty of a third degree felony; or

414 (ii) any information in the database accessed under Section 58-37f-303 by an electronic
415 data system, or accessed by a person via an electronic data system, in violation of rules
416 established by the division under Subsection 58-37f-303(4) is guilty of a third degree felony.

417 (b) Any person who negligently or recklessly releases:

418 (i) any information in the database or any information obtained from other state or
419 federal prescription monitoring programs by means of the database in violation of the
420 limitations under Part 3, Access and Utilization, is guilty of a class C misdemeanor; or

421 (ii) any information in the database accessed under Section 58-37f-303 by an electronic
422 data system, or accessed by a person via an electronic data system, in violation of rules
423 established by the division under Subsection 58-37f-303(4) is guilty of a class C misdemeanor.

424 (2) (a) Any person who obtains or attempts to obtain the following by
425 misrepresentation or fraud is guilty of a third degree felony:

426 (i) information from the database;

427 (ii) information from any other state or federal prescription monitoring program by
428 means of the database; or

429 (iii) information from the database or any other state or federal prescription monitoring
430 program via an electronic data system under Section 58-37f-303.

431 (b) Any person who obtains or attempts to obtain information from the database,
432 including via an electronic data system under Section 58-37f-303 that has access to the
433 database, for a purpose other than a purpose authorized by this chapter or by rule is guilty of a
434 third degree felony.

435 (3) (a) Except as provided in Subsection (3)(e), a person may not knowingly and
436 intentionally use, release, publish, or otherwise make available to any other person the
437 following information for any purpose other than those specified in Part 3, Access and
438 Utilization:

439 (i) information obtained from the database;

440 (ii) information obtained from any other state or federal prescription monitoring
441 program by means of the database; or

442 (iii) information in the database accessed under Section 58-37f-303 by:

443 (A) an electronic data system; or

444 (B) a person via an electronic data system.

445 (b) Each separate violation of this Subsection (3) is a third degree felony and is also
446 subject to a civil penalty not to exceed \$5,000.

447 (c) The procedure for determining a civil violation of this Subsection (3) is in
448 accordance with Section 58-1-108, regarding adjudicative proceedings within the division.

449 (d) Civil penalties assessed under this Subsection (3) shall be deposited in the General
450 Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).

451 (e) This Subsection (3) does not prohibit a person who obtains information from the
452 database under Subsection 58-37f-301(2)[~~(h), (i)~~] (k), (l), (n) or (4)(c) from:

453 (i) including the information in the person's medical chart or file for access by a person
454 authorized to review the medical chart or file; or

455 (ii) providing the information to a person in accordance with the requirements of the
456 Health Insurance Portability and Accountability Act of 1996.