

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 396

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO UNIFORM CONTROLLED SUBSTANCES; AMENDING SECTION 37-2701, IDAHO
2 CODE, TO DEFINE A TERM, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE
3 TECHNICAL CORRECTIONS; AMENDING SECTION 37-2716, IDAHO CODE, TO PRO-
4 VIDE THAT CERTAIN PRESCRIBERS SHALL REGISTER FOR ONLINE ACCESS TO THE
5 CONTROLLED SUBSTANCES PRESCRIPTIONS DATABASE AND TO MAKE TECHNICAL
6 CORRECTIONS; AND AMENDING SECTION 37-2726, IDAHO CODE, TO PROVIDE THAT
7 CERTAIN PRESCRIBERS SHALL REGISTER FOR ONLINE ACCESS TO THE CONTROLLED
8 SUBSTANCES PRESCRIPTIONS DATABASE.
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Section 37-2701, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 37-2701. DEFINITIONS. As used in this ~~act~~ chapter:

14 (a) "Administer" means the direct application of a controlled sub-
15 stance whether by injection, inhalation, ingestion, or any other means, to
16 the body of a patient or research subject by:

17 (1) A practitioner ~~(or, in his presence, by his authorized agent)~~; or

18 (2) The patient or research subject at the direction and in the presence
19 of the practitioner.

20 (b) "Agent" means an authorized person who acts on behalf of or at the
21 direction of a manufacturer, distributor, ~~or~~ dispenser. It does not include
22 a common or contract carrier, public warehouseman, ~~or~~ employee of the car-
23 rier or warehouseman.

24 (c) "Board" means the state board of pharmacy created in chapter 17, ti-
25 tle 54, Idaho Code, or its successor agency.

26 (d) "Bureau" means the ~~Bureau of Narcotic and Dangerous Drugs~~ drug
27 enforcement administration, United States ~~D~~epartment of ~~J~~ustice, or its
28 successor agency.

29 (e) "Controlled substance" means a drug, substance, ~~or~~ immediate pre-
30 cursor in schedules I through VI of article II of this ~~act~~ chapter.

31 (f) "Counterfeit substance" means a controlled substance which, or the
32 container or labeling of which, without authorization, bears the trademark,
33 trade name, or other identifying mark, imprint, number or device, or any
34 likeness thereof, of a manufacturer, distributor, ~~or~~ dispenser other than
35 the person who in fact manufactured, distributed, ~~or~~ dispensed the sub-
36 stance.

37 (g) "Deliver" or "delivery" means the actual, constructive, or at-
38 tempted transfer from one (1) person to another of a controlled substance,
39 whether or not there is an agency relationship.

40 (h) "Director" means the director of the Idaho state police.

41 (i) "Dispense" means to deliver a controlled substance to an ultimate
42 user or research subject by or pursuant to the lawful order of a practi-

1 tioner, including the prescribing, administering, packaging, labeling, or
2 compounding necessary to prepare the substance for that delivery.

3 (j) "Dispenser" means a practitioner who dispenses.

4 (k) "Distribute" means to deliver other than by administering or dis-
5 pensing a controlled substance.

6 (l) "Distributor" means a person who distributes.

7 (m) "Drug" means (1) substances recognized as drugs in the official
8 United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the
9 United States, or official National Formulary, or any supplement to any of
10 them; (2) substances intended for use in the diagnosis, cure, mitigation,
11 treatment or prevention of disease in man or animals; (3) substances, ~~other~~
12 than food, intended to affect the structure or any function of the body of
13 man or animals; and (4) substances intended for use as a component of any
14 article specified in clause (1), (2), or (3) of this subsection. It does not
15 include devices or their components, parts, or accessories.

16 (n) "Drug paraphernalia" means all equipment, products and materi-
17 als of any kind which are used, intended for use, or designed for use, in
18 planting, propagating, cultivating, growing, harvesting, manufactur-
19 ing, compounding, converting, producing, processing, preparing, testing,
20 analyzing, packaging, repackaging, storing, containing, concealing, in-
21 jecting, ingesting, inhaling, or otherwise introducing into the human body
22 a controlled substance in violation of this ~~act~~ chapter. It includes, but is
23 not limited to:

24 (1) Kits used, intended for use, or designed for use in planting, prop-
25 agating, cultivating, growing or harvesting of any species of plant
26 which is a controlled substance or from which a controlled substance can
27 be derived;

28 (2) Kits used, intended for use, or designed for use in manufacturing,
29 compounding, converting, producing, processing, ~~or~~ preparing con-
30 trolled substances;

31 (3) Isomerization devices used, intended for use, or designed for use
32 in increasing the potency of any species of plant which is a controlled
33 substance;

34 (4) Testing equipment used, intended for use, or designed for use in
35 identifying, or in analyzing the strength, effectiveness or purity of
36 controlled substances;

37 (5) Scales and balances used, intended for use, or designed for use in
38 weighing or measuring controlled substances;

39 (6) Diluents and adulterants, such as quinine hydrochloride, mannitol,
40 mannite, dextrose and lactose, used, intended for use, or designed for
41 use in cutting controlled substances;

42 (7) Separation gins and sifters used, intended for use, or designed for
43 use in removing twigs and seeds from, or in otherwise cleaning or refin-
44 ing, marijuana;

45 (8) Blenders, bowls, containers, spoons and mixing devices used,
46 intended for use, or designed for use in compounding controlled sub-
47 stances;

48 (9) Capsules, balloons, envelopes and other containers used, intended
49 for use, or designed for use in packaging small quantities of controlled
50 substances;

1 (10) Containers and other objects used, intended for use, or designed
2 for use in storing or concealing controlled substances;

3 (11) Hypodermic syringes, needles and other objects used, intended
4 for use, or designed for use in parenterally injecting controlled sub-
5 stances into the human body;

6 (12) Objects used, intended for use, or designed for use in ingesting,
7 inhaling, or otherwise introducing marijuana, cocaine, hashish, or
8 hashish oil into the human body, such as:

9 (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
10 pipes with or without screens, permanent screens, hashish heads,
11 or punctured metal bowls;

12 (ii) Water pipes;

13 (iii) Carburetion tubes and devices;

14 (iv) Smoking and carburetion masks;

15 (v) Roach clips: meaning objects used to hold burning material,
16 such as a marijuana cigarette, that has become too small or too
17 short to be held in the hand;

18 (vi) Miniature cocaine spoons, and cocaine vials;

19 (vii) Chamber pipes;

20 (viii) Carburetor pipes;

21 (ix) Electric pipes;

22 (x) Air-driven pipes;

23 (xi) Chillums;

24 (xii) Bongs;

25 (xiii) Ice pipes or chillers;

26 In determining whether an object is drug paraphernalia, a court or other
27 authority should consider, in addition to all other logically relevant fac-
28 tors, the following:

29 1. Statements by an owner or by anyone in control of the object concern-
30 ing its use;

31 2. Prior convictions, if any, of an owner, or of anyone in control of the
32 object, under any state or federal law relating to any controlled sub-
33 stance;

34 3. The proximity of the object, in time and space, to a direct violation
35 of this ~~aet~~ chapter;

36 4. The proximity of the object to controlled substances;

37 5. The existence of any residue of controlled substances on the object;

38 6. Direct or circumstantial evidence of the intent of an owner, or of
39 anyone in control of the object, to deliver it to persons whom he knows,
40 or should reasonably know, intend to use the object to facilitate a vi-
41 olation of this ~~aet~~ chapter; the innocence of an owner, or of anyone in
42 control of the object, as to a direct violation of this ~~aet~~ chapter shall
43 not prevent a finding that the object is intended for use, or designed
44 for use as drug paraphernalia;

45 7. Instructions, oral or written, provided with the object concerning
46 its use;

47 8. Descriptive materials accompanying the object which explain or de-
48 pict its use;

49 9. National and local advertising concerning its use;

50 10. The manner in which the object is displayed for sale;

1 11. Whether the owner, or anyone in control of the object, is a legit-
2 imate supplier of like or related items to the community, such as a li-
3 censed distributor or dealer of tobacco products;

4 12. Direct or circumstantial evidence of the ratio of sales of the ob-
5 ject(s) to the total sales of the business enterprise;

6 13. The existence and scope of legitimate uses for the object in the com-
7 munity;

8 14. Expert testimony concerning its use.

9 (o) "Financial institution" means any bank, trust company, savings and
10 loan association, savings bank, mutual savings bank, credit union, or loan
11 company under the jurisdiction of the state or under the jurisdiction of an
12 agency of the United States.

13 (p) "Immediate precursor" means a substance which the board has found
14 to be and by rule designates as being the principal compound commonly used or
15 produced primarily for use, and which is an immediate chemical intermediary
16 used or likely to be used in the manufacture of a controlled substance, the
17 control of which is necessary to prevent, curtail, or limit manufacture.

18 (q) "Isomer" means the optical isomer, except as used in section
19 37-2705(d), Idaho Code.

20 (r) "Law enforcement agency" means a governmental unit of one (1) or
21 more persons employed full-time or part-time by the state or a political sub-
22 division of the state for the purpose of preventing and detecting crime and
23 enforcing state laws or local ordinances, employees of which unit are autho-
24 rized to make arrests for crimes while acting within the scope of their au-
25 thority.

26 (s) "Manufacture" means the production, preparation, propagation,
27 compounding, conversion or processing of a controlled substance, and in-
28 cludes extraction, directly or indirectly, from substances of natural
29 origin, or independently by means of chemical synthesis, or by a combina-
30 tion of extraction and chemical synthesis, and includes any packaging or
31 repackaging of the substance or labeling or relabeling of its container,
32 except that this term does not include the preparation or compounding of a
33 controlled substance:

34 (1) By a practitioner as an incident to his administering or dispensing
35 of a controlled substance in the course of his professional practice; or

36 (2) By a practitioner, or by his authorized agent under his supervi-
37 sion, for the purpose of, or as an incident to, research, teaching, or
38 chemical analysis and not for delivery.

39 (t) "Marijuana" means all parts of the plant of the genus Cannabis, re-
40 gardless of species, and whether growing or not; the seeds thereof; the resin
41 extracted from any part of such plant; and every compound, manufacture,
42 salt, derivative, mixture, or preparation of such plant, its seeds or resin.
43 It does not include the mature stalks of the plant unless the same are inter-
44 mixed with prohibited parts thereof, fiber produced from the stalks, oil or
45 cake made from the seeds or the achene of such plant, any other compound, man-
46 ufacture, salt, derivative, mixture, or preparation of the mature stalks,
47 (except the resin extracted therefrom or where the same are intermixed with
48 prohibited parts of such plant), fiber, oil, or cake, or the sterilized seed
49 of such plant which is incapable of germination. Evidence that any plant
50 material or the resin or any derivative thereof, regardless of form, con-

1 tains any of the chemical substances classified as tetrahydrocannabinols
2 shall create a presumption that such material is "marijuana" as defined and
3 prohibited herein.

4 (u) "Narcotic drug" means any of the following, whether produced di-
5 rectly or indirectly by extraction from substances of vegetable origin, or
6 independently by means of chemical synthesis, or by a combination of extrac-
7 tion and chemical synthesis:

8 (1) Opium and opiate, and any salt, compound, derivative, or prepara-
9 tion of opium or opiate.

10 (2) Any salt, compound, isomer, derivative, or preparation thereof
11 which is chemically equivalent or identical with any of the substances
12 referred to in clause 1, but not including the isoquinoline alkaloids of
13 opium.

14 (3) Opium poppy and poppy straw.

15 (4) Coca leaves and any salt, compound, derivative, or preparation of
16 coca leaves, and any salt, compound, isomer, derivative, or preparation
17 thereof which is chemically equivalent or identical with any of these
18 substances, but not including decocainized coca leaves or extractions
19 of coca leaves which do not contain cocaine or ecgonine.

20 (v) "Opiate" means any substance having an addiction-forming or ad-
21 diction-sustaining liability similar to morphine or being capable of
22 conversion into a drug having addiction-forming or addiction-sustaining
23 liability. It does not include, unless specifically designated as con-
24 trolled under section 37-2702, Idaho Code, the dextrorotatory isomer of
25 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does in-
26 clude its racemic and levorotatory forms.

27 (w) "Opium poppy" means the plant of the species *Papaver somniferum* L.,
28 except its seeds.

29 (x) "Peace officer" means any duly appointed officer or agent of a law
30 enforcement agency, as defined herein, including, but not limited to, a duly
31 appointed investigator or agent of the Idaho state police, an officer or em-
32 ployee of the board of pharmacy, who is authorized by the board to enforce
33 this ~~act~~ chapter, an officer of the Idaho state police, a sheriff or deputy
34 sheriff of a county, or a marshal or policeman of any city.

35 (y) "Person" means individual, corporation, government, or governmen-
36 tal subdivision or agency, business trust, estate, trust, partnership or as-
37 sociation, or any other legal entity.

38 (z) "Poppy straw" means all parts, except the seeds, of the opium poppy,
39 after mowing.

40 (aa) "Practitioner" means:

41 (1) A physician, dentist, veterinarian, scientific investigator, or
42 other person licensed, registered or otherwise permitted to distrib-
43 ute, dispense, conduct research with respect to or to administer a
44 controlled substance in the course of his professional practice or re-
45 search in this state;

46 (2) A pharmacy, hospital, or other institution licensed, registered,
47 or otherwise permitted to distribute, dispense, conduct research with
48 respect to or to administer a controlled substance in the course of
49 ~~their~~ its professional practice or research in this state.

1 (bb) "Prescriber" means an individual currently licensed, registered
 2 or otherwise authorized to prescribe and administer controlled substances
 3 in the course of professional practice.

4 (cc) "Production" includes the manufacture, planting, cultivation,
 5 growing, or harvesting of a controlled substance.

6 (eedd) "Simulated controlled substance" means a substance that is not a
 7 controlled substance, but which by appearance or representation would lead
 8 a reasonable person to believe that the substance is a controlled substance.
 9 Appearance includes, but is not limited to, color, shape, size, and markings
 10 of the dosage unit. Representation includes, but is not limited to, repre-
 11 sentations or factors of the following nature:

12 (1) Statements made by an owner or by anyone else in control of the sub-
 13 stance concerning the nature of the substance, or its use or effect;

14 (2) Statements made to the recipient that the substance may be resold
 15 for inordinate profit; or

16 (3) Whether the substance is packaged in a manner normally used for il-
 17 licit controlled substances.

18 (edee) "State," when applied to a part of the United States, includes
 19 any state, district, commonwealth, territory, insular possession thereof,
 20 and any area subject to the legal authority of the United States of America.

21 (eeff) "Ultimate user" means a person who lawfully possesses a con-
 22 trolled substance for his own use or for the use of a member of his household
 23 or for administering to an animal owned by him or by a member of his house-
 24 hold.

25 (ffgg) "Utility" means any person, association, partnership or cor-
 26 poration providing telephone and/or communication services, electricity,
 27 natural gas or water to the public.

28 SECTION 2. That Section 37-2716, Idaho Code, be, and the same is hereby
 29 amended to read as follows:

30 37-2716. REGISTRATION REQUIREMENTS. (a) Every person who manufac-
 31 tures, distributes, or dispenses any controlled substance within this state
 32 or who proposes to engage in the manufacture, distribution, or dispensing
 33 of any controlled substance within this state, must obtain annually a reg-
 34 istration issued by the board in accordance with its rules. A copy of each
 35 registration issued shall be transmitted by the board to the director of the
 36 Idaho state police.

37 (b) Every prescriber, except veterinarians, must annually register
 38 with the board to obtain online access to the controlled substances pre-
 39 scriptions database. Such registration shall be completed upon renewal for
 40 existing controlled substance registrants and at the time of registration
 41 for first-time registrants.

42 (c) Persons registered by the board under this ~~act~~ chapter to manufac-
 43 ture, distribute, dispense, or conduct research with controlled substances
 44 may possess, manufacture, distribute, dispense, or conduct research with
 45 those substances to the extent authorized by their registration and in con-
 46 formity with the other provisions of this article.

47 (ed) The following persons need not register and may lawfully possess
 48 controlled substances under this ~~act~~ chapter:

1 (1) An agent or employee of any registered manufacturer, distributor,
2 or dispenser of any controlled substance if he is acting in the usual
3 course of his business or employment;

4 (2) A common or contract carrier or warehouseman, or an employee
5 thereof, whose possession of any controlled substance is in the usual
6 course of business or employment;

7 (3) An ultimate user or a person in possession of any controlled sub-
8 stance pursuant to a lawful order of a practitioner or in lawful posses-
9 sion of a schedule V substance.

10 (~~e~~) The board may waive by rule the requirement for registration of
11 certain manufacturers, distributors, or dispensers if it finds it consis-
12 tent with the public health and safety.

13 (~~f~~) A separate registration is required at each principal place of
14 business or professional practice where the applicant manufactures, dis-
15 tributes, or dispenses controlled substances.

16 (~~g~~) The board may inspect the establishment of a registrant or appli-
17 cant for registration in accordance with the board rule.

18 SECTION 3. That Section 37-2726, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 37-2726. FILING PRESCRIPTIONS -- DATABASE. (1) All controlled sub-
21 stances dispensed for humans shall be filed with the board electronically
22 in a format established by the board or by other method as required by board
23 rule. The board may require the filing of other prescriptions by board rule.
24 The board shall establish by rule the information to be submitted pursuant to
25 the purposes of this section and the purposes set forth in section 37-2730A,
26 Idaho Code.

27 (2) The board shall create, operate and maintain a controlled sub-
28 stances prescriptions database containing the information submitted
29 pursuant to subsection (1) of this section, to be used for the purposes
30 and subject to the terms, conditions and immunities described in section
31 37-2730A, Idaho Code. The database information must be made available only
32 to the following:

33 (a) Authorized individuals employed by Idaho's boards or other states'
34 licensing entities charged with the licensing and discipline of practi-
35 tioners;

36 (b) Peace officers employed by federal, state and local law enforcement
37 agencies engaged as a specified duty of their employment in enforcing
38 law regulating controlled substances;

39 (c) Authorized individuals under the direction of the department of
40 health and welfare for the purpose of monitoring and enforcing that
41 department's responsibilities under the public health, medicare and
42 medicaid laws;

43 (d) A practitioner, licensed in Idaho or another state, having author-
44 ity to prescribe controlled substances, to the extent the information
45 relates specifically to a current patient of the practitioner to whom
46 the practitioner is prescribing or considering prescribing any con-
47 trolled substance;

48 (e) A pharmacist, licensed in Idaho or another state, having authority
49 to dispense controlled substances to the extent the information relates

1 specifically to a current patient to whom that pharmacist is dispensing
2 or considering dispensing any controlled substance, or providing phar-
3 maceutical care as defined in the Idaho pharmacy act;

4 (f) An individual who is the recipient of a controlled substance pre-
5 scription entered into the database or that individual's attorney, upon
6 providing evidence satisfactory to the board that the individual re-
7 questing the information is in fact the person about whom the data entry
8 was made or the attorney for that person;

9 (g) Upon the lawful order of a court of competent jurisdiction; and

10 (h) Prosecuting attorneys, deputy prosecuting attorneys and special
11 prosecutors of a county or city and special assistant attorneys general
12 from the office of the attorney general engaged in enforcing law regu-
13 lating controlled substances.

14 (3) The board shall require prescribers, except veterinarians, to an-
15 nually register with the board to obtain online access to the controlled sub-
16 stances prescriptions database.

17 (4) The board must maintain records on the information disclosed from
18 the database, including:

19 (a) The identification of each individual who requests or receives in-
20 formation from the database and who that individual represents;

21 (b) The information provided to each such individual; and

22 (c) The date and time the information is requested or provided.

23 (45) The board shall promulgate rules to ensure that only authorized
24 individuals have access to the database.

25 (56) Any person who knowingly misrepresents to the board that he is a
26 person entitled under subsection (2) of this section to receive information
27 from the controlled substances prescriptions database under the condi-
28 tions therein provided, and who receives information from the controlled
29 substances prescriptions database resulting from that misrepresentation,
30 shall be guilty of a misdemeanor, punishable by imprisonment in a county jail
31 not to exceed six (6) months, or by a fine not to exceed two thousand dollars
32 (\$2,000), or both. The foregoing criminal penalty is in addition to, and not
33 in lieu of, any other civil or administrative penalty or sanction authorized
34 by law.

35 (67) Any person in possession, whether lawfully or unlawfully, of in-
36 formation from the controlled substances prescriptions database which iden-
37 tifies an individual patient and who knowingly discloses such information to
38 a person not authorized to receive or use such information under any state
39 or federal law, rule or regulation; the lawful order of a court of compe-
40 tent jurisdiction; or written authorization of the individual patient shall
41 be guilty of a misdemeanor, punishable by imprisonment in a county jail not
42 to exceed six (6) months, or by a fine not to exceed two thousand dollars
43 (\$2,000), or both. The foregoing criminal penalty is in addition to, and not
44 in lieu of, any other civil or administrative penalty or sanction authorized
45 by law. The provisions of this subsection shall not apply to disclosure of
46 individual patient information by the patient himself. The provisions of
47 this subsection shall not apply to disclosure of information by a prosecut-
48 ing attorney, deputy prosecuting attorney or special prosecutor of a county
49 or city or by a special assistant attorney general from the office of the at-

1 torney general in the course of a criminal proceeding, whether preconviction
2 or postconviction.

3 (~~78~~) Any person with access to the board's online prescription moni-
4 toring program pursuant to a board issued user account, login name and pass-
5 word who intentionally shares or recklessly fails to safeguard his user ac-
6 count, login name and password, resulting in another person not authorized
7 to receive or use such information under the provisions of any state or fed-
8 eral law, rule or regulation obtaining information from the controlled sub-
9 stances prescriptions database, shall be guilty of a misdemeanor, punish-
10 able by imprisonment in a county jail not to exceed six (6) months or by a fine
11 not to exceed two thousand dollars (\$2,000), or both. The foregoing criminal
12 penalty is in addition to, and not in lieu of, any other civil or administra-
13 tive penalty or sanction authorized by law.

14 (~~89~~) The board may, at its discretion, block access to certain con-
15 trolled substances prescriptions database data if the board has reason to
16 believe that access to the data is or may be used illegally.

17 (~~910~~) All costs associated with recording and submitting data as re-
18 quired in this section are assumed by the dispensing practitioner recording
19 and submitting the data.