LEGISLATURE OF THE STATE OF IDAHO

Sixty-third Legislature First Regular Session - 2015

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 4

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING SECTION 37-2701, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 37-2716, IDAHO CODE, TO REVISE LANGUAGE RELATING TO REGISTRATION REQUIREMENTS, TO PROVIDE AN EXEMPTION AND TO PERMIT FEDERAL REGISTRANTS TO CONDUCT RESEARCH; AMENDING SECTION 37-2717, IDAHO CODE, TO REVISE LANGUAGE RELATING TO REGISTRATION, TO ALLOW CONSIDERATION OF FEDERAL REGISTRATION RESTRICTIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 37-2718, IDAHO CODE, TO PROVIDE THE BOARD WITH ADDITIONAL DISCIPLINARY OPTIONS AND AUTHORITY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 37-2719, IDAHO CODE, TO ADD RESTRICTION TO ACTIONS THAT REQUIRE AN ORDER TO SHOW CAUSE AND TO REVISE THE FINING AUTHORITY OF THE BOARD; AND AMENDING SECTION 37-2720, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO RECORDS OF REGISTRANTS AND TO MAKE TECHNICAL CORRECTIONS.

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

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

37-2701. DEFINITIONS. As used in this chapter:

(a) "Administer" means the direct application of a controlled substance whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

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

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

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

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

(d) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.

(e) "Controlled substance" means a drug, substance or immediate precursor in schedules I through VI of article II of this chapter.

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

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

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

(i) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the ~~prescribing, administering,~~ packaging, labeling, or compounding necessary to prepare the substance for that delivery.

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

(k) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

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

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

(n) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

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

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

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

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

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;

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

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

(11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

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

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

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

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

(vi) Miniature cocaine spoons, and cocaine vials;

(vii) Chamber pipes;

(viii) Carburetor pipes;

(ix) Electric pipes;

(x) Air-driven pipes;

(xi) Chillums;

(xii) Bongs;

(xiii) Ice pipes or chillers;

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;

2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

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

4. The proximity of the object to controlled substances;

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

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

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

8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;
11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
13. The existence and scope of legitimate uses for the object in the community;
14. Expert testimony concerning its use.

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

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

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

(r) "Law enforcement agency" means a governmental unit of one (1) or more persons employed full-time or part-time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(s) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, and includes extraction, directly or indirectly, from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

(1) By a practitioner as an incident to his administering<u>,</u> ~~or~~ dispensing <u>or, as authorized by board rule, distributing</u> of a controlled substance in the course of his professional practice; or

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

(t) "Marijuana" means all parts of the plant of the genus Cannabis, regardless of species, and whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. It does not include the mature stalks of the plant unless the same are intermixed with prohibited parts thereof, fiber produced from the stalks, oil or cake made from the seeds or the achene of such plant, any other compound, man-

ufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom or where the same are intermixed with prohibited parts of such plant, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. Evidence that any plant material or the resin or any derivative thereof, regardless of form, contains any of the chemical substances classified as tetrahydrocannabinols shall create a presumption that such material is "marijuana" as defined and prohibited herein.

(u) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

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

(3) Opium poppy and poppy straw.

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

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

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

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

(y) "Person" means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

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

(aa) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of his professional practice or research in this state;

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

(bb) "Prescribe" means a direction or authorization permitting an ultimate user to lawfully obtain or be administered controlled substances.

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

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

(~~dd~~ee) "Simulated controlled substance" means a substance that is not a controlled substance, but which by appearance or representation would lead a reasonable person to believe that the substance is a controlled substance. Appearance includes, but is not limited to, color, shape, size, and markings of the dosage unit. Representation includes, but is not limited to, representations or factors of the following nature:

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

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

(3) Whether the substance is packaged in a manner normally used for illicit controlled substances.

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

(~~ff~~gg) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(~~gg~~hh) "Utility" means any person, association, partnership or corporation providing telephone and/or communication services, electricity, natural gas or water to the public.

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

37-2716. REGISTRATION REQUIREMENTS. (a) Every person who manufactures, distributes, ~~or~~ prescribes, administers, dispenses, or conducts research with any controlled substance within this state ~~or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must~~ shall obtain annually a registration issued by the board in accordance with this chapter and its rules. ~~A copy of each registration issued shall be transmitted by the board to the director of the Idaho state police.~~

(b) Every prescriber, except veterinarians, ~~must annually~~ shall also register with the board to obtain online access to the controlled substances prescriptions database. ~~Such registration shall be completed upon renewal for existing controlled substance registrants and at the time of registration for first-time registrants.~~

(c) Persons registered by the board under this chapter ~~to manufacture, distribute, dispense, or conduct research with controlled substances~~ may possess, manufacture, distribute, dispense, prescribe, administer, or conduct research with those substances to the extent authorized by their registration and licensing entity and in conformity with the other provisions of this ~~article~~ chapter.

(d) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) An agent or employee of any person registered ~~manufacturer, distributor, or dispenser of any controlled substance~~ pursuant to this chapter, if he is acting in the usual course of his business or employment;

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

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(e) The board may waive by rule the requirement for registration of certain ~~manufacturers, distributors, or dispensers~~ persons if it finds it consistent with the public health and safety.

(f) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, ~~or~~ administers, dispenses, or conducts research with controlled substances, except a separate registration is not required under this chapter for practitioners engaging in research with nonnarcotic controlled substances in schedules II through IV where the practitioner is already registered under this chapter in another capacity.

(g) Practitioners registered under federal law to conduct research with schedule I substances may conduct research with schedule I substances within this state upon registering in Idaho and furnishing the board with evidence of the practitioner's federal registration.

(h) The board may inspect the establishment of a registrant or applicant for registration in accordance with ~~the~~ this chapter and board rule.

SECTION 3. That Section 37-2717, Idaho Code, be, and the same is hereby amended to read as follows:

37-2717. REGISTRATION. ~~(a)~~ The board shall register an applicant to manufacture, ~~or~~ prescribe, administer, dispense, distribute or conduct research with controlled substances included in sections 37-2705, 37-2707, 37-2709, 37-2711 and 37-2713, Idaho Code, unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(~~1~~a) ~~m~~Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(~~2~~b) ~~c~~Compliance with applicable state and local law;

(~~3~~c) ~~a~~Any convictions of the applicant under any federal and state laws relating to any controlled substance;

(4d) ~~p~~Past experience in the manufacture, dispensing, prescribing, administering, research or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversions;

(~~5~~e) ~~f~~Furnishing by the applicant of false or fraudulent material in any application filed under this ~~act~~ chapter;

(~~6~~f) Restriction, suspension or revocation of the applicant's federal registration ~~to manufacture, distribute, or dispense controlled substances as authorized by federal law~~; and

(~~7~~g) ~~a~~Any other factors relevant to and consistent with the public health and safety.

~~(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture and distribute controlled substances in schedule I or II other than those specified in the registration.~~

~~(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this article for practitioners engaging in research with nonnarcotic controlled substances in schedules II through V where the registrant is already registered under this article in another capacity. Practitioners registered under federal law to conduct research with schedule I substances may conduct research with schedule I substances within this state upon furnishing the board evidence of that federal registration.~~

~~(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this act.~~

SECTION 4. That Section 37-2718, Idaho Code, be, and the same is hereby amended to read as follows:

37-2718. ~~REVOCATION AND SUSPENSION OF REGISTRATION~~ DISCIPLINE. (a) A registration under section 37-2717, Idaho Code, ~~to manufacture, distribute, or dispense a controlled substance~~ may be restricted, suspended or revoked by the board upon a finding that the registrant:

(1) Has furnished false or fraudulent material information in any application filed under this act;

(2) Has been found guilty of a felony or misdemeanor under any state or federal law relating to any controlled substance; or

(3) Has had his federal registration restricted, suspended or revoked ~~to manufacture, distribute, or dispense controlled substances~~;

(4) Has violated this chapter, any rule of the board promulgated under this ~~chapter~~ act, an order of the board or any federal regulation relating to controlled substances; provided, however, that no restriction, revocation or suspension procedure be initiated under this paragraph without the board first giving notice of the procedure to the state licensing board with authority over the registrant's professional license.

(b) The notice required in ~~paragraph~~ subsection (a)(4) of this section shall be given immediately in the event action is taken without an order to show cause as allowed under section 37-2719(b), Idaho Code. In all other

cases, such notice shall be given as early as reasonably practicable without risking compromise of the board's investigation but no later than the earlier of:

(1) Issuance of an order to show cause under section 37-2719(a), Idaho Code; or

(2) Setting of a hearing for approval of a resolution of the matter through informal proceedings.

(c) Restriction, r~~R~~evocation or suspension procedures arising solely from "practice related issues" shall be referred by the board to such registrant's state licensing board.

(1) Upon such referral, the registrant's state licensing board shall commence such investigation of the referred matter as it deems necessary and shall take action upon the registrant's license or shall inform the board of pharmacy, in writing, that it has investigated the referred matter and has concluded that no action is necessary.

(2) For purposes of this section, the term "practice related issues" refers to issues involving questions regarding the professional conduct of the registrant within the scope of the registrant's profession.

(d) The board may limit the revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(e) If the board restricts, suspends or revokes a registration, all pertinent controlled substances owned or possessed by the registrant at the time of the restriction or suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(f) The board shall promptly notify the bureau and the state licensing board with authority over the registrant's professional license of all orders restricting, suspending or revoking registration and all forfeitures of controlled substances.

(g) In the event a state licensing board with authority over a registrant's professional license takes an action against the registrant in any fashion which suspends, restricts, limits or affects the registrant's ability to manufacture, distribute, ~~or~~ prescribe, administer, dispense, or conduct research with any controlled substance, the professional licensing board shall promptly notify the board of pharmacy of the action.

(1) Upon such action, the board of pharmacy shall be authorized to issue its order suspending, restricting, limiting or otherwise affecting the registrant's controlled substance registration in the same fashion as the professional licensing board action.

(2) The board of pharmacy order may be issued without further hearing or proceeding, but shall be subject to the effect of any reversal or modification of the professional licensing board action by reason of any appeal or rehearing.

SECTION 5. That Section 37-2719, Idaho Code, be, and the same is hereby amended to read as follows:

37-2719. ORDER TO SHOW CAUSE. (a) Except as set forth in section 37-2718(g), Idaho Code, before denying, restricting, suspending or revoking a registration, or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why the registration should ~~not~~ be restricted, denied, revoked, or suspended, or why the renewal should ~~not~~ be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the board at a time and place not less than thirty (30) days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty (30) days before the expiration of the registration. These proceedings shall be conducted in accordance with chapter 52, title 67, Idaho Code, without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 37-2718, Idaho Code, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

(c) In conjunction with a proceeding for denying, restricting, suspending or revoking a registration, or refusing a renewal of registration, and upon a finding of grounds for such denial, restriction, suspension, revocation or refusal to renew, the board may also impose an administrative fine not to exceed two thousand dollars ($2,000) per occurrence and the costs of prosecution and administrative costs of bringing the action including, but not limited to, attorney's fees and costs and costs of hearing transcripts.

SECTION 6. That Section 37-2720, Idaho Code, be, and the same is hereby amended to read as follows:

37-2720. RECORDS OF REGISTRANTS. Persons registered ~~to manufacture, distribute, or dispense controlled substances~~ under this ~~act~~ chapter shall keep records and maintain inventories in conformance with the ~~record-keeping~~ recordkeeping and inventory requirements of federal law and with any additional rules the board issues.