

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 58

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO PHARMACY; AMENDING SECTION 54-1732, IDAHO CODE, TO PROVIDE AN  
2 EXCEPTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1761,  
3 IDAHO CODE, TO REVISE DEFINITIONS; REPEALING SECTION 54-1762, IDAHO  
4 CODE, RELATING TO THE IDAHO LEGEND DRUG DONATION ACT; AND AMENDING CHAP-  
5 TER 17, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1762,  
6 IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING LEGEND DRUG DONATION.  
7

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

9 SECTION 1. That Section 54-1732, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 54-1732. VIOLATIONS AND PENALTIES. (1) No drug outlet designated in  
12 section 54-1729, Idaho Code, shall be operated until a certificate of reg-  
13 istration has been issued to said facility by the board. Upon the finding of  
14 a violation of this subsection, the board may impose one (1) or more of the  
15 penalties enumerated in section 54-1728, Idaho Code.

16 (2) Reinstatement of a certificate that has been suspended, revoked  
17 or restricted by the board may be granted in accordance with the procedures  
18 specified in section 54-1728(7), Idaho Code.

19 (3) The following acts, or the failure to act, and the causing of any  
20 such act or failure are unlawful:

21 (a) The sale, delivery or administration of any prescription drug or  
22 legend drug, except an opioid antagonist pursuant to section 54-1733B,  
23 Idaho Code, or an epinephrine auto-injector pursuant to sections  
24 54-1733C and 54-1733D, Idaho Code, unless:

25 (i) Such legend drug is dispensed or delivered by a pharmacist  
26 upon an original prescription, drug order or prescription drug or-  
27 der by a practitioner in good faith in the course of his practice.  
28 Any person violating the provisions of this subparagraph shall  
29 be guilty of a felony, and on conviction thereof shall be impris-  
30 oned in the state penitentiary for a term not to exceed three (3)  
31 years, or punished by a fine of not more than five thousand dollars  
32 (\$5,000) or by both such fine and imprisonment.

33 (ii) In the case of a legend drug dispensed by a pharmacist or pre-  
34 scriber, there is a label affixed to the immediate container in  
35 which such drug is dispensed. Any person violating this subpara-  
36 graph shall be guilty of a misdemeanor and upon conviction thereof  
37 shall be fined not more than five hundred dollars (\$500). Noth-  
38 ing in this subparagraph prohibits a practitioner from delivering  
39 professional samples of legend drugs in their original contain-  
40 ers in the course of his practice when oral directions for use are  
41 given at the time of such delivery.

1 (b) The refilling of any prescription or drug order for a legend drug,  
2 except as designated on the prescription or drug order or by the autho-  
3 rization of the practitioner. Any person guilty of violating the pro-  
4 visions of this paragraph shall be guilty of a misdemeanor and upon con-  
5 viction thereof shall be incarcerated in the county jail for a term not  
6 to exceed one (1) year, or punished by a fine of not more than one thou-  
7 sand dollars (\$1,000) or by both such fine and incarceration.

8 (c) The possession or use of a legend drug or a precursor, except an  
9 opioid antagonist pursuant to section 54-1733B, Idaho Code, or an epi-  
10 nephhrine auto-injector pursuant to sections 54-1733C and 54-1733D,  
11 Idaho Code, by any person unless such person obtains such drug on the  
12 prescription or drug order of a practitioner. Any person guilty of vio-  
13 lating the provisions of this paragraph shall be guilty of a misdemeanor  
14 and upon conviction thereof shall be incarcerated in the county jail for  
15 a term not to exceed one (1) year, or punished by a fine of not more than  
16 one thousand dollars (\$1,000) or by both such fine and incarceration.

17 (d) The wholesale distribution of drugs or devices by a pharmacy except  
18 for:

19 (i) The sale, transfer, merger or consolidation of all or part of  
20 the business of a pharmacy or pharmacies from or with another phar-  
21 macy or pharmacies, whether accomplished as a purchase and sale of  
22 stock or business assets.

23 (ii) The sale of minimal quantities of prescription drugs to prac-  
24 titioners for office use or to dispensing drug outlets for a spe-  
25 specific patient need.

26 (iii) The sale of a prescription drug for emergency medical rea-  
27 sons, but never to a wholesale distributor.

28 (iv) Intracompany sales of prescription drugs, meaning any trans-  
29 action or transfer between any division, subsidiary, parent or af-  
30 filiated or related company under common ownership and control of  
31 a corporate entity, or any transaction or transfer between colli-  
32 censees or a colicensed product, but never to a wholesale distrib-  
33 utor.

34 (e) The failure to keep records as required by the board. Any person  
35 guilty of violating the provisions of this paragraph shall be guilty of  
36 a misdemeanor and upon conviction thereof shall be incarcerated in the  
37 county jail for a term not to exceed one (1) year, or punished by a fine  
38 of not more than one thousand dollars (\$1,000) or by both such fine and  
39 incarceration.

40 (f) The refusal to make available and to accord full opportunity to  
41 check any record, as required by the board. Any person guilty of vio-  
42 lating the provisions of this paragraph shall be guilty of a misdemeanor  
43 and upon conviction thereof shall be incarcerated in the county jail for  
44 a term not to exceed one (1) year, or punished by a fine of not more than  
45 one thousand dollars (\$1,000) or by both such fine and incarceration.

46 (g) It is unlawful to:

47 (i) Obtain or attempt to obtain a legend drug or procure or at-  
48 tempt to procure the administration of a legend drug by fraud, de-  
49 ceit, misrepresentation or subterfuge; by the forgery or alter-  
50 ation of a prescription, drug order, or of any written order; by

1 the concealment of a material fact; or by the use of a false name or  
2 the giving of a false address.

3 (ii) Communicate information to a physician in an effort unlaw-  
4 fully to procure a legend drug, or unlawfully to procure the ad-  
5 ministration of any such drug. Any such communication shall not be  
6 deemed a privileged communication.

7 (iii) Intentionally make a false statement in any prescription,  
8 drug order, order, report or record required by this chapter.

9 (iv) For the purpose of obtaining a legend drug to falsely assume  
10 the title of, or represent himself to be, a manufacturer, whole-  
11 saler, pharmacist, physician, dentist, veterinarian or other per-  
12 son.

13 (v) Make or utter any false or forged prescription or false drug  
14 order or forged written order.

15 (vi) Affix any false or forged label to a package or receptacle  
16 containing legend drugs. This subparagraph does not apply to law  
17 enforcement agencies or their representatives while engaged in  
18 enforcing state and federal drug laws.

19 (vii) Wholesale or retail any prescription or legend drug to any  
20 person in this state not entitled by law to deliver such drug to  
21 another.

22 Every violation of paragraph (g) (i) through (vi) of this subsection shall  
23 be a misdemeanor, and any person convicted thereof shall be incarcerated in  
24 the county jail for a term not to exceed one (1) year, or fined not more than  
25 one thousand dollars (\$1,000) or punished by both such fine and imprison-  
26 ment. Any person violating paragraph (g) (vii) of this subsection is guilty  
27 of a felony and on conviction thereof shall be imprisoned in the state peni-  
28 tentiary for a term not to exceed three (3) years, or punished by a fine of not  
29 more than five thousand dollars (\$5,000) or by both such fine and imprison-  
30 ment.

31 (4) Provided however, that a veterinarian may dispense or deliver a  
32 legend drug prescribed for an animal upon the prescription, drug order, or  
33 prescription drug order of another veterinarian. The label shall be affixed  
34 pursuant to subsection (3) (a) (ii) of this section, and penalties for vio-  
35 lations of the provisions of this subsection shall be as provided in this  
36 section for like violations by a pharmacist.

37 (5) The ultimate user of a legend drug who has lawfully obtained such  
38 legend drug may deliver, without being registered, the legend drug to an-  
39 other person for the purpose of disposal of the legend drug if the person re-  
40 ceiving the legend drug for purposes of disposal is authorized under a state  
41 or federal law or regulation to engage in such activity.

42 SECTION 2. That Section 54-1761, Idaho Code, be, and the same is hereby  
43 amended to read as follows:

44 54-1761. DEFINITIONS. As used in sections 54-1760 through 54-1765,  
45 Idaho Code:

46 (1) "Donation repository" means:

47 (a) A community health center as defined in section 39-3203, Idaho  
48 Code;

49 (b) A free medical clinic as defined in section 39-7702, Idaho Code;

1 (c) A designated regional behavioral health center as identified in  
 2 chapter 31, title 39, Idaho Code;

3 (d) A state charitable institution as defined in chapter 1, title 66,  
 4 Idaho Code; or

5 (e) A drug outlet as defined in section 54-1705, Idaho Code.

6 (2) "Legend drug" has the same meaning as provided in section  
 7 54-1705(35), Idaho Code.

8 (23) "Medically indigent patient" means any person who is ~~in need of a~~  
 9 ~~legend drug~~ a resident of Idaho and who meets one (1) of the following condi-  
 10 tions:

11 (a) The person is not eligible for medicaid or medicare, ~~who;~~

12 (b) The person cannot afford private prescription drug insurance; or

13 (c) The person ~~who~~ does not have income and other resources available  
 14 sufficient to pay for the a legend drug.

15 ~~(3) "Patient assistance program" means a program in which pharmaceuti-~~  
 16 ~~cal manufacturers provide financial or medication assistance to low-income~~  
 17 ~~or medically indigent individuals.~~

18 ~~(4) "Qualifying charitable clinic or center" means a community health~~  
 19 ~~center as defined in section 39-3203, Idaho Code, and means a free medical~~  
 20 ~~clinic as defined in section 39-7702, Idaho Code, acting in consultation~~  
 21 ~~with a pharmacist licensed in the state of Idaho; or a designated regional~~  
 22 ~~behavioral health center as identified in chapter 31, title 39, Idaho Code;~~  
 23 ~~or a state charitable institution as defined in chapter 1, title 66, Idaho~~  
 24 ~~Code, acting in consultation with a pharmacist, physician, physician assis-~~  
 25 ~~tant or advanced practice professional nurse with prescriptive authority~~  
 26 ~~licensed in the state of Idaho~~

27 (4) "Qualified donor" means:

28 (a) Any entity that meets the definition of "donation repository" as  
 29 provided in this section; or

30 (b) Any member of the public in accordance with section 54-1762, Idaho  
 31 Code.

32 SECTION 3. That Section [54-1762](#), Idaho Code, be, and the same is hereby  
 33 repealed.

34 SECTION 4. That Chapter 17, Title 54, Idaho Code, be, and the same is  
 35 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 36 ignated as Section 54-1762, Idaho Code, and to read as follows:

37 54-1762. LEGEND DRUG DONATION. (1) Legend drugs may be transferred  
 38 from a qualified donor to a donation repository for donation to medically  
 39 indigent patients.

40 (2) Qualified donors may distribute legend drugs in accordance with the  
 41 following requirements:

42 (a) Drugs donated by an individual member of the public must be in the  
 43 manufacturer's original sealed packaging, including those packaged in  
 44 single unit doses when the outside packaging is open and the single unit  
 45 dose packaging is intact; and

46 (b) Drugs donated by an entity that is a qualified donor must meet ei-  
 47 ther of the following conditions:

1 (i) The drugs are in the manufacturer's original sealed packag-  
2 ing, including those packaged in single unit doses when the out-  
3 side packaging is open and the single unit dose packaging is in-  
4 tact; or

5 (ii) The drugs are opened or unsealed but have remained under the  
6 control and storage of the qualified donor.

7 (3) Donation repositories may accept drugs in accordance with the fol-  
8 lowing specifications:

9 (a) Only drugs that bear a clear and verifiable lot number and expira-  
10 tion date may be accepted and dispensed. Drugs bearing an expiration  
11 date fewer than three (3) months from the date the drug is donated shall  
12 not be accepted and shall not be dispensed;

13 (b) Drugs and other substances provided in schedules II through V of ar-  
14 ticle II, chapter 27, title 37, Idaho Code, shall not be accepted and  
15 shall not be dispensed; and

16 (c) A drug shall not be accepted or dispensed if the person accepting or  
17 dispensing the drug has reason to believe that the drug has been adul-  
18 terated.

19 (4) Any donation repository dispensing legend drugs shall:

20 (a) Comply with all applicable federal and state laws related to the  
21 storage and distribution of drugs;

22 (b) Inspect all drugs prior to dispensing to determine that such drugs  
23 have not been adulterated;

24 (c) Dispense drugs pursuant only to a valid prescription; and

25 (d) Separate donated drugs from the donation repository's normal drug  
26 stock. Donated drugs may not be resold.

27 (5) Nothing in this section shall require any person or entity to donate  
28 legend drugs, dispense donated legend drugs, transfer legend drugs for dona-  
29 tion, or accept donated legend drugs.

30 (6) Nothing in this section shall prohibit or restrict the return of un-  
31 used prescription drugs to the Idaho medicaid program pursuant to rules pro-  
32 mulgated by the Idaho department of health and welfare.