

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 39

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO CONTROLLED SUBSTANCES; AMENDING SECTION 37-2701, IDAHO CODE,  
2 TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION  
3 37-2716, IDAHO CODE, TO PROVIDE FOR CERTAIN REGISTRATION WITH THE DI-  
4 VISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES; AMENDING SECTION  
5 37-2726, IDAHO CODE, TO PROVIDE FOR FILING OF PRESCRIPTIONS WITH THE DI-  
6 VISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES, TO REMOVE A PROVISION  
7 REGARDING A CERTAIN DATABASE, AND TO MAKE TECHNICAL CORRECTIONS; AMEND-  
8 ING SECTION 37-2730A, IDAHO CODE, TO PROVIDE FOR PRESCRIPTION TRACKING  
9 BY THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES AND TO MAKE  
10 TECHNICAL CORRECTIONS; AND AMENDING SECTION 37-2732, IDAHO CODE, TO  
11 PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS.  
12

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

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

16 37-2701. DEFINITIONS. As used in this chapter:

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

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

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

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

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

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

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

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

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

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

1 (i) "Dispense" means to deliver a controlled substance to an ultimate  
2 user or research subject by or pursuant to the lawful order of a practi-  
3 tioner, including the packaging, labeling, or compounding necessary to  
4 prepare the substance for that delivery.

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

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

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

9 (m) "Division" means the Idaho division of occupational and profes-  
10 sional licenses.

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

20 (no) "Drug paraphernalia" means all equipment, products and mate-  
21 rials of any kind which are used, intended for use, or designed for use,  
22 in planting, propagating, cultivating, growing, harvesting, manufactur-  
23 ing, compounding, converting, producing, processing, preparing, testing,  
24 analyzing, packaging, repackaging, storing, containing, concealing, in-  
25 jecting, ingesting, inhaling, or otherwise introducing into the human body  
26 a controlled substance in violation of this chapter. It includes, but is not  
27 limited to:

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

32 (2) Kits used, intended for use, or designed for use in manufacturing,  
33 compounding, converting, producing, processing or preparing con-  
34 trolled substances;

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

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

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

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

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

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

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

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

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

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

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

18 (ii) Water pipes;

19 (iii) Carburetion tubes and devices;

20 (iv) Smoking and carburetion masks;

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

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

25 (vii) Chamber pipes;

26 (viii) Carburetor pipes;

27 (ix) Electric pipes;

28 (x) Air-driven pipes;

29 (xi) Chillums;

30 (xii) Bongs;

31 (xiii) Ice pipes or chillers;

32 In determining whether an object is drug paraphernalia, a court or other au-  
33 thority should consider, in addition to all other logically relevant fac-  
34 tors, the following:

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

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

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

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

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

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

- 1 7. Instructions, oral or written, provided with the object concerning  
2 its use;
- 3 8. Descriptive materials accompanying the object ~~which~~ that explain or  
4 depict its use;
- 5 9. National and local advertising concerning its use;
- 6 10. The manner in which the object is displayed for sale;
- 7 11. Whether the owner, or anyone in control of the object, is a legit-  
8 imate supplier of like or related items to the community, such as a li-  
9 censed distributor or dealer of tobacco products;
- 10 12. Direct or circumstantial evidence of the ratio of sales of the ob-  
11 ject(s) to the total sales of the business enterprise;
- 12 13. The existence and scope of legitimate uses for the object in the com-  
13 munity;
- 14 14. Expert testimony concerning its use.
- 15 (ep) "Financial institution" means any bank, trust company, savings  
16 and loan association, savings bank, mutual savings bank, credit union, or  
17 loan company under the jurisdiction of the state or under the jurisdiction of  
18 an agency of the United States.
- 19 (pq) "Immediate precursor" means a substance which the board has found  
20 to be and by rule designates as being the principal compound commonly used or  
21 produced primarily for use, and which is an immediate chemical intermediary  
22 used or likely to be used in the manufacture of a controlled substance, the  
23 control of which is necessary to prevent, curtail or limit manufacture.
- 24 (qr) "Isomer" means the optical isomer, except as used in section  
25 37-2705(d), Idaho Code.
- 26 (rs) "Law enforcement agency" means a governmental unit of one (1) or  
27 more persons employed full-time or part-time by the state or a political sub-  
28 division of the state for the purpose of preventing and detecting crime and  
29 enforcing state laws or local ordinances, employees of which unit are autho-  
30 rized to make arrests for crimes while acting within the scope of their au-  
31 thority.
- 32 (st) "Manufacture" means the production, preparation, propagation,  
33 compounding, conversion or processing of a controlled substance, and in-  
34 cludes extraction, directly or indirectly, from substances of natural  
35 origin, or independently by means of chemical synthesis, or by a combina-  
36 tion of extraction and chemical synthesis, and includes any packaging or  
37 repackaging of the substance or labeling or relabeling of its container,  
38 except that this term does not include the preparation or compounding of a  
39 controlled substance:
- 40 (1) By a practitioner as an incident to his administering, dispensing  
41 or, as authorized by board rule, distributing of a controlled substance  
42 in the course of his professional practice; or
- 43 (2) By a practitioner, or by his authorized agent under his supervi-  
44 sion, for the purpose of, or as an incident to, research, teaching, or  
45 chemical analysis and not for delivery.
- 46 (tu) "Marijuana" means all parts of the plant of the genus Cannabis,  
47 regardless of species, and whether growing or not; the seeds thereof; the  
48 resin extracted from any part of such plant; and every compound, manufac-  
49 ture, salt, derivative, mixture, or preparation of such plant, its seeds or  
50 resin. It does not include the mature stalks of the plant unless the same are

1 intermixed with prohibited parts thereof, fiber produced from the stalks,  
 2 oil or cake made from the seeds or the achene of such plant, any other com-  
 3 pound, manufacture, salt, derivative, mixture, or preparation of the ma-  
 4 ture stalks, except the resin extracted therefrom or where the same are in-  
 5 termixed with prohibited parts of such plant, fiber, oil, or cake, or the  
 6 sterilized seed of such plant which is incapable of germination. Evidence  
 7 that any plant material or the resin or any derivative thereof, regardless  
 8 of form, contains any of the chemical substances classified as tetrahydro-  
 9 cannabinols shall create a presumption that such material is "marijuana" as  
 10 defined and prohibited herein.

11 (~~uv~~) "Narcotic drug" means any of the following, whether produced di-  
 12 rectly or indirectly by extraction from substances of vegetable origin, or  
 13 independently by means of chemical synthesis, or by a combination of extrac-  
 14 tion and chemical synthesis:

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

17 (2) Any salt, compound, isomer, derivative, or preparation thereof  
 18 ~~which that~~ is chemically equivalent or identical with any of the sub-  
 19 stances referred to in clause 1, but not including the isoquinoline  
 20 alkaloids of opium.

21 (3) Opium poppy and poppy straw.

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

27 (~~w~~) "Opiate" means any substance having an addiction-forming or  
 28 addiction-sustaining liability similar to morphine or being capable of  
 29 conversion into a drug having addiction-forming or addiction-sustaining  
 30 liability. It does not include, unless specifically designated as con-  
 31 trolled under section 37-2702, Idaho Code, the dextrorotatory isomer of  
 32 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does in-  
 33 clude its racemic and levorotatory forms.

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

36 (~~y~~) "Peace officer" means any duly appointed officer or agent of a law  
 37 enforcement agency, as defined herein, including~~r~~ but not limited to~~r~~ a duly  
 38 appointed investigator or agent of the Idaho state police, an officer or an  
 39 employee of the board of pharmacy~~r~~ who is authorized by the board to enforce  
 40 this chapter, an officer of the Idaho state police, a sheriff or deputy sher-  
 41 iff of a county, or a marshal or policeman of any city.

42 (~~yz~~) "Person" means individual, corporation, government, or govern-  
 43 mental subdivision or agency, business trust, estate, trust, partnership or  
 44 association, or any other legal entity.

45 (~~z~~aa) "Poppy straw" means all parts, except the seeds, of the opium  
 46 poppy~~r~~ after mowing.

47 (~~abb~~) "Practitioner" means:

48 (1) A physician, dentist, veterinarian, scientific investigator, or  
 49 other person licensed, registered or otherwise permitted to distrib-  
 50 ute, dispense, conduct research with respect to~~r~~ or to administer a

1 controlled substance in the course of his professional practice or re-  
2 search in this state;

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

7 (~~bb~~cc) "Prescribe" means a direction or authorization permitting an ul-  
8 timate user to lawfully obtain or be administered controlled substances.

9 (~~ee~~dd) "Prescriber" means an individual currently licensed, reg-  
10 istered or otherwise authorized to prescribe and administer controlled  
11 substances in the course of professional practice.

12 (~~de~~ee) "Production" includes the manufacture, planting, cultivation,  
13 growing, or harvesting of a controlled substance.

14 (~~ee~~ff) "Simulated controlled substance" means a substance that is not a  
15 controlled substance, but which by appearance or representation would lead  
16 a reasonable person to believe that the substance is a controlled substance.  
17 Appearance includes, but is not limited to, color, shape, size, and markings  
18 of the dosage unit. Representation includes, but is not limited to, repre-  
19 sentations or factors of the following nature:

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

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

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

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

29 (~~gg~~hh) "Ultimate user" means a person who lawfully possesses a con-  
30 trolled substance for his own use or for the use of a member of his household  
31 or for administering to an animal owned by him or by a member of his house-  
32 hold.

33 (~~hh~~ii) "Utility" means any person, association, partnership or cor-  
34 poration providing telephone and/or communication services, electricity,  
35 natural gas or water to the public.

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

38 37-2716. REGISTRATION REQUIREMENTS. (a) Every person who manufac-  
39 tures, distributes, prescribes, administers, dispenses, or conducts re-  
40 search with any controlled substance within this state shall obtain annually  
41 a registration issued by the board in accordance with this chapter and its  
42 rules.

43 (b) Every prescriber, except veterinarians, shall also register with  
44 the ~~board~~ division to obtain online access to the controlled substances pre-  
45 scriptions database.

46 (c) Persons registered by the board under this chapter may possess,  
47 manufacture, distribute, dispense, prescribe, administer, or conduct re-  
48 search with those substances to the extent authorized by their registration

1 and licensing entity and in conformity with the other provisions of this  
2 chapter.

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

5 (1) An agent or employee of any person registered pursuant to this chap-  
6 ter, if he is acting in the usual course of his business or employment;

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

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

13 (e) The board may waive by rule the requirement for registration of cer-  
14 tain persons if it finds it consistent with the public health and safety.

15 (f) A separate registration is required at each principal place of  
16 business or professional practice where the applicant manufactures, dis-  
17 tributes, administers, dispenses, or conducts research with controlled  
18 substances, except a separate registration is not required under this chap-  
19 ter for practitioners engaging in research with nonnarcotic controlled  
20 substances in schedules II through IV where the practitioner is already reg-  
21 istered under this chapter in another capacity.

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

26 (h) The board may inspect the establishment of a registrant or appli-  
27 cant for registration in accordance with this chapter and board rule.

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

30 37-2726. FILING PRESCRIPTIONS -- DATABASE. (1) All controlled sub-  
31 stances, and opioid antagonists as defined in section 54-1733B, Idaho Code,  
32 dispensed for humans shall be filed with the board division electronically  
33 in a format established by the board or by other method as required by board  
34 rule division. The board division may require the filing of other pre-  
35 scriptions by board rule. The board division shall establish ~~by rule~~ the  
36 information to be submitted pursuant to the purposes of this section and the  
37 purposes set forth in section 37-2730A, Idaho Code.

38 (2) The board division shall create, operate and maintain a controlled  
39 substances prescriptions database containing the information submitted  
40 pursuant to subsection (1) of this section to be used for the purposes  
41 and subject to the terms, conditions and immunities described in section  
42 37-2730A, Idaho Code. The board division shall retain the information sub-  
43 mitted pursuant to subsection (1) of this section for a period of five (5)  
44 years from the date the controlled substance was dispensed. The database  
45 information must be made available only to the following:

46 (a) Authorized individuals employed by the division, Idaho's boards,  
47 or other states' licensing entities charged with the licensing and dis-  
48 cipline of practitioners;

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

4 (c) Authorized individuals under the direction of the department of  
5 health and welfare for the purpose of monitoring and enforcing that  
6 department's responsibilities under the public health, medicare and  
7 medicaid laws;

8 (d) A practitioner, licensed in Idaho or another state, having author-  
9 ity to prescribe controlled substances, or a delegate under the prac-  
10 titioner's supervision, to the extent the information relates specifi-  
11 cally to a current patient of the practitioner to whom the practitioner  
12 is prescribing or considering prescribing any controlled substance;

13 (e) A pharmacist, licensed in Idaho or another state, having author-  
14 ity to dispense controlled substances, or a delegate under the pharma-  
15 cist's supervision, to the extent the information relates specifically  
16 to a current patient to whom that pharmacist is dispensing or consid-  
17 ering dispensing any controlled substance, or providing pharmaceutical  
18 care as defined in the Idaho pharmacy act;

19 (f) An individual who is the recipient of a dispensed controlled sub-  
20 stance entered into the database may access records that pertain to that  
21 individual, upon the production of positive identification, or that in-  
22 dividual's designee upon production of a notarized release of informa-  
23 tion by that individual;

24 (g) Upon a lawful order issued by the presiding judge in a court of com-  
25 petent jurisdiction for the release of prescription monitoring program  
26 records of a named individual;

27 (h) Prosecuting attorneys, deputy prosecuting attorneys and special  
28 prosecutors of a county or city and special assistant attorneys general  
29 from the office of the attorney general engaged in enforcing law regu-  
30 lating controlled substances; and

31 (i) A medical examiner or coroner who is an officer of or employed by a  
32 state or local government, for determining a cause of death or for per-  
33 forming other duties authorized by law.

34 (3) The ~~board~~ division shall require pharmacists and prescribers, ex-  
35 cept veterinarians, to ~~annually~~ register with the ~~board~~ division to obtain  
36 online access to the controlled substances prescriptions database.

37 (4) The ~~board~~ division must maintain records on the information dis-  
38 closed from the database, including:

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

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

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

43 (5) The ~~board~~ division shall ~~promulgate rules to~~ ensure that only au-  
44 thorized individuals have access to the database.

45 (6) ~~The board shall limit to four (4) the number of delegates that a~~  
46 ~~practitioner or pharmacist may permit to access the database under the prac-~~  
47 ~~titioner's or pharmacist's supervision.~~

48 (-7) Any person who knowingly misrepresents to the ~~board~~ division that  
49 he is a person entitled under subsection (2) of this section to receive  
50 information from the controlled substances prescriptions database under



1 the conditions therein provided, and who receives information from the  
2 controlled substances prescriptions database resulting from that misrep-  
3 resentation, shall be guilty of a misdemeanor, punishable by imprisonment  
4 in a county jail not to exceed six (6) months, or by a fine not to exceed two  
5 thousand dollars (\$2,000), or both. The foregoing criminal penalty is in  
6 addition to, and not in lieu of, any other civil or administrative penalty or  
7 sanction authorized by law.

8 (~~8~~7) Any person in possession, whether lawfully or unlawfully, of in-  
9 formation from the controlled substances prescriptions database that iden-  
10 tifies an individual patient and who knowingly discloses such information to  
11 a person not authorized to receive or use such information under any state or  
12 federal law or rule or regulation, or the lawful order of a court of compe-  
13 tent jurisdiction, or written authorization of the individual patient shall  
14 be guilty of a misdemeanor, punishable by imprisonment in a county jail not  
15 to exceed six (6) months, or by a fine not to exceed two thousand dollars  
16 (\$2,000), or both. The foregoing criminal penalty is in addition to, and not  
17 in lieu of, any other civil or administrative penalty or sanction authorized  
18 by law. The provisions of this subsection shall not apply to disclosure of  
19 individual patient information by the patient himself. The provisions of  
20 this subsection shall not apply to disclosure of information by a prosecut-  
21 ing attorney, deputy prosecuting attorney or special prosecutor of a county  
22 or city or by a special assistant attorney general from the office of the at-  
23 torney general in the course of a criminal proceeding, whether preconviction  
24 or postconviction.

25 (~~9~~8) Any person with access to the board division's online prescription  
26 monitoring program pursuant to a board division-issued user account, login  
27 name and password who intentionally shares or recklessly fails to safeguard  
28 his user account, login name and password, resulting in another person not  
29 authorized to receive or use such information under the provisions of any  
30 state or federal law, rule or regulation obtaining information from the  
31 controlled substances prescriptions database, shall be guilty of a misde-  
32 meanor, punishable by imprisonment in a county jail not to exceed six (6)  
33 months or by a fine not to exceed two thousand dollars (\$2,000), or both. The  
34 foregoing criminal penalty is in addition to, and not in lieu of, any other  
35 civil or administrative penalty or sanction authorized by law.

36 (~~10~~9) The board division may, at its discretion, block access to  
37 certain controlled substances prescriptions database data if the board  
38 division has reason to believe that access to the data is or may be used il-  
39 legally.

40 (~~11~~0) All costs associated with recording and submitting data as re-  
41 quired in this section are assumed by the dispensing practitioner recording  
42 and submitting the data.

43 (~~12~~1) For purposes of this section, "delegate" means a nurse, medical or  
44 office assistant, current student of a health profession if a licensed prac-  
45 titioner or registered graduate of such profession who may access the data-  
46 base, or a registered pharmacy technician who is designated by a supervising  
47 practitioner or pharmacist to access the database according to the provi-  
48 sions of this section and who must register with the state board of pharmacy  
49 division for such access.

1 SECTION 4. That Section 37-2730A, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 37-2730A. PRESCRIPTION TRACKING PROGRAM. (1) The board division shall  
4 maintain a program to track the prescriptions for controlled substances that  
5 are filed with the board division under section 37-2726, Idaho Code, for the  
6 purpose of assisting in identifying illegal activity related to the dis-  
7 pensing of controlled substances and for the purpose of assisting the board  
8 division in providing information to patients, practitioners and pharma-  
9 cists to assist in avoiding inappropriate use of controlled substances. The  
10 tracking program and any data created thereby shall be administered by the  
11 board division.

12 (2) The board division shall use the information obtained through the  
13 tracking program in identifying activity it reasonably suspects may be in  
14 violation of this chapter or medical assistance law. The board division  
15 shall report this information to the individuals and persons set forth in  
16 section 37-2726(2), Idaho Code. The board division may release unsolicited  
17 information to pharmacists and practitioners when the release of informa-  
18 tion may be of assistance in preventing or avoiding inappropriate use of  
19 controlled substances. The board division may provide the appropriate law  
20 enforcement agency, medicaid or medicare agency, or licensing board with the  
21 relevant information in the board division's possession, including informa-  
22 tion obtained from the tracking program, for further investigation, or other  
23 appropriate law enforcement or administrative enforcement use.

24 (3) Information, ~~which that~~ does not identify individual patients,  
25 practitioners, or dispensing pharmacists or pharmacies, may be released by  
26 the board division for educational, research, or public information pur-  
27 poses.

28 (4) Nothing herein shall prevent a pharmacist or practitioner from fur-  
29 nishing another pharmacist or practitioner information obtained pursuant to  
30 and in compliance with this chapter.

31 (5) Unless there is shown malice or criminal intent or gross negligence  
32 or reckless, willful and wanton conduct as defined in section 6-904C, Idaho  
33 Code, the state of Idaho, the board division, any other state agency, or any  
34 person, or entity in proper possession of information as herein provided  
35 shall not be subject to any liability or action for money damages or other  
36 legal or equitable relief by reason of any of the following:

37 (a) The furnishing of information under the conditions herein pro-  
38 vided;

39 (b) The receiving and use of, or reliance on, such information;

40 (c) The fact that any such information was not furnished; or

41 (d) The fact that such information was factually incorrect or was re-  
42 leased by the board division to the wrong person or entity.

43 (6) The board division may apply for any available grants and accept any  
44 gifts, grants or donations to assist in developing and maintaining the pro-  
45 gram required by this section.

46 SECTION 5. That Section 37-2732, Idaho Code, be, and the same is hereby  
47 amended to read as follows:

1 37-2732. PROHIBITED ACTS A -- PENALTIES. (a) Except as authorized by  
2 this chapter, it is unlawful for any person to manufacture or deliver, or  
3 possess with intent to manufacture or deliver, a controlled substance.

4 (1) Any person who violates this subsection with respect to:

5 (A) A controlled substance classified in schedule I which is a  
6 narcotic drug or a controlled substance classified in schedule II,  
7 except as provided for in section 37-2732B(a) (3), Idaho Code, is  
8 guilty of a felony and upon conviction may be imprisoned for a term  
9 of years not to exceed life imprisonment, or fined not more than  
10 twenty-five thousand dollars (\$25,000), or both;

11 (B) Any other controlled substance which is a nonnarcotic drug  
12 classified in schedule I, or a controlled substance classified in  
13 schedule III, is guilty of a felony and upon conviction may be im-  
14 prisoned for not more than five (5) years, fined not more than fif-  
15 teen thousand dollars (\$15,000), or both;

16 (C) A substance classified in schedule IV~~7~~ is guilty of a felony  
17 and upon conviction may be imprisoned for not more than three (3)  
18 years, fined not more than ten thousand dollars (\$10,000), or  
19 both;

20 (D) A substance classified in schedules V and VI~~7~~ is guilty of  
21 a misdemeanor and upon conviction may be imprisoned for not more  
22 than one (1) year, fined not more than five thousand dollars  
23 (\$5,000), or both.

24 (b) Except as authorized by this chapter, it is unlawful for any per-  
25 son to create, deliver, or possess with intent to deliver, a counterfeit sub-  
26 stance.

27 (1) Any person who violates this subsection with respect to:

28 (A) A counterfeit substance classified in schedule I which is a  
29 narcotic drug, or a counterfeit substance classified in schedule  
30 II, is guilty of a felony and upon conviction may be imprisoned for  
31 not more than fifteen (15) years, fined not more than twenty-five  
32 thousand dollars (\$25,000), or both;

33 (B) Any other counterfeit substance classified in schedule I  
34 which is a nonnarcotic drug contained in schedule I or a counter-  
35 feit substance contained in schedule III~~7~~ is guilty of a felony and  
36 upon conviction may be imprisoned for not more than five (5) years,  
37 fined not more than fifteen thousand dollars (\$15,000), or both;

38 (C) A counterfeit substance classified in schedule IV~~7~~ is guilty  
39 of a felony and upon conviction may be imprisoned for not more  
40 than three (3) years, fined not more than ten thousand dollars  
41 (\$10,000), or both;

42 (D) A counterfeit substance classified in schedules V and VI or a  
43 noncontrolled counterfeit substance~~7~~ is guilty of a misdemeanor  
44 and upon conviction may be imprisoned for not more than one (1)  
45 year, fined not more than five thousand dollars (\$5,000), or both.

46 (c) It is unlawful for any person to possess a controlled substance un-  
47 less the substance was obtained directly from, or pursuant to, a valid pre-  
48 scription or order of a practitioner while acting in the course of his pro-  
49 fessional practice, or except as otherwise authorized by this chapter.

1 (1) Any person who violates this subsection and has in his possession  
2 a controlled substance classified in schedule I which is a narcotic  
3 drug or a controlled substance classified in schedule II, is guilty of  
4 a felony and upon conviction may be imprisoned for not more than seven  
5 (7) years, or fined not more than fifteen thousand dollars (\$15,000), or  
6 both.

7 (2) Any person who violates this subsection and has in his possession  
8 lysergic acid diethylamide is guilty of a felony and upon conviction may  
9 be imprisoned for not more than three (3) years, or fined not more than  
10 five thousand dollars (\$5,000), or both.

11 (3) Any person who violates this subsection and has in his possession a  
12 controlled substance which is a nonnarcotic drug classified in schedule  
13 I except lysergic acid diethylamide, or a controlled substance classi-  
14 fied in schedules III, IV, V and VI is guilty of a misdemeanor and upon  
15 conviction thereof may be imprisoned for not more than one (1) year, or  
16 fined not more than one thousand dollars (\$1,000), or both.

17 (d) It shall be unlawful for any person to be present at or on premises  
18 of any place where he knows illegal controlled substances are being manufac-  
19 tured or cultivated, or are being held for distribution, transportation, de-  
20 livery, administration, use, or to be given away. A violation of this sec-  
21 tion shall deem those persons guilty of a misdemeanor and upon conviction  
22 shall be punished by a fine of not more than three hundred dollars (\$300) and  
23 not more than ninety (90) days in the county jail, or both.

24 (e) If any person is found to possess marijuana, which for the purposes  
25 of this subsection shall be restricted to all parts of the plants of the  
26 genus Cannabis, including the extract or any preparation of cannabis which  
27 contains tetrahydrocannabinol, in an amount greater than three (3) ounces  
28 net weight, it shall be a felony and upon conviction may be imprisoned for  
29 not more than five (5) years, or fined not more than ten thousand dollars  
30 (\$10,000), or both.

31 (f) If two (2) or more persons conspire to commit any offense defined in  
32 this act, said persons shall be ~~punishable~~ punished by a fine or imprison-  
33 ment, or both, which may not exceed the maximum punishment prescribed for the  
34 offense, the commission of which was the object of the conspiracy.

35 (g) (1) It is unlawful for any person to manufacture or distribute a  
36 "simulated controlled substance," or to possess with intent to distrib-  
37 ute, a "simulated controlled substance." Any person who violates this  
38 subsection shall, upon conviction, be guilty of a misdemeanor and upon  
39 conviction thereof shall be punished by a fine of not more than one thou-  
40 sand dollars (\$1,000) and not more than one (1) year in the county jail,  
41 or both.

42 (2) It is unlawful for any person to possess a "simulated controlled  
43 substance." Any person who violates this subsection shall, upon convic-  
44 tion, be guilty of a misdemeanor and upon conviction thereof shall be  
45 punished by a fine of not more than three hundred dollars (\$300) and not  
46 more than six (6) months in the county jail, or both.

47 (h) It is unlawful for any person to cause to be placed in any newspaper,  
48 magazine, handbill, or other publication, or to post or distribute in any  
49 public place, any advertisement or solicitation offering for sale simulated  
50 controlled substances. Any person who violates this subsection is guilty of

1 a misdemeanor and shall be punished in the same manner as prescribed in sub-  
2 section (g) of this section.

3 (i) No civil or criminal liability shall be imposed by virtue of this  
4 chapter on any person registered under the ~~U~~uniform ~~C~~controlled ~~S~~substances  
5 ~~A~~act who manufactures, distributes, or possesses an imitation controlled  
6 substance for use as a placebo or other use by a registered practitioner, as  
7 defined in section 37-2701(~~aa~~~~bb~~), Idaho Code, in the course of professional  
8 practice or research.

9 (j) No prosecution under this chapter shall be dismissed solely by rea-  
10 son of the fact that the dosage units were contained in a bottle or other con-  
11 tainer with a label accurately describing the ingredients of the imitation  
12 controlled substance dosage units. The good faith of the defendant shall be  
13 an issue of fact for the trier of fact.

14 (k) Upon conviction of a felony or misdemeanor violation under this  
15 chapter or upon conviction of a felony pursuant to the "racketeering act,"  
16 section 18-7804, Idaho Code, or the money laundering and illegal investment  
17 provisions of section 18-8201, Idaho Code, the court may order restitution  
18 for costs incurred by law enforcement agencies in investigating the viola-  
19 tion. Law enforcement agencies shall include, but not be limited to, the  
20 Idaho state police, county and city law enforcement agencies, the office  
21 of the attorney general and county and city prosecuting attorney offices.  
22 Costs shall include, but not be limited to, those incurred for the purchase  
23 of evidence, travel and per diem for law enforcement officers and witnesses  
24 throughout the course of the investigation, hearings and trials, and any  
25 other investigative or prosecution expenses actually incurred, including  
26 regular salaries of employees. In the case of reimbursement to the Idaho  
27 state police, those moneys shall be paid to the Idaho state police for  
28 deposit into the drug and driving while under the influence enforcement  
29 donation fund created in section 57-816, Idaho Code. In the case of reim-  
30 bursement to the office of the attorney general, those moneys shall be paid  
31 to the general fund. A conviction for the purposes of this section means that  
32 the person has pled guilty or has been found guilty, notwithstanding the form  
33 of the judgment (s) or withheld judgment (s).