

IN THE SENATE

SENATE BILL NO. 1322, As Amended in the House

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO EPINEPHRINE AUTO-INJECTORS; AMENDING SECTION 54-1704, IDAHO
2 CODE, TO PROVIDE THAT THE PRACTICE OF PHARMACY INCLUDES PRESCRIBING
3 EPINEPHRINE AUTO-INJECTORS; AMENDING SECTION 54-1732, IDAHO CODE,
4 TO REVISE PROVISIONS REGARDING VIOLATIONS AND PENALTIES AND TO MAKE
5 TECHNICAL CORRECTIONS; AMENDING SECTION 54-1733, IDAHO CODE, TO RE-
6 VISE PROVISIONS REGARDING VALIDITY OF PRESCRIPTION DRUG ORDERS AND
7 TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 17, TITLE 54, IDAHO
8 CODE, BY THE ADDITION OF A NEW SECTION 54-1733C, IDAHO CODE, TO PROVIDE
9 THAT EPINEPHRINE AUTO-INJECTORS MAY BE PRESCRIBED AND DISPENSED TO
10 CERTAIN ENTITIES, TO PROVIDE THAT CERTAIN ENTITIES MAY STOCK EPINEPH-
11 RINE AUTO-INJECTORS, TO PROVIDE THAT EPINEPHRINE AUTO-INJECTORS MAY
12 BE PROVIDED OR ADMINISTERED TO CERTAIN PERSONS, TO REQUIRE TRAINING,
13 TO PROVIDE THAT CERTAIN PERSONS ARE EXEMPT FROM TRAINING, TO PROVIDE
14 IMMUNITY, TO REQUIRE DISPOSAL OF OUTDATED PRODUCT AND TO DEFINE TERMS;
15 AMENDING CHAPTER 17, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
16 TION 54-1733D, IDAHO CODE, TO PROVIDE THAT PHARMACISTS OR PRESCRIBERS
17 MAY PRESCRIBE EPINEPHRINE AUTO-INJECTORS TO CERTAIN PERSONS; AND
18 AMENDING SECTION 54-1734, IDAHO CODE, TO REVISE PROVISIONS REGARDING
19 POSSESSION OF LEGEND DRUGS.
20

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

22 SECTION 1. That Section 54-1704, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 54-1704. PRACTICE OF PHARMACY. "Practice of pharmacy" means:

25 (1) The interpretation, evaluation and dispensing of prescription drug
26 orders;

27 (2) Participation in drug and device selection, drug administration,
28 prospective and retrospective drug reviews and drug or drug-related re-
29 search;

30 (3) The provision of patient counseling and the provision of those acts
31 or services necessary to provide pharmaceutical care;

32 (4) The responsibility for:

33 (a) Compounding and labeling of drugs and devices, except labeling by
34 a manufacturer, repackager or distributor of nonprescription drugs and
35 commercially packaged legend drugs and devices;

36 (b) Proper and safe storage of drugs and devices, and maintenance of
37 proper records for them; and

38 (c) The offering or performing of those acts, services, operations or
39 transactions necessary to the conduct, operation, management and con-
40 trol of pharmacy;

41 (5) The prescribing of:

- 1 (a) Dietary fluoride supplements when prescribed according to the Amer-
 2 ican dental association's recommendations for persons whose drinking
 3 water is proven to have a fluoride content below the United States de-
 4 partment of health and human services' recommended concentration;
 5 (b) Agents for active immunization when prescribed for susceptible per-
 6 sons twelve (12) years of age or older for the protection from communi-
 7 cable disease; ~~and~~
 8 (c) Opioid antagonists pursuant to section 54-1733B, Idaho Code; and
 9 (d) Epinephrine auto-injectors pursuant to sections 54-1733C and
 10 54-1733D, Idaho Code.

11 SECTION 2. That Section 54-1732, Idaho Code, be, and the same is hereby
 12 amended to read as follows:

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

18 (2) Reinstatement of a certificate that has been suspended, revoked
 19 or restricted by the board may be granted in accordance with the procedures
 20 specified in section 54-1728(6), Idaho Code.

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

23 (a) The sale, delivery or administration of any prescription drug or
 24 legend drug, except an opioid antagonist pursuant to section 54-1733B,
 25 Idaho Code, or an epinephrine auto-injector pursuant to sections
 26 54-1733C and 54-1733D, Idaho Code, unless:

27 (i) Such legend drug is dispensed or delivered by a pharmacist
 28 upon an original prescription, drug order or prescription drug or-
 29 der by a practitioner in good faith in the course of his practice.
 30 Any person violating the provisions of this subparagraph shall
 31 be guilty of a felony, and on conviction thereof shall be impris-
 32 oned in the state penitentiary for a term not to exceed three (3)
 33 years, or punished by a fine of not more than five thousand dollars
 34 (\$5,000) or by both such fine and imprisonment.

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

44 (b) The refilling of any prescription or drug order for a legend drug
 45 except as designated on the prescription or drug order, or by the autho-
 46 rization of the practitioner. Any person guilty of violating the pro-
 47 visions of this paragraph shall be guilty of a misdemeanor and upon con-
 48 viction thereof shall be incarcerated in the county jail for a term not

1 to exceed one (1) year, or punished by a fine of not more than one thou-
2 sand dollars (\$1,000) or by both such fine and incarceration.

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

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

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

18 (ii) The sale of minimal quantities of prescription drugs to prac-
19 titioners for office use.

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

22 (iv) Intracompany sales of prescription drugs, meaning any trans-
23 action or transfer between any division, subsidiary, parent or af-
24 filiated or related company under common ownership and control of
25 a corporate entity, or any transaction or transfer between colli-
26 censees or a colicensed product, but never to a wholesale distrib-
27 utor.

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

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

40 (g) It is unlawful to:

41 (i) Obtain or attempt to obtain a legend drug or procure or at-
42 tempt to procure the administration of a legend drug by fraud, de-
43 ceit, misrepresentation or subterfuge; by the forgery or alter-
44 ation of a prescription, drug order, or of any written order; by
45 the concealment of a material fact; or by the use of a false name or
46 the giving of a false address.

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

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

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

7 (v) Make or utter any false or forged prescription or false drug
8 order or forged written order.

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

13 (vii) Wholesale or retail any prescription or legend drug to any
14 person in this state not entitled by law to deliver such drug to
15 another.

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

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

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

36 SECTION 3. That Section 54-1733, Idaho Code, be, and the same is hereby
37 amended to read as follows:

38 54-1733. VALIDITY OF PRESCRIPTION DRUG ORDERS. (1) A prescription
39 drug order for a legend drug is valid only if it is issued by a prescriber for
40 a legitimate medical purpose arising from a prescriber-patient relationship
41 which includes a documented patient evaluation adequate to establish diag-
42 noses and identify underlying conditions and/or contraindications to the
43 treatment.

44 (2) A prescriber who is otherwise authorized to perform any of the ac-
45 tivities listed ~~herein~~ in this section may prescribe or perform any of the
46 following activities for a patient with whom the prescriber does not have a
47 prescriber-patient relationship under the following circumstances:

48 (a) Writing initial admission orders for a newly hospitalized patient;

1 (b) Writing a prescription drug order for a patient of another pre-
2 scriber for whom the prescriber is taking call;

3 (c) Writing a prescription drug order for a patient examined by a physi-
4 cian assistant, advanced practice registered nurse or other licensed
5 practitioner with whom the prescriber has a supervisory or collabora-
6 tive relationship;

7 (d) Writing a prescription drug order for a medication on a short-term
8 basis for a new patient prior to the patient's first appointment;

9 (e) Writing a prescription for an opioid antagonist pursuant to section
10 54-1733B, Idaho Code;

11 (f) In emergency situations where the life or health of the patient is
12 in imminent danger;

13 (g) In emergencies that constitute an immediate threat to the public
14 health including, but not limited to, empiric treatment or prophylaxis
15 to prevent or control an infectious disease outbreak;

16 (h) Epinephrine auto-injectors in the name of a school pursuant to sec-
17 tion 33-520A, Idaho Code, or an authorized entity pursuant to section
18 54-1733C, Idaho Code; and

19 (i) If a prescriber makes a diagnosis of a sexually transmitted disease
20 in a patient, the prescriber may prescribe or dispense antibiotics to
21 the infected patient's named sexual partner or partners for treatment
22 of the sexually transmitted disease as recommended by the most current
23 centers for disease control and prevention (CDC) guidelines.

24 (3) Treatment, including issuing a prescription drug order, based
25 solely on an online questionnaire or consultation outside of an ongoing
26 clinical relationship does not constitute a legitimate medical purpose.

27 (4) A prescription drug order shall only be issued by a prescriber in-
28 cluding a prescriber who is licensed in a jurisdiction other than the state
29 of Idaho and is permitted by such license to prescribe legend drugs in the
30 course of his professional practice so long as the individual is acting
31 within the jurisdiction, scope and authority of his license when issuing the
32 prescription drug order.

33 (5) The following acts shall be unlawful:

34 (a) To knowingly issue an invalid prescription drug order for a legend
35 drug;

36 (b) To knowingly dispense a legend drug pursuant to an invalid pre-
37 scription drug order; or

38 (c) To prescribe drugs to individuals without a prescriber-patient re-
39 lationship, unless excepted in this section.

40 Such acts shall constitute unprofessional conduct and the prescriber or
41 dispenser shall be subject to discipline according to the provisions of
42 the Idaho Code chapter pursuant to which the prescriber or dispenser is li-
43 censed, certified or registered.

44 SECTION 4. That Chapter 17, Title 54, Idaho Code, be, and the same is
45 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
46 ignated as Section 54-1733C, Idaho Code, and to read as follows:

47 54-1733C. EPINEPHRINE AUTO-INJECTORS -- EMERGENCY ADMINISTRA-
48 TION. Notwithstanding any provision of law to the contrary:

1 (1) A health care practitioner, including a pharmacist, may prescribe
2 epinephrine auto-injectors in the name of an authorized entity for use in ac-
3 cordance with this section, and pharmacists and other health care practi-
4 tioners may dispense epinephrine auto-injectors pursuant to a prescription
5 issued in the name of an authorized entity.

6 (2) An authorized entity may acquire and stock a supply of epinephrine
7 auto-injectors pursuant to a prescription issued in accordance with this
8 section. Such epinephrine auto-injectors shall be stored in a location
9 readily accessible in an emergency and in accordance with the epinephrine
10 auto-injector's instructions for use. Following administration, the ad-
11 ministering person shall contact emergency medical services as soon as
12 possible.

13 (3) An employee or agent of an authorized entity or other individual who
14 has completed the training required by subsection (4) of this section may use
15 an epinephrine auto-injector prescribed pursuant to subsection (1) of this
16 section to:

17 (a) Provide an epinephrine auto-injector to any individual whom the em-
18 ployee, agent or other individual believes in good faith to be experi-
19 encing anaphylaxis, or the parent, guardian or caregiver of such an in-
20 dividual, for immediate administration, regardless of whether the per-
21 son has a prescription for an epinephrine auto-injector or has previ-
22 ously been diagnosed with an allergy; or

23 (b) Administer an epinephrine auto-injector to any individual whom the
24 employee, agent or other individual believes in good faith to be experi-
25 encing anaphylaxis, regardless of whether the individual has a pre-
26 scription for an epinephrine auto-injector or has previously been diag-
27 nosed with an allergy.

28 (4) An employee, agent or other individual described in subsection (2)
29 or (3) of this section must complete a biennial anaphylaxis training pro-
30 gram. Such training shall be conducted by a nationally recognized organ-
31 ization experienced in training laypersons in emergency health treatment.
32 Training may be conducted online or in person, and at a minimum shall cover:

33 (a) How to recognize signs and symptoms of severe allergic reactions,
34 including anaphylaxis;

35 (b) Standards and procedures for the storage, administration and dis-
36 posal of an epinephrine auto-injector; and

37 (c) Emergency follow-up procedures.

38 The entity that conducts training shall issue a document of completion to
39 each person who successfully completes the anaphylaxis training program.

40 (5) Nurses, pharmacists or other health care practitioners may act pur-
41 suant to subsection (3) of this section without completing the training re-
42 quired by subsection (4) of this section.

43 (6) The following shall not be liable for any injuries or related dam-
44 ages that result from any act or omission taken pursuant to this section:

45 (a) An authorized entity that possesses and makes available epineph-
46 rine auto-injectors, and the employees, agents or other individuals as-
47 sociated with such entity;

48 (b) A pharmacist or other health care practitioner who prescribes or
49 dispenses epinephrine auto-injectors to an authorized entity; and

1 (c) An individual or entity that conducts the training required by sub-
2 section (4) of this section.

3 This provision of immunity does not apply to acts or omissions constituting
4 gross negligence. The administration of an epinephrine auto-injector in ac-
5 cordance with this section is not the practice of medicine or any other pro-
6 fession that otherwise requires licensure. This section does not eliminate,
7 limit or reduce any other immunity or defense that may be available under
8 state law, including that provided under section 5-330, Idaho Code.

9 (7) An entity located in this state shall not be liable for any injuries
10 or related damages that result from the provision or administration of an
11 epinephrine auto-injector outside of this state if the entity:

12 (a) Would not have been liable for such injuries or related damages had
13 the provision or administration occurred within this state; or

14 (b) Is not liable for such injuries or related damages under the law of
15 the state in which such provision or administration occurred.

16 (8) An authorized entity that possesses and makes available epineph-
17 rine auto-injectors shall take effort to remove outdated product and dispose
18 of it properly.

19 (9) As used in this section:

20 (a) "Administer" means the direct application of an epinephrine auto-
21 injector to the body of an individual.

22 (b) "Authorized entity" means any entity or organization, other than a
23 school pursuant to section 33-520A, Idaho Code, in connection with or at
24 which allergens capable of causing anaphylaxis may be present includ-
25 ing, but not limited to, recreation camps, colleges and universities,
26 day care facilities, youth sports leagues, amusement parks, restau-
27 rants, places of employment and sports arenas.

28 (c) "Epinephrine auto-injector" means a single-use device used for the
29 automatic injection of a premeasured dose of epinephrine into the human
30 body.

31 (d) "Health care practitioner" means an individual currently licensed,
32 registered or otherwise authorized to prescribe and administer drugs in
33 the course of professional practice.

34 (e) "Provide" means to supply one (1) or more epinephrine auto-injec-
35 tors to an individual.

36 SECTION 5. That Chapter 17, Title 54, Idaho Code, be, and the same is
37 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
38 ignated as Section 54-1733D, Idaho Code, and to read as follows:

39 54-1733D. EPINEPHRINE AUTO-INJECTORS -- PRESCRIPTION AND ADMINISTRA-
40 TION. Notwithstanding any other provision of law, any prescriber or phar-
41 macist acting in good faith and exercising reasonable care may prescribe an
42 epinephrine auto-injector to:

43 (1) A person at risk of experiencing anaphylaxis;

44 (2) A person in a position to assist a person at risk of experiencing
45 anaphylaxis;

46 (3) A person who, in the course of the person's official duties or busi-
47 ness, may encounter a person experiencing anaphylaxis; and

48 (4) A person who, in the opinion of the prescriber or pharmacist, has a
49 valid reason to be in possession of an epinephrine auto-injector.

1 SECTION 6. That Section 54-1734, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 54-1734. POSSESSION OF LEGEND DRUGS. (1) The following persons or
4 their agents or employees may possess legend drugs for use in the usual and
5 lawful course of their business or practice or in the performance of their
6 lawful official duties, without a valid prescription drug order:

7 (a) Pharmacists;

8 (b) Prescribers;

9 (c) Researchers who are prohibited from further distribution;

10 (d) Hospitals and other institutional facilities;

11 (e) Manufacturers and wholesalers;

12 (f) Common carriers solely in the usual course of business of trans-
13 porting prescription drugs;

14 (g) Schools or other authorized entities possessing stock supplies of
15 epinephrine auto-injectors pursuant to section 33-520A or 54-1733C,
16 Idaho Code, upon presenting proof that the authorized entity has at
17 least one (1) individual who has completed the training requirement of
18 section 33-520A(5) (b) or 54-1733C(4), Idaho Code; and

19 (h) Persons, agencies and organizations possessing opioid antagonists
20 pursuant to section 54-1733B, Idaho Code.

21 (2) Veterinary drug outlets or their agents or employees may possess
22 legend drugs, excluding controlled substances, for use in the usual and law-
23 ful course of their business or practice or in the performance of their law-
24 ful official duties, without a valid prescription drug order.