

Short Ballot Title

Initiative declaring nutritional and therapeutic products made and sold in Idaho are not subject to interstate commerce laws and regulations.

Long Ballot Title

An initiative relating to nutritional and therapeutic products; amending Title 39, Idaho Code, by the addition of a new Chapter 93, to provide that any nutritional or therapeutic product manufactured in Idaho and remaining within the borders of Idaho is not subject to federal law or federal regulation, including registration with the United States or one of its agencies, under the authority of congress to regulate interstate commerce.

Text of Initiative

CHAPTER 93

THE IDAHO NUTRITIONAL AND THERAPEUTIC PRODUCT PROTECTION ACT

39-9301. SHORT TITLE. This chapter shall be known and cited as the "The Idaho Nutritional and Therapeutic Product Protection Act."

39-9302. DECLARATION OF AUTHORITY. The people declare that the authority for this Section is the following:

(1) The tenth amendment to the United States Constitution guarantees to the states and their people all powers not granted to the federal government elsewhere in the Constitution and reserves to the state and people of Idaho certain powers as they were understood at the time that Idaho was admitted to statehood in 1890. The guaranty of those powers is a matter of contract between the state and people of Idaho and the United States as of the time that the compact with the United States was agreed upon and adopted by Idaho and the United States in 1890.

(2) The ninth amendment to the United States Constitution guarantees to the people rights not granted in the Constitution and reserves to the people of Idaho certain rights as they were understood at the time that Idaho was admitted to statehood in 1890. The guaranty of those rights is a matter of contract between the state and people of Idaho and the United States as of the time that the compact with the United States was agreed upon and adopted by Idaho and the United States in 1890.

(3) The regulation of intrastate commerce is vested in the states under the ninth and tenth amendments to the United States Constitution.

(4) There exists a body of federal case law that is completely incorrect and invalid, misreading the plain and ordinary meaning of the United States Constitution as understood by the framers and any person with common sense. Such decisions include *Wickard v. Filburn*, *Gonzales v. Raich* and *Deyo v. United States* which falsely claim that the United States government has the ability to regulate purely intrastate commerce because of its purely indirect effects on interstate commerce. Intrastate commerce was clearly meant to include commerce occurring between two states and not just indirectly effecting separate acts of commerce between two states. An interpretation such as *Wickard v. Filburn* which held that a man

feeding his chicken wheat was interstate commerce, if applied to the same sentence in the Constitution regarding regulation of "Commerce with foreign Nations" would imply that the United States had the authority to regulate all commerce in France, since such trade effects both direct foreign commerce with the United States and indirect commerce within the United States. It is clear that no such jurisdiction exists, and therefore the interpretation is inherently flawed. Moreover, if the founders had intended the document to regulate all commerce within the United States they would not have specifically mentioned interstate commerce, foreign commerce, and commerce with native American tribes; they would have simply stated that Congress can regulate all commerce in the United States.

(5) Every elected official of the state of Idaho has the duty to uphold the plain meaning of the law in their own understanding when they swear an oath to the United States Constitution, as such oath is not made to any unelected Federal court or one of its incorrect or arbitrary applications of law which would render the actual words of such document moot and worthless.

(6) The founders of the United States never intended for the federal government to have the sole authority to determine the extent of its own power. The principles of state nullification of invalid federal laws were advocated by both James Madison in the Virginia resolution and Thomas Jefferson in the Kentucky resolutions, both opposing the Alien and Sedition Acts abridging the first amendment rights to free speech.

39-9303. PURPOSE. The people of Idaho find that tending to a person's own health is a matter of private choice and not subject to federal government interference. This is particularly true of nutritional supplements which are inexpensive, yet effective remedies and preventatives for a variety of conditions. Efforts to implement a standard regime like the Codex Alimentarius Commission which would restrict the access of citizens to effective and inexpensive health care are abhorrent to the people of Idaho. This act is meant to preempt any attempt by the Food and Drug Administration or any other agency of the federal government to limit an Idahoan's access to nutritional supplements produced in this state, as well as to extend such protections to other pharmaceutical regimens that are not subject to federal jurisdiction due to their noninvolvement with interstate commerce pursuant to the tenth amendment to the United States Constitution. This act shall not be construed to limit the state of Idaho's lawful capacity to regulate pharmaceuticals, biologic therapeutics, or mind-altering drugs.

39-9304. DEFINITIONS. When used in this chapter:

(1) "Borders of Idaho" means the boundaries of Idaho described in Article XVII, Section 1, of the Idaho constitution;

(2) "Nutritional or therapeutic product" means any pharmaceutical, biological therapeutic, food, nutritional supplement, or other substance intended for human consumption, injection, inhalation, or application for purposes of improving or sustaining human health except as declared otherwise in 39-9305, Idaho Code; and

(3) "Manufactured" means that a nutritional or therapeutic product has been created from basic materials for functional usefulness.

39-9305. PROHIBITIONS. A nutritional or therapeutic product that is manufactured commercially or privately in Idaho and that remains within the borders of Idaho is not subject to federal law or federal regulation, including registration with the United States or one of its agencies such as the United States Food and Drug Administration, under the authority of

congress to regulate interstate commerce. It is declared by the legislature that those items have not traveled in interstate commerce. This section applies to a nutritional or therapeutic product that is manufactured in Idaho from basic materials and that can be manufactured without the inclusion of any significant components imported from another state. Generic and insignificant components that have other manufacturing or consumer product applications outside of human health are not nutritional or therapeutic products and their importation into Idaho and incorporation into a nutritional or therapeutic product manufactured in Idaho does not subject the nutritional or therapeutic product to federal regulation. It is declared by the people that basic materials not ordinarily intended for human consumption, injection, inhalation, or application are not nutritional or therapeutic products and are not subject to congressional authority to regulate nutritional and therapeutic products under interstate commerce as if they were actually nutritional and therapeutic products. The authority of congress to regulate interstate commerce in basic materials does not include authority to regulate nutritional and therapeutic products made in Idaho from those materials. Products typically used with nutritional and therapeutic products that are imported into Idaho from another state and that are subject to federal regulation as being in interstate commerce do not subject a nutritional or therapeutic product to federal regulation under interstate commerce because they are used in conjunction with a nutritional or therapeutic product in Idaho.

39-9306. **MARKETING OF NUTRITIONAL AND THERAPEUTIC PRODUCTS.** A nutritional or therapeutic product manufactured or sold in Idaho under this act must have the words "Made in Idaho" clearly printed on the packaging which encloses the product at the point of sale.

39-9307. **APPLICABILITY.** This act applies to nutritional and therapeutic products that are manufactured, as defined in 39-9304, Idaho Code, and retained in Idaho after October 31, 2010.

SECTION 2. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.