

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 491

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO UNIFORM CONTROLLED SUBSTANCES; AMENDING SECTION 37-2732, IDAHO
2 CODE, TO PROVIDE A PENALTY FOR POSSESSION OF MARIJUANA IN A CERTAIN
3 AMOUNT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-7803,
4 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL
5 CORRECTIONS; AMENDING SECTION 18-7804, IDAHO CODE, TO PROVIDE A COR-
6 RECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
7 18-8201, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A
8 TECHNICAL CORRECTION; AND AMENDING SECTION 37-2801, IDAHO CODE, TO PRO-
9 VIDE A CORRECT CODE REFERENCE.
10

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

12 SECTION 1. That Section 37-2732, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 37-2732. PROHIBITED ACTS A -- PENALTIES. (a) Except as authorized by
15 this chapter, it is unlawful for any person to manufacture or deliver, or
16 possess with intent to manufacture or deliver, a controlled substance.

- 17 (1) Any person who violates this subsection with respect to:
18 (A) A controlled substance classified in schedule I which is a
19 narcotic drug or a controlled substance classified in schedule II,
20 except as provided for in section 37-2732B(a) (3), Idaho Code, is
21 guilty of a felony and upon conviction may be imprisoned for a term
22 of years not to exceed life imprisonment, or fined not more than
23 twenty-five thousand dollars (\$25,000), or both;
24 (B) Any other controlled substance which is a nonnarcotic drug
25 classified in schedule I, or a controlled substance classified in
26 schedule III, is guilty of a felony and upon conviction may be im-
27 prisoned for not more than five (5) years, fined not more than fif-
28 teen thousand dollars (\$15,000), or both;
29 (C) A substance classified in schedule IV, is guilty of a felony
30 and upon conviction may be imprisoned for not more than three (3)
31 years, fined not more than ten thousand dollars (\$10,000), or
32 both;
33 (D) A substance classified in schedules V and VI, is guilty of
34 a misdemeanor and upon conviction may be imprisoned for not more
35 than one (1) year, fined not more than five thousand dollars
36 (\$5,000), or both.

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

- 40 (1) Any person who violates this subsection with respect to:
41 (A) A counterfeit substance classified in schedule I which is a
42 narcotic drug, or a counterfeit substance classified in schedule

1 II, is guilty of a felony and upon conviction may be imprisoned for
2 not more than fifteen (15) years, fined not more than twenty-five
3 thousand dollars (\$25,000), or both;

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

9 (C) A counterfeit substance classified in schedule IV, is guilty
10 of a felony and upon conviction may be imprisoned for not more
11 than three (3) years, fined not more than ten thousand dollars
12 (\$10,000), or both;

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

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

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

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

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

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

44 (e) If any person is found to possess marijuana, which for the purposes
45 of this subsection shall be restricted to all parts of the plants of the
46 genus Cannabis, including the extract or any preparation of cannabis which
47 contains tetrahydrocannabinol, in an amount greater than three (3) ounces
48 net weight, it shall be a felony and upon conviction may be imprisoned for
49 not more than five (5) years, or fined not more than ten thousand dollars
50 (\$10,000), or both.

1 (f) If any person is found to possess marijuana, which for the purposes
 2 of this subsection shall be restricted to all parts of the plants of the genus
 3 Cannabis, including the extract or any preparation of cannabis which con-
 4 tains tetrahydrocannabinol, in an amount of one-half (1/2) ounce net weight
 5 or less, the charge shall be a misdemeanor, but, for an offender who has no
 6 prior conviction for a drug-related offense, the charge shall be reduced to
 7 an infraction if the offender pays a fine of two hundred fifty dollars (\$250)
 8 or performs eight (8) hours of community service, and completes four (4)
 9 hours of drug abuse education approved by the court.

10 (g) If two (2) or more persons conspire to commit any offense defined
 11 in this act, said persons shall be punishable by a fine or imprisonment, or
 12 both, which may not exceed the maximum punishment prescribed for the of-
 13 fense, the commission of which was the object of the conspiracy.

14 (gh) (1) It is unlawful for any person to manufacture or distribute a
 15 "simulated controlled substance," or to possess with intent to distrib-
 16 ute, a "simulated controlled substance." Any person who violates this
 17 subsection shall, upon conviction, be guilty of a misdemeanor and upon
 18 conviction thereof shall be punished by a fine of not more than one thou-
 19 sand dollars (\$1,000) and not more than one (1) year in the county jail,
 20 or both.

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

26 (hi) It is unlawful for any person to cause to be placed in any news-
 27 paper, magazine, handbill, or other publication, or to post or distribute
 28 in any public place, any advertisement or solicitation offering for sale
 29 simulated controlled substances. Any person who violates this subsection
 30 is guilty of a misdemeanor and shall be punished in the same manner as pre-
 31 scribed in subsection (gh) of this section.

32 (ij) No civil or criminal liability shall be imposed by virtue of this
 33 chapter on any person registered under the Uniform Controlled Substances
 34 Act who manufactures, distributes, or possesses an imitation controlled
 35 substance for use as a placebo or other use by a registered practitioner, as
 36 defined in section 37-2701(aa), Idaho Code, in the course of professional
 37 practice or research.

38 (jk) No prosecution under this chapter shall be dismissed solely by
 39 reason of the fact that the dosage units were contained in a bottle or other
 40 container with a label accurately describing the ingredients of the imi-
 41 tation controlled substance dosage units. The good faith of the defendant
 42 shall be an issue of fact for the trier of fact.

43 (kl) Upon conviction of a felony or misdemeanor violation under this
 44 chapter or upon conviction of a felony pursuant to the "racketeering act,"
 45 section 18-7804, Idaho Code, or the money laundering and illegal investment
 46 provisions of section 18-8201, Idaho Code, the court may order restitution
 47 for costs incurred by law enforcement agencies in investigating the viola-
 48 tion. Law enforcement agencies shall include, but not be limited to, the
 49 Idaho state police, county and city law enforcement agencies, the office
 50 of the attorney general and county and city prosecuting attorney offices.

1 Costs shall include, but not be limited to, those incurred for the purchase
 2 of evidence, travel and per diem for law enforcement officers and witnesses
 3 throughout the course of the investigation, hearings and trials, and any
 4 other investigative or prosecution expenses actually incurred, including
 5 regular salaries of employees. In the case of reimbursement to the Idaho
 6 state police, those moneys shall be paid to the Idaho state police for
 7 deposit into the drug and driving while under the influence enforcement
 8 donation fund created in section 57-816, Idaho Code. In the case of reim-
 9 bursement to the office of the attorney general, those moneys shall be paid
 10 to the general fund. A conviction for the purposes of this section means that
 11 the person has pled guilty or has been found guilty, notwithstanding the form
 12 of the judgment (s) or withheld judgment (s).

13 SECTION 2. That Section 18-7803, Idaho Code, be, and the same is hereby
 14 amended to read as follows:

15 18-7803. DEFINITIONS. As used in this chapter:

16 (a) "Racketeering" means any act which is chargeable or indictable un-
 17 der the following sections of the Idaho Code or which are equivalent acts
 18 chargeable or indictable as equivalent crimes under the laws of any other ju-
 19 risdiction:

- 20 (1) Homicide (section 18-4001, Idaho Code);
- 21 (2) Robbery, burglary, theft, forgery, counterfeiting, and related
 22 crimes (sections 18-1401, 18-1405, 18-2403, 18-2407, 18-3123, 18-3124,
 23 18-3125, 18-3601, 18-3602, 18-3603, 18-3605, 18-3606, 18-3607,
 24 18-3609, 18-3610, 18-3614, 18-3615, 18-4630, 18-6501 and 49-518, Idaho
 25 Code);
- 26 (3) Kidnapping (section 18-4501, Idaho Code);
- 27 (4) Prostitution (sections 18-5601, 18-5602, 18-5603, 18-5604,
 28 18-5605, 18-5606, 18-5608 and 18-5609, Idaho Code);
- 29 (5) Arson (sections 18-801, 18-802, 18-803, 18-804 and 18-805, Idaho
 30 Code);
- 31 (6) Assault (sections 18-908 and 18-4015, Idaho Code);
- 32 (7) Lotteries and gambling (sections 18-3801, 18-3802, 18-3809,
 33 18-4902, 18-4903, 18-4904, 18-4905, 18-4906 and 18-4908, Idaho Code);
- 34 (8) Indecency and obscenity (sections 18-1515, 18-1518, 18-4103,
 35 18-4103A, 18-4104, 18-4105, 18-4105A and 18-4107, Idaho Code);
- 36 (9) Poisoning (sections 18-4014 and 18-5501, Idaho Code);
- 37 (10) Fraudulent practices, false pretenses, insurance fraud, finan-
 38 cial transaction card crimes and fraud generally (sections 18-2403,
 39 18-2706, 18-3002, 18-3101, 18-3124, 18-3125, 18-3126, 18-6713, 41-293,
 40 41-294 and 41-1306, Idaho Code);
- 41 (11) Alcoholic beverages (sections 23-602, 23-606, 23-610, 23-703,
 42 23-905, 23-914, 23-928, 23-934 and 23-938, Idaho Code);
- 43 (12) Cigarette taxes (sections 63-2505 and 63-2512(b), Idaho Code);
- 44 (13) Securities (sections 30-14-401, 30-14-402, 30-14-403, 30-14-404,
 45 30-14-501, 30-14-502, 30-14-505 and 30-14-506, Idaho Code);
- 46 (14) Horseracing (section 54-2512, Idaho Code);
- 47 (15) Interest and usurious practices (sections 28-45-401 and 28-45-
 48 402, Idaho Code);

1 (16) Corporations (sections 18-1901, 18-1902, 18-1903, 18-1904,
2 18-1905, 18-1906 and 30-1510, Idaho Code);

3 (17) Perjury (sections 18-5401 and 18-5410, Idaho Code);

4 (18) Bribery and corrupt influence (sections 18-1352 and 18-1353, Idaho
5 Code);

6 (19) Controlled substances (sections 37-2732(a), (b), (c), (e) and
7 (~~g~~), 37-2732B, 37-2734 and 37-2734B, Idaho Code);

8 (20) Motor vehicles (sections 49-228, 49-231, 49-232 and 49-518, Idaho
9 Code);

10 (21) Terrorism (section 18-8103, Idaho Code).

11 (b) "Person" means any individual or entity capable of holding a legal
12 or beneficial interest in property;

13 (c) "Enterprise" means any sole proprietorship, partnership, corpora-
14 tion, business, labor union, association or other legal entity or any group
15 of individuals associated in fact although not a legal entity, and includes
16 illicit as well as licit entities; and

17 (d) "Pattern of racketeering activity" means engaging in at least two
18 (2) incidents of racketeering conduct that have the same or similar in-
19 tents, results, accomplices, victims or methods of commission, or otherwise
20 are interrelated by distinguishing characteristics and are not isolated
21 incidents, provided at least one (1) of such incidents occurred after the ef-
22 fective date of this act and that the last of such incidents occurred within
23 five (5) years after a prior incident of racketeering conduct.

24 SECTION 3. That Section 18-7804, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 18-7804. PROHIBITED ACTIVITIES -- PENALTIES. (a) It is unlawful for
27 any person who has received any proceeds derived directly or indirectly from
28 a pattern of racketeering activity in which the person has participated, to
29 use or invest, directly or indirectly, any part of the proceeds or the pro-
30 ceeds derived from the investment or use thereof in the acquisition of any
31 interest in, or the establishment or operation of, any enterprise or real
32 property. Whoever violates this subsection is guilty of a felony.

33 (b) It is unlawful for any person to engage in a pattern of racketeering
34 activity in order to acquire or maintain, directly or indirectly, any inter-
35 est in or control of any enterprise or real property. Whoever violates this
36 subsection is guilty of a felony.

37 (c) It is unlawful for any person employed by or associated with any en-
38 terprise to conduct or participate, directly or indirectly, in the conduct
39 of the affairs of such enterprise by engaging in a pattern of racketeering
40 activity. Whoever violates the provisions of this subsection is guilty of a
41 felony.

42 (d) It is unlawful for any person to conspire to violate any of the pro-
43 visions of subsections (a) through (c) of this section. Whoever violates the
44 provisions of this subsection is guilty of a felony.

45 (e) Whoever violates the provisions of this act is punishable by a fine
46 not to exceed twenty-five thousand dollars (\$25,000) and/or imprisonment
47 not to exceed a term of fourteen (14) years in the Idaho state penitentiary.

48 (f) Upon a conviction of a violation under the provisions of this chap-
49 ter, the court may order restitution for all costs and expenses of prosecu-

1 tion and investigation, pursuant to the terms and conditions set forth in
2 section 37-2732(k~~l~~), Idaho Code.

3 (g) In addition to any other penalties prescribed by law, whoever vio-
4 lates any provisions of this act shall forfeit to the state of Idaho:

5 (1) Any interest acquired or maintained in violation of the racketeer-
6 ing act; and

7 (2) Any interest in, security of, claim against or property or contrac-
8 tual right of any kind affording a source of influence over any enter-
9 prise which he has established, operated, controlled, conducted or par-
10 ticipated in the conduct of in violation of the provisions of the racke-
11 teering act.

12 (h) In any action brought by the state under the racketeering act, the
13 district court shall have jurisdiction to enter such restraining orders or
14 prohibitions, or to take such other actions, including, but not limited to,
15 the acceptance of satisfactory performance bonds, in connection with any
16 property or other interest subject to forfeiture under the provisions of
17 this section, as it shall deem proper.

18 (i) Upon conviction of a person under the provisions of this section,
19 the court shall authorize the attorney general or the proper prosecuting at-
20 torney to seize all property or other interest declared forfeited under the
21 provisions of this section upon such terms and conditions as the court shall
22 deem proper, making due provision for the rights of innocent persons. If
23 a property right or other interest is not exercisable or transferable for
24 value by the convicted person, it shall expire and shall not revert to the
25 convicted person.

26 SECTION 4. That Section 18-8201, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 18-8201. MONEY LAUNDERING AND ILLEGAL INVESTMENT -- PENALTY -- RESTI-
29 TUTION. (1) It is unlawful for any person to knowingly or intentionally give,
30 sell, transfer, trade, invest, conceal, transport, or make available any-
31 thing of value that the person knows is intended to be used to commit or fur-
32 ther a pattern of racketeering activity as defined in section 18-7803(d),
33 Idaho Code, or a violation of the provisions of chapter 27, title 37, Idaho
34 Code.

35 (2) It is unlawful for any person to knowingly or intentionally direct,
36 plan, organize, initiate, finance, manage, supervise, or facilitate the
37 transportation or transfer of proceeds known by that person to be derived
38 from a pattern of racketeering activity as defined in section 18-7803(d),
39 Idaho Code, or a violation of the provisions of chapter 27, title 37, Idaho
40 Code.

41 (3) It is unlawful for any person to knowingly or intentionally con-
42 duct a financial transaction involving proceeds known by that person to
43 be derived from a pattern of racketeering activity as defined in section
44 18-7803(d), Idaho Code, or a violation of the provisions of chapter 27,
45 title 37, Idaho Code, if the transaction is designed in whole or in part to
46 conceal or disguise the nature, location, source, ownership, or control of
47 the proceeds, or to avoid a transaction reporting requirement under state or
48 federal law.

1 (4) A person who violates the provisions of this section is guilty of a
2 felony and upon conviction may be fined not more than two hundred fifty thou-
3 sand dollars (\$250,000) or twice the value of the property involved in the
4 transaction, whichever is greater, or be imprisoned for not more than ten
5 (10) years, or be both so fined and imprisoned.

6 (5) Upon a conviction of a violation under the provisions of this chap-
7 ter, the court may order restitution for all costs and expenses of prosecu-
8 tion and investigation, pursuant to the terms and conditions set forth in
9 section 37-2732(~~*1~~), Idaho Code.

10 SECTION 5. That Section 37-2801, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 37-2801. PROPERTY SUBJECT TO CRIMINAL FORFEITURE. Any person who is
13 found guilty of, who enters a plea of guilty, or who is convicted of a viola-
14 tion of the uniform controlled substances act, chapter 27, title 37, Idaho
15 Code, punishable by imprisonment for more than one (1) year, no matter the
16 form of the judgment or order withholding judgment, shall forfeit to the
17 state of Idaho:

18 (1) Any property constituting, or derived from, any proceeds the person
19 obtained, directly or indirectly, as the result of such violation; and

20 (2) Any of the person's property used, or intended to be used, in any
21 manner or part, to commit, or to facilitate the commission of such violation.
22 The court, in imposing sentence on such person, shall order, in addition to
23 any other sentence imposed pursuant to chapter 27, title 37, Idaho Code, that
24 the person forfeit to the state of Idaho all property described in this sec-
25 tion. The provisions of this chapter shall not be construed or interpreted
26 in any manner to prevent the state of Idaho, attorney general or the appro-
27 priate prosecuting attorney from requesting restitution pursuant to section
28 37-2732(~~*1~~), Idaho Code; or, if appropriate, from pursuing civil forfeiture
29 pursuant to section 37-2744 and/or section 37-2744A, Idaho Code. Nor shall
30 an order of forfeiture pursuant to this chapter be used as an offset against,
31 or in any manner be used to diminish the amount of, a restitution order under
32 section 37-2732(~~*1~~), Idaho Code. The issue of criminal forfeiture shall be
33 for the court alone, without submission to a jury, as a part of the sentencing
34 procedure within the criminal action.