

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 449

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO PENALTIES; AMENDING SECTION 18-7804, IDAHO CODE, TO REQUIRE THE
2 COURT TO IMPOSE A CERTAIN FEE AGAINST CERTAIN DEFENDANTS TO BE PAID TO
3 THE IDAHO STATE POLICE FOR DEPOSIT INTO THE DRUG AND DRIVING WHILE UN-
4 DER THE INFLUENCE ENFORCEMENT DONATION FUND; AMENDING SECTION 18-8201,
5 IDAHO CODE, TO REQUIRE THE COURT TO IMPOSE A CERTAIN FEE AGAINST CER-
6 TAIN DEFENDANTS TO BE PAID TO THE IDAHO STATE POLICE FOR DEPOSIT INTO
7 THE DRUG AND DRIVING WHILE UNDER THE INFLUENCE ENFORCEMENT DONATION
8 FUND; AMENDING SECTION 37-2732, IDAHO CODE, TO REQUIRE THE COURT TO
9 IMPOSE A CERTAIN FEE AGAINST CERTAIN DEFENDANTS TO BE PAID TO THE IDAHO
10 STATE POLICE FOR DEPOSIT INTO THE DRUG AND DRIVING WHILE UNDER THE IN-
11 FLUENCE ENFORCEMENT DONATION FUND AND TO MAKE TECHNICAL CORRECTIONS;
12 AMENDING SECTION 37-2732C, IDAHO CODE, TO REQUIRE THE COURT TO IMPOSE
13 A CERTAIN FEE AGAINST CERTAIN DEFENDANTS TO BE PAID TO THE IDAHO STATE
14 POLICE FOR DEPOSIT INTO THE DRUG AND DRIVING WHILE UNDER THE INFLUENCE
15 ENFORCEMENT DONATION FUND AND TO MAKE TECHNICAL CORRECTIONS; AMENDING
16 SECTION 37-2733, IDAHO CODE, TO REQUIRE THE COURT TO IMPOSE A CERTAIN
17 FEE AGAINST CERTAIN DEFENDANTS TO BE PAID TO THE IDAHO STATE POLICE FOR
18 DEPOSIT INTO THE DRUG AND DRIVING WHILE UNDER THE INFLUENCE ENFORCEMENT
19 DONATION FUND; AMENDING SECTION 37-2734A, IDAHO CODE, TO REQUIRE THE
20 COURT TO IMPOSE A CERTAIN FEE AGAINST CERTAIN DEFENDANTS TO BE PAID TO
21 THE IDAHO STATE POLICE FOR DEPOSIT INTO THE DRUG AND DRIVING WHILE UNDER
22 THE INFLUENCE ENFORCEMENT DONATION FUND; AMENDING SECTION 37-2734B,
23 IDAHO CODE, TO REQUIRE THE COURT TO IMPOSE A CERTAIN FEE AGAINST CERTAIN
24 DEFENDANTS TO BE PAID TO THE IDAHO STATE POLICE FOR DEPOSIT INTO THE DRUG
25 AND DRIVING WHILE UNDER THE INFLUENCE ENFORCEMENT DONATION FUND AND TO
26 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 37-2734C, IDAHO CODE, TO
27 REQUIRE THE COURT TO IMPOSE A CERTAIN FEE AGAINST CERTAIN DEFENDANTS TO
28 BE PAID TO THE IDAHO STATE POLICE FOR DEPOSIT INTO THE DRUG AND DRIV-
29 ING WHILE UNDER THE INFLUENCE ENFORCEMENT DONATION FUND; AND AMENDING
30 SECTION 37-2739A, IDAHO CODE, TO REQUIRE THE COURT TO IMPOSE A CERTAIN
31 FEE AGAINST CERTAIN DEFENDANTS TO BE PAID TO THE IDAHO STATE POLICE FOR
32 DEPOSIT INTO THE DRUG AND DRIVING WHILE UNDER THE INFLUENCE ENFORCEMENT
33 DONATION FUND AND TO MAKE A TECHNICAL CORRECTION.
34

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

36 SECTION 1. That Section 18-7804, Idaho Code, be, and the same is hereby
37 amended to read as follows:

38 18-7804. PROHIBITED ACTIVITIES -- PENALTIES. (a) It is unlawful for
39 any person who has received any proceeds derived directly or indirectly from
40 a pattern of racketeering activity in which the person has participated, to
41 use or invest, directly or indirectly, any part of the proceeds or the pro-
42 ceeds derived from the investment or use thereof in the acquisition of any

1 interest in, or the establishment or operation of, any enterprise or real
2 property. Whoever violates this subsection is guilty of a felony.

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

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

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

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

18 (f) Upon a conviction of a violation under the provisions of this chap-
19 ter, the court may order restitution for all costs and expenses of prosecu-
20 tion and investigation, pursuant to the terms and conditions set forth in
21 section 37-2732(k), Idaho Code.

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

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

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

31 (h) In addition to any other fine assessed under this section and
32 notwithstanding the provisions of section 19-4705, Idaho Code, a fee shall
33 be assessed against the defendant in the amount of twenty dollars (\$20.00)
34 for each conviction under this section. Such fee shall be paid to the clerk
35 of the district court who shall transmit said fee to the Idaho state trea-
36 surer for distribution to the Idaho state police for deposit into the drug
37 and driving while under the influence enforcement donation fund created in
38 section 57-816, Idaho Code.

39 (i) In any action brought by the state under the racketeering act, the
40 district court shall have jurisdiction to enter such restraining orders or
41 prohibitions, or to take such other actions, including, but not limited to,
42 the acceptance of satisfactory performance bonds, in connection with any
43 property or other interest subject to forfeiture under the provisions of
44 this section, as it shall deem proper.

45 (j) Upon conviction of a person under the provisions of this section,
46 the court shall authorize the attorney general or the proper prosecuting at-
47 torney to seize all property or other interest declared forfeited under the
48 provisions of this section upon such terms and conditions as the court shall
49 deem proper, making due provision for the rights of innocent persons. If
50 a property right or other interest is not exercisable or transferable for

1 value by the convicted person, it shall expire and shall not revert to the
2 convicted person.

3 SECTION 2. That Section 18-8201, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 18-8201. MONEY LAUNDERING AND ILLEGAL INVESTMENT -- PENALTY -- RESTI-
6 TUTION. (1) It is unlawful for any person to knowingly or intentionally give,
7 sell, transfer, trade, invest, conceal, transport, or make available any-
8 thing of value that the person knows is intended to be used to commit or fur-
9 ther a pattern of racketeering activity as defined in section 18-7803(d),
10 Idaho Code, or a violation of the provisions of chapter 27, title 37, Idaho
11 Code.

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

18 (3) It is unlawful for any person to knowingly or intentionally con-
19 duct a financial transaction involving proceeds known by that person to
20 be derived from a pattern of racketeering activity as defined in section
21 18-7803(d), Idaho Code, or a violation of the provisions of chapter 27,
22 title 37, Idaho Code, if the transaction is designed in whole or in part to
23 conceal or disguise the nature, location, source, ownership, or control of
24 the proceeds, or to avoid a transaction reporting requirement under state or
25 federal law.

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

31 (5) Upon a conviction of a violation under the provisions of this chap-
32 ter, the court may order restitution for all costs and expenses of prosecu-
33 tion and investigation, pursuant to the terms and conditions set forth in
34 section 37-2732(k), Idaho Code.

35 (6) In addition to any other fine assessed under this section and
36 notwithstanding the provisions of section 19-4705, Idaho Code, a fee shall
37 be assessed against the defendant in the amount of twenty dollars (\$20.00)
38 for each conviction under this section. Such fee shall be paid to the clerk
39 of the district court who shall transmit said fee to the Idaho state trea-
40 surer for distribution to the Idaho state police for deposit into the drug
41 and driving while under the influence enforcement donation fund created in
42 section 57-816, Idaho Code.

43 SECTION 3. That Section 37-2732, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 37-2732. PROHIBITED ACTS A -- PENALTIES. (a) Except as authorized by
46 this chapter, it is unlawful for any person to manufacture or deliver, or
47 possess with intent to manufacture or deliver, a controlled substance.

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

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

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

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

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

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

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

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

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

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

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

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

47 (1) Any person who violates this subsection and has in his possession
48 a controlled substance classified in schedule I which is a narcotic
49 drug or a controlled substance classified in schedule II, is guilty of
50 a felony and upon conviction may be imprisoned for not more than seven

1 (7) years, or fined not more than fifteen thousand dollars (\$15,000), or
2 both.

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

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

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

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

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

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

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

43 (h) It is unlawful for any person to cause to be placed in any newspaper,
44 magazine, handbill, or other publication, or to post or distribute in any
45 public place, any advertisement or solicitation offering for sale simulated
46 controlled substances. Any person who violates this subsection is guilty of
47 a misdemeanor and shall be punished in the same manner as prescribed in sub-
48 section (g) of this section.

49 (i) No civil or criminal liability shall be imposed by virtue of this
50 chapter on any person registered under the ~~U~~uniform ~~C~~controlled ~~S~~substances

1 Aact who manufactures, distributes, or possesses an imitation controlled
 2 substance for use as a placebo or other use by a registered practitioner, as
 3 defined in section 37-2701(aa), Idaho Code, in the course of professional
 4 practice or research.

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

10 (k) Upon conviction of a felony or misdemeanor violation under the pro-
 11 visions of this chapter or upon conviction of a felony pursuant to the "rack-
 12 eteering act," section 18-7804, Idaho Code, or the money laundering and il-
 13 legal investment provisions of section 18-8201, Idaho Code, the court may
 14 order restitution for costs incurred by law enforcement agencies in inves-
 15 tigating the violation. Law enforcement agencies shall include, but not be
 16 limited to, the Idaho state police, county and city law enforcement agen-
 17 cies, the office of the attorney general and county and city prosecuting at-
 18 torney offices. Costs shall include, but not be limited to, those incurred
 19 for the purchase of evidence, travel and per diem for law enforcement of-
 20 ficers and witnesses throughout the course of the investigation, hearings
 21 and trials, and any other investigative or prosecution expenses actually in-
 22 curring, including regular salaries of employees. In the case of reimburse-
 23 ment to the Idaho state police, those moneys shall be paid to the Idaho state
 24 police for deposit into the drug and driving while under the influence en-
 25 forcement donation fund created in section 57-816, Idaho Code. In the case
 26 of reimbursement to the office of the attorney general, those moneys shall be
 27 paid to the general fund. A conviction for the purposes of this section means
 28 that the person has pled guilty or has been found guilty, notwithstanding the
 29 form of the judgment(s) or withheld judgment(s).

30 (l) In addition to any other fine assessed under this section and
 31 notwithstanding the provisions of section 19-4705, Idaho Code, a fee shall
 32 be assessed against the defendant in the amount of twenty dollars (\$20.00)
 33 for each conviction under this section. Such fee shall be paid to the clerk
 34 of the district court who shall transmit said fee to the Idaho state trea-
 35 surer for distribution to the Idaho state police for deposit into the drug
 36 and driving while under the influence enforcement donation fund created in
 37 section 57-816, Idaho Code.

38 SECTION 4. That Section 37-2732C, Idaho Code, be, and the same is hereby
 39 amended to read as follows:

40 37-2732C. USING OR BEING UNDER THE INFLUENCE -- PENALTIES. (a) Except
 41 as authorized in this chapter, it is unlawful for any person on a public road-
 42 way, on a public conveyance, on public property or on private property open
 43 to the public, to use or be under the influence of any controlled substance
 44 specified in subsections (b), (c), (d), (e) and (f) of section 37-2705, Idaho
 45 Code, or subsections (b), (c) and (d) of section 37-2707, Idaho Code, or sub-
 46 section (c) (6) of section 37-2709, Idaho Code, or any narcotic drug classi-
 47 fied in schedule III, IV or V, except when administered by or under the direc-
 48 tion of a person licensed by the state to dispense, prescribe, or administer

1 controlled substances. It shall be the burden of the defense to show that it
2 comes within this exception.

3 (b) Any person convicted of violating the provisions of subsection (a)
4 of this section is guilty of a misdemeanor and is punishable by imprisonment
5 in a county jail for not more than six (6) months, or by a fine not exceeding
6 one thousand dollars (\$1,000) or by both.

7 (c) Any person who is convicted of violating the provisions of subsec-
8 tion (a) of this section, when the offense occurred within five (5) years of
9 that person being convicted of two (2) or more separate violations of that
10 subsection and who refuses to complete a licensed drug rehabilitation pro-
11 gram offered by the court pursuant to subsection (d) shall be punished by im-
12 prisonment in the county jail for a mandatory minimum period of time of not
13 less than one hundred twenty (120) days, nor more than one (1) year. The
14 court may not reduce the mandatory minimum period of incarceration provided
15 in this subsection.

16 (d) The court may, when it would be in the interest of justice, permit
17 any person convicted of a violation of subsection (a) of this section, pun-
18 ishable under subsection (b) or (c) of this section, to complete a licensed
19 drug rehabilitation program in lieu of part or all of the imprisonment in
20 the county jail. As a condition of sentencing, the court may require the of-
21 fender to pay all or a portion of the drug rehabilitation program. In order
22 to alleviate jail overcrowding and to provide recidivist offenders with a
23 reasonable opportunity to seek rehabilitation pursuant to this subsection,
24 counties are encouraged to include provisions to augment licensed drug re-
25 habilitation programs in their substance abuse proposals and applications
26 submitted to the state for federal and state drug abuse funds.

27 (e) Notwithstanding the provisions of subsection (a), (b) or (c) of
28 this section, or any other provision of law to the contrary, any person who is
29 unlawfully under the influence of cocaine, cocaine base, methamphetamine,
30 heroin, or phencyclidine while in the immediate personal possession of a
31 loaded, operable firearm is guilty of a public offense and is punishable by
32 imprisonment in the county jail or the state prison for not more than one (1)
33 year. As used in this subsection, "immediate possession" includes, but is
34 not limited to, the interior passenger compartment of a motor vehicle.

35 (f) Every person who violates the provisions of subsection (e) of this
36 section is punishable upon the second and each subsequent conviction by im-
37 prisonment in the state prison for a period of time not in excess of four (4)
38 years.

39 (g) In addition to any fine assessed under this section and notwith-
40 standing the provisions of section 19-4705, Idaho Code, the court may, upon
41 conviction, assess an additional cost to the defendant in the way of resti-
42 tution, an amount not to exceed two hundred dollars (\$200) to the arresting
43 and/or prosecuting agency or entity. These ~~funds~~ moneys shall be remitted to
44 the appropriate fund to offset the expense of toxicology testing.

45 (h) In addition to any other fine assessed under this section and
46 notwithstanding the provisions of section 19-4705, Idaho Code, a fee shall
47 be assessed against the defendant in the amount of twenty dollars (\$20.00)
48 for each conviction under this section. Such fee shall be paid to the clerk
49 of the district court who shall transmit said fee to the Idaho state trea-
50 surer for distribution to the Idaho state police for deposit into the drug

1 and driving while under the influence enforcement donation fund created in
 2 section 57-816, Idaho Code.

3 SECTION 5. That Section 37-2733, Idaho Code, be, and the same is hereby
 4 amended to read as follows:

5 37-2733. PROHIBITED ACTS B -- PENALTIES. (a) It is unlawful for any
 6 person:

7 (1) Who is subject to article III of this act to distribute or dispense a
 8 controlled substance in violation of section 37-2722, Idaho Code;

9 (2) Who is a registrant, to manufacture a controlled substance not au-
 10 thorized by his registration, or to distribute or dispense a controlled
 11 substance not authorized by his registration to another registrant or
 12 other authorized person;

13 (3) To refuse or fail to make, keep or furnish any record, notification,
 14 order form, statement, invoice or information required under this act;

15 (4) To refuse an entry into any premises for any inspection authorized
 16 by this act; or

17 (5) Knowingly to keep or maintain any store, shop, warehouse, dwelling,
 18 building, vehicle, boat, aircraft, or other structure or place, which
 19 is resorted to by persons using controlled substances in violation of
 20 this act for the purpose of using these substances, or which is used for
 21 keeping or selling them in violation of this act.

22 (b) Any person who violates this section is guilty of a misdemeanor and
 23 upon conviction may be imprisoned for not more than one (1) year, fined not
 24 more than twenty-five thousand dollars (\$25,000), or both.

25 (c) In addition to any other fine assessed under this section and
 26 notwithstanding the provisions of section 19-4705, Idaho Code, a fee shall
 27 be assessed against the defendant in the amount of twenty dollars (\$20.00)
 28 for each conviction under this section. Such fee shall be paid to the clerk
 29 of the district court who shall transmit said fee to the Idaho state trea-
 30 surer for distribution to the Idaho state police for deposit into the drug
 31 and driving while under the influence enforcement donation fund created in
 32 section 57-816, Idaho Code.

33 SECTION 6. That Section 37-2734A, Idaho Code, be, and the same is hereby
 34 amended to read as follows:

35 37-2734A. PROHIBITED ACTS D -- PENALTIES. (1) It is unlawful for any
 36 person to use, or to possess with intent to use, drug paraphernalia to plant,
 37 propagate, cultivate, grow, harvest, manufacture, compound, convert, pro-
 38 duce, process, prepare, test, analyze, pack, repack, store, contain, con-
 39 ceal, inject, ingest, inhale, or otherwise introduce into the human body a
 40 controlled substance.

41 (2) It is unlawful for any person to place in any newspaper, magazine,
 42 handbill, or other publication any advertisement, knowing, or under circum-
 43 stances where one reasonably should know, that the purpose of the advertise-
 44 ment, in whole or in part, is to promote the sale of objects designed or in-
 45 tended for use as drug paraphernalia.

46 (3) Any person who is in violation of the provisions of subsections (1)
 47 and/or (2) of this section is guilty of a misdemeanor and upon conviction may

1 be imprisoned for not more than one (1) year, fined not more than one thousand
2 dollars (\$1,000), or both.

3 (4) In addition to any other fine assessed under this section and
4 notwithstanding the provisions of section 19-4705, Idaho Code, a fee shall
5 be assessed against the defendant in the amount of twenty dollars (\$20.00)
6 for each conviction under this section. Such fee shall be paid to the clerk
7 of the district court who shall transmit said fee to the Idaho state trea-
8 surer for distribution to the Idaho state police for deposit into the drug
9 and driving while under the influence enforcement donation fund created in
10 section 57-816, Idaho Code.

11 SECTION 7. That Section 37-2734B, Idaho Code, be, and the same is hereby
12 amended to read as follows:

13 37-2734B. PROHIBITED ACTS E -- PENALTIES. (1) It is unlawful for any
14 person to deliver, possess with intent to deliver, or manufacture with in-
15 tent to deliver, drug paraphernalia, knowing, or under circumstances where
16 one reasonably should know, that it will be used to plant, propagate, culti-
17 vate, grow, harvest, manufacture, compound, convert, produce, process, pre-
18 pare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,
19 inhale, or otherwise introduce into the human body a controlled substance.

20 (2) Any person who is in violation of this section is guilty of a felony
21 and upon conviction may be imprisoned for not more than nine (9) years, fined
22 not more than thirty thousand dollars (\$30,000), or both.

23 (3) In addition to any other fine assessed under this section and
24 notwithstanding the provisions of section 19-4705, Idaho Code, a fee shall
25 be assessed against the defendant in the amount of twenty dollars (\$20.00)
26 for each conviction under this section. Such fee shall be paid to the clerk
27 of the district court who shall transmit said fee to the Idaho state trea-
28 surer for distribution to the Idaho state police for deposit into the drug
29 and driving while under the influence enforcement donation fund created in
30 section 57-816, Idaho Code.

31 SECTION 8. That Section 37-2734C, Idaho Code, be, and the same is hereby
32 amended to read as follows:

33 37-2734C. PROHIBITED ACTS F -- PENALTIES. (1) A person is guilty of
34 the crime of unlawful storage of anhydrous ammonia in a container that:

35 (a) Is not approved by the United States department of transportation
36 to hold anhydrous ammonia; or

37 (b) Was not constructed to meet state and federal industrial health and
38 safety standards for holding anhydrous ammonia.

39 (2) Violation of this section is a felony.

40 (3) This section does not apply to public employees or private con-
41 tractors authorized to clean up and dispose of hazardous waste or toxic
42 substances pursuant to the provisions of chapter 22, title 49, Idaho Code.

43 (4) Any damages arising out of the unlawful possession of, storage of,
44 or tampering with anhydrous ammonia equipment shall be the sole responsi-
45 bility of the person or persons unlawfully possessing, storing or tamper-
46 ing with the anhydrous ammonia. In no case shall liability for damages aris-
47 ing out of the unlawful possession of, storage of, or tampering with anhy-

1 drous ammonia or anhydrous ammonia equipment extend to the lawful owner, in-
2 staller, maintainer, designer, manufacturer, possessor or seller of the an-
3 hydrous ammonia or anhydrous ammonia equipment, unless such damages arise
4 out of the acts or omissions of the owner, installer, maintainer, designer,
5 manufacturer, possessor or seller that constitute negligent misconduct to
6 abide by the laws regarding anhydrous ammonia possession and storage.

7 (5) In addition to any other fine assessed under this section and
8 notwithstanding the provisions of section 19-4705, Idaho Code, a fee shall
9 be assessed against the defendant in the amount of twenty dollars (\$20.00)
10 for each conviction under this section. Such fee shall be paid to the clerk
11 of the district court who shall transmit said fee to the Idaho state trea-
12 surer for distribution to the Idaho state police for deposit into the drug
13 and driving while under the influence enforcement donation fund created in
14 section 57-816, Idaho Code.

15 SECTION 9. That Section 37-2739A, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 37-2739A. MANDATORY MINIMUM PENALTY. Any person who is convicted
18 of violating the felony provisions of section 37-2732(a), Idaho Code, by
19 distributing controlled substances to another person, who is not subject
20 to a fixed minimum term under section 37-2739B, Idaho Code, and who has
21 previously been convicted within the past ten (10) years in a court of the
22 United States, any state or a political subdivision of one (1) or more felony
23 offenses of dealing, selling or trafficking in controlled substances on
24 an occasion or occasions different from the felony violation of section
25 37-2732(a), Idaho Code, and which offense or offenses were punishable in
26 such court by imprisonment in excess of one (1) year, shall be sentenced to
27 the custody of the state board of correction for a mandatory minimum period
28 of time of not less than three (3) years or for such greater period as the
29 court may impose up to a maximum of life imprisonment. The mandatory minimum
30 period of three (3) years incarceration shall not be reduced and shall run
31 consecutively to any other sentence imposed by the court. In addition to any
32 other fine assessed under this section and notwithstanding the provisions
33 of section 19-4705, Idaho Code, a fee shall be assessed against the defen-
34 dant in the amount of twenty dollars (\$20.00) for each conviction under this
35 section. Such fee shall be paid to the clerk of the district court who shall
36 transmit said fee to the Idaho state treasurer for distribution to the Idaho
37 state police for deposit into the drug and driving while under the influence
38 enforcement donation fund created in section 57-816, Idaho Code.