

IN THE SENATE

SENATE BILL NO. 1146

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING SECTION 37-2701, IDAHO CODE, TO
REVISE THE DEFINITION OF "MARIJUANA," TO DEFINE "CANNABIDIOL OIL" AND
TO PROVIDE AN AFFIRMATIVE DEFENSE; AND DECLARING AN EMERGENCY.

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

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

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

(a) "Administer" means the direct application of a controlled substance whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

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

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

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

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

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

(e) "Controlled substance" means a drug, substance or immediate precursor in schedules I through VI of article II of this chapter.

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

(g) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship.

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

(i) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

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

(k) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

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

1 (m) "Drug" means (1) substances recognized as drugs in the official
2 United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the
3 United States, or official National Formulary, or any supplement to any of
4 them; (2) substances intended for use in the diagnosis, cure, mitigation,
5 treatment or prevention of disease in man or animals; (3) substances, other
6 than food, intended to affect the structure or any function of the body of man
7 or animals; and (4) substances intended for use as a component of any article
8 specified in clause (1), (2), or (3) of this subsection. It does not include
9 devices or their components, parts, or accessories.

10 (n) "Drug paraphernalia" means all equipment, products and materi-
11 als of any kind which are used, intended for use, or designed for use, in
12 planting, propagating, cultivating, growing, harvesting, manufactur-
13 ing, compounding, converting, producing, processing, preparing, testing,
14 analyzing, packaging, repackaging, storing, containing, concealing, in-
15 jecting, ingesting, inhaling, or otherwise introducing into the human body
16 a controlled substance in violation of this chapter. It includes, but is not
17 limited to:

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

22 (2) Kits used, intended for use, or designed for use in manufacturing,
23 compounding, converting, producing, processing or preparing con-
24 trolled substances;

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

28 (4) Testing equipment used, intended for use, or designed for use in
29 identifying, or in analyzing the strength, effectiveness or purity of
30 controlled substances;

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

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

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

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

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

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

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

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

4 (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
5 pipes with or without screens, permanent screens, hashish heads,
6 or punctured metal bowls;

7 (ii) Water pipes;

8 (iii) Carburetion tubes and devices;

9 (iv) Smoking and carburetion masks;

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

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

14 (vii) Chamber pipes;

15 (viii) Carburetor pipes;

16 (ix) Electric pipes;

17 (x) Air-driven pipes;

18 (xi) Chillums;

19 (xii) Bongs;

20 (xiii) Ice pipes or chillers;

21 In determining whether an object is drug paraphernalia, a court or other
22 authority should consider, in addition to all other logically relevant fac-
23 tors, the following:

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

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

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

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

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

33 6. Direct or circumstantial evidence of the intent of an owner, or of
34 anyone in control of the object, to deliver it to persons whom he knows,
35 or should reasonably know, intend to use the object to facilitate a vi-
36 olation of this chapter; the innocence of an owner, or of anyone in con-
37 trol of the object, as to a direct violation of this chapter shall not
38 prevent a finding that the object is intended for use, or designed for
39 use as drug paraphernalia;

40 7. Instructions, oral or written, provided with the object concerning
41 its use;

42 8. Descriptive materials accompanying the object which explain or de-
43 pict its use;

44 9. National and local advertising concerning its use;

45 10. The manner in which the object is displayed for sale;

46 11. Whether the owner, or anyone in control of the object, is a legit-
47 imate supplier of like or related items to the community, such as a li-
48 censed distributor or dealer of tobacco products;

49 12. Direct or circumstantial evidence of the ratio of sales of the ob-
50 ject(s) to the total sales of the business enterprise;

1 13. The existence and scope of legitimate uses for the object in the com-
2 munity;

3 14. Expert testimony concerning its use.

4 (o) "Financial institution" means any bank, trust company, savings and
5 loan association, savings bank, mutual savings bank, credit union, or loan
6 company under the jurisdiction of the state or under the jurisdiction of an
7 agency of the United States.

8 (p) "Immediate precursor" means a substance which the board has found
9 to be and by rule designates as being the principal compound commonly used or
10 produced primarily for use, and which is an immediate chemical intermediary
11 used or likely to be used in the manufacture of a controlled substance, the
12 control of which is necessary to prevent, curtail or limit manufacture.

13 (q) "Isomer" means the optical isomer, except as used in section
14 37-2705(d), Idaho Code.

15 (r) "Law enforcement agency" means a governmental unit of one (1) or
16 more persons employed full-time or part-time by the state or a political sub-
17 division of the state for the purpose of preventing and detecting crime and
18 enforcing state laws or local ordinances, employees of which unit are autho-
19 rized to make arrests for crimes while acting within the scope of their au-
20 thority.

21 (s) "Manufacture" means the production, preparation, propagation,
22 compounding, conversion or processing of a controlled substance, and in-
23 cludes extraction, directly or indirectly, from substances of natural
24 origin, or independently by means of chemical synthesis, or by a combina-
25 tion of extraction and chemical synthesis, and includes any packaging or
26 repackaging of the substance or labeling or relabeling of its container,
27 except that this term does not include the preparation or compounding of a
28 controlled substance:

29 (1) By a practitioner as an incident to his administering or dispensing
30 of a controlled substance in the course of his professional practice; or

31 (2) By a practitioner, or by his authorized agent under his supervi-
32 sion, for the purpose of, or as an incident to, research, teaching, or
33 chemical analysis and not for delivery.

34 (t) "Marijuana" means all parts of the plant of the genus Cannabis, re-
35 gardless of species, and whether growing or not; the seeds thereof; the resin
36 extracted from any part of such plant; and every compound, manufacture,
37 salt, derivative, mixture, or preparation of such plant, its seeds or resin.
38 It does not include the mature stalks of the plant unless the same are inter-
39 mixed with prohibited parts thereof, fiber produced from the stalks, oil or
40 cake made from the seeds or the achene of such plant, any other compound, man-
41 ufacture, salt, derivative, mixture, or preparation of the mature stalks,
42 except the resin extracted therefrom or where the same are intermixed with
43 prohibited parts of such plant, fiber, oil, or cake, or the sterilized seed
44 of such plant which is incapable of germination. Evidence that any plant
45 material or the resin or any derivative thereof, regardless of form, con-
46 tains any of the chemical substances classified as tetrahydrocannabinols
47 shall create a presumption that such material is "marijuana" as defined and
48 prohibited herein.

1 (1) As used in this title, "cannabidiol oil" means an extract from a
 2 cannabis plant or a mixture of preparation containing cannabis plant
 3 material that:

4 (i) Is composed of no more than three-tenths percent (0.3%)
 5 tetrahydrocannabidiol by weight;

6 (ii) Is composed of at least fifteen (15) times more cannabidiol
 7 than tetrahydrocannabidiol by weight; and

8 (iii) Contains no other psychoactive substance.

9 (2) Notwithstanding any other provision of this title, it shall be an
 10 affirmative defense to a charge of possession or use of cannabidiol oil
 11 that:

12 (i) The possessor has, or is a parent or guardian of a person that
 13 has, cancer, amyotrophic lateral sclerosis, seizure disorders,
 14 multiple sclerosis, Crohn's disease, mitochondrial disease, fi-
 15 bro myalgia, Parkinson's disease or sickle cell disease;

16 (ii) The possessor has a written recommendation for the use of
 17 cannabidiol oil from a physician licensed to practice medicine in
 18 the state of Idaho;

19 (iii) The cannabidiol is in a container with a capacity of thirty-
 20 two (32) ounces or less that is labeled by the manufacturer showing
 21 that amounts of tetrahydrocannabidiol by weight and the ratio of
 22 cannabidiol to tetrahydrocannabidiol are in compliance with this
 23 subsection;

24 (iv) An independent laboratory has verified the tetrahydro-
 25 cannabidiol and cannabidiol percentages; and

26 (v) The cannabidiol oil does, in fact, qualify within Idaho's
 27 definition of cannabidiol oil.

28 (u) "Narcotic drug" means any of the following, whether produced di-
 29 rectly or indirectly by extraction from substances of vegetable origin, or
 30 independently by means of chemical synthesis, or by a combination of extrac-
 31 tion and chemical synthesis:

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

34 (2) Any salt, compound, isomer, derivative, or preparation thereof
 35 which is chemically equivalent or identical with any of the substances
 36 referred to in clause 1, but not including the isoquinoline alkaloids of
 37 opium.

38 (3) Opium poppy and poppy straw.

39 (4) Coca leaves and any salt, compound, derivative, or preparation of
 40 coca leaves, and any salt, compound, isomer, derivative, or preparation
 41 thereof which is chemically equivalent or identical with any of these
 42 substances, but not including decocainized coca leaves or extractions
 43 of coca leaves which do not contain cocaine or ecgonine.

44 (v) "Opiate" means any substance having an addiction-forming or ad-
 45 diction-sustaining liability similar to morphine or being capable of
 46 conversion into a drug having addiction-forming or addiction-sustaining
 47 liability. It does not include, unless specifically designated as con-
 48 trolled under section 37-2702, Idaho Code, the dextrorotatory isomer of
 49 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does in-
 50 clude its racemic and levorotatory forms.

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

3 (x) "Peace officer" means any duly appointed officer or agent of a law
4 enforcement agency, as defined herein, including, but not limited to, a duly
5 appointed investigator or agent of the Idaho state police, an officer or em-
6 ployee of the board of pharmacy, who is authorized by the board to enforce
7 this chapter, an officer of the Idaho state police, a sheriff or deputy sher-
8 iff of a county, or a marshal or policeman of any city.

9 (y) "Person" means individual, corporation, government, or governmen-
10 tal subdivision or agency, business trust, estate, trust, partnership or as-
11 sociation, or any other legal entity.

12 (z) "Poppy straw" means all parts, except the seeds, of the opium poppy,
13 after mowing.

14 (aa) "Practitioner" means:

15 (1) A physician, dentist, veterinarian, scientific investigator, or
16 other person licensed, registered or otherwise permitted to distrib-
17 ute, dispense, conduct research with respect to or to administer a
18 controlled substance in the course of his professional practice or re-
19 search in this state;

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

24 (bb) "Prescriber" means an individual currently licensed, registered
25 or otherwise authorized to prescribe and administer controlled substances
26 in the course of professional practice.

27 (cc) "Production" includes the manufacture, planting, cultivation,
28 growing, or harvesting of a controlled substance.

29 (dd) "Simulated controlled substance" means a substance that is not a
30 controlled substance, but which by appearance or representation would lead
31 a reasonable person to believe that the substance is a controlled substance.
32 Appearance includes, but is not limited to, color, shape, size, and markings
33 of the dosage unit. Representation includes, but is not limited to, repre-
34 sentations or factors of the following nature:

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

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

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

41 (ee) "State," when applied to a part of the United States, includes any
42 state, district, commonwealth, territory, insular possession thereof, and
43 any area subject to the legal authority of the United States of America.

44 (ff) "Ultimate user" means a person who lawfully possesses a controlled
45 substance for his own use or for the use of a member of his household or for
46 administering to an animal owned by him or by a member of his household.

47 (gg) "Utility" means any person, association, partnership or corpora-
48 tion providing telephone and/or communication services, electricity, natu-
49 ral gas or water to the public.

1 SECTION 2. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after its
3 passage and approval.