

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 441

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO UNIFORM CONTROLLED SUBSTANCES; AMENDING SECTION 37-2701, IDAHO CODE, TO REVISE A DEFINITION; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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 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 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) "Division" means the Idaho division of occupational and profes-
2 sional licenses.

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

12 (o) "Drug paraphernalia" means all equipment, products and materials
13 of any kind used, intended for use, or designed for use in planting, propa-
14 gating, cultivating, growing, harvesting, manufacturing, compounding, con-
15 verting, producing, processing, preparing, testing, analyzing, packaging,
16 repackaging, storing, containing, concealing, injecting, ingesting, inhal-
17 ing, or otherwise introducing into the human body a controlled substance in
18 violation of this chapter. It includes, but is not limited to:

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

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

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

29 (4) Testing equipment used, intended for use, or designed for use in
30 identifying or in analyzing the strength, effectiveness or purity of
31 controlled substances; however, testing equipment used, intended for
32 use, or designed for use in identifying whether a controlled substance
33 contains fentanyl, a fentanyl analog, or any derivative thereof shall
34 not be considered drug paraphernalia;

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

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

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

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

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

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

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

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

7 (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
8 pipes with or without screens, permanent screens, hashish heads,
9 or punctured metal bowls;

10 (ii) Water pipes;

11 (iii) Carburetion tubes and devices;

12 (iv) Smoking and carburetion masks;

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

16 (vi) Miniature cocaine spoons and cocaine vials;

17 (vii) Chamber pipes;

18 (viii) Carburetor pipes;

19 (ix) Electric pipes;

20 (x) Air-driven pipes;

21 (xi) Chillums;

22 (xii) Bongs;

23 (xiii) Ice pipes or chillers;

24 In determining whether an object is drug paraphernalia, a court or other au-
25 thority should consider, in addition to all other logically relevant fac-
26 tors, the following:

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

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

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

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

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

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

43 7. Instructions, oral or written, provided with the object concerning
44 its use;

45 8. Descriptive materials accompanying the object that explain or de-
46 pict its use;

47 9. National and local advertising concerning its use;

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

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

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

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

8 14. Expert testimony concerning its use.

9 (p) "Financial institution" means any bank, trust company, savings and
10 loan association, savings bank, mutual savings bank, credit union, or loan
11 company under the jurisdiction of the state or under the jurisdiction of an
12 agency of the United States.

13 (q) "Immediate precursor" means a substance which the board has found
14 to be and by rule designates as being the principal compound commonly used or
15 produced primarily for use, and which is an immediate chemical intermediary
16 used or likely to be used in the manufacture of a controlled substance, the
17 control of which is necessary to prevent, curtail or limit manufacture.

18 (r) "Isomer" means the optical isomer, except as used in section
19 37-2705(d), Idaho Code.

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

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

34 (1) By a practitioner as an incident to his administering, dispensing
35 or, as authorized by board rule, distributing of a controlled substance
36 in the course of his professional practice; or

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

40 (u) "Marijuana" or "marihuana" means all parts of the plant of the
41 genus Cannabis, regardless of species, and whether growing or not; the seeds
42 thereof; the resin extracted from any part of such plant; and every compound,
43 manufacture, salt, derivative, mixture, or preparation of such plant, its
44 seeds or resin. It does not include:

45 (1) Industrial hemp or hemp possessed, grown, transported, farmed,
46 produced, processed, or possessed by any other entity engaged in haul-
47 ing, transporting, delivering, or otherwise moving hemp in interstate
48 or intrastate commerce pursuant to a license granted under the provi-
49 sions of the 2014 farm bill, the 2018 farm bill, 7 CFR 990.1 et seq.,
50 or the approved state plan for the state of Idaho. "Industrial hemp"

1 or "hemp" means the plant species *Cannabis sativa* L. and any part of
2 that plant, including the seeds thereof and all derivatives, extracts,
3 cannabinoids, isomers, acids, salts, and salts of isomers, whether
4 growing or not, with a measured total delta-9 tetrahydrocannabinol con-
5 centration of not more than three-tenths of one percent (0.3%) on a dry
6 weight or volume basis that shall determine the total delta-9 tetrahy-
7 drocannabinol (THC) concentration, including both delta-9 tetrahydro-
8 cannabinol and delta-9 tetrahydrocannabinolic acid (THCA) evaluated
9 by decarboxylation during analysis, or by measuring each compound and
10 calculating the total percentage of delta-9 tetrahydrocannabinol if
11 the THCA was decarboxylated, which must not exceed three-tenths of one
12 percent (0.3%).

13 (2) The mature stalks of the plant genus *Cannabis* unless the same are
14 intermixed with prohibited parts thereof, fiber produced from the
15 stalks, oil or cake made from the seeds or the achene of such plant, any
16 other compound, manufacture, salt, derivative, mixture, or preparation
17 of the mature stalks, except the resin extracted therefrom or where the
18 same are intermixed with prohibited parts of such plant, fiber, oil, or
19 cake, or the sterilized seed of such plant which is incapable of germi-
20 nation.

21 Evidence that any plant material or the resin or any derivative
22 thereof, regardless of form, that does not meet the definition of "indus-
23 trial hemp" or "hemp" as provided in this section, or that is possessed
24 without a license granted under the provisions of the 2014 farm bill,
25 the 2018 farm bill, 7 CFR 990.1 et seq., or the approved state plan for
26 the state of Idaho, contains any of the chemical substances classified
27 as tetrahydrocannabinols shall create a presumption that such mate-
28 rial is "marijuana" as defined and prohibited herein. "Marijuana"
29 does not include drug product in finished dosage formulation that has
30 been approved by the United States food and drug administration that
31 contains: (i) cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclo-
32 hexen-1-yl]-5-pentyl-1,3-benzenediol), derived from cannabis and no more
33 than one-tenth of one percent (0.1%) (w/w) residual tetrahydrocannabinols;
34 or (ii) nabiximols.

35 (v) "Narcotic drug" means any of the following, whether produced di-
36 rectly or indirectly by extraction from substances of vegetable origin, or
37 independently by means of chemical synthesis, or by a combination of extrac-
38 tion and chemical synthesis:

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

41 (2) Any salt, compound, isomer, derivative, or preparation thereof
42 that is chemically equivalent or identical with any of the substances
43 referred to in clause (1), but not including the isoquinoline alkaloids
44 of opium.

45 (3) Opium poppy and poppy straw.

46 (4) Coca leaves and any salt, compound, derivative, or preparation of
47 coca leaves, and any salt, compound, isomer, derivative, or preparation
48 thereof which is chemically equivalent or identical with any of these
49 substances, but not including decocainized coca leaves or extractions
50 of coca leaves which do not contain cocaine or ecgonine.

1 (w) "Opiate" means any substance having an addiction-forming or ad-
2 diction-sustaining liability similar to morphine or being capable of
3 conversion into a drug having addiction-forming or addiction-sustaining
4 liability. It does not include, unless specifically designated as con-
5 trolled under section 37-2702, Idaho Code, the dextrorotatory isomer of
6 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does in-
7 clude its racemic and levorotatory forms.

8 (x) "Opium poppy" means the plant of the species *Papaver somniferum* L.,
9 except its seeds.

10 (y) "Peace officer" means any duly appointed officer or agent of a law
11 enforcement agency, as defined herein, including but not limited to a duly
12 appointed investigator or agent of the Idaho state police, an officer or an
13 employee of the board of pharmacy who is authorized by the board to enforce
14 this chapter, an officer of the Idaho state police, a sheriff or deputy sher-
15 iff of a county, or a marshal or policeman of any city.

16 (z) "Person" means individual, corporation, government, or governmen-
17 tal subdivision or agency, business trust, estate, trust, partnership or as-
18 sociation, or any other legal entity.

19 (aa) "Poppy straw" means all parts, except the seeds, of the opium poppy
20 after mowing.

21 (bb) "Practitioner" means:

22 (1) A physician, dentist, veterinarian, scientific investigator,
23 or other person licensed, registered or otherwise permitted to dis-
24 tribute, dispense, conduct research with respect to, or administer a
25 controlled substance in the course of his professional practice or re-
26 search in this state;

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

31 (cc) "Prescribe" means a direction or authorization permitting an ulti-
32 mate user to lawfully obtain or be administered controlled substances.

33 (dd) "Prescriber" means an individual currently licensed, registered
34 or otherwise authorized to prescribe and administer controlled substances
35 in the course of professional practice.

36 (ee) "Production" includes the manufacture, planting, cultivation,
37 growing, or harvesting of a controlled substance.

38 (ff) "Simulated controlled substance" means a substance that is not a
39 controlled substance, but which by appearance or representation would lead
40 a reasonable person to believe that the substance is a controlled substance.
41 Appearance includes, but is not limited to, color, shape, size, and markings
42 of the dosage unit. Representation includes, but is not limited to, repre-
43 sentations or factors of the following nature:

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

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

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

1 (gg) "State," when applied to a part of the United States, includes any
2 state, district, commonwealth, territory, insular possession thereof, and
3 any area subject to the legal authority of the United States of America.

4 (hh) "Ultimate user" means a person who lawfully possesses a controlled
5 substance for his own use or for the use of a member of his household or for
6 administering to an animal owned by him or by a member of his household.

7 (ii) "Utility" means any person, association, partnership or corpora-
8 tion providing telephone and/or communication services, electricity, natu-
9 ral gas or water to the public.

10 SECTION 2. An emergency existing therefor, which emergency is hereby
11 declared to exist, this act shall be in full force and effect on and after
12 July 1, 2024.