

TITLE 37
FOOD, DRUGS, AND OIL

CHAPTER 27
UNIFORM CONTROLLED SUBSTANCES

ARTICLE I

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 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.

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

(n) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in

planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to:

- (1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
- (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;
- (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
- (7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (9) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- (10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
- (11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
 - (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (ii) Water pipes;
 - (iii) Carburetion tubes and devices;
 - (iv) Smoking and carburetion masks;
 - (v) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - (vi) Miniature cocaine spoons, and cocaine vials;
 - (vii) Chamber pipes;
 - (viii) Carburetor pipes;

- (ix) Electric pipes;
- (x) Air-driven pipes;
- (xi) Chillums;
- (xii) Bongs;
- (xiii) Ice pipes or chillers;

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;
2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
3. The proximity of the object, in time and space, to a direct violation of this chapter;
4. The proximity of the object to controlled substances;
5. The existence of any residue of controlled substances on the object;
6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;
11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
13. The existence and scope of legitimate uses for the object in the community;
14. Expert testimony concerning its use.

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

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

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

(r) "Law enforcement agency" means a governmental unit of one (1) or more persons employed full-time or part-time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are autho-

rized to make arrests for crimes while acting within the scope of their authority.

(s) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, and includes extraction, directly or indirectly, from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

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

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

(t) "Marijuana" means all parts of the plant of the genus Cannabis, regardless of species, and whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. It does not include the mature stalks of the plant unless the same are intermixed with prohibited parts thereof, fiber produced from the stalks, oil or cake made from the seeds or the achene of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom or where the same are intermixed with prohibited parts of such plant, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. Evidence that any plant material or the resin or any derivative thereof, regardless of form, contains any of the chemical substances classified as tetrahydrocannabinols shall create a presumption that such material is "marijuana" as defined and prohibited herein.

(u) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

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

(3) Opium poppy and poppy straw.

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

(v) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 37-2702, Idaho Code, the dextrorotatory isomer of

3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

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

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

(y) "Person" means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

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

(aa) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of his professional practice or research in this state;

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

(bb) "Prescribe" means a direction or authorization permitting an ultimate user to lawfully obtain or be administered controlled substances.

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

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

(ee) "Simulated controlled substance" means a substance that is not a controlled substance, but which by appearance or representation would lead a reasonable person to believe that the substance is a controlled substance. Appearance includes, but is not limited to, color, shape, size, and markings of the dosage unit. Representation includes, but is not limited to, representations or factors of the following nature:

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

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

(3) Whether the substance is packaged in a manner normally used for illicit controlled substances.

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

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

(hh) "Utility" means any person, association, partnership or corporation providing telephone and/or communication services, electricity, natural gas or water to the public.

[37-2701, added 1971, ch. 215, sec. 1, p. 939; am. 1972, ch. 133, sec. 1, p. 261; am. 1974, ch. 27, sec. 78, p. 811; am. 1975, ch. 196, sec. 1, p. 545; am. 1980, ch. 388, sec. 1, p. 977; am. 1982, ch. 169, sec. 1, p. 442; am. 1983, ch. 218, sec. 1, p. 599; am. 1989, ch. 266, sec. 1, p. 646; am. 1995, ch. 116, sec. 23, p. 399; am. 1999, ch. 280, sec. 1, p. 696; am. 2000, ch. 469, sec. 84, p. 1528; am. 2010, ch. 118, sec. 2, p. 257; am. 2014, ch. 79, sec. 1, p. 211; am. 2015, ch. 25, sec. 1, p. 30.]

ARTICLE II

37-2702. AUTHORITY TO CONTROL. (a) The board shall administer the regulatory provisions of this act and may add substances to or delete or reschedule all substances enumerated in the schedules in section 37-2705, 37-2707, 37-2709, 37-2711, or 37-2713, Idaho Code, pursuant to the procedures of chapter 52, title 67, Idaho Code. In making a determination regarding a substance, the board shall consider the following:

- (1) The actual or relative potential for abuse;
- (2) The scientific evidence of its pharmacological effect, if known;
- (3) The state of current scientific knowledge regarding the substance;
- (4) The history and current pattern of abuse;
- (5) The scope, duration, and significance of abuse;
- (6) The risk to the public health;
- (7) The potential of the substance to produce psychic or physiological dependence liability; and
- (8) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a) of this section, the board shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.

(c) If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the board, the board shall similarly control the substance under this act by promulgating a temporary rule or proposing a statutory amendment, or both, within thirty (30) days from publication in the federal register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless within that thirty (30) day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall publish its decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this act by the board, control under this act is stayed until the board publishes its decision.

(e) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco.

[37-2702, added 1971, ch. 215, sec. 1, p. 939; am. 1972, ch. 133, sec. 2, p. 261; am. 2017, ch. 4, sec. 1, p. 5.]

37-2703. NOMENCLATURE. The controlled substances listed or to be listed in the schedules in sections 37-2705, 37-2707, 37-2709, 37-2711 and 37-2713, Idaho Code, are included by whatever official, common, usual, chemical, or trade-name designated.

[I.C., sec. 37-2703, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2704. SCHEDULE I TESTS. The board shall place a substance in schedule I if it finds that the substance:

- (a) Has high potential for abuse; and
- (b) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

[I.C., sec. 37-2704, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2705. SCHEDULE I. (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Acetyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide);
- (4) Allylprodine;
- (5) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM);
- (6) Alphameprodine;
- (7) Alphamethadol;
- (8) Alpha-methylfentanyl;
- (9) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (10) Benzethidine;
- (11) Betacetylmethadol;
- (12) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
- (13) Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide);
- (14) Betameprodine;
- (15) Betamethadol;
- (16) Betaprodine;
- (17) Clonitazene;
- (18) Dextromoramide;
- (19) Diampromide;
- (20) Diethylthiambutene;
- (21) Difenoxin;
- (22) Dimenoxadol;
- (23) Dimepheptanol;
- (24) Dimethylthiambutene;
- (25) Dioxaphetyl butyrate;
- (26) Dipipanone;
- (27) Ethylmethylthiambutene;
- (28) Etonitazene;

- (29) Etoxeridine;
- (30) Furethidine;
- (31) Hydroxypethidine;
- (32) Ketobemidone;
- (33) Levomoramide;
- (34) Levophenacymorphan;
- (35) 3-Methylfentanyl;
- (36) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide]);
- (37) Morpheridine;
- (38) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (39) Noracymethadol;
- (40) Norlevorphanol;
- (41) Normethadone;
- (42) Norpipanone;
- (43) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
- (44) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (45) Phenadoxone;
- (46) Phenampromide;
- (47) Phenomorphan;
- (48) Phenoperidine;
- (49) Piritramide;
- (50) Proheptazine;
- (51) Properidine;
- (52) Propiram;
- (53) Racemoramide;
- (54) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
- (55) Tilidine;
- (56) Trimeperidine;
- (57) u-47700 (3,4-Dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide).

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphanol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;

- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon.

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

- (1) Dimethoxyphenethylamine, or any compound not specifically excepted or listed in another schedule that can be formed from dimethoxyphenethylamine by replacement of one (1) or more hydrogen atoms with another atom(s), functional group(s) or substructure(s) including, but not limited to, compounds such as DOB, DOC, 2C-B, 25B-NBOMe;
- (2) Methoxyamphetamine or any compound not specifically excepted or listed in another schedule that can be formed from methoxyamphetamine by replacement of one (1) or more hydrogen atoms with another atom(s), functional group(s) or substructure(s) including, but not limited to, compounds such as PMA and DOM;
- (3) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (4) 5-methoxy-N,N-diisopropyltryptamine;
- (5) Amphetamine or methamphetamine with a halogen substitution on the benzyl ring, including compounds such as fluorinated amphetamine and fluorinated methamphetamine;
- (6) 3,4-methylenedioxy amphetamine;
- (7) 3,4-methylenedioxymethamphetamine (MDMA);
- (8) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-ethyl MDA, MDE, MDEA);
- (9) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-hydroxy MDA);
- (10) 3,4,5-trimethoxy amphetamine;
- (11) 5-methoxy-N,N-dimethyltryptamine (also known as 5-methoxy-3-2[2-(dimethylamino)ethyl]indole and 5-MeO-DMT);
- (12) Alpha-ethyltryptamine (some other names: etryptamine, 3-(2-aminobutyl) indole);
- (13) Alpha-methyltryptamine;
- (14) Bufotenine;
- (15) Diethyltryptamine (DET);
- (16) Dimethyltryptamine (DMT);
- (17) Ibogaine;
- (18) Lysergic acid diethylamide;
- (19) Marihuana;
- (20) Mescaline;
- (21) Parahexyl;
- (22) Peyote;

- (23) N-ethyl-3-piperidyl benzilate;
- (24) N-methyl-3-piperidyl benzilate;
- (25) Psilocybin;
- (26) Psilocyn;
- (27) Tetrahydrocannabinols or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure such as the following:

- i. Tetrahydrocannabinols:

- a. Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in either a soft gelatin capsule or in an oral solution in a drug product approved by the U.S. Food and Drug Administration.
- b. Δ^6 cis or trans tetrahydrocannabinol, and their optical isomers.
- c. $\Delta^{3,4}$ cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)
- d. [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2methyl-octan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)], also known as 6aR-trans-3-(1,1-dimethylheptyl)-6a,7,10,10a-tetrahydro-1-hydroxy-6,6-dimethyl-6H-dibenzo[b,d]pyran-9-methanol (HU-210) and its geometric isomers (HU211 or dexanabinol).

- ii. The following synthetic drugs:

- a. Any compound structurally derived from (1H-indole-3-yl)(cycloalkyl, cycloalkenyl, aryl)methanone, or (1H-indole-3-yl)(cycloalkyl, cycloalkenyl, aryl)methane, or (1H-indole-3-yl)(cycloalkyl, cycloalkenyl, aryl), methyl or dimethyl butanoate, amino-methyl (or dimethyl)-1-oxobutan-2-yl) carboxamide by substitution at the nitrogen atoms of the indole ring or carboxamide to any extent, whether or not further substituted in or on the indole ring to any extent, whether or not substituted to any extent in or on the cycloalkyl, cycloalkenyl, aryl ring(s) (substitution in the ring may include, but is not limited to, heteroatoms such as nitrogen, sulfur and oxygen).
- b. Any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring to any extent, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent.
- c. Any compound structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring to any extent, whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent.
- d. Any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring to any extent, whether or not further sub-

stituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent.

e. Any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring to any extent, whether or not substituted in the cyclohexyl ring to any extent.

f. Any compound structurally derived from 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring to any extent, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

g. [2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrol-
o[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone
(WIN-55,212-2).

h. 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (HU-243).

i. [(6S, 6aR, 9R, 10aR)-9-hydroxy-6-methyl-3-[(2R)-5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate (CP 50,5561).

(28) Ethylamine analog of phencyclidine: N-ethyl-1-phenylcyclohexylamine (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(29) Pyrrolidine analog of phencyclidine: 1-(phenylcyclohexyl) -pyrrolidine, PCPy, PHP;

(30) Thiophene analog of phencyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP;

(31) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy;

(32) Spores or mycelium capable of producing mushrooms that contain psilocybin or psilocin.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate, 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Flunitrazepam (also known as "R2," "Rohypnol");

(3) Mecloqualone;

(4) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Aminorex (some other names: aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (some other names: 2-amino-1-phenol-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone);

(3) Substituted cathinones. Any compound, except bupropion or compounds listed under a different schedule, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either

phenyl, naphthyl or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

- i. By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl or halide substituents, whether or not further substituted in the ring system by one (1) or more other univalent substituents;
 - ii. By substitution at the 3-position with an acyclic alkyl substituent;
 - iii. By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.
- (4) Fenethylamine;
- (5) Methcathinone (some other names: 2-(methyl-amino)-propionophenone, alpha-(methylamino)-propionophenone, N-methylcathinone, AL-464, AL-422, AL-463 and UR1423);
- (6) (+/-)cis-4-methylaminorex [(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine];
- (7) N-benzylpiperazine (also known as: BZP, 1-benzylpiperazine);
- (8) N-ethylamphetamine;
- (9) N,N-dimethylamphetamine (also known as: N,N-alpha-trimethyl-benzeneethanamine).

[37-2705, added 1971, ch. 215, sec. 1, p. 939; am. 1977, ch. 234, sec. 1, p. 698; am. 1980, ch. 160, sec. 1, p. 343; am. 1981, ch. 102, sec. 1, p. 149; am. 1984, ch. 160, sec. 1, p. 390; am. 1985, ch. 25, sec. 1, p. 41; am. 1986, ch. 209, sec. 1, p. 535; am. 1987, ch. 38, sec. 1, p. 61; am. 1988, ch. 190, sec. 1, p. 337; am. 1989, ch. 177, sec. 1, p. 428; am. 1995, ch. 1, sec. 1, p. 3; am. 1996, ch. 36, sec. 1, p. 90; am. 1998, ch. 160, sec. 1, p. 545; am. 2003, ch. 185, sec. 1, p. 500; am. 2004, ch. 302, sec. 1, p. 845; am. 2010, ch. 117, sec. 1, p. 243; am. 2011, ch. 46, sec. 1, p. 105; am. 2011, ch. 47, sec. 1, p. 109; am. 2011, ch. 134, sec. 1, p. 368; am. 2012, ch. 181, sec. 1, p. 472; am. 2013, ch. 253, sec. 1, p. 623; am. 2014, ch. 349, sec. 1, p. 870; am. 2017, ch. 4, sec. 2, p. 6; am. 2018, ch. 36, sec. 1, p. 68.]

37-2706. SCHEDULE II TESTS. The board shall place a substance in schedule II if it finds that:

- (a) The substance has high potential for abuse;
- (b) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (c) The abuse of the substance may lead to severe psychic or physical dependence.

[I.C., sec. 37-2706, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2707. SCHEDULE II. (a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, naltrexone and their respective salts, but including the following:

1. Raw opium;
2. Opium extracts;
3. Opium fluid extracts;
4. Powdered opium;
5. Granulated opium;
6. Tincture of opium;
7. Codeine;
8. Dihydroetorphine;
9. Diprenorphine;
10. Ethylmorphine;
11. Etorphine hydrochloride;
12. Hydrocodone;
13. Hydromorphone;
14. Metopon;
15. Morphine;
16. Oripavine;
17. Oxycodone;
18. Oxymorphone;
19. Tapentadol;
20. Thebaine.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b)(1) of this section, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but shall not include the following:

1. Decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine; or ecgonine; or
2. [¹²³I]ioflupane.

(5) Benzoylecgonine.

(6) Methylbenzoylecgonine (Cocaine - its salts, optical isomers, and salts of optical isomers).

(7) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk Dextropropoxyphene (nondosage forms);
- (6) Carfentanil;

- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levo-alpha-acetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);
- (12) Levomethorphan;
- (13) Levorphanol;
- (14) Metazocine;
- (15) Methadone;
- (16) Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (17) Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl propane-carboxylic acid;
- (18) Pethidine (meperidine);
- (19) Pethidine -- Intermediate -- A, 4-cyano-1-methyl-4-phenyl-piperidine;
- (20) Pethidine -- Intermediate -- B, ethyl-4-phenylpiperidine-4-carboxylate;
- (21) Pethidine -- Intermediate -- C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (22) Phenazocine;
- (23) Piminodine;
- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanil;
- (27) Sufentanil.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Lisdexamfetamine;
- (3) Methamphetamine, its salts, isomers, and salts of its isomers;
- (4) Phenmetrazine and its salts;
- (5) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Amobarbital;
- (2) Glutethimide;
- (3) Pentobarbital;
- (4) Phencyclidine;
- (5) Secobarbital.
- (f) Hallucinogenic substances.

(1) Nabilone REPLACE DOL TAG HERE (another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one) (21 CFR 1308.12 (f)).

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Immediate precursor to amphetamine and methamphetamine:
 - (a) Anthranilic acid;
 - (b) Ephedrine;
 - (c) Lead acetate;
 - (d) Methylamine;
 - (e) Methyl formamide;
 - (f) N-methylephedrine;
 - (g) Phenylacetic acid;
 - (h) Phenylacetone;
 - (i) Phenylpropanolamine;
 - (j) Pseudoephedrine.

Except that any combination or compound containing ephedrine, or any of its salts and isomers, or phenylpropanolamine or its salts and isomers, or pseudoephedrine, or any of its salts and isomers which is prepared for dispensing or over-the-counter distribution is not a controlled substance for the purpose of this section, unless such substance is possessed, delivered, or possessed with intent to deliver to another with the intent to manufacture methamphetamine, amphetamine or any other controlled substance in violation of section 37-2732, Idaho Code. For purposes of this provision, the requirements of the uniform controlled substances act shall not apply to a manufacturer, wholesaler or retailer of over-the-counter products containing the listed substances unless such person possesses, delivers, or possesses with intent to deliver to another the over-the-counter product with intent to manufacture a controlled substance.

- (2) Immediate precursors to phencyclidine (PCP):

- (a) 1-phenylcyclohexylamine;
- (b) 1-piperidinocyclohexanecarbonitrile (PCC).

- (3) Immediate precursor to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP).

[37-2707, added 1971, ch. 215, sec. 1, p. 939; am. 1972, ch. 133, sec. 3, p. 261; am. 1977, ch. 234, sec. 2, p. 701; am. 1980, ch. 160, sec. 2, p. 343; am. 1981, ch. 102, sec. 2, p. 152; am. 1984, ch. 160, sec. 2, p. 393; am. 1985, ch. 25, sec. 2, p. 44; am. 1986, ch. 209, sec. 2, p. 538; am. 1987, ch. 38, sec. 2, p. 64; am. 1988, ch. 190, sec. 2, p. 341; am. 1989, ch. 177, sec. 2, p. 432; am. 1992, ch. 24, sec. 1, p. 72; am. 1995, ch. 1, sec. 2, p. 6; am. 1998, ch. 328, sec. 1, p. 1058; am. 2000, ch. 110, sec. 1, p. 242; am. 2010, ch. 117, sec. 2, p. 246; am. 2011, ch. 134, sec. 2, p. 372; am. 2016, ch. 70, sec. 1, p. 245.]

37-2708. SCHEDULE III TESTS. The board shall place a substance in schedule III if it finds that:

- (a) The substance has a potential for abuse less than the substances listed in schedules I and II;
- (b) The substance has currently accepted medical use in treatment in the United States; and
- (c) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

[I.C., sec. 37-2708, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2709. SCHEDULE III. (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, (whether optical or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed as excepted compounds under 21 CFR 1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

- (2) Benzphetamine;
- (3) Chlorphentermine;
- (4) Clortermine;
- (5) Phendimetrazine.

(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:

- i. Amobarbital;
- ii. Secobarbital;
- iii. Pentobarbital or any salt thereof and one (1) or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

- i. Amobarbital;
- ii. Secobarbital;
- iii. Pentobarbital or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof, including, but not limited to:

- i. Aprobarbital;
- ii. Butobarbital (secbutobarbital);
- iii. Butalbital;
- iv. Butobarbital (butethal);
- v. Talbutal;
- vi. Thiamylal;
- vii. Thiopental;
- viii. Vinbarbital.

(4) Chlorhexadol;

(5) Embutramide;

(6) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal food, drug, and cosmetic act;

(7) Ketamine, its salts, isomers, and salts of isomers-7285. (Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone).

- (8) Lysergic acid;
- (9) Lysergic acid amide;
- (10) Methyprylon;
- (11) Perampanel, and its salts, isomers and salts of isomers;
- (12) Sulfondiethylmethane;
- (13) Sulfonethylmethane;
- (14) Sulfonmethane;
- (15) Tiletamine and zolazepam or any salt thereof.
- (d) Nalorphine.
- (e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule:
 - (1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
 - (i) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
 - (ii) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (iii) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (iv) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more ingredients in recognized therapeutic amounts;
 - (v) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
 - (vi) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - (2) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:
 - (i) Buprenorphine.
 - (ii) [Reserved].
- (f) Anabolic steroids and human growth hormones. Any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins and corticosteroids) that promotes muscle growth including any salt, ester or isomer of a drug or substance listed in this paragraph, if that salt, ester or isomer promotes muscle growth.
 - (1) 13beta-ethyl-17beta-hydroxygon-4-en-3-one;
 - (2) 17alpha-methyl-3alpha, 17beta-dihydroxy-5alpha-androstane;
 - (3) 17alpha-methyl-3beta, 17beta-dihydroxy-5alpha-androstane;
 - (4) 17alpha-methyl-3beta, 17beta-dihydroxyandrost-4-ene;
 - (5) 17alpha-methyl-4-hydroxynandrolone;
 - (6) 17alpha-methyl-delta1-dihydrotestosterone;
 - (7) 19-nor-4-androstenediol;
 - (8) 19-nor-4-androstenedione;

- (9) 19-nor-4,9(10)-androstadienedione;
- (10) 19-nor-5-androstenediol;
- (11) 19-nor-5-androstenedione;
- (12) 1-androstenediol;
- (13) 1-androstenedione;
- (14) 3alpha,17beta-dihydroxy-5alpha-androstane;
- (15) 3beta,17beta-dihydroxy-5alpha-androstane;
- (16) 4-androstenediol;
- (17) 4-androstenedione;
- (18) 4-hydroxy-19-nortestosterone;
- (19) 4-hydroxytestosterone;
- (20) 5-androstenediol;
- (21) 5-androstenedione;
- (22) Androstenedione;
- (23) Bolasterone;
- (24) Boldenone;
- (25) Boldione;
- (26) Calusterone;
- (27) Chlorotestosterone (4-chlorotestosterone);
- (28) Clostebol;
- (29) Dehydrochlormethyltestosterone;
- (30) Delta1-dihydrotestosterone;
- (31) Desoxymethyltestosterone;
- (32) Dihydrotestosterone (4-dihydrotestosterone);
- (33) Drostanolone;
- (34) Ethylestrenol;
- (35) Fluoxymesterone;
- (36) Formebolone;
- (37) Furazabol;
- (38) Human growth hormones;
- (39) Mestanolone;
- (40) Mesterolone;
- (41) Methandienone;
- (42) Methandranone;
- (43) Methandriol;
- (44) Methandrostenolone;
- (45) Methasterone (2a, 17a-dimethyl-5a-androstan-17beta-ol-3-one);
- (46) Methenolone;
- (47) Methyldienolone;
- (48) Methyltestosterone;
- (49) Methyltrienolone;
- (50) Mibolerone;
- (51) Nandrolone;
- (52) Norbolethone;
- (53) Norclostebol;
- (54) Norethandrolone;
- (55) Normethandrolone;
- (56) Oxandrolone;
- (57) Oxymesterone;
- (58) Oxymetholone;
- (59) Prostanazol (17beta-hydroxy-5a-androstano[3,2-c]pyrazole);
- (60) Stanolone;
- (61) Stanazolol;

- (62) Stenbolone;
- (63) Testolactone;
- (64) Testosterone;
- (65) Testosterone cypionate;
- (66) Testosterone enanthate;
- (67) Testosterone propionate;
- (68) Tetrahydrogestrinone;
- (69) Trenbolone.

Anabolic steroids that are expressly intended for administration through implants or injection to cattle or other nonhuman species, and that are approved by the federal Food and Drug Administration for such use, shall not be classified as controlled substances under this act and shall not be governed by its provisions.

In addition to the penalties prescribed in article IV of the uniform controlled substances act, any person shall be guilty of a felony who prescribes, dispenses, supplies, sells, delivers, manufactures or possesses with the intent to prescribe, dispense, supply, sell, deliver or manufacture anabolic steroids or any other human growth hormone for purposes of enhancing performance in an exercise, sport or game or hormonal manipulation intended to increase muscle mass, strength or weight without a medical necessity as determined by a physician.

(g) Hallucinogenic substances.

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in the federal Food and Drug Administration approved product -- 7369. (Some other names for dronabinol: (6aR-trans) -6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol).

(h) The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsection (b) or (c) of this section from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

[37-2709, added 1971, ch. 215, sec. 1, p. 939; am. 1972, ch. 133, sec. 4, p. 261; am. 1977, ch. 234, sec. 3, p. 703; am. 1980, ch. 160, sec. 3, p. 345; am. 1982, ch. 91, sec. 1, p. 166; am. 1984, ch. 160, sec. 3, p. 395; am. 1992, ch. 24, sec. 2, p. 75; am. 1996, ch. 36, sec. 2, p. 94; am. 2000, ch. 110, sec. 2, p. 245; am. 2003, ch. 185, sec. 2, p. 503; am. 2006, ch. 203, sec. 1, p. 620; am. 2010, ch. 117, sec. 3, p. 249; am. 2012, ch. 181, sec. 2, p. 477; am. 2014, ch. 33, sec. 1, p. 48; am. 2015, ch. 29, sec. 1, p. 62; am. 2017, ch. 4, sec. 3, p. 10.]

37-2710. SCHEDULE IV TESTS. The board shall place a substance in schedule IV if it finds that:

(a) The substance has a low potential for abuse relative to substances in schedule III;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule III.

[I.C., sec. 37-2710, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2711. SCHEDULE IV. (a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) No more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(3) 2- [(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol (including tramadol), including its salts, optical and geometric isomers, and salts of isomers.

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alfaxalone 5[alpha]-pregnan-3[alpha]-ol-11,20-dione;

(2) Alprazolam;

(3) Barbital;

(4) Bromazepam;

(5) Camazepam;

(6) Carisprodol;

(7) Chloral betaine;

(8) Chloral hydrate;

(9) Chlordiazepoxide;

(10) Clobazam;

(11) Clonazepam;

(12) Clorazepate;

(13) Clotiazepam;

(14) Cloxazolam;

(15) Delorazepam;

(16) Diazepam;

(17) Dichloralphenazone;

(18) Estazolam;

(19) Ethchlorvynol;

(20) Ethinamate;

(21) Ethyl loflazepate;

(22) Fludiazepam;

(23) Flurazepam;

(24) Fospropofol;

(25) Halazepam;

(26) Haloxazolam;

(27) Ketazolam;

(28) Loprazolam;

(29) Lorazepam;

(30) Lormetazepam;

(31) Mebutamate;

(32) Medazepam;

- (33) Meprobamate;
- (34) Methohexital;
- (35) Methylphenobarbital (mephobarbital);
- (36) Midazolam;
- (37) Nimetazepam;
- (38) Nitrazepam;
- (39) Nordiazepam;
- (40) Oxazepam;
- (41) Oxazolam;
- (42) Paraldehyde;
- (43) Petrichloral;
- (44) Phenobarbital;
- (45) Pinazepam;
- (46) Prazepam;
- (47) Quazepam;
- (48) Suvorexant;
- (49) Temazepam;
- (50) Tetrazepam;
- (51) Triazolam;
- (52) Zaleplon;
- (53) Zolpidem;
- (54) Zopiclone.

(d) Fenfluramine -- Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

- (1) Dexfenfluramine;
- (2) Fenfluramine.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Cathine ((+)-norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Lorcaserin;
- (6) Mazindol;
- (7) Mefenorex;
- (8) Modafinil;
- (9) Pemoline (including organometallic complexes and chelates thereof);
- (10) Phentermine;
- (11) Pipradrol;
- (12) Sibutramine;
- (13) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(f) Other substances. Unless specifically excepted, or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

- (1) Pentazocine;
- (2) Butorphanol (including its optical isomers);
- (3) Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers.

(g) The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (c) of this section from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

[37-2711, added 1971, ch. 215, sec. 1, p. 939; am. 1977, ch. 234, sec. 4, p. 706; am. 1980, ch. 160, sec. 4, p. 347; am. 1981, ch. 102, sec. 3, p. 154; am. 1982, ch. 91, sec. 2, p. 167; am. 1984, ch. 160, sec. 4, p. 397; am. 1986, ch. 209, sec. 3, p. 540; am. 1988, ch. 190, sec. 3, p. 344; am. 1989, ch. 177, sec. 3, p. 435; am. 1989, ch. 197, sec. 1, p. 493; am. 1992, ch. 24, sec. 3, p. 77; am. 1996, ch. 36, sec. 3, p. 97; am. 1999, ch. 67, sec. 1, p. 177; am. 2010, ch. 117, sec. 4, p. 253; am. 2012, ch. 181, sec. 3, p. 481; am. 2014, ch. 33, sec. 2, p. 52; am. 2015, ch. 29, sec. 2, p. 65; am. 2017, ch. 4, sec. 4, p. 14.]

37-2712. SCHEDULE V TESTS. The board shall place a substance in schedule V if it finds that:

- (a) The substance has low potential for abuse relative to the controlled substances listed in schedule IV;
- (b) The substance has currently accepted medical use in treatment in the United States; and
- (c) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV.

[I.C., sec. 37-2712, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2713. SCHEDULE V. (a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below.

(c) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
- (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
- (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligrams difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(d) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl]butanamide) (also referred to as BRV; UCB-34714; Briviact) (including its salts);

(2) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester]-2779;

(3) Lacosamide;

(4) Pregabalin;

(5) Pyrovalerone.

[37-2713, added 1971, ch. 215, sec. 1, p. 939; am. 1977, ch. 234, sec. 5, p. 707; am. 1980, ch. 160, sec. 5, p. 348; am. 1984, ch. 160, sec. 5, p. 399; am. 1986, ch. 209, sec. 4, p. 542; am. 1989, ch. 177, sec. 4, p. 437; am. 1990, ch. 29, sec. 1, p. 44; am. 2003, ch. 185, sec. 3, p. 507; am. 2010, ch. 117, sec. 5, p. 254; am. 2012, ch. 181, sec. 4, p. 483; am. 2017, ch. 4, sec. 5, p. 16.]

37-2713A. SCHEDULE VI. (a) Schedule VI shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section.

(b) Volatile nitrites. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following drugs or their related compounds, congeners or isomers as follows:

(1) Amyl nitrite;

(2) Butyl nitrite;

(3) Isobutyl nitrite;

(4) Isoamyl nitrite;

(5) Isopentyl nitrite.

Except that any combination or compound containing amyl nitrite which is prepared pursuant to a prescription issued by a licensed practitioner is not a controlled substance for the purpose of this section.

[37-2713A, added 1989, ch. 268, sec. 1, p. 654.]

ARTICLE III

37-2715. RULES. The board may promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

[I.C., sec. 37-2715, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2716. REGISTRATION REQUIREMENTS. (a) Every person who manufactures, distributes, prescribes, administers, dispenses, or conducts research with any controlled substance within this state shall obtain annually a registration issued by the board in accordance with this chapter and its rules.

(b) Every prescriber, except veterinarians, shall also register with the board to obtain online access to the controlled substances prescriptions database.

(c) Persons registered by the board under this chapter may possess, manufacture, distribute, dispense, prescribe, administer, or conduct research with those substances to the extent authorized by their registration and licensing entity and in conformity with the other provisions of this chapter.

(d) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) An agent or employee of any person registered pursuant to this chapter, if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(e) The board may waive by rule the requirement for registration of certain persons if it finds it consistent with the public health and safety.

(f) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, administers, dispenses, or conducts research with controlled substances, except a separate registration is not required under this chapter for practitioners engaging in research with nonnarcotic controlled substances in schedules II through IV where the practitioner is already registered under this chapter in another capacity.

(g) Practitioners registered under federal law to conduct research with schedule I substances may conduct research with schedule I substances within this state upon registering in Idaho and furnishing the board with evidence of the practitioner's federal registration.

(h) The board may inspect the establishment of a registrant or applicant for registration in accordance with this chapter and board rule.

[37-2716, added 1971, ch. 215, sec. 1, p. 939; am. 1974, ch. 27, sec. 79, p. 811; am. 2000, ch. 469, sec. 85, p. 1533; am. 2014, ch. 79, sec. 2, p. 215; am. 2015, ch. 25, sec. 2, p. 35.]

37-2717. REGISTRATION. The board shall register an applicant to manufacture, prescribe, administer, dispense, distribute or conduct research with controlled substances included in sections 37-2705, 37-2707, 37-2709, 37-2711 and 37-2713, Idaho Code, unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(a) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(b) Compliance with applicable state and local law;

(c) Any convictions of the applicant under any federal and state laws relating to any controlled substance;

(d) Past experience in the manufacture, dispensing, prescribing, administering, research or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversions;

(e) Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(f) Restriction, suspension or revocation of the applicant's federal registration; and

(g) Any other factors relevant to and consistent with the public health and safety.

[37-2717, added 1971, ch. 215, sec. 1, p. 939; am. 2015, ch. 25, sec. 3, p. 36.]

37-2718. DISCIPLINE. (a) A registration under section 37-2717, Idaho Code, may be restricted, suspended or revoked by the board upon a finding that the registrant:

(1) Has furnished false or fraudulent material information in any application filed under this act;

(2) Has been found guilty of a felony or misdemeanor under any state or federal law relating to any controlled substance; or

(3) Has had his federal registration restricted, suspended or revoked;

(4) Has violated this chapter, any rule of the board promulgated under this act, an order of the board or any federal regulation relating to controlled substances; provided, however, that no restriction, revocation or suspension procedure be initiated under this paragraph without the board first giving notice of the procedure to the state licensing board with authority over the registrant's professional license.

(b) The notice required in subsection (a) (4) of this section shall be given immediately in the event action is taken without an order to show cause as allowed under section 37-2719(b), Idaho Code. In all other cases, such notice shall be given as early as reasonably practicable without risking compromise of the board's investigation but no later than the earlier of:

(1) Issuance of an order to show cause under section 37-2719(a), Idaho Code; or

(2) Setting of a hearing for approval of a resolution of the matter through informal proceedings.

(c) Restriction, revocation or suspension procedures arising solely from "practice related issues" shall be referred by the board to such registrant's state licensing board.

(1) Upon such referral, the registrant's state licensing board shall commence such investigation of the referred matter as it deems necessary and shall take action upon the registrant's license or shall inform the board of pharmacy, in writing, that it has investigated the referred matter and has concluded that no action is necessary.

(2) For purposes of this section, the term "practice related issues" refers to issues involving questions regarding the professional conduct of the registrant within the scope of the registrant's profession.

(d) The board may limit the revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(e) If the board restricts, suspends or revokes a registration, all pertinent controlled substances owned or possessed by the registrant at the time of the restriction or suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the

sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(f) The board shall promptly notify the bureau and the state licensing board with authority over the registrant's professional license of all orders restricting, suspending or revoking registration and all forfeitures of controlled substances.

(g) In the event a state licensing board with authority over a registrant's professional license takes an action against the registrant in any fashion which suspends, restricts, limits or affects the registrant's ability to manufacture, distribute, prescribe, administer, dispense, or conduct research with any controlled substance, the professional licensing board shall promptly notify the board of pharmacy of the action.

(1) Upon such action, the board of pharmacy shall be authorized to issue its order suspending, restricting, limiting or otherwise affecting the registrant's controlled substance registration in the same fashion as the professional licensing board action.

(2) The board of pharmacy order may be issued without further hearing or proceeding, but shall be subject to the effect of any reversal or modification of the professional licensing board action by reason of any appeal or rehearing.

[37-2718, added 1971, ch. 215, sec. 1, p. 939; am. 1981, ch. 102, sec. 4, p. 156; am. 1985, ch. 152, sec. 1, p. 405; am. 2001, ch. 211, sec. 1, p. 835; am. 2015, ch. 25, sec. 4, p. 36.]

37-2719. ORDER TO SHOW CAUSE. (a) Except as set forth in section 37-2718(g), Idaho Code, before denying, restricting, suspending or revoking a registration, or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why the registration should be restricted, denied, revoked, or suspended, or why the renewal should be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the board at a time and place not less than thirty (30) days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty (30) days before the expiration of the registration. These proceedings shall be conducted in accordance with chapter 52, title 67, Idaho Code, without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 37-2718, Idaho Code, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

(c) In conjunction with a proceeding for denying, restricting, suspending or revoking a registration, or refusing a renewal of registration, and upon a finding of grounds for such denial, restriction, suspension, revocation or refusal to renew, the board may also impose an administrative fine not to exceed two thousand dollars (\$2,000) per occurrence and the costs of prosecution and administrative costs of bringing the action including,

but not limited to, attorney's fees and costs and costs of hearing transcripts.

[37-2719, added 1971, ch. 215, sec. 1, p. 939; am. 2001, ch. 211, sec. 2, p. 836; am. 2015, ch. 25, sec. 5, p. 38.]

37-2720. RECORDS -- DRUG STORAGE -- INVENTORY. Persons registered under this chapter shall keep records, store controlled substances and maintain inventories in conformance with the recordkeeping, storage and inventory requirements of federal law and with any additional rules the board issues.

[37-2720, added 1971, ch. 215, sec. 1, p. 939; am. 2015, ch. 25, sec. 6, p. 38; am. 2016, ch. 74, sec. 1, p. 252.]

37-2722. ISSUING, DISTRIBUTING AND DISPENSING OF CONTROLLED SUBSTANCES. No person shall issue or dispense a prescription drug order for a controlled substance unless it is in compliance with applicable state and federal law and rules of the board.

(a) Controlled substances included in schedule I shall be distributed only by a registrant to another registrant pursuant to the federal drug enforcement administration (DEA) order form 222.

(b) Controlled substances included in schedule II shall:

(1) Be distributed only by a registrant to another registrant pursuant to DEA order form 222.

(2) Be dispensed only pursuant to a valid prescription drug order, except when dispensed directly by a prescriber.

(3) Not be refilled.

(4) Include a quantity that is both spelled out in English and written in numerical form, when a written prescription drug order is required.

(c) Controlled substances included in schedule III or IV shall:

(1) Be dispensed only pursuant to a valid prescription drug order, except when dispensed directly by a prescriber.

(2) Not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

(d) Controlled substances included in schedule V shall not be distributed or dispensed other than for a medical purpose.

(e) A pharmacist may dispense a controlled substance pursuant to a valid prescription drug order of an individual licensed in a jurisdiction other than the state of Idaho as long as the individual is acting within the jurisdiction, scope and authority of his license.

[37-2722, added 1971, ch. 215, sec. 1, p. 939; am. 2000, ch. 276, sec. 1, p. 898; am. 2001, ch. 178, sec. 1, p. 601; am. 2018, ch. 36, sec. 4, p. 73.]

37-2725. PRESCRIPTION DRUG ORDER BLANKS. (1) Paper prescription drug order blanks shall comply with federal law and shall utilize noncopyable paper that contains security provisions against copying that results in some indication on the copy that it is a copy and therefore rendering it null and void.

(2) Prescription drug order blanks shall not be transferable. Any person possessing any such blank otherwise than is herein provided is guilty of a misdemeanor.

(3) The prescription drug order blank shall contain the name and address of the prescriber. Prescription drug order blanks may contain the printed names of multiple prescribers who are affiliated; provided however, such prescription drug order blanks shall contain a means, in addition to the signature of the prescriber, such as a box or a check, for clear identification of the printed name and address of the prescriber issuing the prescription.

(4) Prescriptions written by a prescriber in an institutional facility or other health care facility in which a prescriber may attend a patient, other than his or her regular place of business, may be written on prescription drug order blanks kept or provided by that facility that contain the name and address of that facility, but not necessarily of the prescriber, provided the prescriber's name must be stamped, written or printed on the completed prescription in a manner that is legible to a pharmacist.

(5) Failure of a prescriber to clearly mark the prescriber's printed name and address on the prescription as required in subsection (3) of this section, or to stamp, write or print the prescriber's name legibly as required in subsection (4) of this section shall subject the prescriber to appropriate discipline by the board.

(6) Prescription drug order blanks or drugs lost or stolen must be immediately reported to the board.

[37-2725, added 2001, ch. 178, sec. 4, p. 602; am. 2002, ch. 367, sec. 1, p. 1035; am. 2011, ch. 133, sec. 2, p. 367; am. 2018, ch. 36, sec. 7, p. 74.]

37-2726. FILING PRESCRIPTIONS -- DATABASE. (1) All controlled substances, and opioid antagonists as defined in section 54-1733B, Idaho Code, dispensed for humans shall be filed with the board electronically in a format established by the board or by other method as required by board rule. The board may require the filing of other prescriptions by board rule. The board shall establish by rule the information to be submitted pursuant to the purposes of this section and the purposes set forth in section 37-2730A, Idaho Code.

(2) The board shall create, operate and maintain a controlled substances prescriptions database containing the information submitted pursuant to subsection (1) of this section to be used for the purposes and subject to the terms, conditions and immunities described in section 37-2730A, Idaho Code. The board shall retain the information submitted pursuant to subsection (1) of this section for a period of five (5) years from the date the controlled substance was dispensed. The database information must be made available only to the following:

(a) Authorized individuals employed by Idaho's boards or other states' licensing entities charged with the licensing and discipline of practitioners;

(b) Peace officers employed by federal, state and local law enforcement agencies engaged as a specified duty of their employment in enforcing law regulating controlled substances;

(c) Authorized individuals under the direction of the department of health and welfare for the purpose of monitoring and enforcing that department's responsibilities under the public health, medicare and medicaid laws;

(d) A practitioner, licensed in Idaho or another state, having authority to prescribe controlled substances, or a delegate under the prac-

itioner's supervision, to the extent the information relates specifically to a current patient of the practitioner to whom the practitioner is prescribing or considering prescribing any controlled substance;

(e) A pharmacist, licensed in Idaho or another state, having authority to dispense controlled substances, or a delegate under the pharmacist's supervision, to the extent the information relates specifically to a current patient to whom that pharmacist is dispensing or considering dispensing any controlled substance, or providing pharmaceutical care as defined in the Idaho pharmacy act;

(f) An individual who is the recipient of a dispensed controlled substance entered into the database may access records that pertain to that individual, upon the production of positive identification, or that individual's designee upon production of a notarized release of information by that individual;

(g) Upon a lawful order issued by the presiding judge in a court of competent jurisdiction for the release of prescription monitoring program records of a named individual;

(h) Prosecuting attorneys, deputy prosecuting attorneys and special prosecutors of a county or city and special assistant attorneys general from the office of the attorney general engaged in enforcing law regulating controlled substances; and

(i) A medical examiner or coroner who is an officer of or employed by a state or local government, for determining a cause of death or for performing other duties authorized by law.

(3) The board shall require pharmacists and prescribers, except veterinarians, to annually register with the board to obtain online access to the controlled substances prescriptions database.

(4) The board must maintain records on the information disclosed from the database, including:

(a) The identification of each individual who requests or receives information from the database and who that individual represents;

(b) The information provided to each such individual; and

(c) The date and time the information is requested or provided.

(5) The board shall promulgate rules to ensure that only authorized individuals have access to the database.

(6) The board shall limit to four (4) the number of delegates that a practitioner or pharmacist may permit to access the database under the practitioner's or pharmacist's supervision.

(7) Any person who knowingly misrepresents to the board that he is a person entitled under subsection (2) of this section to receive information from the controlled substances prescriptions database under the conditions therein provided, and who receives information from the controlled substances prescriptions database resulting from that misrepresentation, shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed two thousand dollars (\$2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.

(8) Any person in possession, whether lawfully or unlawfully, of information from the controlled substances prescriptions database that identifies an individual patient and who knowingly discloses such information to a person not authorized to receive or use such information under any state or federal law or rule or regulation, or the lawful order of a court of compe-

tent jurisdiction, or written authorization of the individual patient shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed two thousand dollars (\$2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law. The provisions of this subsection shall not apply to disclosure of individual patient information by the patient himself. The provisions of this subsection shall not apply to disclosure of information by a prosecuting attorney, deputy prosecuting attorney or special prosecutor of a county or city or by a special assistant attorney general from the office of the attorney general in the course of a criminal proceeding, whether preconviction or postconviction.

(9) Any person with access to the board's online prescription monitoring program pursuant to a board-issued user account, login name and password who intentionally shares or recklessly fails to safeguard his user account, login name and password, resulting in another person not authorized to receive or use such information under the provisions of any state or federal law, rule or regulation obtaining information from the controlled substances prescriptions database, shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months or by a fine not to exceed two thousand dollars (\$2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.

(10) The board may, at its discretion, block access to certain controlled substances prescriptions database data if the board has reason to believe that access to the data is or may be used illegally.

(11) All costs associated with recording and submitting data as required in this section are assumed by the dispensing practitioner recording and submitting the data.

(12) For purposes of this section, "delegate" means a nurse, medical or office assistant, current student of a health profession if a licensed practitioner or registered graduate of such profession may access the database, or a registered pharmacy technician who is designated by a supervising practitioner or pharmacist to access the database according to the provisions of this section and who must register with the state board of pharmacy for such access.

[37-2726, added 2001, ch. 178, sec. 5, p. 603; am. 2006, ch. 175, sec. 2, p. 538; am. 2008, ch. 129, sec. 1, p. 362; am. 2012, ch. 185, sec. 1, p. 489; am. 2012, ch. 198, sec. 1, p. 531; am. 2014, ch. 32, sec. 1, p. 46; am. 2014, ch. 79, sec. 3, p. 216; am. 2015, ch. 27, sec. 1, p. 42; am. 2016, ch. 72, sec. 1, p. 249; am. 2016, ch. 82, sec. 1, p. 262; am. 2017, ch. 22, sec. 1, p. 40; am. 2018, ch. 10, sec. 1, p. 14.]

37-2727. CONTROLLED SUBSTANCES IN OPIOID (NARCOTIC) TREATMENT PROGRAMS. (1) At a facility with a controlled substance registration certificate issued by the United States department of justice, drug enforcement administration, for the operation of a narcotic treatment program, a nurse licensed under chapter 14, title 54, Idaho Code, may, pursuant to a valid order of a physician licensed under chapter 18, title 54, Idaho Code:

(a) Prepare and administer to a patient at that facility a controlled substance whether or not a practitioner is present; and

(b) Deliver at that facility to a patient for subsequent use by the patient off-site, take-home doses of a controlled substance, provided that:

(i) The patient is entitled to receive take-home doses of the controlled substance;

(ii) The take-home doses delivered by the nurse to the patient were obtained at the facility by the nurse from a locked storage area suitable to prevent unauthorized access and to ensure a proper environment for preservation of the drugs within such area; and

(iii) The take-home doses were prepared pursuant to a valid prescription drug order of the physician and were provided in a suitable container appropriately labeled for use by the patient.

(2) A nurse acting under the authority of this section is exempt from the registration requirements imposed by this chapter.

(3) The facility must be registered under chapter 17, title 54, Idaho Code.

[37-2727, added 2007, ch. 250, sec. 1, p. 735; am. 2018, ch. 36, sec. 8, p. 74.]

37-2730A. PRESCRIPTION TRACKING PROGRAM. (1) The board shall maintain a program to track the prescriptions for controlled substances that are filed with the board under section 37-2726, Idaho Code, for the purpose of assisting in identifying illegal activity related to the dispensing of controlled substances and for the purpose of assisting the board in providing information to patients, practitioners and pharmacists to assist in avoiding inappropriate use of controlled substances. The tracking program and any data created thereby shall be administered by the board.

(2) The board shall use the information obtained through the tracking program in identifying activity it reasonably suspects may be in violation of this chapter or medical assistance law. The board shall report this information to the individuals and persons set forth in section 37-2726(2), Idaho Code. The board may release unsolicited information to pharmacists and practitioners when the release of information may be of assistance in preventing or avoiding inappropriate use of controlled substances. The board may provide the appropriate law enforcement agency, medicaid or medicare agency or licensing board with the relevant information in the board's possession, including information obtained from the tracking program, for further investigation, or other appropriate law enforcement or administrative enforcement use.

(3) Information, which does not identify individual patients, practitioners or dispensing pharmacists or pharmacies, may be released by the board for educational, research or public information purposes.

(4) Nothing herein shall prevent a pharmacist or practitioner from furnishing another pharmacist or practitioner information obtained pursuant to and in compliance with this chapter.

(5) Unless there is shown malice or criminal intent or gross negligence or reckless, willful and wanton conduct as defined in section 6-904C, Idaho Code, the state of Idaho, the board, any other state agency, or any person, or entity in proper possession of information as herein provided shall not be subject to any liability or action for money damages or other legal or equitable relief by reason of any of the following:

(a) The furnishing of information under the conditions herein provided;

(b) The receiving and use of, or reliance on, such information;

(c) The fact that any such information was not furnished; or

(d) The fact that such information was factually incorrect or was released by the board to the wrong person or entity.

(6) The board may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

[37-2730A, added 2000, ch. 194, sec. 1, p. 480; am. 2001, ch. 178, sec. 6, p. 603; am. 2006, ch. 175, sec. 3, p. 539; am. 2012, ch. 198, sec. 2, p. 533; am. 2013, ch. 6, sec. 1, p. 14.]

37-2731. INFORMATION REQUIRED ON LABEL. A practitioner with statutory authority to dispense a controlled substance shall affix to the package a label pursuant to board rule.

[37-2731, added 1971, ch. 215, sec. 1, p. 939; am. 1972, ch. 133, sec. 5, p. 261; am. 2018, ch. 36, sec. 9, p. 75.]

ARTICLE IV

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

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

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

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

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

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

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

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

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

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

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

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

(c) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter.

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

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

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

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

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

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

(g) (1) It is unlawful for any person to manufacture or distribute a "simulated controlled substance," or to possess with intent to distrib-

ute, a "simulated controlled substance." Any person who violates this subsection shall, upon conviction, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000) and not more than one (1) year in the county jail, or both.

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

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

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

(j) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact.

(k) Upon conviction of a felony or misdemeanor violation under this chapter or upon conviction of a felony pursuant to the "racketeering act," section 18-7804, Idaho Code, or the money laundering and illegal investment provisions of section 18-8201, Idaho Code, the court may order restitution for costs incurred by law enforcement agencies in investigating the violation. Law enforcement agencies shall include, but not be limited to, the Idaho state police, county and city law enforcement agencies, the office of the attorney general and county and city prosecuting attorney offices. Costs shall include, but not be limited to, those incurred for the purchase of evidence, travel and per diem for law enforcement officers and witnesses throughout the course of the investigation, hearings and trials, and any other investigative or prosecution expenses actually incurred, including regular salaries of employees. In the case of reimbursement to the Idaho state police, those moneys shall be paid to the Idaho state police for deposit into the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general fund. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment (s) or withheld judgment (s).

[37-2732, as added by 1971, ch. 215, sec. 1, p. 939; am. 1972, ch. 133, sec. 6, p. 261; am. 1972, ch. 409, sec. 1, p. 1195; am. 1974, ch. 242, sec. 1, p. 1606; am. 1977, ch. 185, sec. 1, p. 515; am. 1982, ch. 169, sec. 2, p. 447; am. 1983, ch. 218, sec. 2, p. 605; am. 1984, ch. 200, sec. 1, p. 490; am. 1986, ch. 286, sec. 1, p. 709; am. 1989, ch. 268, sec. 2, p. 654; am. 1992, ch. 20, sec. 1, p. 64; am. 1993, ch. 105, sec. 1, p. 266; am.

1999, ch. 143, sec. 1, p. 407; am. 2000, ch. 469, sec. 86, p. 1533; am. 2004, ch. 242, sec. 1, p. 705; am. 2009, ch. 108, sec. 3, p. 348; am. 2010, ch. 118, sec. 3, p. 262.]

37-2732A. SACRAMENTAL USE OF PEYOTE PERMITTED. The criminal sanctions provided in this chapter do not apply to that plant of the genus *Lophophora Williamii* commonly known as peyote when such controlled substance is transported, delivered or possessed to be used as the sacrament in religious rites of a bona fide native American religious ceremony conducted by a bona fide religious organization; provided, that this exemption shall apply only to persons of native American descent who are members or eligible for membership in a federally recognized Indian tribe. Use of peyote as a sacrament in religious rites shall be restricted to Indian reservations as defined in subsection (2) of section 63-3622Z, Idaho Code. A person transporting, possessing or distributing peyote in this state for religious rites shall have on their person a tribal enrollment card, a card identifying the person as a native American church member and a permit issued by a bona fide religious organization authorizing the transportation, possession and distribution of peyote for religious rites.

[37-2732A, added 1991, ch. 125, sec. 1, p. 279.]

37-2732B. TRAFFICKING -- MANDATORY SENTENCES. (a) Except as authorized in this chapter, and notwithstanding the provisions of section 37-2732, Idaho Code:

(1) Any person who knowingly manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, one (1) pound of marijuana or more, or twenty-five (25) marijuana plants or more, as defined in section 37-2701, Idaho Code, is guilty of a felony, which felony shall be known as "trafficking in marijuana." If the quantity of marijuana involved:

(A) Is one (1) pound or more, but less than five (5) pounds, or consists of twenty-five (25) marijuana plants or more but fewer than fifty (50) marijuana plants, regardless of the size or weight of the plants, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of one (1) year and fined not less than five thousand dollars (\$5,000);

(B) Is five (5) pounds or more, but less than twenty-five (25) pounds, or consists of fifty (50) marijuana plants or more but fewer than one hundred (100) marijuana plants, regardless of the size or weight of the plants, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars (\$10,000);

(C) Is twenty-five (25) pounds or more, or consists of one hundred (100) marijuana plants or more, regardless of the size or weight of the plants, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and fined not less than fifteen thousand dollars (\$15,000).

(D) The maximum number of years of imprisonment for trafficking in marijuana shall be fifteen (15) years, and the maximum fine shall be fifty thousand dollars (\$50,000).

(E) For the purposes of this section, the weight of the marijuana is its weight when seized or as determined as soon as practica-

ble after seizure, unless the provisions of subsection (c) of this section apply.

(2) Any person who knowingly manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, twenty-eight (28) grams or more of cocaine or of any mixture or substance containing a detectable amount of cocaine is guilty of a felony, which felony shall be known as "trafficking in cocaine." If the quantity involved:

(A) Is twenty-eight (28) grams or more, but less than two hundred (200) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars (\$10,000);

(B) Is two hundred (200) grams or more, but less than four hundred (400) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and fined not less than fifteen thousand dollars (\$15,000);

(C) Is four hundred (400) grams or more, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than twenty-five thousand dollars (\$25,000).

(D) The maximum number of years of imprisonment for trafficking in cocaine shall be life, and the maximum fine shall be one hundred thousand dollars (\$100,000).

(3) Any person who knowingly manufactures or attempts to manufacture methamphetamine and/or amphetamine is guilty of a felony which shall be known as "trafficking in methamphetamine and/or amphetamine by manufacturing." Any person convicted of trafficking in methamphetamine and/or amphetamine by attempted manufacturing shall be sentenced to a mandatory minimum fixed term of imprisonment of two (2) years and not to exceed fifteen (15) years imprisonment and fined not less than ten thousand dollars (\$10,000). Any person convicted of trafficking in methamphetamine and/or amphetamine by manufacturing shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and not to exceed life imprisonment and fined not less than twenty-five thousand dollars (\$25,000). The maximum number of years of imprisonment for trafficking in methamphetamine and/or amphetamine by manufacturing shall be life, and the maximum fine shall be one hundred thousand dollars (\$100,000).

(4) Any person who knowingly delivers, or brings into this state, or who is knowingly in actual or constructive possession of, twenty-eight (28) grams or more of methamphetamine or amphetamine or of any mixture or substance containing a detectable amount of methamphetamine or amphetamine is guilty of a felony, which felony shall be known as "trafficking in methamphetamine or amphetamine." If the quantity involved:

(A) Is twenty-eight (28) grams or more, but less than two hundred (200) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars (\$10,000);

(B) Is two hundred (200) grams or more, but less than four hundred (400) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and fined not less than fifteen thousand dollars (\$15,000);

(C) Is four hundred (400) grams or more, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than twenty-five thousand dollars (\$25,000).

(D) The maximum number of years of imprisonment for trafficking in methamphetamine or amphetamine shall be life, and the maximum fine shall be one hundred thousand dollars (\$100,000).

(5) Any person who knowingly manufactures, delivers, brings into this state, or who is knowingly in actual or constructive possession of the below-specified quantities of any of the following immediate precursors to methamphetamine or amphetamine (namely ephedrine, methylamine, methyl formamide, phenylacetic acid, phenylacetone, or pseudoephedrine) as defined in section 37-2707(g)(1), Idaho Code, or any compound, mixture or preparation which contains a detectable quantity of these substances, is guilty of a felony which shall be known as "trafficking in immediate precursors of methamphetamine or amphetamine." If the quantity:

- (A) Of ephedrine is five hundred (500) grams or more;
- (B) Of methylamine is one-half (1/2) pint or more;
- (C) Of methyl formamide is one-quarter (1/4) pint or more;
- (D) Of phenylacetic acid is five hundred (500) grams or more;
- (E) Of phenylacetone is four hundred (400) grams or more;
- (F) Of pseudoephedrine is five hundred (500) grams or more;

such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than twenty-five thousand dollars (\$25,000). The maximum number of years of imprisonment for trafficking in immediate precursors of methamphetamine or amphetamine in the quantities specified in paragraphs (A) through (F) of this subsection (5) shall be life, and the maximum fine shall be one hundred thousand dollars (\$100,000). If the quantity of pseudoephedrine is twenty-five (25) grams or more, but less than five hundred (500) grams, such person shall be sentenced to a term of imprisonment of up to ten (10) years and fined not more than twenty-five thousand dollars (\$25,000).

(6) Any person who knowingly manufactures, delivers or brings into this state, or who is knowingly in actual or constructive possession of, two (2) grams or more of heroin or any salt, isomer, or salt of an isomer thereof, or two (2) grams or more of any mixture or substance containing a detectable amount of any such substance is guilty of a felony, which felony shall be known as "trafficking in heroin." If the quantity involved:

- (A) Is two (2) grams or more, but less than seven (7) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars (\$10,000);
- (B) Is seven (7) grams or more, but less than twenty-eight (28) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than fifteen thousand dollars (\$15,000);
- (C) Is twenty-eight (28) grams or more, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of fifteen (15) years and fined not less than twenty-five thousand dollars (\$25,000).

(D) The maximum number of years of imprisonment for trafficking in heroin shall be life, and the maximum fine shall be one hundred thousand dollars (\$100,000).

(7) A second conviction for any trafficking offense as defined in subsection (a) of this section shall result in a mandatory minimum fixed term that is twice that otherwise required under this section.

(8) Notwithstanding any other provision of law, with respect to any person who is found to have violated the provisions of this section, adjudication of guilt or the imposition or execution of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum fixed term of imprisonment prescribed in this section. Further, the court shall not retain jurisdiction.

(b) Any person who agrees, conspires, combines or confederates with another person or solicits another person to commit any act prohibited in subsection (a) of this section is guilty of a felony and is punishable as if he had actually committed such prohibited act.

(c) For the purposes of subsections (a) and (b) of this section the weight of the controlled substance as represented by the person selling or delivering it is determinative if the weight as represented is greater than the actual weight of the controlled substance.

[37-2732B, added 1992, ch. 336, sec. 1, p. 1005; am. 1995, ch. 58, sec. 1, p. 129; am. 1995, ch. 103, sec. 1, p. 331; am. 1998, ch. 168, sec. 1, p. 563; am. 1999, ch. 143, sec. 2, p. 410; am. 2002, ch. 186, sec. 1, p. 537; am. 2006, ch. 245, sec. 1, p. 749.]

37-2732C. USING OR BEING UNDER THE INFLUENCE -- PENALTIES. (a) Except as authorized in this chapter, it is unlawful for any person on a public roadway, on a public conveyance, on public property or on private property open to the public, to use or be under the influence of any controlled substance specified in subsection (b), (c), (d), (e) and (f) of section 37-2705, Idaho Code, or subsection (b), (c) and (d) of section 37-2707, Idaho Code, or subsection (c) (6) of section 37-2709, Idaho Code, or any narcotic drug classified in schedule III, IV or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within this exception.

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

(c) Any person who is convicted of violating subsection (a) of this section, when the offense occurred within five (5) years of that person being convicted of two (2) or more separate violations of that subsection and who refuses to complete a licensed drug rehabilitation program offered by the court pursuant to subsection (d) shall be punished by imprisonment in the county jail for a mandatory minimum period of time of not less than one hundred twenty (120) days, nor more than one (1) year. The court may not reduce the mandatory minimum period of incarceration provided in this subsection.

(d) The court may, when it would be in the interest of justice, permit any person convicted of a violation of subsection (a) of this section, punishable under subsection (b) or (c) of this section, to complete a licensed drug rehabilitation program in lieu of part or all of the imprisonment in

the county jail. As a condition of sentencing, the court may require the offender to pay all or a portion of the drug rehabilitation program. In order to alleviate jail overcrowding and to provide recidivist offenders with a reasonable opportunity to seek rehabilitation pursuant to this subsection, counties are encouraged to include provisions to augment licensed drug rehabilitation programs in their substance abuse proposals and applications submitted to the state for federal and state drug abuse funds.

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

(f) Every person who violates subsection (e) of this section is punishable upon the second and each subsequent conviction by imprisonment in the state prison for a period of time not in excess of four (4) years.

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

[37-2732C, added 1996, ch. 261, sec. 1, p. 858; am. 2003, ch. 185, sec. 4, p. 507; am. 2010, ch. 117, sec. 6, p. 255.]

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

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

(2) Who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

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

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

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

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

[I.C., sec. 37-2733, as added by 1971, ch. 215, sec. 1, p. 939; am. 1972, ch. 409, sec. 2, p. 1195.]

37-2734. PROHIBITED ACTS C -- PENALTIES. (a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in schedule I or II, except pursuant to the requirements of section 37-2722, Idaho Code;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(4) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this act, or any record required to be kept by this act; or

(5) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a felony and upon conviction may be imprisoned for not more than four (4) years, or fined not more than thirty thousand dollars (\$30,000), or both.

[37-2734, added 1971, ch. 215, sec. 1, p. 939; am. 1972, ch. 133, sec. 7, p. 261; am. 1972, ch. 409, sec. 3, p. 1195; am. 2018, ch. 36, sec. 10, p. 75.]

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

(2) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(3) Any person who is in violation of the provisions of subsections (1) and/or (2) of this section is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than one thousand dollars (\$1,000), or both.

[37-2734A, added 1980, ch. 388, sec. 2, p. 982; am. 1990, ch. 311, sec. 1, p. 851.]

37-2734B. PROHIBITED ACTS E -- PENALTIES. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who is in violation of this section is guilty of a felony and upon conviction may be imprisoned for not more than nine (9) years, fined not more than thirty thousand dollars (\$30,000), or both.

[37-2734B, added 1980, ch. 388, sec. 3, p. 983.]

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

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

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

(2) Violation of this section is a felony.

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

(4) Any damages arising out of the unlawful possession of, storage of, or tampering with anhydrous ammonia equipment shall be the sole responsibility of the person or persons unlawfully possessing, storing or tampering with the anhydrous ammonia. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with anhydrous ammonia or anhydrous ammonia equipment extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor or seller of the anhydrous ammonia or anhydrous ammonia equipment, unless such damages arise out of the acts or omissions of the owner, installer, maintainer, designer, manufacturer, possessor or seller that constitute negligent misconduct to abide by the laws regarding anhydrous ammonia possession and storage.

[37-2734C, added 2002, ch. 257, sec. 3, p. 748.]

37-2735. PENALTIES UNDER OTHER LAWS. Any penalty imposed for violation of this act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

[I.C., sec. 37-2735, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2735A. DRUG HOTLINE FEE. In addition to any other penalties, a person convicted of a violation of this chapter shall be subject to an additional fine of ten dollars (\$10.00) to be deposited in the drug and driving while under the influence enforcement donation fund, as set forth in section 57-816, Idaho Code, to be used for the purposes designated in that section.

[37-2735A, added 2006, ch. 113, sec. 1, p. 308; am. 2009, ch. 108, sec. 4, p. 350.]

37-2736. BAR TO PROSECUTION. If a violation of this act is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

[I.C., sec. 37-2736, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2737. DISTRIBUTION TO PERSONS UNDER AGE 18. Any person eighteen (18) years of age or over who violates section 37-2732(a), Idaho Code, by distributing any nonnarcotic drug classified in schedule I, or any controlled substance classified in schedule III, IV, V, or VI, to a person under eighteen (18) years of age who is at least three (3) years his junior is punishable by the fine authorized by section 37-2732(a) (1) (B), (C) or (D), Idaho Code, by a term of imprisonment of up to twice that authorized by section 37-2732(a) (1) (B), (C) or (D), Idaho Code, or by both.

[I.C., sec. 37-2737, as added by 1971, ch. 215, sec. 1, p. 939; am. 1990, ch. 268, sec. 2, p. 757.]

37-2737A. MANUFACTURE OR DELIVERY OF CONTROLLED SUBSTANCE WHERE CHILDREN ARE PRESENT. (1) Except as authorized in this chapter, it is unlawful for any person to manufacture or deliver, or possess with the intent to manufacture or deliver, a controlled substance as defined in schedules I, II, III and IV in this chapter, upon the same premises where a child under the age of eighteen (18) years is present.

(2) As used in this section, "premises" means any:

(a) Motor vehicle or vessel;

(b) Dwelling or rental unit including, but not limited to, apartment, townhouse, condominium, mobile home, manufactured home, motel room or hotel room;

(c) Dwelling house, its curtilage and any other outbuildings.

(3) Except as provided in subsection (4) of this section, a person who violates the provisions of this section shall be guilty of a felony and upon conviction may be imprisoned for a term not to exceed five (5) years, fined not more than five thousand dollars (\$5,000), or be both so imprisoned and fined.

(4) A person who violates the provisions of this section by manufacturing or delivering, or possessing with the intent to manufacture or deliver, methamphetamine or amphetamine in quantities as specified in section 37-2732B(a) (4), Idaho Code, shall be guilty of a felony and upon conviction may be imprisoned for a term of up to ten (10) years, fined not more than twenty-five thousand dollars (\$25,000), or be both so imprisoned and fined.

(5) Any fine imposed under the provisions of this section shall be in addition to the fine imposed for any other offense, and any term of imprisonment shall be consecutive to any term imposed for any other offense, regardless of whether the violation of the provisions of this section and any of the other offenses have arisen from the same act or transaction.

[37-2737A, added 1991, ch. 275, sec. 1, p. 712; am. 2006, ch. 76, sec. 1, p. 234.]

37-2738. SENTENCING CRITERIA IN DRUG CASES. (1) Any person who pleads guilty to, is found guilty of or has a judgment of conviction entered upon a violation of the provisions of subsection (a), (b), (c) or (e) of section 37-2732, Idaho Code, shall be sentenced according to the criteria set forth herein.

(2) Prior to sentencing for a violation enumerated in subsection (1) of this section, the defendant shall undergo, at his own expense (or at county expense through the procedures set forth in chapters 34 and 35, title 31, Idaho Code), a substance abuse evaluation at a facility approved by the Idaho department of health and welfare. Provided however, if the defendant has no prior or pending charges under the provisions of subsection (a), (b), (c) or (e) of section 37-2732, Idaho Code, and the court does not have any reason to believe that the defendant regularly abuses drugs and is in need of treatment, the court may, in its discretion, waive the evaluation with respect to sentencing for a violation of subsection (b), (c) (3), or (e) of section 37-2732, Idaho Code, and proceed to sentence the defendant. The court may also, in its discretion, waive the requirement of a substance abuse evaluation with respect to a defendant's violation of the provisions of subsection (a), (b), (c) or (e) of section 37-2732, Idaho Code, and proceed to sentence the defendant if the court has a presentence investigation report, substance abuse assessment, criminogenic risk assessment, or similar assessment which

has evaluated the defendant's need for substance abuse treatment conducted within twelve (12) months preceding the date of the defendant's sentencing.

(3) In the event a substance abuse evaluation indicates the need for substance abuse treatment, the evaluation shall recommend an appropriate treatment program, together with the estimated costs thereof, and recommendations for other suitable alternative treatment programs, together with the estimated costs thereof. The person shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration to determine an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event it shall be presumed that substance abuse treatment is needed unless it is shown by a preponderance of evidence that treatment is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide or report an aggravating circumstance in determining an appropriate sentence. If treatment is ordered, the person or facility performing the evaluation shall not be the person or facility that provides the treatment, unless this requirement is waived by the sentencing court, and with the exception of federally recognized Indian tribes or federal military installations where diagnoses and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized pursuant to the provisions of chapter 3, title 39, Idaho Code, for court ordered substance abuse treatment for indigent defendants.

(4) When sentencing an individual for the crimes enumerated in subsection (1) of this section, the court shall not enter a withheld judgment unless it finds by a preponderance of the evidence that:

- (a) The defendant has no prior finding of guilt for any felony, any violation of chapter 80, title 18, Idaho Code, or subsection (a), (b), (c) or (e) of section 37-2732, Idaho Code, whatsoever; and
- (b) The sentencing court has an abiding conviction that the defendant will successfully complete the terms of probation; and
- (c) The defendant has satisfactorily cooperated with law enforcement authorities in the prosecution of drug related crimes of which the defendant has previously had involvement.

The requirements for the granting of a withheld judgment pursuant to this subsection shall not apply to a defendant who has been admitted to a problem solving court program approved by the drug court and mental health court coordinating committee and is participating in, or about to begin participating in, such a program, or who participated in such a problem solving court program in connection with the pending case and who successfully graduated from such a program prior to sentencing.

(5) Any person who pleads guilty to or is found guilty of a violation of the provisions of the Idaho Code identified in subsection (1) of this section shall, when granted a probationary period of any sort whatsoever, be required by the court to complete a period of not less than one hundred (100) hours of community service work.

[37-2738, added 1989, ch. 174, sec. 2, p. 423; am. 2003, ch. 285, sec. 1, p. 770; am. 2004, ch. 22, sec. 1, p. 24; am. 2016, ch. 161, sec. 1, p. 444.]

37-2739. SECOND OR SUBSEQUENT OFFENSES. (a) Any person convicted of a second or subsequent offense under this act, who is not subject to a fixed

minimum term under section 37-2739B, Idaho Code, may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this act or under any statute of the United States or of any state relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs.

[I.C., sec. 37-2739, as added by 1971, ch. 215, sec. 1, p. 939; am. 1972, ch. 133, sec. 8, p. 261; am. 1990, ch. 268, sec. 3, p. 757.]

37-2739A. MANDATORY MINIMUM PENALTY. Any person who is convicted of violating the felony provisions of section 37-2732(a), Idaho Code, by distributing controlled substances to another person, who is not subject to a fixed minimum term under section 37-2739B, Idaho Code, and who has previously been convicted within the past ten (10) years in a court of the United States, any state or a political subdivision of one or more felony offenses of dealing, selling or trafficking in controlled substances on an occasion or occasions different from the felony violation of section 37-2732(a), Idaho Code, and which offense or offenses were punishable in such court by imprisonment in excess of one (1) year, shall be sentenced to the custody of the state board of correction for a mandatory minimum period of time of not less than three (3) years or for such greater period as the court may impose up to a maximum of life imprisonment. The mandatory minimum period of three (3) years incarceration shall not be reduced and shall run consecutively to any other sentence imposed by the court.

[37-2739A, added 1981, ch. 88, sec. 1, p. 122; am. 1990, ch. 268, sec. 4, p. 757.]

37-2739B. FIXED MINIMUM SENTENCES IN DRUG CASES. (a) The legislature intends to allow fixed minimum sentences for certain aggravating factors found in cases brought under the uniform controlled substances act. The legislature hereby finds and declares that trafficking in controlled substances in the state of Idaho is a primary contributor to a societal problem that causes loss of life, personal injury and theft of property, and exacts a tremendous toll on the citizens of this state. To afford better protection to our citizens from those who traffic in controlled substances, the fixed minimum sentencing contained in subsections (b) and (c) of this section is enacted. By enacting fixed minimum sentences, the legislature does not seek to limit a court's power to impose a greater sentence pursuant to section 19-2513, Idaho Code.

(b) Any person who is found guilty of violating the provisions of section 37-2732(a)(1)(A), Idaho Code, or of any attempt or conspiracy to commit such a crime, may be sentenced to a fixed minimum term of confinement to the custody of the state board of correction, which term shall be at least five (5) years and may extend to life, for each of the following aggravating factors found by the trier of fact:

- (1) That the defendant has previously been found guilty of or convicted of a violation of section 37-2732(a)(1)(A), Idaho Code, or of an attempt or conspiracy to commit such a crime, or an offense committed in another jurisdiction which, if committed in this jurisdiction, would be punishable as a violation of section 37-2732(a)(1)(A), Idaho Code, or as an attempt or conspiracy to commit such an offense.

(2) That the violation occurred on or within one thousand (1,000) feet of the property of any public or private primary or secondary school, or in those portions of any building, park, stadium or other structure or grounds which were, at the time of the violation, being used for an activity sponsored by or through such a school.

(3) That the violation consisted of the delivery or attempted delivery of a controlled substance to a minor child under the age of eighteen (18) years.

(c) The fixed minimum terms provided in this section may be imposed where the aggravating factors are separately charged in the information or indictment and admitted by the accused or found to be true by the trier of fact at the trial of the substantive crime; provided, however, that the prosecutor shall give notice to the defendant of intent to seek a fixed penalty at least fourteen (14) days prior to trial. During a fixed minimum term of confinement imposed under this section, the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct except for meritorious service. Each fixed minimum term imposed shall be served consecutively to the others, and consecutively to any minimum term of confinement imposed for the substantive offense.

(d) Any person who is found guilty of violating the provisions of section 37-2732(a)(1)(A), Idaho Code, or of any attempt or conspiracy to commit such a crime, and who is sentenced to serve at least one (1) minimum term of confinement under this section, may be fined an amount up to twice that otherwise provided for the substantive offense.

[37-2739B, added 1990, ch. 268, sec. 1, p. 756.]

37-2739C. MEDICAL ASSISTANCE -- DRUG-RELATED OVERDOSE -- PROSECUTION FOR POSSESSION. (1) A person acting in good faith who seeks medical assistance for any person experiencing a drug-related medical emergency shall not be charged or prosecuted for possession of a controlled substance pursuant to section 37-2732(c) or (e), Idaho Code, for using or being under the influence of a controlled substance pursuant to section 37-2732C(a), Idaho Code, or for using or possessing with intent to use drug paraphernalia pursuant to section 37-2734A(1), Idaho Code, if the evidence for the charge of possession of or using or being under the influence of a controlled substance or using or possessing drug paraphernalia was obtained as a result of the person seeking medical assistance.

(2) A person who experiences a drug-related medical emergency and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to section 37-2732(c) or (e), Idaho Code, for using or being under the influence of a controlled substance pursuant to section 37-2732C(a), Idaho Code, or for using or possessing with intent to use drug paraphernalia pursuant to section 37-2734A(1), Idaho Code, if the evidence for the charge of possession of or using or being under the influence of a controlled substance or using or possessing drug paraphernalia was obtained as a result of the medical emergency and the need for medical assistance.

(3) The protections in this section from prosecution shall not be grounds for suppression of evidence in other criminal charges.

[37-2739C, added 2018, ch. 265, sec. 1, p. 637.]

37-2740. POWERS OF ENFORCEMENT PERSONNEL. (a) Any peace officer, as defined by this act, may:

- (1) Carry firearms in the performance of his official duties;
- (2) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state;
- (3) Make arrests without warrant for any offense under this act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this act which may constitute a felony or a misdemeanor;
- (4) Make seizures of property pursuant to this act.

(b) The director of the Idaho state police shall administer the state-level program of Idaho to suppress the unlawful traffic and abuse of controlled substances and shall have the authority to appoint and commission agents to enforce the provisions of this act.

(c) All duly authorized peace officers while investigating offenses under this act in the performance of their official duties, and any person working under their immediate direction, supervision, or instruction, provided such person shall not deviate from the lawful direction of the peace officer, are immune from prosecution under this act.

[I.C., sec. 37-2740, as added by 1971, ch. 215, sec. 1, p. 939; am. 1972, ch. 133, sec. 9, p. 261; am. 1974, ch. 27, sec. 80, p. 811; am. 2000, ch. 469, sec. 87, p. 1536.]

37-2741. ADMINISTRATIVE INSPECTIONS AND WARRANTS. (a) Issuance and execution of administrative inspection warrants shall be as follows:

(1) A magistrate, within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this act or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this act or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

- (A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;
- (B) Be directed to a person authorized by section 37-2740, Idaho Code, to execute it;
- (C) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;
- (D) Identify the item or types of property to be seized, if any;
- (E) Direct that it be served during normal business hours and designate the judge or magistrate to whom it shall be returned;

(3) A warrant issued pursuant to this section must be executed and returned within ten (10) days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one (1) credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge or magistrate who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the court in the county in which the inspection was made.

(b) The board may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(A) Places where persons registered or exempted from registration requirements under this act are required to keep records; and

(B) Places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to subsection (a) of this section an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the board may:

(A) Inspect and copy records required by this act to be kept;

(B) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (b) (5) of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this act; and

(C) Inventory any stock of any controlled substance therein and obtain samples thereof;

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with chapter 52, title 67, Idaho Code, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(A) If the owner, operator, or agent in charge of the controlled premises consents;

(B) In situations presenting imminent danger to health or safety;

(C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(D) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(E) In all other situations in which a warrant is not constitutionally required;

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

[I.C., sec. 37-2741, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2741A. UTILITY RECORDS -- INSPECTION AND COPYING -- WRONGFUL DISCLOSURE. (a) Upon request of the attorney general or prosecuting attorney, a subpoena for the production of records of a utility may be signed and issued by a magistrate judge if there is reasonable articulable suspicion that a violation of the provisions of section 37-2732, 37-2732B, 37-2733, 37-2734 or 37-2734A, Idaho Code, has occurred or is occurring and that the records sought will materially aid in the investigation of such activity or appear reasonably calculated to lead to the discovery of information that will do so. The subpoena shall be served on the utility as in civil actions. The court may, upon motion timely made and in any event before the time specified for compliance with the subpoena, condition compliance upon advancement by the attorney general or prosecuting attorney of the reasonable costs of producing the records specified in the subpoena.

(b) A response to a subpoena issued under this section is sufficient if a copy or printout, duly authenticated by an authorized representative of the utility as a true and correct copy or printout of its records, is provided, unless otherwise provided in the subpoena for good cause shown.

(c) Except as provided in this subsection, a utility served with a subpoena under this section may disclose to the customer the fact that a subpoena seeking records relating to the customer has been served. A magistrate judge may order that the attorney general, prosecuting attorney or utility refrain from disclosing the fact that a subpoena has been served.

(d) A utility shall be reimbursed in an amount set by the court for reasonable costs incurred in providing information pursuant to the provisions of this section.

(e) The provisions of this section do not preclude the use of other legally authorized means of obtaining records, nor preclude the assertion of any legally recognized privileges or the right to seek a protective order where appropriate.

(f) Disclosure by the attorney general, county prosecuting attorney, or any peace officer or other person designated by the attorney general or the county prosecuting attorney, of information obtained under this section, except in the proper discharge of official duties, is punishable as a misdemeanor.

(g) Upon filing of any civil or criminal action, the nondisclosure requirements of any subpoena or order under this section shall terminate, and the attorney general or prosecuting attorney filing the action shall provide copies to the defendant of all subpoenas or other orders issued under this section.

(h) A good faith reliance on a court order by a utility shall constitute a complete defense to any civil or criminal action brought against such utility under the laws of this state.

(i) The term "utility," as used herein, shall mean every corporation, association, company, partnership, sole proprietorship, business entity, person, or any municipal corporation, mutual nonprofit or cooperative corporation which provides water, gas or electrical services to members of the public, for compensation, within the state of Idaho.

(j) If an action is not filed within two (2) years and the investigation is no longer active, records obtained pursuant to this section shall be destroyed by the attorney general or prosecuting attorney.

[37-2741A, added 1989, ch. 266, sec. 2, p. 652; am. 1991, ch. 218, sec. 1, p. 522; am. 1994, ch. 358, sec. 1, p. 1126.]

37-2742. INJUNCTIONS. (a) The district courts have jurisdiction to restrain or enjoin violations of this act.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

[I.C., sec. 37-2742, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2743. COOPERATIVE ARRANGEMENTS. (a) The director of the Idaho state police shall cooperate with federal and other state agencies in discharging his responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(3) Cooperate with the bureau by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes. The name or identity of a patient or research subject whose identity could not be obtained under subsection (c) of this section shall be subject to disclosure according to chapter 1, title 74, Idaho Code;

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substance may be extracted;

(5) Enter into agreements with other states to coordinate and facilitate the enforcement of this act; and

(6) Require law enforcement agencies to report such information regarding traffic in controlled substances and abuse of controlled substances as he deems necessary to enforce this act. Such reports shall be on forms supplied by the director of the Idaho state police and shall include, but not be limited to, the following information: Names, ages, sex, race, and residences of individuals involved in violations of this act; the contraband confiscated, showing the kind, location, quantity, date, and place where seized; the circumstances surrounding the arrests and a report of the disposition of charges.

(b) Results, information, and evidence received from the bureau relating to the regulatory functions of this act, including results of inspec-

tions and investigations conducted by the bureau may be relied and acted upon by the board in the exercise of its regulatory functions under this act.

(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the director, nor may he be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential and as such the name or identity of the patient or research subject is subject to disclosure according to chapter 1, title 74, Idaho Code.

[37-2743, added 1971, ch. 215, sec. 1, p. 939; am. 1972, ch. 133, sec. 10, p. 261; am. 1974, ch. 27, sec. 81, p. 811; am. 1990, ch. 213, sec. 32, p. 507; am. 2000, ch. 469, sec. 88, p. 1537; am. 2015, ch. 141, sec. 80, p. 438.]

37-2744. FORFEITURES. (a) The following are subject to forfeiture:

(1) All controlled substances that have been manufactured, distributed, dispensed, acquired, possessed or held in violation of this act or with respect to which there has been any act by any person in violation of this act;

(2) All raw materials, products and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substances or counterfeit substances in violation of this act;

(3) All property that is used, or intended for use, as a container for property used in the commission of an act prohibited by section 37-2732B, 37-2732(a) or (b), or 37-2737A, Idaho Code;

(4) All conveyances, including aircraft, vehicles, or vessels, that are used, or intended for use, to transport, or in any manner to facilitate the transportation, delivery, receipt or manufacture of substances as prohibited by section 37-2732B, 37-2732(a) or (b), or 37-2737A, Idaho Code, but:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act;

(B) No conveyance is subject to forfeiture under this section if the owner establishes that he could not have known in the exercise of reasonable diligence that the conveyance was being used, had been used, was intended to be used or had been intended to be used in any manner described in subsection (a) (4) of this section;

(C) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the security interest was created without any knowledge or reason to believe that the conveyance was being used, had been used, was intended to be used, or had been intended to be used for the purpose alleged.

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used, or intended for use, in violation of this act.

(6) (A) All moneys, currency, negotiable instruments, securities or other items easily liquidated for cash, such as, but not limited to, jewelry, stocks and bonds, or other property described in

paragraphs (2) and (3) of this subsection that is found in close proximity to property described in paragraph (1), (2), (3), (5), (7) or (8) of this subsection and that has been used or is intended for use in connection with the illegal manufacture, distribution, dispensing or possession of property described in paragraph (1), (2), (3), (5), (7) or (8) of this subsection;

(B) Items described in paragraph (6)(A) of this subsection or other things of value furnished or intended to be furnished by any person in exchange for a contraband controlled substance in violation of this chapter, all proceeds, including items of property traceable to such an exchange, and all moneys or other things of value used or intended to be used to facilitate any violation of this chapter, except that no property shall be forfeited under this paragraph to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(7) All drug paraphernalia as defined by section 37-2701, Idaho Code.

(8) All simulated controlled substances, which are used or intended for use in violation of this chapter.

(9) All weapons, or firearms, which are used in any manner to facilitate a violation of the provisions of this chapter.

(b) Property subject to forfeiture under this chapter may be seized by the director, or any peace officer of this state, upon process issued by any district court, or magistrate division thereof, having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal racketeering or civil forfeiture proceeding based upon a violation of this chapter;

(3) Probable cause exists to believe that the property is directly or indirectly dangerous to health or safety; or

(4) Probable cause exists to believe that the property was used or is intended to be used in violation of this chapter.

Mere presence or possession of United States currency, without other indicia of criminal activity, is insufficient cause for seizure.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(1) When property is seized under this section, the director or the peace officer who seized the property may:

(A) Place the property under seal;

(B) Remove the property to a place designated by it; or

(C) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(2) The peace officer who seized the property shall within five (5) days notify the director of such seizure.

(3) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted within thirty (30) days by the director or appropriate prosecuting attorney.

(d) Property taken or detained under this section may be subject to replevin during the pendency of the forfeiture proceedings upon a hearing and

finding by the district court, or magistrate division thereof, having jurisdiction over the forfeiture proceedings, that the property is: (i) reasonably necessary for the owner's employment or personal use, that the property will not be disposed of or used for criminal activity, and that reasonable security has been posted; or (ii) that the seizure violated the provisions of this section. The right of replevin shall terminate upon an order of forfeiture as set forth in this section. Property that is being held that has evidentiary value in the underlying criminal case shall not be subject to replevin. Forfeiture proceedings shall be civil actions against the property subject to forfeiture and the standard of proof shall be preponderance of the evidence.

(1) All property described in paragraphs (1), (7) and (8) of subsection (a) of this section shall be deemed contraband and shall be summarily forfeited to the state. Controlled substances that are seized or come into possession of the state, the owners of which are unknown, shall be deemed contraband and shall be summarily forfeited to the state.

(2) When property described in paragraphs (2), (3), (4), (5), (6) or (9) of subsection (a) of this section is seized pursuant to this section, forfeiture proceedings shall be filed in the office of the clerk of the district court for the county wherein such property is seized. The procedure governing such proceedings shall be the same as that prescribed for civil proceedings by the Idaho rules of civil procedure. The court shall determine whether such property was used, or intended for use, in violation of this chapter. The court shall also determine whether a property forfeiture is proportionate to the crime alleged, charged or proven. Factors to be considered by the court in making such a determination shall include, but are not limited to, the nature and severity of the crime, the fair market value of the property, the intangible or subjective value of the property, the hardship to the defendant, the effect of forfeiture on the defendant's family or financial circumstances, and any other sanctions or penalties that have been imposed upon the defendant. The court may tailor the forfeiture of property according to its determination of proportionality as justice requires.

(3) When conveyances, including aircraft, vehicles, or vessels are seized pursuant to this section a complaint instituting forfeiture proceedings shall be filed in the office of the clerk of the district court for the county wherein such conveyance is seized.

(A) Notice of forfeiture proceedings shall be given to each owner or party in interest who has a right, title, or interest which in the case of a conveyance shall be determined by the record in the Idaho transportation department or a similar department of another state if the records are maintained in that state, by serving a copy of the complaint and summons according to one (1) of the following methods:

(I) Upon each owner or party in interest by mailing a copy of the complaint and summons by certified mail to the address as given upon the records of the appropriate department.

(II) Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last known address.

(B) Within twenty (20) days after the mailing or publication of the notice, the owner of the conveyance or claimant may file a ver-

ified answer and claim to the property described in the complaint instituting forfeiture proceedings.

(C) If at the end of twenty (20) days after the notice has been mailed there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use, or intent to use, and shall order the property forfeited to the director, or appropriate prosecuting attorney, if such fact is proved.

(D) If a verified answer is filed, the forfeiture proceeding shall be set for hearing before the court without a jury on a day not less than thirty (30) days therefrom; and the proceeding shall have priority over other civil cases.

(I) At the hearing any owner who has a verified answer on file may show by competent evidence that the conveyance was not used or intended to be used in any manner described in subsection (a) (4) of this section.

(II) At the hearing any owner who has a verified answer on file may show by competent evidence that his interest in the conveyance is not subject to forfeiture because he did not know that the conveyance was being used, had been used, was intended to be used or had been intended to be used in any manner described in subsection (a) (4) of this section.

(III) If the court finds that the property was not used or was not intended to be used in violation of this act, or is not subject to forfeiture under this act, the court shall order the property released to the owner as his right, title, or interest appears on records in the appropriate department as of the seizure.

(IV) An owner, co-owner or claimant of any right, title, or interest in the conveyance may prove that his right, title, or interest, whether under a lien, mortgage, conditional sales contract or otherwise, was created without any knowledge or reason to believe that the conveyance was being used, had been used, was intended to be used, or had been intended to be used for the purpose alleged;

(i) In the event of such proof, the court shall order the conveyance released to the bona fide or innocent owner, purchaser, lienholder, mortgagee, or conditional sales vendor.

(ii) If the amount due to such person is less than the value of the conveyance, the conveyance may be sold at public auction by the director or appropriate prosecuting attorney. The director, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the conveyance. The proceeds from such sale shall be distributed as follows in the order indicated:

1. To the bona fide or innocent owner, purchaser, conditional sales vendor, lienholder or mortgagee of the conveyance, if any, up to the value of his interest in the conveyance.
2. The balance, if any, in the following order:

A. To the director, or appropriate prosecuting attorney, for all expenditures made or incurred by it in connection with the sale, including expenditure for any necessary repairs, storage, or transportation of the conveyance, and for all expenditures made or incurred by him in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

B. To the law enforcement agency of this state which seized the conveyance for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any conveyance seized under this act.

C. The remainder, if any, to the director for credit to the drug and driving while under the influence enforcement donation fund or to the appropriate prosecuting attorney for credit to the local drug enforcement donation fund, or its equivalent.

(iii) In any case, the director, or appropriate prosecuting attorney, may, within thirty (30) days after judgment, pay the balance due to the bona fide lienholder, mortgagee or conditional sales vendor and thereby purchase the conveyance for use to enforce this act.

(e) When property is forfeited under this section, or is received from a federal enforcement agency, the director, or appropriate prosecuting attorney, may:

(1) Upon a showing that the property as set forth in this section is suited for and likely to be used for law enforcement activities, the plaintiff or law enforcement agency may, with judicial approval, retain it for official use;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public.

The director, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated:

(A) To the director, or prosecuting attorney on behalf of the county or city law enforcement agency, for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs, maintenance, storage or transportation, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to,

expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

(B) To the law enforcement agency of this state which seized the property for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under this act.

(C) The remainder, if any, to the director for credit to the drug and driving while under the influence enforcement donation fund or to the appropriate prosecuting attorney for credit to the local agency's drug enforcement donation fund; or

(3) Take custody of the property and remove it for disposition in accordance with law.

(f) (1) The director or any peace officer of this state seizing any of the property described in paragraphs (1) and (2) of subsection (a) of this section shall cause a written inventory to be made and maintain custody of the same until all legal actions have been exhausted unless such property has been placed in lawful custody of a court or state or federal law enforcement agency. After all legal actions have been exhausted with respect to such property, the property shall be surrendered by the court, law enforcement agency, or person having custody of the same to the director to be destroyed pursuant to paragraph (2) of this subsection. The property shall be accompanied with a written inventory on forms furnished by the director.

(2) All property described in paragraphs (1) and (2) of subsection (a) of this section that is seized or surrendered under the provisions of this act may be destroyed after all legal actions have been exhausted. The destruction shall be done under the supervision of the Idaho state police by a representative of the office of the director and a representative of the state board of pharmacy. An official record listing the property destroyed and the location of destruction shall be kept on file at the office of the director. Except, however, that the director of the Idaho state police or his designee may authorize the destruction of drug or nondrug evidence, or store those items at government expense when, in the opinion of the director or his designee, it is not reasonable to remove or transport such items from the location of the seizure for destruction. In such case, a representative sample will be removed and preserved for evidentiary purposes and, when practicable, destroyed as otherwise is in accordance with this chapter. On-site destruction of such items shall be witnessed by at least two (2) persons, one (1) of whom shall be the director or his designee who shall make a record of the destruction.

(g) Species of plants from which controlled substances in schedules I and II may be derived that have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or that are wild growths, may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the director, or his duly authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) The director shall have the authority to enter upon any land or into any dwelling pursuant to a search warrant, to cut, harvest, carry off or destroy such plants described in subsection (g) of this section.

(j) On or before March 31, 2019, and by March 31 of each year thereafter, each state or local law enforcement agency in this state that has seized or forfeited property pursuant to this section shall retain the following information from the previous calendar year:

- (1) Name of the law enforcement agency that seized the property;
- (2) Date of seizure;
- (3) Type and description of property seized, including make, model, year, and serial number, if applicable;
- (4) Crime, if any, for which the suspect has been charged, including whether such crime is a violation of state or federal law;
- (5) Criminal case number, if any;
- (6) Outcome, if any, of suspect's case;
- (7) If forfeiture was not processed under state law, the reason for the federal transfer, if known;
- (8) Forfeiture case number;
- (9) Date of forfeiture decision;
- (10) Whether there was a forfeiture settlement agreement;
- (11) Date and outcome of property disposition as described by one (1) of the following: returned to owner, partially returned to owner, sold, destroyed, or retained by law enforcement; and
- (12) Value of the property forfeited based on the value realized, if sold, or a reasonable good faith estimate of the value, if possible.

Local law enforcement agencies shall submit the information required by this subsection to the county prosecutor for its jurisdiction on a form as promulgated in rule by the Idaho state police, and such prosecutor shall retain the form for a period of seven (7) years.

[37-2744, added 1971, ch. 215, sec. 1, p. 939; am. 1972, ch. 133, sec. 11, p. 261; am. 1972, ch. 409, sec. 4, p. 1195; am. 1974, ch. 27, sec. 82, p. 811; am. 1980, ch. 388, sec. 4, p. 983; am. 1982, ch. 265, sec. 1, p. 680; am. 1983, ch. 218, sec. 3, p. 607; am. 1986, ch. 286, sec. 2, p. 712; am. 1988, ch. 47, sec. 3, p. 58; am. 1990, ch. 239, sec. 1, p. 676; am. 1990, ch. 312, sec. 1, p. 852; am. 1992, ch. 174, sec. 1, p. 546; am. 1994, ch. 285, sec. 1, p. 894; am. 1994, ch. 286, sec. 1, p. 900; am. 1999, ch. 218, sec. 1, p. 578; am. 2000, ch. 469, sec. 89, p. 1538; am. 2009, ch. 108, sec. 5, p. 350; am. 2014, ch. 78, sec. 1, p. 205; am. 2018, ch. 221, sec. 1, p. 494.]

37-2744A. REAL PROPERTY SUBJECT TO FORFEITURE. (a) Any real property, including any interest therein and any appurtenances thereto or improvements thereon, which is used in any manner or part, to commit or to facilitate the commission of a violation of the provisions of this chapter punishable by more than one (1) year of imprisonment, shall be subject to forfeiture under the provisions of this section.

(b) Property subject to forfeiture under the provisions of this section may be seized by the director upon determining that a parcel of property is subject to forfeiture, by filing a notice of forfeiture with the recorder of the county in which the property or any part thereof is situated. The notice must contain a legal description of the property sought to be forfeited; provided, however, that in the event the property sought to be forfeited is part of a greater parcel, the director may, for the purposes of this notice, use

the legal description of the greater parcel. The director shall also send by certified mail a copy of the notice of forfeiture to any persons holding a recorded interest or of whose interest the director has actual knowledge. The director shall post a similar copy of the notice conspicuously upon the property and publish a copy thereof once a week for three (3) consecutive weeks immediately following the seizure in a newspaper published in the county. The owner or party in lawful possession of the property sought to be forfeited may retain possession and use thereof and may collect and keep income from the property while the forfeiture proceedings are pending.

(c) In the event of a seizure pursuant to subsection (a) of this section, a complaint instituting forfeiture proceedings under subsection (d) of this section shall be filed in the district court in the county in which the real property is situated within ninety (90) days of the date of seizure. The complaint shall be served in the same manner as other complaints subject to the Idaho rules of civil procedure on all persons having an interest in the real property sought to be forfeited.

(d) Real property sought to be forfeited under the provisions of this section shall not be subject to an action for detainer or any other collateral action, but is deemed to be in the custody of the director subject only to the orders and decrees of the district court having jurisdiction over the forfeiture proceedings. Forfeiture proceedings shall be civil proceedings in which the burden of proof shall be on the director to prove by a preponderance of the evidence that the property sought to be forfeited is subject to forfeiture. Upon being satisfied that an owner or claimant as defined in paragraph (4) of this subsection should not be subjected to forfeiture because that person had no knowledge or reason to believe that the real property was being used or had been used for the purposes alleged by the department, the director shall release the property to the owner or other claimant. The procedure applicable to such cases shall be the same as that prescribed by the Idaho rules of civil procedure. Following service the director may, where appropriate, seek default judgment pursuant to the Idaho rules of civil procedure. If an answer is filed the court shall proceed to set the case for hearing before the court without a jury.

(1) Following the hearing, if the court finds that the property is subject to forfeiture pursuant to subsection (a) of this section the court shall order the property forfeited to the director and title shall vest as of the date of the original seizure.

(2) Following the hearing, if the court finds that the property is not subject to forfeiture pursuant to subsection (a) of this section, the court shall order the property released to the owner or owners thereof.

(3) Any owner who has an answer on file may show by competent evidence that his interest in the property sought to be forfeited is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the real property was being used, or had been used in any manner in violation of the provisions of this section. If the court finds that the property was not used in violation of the provisions of this section or is not subject to forfeiture under the provisions of this section, the court shall order the property released to the owner.

(4) An owner, co-owner or claimant of any right, title or interest in the real property sought to be forfeited may prove that his right, title or interest, whether under a lien, mortgage, or otherwise, was created

without any knowledge or reason to believe that the real property was being used or had been used for the purposes alleged by the department;

(A) In the event of such proof, the court shall order the real property released to the innocent owner, purchaser, lienholder or mortgagee.

(B) If the amount due to such person is less than the value of the real property, the real property may be sold in a commercially reasonable manner by the director. The proceeds from such sale shall be distributed as follows in the order indicated:

(i) To the innocent owner, purchaser or mortgagee of the real property, if any, up to the value of his interest in the real property.

(ii) The balance, if any, in the following order:

1. To the director for all expenditures made or incurred by the department in connection with the sale, including expenditure for any necessary repairs or maintenance of the real property, and for all expenditures made or incurred by the department in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, travel, investigation, title company fees and insurance premiums.

2. The remainder, if any, to the director for credit to the drug enforcement donation account.

(C) In any case, the director may, within thirty (30) days after judgment, pay the balance due to the innocent owner, purchaser, lienholder or mortgagee and thereby purchase the real property for use in the enforcement of this act.

(e) In issuing any order under the provisions of this section, the court shall make a determination that the property, or a portion thereof, was actually used in violation of the provisions of this act. The size of the property forfeited shall not be unfairly disproportionate to the size of the property actually used in violation of the provisions of this section.

(f) When property is forfeited under the provisions of this section the director may:

(1) Retain it for official use; or

(2) Sell the property in a commercially reasonable manner. The proceeds shall be distributed by the director as follows:

(A) To reimburse for all expenditures made or incurred in connection with the sale, including expenditures for any necessary repairs or maintenance, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expenditures for attorneys' fees, title company fees, insurance premiums, recording costs, witnesses' fees, reporters' fees, transcripts, printing, travel and investigation.

(B) The remainder, if any, shall be credited to the drug enforcement donation account.

(3) Recommend to the court that the property, or proceeds thereof, be forfeited in whole or in part to a city or county, the law enforcement agency of which participated in the events leading to the seizure of the property or proceeds. Property distributed pursuant to this recommen-

dation shall be used by the city or county for purposes consistent with the provisions of this chapter.

[37-2744A, added 1989, ch. 341, sec. 2, p. 863; am. 1994, ch. 395, sec. 1, p. 1251.]

37-2744B. AUTHORIZATION TO RECEIVE AND ADMINISTER FEDERAL FORFEITURES AND PRIVATE DONATIONS. The director of the Idaho state police is authorized to receive and dispose of any real or personal property which has been seized by a federal drug enforcement agency, or any donations from private citizens, the proceeds of which shall be placed in the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code.

[(37-2744B) 1986, ch. 286, sec. 3, p. 718; am. and redesignated 1989, ch. 341, sec. 1, p. 862; am. 2000, ch. 469, sec. 90, p. 1544; am. 2010, ch. 79, sec. 13, p. 142.]

37-2745. BURDEN OF PROOF -- LIABILITIES. (a) It is not necessary for the state to negate any exemption or exception in this act in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under the provisions of this act. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration, valid prescription, or order form issued under the provisions of this act, he is presumed not to be the holder of the registration, valid prescription or form. The burden of proof is upon him to rebut the presumption.

(c) In all prosecutions under the provisions of this act involving the analysis of a controlled substance or a sample thereof, a certified copy of the analytical report with the notarized signature of the bureau chief of the Idaho forensic laboratory and the criminalist who conducted the analysis shall be accepted as prima facie evidence of the results of the analytical findings.

(d) Notwithstanding any statute or rule to the contrary, the defendant may subpoena the criminalist to testify at the preliminary hearing and trial of the issue at no cost to the defendant.

(e) No liability is imposed under the provisions of this act upon any authorized state, county or municipal officer, engaged in the lawful performance of his duties.

[I.C., sec. 37-2745, as added by 1971, ch. 215, sec. 1, p. 939; am. 1972, ch. 133, sec. 12, p. 261; am. 1993, ch. 158, sec. 1, p. 408.]

37-2746. JUDICIAL REVIEW. All final determinations, findings and conclusions of the board under this act are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the district court of the county where the aggrieved person resides. Findings of fact by the board, if supported by substantial evidence, are conclusive.

[I.C., sec. 37-2746, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2747. EDUCATION AND RESEARCH. (a) The director or his authorized agent shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs he may:

- (1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;
- (2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;
- (3) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;
- (4) Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;
- (5) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and
- (6) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The director shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this act, he may:

- (1) Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;
- (2) Make studies and undertake programs of research to:
 - (A) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this act;
 - (B) Determine patterns of misuse and abuse of controlled substances and the social effects thereof; and
 - (C) Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and
- (3) Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The director may enter into contracts for educational and research activities without performance bonds.

(d) The director may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The director may authorize the possession and distribution of controlled substances by persons lawfully engaged in education and research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

[I.C., sec. 37-2747, as added by 1971, ch. 215, sec. 1, p. 939; am. 1972, ch. 133, sec. 13, p. 261; am. 1974, ch. 27, sec. 83, p. 811.]

37-2748. PENDING PROCEEDINGS. (a) Prosecution for any violation of law occurring prior to the effective date of this act is not affected or abated by this act. If the offense being prosecuted is similar to one set out in article IV of this act, then the penalties under article IV apply if they are less than those under prior law.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of this act are not affected by this act.

(c) All administrative proceedings pending under prior laws which are superseded by this act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of this act. Any substance controlled under prior law which is not listed within schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The board shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to the effective date of this act and who are registered or licensed by the state.

(e) This act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

[I.C., sec. 37-2748, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2749. CONTINUATION OF RULES. Any orders and rules promulgated under any law affected by this act and in effect on the effective date of this act and not in conflict with it continue in effect until modified, superseded or repealed.

[I.C., sec. 37-2749, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2750. UNIFORMITY OF INTERPRETATION. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

[I.C., sec. 37-2750, as added by 1971, ch. 215, sec. 1, p. 939.]

37-2751. SHORT TITLE. This act may be cited as the "Uniform Controlled Substances Act."

[I.C., sec. 37-2751, as added by 1971, ch. 215, sec. 1, p. 939.]