

IN THE SENATE

SENATE BILL NO. 1146, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (ii) Water pipes;

8 (iii) Carburetion tubes and devices;

9 (iv) Smoking and carburetion masks;

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

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

14 (vii) Chamber pipes;

15 (viii) Carburetor pipes;

16 (ix) Electric pipes;

17 (x) Air-driven pipes;

18 (xi) Chillums;

19 (xii) Bongs;

20 (xiii) Ice pipes or chillers;

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

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

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

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

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

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

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

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

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

44 9. National and local advertising concerning its use;

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

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

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

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

3 14. Expert testimony concerning its use.

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

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

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

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

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

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

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

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

49 (1) As used in this title, "cannabidiol oil" means an extract from a  
50 cannabis plant in an oral suspension or oil that:

1           (i) Is composed of no more than three-tenths percent (0.3%) total tetrahydrocannabinol (the sum of tetrahydrocannabinol and tetrahydrocannabinolic acid) by weight;

2           (ii) Is composed of at least fifteen (15) times more cannabidiol (the sum of cannabidiol and cannabidiolic acid) than total tetrahydrocannabinol by weight; and

3           (iii) Contains no other substance controlled by the state of Idaho.

4           (2) Notwithstanding any other provision of law, a person who possesses or uses cannabidiol oil is not subject to the penalties set forth in this chapter for the possession or use of the cannabidiol oil if:

5           (i) The cannabidiol oil meets the requirements of subsection (t) (1) of this section;

6           (ii) The individual has or is the parent or legal guardian of a minor that has an intractable seizure disorder and possesses and uses the cannabidiol oil only to treat the intractable seizure disorder;

7           (iii) The individual has a written recommendation for the use of cannabidiol oil from a physician licensed under chapter 18, title 54, Idaho Code, to practice medicine in the state of Idaho;

8           (iv) The cannabidiol oil is in a container with a capacity of thirty-two (32) fluid ounces or less that is labeled by the manufacturer showing the total tetrahydrocannabinol by weight and that the ratio of total cannabidiol to total tetrahydrocannabinol is in compliance with this subsection; and

9           (v) A laboratory unaffiliated with the producer of the cannabidiol oil has verified the tetrahydrocannabinol and cannabidiol oil by weight.

10           (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:

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

12           (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.

13           (3) Opium poppy and poppy straw.

14           (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.

15           (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

1 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does in-  
2 clude its racemic and levorotatory forms.

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

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

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

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

16 (aa) "Practitioner" means:

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

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

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

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

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

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

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

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

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

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

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

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