

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 695

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO UNIFORM CONTROLLED SUBSTANCES; AMENDING SECTION 37-2732, IDAHO CODE, TO PROVIDE A PENALTY; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 37-2732, Idaho Code, be, and the same is hereby amended to read as follows:

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

1 upon conviction may be imprisoned for not more than five (5) years,
2 fined not more than fifteen thousand dollars (\$15,000), or both;

3 (C) A counterfeit substance classified in schedule IV is guilty
4 of a felony and upon conviction may be imprisoned for not more
5 than three (3) years, fined not more than ten thousand dollars
6 (\$10,000), or both;

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

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

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

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

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

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

38 (e) If any person is found to possess marijuana, which for the purposes
39 of this subsection shall be restricted to all parts of the plants of the
40 genus Cannabis, including the extract or any preparation of cannabis which
41 contains tetrahydrocannabinol, in an amount greater than three (3) ounces
42 net weight, it shall be a felony and upon conviction may be imprisoned for
43 not more than five (5) years, or fined not more than ten thousand dollars
44 (\$10,000), or both, and for any amount less than three (3) ounces net weight
45 possessed by a person eighteen (18) years of age or older, it shall be a
46 misdemeanor and upon conviction shall be punished by a fine of not less than
47 three hundred dollars (\$300) in addition to any penalties provided for in
48 subsection (c) (3) of this section.

49 (f) If two (2) or more persons conspire to commit any offense defined in
50 this act, said persons shall be punished by a fine or imprisonment, or both,

1 which may not exceed the maximum punishment prescribed for the offense, the
2 commission of which was the object of the conspiracy.

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

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

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

21 (i) No civil or criminal liability shall be imposed by virtue of this
22 chapter on any person registered under the uniform controlled substances
23 act who manufactures, distributes, or possesses an imitation controlled
24 substance for use as a placebo or other use by a registered practitioner, as
25 defined in section 37-2701(bb), Idaho Code, in the course of professional
26 practice or research.

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

32 (k) Upon conviction of a felony or misdemeanor violation under this
33 chapter or upon conviction of a felony pursuant to the racketeering act,
34 section 18-7804, Idaho Code, or the money laundering and illegal investment
35 provisions of section 18-8201, Idaho Code, the court may order restitution
36 for costs incurred by law enforcement agencies in investigating the viola-
37 tion. Law enforcement agencies shall include, but not be limited to, the
38 Idaho state police, county and city law enforcement agencies, the office
39 of the attorney general and county and city prosecuting attorney offices.
40 Costs shall include, but not be limited to, those incurred for the purchase
41 of evidence, travel and per diem for law enforcement officers and witnesses
42 throughout the course of the investigation, hearings and trials, and any
43 other investigative or prosecution expenses actually incurred, including
44 regular salaries of employees. In the case of reimbursement to the Idaho
45 state police, those moneys shall be paid to the Idaho state police for
46 deposit into the drug and driving while under the influence enforcement
47 donation fund created in section 57-816, Idaho Code. In the case of reim-
48 bursement to the office of the attorney general, those moneys shall be paid
49 to the general fund. A conviction for the purposes of this section means that

1 the person has pled guilty or has been found guilty, notwithstanding the form
2 of the judgment(s) or withheld judgment(s).

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