

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 77

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO CONTROLLED SUBSTANCES; AMENDING SECTION 18-7804, IDAHO CODE, TO  
2 REQUIRE THE COURT TO IMPOSE AS A PENALTY A CERTAIN FINE AND TO PROVIDE  
3 THAT SUCH PENALTY BE DEPOSITED INTO THE DRUG AND DRIVING WHILE UNDER THE  
4 INFLUENCE ENFORCEMENT DONATION FUND AND TO MAKE A TECHNICAL CORRECTION;  
5 AMENDING SECTION 18-8201, IDAHO CODE, TO REQUIRE THE COURT TO IMPOSE AS  
6 A PENALTY A CERTAIN FINE AND TO PROVIDE THAT SUCH PENALTY BE DEPOSITED  
7 INTO THE DRUG AND DRIVING WHILE UNDER THE INFLUENCE ENFORCEMENT DONA-  
8 TION FUND; AMENDING SECTION 37-2732, IDAHO CODE, TO REQUIRE THE COURT  
9 TO IMPOSE AS A PENALTY A CERTAIN FINE, TO PROVIDE THAT SUCH PENALTY BE  
10 DEPOSITED INTO THE DRUG AND DRIVING WHILE UNDER THE INFLUENCE ENFORCE-  
11 MENT DONATION FUND, TO MAKE A CODIFIER'S CORRECTION AND TO MAKE TECH-  
12 NICAL CORRECTIONS; AMENDING SECTION 37-2732C, IDAHO CODE, TO REQUIRE  
13 THE COURT TO IMPOSE AS A PENALTY A CERTAIN FINE, TO PROVIDE THAT SUCH  
14 PENALTY BE DEPOSITED INTO THE DRUG AND DRIVING WHILE UNDER THE INFLUENCE  
15 ENFORCEMENT DONATION FUND AND TO MAKE TECHNICAL CORRECTIONS; AMENDING  
16 SECTION 37-2733, IDAHO CODE, TO REQUIRE THE COURT TO IMPOSE AS A PENALTY  
17 A CERTAIN FINE AND TO PROVIDE THAT SUCH PENALTY BE DEPOSITED INTO THE  
18 DRUG AND DRIVING WHILE UNDER THE INFLUENCE ENFORCEMENT DONATION FUND;  
19 AMENDING SECTION 37-2734A, IDAHO CODE, TO REQUIRE THE COURT TO IMPOSE AS  
20 A PENALTY A CERTAIN FINE AND TO PROVIDE THAT SUCH PENALTY BE DEPOSITED  
21 INTO THE DRUG AND DRIVING WHILE UNDER THE INFLUENCE ENFORCEMENT DONA-  
22 TION FUND; AMENDING SECTION 37-2734B, IDAHO CODE, TO REQUIRE THE COURT  
23 TO IMPOSE AS A PENALTY A CERTAIN FINE AND TO PROVIDE THAT SUCH PENALTY BE  
24 DEPOSITED INTO THE DRUG AND DRIVING WHILE UNDER THE INFLUENCE ENFORCE-  
25 MENT DONATION FUND; AMENDING SECTION 37-2734C, IDAHO CODE, TO REQUIRE  
26 THE COURT TO IMPOSE AS A PENALTY A CERTAIN FINE AND TO PROVIDE THAT SUCH  
27 PENALTY BE DEPOSITED INTO THE DRUG AND DRIVING WHILE UNDER THE INFLUENCE  
28 ENFORCEMENT DONATION FUND; AND AMENDING SECTION 37-2739A, IDAHO CODE,  
29 TO REQUIRE THE COURT TO IMPOSE AS A PENALTY A CERTAIN FINE, TO PROVIDE  
30 THAT SUCH PENALTY BE DEPOSITED INTO THE DRUG AND DRIVING WHILE UNDER THE  
31 INFLUENCE ENFORCEMENT DONATION FUND AND TO MAKE A TECHNICAL CORRECTION.  
32

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

34 SECTION 1. That Section 18-7804, Idaho Code, be, and the same is hereby  
35 amended to read as follows:

36 18-7804. PROHIBITED ACTIVITIES -- PENALTIES. (a) It is unlawful for  
37 any person who has received any proceeds derived directly or indirectly from  
38 a pattern of racketeering activity in which the person has participated, to  
39 use or invest, directly or indirectly, any part of the proceeds or the pro-  
40 ceeds derived from the investment or use thereof in the acquisition of any  
41 interest in, or the establishment or operation of, any enterprise or real  
42 property. Whoever violates this subsection is guilty of a felony.

1 (b) It is unlawful for any person to engage in a pattern of racketeering  
 2 activity in order to acquire or maintain, directly or indirectly, any inter-  
 3 est in or control of any enterprise or real property. Whoever violates this  
 4 subsection is guilty of a felony.

5 (c) It is unlawful for any person employed by or associated with any en-  
 6 terprise to conduct or participate, directly or indirectly, in the conduct  
 7 of the affairs of such enterprise by engaging in a pattern of racketeering  
 8 activity. Whoever violates the provisions of this subsection is guilty of a  
 9 felony.

10 (d) It is unlawful for any person to conspire to violate any of the pro-  
 11 visions of subsections (a) through (c) of this section. Whoever violates the  
 12 provisions of this subsection is guilty of a felony.

13 (e) Whoever violates the provisions of this act is punishable by a fine  
 14 not to exceed twenty-five thousand dollars (\$25,000) and/or imprisonment  
 15 not to exceed a term of fourteen (14) years in the Idaho state penitentiary.

16 (f) Upon a conviction of a violation under the provisions of this chap-  
 17 ter, the court may order restitution for all costs and expenses of prosecu-  
 18 tion and investigation, pursuant to the terms and conditions set forth in  
 19 section 37-2732(k), Idaho Code.

20 (g) In addition to any other penalties prescribed by law, the court  
 21 shall impose, as a penalty, a fine in the amount of twenty dollars (\$20.00)  
 22 for each conviction under this section as set forth in section 37-2732(l),  
 23 Idaho Code. Such penalty shall be paid to the Idaho state police for deposit  
 24 into the drug and driving while under the influence enforcement donation  
 25 fund.

26 (h) In addition to any other penalties prescribed by law, whoever vio-  
 27 lates any provisions of this act shall forfeit to the state of Idaho:

28 (1) Any interest acquired or maintained in violation of the racketeer-  
 29 ing act; and

30 (2) Any interest in, security of, claim against or property or contrac-  
 31 tual right of any kind affording a source of influence over any enter-  
 32 prise which he has established, operated, controlled, conducted or par-  
 33 ticipated in the conduct of in violation of the provisions of the racke-  
 34 teering act.

35 (hi) In any action brought by the state under the racketeering act, the  
 36 district court shall have jurisdiction to enter such restraining orders or  
 37 prohibitions, or to take such other actions, including, but not limited to,  
 38 the acceptance of satisfactory performance bonds, in connection with any  
 39 property or other interest subject to forfeiture under the provisions of  
 40 this section, as it shall deem proper.

41 (ij) Upon conviction of a person under the provisions of this section,  
 42 the court shall authorize the attorney general or the proper prosecuting at-  
 43 torney to seize all property or other interest declared forfeited under the  
 44 provisions of this section upon such terms and conditions as the court shall  
 45 deem proper, making due provision for the rights of innocent persons. If  
 46 a property right or other interest is not exercisable or transferable for  
 47 value by the convicted person, it shall expire and shall not revert to the  
 48 convicted person.

49 SECTION 2. That Section 18-8201, Idaho Code, be, and the same is hereby  
 50 amended to read as follows:

1 18-8201. MONEY LAUNDERING AND ILLEGAL INVESTMENT -- PENALTY -- RESTI-  
2 TUTION. (1) It is unlawful for any person to knowingly or intentionally give,  
3 sell, transfer, trade, invest, conceal, transport, or make available any-  
4 thing of value that the person knows is intended to be used to commit or fur-  
5 ther a pattern of racketeering activity as defined in section 18-7803(d),  
6 Idaho Code, or a violation of the provisions of chapter 27, title 37, Idaho  
7 Code.

8 (2) It is unlawful for any person to knowingly or intentionally direct,  
9 plan, organize, initiate, finance, manage, supervise, or facilitate the  
10 transportation or transfer of proceeds known by that person to be derived  
11 from a pattern of racketeering activity as defined in section 18-7803(d),  
12 Idaho Code, or a violation of the provisions of chapter 27, title 37, Idaho  
13 Code.

14 (3) It is unlawful for any person to knowingly or intentionally con-  
15 duct a financial transaction involving proceeds known by that person to  
16 be derived from a pattern of racketeering activity as defined in section  
17 18-7803(d), Idaho Code, or a violation of the provisions of chapter 27,  
18 title 37, Idaho Code, if the transaction is designed in whole or in part to  
19 conceal or disguise the nature, location, source, ownership, or control of  
20 the proceeds, or to avoid a transaction reporting requirement under state or  
21 federal law.

22 (4) A person who violates the provisions of this section is guilty of a  
23 felony and upon conviction may be fined not more than two hundred fifty thou-  
24 sand dollars (\$250,000) or twice the value of the property involved in the  
25 transaction, whichever is greater, or be imprisoned for not more than ten  
26 (10) years, or be both so fined and imprisoned.

27 (5) Upon a conviction of a violation under the provisions of this chap-  
28 ter, the court may order restitution for all costs and expenses of prosecu-  
29 tion and investigation, pursuant to the terms and conditions set forth in  
30 section 37-2732(k), Idaho Code.

31 (6) In addition to any other penalties prescribed by law, the court  
32 shall impose, as a penalty, a fine in the amount of twenty dollars (\$20.00)  
33 for each conviction under this section as set forth in section 37-2732(l),  
34 Idaho Code. Such penalty shall be paid to the Idaho state police for deposit  
35 into the drug and driving while under the influence enforcement donation  
36 fund.

37 SECTION 3. That Section 37-2732, Idaho Code, be, and the same is hereby  
38 amended to read as follows:

39 37-2732. PROHIBITED ACTS A -- PENALTIES. (a) Except as authorized by  
40 this chapter, it is unlawful for any person to manufacture or deliver, or  
41 possess with intent to manufacture or deliver, a controlled substance.

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

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

1 (B) Any other controlled substance which is a nonnarcotic drug  
2 classified in schedule I, or a controlled substance classified in  
3 schedule III, is guilty of a felony and upon conviction may be im-  
4 prisoned for not more than five (5) years, fined not more than fif-  
5 teen thousand dollars (\$15,000), or both;

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

10 (D) A substance classified in schedules V and VI, is guilty of  
11 a misdemeanor and upon conviction may be imprisoned for not more  
12 than one (1) year, fined not more than five thousand dollars  
13 (\$5,000), or both.

14 (b) Except as authorized by this chapter, it is unlawful for any per-  
15 son to create, deliver, or possess with intent to deliver, a counterfeit sub-  
16 stance.

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

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

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

28 (C) A counterfeit substance classified in schedule IV, is guilty  
29 of a felony and upon conviction may be imprisoned for not more  
30 than three (3) years, fined not more than ten thousand dollars  
31 (\$10,000), or both;

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

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

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

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

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

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

14 (e) If any person is found to possess marijuana, which for the purposes  
15 of this subsection shall be restricted to all parts of the plants of the  
16 genus Cannabis, including the extract or any preparation of cannabis which  
17 contains tetrahydrocannabinol, in an amount greater than three (3) ounces  
18 net weight, it shall be a felony and upon conviction may be imprisoned for  
19 not more than five (5) years, or fined not more than ten thousand dollars  
20 (\$10,000), or both.

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

25 (g) (1) It is unlawful for any person to manufacture or distribute a  
26 "simulated controlled substance," or to possess with intent to distrib-  
27 ute, a "simulated controlled substance." Any person who violates this  
28 ~~subsection~~ paragraph shall, upon conviction, be guilty of a misdemeanor  
29 and upon conviction thereof shall be punished by a fine of not more than  
30 one thousand dollars (\$1,000) and, imprisoned for not more than one (1)  
31 year in the county jail, or both.

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

38 (h) It is unlawful for any person to cause to be placed in any newspaper,  
39 magazine, handbill, or other publication, or to post or distribute in any  
40 public place, any advertisement or solicitation offering for sale simulated  
41 controlled substances. Any person who violates this subsection is guilty of  
42 a misdemeanor and shall be punished in the same manner as prescribed in sub-  
43 section (g) (1) of this section.

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

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

6 (k) Upon conviction of a felony or misdemeanor violation under the  
7 provisions of this chapter or upon conviction of a felony pursuant to the  
8 "racketeering act," section 18-7804, Idaho Code, or the money laundering  
9 and illegal investment provisions of section 18-8201, Idaho Code, the court  
10 may order restitution for costs incurred by law enforcement agencies in  
11 investigating the violation. Law enforcement agencies shall include, but  
12 not be limited to, the Idaho state police, county and city law enforcement  
13 agencies, the office of the attorney general and county and city prosecuting  
14 attorney offices. Costs shall include, but not be limited to, those incurred  
15 for the purchase of evidence, travel and per diem for law enforcement of-  
16 ficers and witnesses throughout the course of the investigation, hearings  
17 and trials, and any other investigative or prosecution expenses actually  
18 incurred, including regular salaries of employees. In the case of reim-  
19 bursement to the Idaho state police, those moneys shall be paid to the Idaho  
20 state police for deposit into the drug and driving while under the influence  
21 enforcement donation fund created in section 57-816, Idaho Code. In the case  
22 of reimbursement to the office of the attorney general, those moneys shall be  
23 paid to the general fund.

24 (l) The court shall also impose, as a penalty, a fine in the amount of  
25 twenty dollars (\$20.00) for each felony or misdemeanor conviction under this  
26 section or upon conviction of a felony under section 18-7804 or 18-8201,  
27 Idaho Code. Such penalty shall be paid to the Idaho state police for deposit  
28 into the drug and driving while under the influence enforcement donation  
29 fund created in section 57-816, Idaho Code.

30 (m) A conviction for the purposes of this section means that the per-  
31 son has pled guilty or has been found guilty, notwithstanding the form of the  
32 judgment(s) or withheld judgment(s).

33 SECTION 4. That Section 37-2732C, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35 37-2732C. USING OR BEING UNDER THE INFLUENCE -- PENALTIES. (a) Except  
36 as authorized in this chapter, it is unlawful for any person on a public road-  
37 way, on a public conveyance, on public property or on private property open  
38 to the public, to use or be under the influence of any controlled substance  
39 specified in subsections (b), (c), (d), (e) and (f) of section 37-2705, Idaho  
40 Code, or subsections (b), (c) and (d) of section 37-2707, Idaho Code, or sub-  
41 section (c) (6) of section 37-2709, Idaho Code, or any narcotic drug classi-  
42 fied in schedule III, IV or V, except when administered by or under the direc-  
43 tion of a person licensed by the state to dispense, prescribe, or administer  
44 controlled substances. It shall be the burden of the defense to show that it  
45 comes within this exception.

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

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

10 (d) The court may, when it would be in the interest of justice, permit  
11 any person convicted of a violation of subsection (a) of this section, pun-  
12 ishable under subsection (b) or (c) of this section, to complete a licensed  
13 drug rehabilitation program in lieu of part or all of the imprisonment in  
14 the county jail. As a condition of sentencing, the court may require the of-  
15 fender to pay all or a portion of the drug rehabilitation program. In order  
16 to alleviate jail overcrowding and to provide recidivist offenders with a  
17 reasonable opportunity to seek rehabilitation pursuant to this subsection,  
18 counties are encouraged to include provisions to augment licensed drug re-  
19 habilitation programs in their substance abuse proposals and applications  
20 submitted to the state for federal and state drug abuse funds.

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

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

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

39 (h) The court shall also impose, as a penalty, a fine in the amount of  
40 twenty dollars (\$20.00) for each felony or misdemeanor conviction under this  
41 section. Such penalty shall be paid to the Idaho state police for deposit  
42 into the drug and driving while under the influence enforcement donation  
43 fund created in section 57-816, Idaho Code.

44 SECTION 5. That Section 37-2733, Idaho Code, be, and the same is hereby  
45 amended to read as follows:

46 37-2733. PROHIBITED ACTS B -- PENALTIES. (a) It is unlawful for any  
47 person:

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

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

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

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

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

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

17 (c) The court shall also impose, as a penalty, a fine in the amount  
 18 of twenty dollars (\$20.00) for each conviction under this section. Such  
 19 penalty shall be paid to the Idaho state police for deposit into the drug  
 20 and driving while under the influence enforcement donation fund created in  
 21 section 57-816, Idaho Code.

22 SECTION 6. That Section 37-2734A, Idaho Code, be, and the same is hereby  
 23 amended to read as follows:

24 37-2734A. PROHIBITED ACTS D -- PENALTIES. (1) It is unlawful for any  
 25 person to use, or to possess with intent to use, drug paraphernalia to plant,  
 26 propagate, cultivate, grow, harvest, manufacture, compound, convert, pro-  
 27 duce, process, prepare, test, analyze, pack, repack, store, contain, con-  
 28 ceal, inject, ingest, inhale, or otherwise introduce into the human body a  
 29 controlled substance.

30 (2) It is unlawful for any person to place in any newspaper, magazine,  
 31 handbill, or other publication any advertisement, knowing, or under circum-  
 32 stances where one reasonably should know, that the purpose of the advertise-  
 33 ment, in whole or in part, is to promote the sale of objects designed or in-  
 34 tended for use as drug paraphernalia.

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

39 (4) The court shall also impose, as a penalty, a fine in the amount  
 40 of twenty dollars (\$20.00) for each conviction under this section. Such  
 41 penalty shall be paid to the Idaho state police for deposit into the drug  
 42 and driving while under the influence enforcement donation fund created in  
 43 section 57-816, Idaho Code.

44 SECTION 7. That Section 37-2734B, Idaho Code, be, and the same is hereby  
 45 amended to read as follows:

46 37-2734B. PROHIBITED ACTS E -- PENALTIES. (1) It is unlawful for any  
 47 person to deliver, possess with intent to deliver, or manufacture with in-

1 tent to deliver, drug paraphernalia, knowing, or under circumstances where  
 2 one reasonably should know, that it will be used to plant, propagate, culti-  
 3 vate, grow, harvest, manufacture, compound, convert, produce, process, pre-  
 4 pare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,  
 5 inhale, or otherwise introduce into the human body a controlled substance.

6 (2) Any person who is in violation of this section is guilty of a felony  
 7 and upon conviction may be imprisoned for not more than nine (9) years, fined  
 8 not more than thirty thousand dollars (\$30,000), or both.

9 (3) The court shall also impose, as a penalty, a fine in the amount  
 10 of twenty dollars (\$20.00) for each conviction under this section. Such  
 11 penalty shall be paid to the Idaho state police for deposit into the drug  
 12 and driving while under the influence enforcement donation fund created in  
 13 section 57-816, Idaho Code.

14 SECTION 8. That Section 37-2734C, Idaho Code, be, and the same is hereby  
 15 amended to read as follows:

16 37-2734C. PROHIBITED ACTS F -- PENALTIES. (1) A person is guilty of  
 17 the crime of unlawful storage of anhydrous ammonia in a container that:

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

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

22 (2) Violation of this section is a felony.

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

26 (4) Any damages arising out of the unlawful possession of, storage of,  
 27 or tampering with anhydrous ammonia equipment shall be the sole responsi-  
 28 bility of the person or persons unlawfully possessing, storing or tamper-  
 29 ing with the anhydrous ammonia. In no case shall liability for damages aris-  
 30 ing out of the unlawful possession of, storage of, or tampering with anhy-  
 31 drous ammonia or anhydrous ammonia equipment extend to the lawful owner, in-  
 32 staller, maintainer, designer, manufacturer, possessor or seller of the an-  
 33 hydrous ammonia or anhydrous ammonia equipment, unless such damages arise  
 34 out of the acts or omissions of the owner, installer, maintainer, designer,  
 35 manufacturer, possessor or seller that constitute negligent misconduct to  
 36 abide by the laws regarding anhydrous ammonia possession and storage.

37 (5) In addition to any other penalty applicable for violation of this  
 38 section, the court shall also impose, as a penalty, a fine in the amount  
 39 of twenty dollars (\$20.00) for each conviction under this section. Such  
 40 penalty shall be paid to the Idaho state police for deposit into the drug  
 41 and driving while under the influence enforcement donation fund created in  
 42 section 57-816, Idaho Code.

43 SECTION 9. That Section 37-2739A, Idaho Code, be, and the same is hereby  
 44 amended to read as follows:

45 37-2739A. MANDATORY MINIMUM PENALTY. Any person who is convicted  
 46 of violating the felony provisions of section 37-2732(a), Idaho Code, by  
 47 distributing controlled substances to another person, who is not subject

1 to a fixed minimum term under section 37-2739B, Idaho Code, and who has  
2 previously been convicted within the past ten (10) years in a court of the  
3 United States, any state or a political subdivision of one (1) or more felony  
4 offenses of dealing, selling or trafficking in controlled substances on  
5 an occasion or occasions different from the felony violation of section  
6 37-2732(a), Idaho Code, and which offense or offenses were punishable in  
7 such court by imprisonment in excess of one (1) year, shall be sentenced to  
8 the custody of the state board of correction for a mandatory minimum period  
9 of time of not less than three (3) years or for such greater period as the  
10 court may impose up to a maximum of life imprisonment. The mandatory minimum  
11 period of three (3) years incarceration shall not be reduced and shall run  
12 consecutively to any other sentence imposed by the court. The court shall  
13 also impose, as a penalty, a fine in the amount of twenty dollars (\$20.00) for  
14 each conviction under this section. Such penalty shall be paid to the Idaho  
15 state police for deposit into the drug and driving while under the influence  
16 enforcement donation fund created in section 57-816, Idaho Code.