

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 172

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO CIVIL FORFEITURES; AMENDING SECTION 37-2744, IDAHO CODE, TO  
2 REVISE CERTAIN PROPERTY SUBJECT TO FORFEITURE, TO PROVIDE THAT CER-  
3 TAIN PROPERTY SHALL BE SUBJECT TO REPLEVIN UPON A FINDING BY A COURT,  
4 TO PROVIDE FOR A COURT DETERMINATION OF PROPORTIONALITY WITH REGARD TO  
5 FORFEITURE, TO REMOVE AN OBSOLETE PUBLICATION PROVISION, TO REMOVE A  
6 PROVISION REGARDING PAYMENT OF CERTAIN COSTS, TO PROVIDE FOR THE DISPO-  
7 SITION OF FORFEITED PROPERTY, TO PROVIDE REPORTING REQUIREMENTS AND TO  
8 MAKE TECHNICAL CORRECTIONS.  
9

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

11 SECTION 1. That Section 37-2744, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 37-2744. FORFEITURES. (a) The following are subject to forfeiture:

14 (1) All controlled substances which have been manufactured, dis-  
15 tributed, dispensed, acquired, possessed or held in violation of this  
16 act or with respect to which there has been any act by any person in vio-  
17 lation of this act;

18 (2) All raw materials, products and equipment of any kind which are  
19 used, or intended for use, in manufacturing, compounding, processing,  
20 delivering, importing, or exporting any controlled substances or coun-  
21 terfeit substances in violation of this act;

22 (3) All property which is used, or intended for use, as a container for  
23 property ~~described in paragraph (1) or (2) of this section~~ used in the  
24 commission of an act prohibited by section 37-2732B, 37-2732(a) or (b),  
25 or 37-2737A, Idaho Code;

26 (4) All conveyances, including aircraft, vehicles, or vessels, which  
27 are used, or intended for use, to transport, or in any manner to facili-  
28 tate the transportation, delivery, receipt, ~~possession or concealment,~~  
29 ~~for the purpose of distribution or receipt~~ manufacture of property de-  
30 scribed in paragraph (1) or (2) of this substances as prohibited by sec-  
31 tion 37-2732B, 37-2732(a) or (b), or 37-2737A, Idaho Code, but:

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

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

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

7 (5) All books, records, and research products and materials, includ-  
8 ing formulas, microfilm, tapes, and data which are used, or intended for  
9 use, in violation of this act.

10 (6) (A) All moneys, currency, negotiable instruments, securities or  
11 other items easily liquidated for cash, such as, but not limited  
12 to, jewelry, stocks and bonds, or other property described in  
13 paragraphs (2) and (3) hereof, found in close proximity to prop-  
14 erty described in paragraph (1), (2), (3), (5), (7) or (8) of sub-  
15 section (a) of this section ~~or~~ and which has been used or intended  
16 for use in connection with the illegal manufacture, distribution,  
17 dispensing or possession of property described in paragraph (1),  
18 (2), (3), (5), (7) or (8) of subsection (a) of this section;

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

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

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

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

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

38 (1) The seizure is incident to an arrest or a search under a search war-  
39 rant or an inspection under an administrative inspection warrant;

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

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

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

47 Mere presence or possession of United States currency, without other indi-  
48 cia, is insufficient probable cause for seizure.

1 (c) In the event of seizure pursuant to subsection (b) of this sec-  
2 tion, proceedings under subsection (d) of this section shall be instituted  
3 promptly.

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

6 (A) Place the property under seal;

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

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

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

12 (3) In the event of seizure pursuant to subsection (b) of this section,  
13 proceedings under subsection (d) of this section shall be instituted  
14 within thirty (30) days by the director or appropriate prosecuting at-  
15 torney.

16 (d) Property taken or detained under this section shall ~~not~~ be subject  
17 to replevin, ~~but is deemed to be in the custody of the director, or appropri-~~  
18 ~~ate prosecuting attorney, subject only to the orders and decrees of~~ during  
19 the pendency of the forfeiture proceedings upon a finding by the district  
20 court, or magistrate's division thereof, having jurisdiction over the for-  
21 feiture proceedings, that the property is: (i) reasonably necessary for the  
22 owner's employment or personal use, that the property will not be disposed of  
23 or used for criminal activity, and that reasonable security has been posted;  
24 or (ii) that the seizure violated the provisions of this section. The right  
25 of replevin shall terminate upon an order of forfeiture as set forth in this  
26 section. Forfeiture proceedings shall be civil actions against the property  
27 subject to forfeiture and the standard of proof shall be preponderance of the  
28 evidence.

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

34 (2) When property described in paragraphs (2), (3), (4), (5), and (6)  
35 or (9) of subsection (a) of this section is seized pursuant to this  
36 section, forfeiture proceedings shall be filed in the office of the  
37 clerk of the district court for the county wherein such property is  
38 seized. The procedure governing such proceedings shall be the same as  
39 that prescribed for civil proceedings by the Idaho rules of civil pro-  
40 cedure. The court shall ~~order the property forfeited to the director,~~  
41 ~~or appropriate prosecuting attorney, if he determines that~~ determine  
42 whether such property was used, or intended for use, in violation of  
43 this chapter, or, in the case of items described in paragraph (6) (A)  
44 of subsection (a), was found in close proximity to property described  
45 in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this  
46 section. The court shall also determine whether a property forfeiture  
47 is proportionate to the crime alleged, charged or proven. Factors to be  
48 considered by the court in making such a determination shall include,  
49 but are not limited to, the nature and severity of the crime, the fair  
50 market value of the property, the intangible or subjective value of the

1 property, the hardship to the defendant, the effect of forfeiture on the  
2 defendant's family or financial circumstances, and any other sanctions  
3 or penalties which have been imposed upon the defendant. The court may  
4 tailor the forfeiture of property according to its determination of  
5 proportionality as justice requires.

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

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

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

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

23 (B) Within twenty (20) days after the mailing ~~or publication of~~  
24 ~~the notice~~, the owner of the conveyance or claimant may file a ver-  
25 ified answer and claim to the property described in the complaint  
26 instituting forfeiture proceedings.

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

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

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

40 (II) At the hearing any owner who has a verified answer on  
41 file may show by competent evidence that his interest in the  
42 conveyance is not subject to forfeiture because he ~~could~~ did  
43 ~~not have known in the exercise of reasonable diligence~~ know  
44 that the conveyance was being used, had been used, was in-  
45 tended to be used or had been intended to be used in any man-  
46 ner described in subsection (a) (4) of this section.

47 (III) If the court finds that the property was not used or was  
48 not intended to be used in violation of this act, or is not  
49 subject to forfeiture under this act, the court shall order  
50 the property released to the owner as his right, title, or

1 interest appears on records in the appropriate department as  
2 of the seizure.

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

10 (i) In the event of such proof, the court shall order  
11 the conveyance released to the bona fide or innocent  
12 owner, purchaser, lienholder, mortgagee, or condi-  
13 tional sales vendor. ~~The court may order payment of all~~  
14 ~~costs incurred by the state or law enforcement agency~~  
15 ~~as a result of such seizure.~~

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

26 1. To the bona fide or innocent owner, purchaser,  
27 conditional sales vendor, lienholder or mort-  
28 gagee of the conveyance, if any, up to the value  
29 of his interest in the conveyance.

30 2. The balance, if any, in the following order:

31 A. To the director, or appropriate prose-  
32 cuting attorney, for all expenditures made  
33 or incurred by it in connection with the  
34 sale, including expenditure for any neces-  
35 sary repairs, storage, or transportation  
36 of the conveyance, and for all expendi-  
37 tures made or incurred by him in connection  
38 with the forfeiture proceedings includ-  
39 ing, but not limited to, expenditures for  
40 witnesses' fees, reporters' fees, tran-  
41 scripts, printing, traveling and investi-  
42 gation.

43 B. To the law enforcement agency of this  
44 state which seized the conveyance for all  
45 expenditures for traveling, investiga-  
46 tion, storage and other expenses made or  
47 incurred after the seizure and in connec-  
48 tion with the forfeiture of any conveyance  
49 seized under this act.

1 C. The remainder, if any, to the director  
 2 for credit to the drug and driving while  
 3 under the influence enforcement donation  
 4 fund or to the appropriate prosecuting  
 5 attorney for credit to the local drug en-  
 6 forcement donation fund, or its equiva-  
 7 lent.

8 (iii) In any case, the director, or appropriate pros-  
 9 ecuting attorney, may, within thirty (30) days after  
 10 judgment, pay the balance due to the bona fide lien-  
 11 holder, mortgagee or conditional sales vendor and  
 12 thereby purchase the conveyance for use to enforce this  
 13 act.

14 (e) When property is forfeited under this section, or is received from a  
 15 federal enforcement agency, the director, or appropriate prosecuting attor-  
 16 ney, may:

17 (1) Upon a showing that it is not reasonably practicable to dispose of  
 18 the property as set forth in this section, the plaintiff or law enforce-  
 19 ment agency may, with judicial approval, rRetain it for official use;

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

22 The director, or appropriate prosecuting attorney, shall publish a no-  
 23 tice of the sale by at least one (1) publication in a newspaper published  
 24 and circulated in the city, community or locality where the sale is to  
 25 take place at least one (1) week prior to sale of the property. The pro-  
 26 ceeds from such sale shall be distributed as follows in the order indi-  
 27 cated:

28 (A) To the director, or prosecuting attorney on behalf of the  
 29 county or city law enforcement agency, for all expenditures made  
 30 or incurred in connection with the sale, including expenditure  
 31 for any necessary repairs, maintenance, storage or transporta-  
 32 tion, and for all expenditures made or incurred in connection  
 33 with the forfeiture proceedings including, but not limited to,  
 34 expenditures for witnesses' fees, reporters' fees, transcripts,  
 35 printing, traveling and investigation.

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

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

45 (3) Take custody of the property and remove it for disposition in accor-  
 46 dance with law.

47 (f) (1) The director or any peace officer of this state seizing any of  
 48 the property described in paragraphs (1) and (2) of subsection (a) of  
 49 this section shall cause a written inventory to be made and maintain  
 50 custody of the same until all legal actions have been exhausted unless

1 such property has been placed in lawful custody of a court or state  
2 or federal law enforcement agency. After all legal actions have been  
3 exhausted with respect to such property, the property shall be surren-  
4 dered by the court, law enforcement agency, or person having custody  
5 of the same to the director to be destroyed pursuant to paragraph (2)  
6 of this subsection. The property shall be accompanied with a written  
7 inventory on forms furnished by the director.

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

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

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

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

38 (j) On or before August 31, 2018, and by August 31 of each year there-  
39 after, each law enforcement agency in this state shall submit to the office  
40 of the state controller the following information from the previous fiscal  
41 year:

- 42 (1) Name of the law enforcement agency that seized the property;
- 43 (2) Date of seizure;
- 44 (3) Type and description of property seized, including make, model,  
45 year, and serial number, if applicable;
- 46 (4) Estimated value of the seizure;
- 47 (5) Crime for which the suspect was charged (include whether state or  
48 federal law);
- 49 (6) Criminal case number;
- 50 (7) Outcome of suspect's case;

- 1       (8) If forfeiture was not processed under state law, the reason for the  
2       federal transfer: adoption or joint task force;  
3       (9) Forfeiture case number;  
4       (10) Date of forfeiture decision;  
5       (11) Whether there was a forfeiture settlement agreement;  
6       (12) Date and outcome of property disposition: returned to owner, par-  
7       tially returned to owner, sold, destroyed, or retained by law enforce-  
8       ment; and  
9       (13) Value of the property forfeited.  
10      The state controller's office shall act as the repository for the informa-  
11      tion submitted pursuant to the provisions of this subsection from the law  
12      enforcement agency, and shall make the information available to the public  
13      upon request.