

IN THE SENATE

SENATE BILL NO. 1106

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO CRIMES AND PUNISHMENTS; AMENDING SECTION 18-8002, IDAHO  
2 CODE, TO PROVIDE THAT A COURT MAY ORDER RESTITUTION IN CERTAIN  
3 CIRCUMSTANCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING  
4 SECTION 18-8003, IDAHO CODE, TO PROVIDE THAT UPON CONVICTION  
5 FOR CERTAIN OFFENSES A COURT MAY ORDER RESTITUTION FOR  
6 CERTAIN COSTS INCURRED, TO PROVIDE FOR THE DISTRIBUTION OF THE  
7 RESTITUTION AND TO DEFINE A TERM; AMENDING SECTIONS 37-2732 AND  
8 37-2735A, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING  
9 SECTIONS 37-2744 AND 37-2807, IDAHO CODE, TO PROVIDE CORRECT  
10 TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING  
11 SECTION 37-2808, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY;  
12 AMENDING SECTION 57-816, IDAHO CODE, TO EXPAND THE DRUG  
13 ENFORCEMENT DONATION FUND TO INCLUDE DRIVING WHILE UNDER  
14 THE INFLUENCE; AND AMENDING SECTIONS 63-3067A AND 63-3067B, IDAHO  
15 CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL  
16 CORRECTIONS.  
17

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

19 SECTION 1. That Section 18-8002, Idaho Code, be, and the same is hereby amended to  
20 read as follows:

21 18-8002. TESTS OF DRIVER FOR ALCOHOL CONCENTRATION, PRESENCE OF  
22 DRUGS OR OTHER INTOXICATING SUBSTANCES – PENALTY AND SUSPENSION  
23 UPON REFUSAL OF TESTS. (1) Any person who drives or is in actual physical control of  
24 a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing  
25 for concentration of alcohol as defined in section 18-8004, Idaho Code, and to have given  
26 his consent to evidentiary testing for the presence of drugs or other intoxicating substances,  
27 provided that such testing is administered at the request of a peace officer having reasonable  
28 grounds to believe that person has been driving or in actual physical control of a motor vehicle  
29 in violation of the provisions of section 18-8004, Idaho Code, or section 18-8006, Idaho Code.

30 (2) Such person shall not have the right to consult with an attorney before submitting to  
31 such evidentiary testing.

32 (3) At the time evidentiary testing for concentration of alcohol, or for the presence of  
33 drugs or other intoxicating substances is requested, the person shall be informed that if he  
34 refuses to submit to or if he fails to complete, evidentiary testing:

35 (a) He is subject to a civil penalty of two hundred fifty dollars (\$250) for refusing to take  
36 the test;

37 (b) His driver’s license will be seized by the peace officer and a temporary permit will be  
38 issued; provided, however, that no peace officer shall issue a temporary permit pursuant to

1 this section to a driver whose driver's license or permit has already been and is suspended  
2 or revoked because of previous violations, and in no instance shall a temporary permit be  
3 issued to a driver of a commercial vehicle who refuses to submit to or fails to complete  
4 an evidentiary test;

5 (c) He has the right to request a hearing within seven (7) days to show cause why he  
6 refused to submit to, or complete evidentiary testing;

7 (d) If he does not request a hearing or does not prevail at the hearing, the court shall  
8 sustain the civil penalty and his driver's license will be suspended absolutely for one (1)  
9 year if this is his first refusal and two (2) years if this is his second refusal within ten (10)  
10 years; and

11 (e) After submitting to evidentiary testing he may, when practicable, at his own expense,  
12 have additional tests made by a person of his own choosing.

13 (4) If the motorist refuses to submit to or complete evidentiary testing after the  
14 information has been given in accordance with subsection (3) above:

15 (a) He shall be fined a civil penalty of two hundred fifty dollars (\$250) and his driver's  
16 license or permit shall be seized by the peace officer and forwarded to the court and a  
17 temporary permit shall be issued by the peace officer which allows him to operate a motor  
18 vehicle until the date of his hearing, if a hearing is requested, but in no event for more  
19 than thirty (30) days; provided, however, that no peace officer shall issue a temporary  
20 permit pursuant to this section to a driver whose driver's license or permit has already  
21 been and is suspended or revoked because of previous violations and in no instance shall  
22 a temporary permit be issued to a driver of a commercial vehicle who refuses to submit to  
23 or fails to complete an evidentiary test;

24 (b) A written request may be made within seven (7) calendar days for a hearing before  
25 the court; if requested, the hearing must be held within thirty (30) days of the seizure  
26 unless this period is, for good cause shown, extended by the court for one (1) additional  
27 thirty (30) day period. The court, in granting such an extension, may, for good cause  
28 shown, extend the defendant's temporary driving privileges for one (1) additional thirty  
29 (30) day period. The hearing shall be limited to the question of why the defendant did  
30 not submit to, or complete, evidentiary testing, and the burden of proof shall be upon  
31 the defendant; the court shall sustain a two hundred fifty dollar (\$250) civil penalty  
32 immediately and suspend all the defendant's driving privileges immediately for one (1)  
33 year for a first refusal and two (2) years for a second refusal within ten (10) years unless  
34 it finds that the peace officer did not have legal cause to stop and request him to take the  
35 test or that the request violated his civil rights;

36 (c) If a hearing is not requested by written notice to the court concerned within seven (7)  
37 calendar days, upon receipt of a sworn statement by the peace officer of the circumstances  
38 of the refusal, the court shall sustain a two hundred fifty dollar (\$250) civil penalty and  
39 suspend the defendant's driving privileges for one (1) year for a first refusal and two  
40 (2) years for a second refusal within ten (10) years, during which time he shall have  
41 absolutely no driving privileges of any kind; and

42 (d) After submitting to evidentiary testing at the request of the peace officer, he may,  
43 when practicable, at his own expense, have additional tests made by a person of his own  
44 choosing. The failure or inability to obtain an additional test or tests by a person shall not  
45 preclude the admission of results of evidentiary testing for alcohol concentration or for

1 the presence of drugs or other intoxicating substances taken at the direction of the peace  
2 officer unless the additional test was denied by the peace officer.

3 (5) Any sustained civil penalty or suspension of driving privileges under this section  
4 or section 18-8002A, Idaho Code, shall be a civil penalty separate and apart from any other  
5 suspension imposed for a violation of other Idaho motor vehicle codes or for a conviction of an  
6 offense pursuant to this chapter, and may be appealed to the district court.

7 (6) No hospital, hospital officer, agent, or employee, or health care professional licensed  
8 by the state of Idaho, whether or not such person has privileges to practice in the hospital  
9 in which a body fluid sample is obtained or an evidentiary test is made, shall incur any civil  
10 or criminal liability for any act arising out of administering an evidentiary test for alcohol  
11 concentration or for the presence of drugs or other intoxicating substances at the request or  
12 order of a peace officer in the manner described in this section and section 18-8002A, Idaho  
13 Code; provided, that nothing in this section shall relieve any such person or legal entity from  
14 civil liability arising from the failure to exercise the community standard of care.

15 (a) This immunity extends to any person who assists any individual to withdraw a blood  
16 sample for evidentiary testing at the request or order of a peace officer, which individual  
17 is authorized to withdraw a blood sample under the provisions of section 18-8003, Idaho  
18 Code, regardless of the location where the blood sample is actually withdrawn.

19 (b) A peace officer is empowered to order an individual authorized in section 18-8003,  
20 Idaho Code, to withdraw a blood sample for evidentiary testing when the peace officer  
21 has probable cause to believe that the suspect has committed any of the following  
22 offenses:

23 (i) Aggravated driving under the influence of alcohol, drugs or other intoxicating  
24 substances as provided in section 18-8006, Idaho Code;

25 (ii) Vehicular manslaughter as provided in subsections (3)(a), (b) and (c) of  
26 section 18-4006, Idaho Code;

27 (iii) Aggravated operating of a vessel on the waters of the state while under the  
28 influence of alcohol, drugs or other intoxicating substances as provided in section  
29 67-7035, Idaho Code; or

30 (iv) Any criminal homicide involving a vessel on the waters of the state while  
31 under the influence of alcohol, drugs or other intoxicating substances.

32 (c) Nothing herein shall limit the discretion of the hospital administration to designate the  
33 qualified hospital employee responsible to withdraw the blood sample.

34 (d) The law enforcement agency that requests or orders withdrawal of the blood sample  
35 shall pay the reasonable costs to withdraw such blood sample, perform laboratory  
36 analysis, preserve evidentiary test results, and testify in judicial proceedings. The court  
37 may order restitution pursuant to the provisions of section 18-8003(2), Idaho Code.

38 (e) The withdrawal of the blood sample may be delayed or terminated if:

39 (i) In the reasonable judgment of the hospital personnel withdrawal of the blood  
40 sample may result in serious bodily injury to hospital personnel or other patients;  
41 or

42 (ii) The licensed health care professional treating the suspect believes the  
43 withdrawal of the blood sample is contraindicated because of the medical  
44 condition of the suspect or other patients.

1 (7) "Actual physical control" as used in this section and section 18-8002A, Idaho Code,  
2 shall be defined as being in the driver's position of the motor vehicle with the motor running or  
3 with the motor vehicle moving.

4 (8) Any written notice required by this section shall be effective upon mailing.

5 (9) For the purposes of this section and section 18-8002A, Idaho Code, "evidentiary  
6 testing" shall mean a procedure or test or series of procedures or tests, including the additional  
7 test authorized in subsection (10) of this section, utilized to determine the concentration of  
8 alcohol or the presence of drugs or other intoxicating substances in a person.

9 (10) A person who submits to a breath test for alcohol concentration, as defined in  
10 subsection (4) of section 18-8004, Idaho Code, may also be requested to submit to a second  
11 evidentiary test of blood or urine for the purpose of determining the presence of drugs or other  
12 intoxicating substances if the peace officer has reasonable cause to believe that a person was  
13 driving under the influence of any drug or intoxicating substance or the combined influence of  
14 alcohol and any drug or intoxicating substance. The peace officer shall state in his or her report  
15 the facts upon which that belief is based.

16 (11) Notwithstanding any other provision of law to the contrary, the civil penalty imposed  
17 under the provisions of this section must be paid, as ordered by the court, to the county justice  
18 fund or the county current expense fund where the incident occurred. If a person does not pay  
19 the civil penalty imposed as provided in this section within thirty (30) days of the imposition,  
20 unless this period has been extended by the court for good cause shown, the prosecuting  
21 attorney representing the political subdivision where the incident occurred may petition the  
22 court in the jurisdiction where the incident occurred to file the order imposing the civil penalty  
23 as an order of the court. Once entered, the order may be enforced in the same manner as a  
24 final judgment of the court. In addition to the civil penalty, attorney's fees, costs and interest  
25 may be assessed against any person who fails to pay the civil penalty.

26 SECTION 2. That Section 18-8003, Idaho Code, be, and the same is hereby amended to  
27 read as follows:

28 18-8003. PERSONS AUTHORIZED TO WITHDRAW BLOOD FOR THE  
29 PURPOSES OF DETERMINING CONTENT OF ALCOHOL OR OTHER INTOXICATING  
30 SUBSTANCES AND RESTITUTION ORDERS. (1) Only a licensed physician, qualified  
31 medical technologist, registered nurse, phlebotomist trained in a licensed hospital or educational  
32 institution or other medical personnel trained in a licensed hospital or educational institution to  
33 withdraw blood can, at the order or request of a peace officer, withdraw blood for the purpose  
34 of determining the content of alcohol, drugs or other intoxicating substances therein. This  
35 limitation shall not apply to the taking of a urine, saliva or breath specimen. For purposes of  
36 this section: (a) the term "qualified medical technologist" shall be deemed to mean a person  
37 who meets the standards of a "clinical laboratory technologist" as set forth by the then current  
38 rules and regulations of the social security administration of the United States department of  
39 health and human services pursuant to subpart M of part 405, chapter III, title 20, of the code  
40 of federal regulation; and (b) the terms "phlebotomist" and "other medical personnel" shall be  
41 deemed to mean persons who meet the standards for the withdrawing of blood as designated  
42 and qualified by the employing medical facility or other employing entity of those persons.

43 (2) Upon conviction for a felony or misdemeanor violation under this chapter, except  
44 pursuant to sections 18-8001 and 18-8007, Idaho Code, or upon conviction for vehicular  
45 manslaughter pursuant to section 18-4006(3)(b), Idaho Code, the court may order restitution for

1 the reasonable costs incurred by law enforcement agencies to withdraw blood samples, perform  
 2 laboratory analysis, transport and preserve evidence, preserve evidentiary test results and for  
 3 testimony relating to the analysis in judicial proceedings, including travel costs associated with  
 4 the testimony. Law enforcement agencies shall include, but not be limited to, the Idaho state  
 5 police, county and city law enforcement agencies, the office of the attorney general and county  
 6 and city prosecuting attorney offices. In the case of reimbursement to the Idaho state police,  
 7 those moneys shall be paid to the Idaho state police for deposit into the drug and driving  
 8 while under the influence enforcement donation fund created in section 57-816, Idaho Code.  
 9 In the case of reimbursement to the office of the attorney general, those moneys shall be paid  
 10 to the general fund. A "conviction" for purposes of this subsection means that the person has  
 11 pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld  
 12 judgment(s).

13 (3) The person tested may, at his own expense, have a person of his own choosing, who  
 14 is authorized to make a test, administer an evidentiary test for alcohol concentration in addition  
 15 to the one administered at the request of a peace officer.

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

18 37-2732. PROHIBITED ACTS A – PENALTIES. (a) Except as authorized by this  
 19 chapter, it is unlawful for any person to manufacture or deliver, or possess with intent to  
 20 manufacture or deliver, a controlled substance.

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

22 (A) a controlled substance classified in schedule I which is a narcotic drug or  
 23 a controlled substance classified in schedule II, except as provided for in section  
 24 37-2732B(a)(3), Idaho Code, is guilty of a felony and upon conviction may be  
 25 imprisoned for a term of years not to exceed life imprisonment, or fined not more  
 26 than twenty-five thousand dollars (\$25,000), or both;

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

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

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

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

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

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

44 (B) any other counterfeit substance classified in schedule I which is a nonnarcotic  
 45 drug contained in schedule I or a counterfeit substance contained in schedule III, is

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

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

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

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

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

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

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

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

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

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

42 (g) (1) It is unlawful for any person to manufacture or distribute a "simulated controlled  
43 substance," or to possess with intent to distribute, a "simulated controlled substance." Any  
44 person who violates this subsection shall, upon conviction, be guilty of a misdemeanor  
45 and upon conviction thereof shall be punished by a fine of not more than one thousand  
46 dollars (\$1,000) and not more than one (1) year in the county jail, or both.

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

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

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

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

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

35 SECTION 4. That Section 37-2735A, Idaho Code, be, and the same is hereby amended  
36 to read as follows:

37 37-2735A. DRUG HOTLINE FEE. In addition to any other penalties, a person  
38 convicted of a violation of this chapter shall be subject to an additional fine of ten dollars  
39 (\$10.00) to be deposited in the drug and driving while under the influence enforcement  
40 donation fund, as set forth in section 57-816, Idaho Code, to be used for the purposes  
41 designated in that section.

42 SECTION 5. That Section 37-2744, Idaho Code, be, and the same is hereby amended to  
43 read as follows:

1 37-2744. FORFEITURES. (a) The following are subject to forfeiture:

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

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

8 (3) All property which is used, or intended for use, as a container for property described  
9 in paragraph (1) or (2) hereof;

10 (4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended  
11 for use, to transport, or in any manner to facilitate the transportation, delivery, receipt,  
12 possession or concealment, for the purpose of distribution or receipt of property described  
13 in paragraph (1) or (2) hereof, but:

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

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

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

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

30 (6) (A) All moneys, currency, negotiable instruments, securities or other items easily  
31 liquidated for cash, such as, but not limited to, jewelry, stocks and bonds, or other  
32 property described in paragraphs (2) and (3) hereof, found in close proximity to  
33 property described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of  
34 this section or which has been used or intended for use in connection with the  
35 illegal manufacture, distribution, dispensing or possession of property described in  
36 paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section;

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

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

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

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

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

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

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

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

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

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

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

21 (A) Place the property under seal;

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

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

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

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

30 (d) Property taken or detained under this section shall not be subject to replevin, but  
31 is deemed to be in the custody of the director, or appropriate prosecuting attorney, subject  
32 only to the orders and decrees of the district court, or magistrate's division thereof, having  
33 jurisdiction over the forfeiture proceedings. Forfeiture proceedings shall be civil actions against  
34 the property subject to forfeiture and the standard of proof shall be preponderance of the  
35 evidence.

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

40 (2) When property described in paragraphs (2), (3), (4), (5) and (6) of subsection (a)  
41 hereof is seized pursuant to this section, forfeiture proceedings shall be filed in the office  
42 of the clerk of the district court for the county wherein such property is seized. The  
43 procedure governing such proceedings shall be the same as that prescribed for civil  
44 proceedings by the Idaho Rules of Civil Procedure. The court shall order the property  
45 forfeited to the director, or appropriate prosecuting attorney, if he determines that such  
46 property was used, or intended for use, in violation of this chapter, or, in the case of items

1 described in paragraph (6)(A) of subsection (a), was found in close proximity to property  
2 described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section.

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

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

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

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

18 (B) Within twenty (20) days after the mailing or publication of the notice, the  
19 owner of the conveyance or claimant may file a verified answer and claim to the  
20 property described in the complaint instituting forfeiture proceedings.

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

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

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

31 (II) At the hearing any owner who has a verified answer on file may show  
32 by competent evidence that his interest in the conveyance is not subject to  
33 forfeiture because he could not have known in the exercise of reasonable  
34 diligence that the conveyance was being used, had been used, was intended  
35 to be used or had been intended to be used in any manner described in  
36 subsection (a)(4) of this section.

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

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

1 (i) In the event of such proof, the court shall order the conveyance  
2 released to the bona fide or innocent owner, purchaser, lienholder,  
3 mortgagee, or conditional sales vendor. The court may order  
4 payment of all costs incurred by the state or law enforcement  
5 agency as a result of such seizure.

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

14 1. To the bona fide or innocent owner, purchaser, conditional  
15 sales vendor, lienholder or mortgagee of the conveyance, if  
16 any, up to the value of his interest in the conveyance.

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

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

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

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

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

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

44 (1) Retain it for official use;

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

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

5 (A) To the director, or prosecuting attorney on behalf of the county or city law  
6 enforcement agency, for all expenditures made or incurred in connection with  
7 the sale, including expenditure for any necessary repairs, maintenance, storage or  
8 transportation, and for all expenditures made or incurred in connection with the  
9 forfeiture proceedings including, but not limited to, expenditures for witnesses'  
10 fees, reporters' fees, transcripts, printing, traveling and investigation.

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

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

18 (3) Take custody of the property and remove it for disposition in accordance with law; or  
19 (f) (1) The director or any peace officer of this state seizing any of the property described  
20 in paragraphs (1) and (2) of subsection (a) of this section shall cause a written inventory  
21 to be made and maintain custody of the same until all legal actions have been exhausted  
22 unless such property has been placed in lawful custody of a court or state or federal law  
23 enforcement agency. After all legal actions have been exhausted with respect to such  
24 property, the property shall be surrendered by the court, law enforcement agency, or  
25 person having custody of the same to the director to be destroyed pursuant to paragraph  
26 (2) hereof. The property shall be accompanied with a written inventory on forms  
27 furnished by the director.

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

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

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

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

8 SECTION 6. That Section 37-2807, Idaho Code, be, and the same is hereby amended to  
 9 read as follows:

10 37-2807. PERSONAL PROPERTY – RIGHTS OF THIRD PARTIES. (1) Within five  
 11 (5) days of any of the events specified in section 37-2806, Idaho Code, notice, including a copy  
 12 of the request for forfeiture, shall be given to each co-owner or party in interest who has or  
 13 claims any right, title or interest in any of such personal property according to one (1) of the  
 14 following methods:

15 (a) Upon each co-owner of or party in interest in a titled motor vehicle, aircraft or other  
 16 conveyance, by mailing notice by certified mail to the address of each co-owner and party  
 17 in interest as given upon the records of the appropriate department of state or federal  
 18 government where records relating to such conveyances are maintained.

19 (b) Upon each secured party and assignee designated as such in any UCC-1 financing  
 20 statement on file in an appropriate filing office covering any personal property sought to  
 21 be forfeited, by mailing notice by certified mail to the secured party and the assignee, if  
 22 any, at their respective addresses as shown on such financing statement.

23 (c) Upon each co-owner or party in interest whose name and address is known, by  
 24 mailing notice by registered mail to the ~~last known~~ last known address of such person.

25 (2) Within twenty (20) days after the mailing of the notice, the co-owner or party in  
 26 interest may file a verified answer and claim to the property described in the notice.

27 (3) If a verified answer is filed within twenty (20) days after mailing of the notice,  
 28 the forfeiture proceeding against all co-owners and parties in interest who have filed verified  
 29 answers shall be set for hearing before the court without a jury on a day not less than sixty  
 30 (60) days after the mailing of the notice; and the proceeding shall have priority over other civil  
 31 cases.

32 (a) At the hearing, any co-owner or party in interest who has a verified answer on file  
 33 may show by competent evidence that his interest in the titled motor vehicle, aircraft or  
 34 other conveyance is not subject to forfeiture because he could not have known in the  
 35 exercise of reasonable diligence that the titled motor vehicle, aircraft or other conveyance  
 36 was being used, had been used or was intended to be used for the purposes described in  
 37 section 37-2801, Idaho Code.

38 (b) A co-owner, or claimant of any right, title, or interest in the property may prove that  
 39 his right, title or interest, whether under a lien, mortgage, security agreement, conditional  
 40 sales contract or otherwise, was created without any knowledge or reason to believe that  
 41 the property was being used, had been used or was intended to be used for the purpose  
 42 alleged;

43 (i) In the event of such proof, the court shall order that portion of the property  
 44 or interest released to the bona fide or innocent co-owner, purchaser, lienholder,  
 45 mortgagee, secured party or conditional sales vendor.

1 (ii) If the amount due to such person is less than the value of the property, the  
 2 property may be sold at public auction or in another commercially reasonable  
 3 method by the attorney general or appropriate prosecuting attorney. If sold at  
 4 public auction, the attorney general, or appropriate prosecuting attorney, shall  
 5 publish a notice of the sale by at least one (1) publication in a newspaper  
 6 published and circulated in the city, community or locality where the sale is to take  
 7 place at least one (1) week prior to sale of the property. The proceeds from such  
 8 sale shall be distributed as follows in the order indicated:

9 1. To the bona fide or innocent co-owner, purchaser, conditional sales  
 10 vendor, lienholder, mortgagee or secured party of the property, if any, up  
 11 to the value of his interest in the property.

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

13 (A) To the attorney general or appropriate prosecuting attorney,  
 14 for all expenditures made or incurred by them in connection with  
 15 the sale, including expenditure for any necessary repairs, storage  
 16 or transportation of the property, and for all expenditures made  
 17 or incurred by him in connection with the forfeiture proceedings  
 18 including, but not limited to, expenditures for witnesses' fees,  
 19 reporters' fees, transcripts, printing, traveling and investigation.

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

24 (C) The remainder, if any, to the director of the Idaho state  
 25 police for credit to the drug and driving while under the influence  
 26 enforcement donation fund created in section 57-816, Idaho Code,  
 27 or to the appropriate prosecuting attorney for credit to the local drug  
 28 enforcement donation fund, or its equivalent.

29 3. Notwithstanding any other provision of this section, upon being  
 30 satisfied that the interest of a co-owner or claimant should not be subject  
 31 to forfeiture because they neither knew nor should have known that the  
 32 personal property was being used or had been used for the purposes  
 33 alleged, or that due to preexisting security interests in such property there  
 34 is no equity which may be forfeited, the attorney general or appropriate  
 35 prosecuting attorney may release the property to the co-owner, holder of the  
 36 security interest, or other claimant.

37 4. In any case, the attorney general, or appropriate prosecuting attorney,  
 38 may, within thirty (30) days after order of forfeiture, pay the balance due  
 39 to the bona fide lienholder, mortgagee, secured party or conditional sales  
 40 vendor and thereby purchase the property for use to enforce this chapter.

41 SECTION 7. That Section 37-2808, Idaho Code, be, and the same is hereby amended to  
 42 read as follows:

43 37-2808. REAL PROPERTY – RIGHTS OF THIRD PARTIES. (1) Real property  
 44 subject to forfeiture under the provisions of this chapter may be seized by the attorney general  
 45 or appropriate prosecuting attorney upon determining that a parcel of property is subject to

1 forfeiture, by filing a notice of seizure with the recorder of the county in which the property  
2 or any part thereof is situated. The notice must contain a legal description of the property  
3 sought to be forfeited; provided however, that in the event the property sought to be forfeited is  
4 part of a greater parcel, the attorney general or appropriate prosecuting attorney may, for the  
5 purposes of this notice, use the legal description of the greater parcel. The attorney general  
6 or appropriate prosecuting attorney shall also send by certified mail a copy of the notice of  
7 seizure to any persons holding a recorded interest or of whose interest the attorney general or  
8 appropriate prosecuting attorney has actual knowledge. The attorney general or appropriate  
9 prosecuting attorney shall post a similar copy of the notice conspicuously upon the property and  
10 publish a copy thereof once a week for three (3) consecutive weeks immediately following the  
11 seizure in a newspaper published in the county. The co-owner or party in lawful possession of  
12 the property sought to be forfeited may retain possession and use thereof and may collect and  
13 keep income from the property while the forfeiture proceedings are pending.

14 (2) In the event of a seizure pursuant to subsection (1) of this section, a request for  
15 forfeiture shall be filed with the trial court within the time limit imposed by section 37-2804,  
16 Idaho Code. The request shall be served in the same manner as complaints subject to the  
17 Idaho rules of civil procedure on all persons having an interest in the real property sought to be  
18 forfeited.

19 (3) Notwithstanding any other provision of this section, upon being satisfied that the  
20 interest of a co-owner or claimant should not be subject to forfeiture because they neither  
21 knew nor should have known that the real property was being used or had been used for the  
22 purposes alleged, or that due to preexisting security interests in such property there is no equity  
23 which may be forfeited, the attorney general or appropriate prosecuting attorney may release  
24 the property to the co-owner, holder of the security interest, or other claimant.

25 (4) Within twenty (20) days of the mailing of the notice, the co-owner or party in interest  
26 may file a verified answer and claim to the property described in the notice.

27 (5) If a verified answer is filed within twenty (20) days after mailing of the notice,  
28 the forfeiture proceeding against all co-owners and parties in interest who have filed verified  
29 answers shall be set for hearing before the court without a jury on a day not less than sixty  
30 (60) days after the mailing of the notice; and the proceeding shall have priority over other civil  
31 cases.

32 (a) A co-owner, or claimant of any right, title or interest in the real property sought to be  
33 forfeited may prove that his right, title or interest, whether under a lien, mortgage, deed  
34 of trust or otherwise, was created without any knowledge or reason to believe that the real  
35 property was being used or had been used for the purposes alleged;

36 (b) Any co-owner who has a verified answer on file may show by competent evidence  
37 that his interest in the property sought to be forfeited is not subject to forfeiture because  
38 he could not have known in the exercise of reasonable diligence that the real property  
39 was being used, or had been used in any manner in violation of the provisions of section  
40 37-2801, Idaho Code.

41 (6) In the event of such proof, the court shall order the release of the interest of the  
42 co-owner, purchaser, lienholder, mortgagee or beneficiary.

43 (a) If the amount due to such person is less than the value of the real property, the  
44 real property may be sold in a commercially reasonable manner by the attorney general  
45 or appropriate prosecuting attorney. The proceeds from such sale shall be distributed as  
46 follows in the order indicated:

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

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

4 1. To the attorney general or appropriate prosecuting attorney for all  
5 expenditures made or incurred in connection with the sale, including  
6 expenditure for any necessary repairs or maintenance of the real property,  
7 and for all expenditures made or incurred in connection with the forfeiture  
8 proceedings including, but not limited to, expenditures for witnesses' fees,  
9 reporters' fees, transcripts, printing, travel, investigation, title company fees  
10 and insurance premiums.

11 2. The remainder, if any, to the director of the Idaho state police for credit  
12 to the drug and driving while under the influence enforcement donation  
13 fund created in section 57-816, Idaho Code.

14 (b) In any case, the attorney general or appropriate prosecuting attorney may, within  
15 thirty (30) days after the order of forfeiture, pay the balance due to the innocent co-owner,  
16 purchaser, lienholder, mortgagee or beneficiary and thereby purchase the real property for  
17 use in the enforcement of this chapter.

18 SECTION 8. That Section 57-816, Idaho Code, be, and the same is hereby amended to  
19 read as follows:

20 57-816. DRUG AND DRIVING WHILE UNDER THE INFLUENCE  
21 ENFORCEMENT DONATION FUND. (1) There is hereby created in the state operating fund  
22 the drug and driving while under the influence enforcement donation fund. Moneys in the  
23 fund may be appropriated only for programs designed to control or eliminate illicit drug traffic  
24 or to enforce statutory provisions related to driving while under the influence, and for law  
25 enforcement functions associated with such control or enforcement.

26 (2) Separate and apart from any other moneys in the fund, moneys deposited in the fund  
27 pursuant to section 37-2735A, Idaho Code, shall be used exclusively to support a twenty-four  
28 (24) hour anonymous hotline and reward system, including any advertising for and about such  
29 system, for the reporting of drug violations.

30 SECTION 9. That Section 63-3067A, Idaho Code, be, and the same is hereby amended  
31 to read as follows:

32 63-3067A. DESIGNATION BY INDIVIDUALS – TRUST ACCOUNTS. (1) Every  
33 individual who:

34 (a) Has a refund due and payable for overpayment of taxes under this act may designate  
35 all or any portion thereof to be deposited in a trust account specified in subsection (3) of  
36 this section; or

37 (b) Has an income tax liability may, in addition to his tax obligation, include a donation  
38 to be deposited in a trust account specified in subsection (3) of this section.

39 (2) A designation under subsection (1) of this section may be made in any taxable year  
40 in such manner and form as prescribed by the state tax commission. The manner and form  
41 so prescribed shall be a conspicuous portion of the principal form provided for the purpose of  
42 individual taxation.

1 (3) The trust accounts authorized to receive moneys designated under subsection (1) of  
2 this section are:

- 3 (a) The fish and game set-aside account created by section 36-111, Idaho Code;  
4 (b) The Idaho ag in the classroom account created by section 57-815, Idaho Code;  
5 (c) The drug and driving while under the influence enforcement donation ~~account~~ fund  
6 created by section 57-816, Idaho Code;  
7 (d) The children's trust fund created by section 39-6007, Idaho Code;  
8 (e) The special olympics Idaho fund created in section 57-823, Idaho Code;  
9 (f) The Idaho guard and reserve family support fund created by section 57-820, Idaho  
10 Code; and  
11 (g) The American red cross of greater Idaho fund created in section 57-821, Idaho Code.

12 (4) Prior to the distribution of funds into any of the trust accounts specified in subsection  
13 (3) of this section from the refund account, the state tax commission shall retain funds for the  
14 commission's costs for collecting and administering the moneys in the accounts as follows:  
15 three thousand dollars (\$3,000) from each account for start-up costs during the first year  
16 of collections, and three thousand dollars (\$3,000) or twenty percent (20%) of the moneys  
17 remitted to each account during the fiscal year, whichever is less, from each account during  
18 each fiscal year thereafter, which amounts are hereby appropriated to the tax commission.

19 SECTION 10. That Section 63-3067B, Idaho Code, be, and the same is hereby amended  
20 to read as follows:

21 63-3067B. DESIGNATION BY INDIVIDUALS – TRUST ACCOUNTS. (1) Every  
22 resident individual who:

- 23 (a) Has a refund due and payable for overpayment of taxes under this act may designate  
24 all or any portion thereof to be deposited in a trust account specified in subsection (3)  
25 below; or  
26 (b) Has an income tax liability may, in addition to his tax obligation, include a donation  
27 to be deposited in a trust account specified in subsection (3) of this section.

28 (2) A designation under subsection (1) of this section may be made in any taxable year  
29 in such manner and form as prescribed by the state tax commission. The manner and form  
30 so prescribed shall be a conspicuous portion of the principal form provided for the purpose of  
31 individual taxation.

32 (3) The trust accounts authorized to receive moneys designated under subsection (1) of  
33 this section are:

- 34 (a) The fish and game set-aside account created in section 36-111, Idaho Code;  
35 (b) The Idaho ag in the classroom account created in section 57-815, Idaho Code;  
36 (c) The drug and driving while under the influence enforcement donation ~~account~~ fund  
37 created in section 57-816, Idaho Code;  
38 (d) The children's trust fund created in section 39-6007, Idaho Code;  
39 (e) The special olympics Idaho fund created in section 57-823, Idaho Code;  
40 (f) The Alzheimer's disease services account created in section 57-819, Idaho Code;  
41 (g) The community forestry trust account created in section 38-136, Idaho Code;  
42 (h) The American red cross of greater Idaho fund created in section 57-821, Idaho Code,  
43 which donation shall be ten dollars (\$10.00) if made; and  
44 (i) The veterans support fund created in section 65-209, Idaho Code.

1           (4) Prior to the distribution of funds into any of the trust accounts specified in subsection  
2 (3) of this section from the refund account, the state tax commission shall retain funds for the  
3 commission's costs for collecting and administering the moneys in the accounts as follows:  
4 three thousand dollars (\$3,000) from each account for start-up costs during the first year  
5 of collections, and three thousand dollars (\$3,000) or twenty percent (20%) of the moneys  
6 remitted to each account during the fiscal year, whichever is less, from each account during  
7 each fiscal year thereafter, which amounts are hereby appropriated to the tax commission.