

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 447

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO CIVIL FORFEITURES; AMENDING SECTION 37-2744, IDAHO CODE, TO REVISE PROVISIONS REGARDING CERTAIN PROPERTY SUBJECT TO FORFEITURE, TO PROVIDE THAT CERTAIN PROPERTY MAY BE SUBJECT TO REPLEVIN UPON A FINDING BY A COURT, TO PROVIDE FOR A COURT DETERMINATION OF PROPORTIONALITY WITH REGARD TO FORFEITURE, TO REMOVE A PROVISION REGARDING PAYMENT OF CERTAIN COSTS, TO PROVIDE FOR THE DISPOSITION OF FORFEITED PROPERTY, TO PROVIDE REPORTING REQUIREMENTS, TO PROVIDE FOR THE SUBMISSION AND RETENTION OF INFORMATION AND TO MAKE TECHNICAL CORRECTIONS.

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

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

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

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

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

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

(4) All conveyances, including aircraft, vehicles, or vessels, ~~which that~~ are used, or intended for use, to transport, or in any manner to facilitate the transportation, delivery, receipt, ~~possession~~ or concealment, ~~for the purpose of distribution or receipt~~ manufacture of property described in paragraph (1) or (2) of this section as prohibited by section 37-2732B, 37-2732(a) or (b), or 37-2737A, Idaho Code, but:

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

(B) No conveyance is subject to forfeiture under this section if the owner establishes that he could not have known in the exercise of reasonable diligence that the conveyance was being used, had been used, was intended to be used or had been intended to be used 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, including  
 8 formulas, microfilm, tapes, and data ~~which~~ that are used, or intended  
 9 for 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~~, of this subsection that is found in  
 14 close proximity to property described in paragraph (1), (2), (3),  
 15 (5), (7) or (8) of this subsection (a) of this section or which and  
 16 that has been used or is intended for use in connection with the  
 17 illegal manufacture, distribution, dispensing or possession of  
 18 property described in paragraph (1), (2), (3), (5), (7) or (8) of  
 19 this subsection (a) of this section;

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

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

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

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

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

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

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

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

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

48 Mere presence or possession of United States currency, without other indicia  
 49 of criminal activity, is insufficient 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 may be sub-~~  
17 ~~ject to replevin, but is deemed to be in the custody of the director, or ap-~~  
18 ~~propriate prosecuting attorney, subject only to the orders and decrees of~~  
19 ~~during the pendency of the forfeiture proceedings upon a hearing and find-~~  
20 ~~ing by the district court, or magistrate's division thereof, having juris-~~  
21 ~~isdiction over the forfeiture proceedings, that the property is: (i) reason-~~  
22 ~~ably necessary for the owner's employment or personal use, that the property~~  
23 ~~will not be disposed of or used for criminal activity, and that reasonable~~  
24 ~~security has been posted; or (ii) that the seizure violated the provisions~~  
25 ~~of this section. The right of replevin shall terminate upon an order of for-~~  
26 ~~feiture as set forth in this section. Property that is being held that has~~  
27 ~~evidentiary value in the underlying criminal case shall not be subject to re-~~  
28 ~~plevin. Forfeiture proceedings shall be civil actions against the property~~  
29 ~~subject to forfeiture and the standard of proof shall be preponderance of the~~  
30 ~~evidence.~~

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

37 (2) When property described in paragraphs (2), (3), (4), (5), and (6)  
38 or (9) of subsection (a) of this section is seized pursuant to this  
39 section, forfeiture proceedings shall be filed in the office of the  
40 clerk of the district court for the county wherein such property is  
41 seized. The procedure governing such proceedings shall be the same as  
42 that prescribed for civil proceedings by the Idaho rules of civil pro-  
43 cedure. The court shall ~~order the property forfeited to the director,~~  
44 ~~or appropriate prosecuting attorney, if he determines that~~ determine  
45 whether such property was used, or intended for use, in violation of  
46 this chapter, or, in the case of items described in paragraph (6) (A)  
47 of subsection (a), was found in close proximity to property described  
48 in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this  
49 section. The court shall also determine whether a property forfeiture  
50 is proportionate to the crime alleged, charged or proven. Factors to be

1 considered by the court in making such a determination shall include,  
2 but are not limited to, the nature and severity of the crime, the fair  
3 market value of the property, the intangible or subjective value of the  
4 property, the hardship to the defendant, the effect of forfeiture on the  
5 defendant's family or financial circumstances, and any other sanctions  
6 or penalties that have been imposed upon the defendant. The court may  
7 tailor the forfeiture of property according to its determination of  
8 proportionality as justice requires.

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

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

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

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

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

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

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

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

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

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

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

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

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

30 1. To the bona fide or innocent owner, purchaser,  
31 conditional sales vendor, lienholder or mort-  
32 gagee of the conveyance, if any, up to the value  
33 of his interest in the conveyance.

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

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

47 B. To the law enforcement agency of this  
48 state which seized the conveyance for all  
49 expenditures for traveling, investiga-  
50 tion, storage and other expenses made or

1 incurred after the seizure and in connec-  
 2 tion with the forfeiture of any conveyance  
 3 seized under this act.

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

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

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

20 (1) Upon a showing that the property as set forth in this section  
 21 is suited for and likely to be used for law enforcement activities,  
 22 the plaintiff or law enforcement agency may, with judicial approval,  
 23 retain it for official use;

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

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

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

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

45 (C) The remainder, if any, to the director for credit to the drug  
 46 and driving while under the influence enforcement donation fund  
 47 or to the appropriate prosecuting attorney for credit to the local  
 48 agency's drug enforcement donation fund; or

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

1 (f) (1) The director or any peace officer of this state seizing any of  
2 the property described in paragraphs (1) and (2) of subsection (a) of  
3 this section shall cause a written inventory to be made and maintain  
4 custody of the same until all legal actions have been exhausted unless  
5 such property has been placed in lawful custody of a court or state  
6 or federal law enforcement agency. After all legal actions have been  
7 exhausted with respect to such property, the property shall be surren-  
8 dered by the court, law enforcement agency, or person having custody  
9 of the same to the director to be destroyed pursuant to paragraph (2)  
10 of this subsection. The property shall be accompanied with a written  
11 inventory on forms furnished by the director.

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

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

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

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

42 (j) On or before March 31, 2019, and by March 31 of each year thereafter,  
43 each state or local law enforcement agency in this state that has seized or  
44 forfeited property pursuant to this section shall retain the following in-  
45 formation from the previous calendar year:

46 (1) Name of the law enforcement agency that seized the property;

47 (2) Date of seizure;

48 (3) Type and description of property seized, including make, model,  
49 year, and serial number, if applicable;

- 1       (4) Crime, if any, for which the suspect has been charged, including  
2       whether such crime is a violation of state or federal law;  
3       (5) Criminal case number, if any;  
4       (6) Outcome, if any, of suspect's case;  
5       (7) If forfeiture was not processed under state law, the reason for the  
6       federal transfer, if known;  
7       (8) Forfeiture case number;  
8       (9) Date of forfeiture decision;  
9       (10) Whether there was a forfeiture settlement agreement;  
10       (11) Date and outcome of property disposition as described by one (1) of  
11       the following: returned to owner, partially returned to owner, sold,  
12       destroyed, or retained by law enforcement; and  
13       (12) Value of the property forfeited based on the value realized, if  
14       sold, or a reasonable good faith estimate of the value, if possible.  
15       Local law enforcement agencies shall submit the information required by this  
16       subsection to the county prosecutor for its jurisdiction on a form as promul-  
17       gated in rule by the Idaho state police, and such prosecutor shall retain the  
18       form for a period of seven (7) years.