

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 202, As Amended in the Senate

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 CERTAIN
3 PROPERTY MAY BE SUBJECT TO REPLEVIN UPON A FINDING BY A COURT, TO PROVIDE
4 FOR A COURT DETERMINATION OF PROPORTIONALITY WITH REGARD TO FORFEITURE,
5 TO REMOVE AN OBSOLETE PUBLICATION PROVISION, TO REMOVE A PROVISION
6 REGARDING PAYMENT OF CERTAIN COSTS, TO PROVIDE FOR THE DISPOSITION OF
7 FORFEITED PROPERTY, TO PROVIDE REPORTING REQUIREMENTS, TO PROVIDE FOR
8 THE SUBMISSION AND RETENTION OF INFORMATION AND TO MAKE TECHNICAL COR-
9 RECTIONS.
10

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

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

14 37-2744. FORFEITURES. (a) The following are subject to forfeiture:

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

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

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

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

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

38 (B) No conveyance is subject to forfeiture under this section if
39 the owner establishes that he could not have known in the exercise
40 of reasonable diligence that the conveyance was being used, had
41 been used, was intended to be used or had been intended to be used
42 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 indicia
 48 of criminal activity, 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~~ 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 are seized or come
34 into possession of the state, the owners of which are unknown, shall be
35 deemed contraband and shall be summarily forfeited to the state.

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

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

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

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

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

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

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

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

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

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

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

49 (III) If the court finds that the property was not used or was
50 not intended to be used in violation of this act, or is not

1 subject to forfeiture under this act, the court shall order
2 the property released to the owner as his right, title, or
3 interest appears on records in the appropriate department as
4 of the seizure.

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

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

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

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

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

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

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

tion with the forfeiture of any conveyance seized under this act.

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

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

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

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

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

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

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

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

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

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

30 (g) Species of plants from which controlled substances in schedules I
31 and II may be derived which have been planted or cultivated in violation of
32 this act, or of which the owners or cultivators are unknown, or which are wild
33 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 August 31, 2018, and by August 31 of each year there-
43 after, each state or local law enforcement agency in this state that has
44 seized or forfeited property pursuant to this section shall retain the fol-
45 lowing information from the previous fiscal 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 for which the suspect was charged (include whether state or
- 2 federal law);
- 3 (5) Criminal case number;
- 4 (6) Outcome 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: returned to owner, par-
- 11 tially returned to owner, sold, destroyed, or retained by law enforce-
- 12 ment; 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 or in a
- 17 format specified by such prosecutor, and such prosecutor shall retain the
- 18 information for a period of seven (7) years.