

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 372

BY SCOTT

AN ACT

1 RELATING TO FORFEITURES; AMENDING SECTION 37-2744, IDAHO CODE, TO PROVIDE
2 FOR THE SUBMISSION OF INFORMATION REGARDING FORFEITURE TO THE STATE
3 CONTROLLER; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
4

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

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

8 37-2744. FORFEITURES. (a) The following are subject to forfeiture:

9 (1) All controlled substances that have been manufactured, dis-
10 tributed, dispensed, acquired, possessed or held in violation of this
11 act or with respect to which there has been any act by any person in vio-
12 lation of this act;

13 (2) All raw materials, products and equipment of any kind that are used,
14 or intended for use, in manufacturing, compounding, processing, deliv-
15 ering, importing, or exporting any controlled substances or counter-
16 feit substances in violation of this act;

17 (3) All property that is used, or intended for use, as a container
18 for property used in the commission of an act prohibited by section
19 37-2732B, 37-2732(a) or (b), or 37-2737A, Idaho Code;

20 (4) All conveyances, including aircraft, vehicles, or vessels, that
21 are used, or intended for use, to transport, or in any manner to fa-
22 cilitate the transportation, delivery, receipt or manufacture of
23 substances as prohibited by section 37-2732B, 37-2732(a) or (b), or
24 37-2737A, Idaho Code, but:

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

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

35 (C) A forfeiture of a conveyance encumbered by a bona fide secu-
36 rity interest is subject to the interest of the secured party if
37 the security interest was created without any knowledge or reason
38 to believe that the conveyance was being used, had been used, was
39 intended to be used, or had been intended to be used for the purpose
40 alleged.

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

4 (6) (A) All moneys, currency, negotiable instruments, securities
 5 or other items easily liquidated for cash, such as, but not lim-
 6 ited to, jewelry, stocks and bonds, or other property described in
 7 paragraphs (2) and (3) of this subsection that is found in close
 8 proximity to property described in paragraph (1), (2), (3), (5),
 9 (7) or (8) of this subsection and that has been used or is intended
 10 for use in connection with the illegal manufacture, distribution,
 11 dispensing or possession of property described in paragraph (1),
 12 (2), (3), (5), (7) or (8) of this subsection;

13 (B) Items described in subparagraph (A) of this paragraph or other
 14 things of value furnished or intended to be furnished by any person
 15 in exchange for a contraband controlled substance in violation of
 16 this chapter, all proceeds, including items of property traceable
 17 to such an exchange, and all moneys or other things of value used or
 18 intended to be used to facilitate any violation of this chapter,
 19 except that no property shall be forfeited under this paragraph
 20 to the extent of the interest of an owner, by reason of any act or
 21 omission established by that owner to have been committed or omit-
 22 ted without the knowledge or consent of that owner.

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

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

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

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

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

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

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

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

41 Mere presence or possession of United States currency, without other indicia
 42 of criminal activity, is insufficient cause for seizure.

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

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

48 (A) Place the property under seal;

49 (B) Remove the property to a place designated by him; or

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

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

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

9 (d) Property taken or detained under this section may be subject to re-
10 plevin during the pendency of the forfeiture proceedings upon a hearing and
11 finding by the district court, or magistrate division thereof, having juris-
12 diction over the forfeiture proceedings, that the property is: (i) reason-
13 ably necessary for the owner's employment or personal use, that the property
14 will not be disposed of or used for criminal activity, and that reasonable
15 security has been posted; or (ii) that the seizure violated the provisions
16 of this section. The right of replevin shall terminate upon an order of for-
17 feiture as set forth in this section. Property that is being held that has
18 evidentiary value in the underlying criminal case shall not be subject to re-
19 plevin. Forfeiture proceedings shall be civil actions against the property
20 subject to forfeiture and the standard of proof shall be preponderance of the
21 evidence.

22 (1) All property described in paragraphs (1), (7) and (8) of subsection
23 (a) of this section shall be deemed contraband and shall be summarily
24 forfeited to the state. Controlled substances that are seized or come
25 into possession of the state, the owners of which are unknown, shall be
26 deemed contraband and shall be summarily forfeited to the state.

27 (2) When property described in paragraphs (2), (3), (4), (5), (6) or (9)
28 of subsection (a) of this section is seized pursuant to this section,
29 forfeiture proceedings shall be filed in the office of the clerk of the
30 district court for the county wherein such property is seized. The pro-
31 cedure governing such proceedings shall be the same as that prescribed
32 for civil proceedings by the Idaho rules of civil procedure. The court
33 shall determine whether such property was used, or intended for use,
34 in violation of this chapter. The court shall also determine whether a
35 property forfeiture is proportionate to the crime alleged, charged or
36 proven. Factors to be considered by the court in making such a determi-
37 nation shall include, but are not limited to, the nature and severity of
38 the crime, the fair market value of the property, the intangible or sub-
39 jective value of the property, the hardship to the defendant, the effect
40 of forfeiture on the defendant's family or financial circumstances, and
41 any other sanctions or penalties that have been imposed upon the defen-
42 dant. The court may tailor the forfeiture of property according to its
43 determination of proportionality as justice requires.

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

48 (A) Notice of forfeiture proceedings shall be given to each owner
49 or party in interest who has a right, title, or interest which in
50 the case of a conveyance shall be determined by the record in the

1 Idaho transportation department, or a similar department of an-
2 other state if the records are maintained in that state, by serving
3 a copy of the complaint and summons according to one (1) of the fol-
4 lowing methods:

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

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

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

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

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

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

28 (II) At the hearing any owner who has a verified answer on
29 file may show by competent evidence that his interest in the
30 conveyance is not subject to forfeiture because he did not
31 know that the conveyance was being used, had been used, was
32 intended to be used or had been intended to be used in any
33 manner described in subsection (a) (4) of this section.

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

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

47 (i) In the event of such proof, the court shall or-
48 der the conveyance released to the bona fide or inno-
49 cent owner, purchaser, lienholder, mortgagee, or con-
50 ditional sales vendor.

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

11 1. To the bona fide or innocent owner, purchaser,
12 conditional sales vendor, lienholder or mort-
13 gagee of the conveyance, if any, up to the value
14 of his interest in the conveyance.

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

16 A. To the director, or appropriate prose-
17 cuting attorney, for all expenditures made
18 or incurred by him in connection with the
19 sale, including expenditure for any neces-
20 sary repairs, storage, or transportation
21 of the conveyance, and for all expendi-
22 tures made or incurred by him in connection
23 with the forfeiture proceedings includ-
24 ing, but not limited to, expenditures for
25 witnesses' fees, reporters' fees, tran-
26 scripts, printing, traveling and investi-
27 gation.

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

35 C. The remainder, if any, to the director
36 for credit to the drug and driving while
37 under the influence enforcement donation
38 fund or to the appropriate prosecuting
39 attorney for credit to the local drug en-
40 forcement donation fund, or its equiva-
41 lent.

42 (iii) In any case, the director, or appropriate pros-
43 ecuting attorney, may, within thirty (30) days after
44 judgment, pay the balance due to the bona fide lien-
45 holder, mortgagee or conditional sales vendor and
46 thereby purchase the conveyance for use to enforce this
47 act.

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

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

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

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

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

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

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

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

32 (f) (1) The director or any peace officer of this state seizing any of
33 the property described in paragraphs (1) and (2) of subsection (a) of
34 this section shall cause a written inventory to be made and maintain
35 custody of the same until all legal actions have been exhausted unless
36 such property has been placed in lawful custody of a court or state
37 or federal law enforcement agency. After all legal actions have been
38 exhausted with respect to such property, the property shall be surren-
39 dered by the court, law enforcement agency, or person having custody
40 of the same to the director to be destroyed pursuant to paragraph (2)
41 of this subsection. The property shall be accompanied with a written
42 inventory on forms furnished by the director.

43 (2) All property described in paragraphs (1) and (2) of subsection (a)
44 of this section that is seized or surrendered under the provisions of
45 this act may be destroyed after all legal actions have been exhausted.
46 The destruction shall be done under the supervision of the Idaho state
47 police by a representative of the office of the director. An official
48 record listing the property destroyed and the location of destruction
49 shall be kept on file at the office of the director. Except, however,
50 that the director of the Idaho state police or his designee may autho-

1 rize the destruction of drug or nondrug evidence, or store those items
2 at government expense when, in the opinion of the director or his de-
3 signee, it is not reasonable to remove or transport such items from the
4 location of the seizure for destruction. In such case, a representative
5 sample will be removed and preserved for evidentiary purposes and, when
6 practicable, destroyed as otherwise is in accordance with this chapter.
7 On-site destruction of such items shall be witnessed by at least two (2)
8 persons, one (1) of whom shall be the director or his designee who shall
9 make a record of the destruction.

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

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

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

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

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

27 (2) Date of seizure;

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

30 (4) Crime, if any, for which the suspect has been charged, including
31 whether such crime is a violation of state or federal law;

32 (5) Criminal case number, if any;

33 (6) Outcome, if any, of suspect's case;

34 (7) If forfeiture was not processed under state law, the reason for the
35 federal transfer, if known;

36 (8) Forfeiture case number;

37 (9) Date of forfeiture decision;

38 (10) Whether there was a forfeiture settlement agreement;

39 (11) Date and outcome of property disposition as described by one (1) of
40 the following: returned to owner, partially returned to owner, sold,
41 destroyed, or retained by law enforcement; and

42 (12) Value of the property forfeited based on the value realized, if
43 sold, or a reasonable good faith estimate of the value, if possible.

44 Local law enforcement agencies shall submit the information required by this
45 subsection to the county prosecutor for its jurisdiction and to the state
46 controller on a form as promulgated in rule by the Idaho state police, and
47 such prosecutor and the state controller shall retain the form for a period
48 of seven (7) years.

1 SECTION 2. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after
3 July 1, 2023.