

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 422

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO UNIFORM CONTROLLED SUBSTANCES; AMENDING SECTION 37-2744, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE SUPERVISION OF THE DESTRUCTION OF CERTAIN PROPERTY 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 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 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 is used, or intended for use, as a container for property described in paragraph (1) or (2) ~~hereof~~ of this section;

(4) All conveyances, including aircraft, vehicles, or vessels, which 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 of property described in paragraph (1) or (2) ~~hereof~~ of this section, 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;

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

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

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

10 (B) Items described in paragraph (6) (A) above of this subsection  
11 or other things of value furnished or intended to be furnished by  
12 any person in exchange for a contraband controlled substance in  
13 violation of this chapter, all proceeds, including items of prop-  
14 erty traceable to such an exchange, and all moneys or other things  
15 of value used or intended to be used to facilitate any violation  
16 of this chapter, except that no property shall be forfeited under  
17 this paragraph to the extent of the interest of an owner, by reason  
18 of any act or omission established by that owner to have been com-  
19 mitted or omitted without the knowledge or consent of that owner.

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

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

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

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

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

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

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

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

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

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

43 (A) Place the property under seal;

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

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

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

49 (3) In the event of seizure pursuant to subsection (b) of this section,  
50 proceedings under subsection (d) of this section shall be instituted

1           within thirty (30) days by the director or appropriate prosecuting at-  
2           torney.

3           (d) Property taken or detained under this section shall not be subject  
4           to replevin, but is deemed to be in the custody of the director, or appro-  
5           priate prosecuting attorney, subject only to the orders and decrees of the  
6           district court, or magistrate's division thereof, having jurisdiction over  
7           the forfeiture proceedings. Forfeiture proceedings shall be civil actions  
8           against the property subject to forfeiture and the standard of proof shall be  
9           preponderance of the evidence.

10          (1) All property described in paragraphs (1), (7) and (8) of subsec-  
11          tion (a) ~~hereof of this section~~ shall be deemed contraband and shall  
12          be summarily forfeited to the state. Controlled substances which are  
13          seized or come into possession of the state, the owners of which are  
14          unknown, shall be deemed contraband and shall be summarily forfeited to  
15          the state.

16          (2) When property described in paragraphs (2), (3), (4), (5) and (6)  
17          of subsection (a) ~~hereof of this section~~ is seized pursuant to this sec-  
18          tion, forfeiture proceedings shall be filed in the office of the clerk  
19          of the district court for the county wherein such property is seized.  
20          The procedure governing such proceedings shall be the same as that pre-  
21          scribed for civil proceedings by the Idaho ~~R~~rules of ~~C~~civil ~~P~~procedure.  
22          The court shall order the property forfeited to the director, or appro-  
23          priate prosecuting attorney, if he determines that such property was  
24          used, or intended for use, in violation of this chapter, or, in the case  
25          of items described in paragraph (6) (A) of subsection (a), was found in  
26          close proximity to property described in paragraph (1), (2), (3), (5),  
27          (7) or (8) of subsection (a) of this section.

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

32                (A) Notice of forfeiture proceedings shall be given each owner  
33                or party in interest who has a right, title, or interest which in  
34                the case of a conveyance shall be determined by the record in the  
35                Idaho transportation department or a similar department of an-  
36                other state if the records are maintained in that state, by serving  
37                a copy of the complaint and summons according to one (1) of the  
38                following methods:

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

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

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

49                (C) If at the end of twenty (20) days after the notice has been  
50                mailed there is no verified answer on file, the court shall hear

1 evidence upon the fact of the unlawful use, or intent to use, and  
2 shall order the property forfeited to the director, or appropriate  
3 prosecuting attorney, if such fact is proved.

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

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

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

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

25 (IV) An owner, co-owner or claimant of any right, title, or  
26 interest in the conveyance may prove that his right, title,  
27 or interest, whether under a lien, mortgage, conditional  
28 sales contract or otherwise, was created without any knowl-  
29 edge or reason to believe that the conveyance was being used,  
30 had been used, was intended to be used, or had been intended  
31 to be used for the purpose alleged;

32 (i) In the event of such proof, the court shall order  
33 the conveyance released to the bona fide or innocent  
34 owner, purchaser, lienholder, mortgagee, or condi-  
35 tional sales vendor. The court may order payment of all  
36 costs incurred by the state or law enforcement agency  
37 as a result of such seizure.

38 (ii) If the amount due to such person is less than  
39 the value of the conveyance, the conveyance may be  
40 sold at public auction by the director or appropriate  
41 prosecuting attorney. The director, or appropriate  
42 prosecuting attorney, shall publish a notice of the  
43 sale by at least one (1) publication in a newspaper  
44 published and circulated in the city, community or lo-  
45 cality where the sale is to take place at least one (1)  
46 week prior to sale of the conveyance. The proceeds from  
47 such sale shall be distributed as follows in the order  
48 indicated:

49 1. To the bona fide or innocent owner, purchaser,  
50 conditional sales vendor, lienholder or mort-

1 gagee of the conveyance, if any, up to the value  
2 of his interest in the conveyance.

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

4 A. To the director, or appropriate prose-  
5 cuting attorney, for all expenditures made  
6 or incurred by it in connection with the  
7 sale, including expenditure for any neces-  
8 sary repairs, storage, or transportation  
9 of the conveyance, and for all expendi-  
10 tures made or incurred by him in connection  
11 with the forfeiture proceedings includ-  
12 ing, but not limited to, expenditures for  
13 witnesses' fees, reporters' fees, tran-  
14 scripts, printing, traveling and investi-  
15 gation.

16 B. To the law enforcement agency of this  
17 state which seized the conveyance for all  
18 expenditures for traveling, investiga-  
19 tion, storage and other expenses made or  
20 incurred after the seizure and in connec-  
21 tion with the forfeiture of any conveyance  
22 seized under this act.

23 C. The remainder, if any, to the director  
24 for credit to the drug and driving while  
25 under the influence enforcement donation  
26 fund or to the appropriate prosecuting  
27 attorney for credit to the local drug en-  
28 forcement donation fund, or its equiva-  
29 lent.

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

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

39 (1) Retain it for official use;

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

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

48 (A) To the director, or prosecuting attorney on behalf of the  
49 county or city law enforcement agency, for all expenditures made  
50 or incurred in connection with the sale, including expenditure

1 for any necessary repairs, maintenance, storage or transporta-  
 2 tion, and for all expenditures made or incurred in connection  
 3 with the forfeiture proceedings including, but not limited to,  
 4 expenditures for witnesses' fees, reporters' fees, transcripts,  
 5 printing, traveling and investigation.

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

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

15 (3) Take custody of the property and remove it for disposition in accor-  
 16 dance with law; ~~or~~.

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

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

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

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

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