

§ 18B-503. Disposition of seized alcoholic beverages.

(a) Storage. – A law-enforcement officer who seizes alcoholic beverages as evidence of an ABC law violation shall provide for the storage of those alcoholic beverages until the commencement of the trial or administrative hearing relating to the violation, unless some other disposition is authorized under this section.

(b) Disposition Before Trial. – After giving notice to each defendant, to any other known owner, and to the Commission, a judge may order any of the following dispositions of alcoholic beverages seized as evidence of an ABC law violation:

- (1) The destruction of any malt beverages except that amount needed for evidence at trial.
- (2) The sale of any alcoholic beverages other than malt beverages or nontaxpaid alcoholic beverages, and other than any alcoholic beverages needed for evidence at trial, if the trial is likely to be delayed for more than 90 days, or if the quantity or nature of the alcoholic beverages is such that storage is impractical or unduly expensive.
- (3) The destruction of the alcoholic beverages if storage or sale is not practical.
- (4) Continued storage of the alcoholic beverages.

(c) Disposition After Trial. – After the criminal charge is resolved, a judge may order the following dispositions of seized alcoholic beverages:

- (1) If the owner or possessor of the alcoholic beverages is found guilty of a criminal charge relating to those alcoholic beverages, the judge may order the sale or destruction of any alcoholic beverages that were held until trial.
- (2) If the owner or possessor of the alcoholic beverages is found not guilty, or if charges are dismissed or otherwise resolved in favor of the owner or possessor, the judge shall order the alcoholic beverages returned to that owner or possessor, except as provided in subdivision (3).
- (3) If the owner or possessor of the alcoholic beverages is found not guilty, or if charges are otherwise resolved in favor of the owner or possessor, but possession of the alcoholic beverages by that owner or possessor would be unlawful, the judge shall order the alcoholic beverages either sold or destroyed.
- (4) If ownership of the alcoholic beverages remains uncertain after trial or after the charges have been dismissed, the judge may order the alcoholic beverages held, or the alcoholic beverages sold and the proceeds held, for a specified time, until ownership of the alcoholic beverages can be determined.

(d) Holding for Administrative Hearings. – If alcoholic beverages used as evidence in a criminal proceeding are also needed as evidence at an administrative hearing, a judge shall not order any of the dispositions set out in subsection (c), but shall order the alcoholic beverages held for the administrative hearing and for a determination of final disposition by the Commission. The Commission may, before or after an administrative hearing, order any of the dispositions authorized under subsections (b) and (c). If no related criminal proceeding has commenced, the Commission shall not order sale or destruction of alcoholic beverages until notice has been given to the district attorney for the district where the alcoholic beverages were seized or any violation of ABC laws related to the seizure of the alcoholic beverages is likely to be prosecuted.

(e) Sale Procedure. – The sale of unfortified wine or fortified wine shall be by public auction unless those wines would likely become spoiled or lose value in the time required to arrange a public auction. If spoilage or loss of value is likely, the judge ordering the sale or the

Commission may authorize sale at the prevailing wholesale price, as determined by the Commission, to one or more persons holding the appropriate retail wine permits in the county in which the wine was seized, or in a neighboring county if there are no such persons in the county in which the wine was seized. Spirituous liquor may be sold only to the local ABC board serving the city or county in which the liquor was seized, or, if there is no local board for that city or county, to the nearest local board. The sale price shall be at least ten percent (10%) less than the price the local board would pay for the same liquor bought through the State warehouse.

(f) Sale Proceeds. – An agency selling alcoholic beverages seized under the provisions of this Chapter shall keep the proceeds in a separate account until some other disposition is ordered by a judge or the Commission. In a criminal proceeding, if the owner or possessor of the alcoholic beverages is found guilty of a violation relating to seizure of the alcoholic beverages, if the owner or possessor is found not guilty or the charge is dismissed or otherwise resolved in favor of the owner or possessor, but the possession of the alcoholic beverages by that owner or possessor would be unlawful, or if the ownership of the alcoholic beverages cannot be determined, the proceeds from the sale of those alcoholic beverages shall be paid to the school fund of the county in which the alcoholic beverages were seized. If the owner or possessor of alcoholic beverages seized for violation of the ABC laws is found not guilty of criminal charges relating to the seizure of those beverages or the charge is dismissed or otherwise resolved in favor of the owner or possessor, and if possession of the alcoholic beverages by that owner or possessor was lawful when the beverages were seized, the proceeds from the sale of those alcoholic beverages shall be paid to the owner or possessor. The agency making the sale may deduct and retain from the amount to be placed in the county school fund the costs of storing the seized alcoholic beverages and of conducting the sale, but may not deduct those costs from the amount to be turned over to an owner or possessor of the alcoholic beverages.

(g) Court Action by Owner. – Any person who claims any of the following resulting from the seizure of alcoholic beverages may bring an action in the superior court of the county in which the alcoholic beverages were seized:

- (1) To be the owner of alcoholic beverages that are wrongfully held.
- (2) To be the owner of alcoholic beverages that are needed as evidence in another proceeding.
- (3) To be entitled to proceeds from a sale of seized alcoholic beverages.
- (4) To be entitled to restitution for alcoholic beverages wrongfully destroyed. (1923, c. 1, s. 12; C.S., s. 3411(1); 1939, c. 12; 1941, c. 310; 1957, c. 1235, s. 3; 1971, c. 872, s. 1; 1981, c. 412, s. 2; 1993, c. 415, s. 5.)