

§ 18B-504. Forfeiture.

(a) **Property Subject to Forfeiture.** – The following kinds of property shall be subject to forfeiture:

- (1) Motor vehicles, boats, airplanes, and all other conveyances used to transport nontaxpaid alcoholic beverages in violation of the ABC laws;
- (2) Containers for alcoholic beverages which are manufactured, possessed, sold, or transported in violation of the ABC laws; and
- (3) Equipment or ingredients used in the manufacture of alcoholic beverages in violation of the ABC laws.

(b) **Exemption for Forfeiture.** – Property which may be possessed lawfully shall not be subject to forfeiture when it was used unlawfully by someone other than the owner of the property and the owner did not consent to the unlawful use.

(c) **Seizure of Property.** – If property subject to forfeiture has not already been seized as part of an arrest or search, a law-enforcement officer may apply to a judge for an order authorizing seizure of that property. An order for seizure may be issued only after criminal process has been issued for an ABC law violation in connection with that property. The order shall describe the property to be seized and shall state the facts establishing probable cause to believe that the property is subject to forfeiture.

(d) **Custody until Trial.** – A law-enforcement officer seizing property subject to forfeiture shall provide for its safe storage until trial. The officer may destroy stills and perishable materials seized under subdivision (a)(3), if storage is impractical and if the absence of the property will not be likely to adversely affect the defendant's right to defend against the charge that is the basis for the forfeiture. If the officer having custody of the property is satisfied that it will be returned at the time of trial, he may return the property to the owner upon receiving a bond for the value of the property, signed by sufficient sureties. If the property is not returned at the time of trial, the full amount of the bond shall be forfeited to the court. Property which it is unlawful to possess may not be returned to the owner.

(e) **Disposition after Trial.** – The presiding judge in a criminal proceeding for violation of ABC laws may take the following actions after resolution of a charge against the owner or possessor of property subject to forfeiture under this section:

- (1) If the owner or possessor of the property is found guilty of an ABC offense, the judge may order the property forfeited.
- (2) If the owner or possessor of the property is found not guilty, or if the charge is dismissed or otherwise resolved in favor of the owner or possessor, the judge shall order the property returned to the owner or possessor.
- (3) If ownership of the property remains uncertain after trial, the judge may order the property held for a specified time to determine ownership. If the judge finds that ownership cannot be determined with reasonable effort, the judge shall order the property forfeited.
- (4) Regardless of the disposition of the charge, if the property is something that may not be possessed lawfully, the judge shall order it forfeited.
- (5) If the property is also needed as evidence at an administrative hearing, the judge shall provide that the order does not go into effect until the Commission determines that the property is no longer needed for the administrative proceeding.

(f) **Disposition of Forfeited Property.** – A judge ordering forfeiture of property may order any one of the following dispositions:

- (1) Sale at public auction;
- (2) Sale at auction after notice to certain named individuals or groups, if only a limited number of people would have use for that property;

- (3) Delivery to a named State or local law-enforcement agency, if the property is not suited for sale, with preference to be given in the following order, to: the agency that seized the property, the ALE Division, the Commission, the local board of the jurisdiction in which the property was seized, and the Department of Justice; or
- (4) Destruction, if possession of the property would be unlawful and it could not be used or is not wanted for law enforcement, or if sale or other disposition is not practical.

(g) Proceeds of Sale. – If forfeited property is sold, the proceeds of that sale shall be paid to the school fund of the county in which the property was seized, except as provided in subsection (h). Before placing the proceeds in the school fund the agency making the sale may deduct and retain the costs of storing the property and conducting the sale.

(h) Innocent Parties. – At any time before forfeiture is ordered, an owner of seized property or a holder of a security interest in seized property, other than the defendant, may apply to protect his interest in the property. The application may be made to any judge who has jurisdiction to try the offense with which the property is associated. If the judge finds that the property owner or holder of a security interest did not consent to the unlawful use of the property, and that the property may be possessed lawfully by the owner or holder, the judge may order:

- (1) That the property be returned to the owner, if it is not needed as evidence at trial;
- (2) That the property be returned to the owner following trial or other resolution of the case; or
- (3) That, if the property is sold following trial, a specified sum be paid from the proceeds of that sale to the holder of the security interest.

(i) Defendant Unavailable. – When property is seized for forfeiture, but the owner is unknown, the district attorney may seek forfeiture under this section by an action in rem against the property. If the owner is known and has been charged with an offense, but is unavailable for trial, the district attorney may seek forfeiture either by an action in rem against the property or by motion in the criminal action.

(j) When No Charge is Made. – Any owner of property seized for forfeiture may apply to a judge to have the property returned to him if no criminal charge has been made in connection with that property within a reasonable time after seizure. The judge may not order the return of the property if possession by the owner would be unlawful. (1923, c. 1, s. 6; C.S., s. 3411(f); 1927, c. 18; 1945, c. 635; 1951, c. 850; 1955, c. 560; 1957, c. 1235, s. 1; 1969, c. 789; 1971, c. 872, s. 1; 1977, c. 854, s. 2; 1981, c. 412, s. 2; c. 747, s. 48; 1993, c. 415, s. 6; 2011-145, s. 19.1(q); 2014-100, s. 17.1(xxx); 2019-203, s. 9(a).)