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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 9. ALCOHOLIC BEVERAGES [23000 - 25762] (*Division 9 added by Stats. 1953, Ch. 152.*)

CHAPTER 14. Seizure and Forfeiture of Property [25350 - 25375] (*Chapter 14 added by Stats. 1953, Ch. 152.*)

25350. The department may seize the following alcoholic beverages:

(a) Alcoholic beverages manufactured or produced in this state by any person other than licensed manufacturer or wine grower, regardless of where found.

(b) Beer and wine upon the sale of which the excise tax imposed by Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code has not been paid, regardless of where found.

(c) Distilled spirits except (1) distilled spirits located upon premises for which licenses authorizing the sale of the distilled spirits have been issued; (2) distilled spirits consigned to and in the course of transportation to a licensee holding licenses authorizing the sale of the distilled spirits or for delivery without this state; (3) distilled spirits upon the sale of which the excise tax imposed by Part 14 (commencing with Section 32001) of Division 2 of the Revenue and Taxation Code has been paid; (4) alcohol or distilled spirits in the possession of a person who has lawfully purchased it for use in the trades, professions, or industries and not for beverage use.

(d) Any alcoholic beverage possessed, kept, stored, or owned with the intent to sell it without a license in violation of this division.

(e) Notwithstanding any other provision of this section, any alcoholic beverage acquired, exchanged, purchased, sold, delivered, or possessed in violation of Sections 23104.2, 23104.3, 23394, 23402, or Chapter 12 (commencing with Section 25000), except that seizures under this subdivision shall be limited to the actual package or case of alcoholic beverage acquired, exchanged, purchased, sold, delivered, or possessed in violation of the foregoing provisions. Any seizure under this subdivision shall not exceed one hundred dollars (\$100) of alcoholic beverages at retail price.

(Amended by Stats. 2015, Ch. 303, Sec. 22. (AB 731) Effective January 1, 2016.)

25351. Any person who possesses alcoholic beverages which are subject to seizure under Section 25350 is guilty of a misdemeanor.

(Added by Stats. 1953, Ch. 152.)

25352. The department or its employees may seize any unlicensed still, whether in actual operation or not and whether assembled for operation or dismantled, any parts of such stills, and any materials or supplies capable of being used for the manufacture of alcoholic beverages which are found on or about the premises where any unlicensed still or parts thereof are found. The department or its employees may also seize any implements, instruments, vehicles, and personal property in the place or building, or within any yard or enclosure, where any unlicensed still or parts thereof are found.

(Amended by Stats. 1955, Ch. 447.)

25353. When alcoholic beverages or any other property are seized pursuant to this division, the alcoholic beverages or other property shall be forfeited to the State, and all such forfeitures are hereby declared to be statutory forfeitures.

(Added by Stats. 1953, Ch. 152.)

25354. Alcoholic beverages manufactured or produced in this state by any person other than a licensed manufacturer or winegrower, when seized for forfeiture under this division, may be disposed of by the department, its officers, or employees by summary destruction. Controlled substances, instruments, or paraphernalia seized by the department may only be disposed of pursuant to a court order for destruction.

(Amended by Stats. 1999, Ch. 787, Sec. 1. Effective January 1, 2000.)

25355. Any alcoholic beverages or other property seized for forfeiture under this division, except automobiles or other vehicles, may be disposed of by the department, its officers, or employees by destruction or otherwise as provided in this division, upon order of the department made not less than 15 days after the date of seizure.

(Amended by Stats. 1955, Ch. 447.)

25356. Any person whose alcoholic beverages or other property, except automobiles or other vehicles, have been seized for forfeiture under this division, may, within 10 days after such seizure, petition the department to return the alcoholic beverages or other property upon the grounds that the alcoholic beverages or other property were illegally or erroneously seized.

(Amended by Stats. 1955, Ch. 447.)

25357. Any petition filed pursuant to Section 25356 shall be considered by the department within 60 days after filing, and an oral hearing shall be granted the petitioner if requested. The department shall serve notice of its decision upon the petitioner.

(Amended by Stats. 1955, Ch. 447.)

25358. The department may order the alcoholic beverages or other property seized disposed of, or returned to the petitioner if illegally or erroneously seized.

(Amended by Stats. 1955, Ch. 447.)

25359. Any beverage or other property seized by the department may be turned over to any state department or institution. The person in charge of any state department or institution may file with the department a request that beverages or other property of a kind specified in the request be turned over to the department or institution. No beverage or property for which a request has been made by a state department or institution shall be destroyed until all requests of state departments and institutions for the type or kind of beverage or property have been complied with.

(Amended by Stats. 1955, Ch. 447.)

25360. When alcoholic beverages or other property are seized or forfeited under this division and are not disposed of pursuant to Sections 25354 to 25359, inclusive, the alcoholic beverages or other property shall be subjected to a forfeiture proceeding in the superior court as provided in this chapter.

(Added by Stats. 1953, Ch. 152.)

25361. Notice of the seizure and of the intended forfeiture proceeding shall be filed with the clerk of the court and shall be served on all persons, firms, or corporations having any right, title, or interest in the alcoholic beverages or other property seized. If the owner or owners are unknown or cannot be found, notice of the seizure and intended forfeiture proceedings shall be made upon such owners by publication pursuant to Section 6061 of the Government Code in the county where the seizure was made.

(Amended by Stats. 2002, Ch. 784, Sec. 10. Effective January 1, 2003.)

25362. Within 20 days after service of the notice of seizure and intended forfeiture proceedings, or within 20 days after the date of publication, the owner or owners of the alcoholic beverages or other property seized may file a verified answer to the fact of the alleged unlawful use of the alcoholic beverages or other property. The claimant of any right, title, or interest in the alcoholic beverages or other property seized may make a verified answer to establish his claim as provided in Section 25367. No extensions of time shall be granted for the purpose of making the verified answer.

(Added by Stats. 1953, Ch. 152.)

25363. If at the end of 20 days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of unlawful use and shall, upon proof thereof, order the alcoholic beverages or other property forfeited to the State.

(Added by Stats. 1953, Ch. 152.)

25364. If a verified answer has been filed, the forfeiture proceeding may be set for hearing on a day within 30 days from the date of filing, and notice of this proceeding shall be given to the owner or owners filing verified answers.

(Added by Stats. 1953, Ch. 152.)

25365. At the time set for the hearing, any of the owners who have verified answers on file may show by competent evidence that the alcoholic beverages or other property were not in fact used contrary to the provisions of this division.

(Added by Stats. 1953, Ch. 152.)

25366. If the fact is determined that the alcoholic beverages or other property were not used contrary to the provisions of this division, the court shall order the alcoholic beverages or other property released to the owner or owners thereof.

(Added by Stats. 1953, Ch. 152.)

25367. At the time set for the hearing the claimant of any right, title, or interest in the alcoholic beverages or other property under a lien, mortgage, or conditional sales contract which is officially of record may prove that the lien, mortgage, or conditional sales contract is bona fide and was created after a reasonable investigation of the moral responsibility, character, and reputation of the lienor, mortgagor, or vendee and without any knowledge that the alcoholic beverages or other property was being, or was to be, used contrary to the provisions of this division.

(Added by Stats. 1953, Ch. 152.)

25368. If the lienholder, mortgagee, or vendor proves the facts set forth in Section 25367, the court shall order the alcoholic beverages or other property released to him if the amount due to him is equal to, or in excess of, the value of the alcoholic beverages or other property. If the amount due to him is less than the value of the alcoholic beverages or other property, the alcoholic beverages or other property shall be sold at public auction by the department, and the remainder of the proceeds of the sale, after payment of the balance due on the purchase price, mortgage, or lien, shall be deposited in the State Treasury.

(Amended by Stats. 1955, Ch. 447.)

25369. In any case the Department of Finance may, within 30 days after judgment, pay the balance due to the bona fide or innocent purchaser, lienholder, mortgagee, or vendor and purchase the alcoholic beverages or other property for the State.

(Added by Stats. 1953, Ch. 152.)

25370. Upon a judgment in favor of the forfeiture, the alcoholic beverages or other property shall be ordered turned over to the Department of General Services for disposition as follows:

(a) Delivery to the Department of Alcoholic Beverage Control for use in the needs of the department as may be requested by it.

(b) Delivery to any other state department, board, commission, officer, hospital, or institution.

(c) Sale at public auction, and when alcoholic beverages are sold at public auction they shall be sold only to licensees authorized to sell them.

(Amended by Stats. 1965, Ch. 371.)

25371. When alcoholic beverages or other property are seized under this division, a record of the seizure and disposition shall be kept by the Department of Alcoholic Beverage Control.

(Amended by Stats. 1955, Ch. 447.)

25372. Any officer, employee, or agent of the Department of Alcoholic Beverage Control who disposes of any alcoholic beverages or other property seized under this division in any manner other than as directed by order of the court or the provisions of this division is liable to the State in a civil action and is guilty of a felony.

(Amended by Stats. 1955, Ch. 447.)

25373. Any peace officer of this State upon seizing any alcoholic beverages or other property may hold them as evidence until a forfeiture has been declared, a release ordered as provided in this chapter, or other disposition has been made pursuant to this division.

(Added by Stats. 1953, Ch. 152.)

25374. Nothing contained in this chapter applies to common carriers or to an employee acting within the scope of his employment under this division.

(Added by Stats. 1953, Ch. 152.)

25375. (a) Upon 10 days notice to a person who holds a license described in this division, the Attorney General or a district attorney shall seek an order from the superior court for the seizure of a license described in this division for purposes of seeking forfeiture of the license pursuant to Sections 11470 to 11492, inclusive, of the Health and Safety Code. From the time of notice until the hearing to establish probable cause, as provided by this section, the license may not be sold or transferred. The 10-day period may be extended by the court for good cause or upon the stipulation of the parties.

(b) A petition for forfeiture pursuant to Section 11488.4 of the Health and Safety Code shall be filed within 10 days of the service of notice pursuant to this section.

(c) At the hearing, the Attorney General or district attorney shall establish probable cause that the license is subject to forfeiture pursuant to Section 11470 of the Health and Safety Code. The showing of probable cause may be established by deposition, affidavit, declaration, prior judicial testimony, or other evidence. The licensee may produce evidence to refute the showing of probable cause.

(d) If the court determines there is probable cause that the license is subject to forfeiture, it shall issue an order for its seizure by any peace officer within its jurisdiction.

(e) If probable cause is not established at the hearing, or if the hearing is neither held within the 10-day period nor continued for good cause or by stipulation of the parties, the prohibition against the sale or transfer of the license shall immediately cease and the petition for forfeiture shall be dismissed.

(f) Immediately upon seizure of the license, the peace officer shall surrender the license to the department by certified mail, along with written notice to the department of the seizure and intention to seek the initiation of forfeiture proceedings. No person who holds any interest in a license shall exercise any privileges of that license after it has been seized and during the time it is surrendered to the department pursuant to this subdivision.

However, if the licensee appears and in any manner contest the showing of probable cause required by this subdivision, the licensee shall be barred from bringing a motion pursuant to paragraph (2) of subdivision (g) of Section 11488.4 of the Health and Safety Code.

(g) Notwithstanding Article 5 (commencing with Section 23090) of Chapter 1.5 of this division, the Attorney General or a district attorney may seek a pendente lite order as provided in Section 11492 of the Health and Safety Code or Section 186.6 of the Penal Code relating to the custody, right, title, interest, and exercise of rights and privileges as related to a license described in this division which is the subject of a forfeiture proceeding pursuant to Section 11488.4 of the Health and Safety Code or Section 186.4 of the Penal Code.

(h) Rights and privileges related to any license which is the subject of a forfeiture proceeding and which has been seized and surrendered to the department pursuant to this section may be exercised solely by a receiver appointed pursuant to Section 11492 of the Health and Safety Code or Section 186.6 of the Penal Code. No license, rights, or privileges of a license may be exercised by a receiver until that person has been found qualified to hold a license in his or her own right by the department pursuant to this division and the license has been issued to the custody of the receiver. Chapter 6 (commencing with Section 23950) of this division does not apply to a receiver appointed pursuant to this paragraph. Any receiver appointed pursuant to Section 11492 of the Health and Safety Code or Section 186.6 of the Penal Code who exercises privileges of a license issued to his or her custody shall be subject to disciplinary proceedings and may have the license suspended or revoked in the same manner as if he or she were licensed directly pursuant to this division.

(i) Upon the entry of a judgment of forfeiture pursuant to Section 11488.5 of the Health and Safety Code or Section 186.6 of the Penal Code, or a declaration of forfeiture pursuant to subdivision (j) of Section 11488.5 of the Health and Safety Code forfeiting a license described in this division, the state or local government entity shall sell and transfer the license in accordance with Chapter 6 (commencing with Section 23950) of this division. The proceeds of that sale and transfer shall be allocated as specified in Section 11489 of the Health and Safety Code or Section 186.8 of the Penal Code, as appropriate.

(j) Any alcoholic beverage which is the subject of a judgment of forfeiture pursuant to Section 11488.5 of the Health and Safety Code or Section 186.7 of the Penal Code, or a declaration of forfeiture pursuant to subdivision (i) of Section 11488.4 of the Health and Safety Code may be sold, transferred, and delivered by the state or local governmental entity, as specified in Section 11489 of the Health and Safety Code or Section 186.8 of the Penal Code, to a person licensed to sell that type of alcoholic beverage pursuant to this division.

(Added by Stats. 1989, Ch. 1195, Sec. 1.2.)