

ALCOHOLIC BEVERAGE CODE

TITLE 4. REGULATORY AND PENAL PROVISIONS

CHAPTER 103. ILLICIT BEVERAGES

Sec. 103.01. ILLICIT BEVERAGES PROHIBITED. No person may possess, manufacture, transport, or sell an illicit beverage.  
Acts 1977, 65th Leg., p. 505, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.02. EQUIPMENT OR MATERIAL FOR MANUFACTURE OF ILLICIT BEVERAGES. No person may possess equipment or material designed for, capable of use for, or used in manufacturing an illicit beverage.  
Acts 1977, 65th Leg., p. 505, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.03. SEIZURE OF ILLICIT BEVERAGES, ETC. A peace officer may seize without a warrant:

(1) any illicit beverage, its container, and its packaging;

(2) any vehicle, including an aircraft or watercraft, used to transport an illicit beverage;

(3) any equipment designed for use in or used in manufacturing an illicit beverage; or

(4) any material to be used in manufacturing an illicit beverage.

Acts 1977, 65th Leg., p. 505, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.04. ARREST OF PERSON IN POSSESSION. A peace officer may arrest without a warrant any person found in possession of:

(1) an illicit beverage;

(2) any equipment designed for use in or used in manufacturing an illicit beverage; or

(3) any material to be used in manufacturing an illicit beverage.

Acts 1977, 65th Leg., p. 505, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.05. REPORT OF SEIZURE. (a) A peace officer who

makes a seizure under Section 103.03 of this code shall make a report in triplicate which lists each item seized and the place and name of the owner, operator, or other person from whom it is seized. One copy of the report shall be verified by oath.

(b) The verified copy shall be retained in the permanent files of the commission or other agency making the seizure. The copy is subject to inspection by any member of the legislature or by any authorized law enforcement agency of the state.

(c) One copy of the report shall be delivered to the person from whom the seizure is made.

(d) A peace officer who makes a false report of the property seized commits a felony punishable by confinement in the Texas Department of Criminal Justice for not less than two years and not more than five years.

(e) A peace officer who fails to file the reports of a seizure as required by this section commits a misdemeanor punishable by a fine of not less than \$50 nor more than \$100 or by confinement in jail for not less than 10 nor more than 90 days or by both. The commission shall insure that the reports are made by peace officers.

Acts 1977, 65th Leg., p. 505, ch. 194, Sec. 1, eff. Sept. 1, 1977.  
Amended by Acts 1983, 68th Leg., p. 5222, ch. 954, Sec. 1, eff. Aug. 29, 1983.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.008, eff. September 1, 2009.

Sec. 103.06. BEVERAGE SEIZED BY PEACE OFFICER. Any alcoholic beverage, its container, and its packaging which has been seized by a peace officer, as provided in Section 103.03:

(1) may not be replevied; and

(2) shall be:

(A) destroyed or disposed of by a peace officer;

or

(B) delivered to the commission for immediate public or private sale in the manner the commission considers best.

Acts 1977, 65th Leg., p. 506, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 223 (H.B. 763), Sec. 1, eff. September 1, 2021.

Sec. 103.07. BEVERAGE OF ILLICIT MANUFACTURE OR UNFIT FOR CONSUMPTION. (a) The commission may not sell alcoholic beverages seized by a peace officer, as provided in Section 103.03, that are unfit for public consumption or are of illicit manufacture.

(b) Alcoholic beverages are unfit for public consumption if:

(1) the manufacturer or wholesaler of the beverages determines that the beverages are inappropriate for sale to a consumer;

(2) the beverages are damaged; or

(3) the code date affixed by the manufacturer to the beverages has expired.

(c) If the commission determines that seized alcoholic beverages are unfit for public consumption or are of illicit manufacture, the commission shall destroy the alcoholic beverages. Acts 1977, 65th Leg., p. 506, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2005, 79th Leg., Ch. 1182 (S.B. 1255), Sec. 8, eff. June 18, 2005.

Sec. 103.08. SALE OF MALT BEVERAGE. (a) Any malt beverage, its container, or its packaging which is seized under the terms of this chapter shall be disposed of in accordance with this section.

(b) On notification that the malt beverage has been seized, the commission shall promptly notify a holder of a general or branch distributor's license who handles the brand of malt beverage seized and who operates in the county in which it was seized. If the malt beverage was seized in a dry area, the commission shall notify either the general or branch distributor who handles the brand operating nearest the area or the brewer brewing the malt beverage. The commission and the distributor or brewer shall jointly determine whether the malt beverage is in a salable condition.

(c) If the malt beverage is determined not to be in a salable condition, the commission shall immediately destroy it. If it is determined to be in a salable condition, it shall be offered for sale to the distributor or brewer. If offered to a distributor, the malt beverage shall be sold at the distributor's cost price less any state taxes which have been paid on the malt beverage, F.O.B. the distributor's place of business. If the malt beverage is offered to a brewer, it shall be sold at the brewer's cost price to its nearest distributor, less any state taxes which have been paid on the malt beverage, F.O.B., the nearest distributor's place of business. In either case, the storage or warehousing charges necessarily incurred as a result of the seizure shall be added to the cost price.

(d) If the distributor or brewer does not exercise the right to purchase salable malt beverages or to purchase returnable bottles, containers, or packages at their deposit price within 10 days, the commission shall sell the malt beverages, bottles, containers, or packages at public or private sale as provided in this chapter.

Acts 1977, 65th Leg., p. 506, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. [1545](#)), Sec. 319, eff. September 1, 2021.

Sec. 103.09. SALE OF LIQUOR. (a) Any liquor, its container, or its packaging which is seized under the terms of this chapter shall be disposed of in accordance with this section.

(b) On notification that liquor has been seized, the commission shall promptly notify a holder of a wholesaler's permit or a general class B wholesaler's permit who handles the brand of liquor seized and who operates in the county in which it was seized. If the liquor was seized in a dry area, the commission shall notify the wholesaler who handles the brand seized who operates nearest the area. The commission and the wholesaler shall jointly determine whether the liquor is in a salable condition.

(c) If the liquor is determined not to be in a salable condition, the commission shall immediately destroy it. If it is

determined to be in a salable condition, it shall first be offered for sale to the wholesaler notified at the wholesaler's cost price F.O.B. its place of business, plus any storage or warehousing charges necessarily incurred as a result of the seizure.

(d) If the wholesaler does not exercise the right to purchase salable liquor, containers, or packages at the price specified in this section within 10 days, the commission shall sell the liquor, container, or packages at public or private sale, as provided in this chapter.

Acts 1977, 65th Leg., p. 506, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 320, eff. September 1, 2019.

Sec. 103.10. EXERCISE OF DISCRETION IN CASE OF MISTAKE. The preceding sections of this subchapter shall not be construed as preventing the commission from exercising its discretion if illicit alcoholic beverages are seized as the result of an accidental shipment or other reasonable mistake. Under those circumstances, the commission may issue orders and make disposition of the alcoholic beverages as it finds just and reasonable.

Acts 1977, 65th Leg., p. 507, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.11. PROCEEDS FROM SALE. (a) The proceeds from the sale of seized alcoholic beverages, their containers, and their packaging shall be placed in escrow in a suspense account established by the commission for that purpose, pending the outcome of the forfeiture suit provided for in this chapter.

(b) Proceeds in escrow which are not forfeited to the state as a result of the suit shall be refunded to the alleged violator. Should the state illegally seize and sell any alcoholic beverages, the person legally entitled to possession of the beverages at the time of the seizure may recover from the state the fair market value of the beverages seized and sold, with the reimbursement paid out of the proceeds held in escrow from the sale and, if the funds in escrow are not sufficient, from the confiscated liquor fund.

Acts 1977, 65th Leg., p. 507, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.12. CEILING PRICES DURING EMERGENCY. If the federal government provides a method by which illicit alcoholic beverages or other property belonging to or forfeited to the state is sold at ceiling prices during a national emergency, the commission may comply with federal law or regulations in the sale or disposal of the beverages or property, even to the extent of partially or wholly abrogating provisions of this code that are inconsistent with the federal law or regulations.

Acts 1977, 65th Leg., p. 507, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.13. BONDING OF SEIZED VEHICLES PENDING SUIT. Any person with an ownership or a security interest in a vehicle that has been seized under Section 103.03 may recover possession of the vehicle pending suit for forfeiture by executing a bond with surety equal to double the appraised value of the vehicle. The bond shall be approved by the officer who made the seizure and shall secure the return of the vehicle to the custody of the seizing officer on the day of trial of the forfeiture suit.

Acts 1977, 65th Leg., p. 507, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.14. INSTITUTION OF SUIT FOR FORFEITURE. (a) The attorney general or the county or district attorney in the county in which a seizure is made shall institute a suit for forfeiture of the property or the proceeds in escrow from any sale of illicit beverages, or both, when notified by the commission or by the seizing officer that a seizure has been made under Section 103.03 of this code.

(b) The forfeiture suit shall be brought in the name of the State of Texas against the property or the proceeds in escrow, or both, and shall be brought in a court of competent jurisdiction in the county in which the seizure was made.

Acts 1977, 65th Leg., p. 508, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.15. NOTICE OF FORFEITURE SUIT. (a) Notice of the pendency of a suit for forfeiture under this chapter shall be served in the manner prescribed by law on any person in possession of the

property at the time of seizure.

(b) If no person was in possession at the time of seizure or if the location of anyone who was in possession is unknown, notice of the suit shall be posted for 20 consecutive days immediately preceding the date of the suit at the courthouse door in the county in which the seizure was made.

Acts 1977, 65th Leg., p. 508, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.16. FORFEITURE OF A SEIZED VEHICLE. (a) In a suit for forfeiture of a vehicle seized under Section 103.03 of this code, the state shall have the burden of proving that the vehicle was used to transport an illicit beverage and that all intervenors under Subsection (b) of this section, if any, knowingly violated some provision of this code.

(b) Any person with an ownership or security interest in the vehicle may intervene in the suit for forfeiture to establish his rights. An intervenor under the provisions of this section has the burden of proving that he has a valid ownership or security interest in the vehicle.

(c) If the state fails to prove that the vehicle was used to transport an illicit beverage, the court shall render judgment returning the vehicle to the owner.

(d) If the state proves that the vehicle was used to transport an illicit beverage and that all intervenors, if any, knowingly violated some provision of this code, the court shall render judgment forfeiting the vehicle to the state.

(e) If the state proves that the vehicle was used to transport an illicit beverage but fails to prove that any intervenor knowingly violated some provision of this code, the court shall render judgment delivering possession of the vehicle to the innocent intervenor with the highest priority to possession of the vehicle.

Acts 1977, 65th Leg., p. 508, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.17. FORFEITURE OF OTHER SEIZED PROPERTY. (a) In any suit for forfeiture of proceeds in escrow from a sale of illicit beverages or of property other than vehicles, or both, seized under

Section 103.03 of this code, the state shall have the burden of proving that:

- (1) the alcoholic beverages were illicit;
- (2) the equipment is designed to be used on or is used in manufacturing an illicit beverage; or
- (3) the material is to be used in manufacturing an illicit beverage.

(b) If the state fails to prove the facts necessary for forfeiture, the court shall render judgment returning possession of the property or of the proceeds in escrow to the owner or the person in possession at the time of seizure.

(c) If the state proves the facts necessary for forfeiture, the court shall render judgment forfeiting the property or the proceeds in escrow, or both, to the state and ordering disposal in accordance with the provisions of Section 103.20 or Section 103.18(c) of this code.

Acts 1977, 65th Leg., p. 508, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.18. INTERVENTION BY SECURED CREDITORS. (a) In any suit for forfeiture of proceeds in escrow from any sale of illicit beverages or of property other than vehicles, or both, seized under Section 103.03 of this code, any person who has a security interest in any of the seized property may intervene to establish his rights.

(b) An intervenor under the provisions of this section shall have the burden of proving that he has a valid security interest in the property and that he had no knowledge that the property in which he has a security interest had been used or was to be used in violation of this code at the time the security interest was created.

(c) If an intervenor under this section establishes a security interest and a lack of knowledge of unlawful use of the property, the court, in the judgment forfeiting the property, shall issue an order of sale directed to the sheriff or any constable of the county in which the property was seized. The order shall command the sheriff or constable to conduct a sale at the courthouse door of all or part of the property, whichever the court considers proper, in the same manner as personal property is sold under



execution.

(d) The proceeds of a sale under Subsection (c) of this section shall be applied first to the payment of the costs of suit and the expenses incident to the sale. After the costs of suit and expenses of sale have been approved by the court that tried the suit, any remaining proceeds shall be applied toward payment of creditors secured by the property, according to their priorities. After all secured creditors are satisfied, any remaining proceeds shall be paid to the commission to be allocated in accordance with the provisions of Section 103.23 of this code.

(e) If all intervenors under this section fail to establish a valid security interest or lack of knowledge of unlawful use of the property, the court, in the judgment forfeiting the property, shall order disposal of the property in accordance with the provisions of Section 103.20 of this code.

Acts 1977, 65th Leg., p. 509, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.19. TRANSFER OF SECURITY INTERESTS. All security interests in property sold under this chapter shall be transferred to the proceeds of the sale.

Acts 1977, 65th Leg., p. 509, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.20. DISPOSITION OF FORFEITED PROPERTY. (a) The commission may sell property, other than proceeds in escrow, forfeited to the state at a public or private sale in the manner the commission considers best.

(b) If in the opinion of the commission or the administrator the property is needed for the use of the commission, the commission may retain and use the property until it is no longer needed, at which time it shall be sold in accordance with Subsection (a) of this section.

Acts 1977, 65th Leg., p. 509, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.21. BILL OF SALE TO PURCHASER. When executing a sale under this chapter, the commission or the sheriff or constable shall issue a bill of sale to each purchaser of property. The bill of sale shall convey a valid and unimpaired title in the property to

the purchaser.

Acts 1977, 65th Leg., p. 509, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.22. COSTS OF FORFEITURE SUITS. The commission is entitled to recover from the proceeds of a forfeiture sale all costs of a forfeiture suit brought under this chapter, including:

- (1) all usual court costs, including the cost of serving process;
- (2) expenses of the forfeiture sale; and
- (3) reasonable attorney's fees.

Acts 1977, 65th Leg., p. 510, ch. 194, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2005, 79th Leg., Ch. 1182 (S.B. [1255](#)), Sec. 9, eff. June 18, 2005.

Sec. 103.23. ALLOCATION OF PROCEEDS OF SALE. Proceeds from a forfeiture sale and proceeds in escrow which are forfeited to the state in a forfeiture suit shall be disposed of by depositing 35 percent of the proceeds in a separate fund in the state treasury designated as the confiscated liquor fund and depositing 65 percent of the proceeds in the general revenue fund. The confiscated liquor fund may be appropriated to the commission to defray the expenses of accumulating evidence pertaining to violations of this code; assembling, storing, transporting, selling, and accounting for confiscated alcoholic beverages, containers, devices, and property; and any other purposes deemed necessary by the commission in administering and enforcing this code. Any unexpended balance in the confiscated liquor fund at the end of a biennium shall remain in the fund subject to further appropriation for the same purposes.

Acts 1977, 65th Leg., p. 510, ch. 194, Sec. 1, eff. Sept. 1, 1977.