

SHORT TITLE: Intoxicating liquors; requiring alcoholic beverages in open container to be destroyed upon seizure; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 661

By: Roberts of the Senate

and

Hilliard of the House

AS INTRODUCED

An Act relating to intoxicating liquors; amending 37 O.S. 1991, Section 539, which relates to the Alcoholic Beverage Control Act; modifying alcoholic beverages required to be destroyed under certain circumstances; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 37 O.S. 1991, Section 539, is amended to read as follows:

Section 539. A. A search warrant may be issued pursuant to the provisions of Sections 1221 through 1264 of Title 22 of the Oklahoma Statutes, as amended, for the purpose of searching for, seizing, destroying or holding any alcoholic beverages possessed, sold, transported, manufactured, kept, or stored in violation of the Oklahoma Alcoholic Beverage Control Act; for the purpose of searching for and seizing any apparatus, vehicle, equipment, or instrumentality used for, or intended for use in, manufacturing or transporting any alcoholic beverage in violation of the Oklahoma Alcoholic Beverage Control Act; and all such property shall be forfeited to the State of Oklahoma. This section shall not be construed to require a search warrant for duly authorized agents of the Alcoholic Beverage Laws Enforcement Commission to enter upon and inspect any licensed premises, but such right of entry and

inspection shall be a condition on which every license shall be issued and the application for, and acceptance of, any license hereunder shall conclusively be deemed to be consent of the applicant and licensee to such entry and inspection.

B. Any alcoholic beverages upon which the appropriate federal excise tax has not been paid, and any alcoholic beverages upon which the appropriate federal excise tax has been paid and which were in a container which had been opened or the seal of which had been broken, at the time of seizure under this section shall be destroyed by the sheriff who seized the same or to whom the same has been delivered in accordance with the provisions of Section 1261 of Title 22 of the Oklahoma Statutes, ~~as amended,~~ after the same is no longer needed as evidence in any criminal prosecution. All other property, including alcoholic beverages ~~upon which the appropriate federal excise tax has been paid~~ other than those specified above, seized under this section shall be forfeited to the State of Oklahoma by order of the court issuing the process by virtue of which such property was seized, or before which the persons violating the law, or to which such property was taken by the officer or officers making the seizure. Said court shall, without a jury, order an immediate hearing as to whether the property so seized was subject to seizure under this section, and take such legal evidence as is offered, and determine the same as in civil cases. If the court finds from a preponderance of the evidence that the property so seized was subject to seizure under this section, it shall render judgment accordingly and order said property forfeited to the State of Oklahoma unless seized by county or municipal law enforcement officers in which case said property shall be forfeited to the county or municipality, whichever is appropriate, in which the seizure of the property took place. Such seized property shall be sold by the officer having the same in charge, after giving ten (10) days' notice by one publication in a legal newspaper of the county

or, if no legal newspaper is published in said county, after five notices of such sale have been posted in conspicuous places in the city or town wherein such sale is to be made, at least ten (10) days before such sale. Appeal from such an order may be taken as in civil cases. When such property is sold under the provisions of this section, the proceeds thereof shall be distributed as follows: First, to the payment of the costs of the case in which the order of forfeiture was made and the actual expenses of preserving the property; and second, the remainder shall be deposited with the county or municipal treasurer of the county or municipality in which the seizure took place if the property was seized by county or municipal law enforcement officials or with the State Treasurer to the credit of the General Revenue Fund of the State of Oklahoma in all other cases.

SECTION 2. This act shall become effective September 1, 1994.

44-2-1777

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