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### Amending Sections 75-2-33, Colorado Revised Statutes 1953, and Providing for the Sale of Seized Illegal Liquor.

Colorado General Assembly

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## CHAPTER 169

## INTOXICATING LIQUORS

## LIQUOR CODE OF 1935

(Senate Bill No. 62. By Senators Oliver and Donnelly; also Representatives Kane and Kelley.)

## A N A C T

AMENDING SECTIONS 75-2-33, COLORADO REVISED STATUTES 1953, AND PROVIDING FOR THE SALE OF SEIZED ILLEGAL LIQUOR.

*Be It Enacted by the General Assembly of the State of Colorado:*

Section 1. 75-2-33, Colorado Revised Statutes 1953, is hereby amended to read:

**75-2-33.—Return on warrant — sale of liquor siezed.**

—(1) If any alcoholic liquors are there found, said officer shall seize the same and the vessels in which they are contained and all implements and furniture used or kept in connection with such liquors in the illegal selling, bartering, exchanging, giving away, or carrying of same, and any wagon, automobile, truck, vehicle, contrivance, thing, or device used in conveying same, and safely keep them and make immediate return on such warrant. Such property shall not be taken from the custody of any officer seizing or holding the same by writ of replevin or other process, while the proceedings relating thereto are pending.

(2) Final judgment of conviction in such proceedings shall be a bar to any and all suit for the recovery of any such property so seized or the value of same, or for damages alleged to arise by reason of such seizure and detention. The judgment entered shall find said liquor to be unlawful and shall direct its destruction ~~OR forthwith~~ **SALE FORTHWITH, IN THE MANNER PRO-**

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

VIDED BY SUBSECTION (7) OF THIS SECTION. The wagon, automobile, truck, vehicle, contrivance, thing or device, vessels, implements, and furniture, shall likewise be ordered disposed of IN THE SAME MANNER as personal property is sold under execution, and the proceeds therefrom applied, first in the payment of the cost of the prosecution and of any fine imposed, and the balance, if any, paid into the general school fund of the county in which such conviction is had.

(3) The officer serving the warrant shall forthwith file a ~~complaint~~ PROCEED IN THE MANNER REQUIRED FOR THE INSTITUTION OF A CRIMINAL ACTION in the court issuing ~~same~~ THE WARRANT, charging such violation of law as the evidence in the case justifies. If such officer refuses or neglects to file ~~such complaint~~, SO PROCEED, then the person filing the affidavit for the search warrant, or any other person, may file ~~such complaint~~ SO PROCEED.

(4) If, DURING THE TRIAL OF A PERSON CHARGED WITH A VIOLATION OF THIS ARTICLE, THE EVIDENCE PRESENTED DISCLOSES THAT fluids are WERE poured out, or otherwise destroyed, manifestly for the purpose of preventing seizure, said fluids shall be held to be prima facie alcoholic liquors and intended for unlawful use, sale, barter, exchange, or gift.

(5) If no person is in possession of the premises where ~~such~~ ILLEGAL ALCOHOLIC liquors are found, the officer seizing such liquors shall post in a conspicuous place on said premises a copy of his warrant, and if at the time fixed for ~~said~~ ANY hearing CONCERNING THE LIQUORS SEIZED, or within thirty days thereafter, no person appears, ~~said justice of the peace, or~~ THE court IN WHICH THE HEARING WAS TO BE HELD shall order such liquors destroyed OR SOLD IN THE MANNER PROVIDED IN SUBSECTION (7) OF THIS SECTION.

(6) No warrant issued pursuant to this article shall authorize the search of any place where a person may lawfully keep alcoholic liquors as provided in this article. No warrant shall be issued to search a home occupied as such, as in this section provided, unless it or some part of it, is used in connection with or as a store, shop, hotel, boarding house, rooming house, or place of public resort.

(7) ANY SALE OF ALCOHOLIC LIQUORS CONDUCTED UPON ORDER OF COURT PURSUANT TO THIS SECTION SHALL BE CONDUCTED IN THE FOLLOWING MANNER:

(a) THE OFFICER ORDERED BY THE COURT TO CONDUCT THE SALE SHALL GIVE NOTICE OF THE TIME AND PLACE OF THE SALE BY POSTING A NOTICE IN A PROMINENT PLACE IN THE COUNTY FOR A PERIOD OF FIVE CONSECUTIVE DAYS PRIOR TO THE DAY OF THE SALE. THE NOTICE SHALL DESCRIBE AS FULLY AS POSSIBLE THE PROPERTY TO BE SOLD AND SHALL STATE THE TIME AND PLACE OF THE SALE.

(b) THE SALE SHALL BE CONDUCTED AS A PUBLIC AUCTION IN SOME SUITABLE PUBLIC PLACE, ON THE SPECIFIED DAY, AT SOME TIME BETWEEN THE HOURS OF NINE A.M. AND FIVE P.M., AND THE TIME CHOSEN FOR THE SALE SHALL BE INDICATED IN THE NOTICE.

Section 3.—**Safety clause.**—The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 16, 1963.