



# SEIZURE OF PROPERTY

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Enforcement Division

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## POLICY STATEMENT

The Texas Alcoholic Beverage Commission (TABC) will conduct inspections and investigations to ensure that permittees, licensees, and members of the public are conforming to the Alcoholic Beverage Code, Commission Rules, and other applicable laws. During those operations, certified peace officers (CPOs) may seize, retain, and dispose of evidence and other seized property when necessary for the purpose of collecting evidence or protecting the property.

## POLICY PURPOSE

The purpose of this policy is to explain the requirements and procedures for the seizure of property.

## CODES REFERENCES

**Texas Code of Criminal Procedure, Chapter 59 Forfeiture of Contraband**

**Texas Code of Criminal Procedure, Chapter 18 Search Warrant**

**Alcoholic Beverage Code § 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.

**Alcoholic Beverage Code § 103.05. Report of Seizure.**

- (a) A peace officer that makes a seizure under § 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 that makes a false report of the property seized commits a felony punishable by confinement in the penitentiary 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 both. The commission shall insure that the reports are made by peace officers.

### **Alcoholic Beverage Code § 103.06. Beverage Delivered to Commission.**

Any alcoholic beverage, its container, and its packaging which has been seized by a peace officer, as provided in § 103.03 of this code, may not be replevied and shall be delivered to the commission for immediate public or private sale in the manner the commission considers best.

### **Alcoholic Beverage Code § 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 § 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.

## **PROCEDURES**

1. **The Basis for the Seizure.** A seizure is considered valid if one of the following events occur.
  - a. A valid search warrant has been issued.
  - b. A CPO confiscates alcoholic beverages and related property pursuant to § 103.03 of the Alcoholic Beverage Code.
  - c. “Application of the “Plain View Doctrine” occurs. There are two requirements for a plain view seizure:
    - the CPO is in a public place or has the right to be in the place where the evidence is seen; and
    - it must be immediately apparent to the CPO that the item seen relates to a crime or contraband.
  - d. “Application of the Abandoned Property Exception” occurs.
    - When a person abandons property, then the person gives up his or her expectation of privacy with regard to the property.

- A CPO will only consider property to be abandoned when:
  - (1) the person clearly intended to abandon the property; and
  - (2) the person's decision to abandon the property was not made because of a CPO's misconduct including improper stops, stops made without reasonable suspicion, or any violation of search or seizure laws.
- e. A CPO seizes proceeds from the listed offenses and/or instruments used in furtherance of listed offense pursuant to Chap. 59 Texas Code of Criminal Procedure (Forfeiture of Contraband).

## 2. Executing the Seizure.

- a. Upon determining that seizure of that property is appropriate, the CPO will locate the owner or current possessor of the property, if possible. The CPO will identify himself or herself to the person and will identify the property that he or she intends to seize (or has seized) and will explain to the person the reason for the seizure. If the owner cannot be located, a statement should be entered to document this fact.
- b. The CPO will complete a *Seized Property Report*. The CPO will give a copy of the report to the owner or current possessor of the seized property, if possible.
- c. A CPO may immediately destroy seized alcoholic beverages rather than deliver them to the property officer if:
  - the CPO determines that the seized alcoholic beverages are unfit for public consumption or are of illicit manufacture;
  - the local prosecutor does not require the illicit beverages for evidentiary purposes; and
  - a sergeant or supervisor approves the destruction.
- d. On search warrant operations and other "single site" operations involving initiation of an Operations Plan (1.07.00), the person discovering evidence or property requiring seizure will notify the designated property custodian for that site, and only the designated property custodian for that site will document and physically seize any items of property/evidence from their initial point of discovery. This designated property/evidence custodian will execute all applicable notifications, and make disposition as prescribed by this policy.

## 3. Storing the Property and Documenting Chain of Custody.

- a. Possessors of seized property must document the chain of custody of that property. TABC employees will take special care to secure seized property and document the chain of custody.
- b. At or before the end of the shift during which the CPO seizes the property, he or she will put the property in the property room, ensuring that the room is securely locked. If the CPO's office does not have a property room, he or she will put the property in another secure, locked area with controlled access.

- c. The CPO will document the transfer of custody of the property from the CPO to the property officer at the next reasonable opportunity:
- A CPO stationed in an office that employs a property officer will transfer custody to the property officer during the next shift at which both the CPO and the property officer are present.
  - A CPO stationed in an office that does not employ a property officer will deliver the property to the appropriate property officer at the next reasonable opportunity.
- d. The property officer will retain the property and sell or destroy the property according to procedures in the Compliance Policy and Procedures Manual. Any CPO that fulfills the duties of the property officer will do so according to the policies and procedures in the Compliance Policy and Procedures Manual.

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**FORMS**

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*Seized Property Report*

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**RELATED DOCUMENTS**

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*Compliance Policy and Procedures Manual*

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