

IC 7.1-2-5

Chapter 5. Remedies: Searches, Seizures, Property Rights, Evidence, and Judicial Sales

IC 7.1-2-5-1

Issuance of warrant

Sec. 1. A judge of any court may issue a warrant to search a house or other place for alcohol, an alcoholic liquid or substance, a still, a distilling apparatus, a tobacco product, or another article that is being possessed, kept, sold, bartered, given away, used, or transported in violation of this title.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.1-1990, SEC.87; P.L.94-2008, SEC.8.

IC 7.1-2-5-2

Service of warrant

Sec. 2. Service of Warrant. The warrant shall be directed to the officer, agent, or employee of the commission who filed the affidavit for the warrant and otherwise it shall be directed to any officer who has the power to serve criminal process. The warrant shall be served by the person to whom it was issued in the daytime or nighttime and the return made within twenty (20) days from the date of issue.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-5-3

Seizures

Sec. 3. Seizures. The officer who serves the warrant shall seize any article described in the warrant and any other article that he may find during the search that is used in the violation of a provision of this title and hold them pending the disposition as may be ordered by the court in which a prosecution may be instituted for the violation of a provision of this title.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-5-4

Disposition of articles pending judgment

Sec. 4. An alcoholic beverage or a tobacco product seized pursuant to this chapter and any other article which may be found on the searched premises and taken under the warrant shall not be taken from the custody of the person who served the warrant by a writ of replevin or other process while the proceedings provided in this chapter are pending. A final judgment of conviction in that proceeding shall be a bar in all cases to an action for recovery of the thing seized or the value of it or damages alleged to have arisen by reason of the seizing and detention of it.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.94-2008, SEC.9.

IC 7.1-2-5-5

Property rights limited

Sec. 5. All rights of any kind in an alcoholic beverage or a tobacco product of any type, or in a container for an alcoholic beverage, or in an article, apparatus, package, fixture or utensil in which an alcoholic beverage or a tobacco product may be placed, or which is used in connection with it, or a vehicle or conveyance in which an alcoholic beverage or a tobacco product is being transported or which is used for the transportation of an alcoholic beverage or a tobacco product, shall at all times and under all circumstances by whomsoever held, owned, or possessed, be deemed qualified by the right of the state, the commission, and the chairman, to administer, execute and enforce the provisions of this title.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.94-2008, SEC.10.

IC 7.1-2-5-6

Certain property rights prohibited

Sec. 6. A person shall have no property right of any kind in alcohol, an alcoholic beverage, a malt article, or a tobacco product had, kept, transported, or possessed contrary to law, or in or to a receptacle or container of any kind in which these liquids and articles may be found, or in an unlawful or prohibited receptacle or container, or in a receptacle or container which does not conform to or which is being used contrary to or which is not kept in conformity to a rule or regulation of the commission, or which is being used to contain an alcoholic beverage or tobacco product upon which a tax is due and unpaid, or an adulterated or misbranded alcoholic beverage, or which is being used in an unlawful practice, or a practice contrary to a rule or regulation of the commission.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.94-2008, SEC.11.

IC 7.1-2-5-7

Illegal transportation; property rights limited

Sec. 7. A person who is interested in illegal transportation, or who has knowledge of it, shall have no right, title, or interest in or to a conveyance of any kind used for the illegal transportation of alcohol, alcoholic beverages, malt articles, or a tobacco product.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.94-2008, SEC.12.

IC 7.1-2-5-8

Forfeiture to state

Sec. 8. An officer who makes an arrest for a violation of the provisions of this title shall seize the evidence of the commission of that violation, including any vehicle, automobile, boat, air or water craft, or other conveyance in which alcohol, alcoholic beverages, malt articles, or tobacco products are kept, possessed, or transported

contrary to law, or contrary to a rule or regulation of the commission. The articles and vehicles mentioned in this section and in sections 5 through 7 of this chapter are hereby declared forfeited to the state and shall be seized.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.3-2008, SEC.68; P.L.94-2008, SEC.13.

IC 7.1-2-5-9

Opinion evidence

Sec. 9. Opinion Evidence. Testimony concerning the appearance, taste or odor of a beverage or liquid shall be received in evidence in a criminal prosecution under this title, or in a proceeding before the commission or a local board. A witness, either lay or expert, may testify as to his opinion that a beverage or liquid which he has tasted, seen, smelled, or otherwise examined is a particular type of alcoholic beverage.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-5-10

Repealed

(Repealed by P.L.63-1990, SEC.1.)

IC 7.1-2-5-11

Evidence of misbranding

Sec. 11. Evidence of Misbranding. An unbroken bottle which contains, or has contained, liquor or wine and which bears a brand, label, trade-mark, name or other device, marking, inscription, or a reference to quality, nature, character, origin, or manufacturer of the alcoholic beverage contents of that bottle, that has been altered, defaced, restored, or upon which the tax stamp of the federal government has been forged, counterfeited, restored, or reused, or which brand, label, trade-mark, name or other device, marking or inscription does not truly describe the contents or former contents shall be received in evidence in a court as prima facie proof that the person chargeable with the possession of it either is, or was, or both, maintaining a public nuisance and either is, or was, or both, keeping and possessing misbranded or adulterated alcoholic beverages.

(Formerly: Acts 1973, P.L.55, SEC.1; Acts 1973, P.L.56, SEC.4.)

IC 7.1-2-5-12

Oral evidence

Sec. 12. The court shall receive oral testimony also upon a matter referred to in section 11 of this chapter for the purpose of showing a violation of this title whether the bottle is offered in evidence or not. *(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.1-2009, SEC.62.*

IC 7.1-2-5-13

Destroyed evidence

Sec. 13. Destroyed Evidence. If a fluid is poured out or otherwise destroyed or carried away by the tenant or other person when a premises is being searched, the fluid shall be held to be, prima facie, an alcoholic beverage held or possessed contrary to this title and intended for unlawful possession and sale. Proof of the possession of an empty bottle, keg, case and vessel that has contained a destroyed alcoholic beverage shall be admitted as evidence of the illegal possession of that alcoholic beverage.
(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-5-14

Sale of property seized from owner

Sec. 14. Sale of Property Seized from Owner. The court, upon conviction of the owner, shall order that personal property of any type seized under this title and which has been found to have been used, kept or possessed in violation of this title shall be sold by the chairman if the property has commercial value and may be purchased and used legally. The court shall order the chairman, or the sheriff, to destroy the property if it has no commercial value or cannot be purchased and used legally. However, the court shall enter its order of sale or destruction only after an opportunity has been given to the owner for a hearing concerning the proposed order.
(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-5-15

Sale of property seized from non-owner

Sec. 15. Sale of Property Seized from Non-Owner. The court, upon the conviction of a person other than the owner, found in charge or possession of personal property seized under this title, or upon written petition of the chairman if no person is found in charge of or in possession of the seized property, and if the court, upon hearing, finds that any of the personal property was used, kept, or possessed in violation of this title, with the knowledge of the owner, shall order the property disposed of as provided in IC 1971, 7.1-2-5-14. However, the court shall enter its order of sale or destruction only after an opportunity for a hearing has been given by not less than ten (10) days' notice to the owner, if he is known, or if he is not known, then by notice of the seizure of the property, with a description of it, by publication one (1) time in a newspaper of general circulation published in the county seat of the county of the court having jurisdiction. If there is no newspaper published in the county seat, the notice shall be published in a newspaper of a general circulation in the county. Notice published in a newspaper shall be given not less than ten (10) days prior to the time fixed for the hearing.
(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-5-16

Rights of lien holders

Sec. 16. Rights of Lien Holders. A lien holder, by intervention at

a hearing as provided in IC 1971, 7.1-2-5-14, or 7.1-2-5-15, or in another proceeding brought for that purpose, at any time before the sale of property ordered sold, may have his lien determined and his priority fixed. Liens determined under this section shall be transferred to and attached to the proceeds of the sale of the property.

(Formerly: Acts 1973, P.L.55, SEC.1.)

IC 7.1-2-5-17

Conduct of sale

Sec. 17. Property ordered sold by a court under the provisions of section 14 or 15 of this chapter shall be sold by the chairman at public auction in any county in which he may deem it most advantageous to sell the property. The chairman shall give one (1) week's notice of the sale prior to the sale. The notice shall be published in the county seat of the county in which the sale is to be made. Property which has a commercial value and which may be lawfully purchased may be sold to any person. The proceeds of the sale, after deducting necessary costs and charges, including fees for publication, and payment of liens shall be paid to the chairman for deposit under IC 7.1-4-10-3.

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.105-1995, SEC.4.