

No. 239, A.]

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### CHAPTER 417.

AN ACT to repeal and recreate 139.03 (10) and 176.62 (2) and (3) of the statutes, relating to seizure, confiscation and disposition of fermented malt beverages, intoxicating liquors and property used in connection therewith.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 139.03 (10) of the statutes is repealed and recreated to read:

139.03 (10) Whenever the department of taxation or any sheriff, policeman, marshal or constable, within his respective jurisdiction, shall discover any fermented malt beverages in or upon any premises other than the premises of a brewer, bottler or sales company, or any intoxicating liquor in or upon any premises other than the premises of a manufacturer, rectifier, winery or wholesaler, and upon which the tax has not been paid or which was possessed, kept, stored, manufactured, sold, distributed or transported in violation of the provisions of this chapter and chapters 66 and 176, the department of taxation or any such officer may forthwith seize and take possession of said fermented malt beverages or intoxicating liquors. Any such fermented malt beverages or intoxicating liquors so seized shall be held by the department of taxation and disposed of through the director of purchases in the manner provided in section 176.62.

SECTION 2. 176.62 (2) and (3) of the statutes are repealed and recreated to read:

176.62 (2) (a) The court, upon the conviction of any person for owning, possessing, keeping, storing, manufacturing, selling, distributing or transporting intoxicating liquor or fermented malt beverages in violation of this chapter or chapter 66 or chapter 139, shall order any part or all of such intoxicating liquor, fermented malt beverages or personal property used in connection therewith, which was seized in connection with such violation, to be destroyed if for any reason it is unfit for sale. Such intoxicating liquor and fermented malt beverages and other chattels as are fit for sale shall be turned over to the department of taxation for disposition. The person seizing the same shall exercise reasonable diligence to ascertain the name and address of the owner of said property and of all persons holding a chattel mortgage or conditional sales contract secured by all or part of said property, and he shall make a written report in respect thereto to the department of taxation. Upon receipt of such confiscated property, the department of taxation shall also exercise reasonable diligence to ascertain the names and addresses of any such owners and lienholders, and if a motor vehicle is confiscated, the department of taxation shall obtain the written advice of the motor vehicle department as to the ownership of and liens outstanding against said motor vehicle.

(b) From time to time the department of taxation shall submit to the director of purchases an inventory of such intoxicating liquors and fermented malt beverages in its possession, such inventory showing kinds, quantities, brands and container sizes and taxes due thereon. Upon receipt of such inventory, the director of purchases shall advertise in the official state paper for sealed bids on such inventory from licensees and permittees under this chapter or chapters 139 or 66 and may sell same to the highest bidder, provided such bidder is a licensee or permittee. Any items or groups of items in such inventory subject to a lien or liens established, by intervention or otherwise, in the proceedings for conviction as being bona fide and as having been created without the lienor having notice that such items were being used or were to be used in connection with such violation, shall be sold separately. The net proceeds from any such sale, less all costs of seizure, storage and sale shall be turned over to the state treasurer and credited to the common school fund.

(c) Any personal property, other than intoxicating liquor or fermented malt beverages, seized pursuant to subsection (1) and fit for sale, shall be turned over to the department of taxation for disposition and shall be disposed of by the director of purchases at public auction to the highest bidder at a time and place stated in a notice of sale which shall describe the property to be sold and be subscribed by the director of purchases in his official position. The place of sale shall be in a conveniently accessible place in the county where the property was taken. A copy of the notice shall be published once each week for 2 successive weeks before the time of sale in the official state newspaper and in a newspaper having general circulation in the area where the property is to be sold and shall be posted in a conspicuous place in the court house or on the court house grounds in such county at least 10 days before the sale. The department of taxation shall serve a copy of the notice of sale at least 2 weeks before the date thereof on all persons who are or may be owners or holders of lien contracts on all or part of the property, according to information received by the department of taxation. Any confiscated chattel worth in

excess of \$100 shall be sold separately, and the balance of the confiscated chattels shall be sold in bulk or piecemeal in the discretion of the director of purchases. The net proceeds from such sale less all costs of seizure, storage and sale shall be turned over to the state treasurer. No motor vehicle or motor boat confiscated pursuant to this section shall be sold within a period of 30 days after date of seizure.

(3) (a) Prior to sale, the owner of any confiscated property may apply to any court of record in the county where the property was seized, for an order restoring said property to such owner; and such owner may apply to such court, after sale, for a refund of the amount realized on the sale of the property of such owner; and any holder of a chattel mortgage or a conditional sales contract secured by any part or all of said property may apply to such court for a refund of the sum realized on the sale of property subject to any such lien, but not in excess of the amount due on such lien contract.

(b) Such application shall be made within one year after the sale of the property. A copy of the application and the order of hearing thereof shall be served on the department of taxation at least 20 days before the date set for hearing.

(c) Relief shall be granted only after a showing by the applicant that he is the true owner or holder of a bona fide lien contract on all or part of the property seized, and that the violation which led to the confiscation was not with his knowledge, consent or connivance, and that he had no reasonable grounds to believe or suspect that such property would be used in such a violation; and as to these matters the burden of proof shall be on the applicant.

(d) Whether or not the applicant shall pay the costs of the seizure and sale as a condition to obtaining relief, and the matter of allowing costs and disbursements shall rest in the discretion of the court. All property seized and the proceeds thereof after sale shall be subject to the order of the court.

Approved June 26, 1951.

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