

4373

2011-2012 Regular Sessions

I N S E N A T E

March 31, 2011

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to the seizure and forfeiture of vehicles, vessels and aircraft used in counterfeit goods

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Title J of part 3 of the penal law is amended by adding a
2 new article 166 to read as follows:

3 ARTICLE 166

4 SEIZURE AND FORFEITURE OF VEHICLES, VESSELS AND
5 AIRCRAFT USED IN COUNTERFEIT GOODS

6 SECTION 166.00 SEIZURE AND FORFEITURE OF VEHICLES, VESSELS AND AIRCRAFT
7 USED IN COUNTERFEIT GOODS.

8 S 166.00 SEIZURE AND FORFEITURE OF VEHICLES, VESSELS AND AIRCRAFT USED
9 IN COUNTERFEIT GOODS.

10 1. ANY VEHICLE, VESSEL OR AIRCRAFT WHICH HAS BEEN OR IS BEING USED IN
11 VIOLATION OF SECTION 165.71, 165.72, OR 165.73 OF THIS TITLE SHALL BE
12 SEIZED BY ANY PEACE OFFICER, WHO IS ACTING PURSUANT TO HIS SPECIAL
13 DUTIES, OR POLICE OFFICER, AND FORFEITED AS PROVIDED IN THIS SECTION.
14 HOWEVER, SUCH FORFEITURE AND SEIZURE PROVISIONS SHALL NOT APPLY TO ANY
15 VEHICLE, VESSEL OR AIRCRAFT USED BY ANY PERSON AS A COMMON CARRIER IN
16 THE TRANSACTION OF BUSINESS AS SUCH COMMON CARRIER.

17 2. THE SEIZED PROPERTY SHALL BE DELIVERED BY THE POLICE OFFICER OR
18 PEACE OFFICER HAVING MADE THE SEIZURE TO THE CUSTODY OF THE DISTRICT
19 ATTORNEY OF THE COUNTY WHEREIN THE SEIZURE WAS MADE, TOGETHER WITH A
20 REPORT OF ALL THE FACTS AND CIRCUMSTANCES OF THE SEIZURE.

21 3. IT SHALL BE THE DUTY OF THE DISTRICT ATTORNEY OF THE COUNTY WHEREIN
22 THE SEIZURE IS MADE, TO INQUIRE INTO THE FACTS OF THE SEIZURE SO
23 REPORTED TO HIM AND IF IT APPEARS PROBABLE THAT A FORFEITURE HAS BEEN
24 INCURRED BY REASON OF A VIOLATION OF SECTION 165.71, 165.72, OR 165.73
25 OF THIS TITLE, FOR THE DETERMINATION OF WHICH THE INSTITUTION OF

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 PROCEEDINGS IN THE SUPREME COURT IS NECESSARY, TO CAUSE THE PROPER
2 PROCEEDINGS TO BE COMMENCED AND PROSECUTED, AT ANY TIME AFTER THIRTY
3 DAYS FROM THE DATE OF THE SEIZURE, TO DECLARE SUCH FORFEITURE, UNLESS,
4 UPON INQUIRY AND EXAMINATION, SUCH DISTRICT ATTORNEY OR CORPORATION
5 COUNSEL DECIDES THAT SUCH PROCEEDINGS CAN NOT PROBABLY BE SUSTAINED OR
6 THAT THE ENDS OF PUBLIC JUSTICE DO NOT REQUIRE THAT THEY SHOULD BE
7 INSTITUTED OR PROSECUTED, IN WHICH CASE, THE DISTRICT ATTORNEY OR CORPO-
8 RATION COUNSEL SHALL CAUSE SUCH SEIZED PROPERTY TO BE RETURNED TO THE
9 OWNER THEREOF.

10 4. NOTICE OF THE INSTITUTION OF THE FORFEITURE PROCEEDING SHALL BE
11 SERVED EITHER (A) PERSONALLY ON THE OWNERS OF THE SEIZED PROPERTY, OR
12 (B) BY REGISTERED MAIL TO THE OWNERS' LAST KNOWN ADDRESS AND BY PUBLICA-
13 TION OF THE NOTICE ONCE A WEEK FOR TWO SUCCESSIVE WEEKS IN A NEWSPAPER
14 PUBLISHED OR CIRCULATED IN THE COUNTY WHEREIN THE SEIZURE WAS MADE.

15 5. FORFEITURE SHALL NOT BE ADJUDGED WHERE THE OWNERS ESTABLISH BY
16 PREPONDERANCE OF THE EVIDENCE THAT (A) THE USE OF SUCH SEIZED PROPERTY,
17 IN VIOLATION OF SECTION 165.71, 165.72, OR 165.73 OF THIS TITLE, WAS NOT
18 INTENTIONAL ON THE PART OF ANY OWNER, OR (B) SUCH SEIZED PROPERTY WAS
19 USED IN VIOLATION OF SECTION 165.71, 165.72, OR 165.73 OF THIS TITLE, BY
20 ANY PERSON OTHER THAN AN OWNER THEREOF, WHILE SUCH SEIZED PROPERTY WAS
21 UNLAWFULLY IN THE POSSESSION OF A PERSON WHO ACQUIRED POSSESSION THEREOF
22 IN VIOLATION OF THE CRIMINAL LAWS OF THE UNITED STATES, OR OF ANY STATE.

23 6. THE DISTRICT ATTORNEY OR THE POLICE DEPARTMENT HAVING CUSTODY OF
24 THE SEIZED PROPERTY, AFTER SUCH JUDICIAL DETERMINATION OF FORFEITURE,
25 SHALL, AT THEIR DISCRETION, EITHER RETAIN SUCH SEIZED PROPERTY FOR THE
26 OFFICIAL USE OF THEIR OFFICE OR DEPARTMENT, OR, BY A PUBLIC NOTICE OF AT
27 LEAST FIVE DAYS, SELL SUCH FORFEITED PROPERTY AT PUBLIC SALE. THE NET
28 PROCEEDS OF ANY SUCH SALE, AFTER DEDUCTION OF THE LAWFUL EXPENSES
29 INCURRED, SHALL BE PAID INTO THE GENERAL FUND OF THE COUNTY WHEREIN THE
30 SEIZURE WAS MADE.

31 7. WHENEVER ANY PERSON INTERESTED IN ANY PROPERTY WHICH IS SEIZED AND
32 DECLARED FORFEITED UNDER THE PROVISIONS OF THIS SECTION FILES WITH A
33 JUSTICE OF THE SUPREME COURT A PETITION FOR THE RECOVERY OF SUCH
34 FORFEITED PROPERTY, THE JUSTICE OF THE SUPREME COURT MAY RESTORE SUCH
35 FORFEITED PROPERTY UPON SUCH TERMS AND CONDITIONS AS HE DEEMS REASONABLE
36 AND JUST, IF THE PETITIONER ESTABLISHES EITHER OF THE AFFIRMATIVE
37 DEFENSES SET FORTH IN SUBDIVISION FIVE OF THIS SECTION AND THAT THE
38 PETITIONER WAS WITHOUT PERSONAL OR ACTUAL KNOWLEDGE OF THE FORFEITURE
39 PROCEEDING. IF THE PETITION IS FILED AFTER THE SALE OF THE FORFEITED
40 PROPERTY, ANY JUDGMENT IN FAVOR OF THE PETITIONER SHALL BE LIMITED TO
41 THE NET PROCEEDS OF SUCH SALE AFTER DEDUCTION OF THE LAWFUL EXPENSES AND
42 COSTS INCURRED BY THE DISTRICT ATTORNEY, POLICE DEPARTMENT OR CORPO-
43 RATION COUNSEL.

44 8. NO SUIT OR ACTION UNDER THIS SECTION FOR WRONGFUL SEIZURE SHALL BE
45 INSTITUTED UNLESS SUCH SUIT OR ACTION IS COMMENCED WITHIN TWO YEARS
46 AFTER THE TIME WHEN THE PROPERTY WAS SEIZED.

47 S 2. This act shall take effect on the first of November next succeed-
48 ing the date on which it shall have become a law.