

5961

2009-2010 Regular Sessions

I N A S S E M B L Y

February 23, 2009

Introduced by M. of A. SCHIMMINGER, PEOPLES, ORTIZ -- Multi-Sponsored by
-- M. of A. ABBATE, AUBRY, DeMONTE, GOTTFRIED, HOOPER, MAGEE, PHEFFER
-- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to the seizure and forfeiture of property or money furnished in the illegal exchange of a controlled substance

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

1 Section 1. Section 3388 of the public health law, as added by chapter
2 878 of the laws of 1972, subdivision 2 as amended by chapter 843 of the
3 laws of 1980, subdivision 3 as amended by chapter 419 of the laws of
4 1986, subdivision 4 as amended by chapter 527 of the laws of 1987 and
5 subdivision 7 as amended by chapter 655 of the laws of 1990, is amended
6 to read as follows:
7 S 3388. Seizure and forfeiture of vehicles, vessels or aircraft
8 unlawfully used to conceal, convey or transport controlled substances
9 AND OF PROPERTY FURNISHED IN EXCHANGE FOR SUCH SUBSTANCES. 1. Except as
10 authorized in this article, it shall be unlawful to:
11 (a) transport, carry, or convey any controlled substance in, upon, or
12 by means of any vehicle, vessel or aircraft; or
13 (b) conceal or possess any controlled substance in or upon any vehi-
14 cle, vessel or aircraft, or upon the person of anyone in or upon any
15 vehicle, vessel or aircraft; or
16 (c) use any vehicle, vessel or aircraft to facilitate the transporta-
17 tion, carriage, conveyance, concealment, receipt, possession, purchase,
18 or sale of any controlled substance[.]; OR
19 (D) POSSESS PROPERTY FURNISHED IN EXCHANGE FOR ANY CONTROLLED
20 SUBSTANCE IN VIOLATION OF THIS ARTICLE.
21 2. (A) Any vehicle, vessel or aircraft which has been or is being
22 used in violation of subdivision one OF THIS SECTION, (except a vehicle,
23 vessel or aircraft used by any person as a common carrier in the trans-

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

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1 action of business as such common carrier) AND PROPERTY, POSSESSED IN
2 VIOLATION OF PARAGRAPH (D) OF SUCH SUBDIVISION, shall be seized by any
3 peace officer, acting pursuant to his OR HER special duties, or police
4 officer, and forfeited as hereinafter in this section provided.

5 (B) A vehicle, vessel or aircraft is not subject to forfeiture unless
6 used in connection with acts or conduct which would constitute a felony
7 under article [220] TWO HUNDRED TWENTY of the penal law.

8 (C) FOR PURPOSES OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION
9 AND THIS SUBDIVISION:

10 (1) THE TERM "PROPERTY" HAS THE ORDINARY, COMMON MEANING ASCRIBED TO
11 IT AND INCLUDES REAL AND PERSONAL PROPERTY, MONEY, NEGOTIABLE AND
12 NON-NEGOTIABLE INSTRUMENTS AND SECURITIES, AND THE BENEFITS AND PROPERTY
13 RESULTING FROM THE USE OR EXCHANGE OF ANY OF THEM.

14 (2) IT SHALL BE A PRESUMPTION (SUBJECT TO REBUTTAL BY THE CLAIMANT)
15 THAT ANY MONEY FOUND IN CLOSE PROXIMITY TO ANY CONTROLLED SUBSTANCE
16 OWNED OR POSSESSED IN VIOLATION OF THIS ARTICLE OR IN CLOSE PROXIMITY TO
17 ANY MATERIALS OR RECORDS USED IN CONNECTION THEREWITH, WAS MONEY
18 FURNISHED IN VIOLATION OF PARAGRAPH (D) OF SUBDIVISION ONE OF THIS
19 SECTION.

20 3. The seized property shall be delivered by the officer having made
21 the seizure to the custody of the district attorney of the county where-
22 in the seizure was made, except that in the cities of New York, Yonkers,
23 Rochester and Buffalo the seized property shall be delivered to the
24 custody of the police department of such cities and such property seized
25 by a member or members of the state police shall be delivered to the
26 custody of the superintendent of state police, together with a report of
27 all the facts and circumstances of the seizure.

28 4. It shall be the duty of the attorney general in seizures by members
29 of the state police, otherwise it shall be the duty of the district
30 attorney of the county wherein the seizure is made, if elsewhere than in
31 the cities of New York, Yonkers, Rochester or Buffalo, and where the
32 seizure is made in such cities it shall be the duty of the corporation
33 counsel of the city, to inquire into the facts of the seizure so
34 reported to him OR HER and if it appears probable that a forfeiture has
35 been incurred by reason of a violation of this section, for the determi-
36 nation of which the institution of proceedings in the supreme court is
37 necessary, to cause the proper proceedings to be commenced and prose-
38 cuted, not later than twenty days after written demand by a person
39 claiming ownership thereof, to declare such forfeiture, unless, upon
40 inquiry and examination, such district attorney, attorney general or
41 corporation counsel decides that such proceedings cannot probably be
42 sustained or that the ends of public justice do not require that they
43 should be instituted or prosecuted, in which case, the district attor-
44 ney, the attorney general or corporation counsel shall cause such seized
45 property to be returned to the owner thereof. The procedure for
46 proceedings instituted under this section shall conform as much as
47 possible to the procedure for attachment.

48 5. Notice of the institution of the forfeiture proceeding shall be
49 served either:

50 (a) personally on the owners of the seized property; or

51 (b) by registered mail to the owners' last known address and by publi-
52 cation of the notice once a week for two successive weeks in a newspaper
53 published or circulated in the county wherein the seizure was made.

54 6. Forfeiture shall not be adjudged where the owners establish by
55 preponderance of the evidence that:

1 (a) the use of such seized property, in violation of subdivision one
2 of this section, was not intentional on the part of any owner; or

3 (b) said seized property was used in violation of subdivision one of
4 this section by any person other than an owner thereof, while such
5 seized property was unlawfully in the possession of a person who
6 acquired possession thereof in violation of the criminal laws of the
7 United States, or of any state.

8 7. The district attorney, the superintendent of state police or the
9 police department having custody of the seized property, after such
10 judicial determination of forfeiture, shall EXCEPT WITH RESPECT TO
11 MONEY, at their discretion, either retain such seized property for the
12 official use of their office, division or department, or, by a public
13 notice of at least five days, sell such forfeited property at public
14 sale; provided, however, that where such property is subject to a
15 perfected lien such property may not be retained for their official use
16 unless all such liens on the property to be retained have been or will
17 be satisfied. The net proceeds of any such sale, after deduction of the
18 lawful expenses incurred, AND ALL SEIZED MONEY shall be paid into the
19 general fund of the county wherein the seizure was made except that the
20 net proceeds of the sale of property AND ALL MONEY seized in the cities
21 of New York, Yonkers, Rochester and Buffalo shall be paid into the
22 respective general funds of such cities, and THE NET PROCEEDS of the
23 sale of property AND ALL MONEY seized by the state police into the
24 general fund of the state.

25 8. Whenever any person interested in any property OR MONEY which is
26 seized and declared forfeited under the provisions of this section files
27 with a justice of the supreme court a petition for the recovery of such
28 forfeited property OR MONEY, the justice of the supreme court may
29 restore said forfeited property OR MONEY upon such terms and conditions
30 as he OR SHE deems reasonable and just, if the petitioner establishes
31 either of the affirmative defenses set forth in subdivision six of this
32 section and that the petitioner was without personal or actual knowledge
33 of the forfeiture proceeding. If the petition be filed after the sale
34 of the forfeited property, any judgment in favor of the petitioner shall
35 be limited to the net proceeds of such sale, after deduction of the
36 lawful expenses and costs incurred by the district attorney, police
37 department or corporation counsel.

38 9. No suit or action under this section for wrongful seizure shall be
39 instituted unless such suit or action is commenced within two years
40 after the time when the property was seized.

41 S 2. This act shall take effect immediately.