S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N S E N A T E

February 25, 2009

Introduced by Sens. PADAVAN, DeFRANCISCO, GRIFFO, LARKIN, MORAHAN -- 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:

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

ARTICLE 166

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

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

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

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

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

3. IT SHALL BE THE DUTY OF THE DISTRICT ATTORNEY OF THE COUNTY WHEREIN THE SEIZURE IS MADE, TO INQUIRE INTO THE FACTS OF THE SEIZURE SO REPORTED TO HIM AND IF IT APPEARS PROBABLE THAT A FORFEITURE HAS BEEN INCURRED BY REASON OF A VIOLATION OF SECTION 165.71, 165.72, OR 165.73

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

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OF THIS TITLE, FOR THE DETERMINATION OF WHICH THE INSTITUTION OF PROCEEDINGS IN THE SUPREME COURT IS NECESSARY, TO CAUSE THE PROPER PROCEEDINGS TO BE COMMENCED AND PROSECUTED, AT ANY TIME AFTER THIRTY DAYS FROM THE DATE OF THE SEIZURE, TO DECLARE SUCH FORFEITURE, UNLESS, UPON INQUIRY AND EXAMINATION, SUCH DISTRICT ATTORNEY OR CORPORATION COUNSEL DECIDES THAT SUCH PROCEEDINGS CAN NOT PROBABLY BE SUSTAINED OR THAT THE ENDS OF PUBLIC JUSTICE DO NOT REQUIRE THAT THEY SHOULD BE INSTITUTED OR PROSECUTED, IN WHICH CASE, THE DISTRICT ATTORNEY OR CORPORATION COUNSEL SHALL CAUSE SUCH SEIZED PROPERTY TO BE RETURNED TO THE OWNER THEREOF.

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

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

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

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

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

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.