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

987

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

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

AN ACT to amend the civil practice law and rules, in relation to civil forfeiture of a motor vehicle in connection with a DWI charge

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

Section 1. Subdivision 4 of section 1310 of the civil practice law and rules, as added by chapter 669 of the laws of 1984, is amended to read as follows:

4. "Instrumentality of a crime" means any property, other than real property and any buildings, fixtures, appurtenances, and improvements thereon, whose use contributes directly and materially to the commission of a crime defined in subdivisions five and six [hereof] OF THIS SECTION, INCLUDING A VEHICLE, WHERE THE DRIVER IS CHARGED WITH A FELONY UNDER SUBDIVISION TWO, THREE OR FOUR OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW.

S 2. The opening paragraph of subdivision 1 of section 1311 of the civil practice law and rules, as amended by chapter 655 of the laws of 1990, is amended to read as follows:

A civil action may be commenced by the appropriate claiming authority against a criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime or the real property instrumentality of a crime or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime. A CIVIL ACTION MUST BE COMMENCED TO RECOVER A VEHICLE WHERE THE DEFENDANT STANDS ACCUSED OF VIOLATING SUBDIVISION TWO, THREE OR FOUR OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW AND THE DEFENDANT HAS BEEN TWICE CONVICTED OF VIOLATING SUBDIVISION TWO, THREE OR FOUR OF SECTION ELEVEN HUNDRED NINETY-TWO OF

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

LBD06791-01-9

THE VEHICLE AND TRAFFIC LAW IN THE PREVIOUS FIVE YEARS. A civil action may be commenced against a non-criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime provided, however, that a judgment of forfeiture predicated upon clause (A) of subparagraph (iv) of paragraph (b) of subdivision three [hereof] OF THIS SECTION shall be limited to the amount of the proceeds of the crime. Any action under this article must be commenced within five years of the commission of the crime and shall be civil, remedial, and in personam in nature and shall not be deemed to be a penalty or criminal forfeiture for any purpose. Except as otherwise specially provided by statute, the proceedings under this article shall be governed by this chapter. An action under this article is not a criminal proceeding and may not be deemed to be a previous prosecution under article forty of the criminal procedure law.

S 3. This act shall take effect immediately.