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I N   A S S E M B L Y

May 25, 2010

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Introduced by M. of A. D. WEPRIN -- read once and referred 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 ASSEM-  
BLY, 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  
26    PROCEEDINGS IN THE SUPREME COURT IS NECESSARY, TO CAUSE THE PROPER  
27    PROCEEDINGS TO BE COMMENCED AND PROSECUTED, AT ANY TIME AFTER THIRTY  
28    DAYS FROM THE DATE OF THE SEIZURE, TO DECLARE SUCH FORFEITURE, UNLESS,

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

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1 UPON INQUIRY AND EXAMINATION, SUCH DISTRICT ATTORNEY OR CORPORATION  
2 COUNSEL DECIDES THAT SUCH PROCEEDINGS CAN NOT PROBABLY BE SUSTAINED OR  
3 THAT THE ENDS OF PUBLIC JUSTICE DO NOT REQUIRE THAT THEY SHOULD BE  
4 INSTITUTED OR PROSECUTED, IN WHICH CASE, THE DISTRICT ATTORNEY OR CORPO-  
5 RATION COUNSEL SHALL CAUSE SUCH SEIZED PROPERTY TO BE RETURNED TO THE  
6 OWNER THEREOF.

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

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

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

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

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

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