

4147

2011-2012 Regular Sessions

I N S E N A T E

March 21, 2011

Introduced by Sens. GRIFFO, GOLDEN -- read twice and ordered printed,
and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in
relation to the storage and destruction of goods and articles relating
to the offenses of trademark counterfeiting and unauthorized
recordings; and to repeal certain provisions of the penal law relating
thereto

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

1 Section 1. Section 60.27 of the penal law is amended by adding a new
2 subdivision 15 to read as follows:
3 15. IF THE OFFENSE OF WHICH A PERSON IS CONVICTED IS DEFINED IN
4 SECTION 165.71, 165.72, 165.73 OR ARTICLE TWO HUNDRED SEVENTY-FIVE OF
5 THIS CHAPTER, AND A LAW ENFORCEMENT AGENCY OR OTHER PUBLIC ENTITY HAS
6 EXPENDED FUNDS FOR THE PURPOSE OF STORING AND/OR DESTROYING GOODS OR
7 ARTICLES SEIZED IN CONNECTION WITH SUCH OFFENSE, THEN NOTWITHSTANDING
8 THE PROVISIONS OF PARAGRAPH (A) OF SUBDIVISION FIVE OF THIS SECTION,
9 SAID AGENCY OR OTHER PUBLIC ENTITY SHALL BE ENTITLED TO RESTITUTION OF
10 THE REASONABLE COST OF SUCH STORAGE AND/OR DESTRUCTION, LESS THE AMOUNT
11 OF ANY FUNDS WHICH HAVE BEEN OR ARE ANTICIPATED TO BE RECOVERED FROM ANY
12 OTHER SOURCE. ANY LAW ENFORCEMENT AGENCY OR OTHER PUBLIC ENTITY SEEKING
13 RESTITUTION PURSUANT TO THIS SUBDIVISION SHALL FILE WITH THE COURT,
14 DISTRICT ATTORNEY AND DEFENSE COUNSEL AN AFFIDAVIT STATING THAT THE
15 COSTS FOR WHICH RESTITUTION IS BEING SOUGHT HAVE NOT BEEN AND ARE NOT
16 ANTICIPATED TO BE RECOVERED FROM ANY OTHER SOURCE OR IN ANY OTHER CIVIL
17 OR CRIMINAL PROCEEDING.
18 S 2. Section 165.70 of the penal law is amended by adding a new subdi-
19 vision 5 to read as follows:
20 5. THE TERM "REPRESENTATIVE SAMPLE" MEANS A MINIMUM OF ONE HUNDRED
21 TWENTY-FIVE PERCENT OF THE AMOUNT OF GOODS THAT IS REQUIRED TO SUBSTAN-
22 TIATE THE HIGHEST DEGREE OF THE OFFENSE THAT MAY BE CHARGED IN THE ACCU-

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

LBD10375-01-1

1 SATORY INSTRUMENT, AS DETERMINED BY THE AGENCY HAVING CUSTODY OF SUCH
2 GOODS.

3 S 3. Section 165.74 of the penal law is REPEALED and a new section
4 165.74 is added to read as follows:

5 S 165.74 SEIZURE AND DESTRUCTION OF GOODS BEARING COUNTERFEIT TRADE-
6 MARKS.

7 1. ANY GOODS MANUFACTURED, SOLD, OFFERED FOR SALE, DISTRIBUTED OR
8 PRODUCED IN VIOLATION OF THIS ARTICLE MAY BE SEIZED BY ANY POLICE OFFI-
9 CER, OR BY ANY PEACE OFFICER ACTING WITHIN HIS OR HER LAWFUL AUTHORITY.

10 2. IF THE DEFENDANT REQUESTS A HEARING AT ARRAIGNMENT PURSUANT TO
11 SUBDIVISION TEN OF SECTION 170.10, SUBDIVISION SEVEN OF SECTION 180.10
12 OR SUBDIVISION FOUR OF SECTION 210.15 OF THE CRIMINAL PROCEDURE LAW, OR
13 IF ANY OTHER PERSON TIMELY REQUESTS SUCH A HEARING PURSUANT TO SUBDIVI-
14 SION FIVE OF THIS SECTION, THE COURT MUST, WITHIN FORTY-EIGHT HOURS
15 AFTER ARRAIGNMENT OF THE DEFENDANT OR WITHIN FORTY-EIGHT HOURS OF A
16 REQUEST FOR A HEARING PURSUANT TO PARAGRAPH (A) OF SUBDIVISION FIVE OF
17 THIS SECTION, WHICHEVER IS LATER, HOLD A HEARING AND DETERMINE WHETHER
18 PROBABLE CAUSE EXISTS TO BELIEVE THAT GOODS SEIZED PURSUANT TO SUBDIVI-
19 SION ONE OF THIS SECTION WERE MANUFACTURED, SOLD, OFFERED FOR SALE,
20 DISTRIBUTED OR PRODUCED IN VIOLATION OF THIS ARTICLE. THE HEARING TO
21 MAKE SUCH DETERMINATION SHALL BE CONCLUDED AND SUCH DETERMINATION SHALL
22 BE MADE WITHIN FORTY-EIGHT HOURS AFTER THE COMMENCEMENT OF THE HEARING,
23 PROVIDED THAT FOR GOOD CAUSE THE COURT MAY EXTEND THE TIME WITHIN WHICH
24 TO HOLD OR CONCLUDE SUCH HEARING.

25 3. (A) IF A HEARING IS REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS
26 SECTION, AND THE COURT, AFTER SUCH HEARING, FINDS THAT NOTICE PURSUANT
27 TO PARAGRAPH (B) OF SUBDIVISION FIVE OF THIS SECTION, IF REQUIRED, HAS
28 BEEN PROVIDED AND THAT PROBABLE CAUSE EXISTS TO BELIEVE THAT SUCH GOODS
29 WERE MANUFACTURED, SOLD, OFFERED FOR SALE, DISTRIBUTED OR PRODUCED IN
30 VIOLATION OF THIS ARTICLE, THE COURT SHALL AUTHORIZE THAT ALL BUT A
31 REPRESENTATIVE SAMPLE OF SUCH GOODS MAY BE DESTROYED BY THE AGENCY
32 HAVING CUSTODY OF THE SEIZED GOODS. NOTWITHSTANDING THE FOREGOING, IF
33 THE COURT FURTHER FINDS THAT A SUBSTANTIAL ISSUE OF FACT HAS BEEN RAISED
34 WHETHER SUCH GOODS WERE MANUFACTURED, SOLD, OFFERED FOR SALE, DISTRIB-
35 UTED, OR PRODUCED IN VIOLATION OF THIS ARTICLE, THE COURT SHALL REQUIRE
36 THAT SUCH GOODS BE RETAINED AS EVIDENCE PENDING THE TRIAL OF THE DEFEND-
37 ANT OR OTHER DISPOSITION OF THE CRIMINAL PROCEEDINGS INVOLVING THE
38 DEFENDANT.

39 (B) IF A HEARING IS NOT REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS
40 SECTION, THE AGENCY HAVING CUSTODY OF SEIZED GOODS MAY DESTROY ALL BUT A
41 REPRESENTATIVE SAMPLE OF SUCH GOODS IN ACCORDANCE WITH THIS SECTION,
42 PROVIDED THAT NOTICE PURSUANT TO PARAGRAPH (B) OF SUBDIVISION FIVE OF
43 THIS SECTION, IF REQUIRED, HAS BEEN PROVIDED AND ANY TIME FOR REQUESTING
44 SUCH HEARING HAS EXPIRED.

45 4. PRIOR TO THE DESTRUCTION OF GOODS IN EXCESS OF A REPRESENTATIVE
46 SAMPLE PURSUANT TO SUBDIVISION THREE OF THIS SECTION, THE AGENCY HAVING
47 CUSTODY OF SEIZED GOODS SHALL PHOTOGRAPH, VIDEOTAPE OR OTHERWISE RECORD
48 SUCH GOODS IN A MANNER THAT REASONABLY PORTRAYS THEIR QUANTITY AND CHAR-
49 ACTER AND IDENTIFIES THE CASE OR ARREST TO WHICH SUCH GOODS RELATE.
50 WHERE THE GOODS SEIZED CONSIST OF ITEMS OF APPAREL OR FOOTWEAR BEARING A
51 COUNTERFEIT TRADEMARK, WITH THE CONSENT OF THE HOLDER OF THE TRADEMARK
52 THE GOODS MAY BE RELEASED BY SUCH AGENCY HAVING CUSTODY OF SEIZED GOODS
53 TO THE HOLDER OF THE TRADEMARK OR A CHARITABLE ORGANIZATION AUTHORIZED
54 TO RECEIVE SUCH GOODS BY THE HOLDER OF THE TRADEMARK RATHER THAN BEING
55 DESTROYED PURSUANT TO THIS SECTION. SUCH AGENCY SHALL NOT BE REQUIRED TO
56 REMOVE THE COUNTERFEIT TRADEMARK OR OTHERWISE ALTER THE GOODS BEFORE

1 RELEASE PURSUANT TO THIS SUBDIVISION. EXCEPT AS PROVIDED IN THIS SUBDI-
2 VISION, DESTRUCTION SHALL NOT INCLUDE AUCTION, SALE OR DISTRIBUTION OF
3 THE GOODS IN THEIR ORIGINAL FORM.

4 5. (A) A PERSON OTHER THAN THE DEFENDANT MAY REQUEST A HEARING IN THE
5 COURT HAVING JURISDICTION OVER A CRIMINAL PROCEEDING RELATING TO THE
6 DEFENDANT TO DETERMINE WHETHER PROBABLE CAUSE EXISTS TO BELIEVE THAT
7 GOODS SEIZED PURSUANT TO SUBDIVISION ONE OF THIS SECTION WERE MANUFAC-
8 TURED, SOLD, OFFERED FOR SALE, DISTRIBUTED, OR PRODUCED IN VIOLATION OF
9 THIS ARTICLE BY (I) CALLING THE TELEPHONE NUMBER, AS PROVIDED IN THE
10 NOTICE REQUIRED BY PARAGRAPH (B) OF THIS SUBDIVISION, DURING REGULAR
11 BUSINESS HOURS WITHIN TWO BUSINESS DAYS OF THE DATE OF SUCH NOTICE OR
12 FIVE CALENDAR DAYS OF THE DATE OF THE NOTICE WHERE NOTICE HAS BEEN
13 PROVIDED BY FIRST CLASS MAIL OR HAS BEEN PROVIDED PURSUANT TO CLAUSE
14 (III) OF SUBPARAGRAPH TWO OF PARAGRAPH (B) OF THIS SUBDIVISION, OR (II)
15 CONTACTING THE DESIGNATED PERSON OR UNIT WITHIN THE OFFICE OF THE
16 DISTRICT ATTORNEY IN THE COUNTY WHERE THE GOODS WERE SEIZED DURING REGU-
17 LAR BUSINESS HOURS WITHIN TWO BUSINESS DAYS OF THE DATE OF THE SEIZURE,
18 OR FIVE CALENDAR DAYS OF SUCH DATE WHERE NOTICE HAS BEEN PROVIDED BY
19 FIRST CLASS MAIL OR PURSUANT TO CLAUSE (III) OF SUCH SUBPARAGRAPH. SUCH
20 PERSON REQUESTING A HEARING SHALL PROVIDE A SWORN STATEMENT AT OR BEFORE
21 THE HEARING DECLARING THAT HE OR SHE HAS A FINANCIAL OR OWNERSHIP INTER-
22 EST IN GOODS THAT ARE THE SUBJECT OF SUCH HEARING.

23 (B) (1) NOTICE REQUIRED PURSUANT TO THIS PARAGRAPH AT A MINIMUM SHALL
24 INDICATE THE FOLLOWING: (I) THAT THE SEIZED GOODS ARE SUBJECT TO
25 DESTRUCTION PURSUANT TO THIS SECTION; (II) THAT ANY PERSON MAY REQUEST A
26 HEARING, AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION, TO DETERMINE
27 WHETHER PROBABLE CAUSE EXISTS TO BELIEVE THAT THE SEIZED GOODS WERE
28 MANUFACTURED, SOLD, OFFERED FOR SALE, DISTRIBUTED OR PRODUCED IN
29 VIOLATION OF THIS ARTICLE; (III) THAT SUCH PERSON MUST PROVIDE A SWORN
30 STATEMENT AT OR BEFORE THE HEARING DECLARING THAT HE OR SHE HAS A FINAN-
31 CIAL OR OWNERSHIP INTEREST IN THE SEIZED GOODS; AND (IV) THAT FAILURE TO
32 TIMELY REQUEST SUCH HEARING OR PROVIDE SUCH SWORN STATEMENT SHALL BE
33 DEEMED A WAIVER OF THE RIGHT TO CHALLENGE THE DESTRUCTION OF SEIZED
34 GOODS IN ANY CRIMINAL OR CIVIL ACTION OR PROCEEDING. SUCH NOTICE SHALL
35 PROVIDE A TELEPHONE NUMBER THAT A PERSON MAY CALL DURING REGULAR BUSI-
36 NESS HOURS TO REQUEST A HEARING.

37 (2) NOTICE REQUIRED PURSUANT TO THIS PARAGRAPH SHALL BE PROVIDED AS
38 FOLLOWS: (I) IF ANY OF THE GOODS TO BE DESTROYED PURSUANT TO SUBDIVISION
39 THREE OF THIS SECTION WERE SEIZED FROM A PREMISES, NOTICE SHALL BE
40 CONSPICUOUSLY AFFIXED TO A DOOR OR OTHER LOCATION REASONABLY CALCULATED
41 TO BE VISIBLE TO A PERSON ENTERING THE AREA FROM WHICH THE GOODS WERE
42 SEIZED; (II) IF ANY SUCH GOODS WERE SEIZED FROM A VEHICLE, NOTICE SHALL
43 BE CONSPICUOUSLY AFFIXED TO THE VEHICLE OR LEFT INSIDE SUCH VEHICLE AND
44 MAILED BY FIRST CLASS MAIL TO THE VEHICLE'S REGISTERED OWNER; AND (III)
45 IF ANY PERSON IS KNOWN TO HAVE A FINANCIAL OR OWNERSHIP INTEREST IN THE
46 SEIZED GOODS, NOTICE SHALL BE PROVIDED BY A MEANS REASONABLY CALCULATED
47 TO CONVEY THE INFORMATION SET FORTH IN SUBPARAGRAPH ONE OF THIS PARA-
48 GRAPH.

49 6. FAILURE OF ANY PERSON TO TIMELY REQUEST A HEARING PURSUANT TO THIS
50 SECTION OR PROVIDE A SWORN STATEMENT AS REQUIRED BY PARAGRAPH (A) OF
51 SUBDIVISION FIVE OF THIS SECTION SHALL BE DEEMED A WAIVER OF SUCH
52 PERSON'S RIGHT TO CHALLENGE THE DESTRUCTION OF ANY SEIZED GOODS IN ANY
53 CRIMINAL OR CIVIL ACTION OR PROCEEDING.

54 7. UPON FINAL DETERMINATION OF THE CHARGES, THE COURT SHALL, UPON
55 PROPER NOTICE BY THE DISTRICT ATTORNEY OR REPRESENTATIVE OF THE CRIME
56 VICTIM OR VICTIMS, AFTER PRIOR NOTICE TO THE DISTRICT ATTORNEY AND

1 CUSTODIAN OF THE SEIZED PROPERTY, ENTER AN ORDER PRESERVING ANY OF THE
2 GOODS MANUFACTURED, SOLD, OFFERED FOR SALE, DISTRIBUTED OR PRODUCED IN
3 VIOLATION OF THIS ARTICLE, NOT OTHERWISE DESTROYED OR PERMITTED TO BE
4 DESTROYED PURSUANT TO SUBDIVISION THREE OF THIS SECTION, AS EVIDENCE FOR
5 USE IN OTHER CASES, INCLUDING A CIVIL ACTION. THIS NOTICE MUST BE
6 RECEIVED WITHIN THIRTY DAYS OF FINAL DETERMINATION OF THE CHARGES. THE
7 COST OF STORAGE, SECURITY AND DESTRUCTION OF GOODS SO ORDERED FOR PRES-
8 ERVATION, OTHER THAN FOR A CIVIL ACTION UNDER ARTICLE THIRTEEN-A OF THE
9 CIVIL PRACTICE LAW AND RULES INITIATED BY THE DISTRICT ATTORNEY, SHALL
10 BE PAID BY THE PARTY SEEKING SUCH PRESERVATION. IF NO SUCH ORDER IS
11 ENTERED WITHIN THE THIRTY DAY PERIOD, SUCH GOODS MAY BE DESTROYED BY THE
12 AGENCY HAVING CUSTODY OF SUCH GOODS. WHERE SUCH GOODS CONSIST OF ITEMS
13 OF APPAREL OR FOOTWEAR BEARING A COUNTERFEIT TRADEMARK, WITH THE CONSENT
14 OF THE HOLDER OF THE TRADEMARK THE GOODS MAY BE RELEASED BY SUCH AGENCY
15 HAVING CUSTODY OF SEIZED GOODS TO THE HOLDER OF THE TRADEMARK OR A CHAR-
16 ITABLE ORGANIZATION AUTHORIZED TO RECEIVE SUCH GOODS BY THE HOLDER OF
17 THE TRADEMARK RATHER THAN BEING DESTROYED PURSUANT TO THIS SECTION. SUCH
18 AGENCY SHALL NOT BE REQUIRED TO REMOVE THE COUNTERFEIT TRADEMARK OR
19 OTHERWISE ALTER THE GOODS BEFORE RELEASE PURSUANT TO THIS SUBDIVISION.
20 EXCEPT AS PROVIDED IN THIS SUBDIVISION, DESTRUCTION SHALL NOT INCLUDE
21 AUCTION, SALE OR DISTRIBUTION OF THE GOODS IN THEIR ORIGINAL FORM.

22 8. EXCEPT AS PROVIDED IN SUBDIVISION SEVEN OF THIS SECTION, NOTHING IN
23 THIS SECTION SHALL PROHIBIT THE DESTRUCTION OR OTHER DISPOSITION, PURSU-
24 ANT TO ANY OTHER APPLICABLE PROVISION OF STATE OR LOCAL LAW, OF GOODS
25 SEIZED PURSUANT TO SUBDIVISION ONE OF THIS SECTION WHERE THERE IS NO
26 ONGOING CRIMINAL PROCEEDING THAT HAS BEEN COMMENCED IN RELATION TO SUCH
27 GOODS.

28 S 4. Section 420.00 of the penal law is REPEALED and a new section
29 420.00 is added to read as follows:

30 S 420.00 SEIZURE AND DESTRUCTION OF UNAUTHORIZED RECORDINGS.

31 1. ANY ARTICLE MANUFACTURED, SOLD, OFFERED FOR SALE, DISTRIBUTED OR
32 PRODUCED IN VIOLATION OF ARTICLE TWO HUNDRED SEVENTY-FIVE OF THIS CHAP-
33 TER MAY BE SEIZED BY ANY POLICE OFFICER, OR BY ANY PEACE OFFICER ACTING
34 WITHIN HIS OR HER LAWFUL AUTHORITY.

35 2. IF THE DEFENDANT REQUESTS A HEARING AT ARRAIGNMENT PURSUANT TO
36 SUBDIVISION TEN OF SECTION 170.10, SUBDIVISION SEVEN OF SECTION 180.10
37 OR SUBDIVISION FOUR OF SECTION 210.15 OF THE CRIMINAL PROCEDURE LAW, OR
38 IF ANY OTHER PERSON TIMELY REQUESTS SUCH A HEARING PURSUANT TO SUBDIVI-
39 SION FIVE OF THIS SECTION, THE COURT MUST, WITHIN FORTY-EIGHT HOURS
40 AFTER ARRAIGNMENT OF THE DEFENDANT OR WITHIN FORTY-EIGHT HOURS OF A
41 REQUEST FOR A HEARING PURSUANT TO PARAGRAPH (A) OF SUBDIVISION FIVE OF
42 THIS SECTION, WHICHEVER IS LATER, HOLD A HEARING AND DETERMINE WHETHER
43 PROBABLE CAUSE EXISTS TO BELIEVE THAT THE ARTICLES SEIZED PURSUANT TO
44 SUBDIVISION ONE OF THIS SECTION WERE MANUFACTURED, SOLD, OFFERED FOR
45 SALE, DISTRIBUTED OR PRODUCED IN VIOLATION OF ARTICLE TWO HUNDRED SEVEN-
46 TY-FIVE OF THIS CHAPTER. THE HEARING TO MAKE SUCH DETERMINATION SHALL BE
47 CONCLUDED AND SUCH DETERMINATION SHALL BE MADE WITHIN FORTY-EIGHT HOURS
48 AFTER THE COMMENCEMENT OF THE HEARING, PROVIDED THAT FOR GOOD CAUSE THE
49 COURT MAY EXTEND THE TIME WITHIN WHICH TO HOLD OR CONCLUDE SUCH HEARING
50 OR MAKE SUCH DETERMINATION.

51 3. (A) IF A HEARING IS REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS
52 SECTION, AND THE COURT, AFTER SUCH HEARING, FINDS THAT NOTICE PURSUANT
53 TO PARAGRAPH (B) OF SUBDIVISION FIVE OF THIS SECTION, IF REQUIRED, HAS
54 BEEN PROVIDED AND THAT PROBABLE CAUSE EXISTS TO BELIEVE THAT SUCH ARTI-
55 CLES WERE MANUFACTURED, SOLD, OFFERED FOR SALE, DISTRIBUTED OR PRODUCED
56 IN VIOLATION OF ARTICLE TWO HUNDRED SEVENTY-FIVE OF THIS CHAPTER, THE

1 COURT SHALL AUTHORIZE THAT ALL BUT A REPRESENTATIVE SAMPLE OF SUCH ARTI-
2 CLES MAY BE DESTROYED BY THE AGENCY HAVING CUSTODY OF THE SEIZED ARTI-
3 CLES. NOTWITHSTANDING THE FOREGOING, IF THE COURT FURTHER FINDS THAT A
4 SUBSTANTIAL ISSUE OF FACT HAS BEEN RAISED WHETHER SUCH ARTICLES WERE
5 MANUFACTURED, SOLD, OFFERED FOR SALE, DISTRIBUTED, OR PRODUCED IN
6 VIOLATION OF ARTICLE TWO HUNDRED SEVENTY-FIVE OF THIS CHAPTER, THE COURT
7 SHALL REQUIRE THAT SUCH ARTICLES BE RETAINED AS EVIDENCE PENDING THE
8 TRIAL OF THE DEFENDANT OR OTHER DISPOSITION OF THE CRIMINAL PROCEEDINGS
9 INVOLVING THE DEFENDANT.

10 (B) IF A HEARING IS NOT REQUIRED PURSUANT TO SUBDIVISION TWO OF THIS
11 SECTION, THE AGENCY HAVING CUSTODY OF SEIZED GOODS MAY DESTROY ALL BUT A
12 REPRESENTATIVE SAMPLE OF SUCH ARTICLES IN ACCORDANCE WITH THIS SECTION,
13 PROVIDED THAT NOTICE PURSUANT TO PARAGRAPH (B) OF SUBDIVISION FIVE OF
14 THIS SECTION, IF REQUIRED, HAS BEEN PROVIDED AND ANY TIME FOR REQUESTING
15 SUCH HEARING HAS EXPIRED.

16 4. PRIOR TO THE DESTRUCTION OF ARTICLES IN EXCESS OF A REPRESENTATIVE
17 SAMPLE PURSUANT TO SUBDIVISION THREE OF THIS SECTION, THE AGENCY HAVING
18 CUSTODY OF SEIZED ARTICLES SHALL PHOTOGRAPH, VIDEOTAPE OR OTHERWISE
19 RECORD SUCH ARTICLES IN A MANNER THAT REASONABLY PORTRAYS THEIR QUANTITY
20 AND CHARACTER AND IDENTIFIES THE CASE OR ARREST TO WHICH SUCH ARTICLES
21 RELATE.

22 5. (A) A PERSON OTHER THAN THE DEFENDANT MAY REQUEST A HEARING IN THE
23 COURT HAVING JURISDICTION OVER A CRIMINAL PROCEEDING RELATING TO THE
24 DEFENDANT TO DETERMINE WHETHER PROBABLE CAUSE EXISTS TO BELIEVE THAT
25 ARTICLES SEIZED PURSUANT TO SUBDIVISION ONE OF THIS SECTION WERE MANU-
26 FACTURED, SOLD, OFFERED FOR SALE, DISTRIBUTED, OR PRODUCED IN VIOLATION
27 OF ARTICLE TWO HUNDRED SEVENTY-FIVE OF THIS CHAPTER BY (I) CALLING THE
28 TELEPHONE NUMBER, AS PROVIDED IN THE NOTICE REQUIRED BY PARAGRAPH (B) OF
29 THIS SUBDIVISION, DURING REGULAR BUSINESS HOURS WITHIN TWO BUSINESS DAYS
30 OF THE DATE OF SUCH NOTICE OR WITHIN FIVE CALENDAR DAYS OF SUCH DATE
31 WHERE NOTICE HAS BEEN PROVIDED BY FIRST CLASS MAIL OR PURSUANT TO CLAUSE
32 (III) OF SUBPARAGRAPH TWO OF PARAGRAPH (B) OF THIS SUBDIVISION, OR (II)
33 CONTACTING THE DESIGNATED PERSON OR UNIT WITHIN THE OFFICE OF THE
34 DISTRICT ATTORNEY IN THE COUNTY WHERE THE ARTICLES WERE SEIZED DURING
35 REGULAR BUSINESS HOURS WITHIN TWO BUSINESS DAYS OF THE DATE OF THE
36 SEIZURE, OR WITHIN FIVE CALENDAR DAYS OF SUCH DATE WHERE NOTICE HAS BEEN
37 PROVIDED BY FIRST CLASS MAIL OR PURSUANT TO CLAUSE (III) OF SUCH SUBPAR-
38 AGRAPH. SUCH PERSON REQUESTING A HEARING SHALL PROVIDE A SWORN STATEMENT
39 AT OR BEFORE THE HEARING DECLARING THAT HE OR SHE HAS A FINANCIAL OR
40 OWNERSHIP INTEREST IN ARTICLES THAT ARE THE SUBJECT OF SUCH HEARING.

41 (B) (1) NOTICE REQUIRED PURSUANT TO THIS PARAGRAPH AT A MINIMUM SHALL
42 INDICATE THE FOLLOWING: (I) THAT THE SEIZED ARTICLES ARE SUBJECT TO
43 DESTRUCTION PURSUANT TO THIS SECTION; (II) THAT ANY PERSON MAY REQUEST A
44 HEARING, AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION, TO DETERMINE
45 WHETHER PROBABLE CAUSE EXISTS TO BELIEVE THAT THE SEIZED ARTICLES WERE
46 MANUFACTURED, SOLD, OFFERED FOR SALE, DISTRIBUTED OR PRODUCED IN
47 VIOLATION OF ARTICLE TWO HUNDRED SEVENTY-FIVE OF THIS CHAPTER; (III)
48 THAT SUCH PERSON MUST PROVIDE A SWORN STATEMENT AT OR BEFORE THE HEARING
49 DECLARING THAT HE OR SHE HAS A FINANCIAL OR OWNERSHIP INTEREST IN THE
50 SEIZED ARTICLES; AND (IV) THAT FAILURE TO TIMELY REQUEST SUCH HEARING OR
51 PROVIDE SUCH SWORN STATEMENT SHALL BE DEEMED A WAIVER OF THE RIGHT TO
52 CHALLENGE THE DESTRUCTION OF SEIZED ARTICLES IN ANY CRIMINAL OR CIVIL
53 ACTION OR PROCEEDING. SUCH NOTICE SHALL PROVIDE A TELEPHONE NUMBER THAT
54 A PERSON MAY CALL DURING REGULAR BUSINESS HOURS TO REQUEST A HEARING.

55 (2) NOTICE REQUIRED PURSUANT TO THIS PARAGRAPH SHALL BE PROVIDED AS
56 FOLLOWS: (I) IF ANY OF THE ARTICLES TO BE DESTROYED PURSUANT TO SUBDIVI-

1 SION THREE OF THIS SECTION WERE SEIZED FROM A PREMISES, NOTICE SHALL BE
2 CONSPICUOUSLY AFFIXED TO A DOOR OR OTHER LOCATION REASONABLY CALCULATED
3 TO BE VISIBLE TO A PERSON ENTERING THE AREA FROM WHICH THE ARTICLES WERE
4 SEIZED; (II) IF ANY SUCH ARTICLES WERE SEIZED FROM A VEHICLE, NOTICE
5 SHALL BE CONSPICUOUSLY AFFIXED TO THE VEHICLE OR LEFT INSIDE SUCH VEHI-
6 CLE AND MAILED BY FIRST CLASS MAIL TO THE VEHICLE'S REGISTERED OWNER;
7 AND (III) IF ANY PERSON IS KNOWN TO HAVE A FINANCIAL OR OWNERSHIP INTER-
8 EST IN THE SEIZED GOODS, NOTICE SHALL BE PROVIDED BY A MEANS REASONABLY
9 CALCULATED TO CONVEY THE INFORMATION SET FORTH IN SUBPARAGRAPH ONE OF
10 THIS PARAGRAPH.

11 6. FAILURE OF ANY PERSON TO TIMELY REQUEST A HEARING PURSUANT TO THIS
12 SECTION OR PROVIDE A SWORN STATEMENT AS REQUIRED BY PARAGRAPH (A) OF
13 SUBDIVISION FIVE OF THIS SECTION SHALL BE DEEMED A WAIVER OF SUCH
14 PERSON'S RIGHT TO CHALLENGE THE DESTRUCTION OF ANY SEIZED ARTICLES IN
15 ANY CRIMINAL OR CIVIL ACTION OR PROCEEDING.

16 7. UPON FINAL DETERMINATION OF THE CHARGES, THE COURT SHALL, UPON
17 PROPER NOTICE BY THE DISTRICT ATTORNEY OR REPRESENTATIVE OF THE CRIME
18 VICTIM OR VICTIMS, AFTER PRIOR NOTICE TO THE DISTRICT ATTORNEY AND
19 CUSTODIAN OF THE SEIZED PROPERTY, ENTER AN ORDER PRESERVING ANY OF THE
20 ARTICLES MANUFACTURED, SOLD, OFFERED FOR SALE, DISTRIBUTED OR PRODUCED
21 IN VIOLATION OF ARTICLE TWO HUNDRED SEVENTY-FIVE OF THIS CHAPTER, NOT
22 OTHERWISE DESTROYED OR PERMITTED TO BE DESTROYED PURSUANT TO SUBDIVISION
23 THREE OF THIS SECTION, AS EVIDENCE FOR USE IN OTHER CASES, INCLUDING A
24 CIVIL ACTION. THIS NOTICE MUST BE RECEIVED WITHIN THIRTY DAYS OF FINAL
25 DETERMINATION OF THE CHARGES. THE COST OF STORAGE, SECURITY AND
26 DESTRUCTION OF ARTICLES SO ORDERED FOR PRESERVATION, OTHER THAN FOR A
27 CIVIL ACTION UNDER ARTICLE THIRTEEN-A OF THE CIVIL PRACTICE LAW AND
28 RULES INITIATED BY THE DISTRICT ATTORNEY, SHALL BE PAID BY THE PARTY
29 SEEKING SUCH PRESERVATION. IF NO SUCH ORDER IS ENTERED WITHIN THE THIRTY
30 DAY PERIOD, SUCH ARTICLES MAY BE DESTROYED BY THE AGENCY HAVING CUSTODY
31 OF SUCH ARTICLES. DESTRUCTION SHALL NOT INCLUDE AUCTION, SALE OR
32 DISTRIBUTION OF THE ARTICLES IN THEIR ORIGINAL FORM.

33 8. EXCEPT AS PROVIDED IN SUBDIVISION SEVEN OF THIS SECTION, NOTHING IN
34 THIS SECTION SHALL PROHIBIT THE DESTRUCTION OR OTHER DISPOSITION, PURSU-
35 ANT TO ANY OTHER APPLICABLE PROVISION OF STATE OR LOCAL LAW, OR ARTICLES
36 SEIZED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, WHERE THERE IS NO
37 ONGOING CRIMINAL PROCEEDING THAT HAS BEEN COMMENCED IN RELATION TO SUCH
38 ARTICLES.

39 9. FOR PURPOSES OF THIS SECTION, THE TERM "REPRESENTATIVE SAMPLE"
40 MEANS A MINIMUM OF ONE HUNDRED TWENTY-FIVE PERCENT OF THE AMOUNT OF
41 ARTICLES THAT IS REQUIRED TO SUBSTANTIATE THE HIGHEST DEGREE OF THE
42 OFFENSE THAT MAY BE CHARGED IN THE ACCUSATORY INSTRUMENT.

43 S 5. Section 170.10 of the criminal procedure law is amended by adding
44 a new subdivision 10 to read as follows:

45 10. WHERE A VIOLATION OF SECTION 165.71, 275.05, 275.15, 275.25 OR
46 275.35 OF THE PENAL LAW IS ALLEGED, THE COURT SHALL INFORM THE DEFENDANT
47 AT ARRAIGNMENT THAT (A) HE OR SHE MAY REQUEST A HEARING TO DETERMINE
48 WHETHER PROBABLE CAUSE EXISTS TO BELIEVE THAT ANY SEIZED GOODS OR ARTI-
49 CLES THAT ARE THE SUBJECT OF SUCH ALLEGED VIOLATION WERE MANUFACTURED,
50 SOLD, OFFERED FOR SALE, DISTRIBUTED OR PRODUCED IN VIOLATION OF ANY SUCH
51 SECTION, AND (B) FAILURE TO REQUEST SUCH A HEARING AT ARRAIGNMENT SHALL
52 BE DEEMED A WAIVER OF SUCH DEFENDANT'S RIGHT TO CHALLENGE THE
53 DESTRUCTION OF THE GOODS OR ARTICLES PURSUANT TO SECTION 165.74 OR
54 420.00 OF THE PENAL LAW IN ANY CRIMINAL OR CIVIL ACTION OR PROCEEDING.
55 SUCH HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH SECTION 165.74 OF THE
56 PENAL LAW, WITH RESPECT TO A VIOLATION OF SECTION 165.71 OF SUCH LAW, OR

SECTION 420.00 OF THE PENAL LAW, WITH RESPECT TO ANY VIOLATION OF SECTION 275.05, 275.15, 275.25 OR 275.35 OF SUCH LAW.

S 6. Section 180.10 of the criminal procedure law is amended by adding a new subdivision 7 to read as follows:

7. WHERE A VIOLATION OF SECTION 165.71, 165.72, 165.73, 275.05, 275.10, 275.15, 275.20, 275.25, 275.30, 275.35 OR 275.40 OF THE PENAL LAW IS ALLEGED, THE COURT SHALL INFORM THE DEFENDANT AT ARRAIGNMENT THAT (A) HE OR SHE MAY REQUEST A HEARING TO DETERMINE WHETHER PROBABLE CAUSE EXISTS TO BELIEVE THAT ANY SEIZED GOODS OR ARTICLES THAT ARE THE SUBJECT OF SUCH ALLEGED VIOLATION WERE MANUFACTURED, SOLD, OFFERED FOR SALE, DISTRIBUTED OR PRODUCED IN VIOLATION OF ANY SUCH SECTION, AND (B) FAILURE TO REQUEST SUCH A HEARING AT ARRAIGNMENT SHALL BE DEEMED A WAIVER OF SUCH DEFENDANT'S RIGHT TO CHALLENGE THE DESTRUCTION OF THE GOODS OR ARTICLES PURSUANT TO SECTION 165.74 OR 420.00 OF THE PENAL LAW IN ANY CRIMINAL OR CIVIL ACTION OR PROCEEDING. SUCH HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH SECTION 165.74 OF THE PENAL LAW, WITH RESPECT TO A VIOLATION OF SECTION 165.72 OR 165.73 OF SUCH LAW, OR SECTION 420.00 OF THE PENAL LAW, WITH RESPECT TO ANY VIOLATION OF SECTION 275.10, 275.20, 275.30 OR 275.40 OF SUCH LAW.

S 7. Section 210.15 of the criminal procedure law is amended by adding a new subdivision 4 to read as follows:

4. WHERE A VIOLATION OF SECTION 165.71, 165.72, 165.73, 275.05, 275.10, 275.15, 275.20, 275.25, 275.30, 275.35 OR 275.40 OF THE PENAL LAW IS ALLEGED, THE COURT SHALL INFORM THE DEFENDANT AT ARRAIGNMENT THAT (A) HE OR SHE MAY REQUEST A HEARING TO DETERMINE WHETHER PROBABLE CAUSE EXISTS TO BELIEVE THAT ANY SEIZED GOODS OR ARTICLES THAT ARE THE SUBJECT OF SUCH ALLEGED VIOLATION WERE MANUFACTURED, SOLD, OFFERED FOR SALE, DISTRIBUTED OR PRODUCED IN VIOLATION OF ANY SUCH SECTION, AND (B) FAILURE TO REQUEST SUCH A HEARING AT ARRAIGNMENT SHALL BE DEEMED A WAIVER OF SUCH DEFENDANT'S RIGHT TO CHALLENGE THE DESTRUCTION OF THE GOODS OR ARTICLES PURSUANT TO SECTION 165.74 OR 420.00 OF THE PENAL LAW IN ANY CRIMINAL OR CIVIL ACTION OR PROCEEDING. SUCH HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH SECTION 165.74 OF THE PENAL LAW, WITH RESPECT TO A VIOLATION OF SECTION 165.71, 165.72 OR 165.73 OF SUCH LAW, OR SECTION 420.00 OF THE PENAL LAW, WITH RESPECT TO ANY VIOLATION OF SECTION 275.05, 275.10, 275.15, 275.20, 275.25, 275.30, 275.35 OR 275.40 OF SUCH LAW.

S 8. This act shall take effect on the ninetieth day after it shall have become a law.