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2011-2012 Regular Sessions

IN ASSEMBLY

January 27, 2011

Introduced by M. of A. 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:

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

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ARTICLE 166

SEIZURE AND FORFEITURE OF VEHICLES, VESSELS AND

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 ANY VEHICLE, VESSEL OR AIRCRAFT WHICH HAS BEEN OR IS BEING USED IN 1. VIOLATION OF SECTION 165.71, 165.72, OR 165.73 OF THIS TITLE SHALL BE 11 PEACE OFFICER, WHO IS ACTING PURSUANT TO HIS SPECIAL 12 SEIZED BY ANY 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 IΝ 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.

3. IT SHALL BE THE DUTY OF THE DISTRICT ATTORNEY OF THE COUNTY WHEREIN 21 THE SEIZURE IS MADE, TO INOUIRE 22 INTO THEFACTS OF THE SEIZURE SO 23 TO HIM AND IF IT APPEARS PROBABLE THAT A FORFEITURE HAS BEEN REPORTED 24 INCURRED BY REASON OF A VIOLATION OF SECTION 165.71, 165.72, OR 165.73 25 TITLE, FOR THE DETERMINATION OF WHICH THE INSTITUTION OF OF THIS

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

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PROCEEDINGS IN THE SUPREME COURT IS NECESSARY, TO CAUSE THE PROPER 1 PROCEEDINGS TO BE COMMENCED AND PROSECUTED, AT ANY TIME AFTER THIRTY 2 DAYS FROM THE DATE OF THE SEIZURE, TO DECLARE SUCH FORFEITURE, UNLESS, 3 4 UPON INQUIRY AND EXAMINATION, SUCH DISTRICT ATTORNEY OR CORPORATION 5 COUNSEL DECIDES THAT SUCH PROCEEDINGS CAN NOT PROBABLY BE SUSTAINED OR THAT THE ENDS OF PUBLIC JUSTICE DO NOT REQUIRE THAT THEY SHOULD BE 6 7 INSTITUTED OR PROSECUTED, IN WHICH CASE, THE DISTRICT ATTORNEY OR CORPO-8 RATION COUNSEL SHALL CAUSE SUCH SEIZED PROPERTY TO BE RETURNED TO THE 9 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 15 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 16 17 INTENTIONAL ON THE PART OF ANY OWNER, OR (B) SUCH SEIZED PROPERTY WAS 18 19 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 20 UNLAWFULLY IN THE POSSESSION OF A PERSON WHO ACQUIRED POSSESSION THEREOF 21 IN VIOLATION OF THE CRIMINAL LAWS OF THE UNITED STATES, OR OF ANY STATE. 22 6. THE DISTRICT ATTORNEY OR THE POLICE DEPARTMENT HAVING CUSTODY OF 23 THE SEIZED PROPERTY, AFTER SUCH JUDICIAL DETERMINATION OF FORFEITURE, 24 25 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 26 27 LEAST FIVE DAYS, SELL SUCH FORFEITED PROPERTY AT PUBLIC SALE. THE NET PROCEEDS OF ANY SUCH SALE, AFTER DEDUCTION OF THE LAWFUL EXPENSES 28 INCURRED, SHALL BE PAID INTO THE GENERAL FUND OF THE COUNTY WHEREIN THE 29 30 SEIZURE WAS MADE.

7. WHENEVER ANY PERSON INTERESTED IN ANY PROPERTY WHICH IS SEIZED AND 31 32 DECLARED FORFEITED UNDER THE PROVISIONS OF THIS SECTION FILES WITH A 33 JUSTICE OF THE SUPREME COURT A PETITION FOR THE RECOVERY OF SUCH FORFEITED PROPERTY, THE JUSTICE OF THE SUPREME COURT MAY RESTORE SUCH 34 35 FORFEITED PROPERTY UPON SUCH TERMS AND CONDITIONS AS HE DEEMS REASONABLE AND JUST, IF THE PETITIONER ESTABLISHES EITHER OF THE AFFIRMATIVE 36 DEFENSES SET FORTH IN SUBDIVISION FIVE OF THIS SECTION AND THAT THE 37 38 PETITIONER WAS WITHOUT PERSONAL OR ACTUAL KNOWLEDGE OF THE FORFEITURE PROCEEDING. IF THE PETITION IS FILED AFTER THE SALE OF THE FORFEITED 39 40 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 41 COSTS INCURRED BY THE DISTRICT ATTORNEY, POLICE DEPARTMENT OR CORPO-42 43 RATION 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.

47 S 2. This act shall take effect on the first of November next succeed-48 ing the date on which it shall have become a law.