

4655

2015-2016 Regular Sessions

I N   S E N A T E

April 1, 2015

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Introduced by Sen. LANZA -- 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:

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 OR HER  
13    SPECIAL DUTIES, OR POLICE OFFICER, AND FORFEITED AS PROVIDED IN THIS  
14    SECTION. HOWEVER, SUCH FORFEITURE AND SEIZURE PROVISIONS SHALL NOT  
15    APPLY TO ANY VEHICLE, VESSEL OR AIRCRAFT USED BY ANY PERSON AS A COMMON  
16    CARRIER IN 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 OR HER AND IF IT APPEARS PROBABLE THAT A FORFEITURE HAS  
24    BEEN INCURRED BY REASON OF A VIOLATION OF SECTION 165.71, 165.72, OR  
25    165.73 OF THIS TITLE, FOR THE DETERMINATION OF WHICH THE INSTITUTION OF

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

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1 PROCEEDINGS IN THE SUPREME COURT IS NECESSARY, TO CAUSE THE PROPER  
2 PROCEEDINGS TO BE COMMENCED AND PROSECUTED, AT ANY TIME AFTER THIRTY  
3 DAYS FROM THE DATE OF THE SEIZURE, TO DECLARE SUCH FORFEITURE, UNLESS,  
4 UPON INQUIRY AND EXAMINATION, SUCH DISTRICT ATTORNEY OR CORPORATION  
5 COUNSEL DECIDES THAT SUCH PROCEEDINGS CAN NOT PROBABLY BE SUSTAINED OR  
6 THAT THE ENDS OF PUBLIC JUSTICE DO NOT REQUIRE THAT THEY SHOULD BE  
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.

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

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

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

31 7. WHENEVER ANY PERSON INTERESTED IN ANY PROPERTY WHICH IS SEIZED AND  
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  
34 FORFEITED PROPERTY, THE JUSTICE OF THE SUPREME COURT MAY RESTORE SUCH  
35 FORFEITED PROPERTY UPON SUCH TERMS AND CONDITIONS AS HE OR SHE DEEMS  
36 REASONABLE AND JUST, IF THE PETITIONER ESTABLISHES EITHER OF THE AFFIR-  
37 MATIVE DEFENSES SET FORTH IN SUBDIVISION FIVE OF THIS SECTION AND THAT  
38 THE PETITIONER WAS WITHOUT PERSONAL OR ACTUAL KNOWLEDGE OF THE FORFEI-  
39 TURE PROCEEDING. IF THE PETITION IS FILED AFTER THE SALE OF THE  
40 FORFEITED PROPERTY, ANY JUDGMENT IN FAVOR OF THE PETITIONER SHALL BE  
41 LIMITED TO THE NET PROCEEDS OF SUCH SALE AFTER DEDUCTION OF THE LAWFUL  
42 EXPENSES AND COSTS INCURRED BY THE DISTRICT ATTORNEY, POLICE DEPARTMENT  
43 OR CORPORATION COUNSEL.

44 8. NO SUIT OR ACTION UNDER THIS SECTION FOR WRONGFUL SEIZURE SHALL BE  
45 INSTITUTED UNLESS SUCH SUIT OR ACTION IS COMMENCED WITHIN TWO YEARS  
46 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.