

BILL TEXT:

STATE OF NEW YORK

7179

2005-2006 Regular Sessions

IN ASSEMBLY

April 7, 2005

Introduced by M. of A. DiNAPOLI -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to forfeiture and non-criminal defendants

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subparagraph (iv) of paragraph (b) of subdivision 3 of
2 section 1311 of the civil practice law and rules, as added by chapter
3 669 of the laws of 1984, is amended to read as follows:

4 (iv) if the action relates to an instrumentality of a crime, except as
5 provided for in subparagraph (i) hereof, the burden shall be upon the
6 claiming authority to prove by a preponderance of the evidence the facts
7 necessary to establish a claim for forfeiture and that the non-criminal
8 defendant either (A) knew, or should have known, that the instrumentali-
9 ty was or would be used in a manner that would directly and materially
10 contribute to the commission of a crime or (B) [~~knowingly~~] knew, or
11 should have known, that any interest he or she obtained [~~his or her~~
12 ~~interest~~] in the instrumentality [~~to avoid~~] could assist the criminal
13 defendant in avoiding forfeiture.

14 § 2. Paragraph (c) of subdivision 3 of section 1311 of the civil prac-
15 tice law and rules is amended by adding a new subparagraph (v) to read
16 as follows:

17 (v) a non-criminal defendant who knows, or should know, of prior
18 illegal use by a criminal defendant of the instrumentality or other
19 property of a like nature or kind, shall be presumed to know that the
20 instrumentality was or would be used in a manner that would directly and
21 materially contribute to the commission of a subsequent crime or that
22 obtaining his or her interest in the instrumentality could assist the
23 criminal defendant in avoiding forfeiture.

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

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1 § 3. Subdivision 8 of section 1311 of the civil practice law and
2 rules, as added by chapter 669 of the laws of 1984, is amended to read
3 as follows:

4 8. The total amount that may be recovered by the claiming authority
5 against all criminal defendants in a forfeiture action or actions
6 involving the same crime shall not exceed the value of the proceeds of
7 the crime or substituted proceeds of the crime, whichever amount is
8 greater, and, in addition, the value of any forfeited instrumentality
9 used in the crime. Any such recovery against criminal defendants for
10 the value of the proceeds of the crime or substituted proceeds of the
11 crime shall be reduced by an amount which equals the value of the same
12 proceeds of the same crime or the same substituted proceeds of the same
13 crime recovered against all non-criminal defendants. Any such recovery
14 for the value of an instrumentality of a crime shall be reduced by an
15 amount which equals the value of the same instrumentality recovered
16 against any non-criminal defendant.

17 The total amount that may be recovered against all non-criminal
18 defendants in a forfeiture action or actions involving the same crime
19 shall not exceed the value of the proceeds of the crime or the substi-
20 tuted proceeds of the crime, whichever amount is greater, and, in addi-
21 tion, the value of any forfeited instrumentality used in the crime. Any
22 such recovery against non-criminal defendants for the value of the
23 proceeds of the crime or substituted proceeds of the crime shall be
24 reduced by an amount which equals the value of the proceeds of the crime
25 or substituted proceeds of the crime recovered against all criminal
26 defendants. [~~A judgment against a non-criminal defendant pursuant to
27 clause (A) of subparagraph (iv) of paragraph (b) of subdivision three of
28 this section shall be limited to the amount of the proceeds of the
29 crime.~~] Any recovery for the value of an instrumentality of the crime
30 shall be reduced by an amount equal to the value of the same instrumen-
31 tality recovered against any criminal defendant.

32 § 4. This act shall take effect immediately and shall apply to crimes
33 committed on or after such date.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A7179

SPONSOR: DiNapoli

TITLE OF BILL:

An act to amend the civil practice law and rules, in relation to forfei-
ture and non-criminal defendants

PURPOSE:

This bill would permit forfeiture actions to be brought against the
owners of property used as the instrumentality of a crime, when such
owners did not commit a crime, but knew or should have known that their
property would be used in the commission of a crime.

SUMMARY OF PROVISIONS:

Section 1: Amends section 1311(3)(b)(iv) of the Civil Practice Law and
Rules (CPLR) to allow forfeiture actions against the non-criminal owner

of the instrumentality of a crime when the owner knew or should have known that the property would directly and materially contribute to the commission of a crime; or when the owner's interest in the property could assist the criminal defendant in avoiding forfeiture.

Section 2: Creates a rebuttable presumption in CPLR section 1311 that a non-criminal owner of an instrumentality who knew or should have known that the criminal defendant had previously used the instrumentality or similar property in the commission of a crime, also knew or should have known that the instrumentality would directly and materially contribute to the commission of a subsequent crime committed by the defendant. Also creates a presumption that when the non-criminal owner knew or should have known that the defendant had used the instrumentality or similar property in the commission of a crime, that owner also knew or should have known that their acquisition of an ownership interest in the property could assist the criminal defendant in avoiding forfeiture.

Section 3: Removes the current limit of the value of an instrumentality belonging to non-criminal owner which may be forfeited, which is set forth in subdivision 8 of CPLR section 1311.

EXISTING LAW:

A property used to commit a crime is referred to as an instrumentality of the crime. Section 1311 of the Civil Practice Law and Rules currently permits forfeiture actions against the non-criminal owners of instrumentalities used to commit felonies when, although the owner did not commit the crime, they allowed the defendant to use the instrumentality knowing that the property would be used to commit a crime. Under these circumstances, the value of the instrumentality which may be forfeited is limited to the value of the proceeds of the crime. Forfeiture is also permitted when the owner obtained their ownership interest in the property only to avoid its forfeiture.

JUSTIFICATION:

Too often, repeat drunk drivers have demonstrated that the criminal penalties meted out for Driving While Intoxicated are not sufficient to deter them from jeopardizing the lives of other motorists by drinking and driving. Vehicle forfeitures, have been used successfully to prevent these repeat drunk drivers from endangering other drivers by taking away their vehicles, and thus preventing them from driving.

Two trends have been identified which suggest that the present forfeiture statute is inadequate. According to law enforcement sources, some repeat drunk drivers borrow cars belonging to others, and others transfer ownership of their cars, particularly to family members, for the purpose of avoiding the forfeiture of these vehicles. This bill would discourage vehicle owners from lending their cars to repeat drunk drivers by creating the rebuttable presumption that, if the owner knew or should have known that the driver had driven drunk in the past, they should have also known that the driver would do so again, using their vehicle. This bill also precludes repeat drunk drivers from transferring the ownership of their vehicles to avoid forfeiture, by permitting a forfeiture action when the transfer of ownership assisted the drunk driver in avoiding forfeiture.

It must also be noted that the present forfeiture statute only pertains to felony level crimes. This bill would not expand the classes of crimes where forfeitures would be permitted. Therefore, in DWI cases, only felony level crimes such as second and subsequent DWI offenses would subject the non-criminal owner to the possibility of forfeiture.

LEGISLATIVE HISTORY: New bill.

FISCAL IMPLICATIONS: None to the state.

EFFECTIVE DATE: Immediately.
