

LOCAL LAW INTRO. NO. -2009

A LOCAL LAW amending the Laws of Westchester County in relation to the forfeiture of vehicles operated by persons while under the influence of alcohol or drugs or while engaged in unlawful speed contests or races.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. The chapter heading of Chapter 699 of the Laws of Westchester County is hereby amended to read as follows:

Chapter 699

FORFEITURE OF PROPERTY IN CONNECTION WITH CRIMINAL ACTS

Article I

Seizure and Forfeiture of Property in Connection with

Criminal Acts as Defined by Article 220 of the Penal Law

Sec. 699.1 Regulations.

Section 2. Subsection 7. of Section 699.1 of the Laws of Westchester County is hereby amended to read as follows:

7. The Westchester County Department of Public Safety, having custody of the seized property, after such judicial determination of forfeiture, shall transfer one-half of the forfeited property, as determined by the Commissioner/Sheriff of Public Safety, to municipal police agencies cooperating in the seizures in equitable amounts. Of the balance of such property not transferred, the Westchester Department of Public Safety shall either retain such seized property for the official use of its office, division or department or, by a public notice of at least five days, sell such forfeited property at a public sale conducted by the County Purchasing Agent pursuant to section 116.11 and Chapter 836 of the Laws of Westchester County. The net proceeds of any

such sale, after deduction of the lawful expenses incurred, shall be paid into an account to be designated "War on Drugs." Monies paid into this account shall be used for the costs of the respective county departments administering the provisions of this article, including but not limited to costs of seizing property, publication service and legal costs; any balance shall be used to fund War on Drugs program initiatives in law enforcement, treatment and education/prevention.

Section 3. Chapter 699 of the Laws of Westchester County is hereby amended by adding a new Article II, to read as follows:

Article II

**Forfeiture of Vehicles Operated by Persons While Under the Influence of Alcohol or Drugs
or While Engaged in Unlawful Speed Contests or Races**

- Sec. 699.2. Legislative findings.**
- Sec. 699.3. Forfeiture of vehicles operated by persons while under the influence of alcohol or drugs or while engaged in unlawful speed contests or races.**
- Sec. 699.4. Notice to vehicle operator, owner, and lienholder.**
- Sec. 699.5. Notice to the County of owner's intention to transfer ownership or possession of vehicle.**
- Sec. 699.6. County's provisional remedies.**
- Sec. 699.7. Innocent owner affirmative defense; lienholder's interest.**
- Sec. 699.8. Hardship relief.**
- Sec. 699.9. Settlement of claims.**
- Sec. 699.10. Disposition of forfeited vehicles.**
- Sec. 699.11. Public education.**
- Sec. 699.12. Annual report.**
- Sec. 699.13. Severability.**

Sec. 699.2. Legislative findings.

The Westchester County Board of Legislators finds that vehicles operated by persons while under the influence of alcohol or drugs, or for purposes of engaging in or aiding or abetting in any motor vehicle or other speed contest or exhibition of speed, pose a serious threat to the lives

and safety of all Westchester County residents. While larger fines, longer license suspensions, and increased jail sentences may deter some offenders, a stronger deterrent is necessary to protect the public. Civil forfeiture of motor vehicles that are used by such offenders will send a stern message that driving while under the influence of alcohol and/or drugs, or using a vehicle for purposes of engaging in or aiding or abetting drag racing will not be tolerated in Westchester County. While this article authorizes the County Attorney to bring such civil forfeiture proceedings arising out of enforcement actions undertaken by police officers of the Westchester County Department of Public Safety, the Westchester County Board of Legislators strongly encourages municipalities within Westchester County to adopt similar measures based upon enforcement action undertaken by their police agencies.

Sec. 699.3. Forfeiture of vehicles operated by persons while under the influence of alcohol or drugs or while engaged in unlawful speed contests or races.

A. Except for a felony offense, as defined in section eleven hundred ninety-three of the Vehicle and Traffic Law, which may give rise to a forfeiture action pursuant to article thirteen-A of the Civil Practice Law and Rules, the County Attorney may commence a civil action for forfeiture to the County of any vehicle, as such term is defined in subdivision fourteen of section 10.00 of the Penal Law, when such vehicle is operated by a person who is arrested by any police officer of the Westchester County Department of Public Safety for an offense under section eleven hundred ninety-two of the Vehicle and Traffic Law and such person is convicted or pleads guilty to any subdivision of such section. In order to establish its case in any action commenced under this subsection, the County shall demonstrate, by a preponderance of the evidence in the civil forfeiture proceeding, that such person was driving in violation of such section.

B. The County Attorney may commence a civil action for forfeiture to the County of any vehicle, as such term is defined in subdivision fourteen of section 10.00 of the Penal Law, when such vehicle is operated or used by a person who is arrested or issued a summons by any police officer of the Westchester County Department of Public Safety for engaging in or aiding or abetting in any motor vehicle or other speed contest or exhibition of speed on a highway as prohibited by section eleven hundred eighty-two of the Vehicle and Traffic Law and such person is convicted or pleads guilty to any offense arising out of such arrest or summons. In order to establish its case in any action commenced under this subsection, the County shall demonstrate, by a preponderance of the evidence in the civil forfeiture proceeding, that such person engaged in or aided or abetted in any motor vehicle or other speed contest or exhibition of speed on a highway as prohibited by section eleven hundred eighty-two of the Vehicle and Traffic Law and that such person's operation or use of such vehicle contributed directly and materially to the commission of such offense.

C. A civil action seeking forfeiture brought pursuant to this section shall be commenced in the County of Westchester within sixty (60) days after such person has been convicted of any subdivision of section eleven hundred ninety-two of the Vehicle and Traffic Law, if brought pursuant to subsection A. of this section, or within sixty (60) days after such person has been convicted of any offense arising out of his or her arrest or summons under section eleven hundred eighty-two of the Vehicle and Traffic Law, if brought pursuant to subsection B. of this section. The Westchester County Department of Public Safety shall make a timely notification to the Office of the County Attorney regarding such conviction, or other disposition of the applicable criminal action or proceeding regarding such person.

Sec. 699.4. Notice to vehicle operator, owner, and lienholder.

A person who is arrested by any police officer of the Westchester County Department of Public Safety for an offense under section eleven hundred ninety-two of the Vehicle and Traffic Law and/or arrested or summonsed by any police officer of the Westchester County Department of Public Safety for an offense under section eleven hundred eighty-two of the Vehicle and Traffic Law, shall receive notice at the time of arrest or summoning on such charge and by certified mail, return receipt requested, as soon thereafter as practical, informing such person how and when the vehicle may be released and that the vehicle may be subject to a civil forfeiture proceeding. In the event that the driver is not the registered owner of the vehicle, separate notice shall be provided to the registered owner of the vehicle. Notice shall also be provided to any lienholder. Notice pursuant to this section shall be to the address recorded with the Department of Motor Vehicles of New York State or any other state, territory, district, province, nation or other jurisdiction, by certified mail, return receipt requested. The procedures set forth in Chapter 698 of the Laws of Westchester County with respect to impoundment, towing, storage and release of vehicles shall apply whenever a person has been arrested for an offense under section eleven hundred ninety-two of the Vehicle and Traffic Law.

Sec. 699.5. Notice to the County of owner's intention to transfer ownership or possession of vehicle.

A. The owner of a vehicle subject to forfeiture pursuant to this article must notify the County of any intention to transfer ownership or possession of such vehicle, no later than fifteen days prior to such transfer. Notice provided pursuant to section 699.4 shall set forth the time and manner and procedures for such notification to the County. The provisions of this section shall

remain in effect until the resolution of the forfeiture proceeding, provided, however, that the notice requirement herein shall expire as follows:

(1) if the vehicle may be subject to forfeiture pursuant to subsection A. of section 699.3 of this article - (a) on the sixty-first (61st) day after a conviction of any subdivision of section eleven hundred ninety-two of the Vehicle and Traffic Law, in the event that the County has not commenced a forfeiture proceeding pursuant to this article prior to such day; or (b) on the day that the criminal action or proceeding against the person arrested for violation of any provision of section eleven hundred ninety-two of the Vehicle and Traffic Law is terminated by the conviction of such person of an offense or offenses which are not a violation of any provision of such section; or (c) the criminal action or proceeding against the person arrested for violation of any provision of section eleven hundred ninety-two of the Vehicle and Traffic Law is terminated in favor of such person without a conviction, as set forth in subdivision three of section 160.50 of the Criminal Procedure Law; and

(2) if the vehicle may be subject to forfeiture pursuant to subsection B. of section 699.3 of this article - (a) on the sixty-first (61st) day after any conviction of any offense arising out of an arrest or summons for an offense under section eleven hundred eighty-two of the Vehicle and Traffic Law, in the event that the County has not commenced a forfeiture proceeding pursuant to this article prior to such day; or (b) on the day that the criminal action or proceeding against the person arrested or summonsed for violation of any provision of section eleven hundred eighty-two of the Vehicle and Traffic Law is terminated in favor of such person without a conviction, as set forth in subdivision three of section 160.50 of the Criminal Procedure Law.

B. (i) Nothing in this section shall be construed to affect the ability of an entity that leases vehicles or a lienholder to exercise its lawful rights to obtain possession of a vehicle under a contract or applicable law.

(ii) In the event of a transfer of title or possession pursuant to clause (i) of this subsection, the person or entity that affects such transfer shall provide notice to the County of its action as soon as practicable and in no event later than seventy-two hours subsequent to such action.

C. A person who transfers title or possession of a vehicle without providing notice to the County as required by this section shall be subject, upon a judgment that the vehicle shall be forfeited, to a penalty in the amount of fifteen hundred dollars in addition to the fair market value of the vehicle at the time of the arrest. Evidence of such fair market value may be established with reference to publications such as, but not limited to, Kelley Blue Book or NADA guide.

Sec. 699.6. County's provisional remedies.

A. Upon receiving notification pursuant to section 699.5, the County may apply for a court order, either prior to or subsequent to the commencement of the civil forfeiture proceeding, to ensure that the vehicle remains available pending the outcome of the civil forfeiture proceeding pursuant to this article. In such an application, the County may request appropriate measures including, but not limited to, an order of the court restraining the transfer of title or possession of such vehicle, retention by the County of the vehicle pending the outcome of the forfeiture proceeding, or a bond in the amount of fifteen hundred dollars plus the fair market value of the vehicle at the time of the arrest, to be determined as set forth in subsection C. of section 699.5.

B. (1) If a person is arrested by any police officer of the Westchester County Department of Public Safety for an offense under section eleven hundred ninety-two of the Vehicle and Traffic Law and such person is not convicted or does not plead guilty to any subdivision of such section,

any vehicle retained pursuant to subsection A. of this section will be returned to him or her, or in the event that another person has a superior right of possession in such property, to such other person.

(2) If a person is arrested or summonsed by any police officer of the Westchester County Department of Public Safety for an offense under section eleven hundred eighty-two of the Vehicle and Traffic Law and such person is not convicted or does not plead guilty to any offense arising out of such arrest or summons, any vehicle retained pursuant to subsection A. of this section will be returned to him or her, or in the event that another person has a superior right of possession in such property, to such other person.

Sec. 699.7. Innocent owner affirmative defense; lienholder's interest.

A. It shall be an affirmative defense to an action brought pursuant to this article that the owner of the vehicle, other than the person arrested for violation of any provision of section eleven hundred ninety-two of the Vehicle and Traffic Law and/or arrested or summonsed for an offense under section eleven hundred eighty-two of the Vehicle and Traffic Law, did not have actual or constructive knowledge that the vehicle would be used or operated in violation of any such offenses or that the owner took reasonable steps to prevent use of the vehicle by the person arrested or summonsed.

B. Subject to the provisions of subsection A. of this section, the interest of a lienholder in such vehicle shall not be subject to forfeiture pursuant to this article, provided, however, that this provision shall not be construed to entitle a lienholder to more than the outstanding balance of the lien. For purposes of this subsection, the term "lienholder" shall mean any person, corporation, partnership, firm, agency, association or other entity who at the time of an arrest or summonsing pursuant to this article, has a financial interest recorded as a lien with the

Department of Motor Vehicles of New York State or any other state, territory, district, province, nation or other jurisdiction, except that "lienholder" shall not mean an entity that leases vehicles pursuant to a written agreement subject to the New York State Personal Property Law or the Uniform Commercial Code. Nothing in this provision shall be construed to prevent a lienholder whose lien is not so recorded from intervening in any action or proceeding under this article.

Sec. 699.8. Hardship relief.

Following a determination by the court pursuant to this article that a vehicle shall be forfeited, an owner may make a motion to the court for relief from such determination. Such motion shall be made on notice to the County. In order to obtain such relief, the owner must submit evidence which establishes that the loss of the vehicle would cause a substantial and unwarranted hardship because the owner has no reasonable access to public transportation and to the use of another vehicle and lacks the financial resources to purchase or lease another vehicle and that possession of a vehicle is a necessary incident to his or her employment, business, trade, occupation or profession; or to his or her travel to and from a class or course at an accredited school, college or university or at a state approved institution of vocational or technical training; or necessary to travel to and from a necessary medical examination or necessary medical treatment for such owner or a member of his or her household. Upon satisfactory demonstration of these factors to the court, the court may grant relief from the forfeiture determination upon such terms and conditions as will provide maximum protection to the public safety, which may include, but not be limited to, installation of an ignition interlock device in such vehicle.

Sec. 699.9. Settlement of claims.

Notwithstanding any provision of law to the contrary, the County Attorney shall be empowered to compromise, settle, or adjust rights, claims, demands or causes of action in favor of or against the County arising under this article.

Sec. 699.10. Disposition of forfeited vehicles.

A. After a judicial determination of forfeiture, the Westchester County Department of Public Safety shall effect seizure of the vehicle, if such vehicle has not already been retained by the County pursuant to section 699.6 of this article, unless relief from such judicial determination by the court pursuant to section 699.8 of this article would prevent such seizure, or the County Attorney has otherwise compromised, settled or adjusted the matter pursuant to section 699.9 of this article, in a manner that renders such seizure unnecessary. Following such seizure, the Westchester County Department of Public Safety shall either:

- (1) retain such seized vehicle for the official use of its office, division or department; or
- (2) transfer such seized vehicle to any County agency, department, board or commission demonstrating need for such seized vehicle, so that such seized vehicle may be put into official use by that agency, department, board or commission; or
- (3) transfer such seized vehicle to any County-funded agency or organization demonstrating need for such seized vehicle, so that such seized vehicle may be put into use by the funded agency or organization in the regular course of business of that funded agency or organization.

Any such transfer of forfeited vehicles under this subparagraph may result in an in-kind deduction from those funds paid by the County to the specific agency or organization; or

(4) by a public notice of at least five days, sell such forfeited property at a public sale conducted by the County Purchasing Agent pursuant to Chapter 836 of the Laws of Westchester County.

B. The net proceeds from any sale pursuant to subparagraph (4) of subsection A. of this section or from any compromise, settlement or adjustment by the County Attorney pursuant to section 699.9 of this article, after deduction of the lawful expenses incurred, shall be paid into an account to be designated “Chapter 699 Forfeiture Proceeds”. Monies paid into this account shall be used for the costs of the respective County departments administering the provisions of this article, including but not limited to, costs of seizing property, publication service and legal costs; any balance shall be used to fund DWI program initiatives in law enforcement, treatment and education/prevention.

Sec. 699.11. Public education.

The County of Westchester shall conduct public education to advise members of the public, the judiciary, and legal community of the provisions of this article.

Sec. 699.12. Annual report.

The County of Westchester shall provide a detailed annual report to the Board of Legislators on the enforcement of this article for the previous year. Such report shall include appropriate statistical analysis and comment.

Sec. 699.13. Severability.

If any clause, sentence, subparagraph, subsection or section of this article shall be held invalid by any court of competent jurisdiction, or the application of this article to any person or set of circumstances shall be held invalid, such invalidity or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence,

subparagraph, subsection, section, or operation of this article directly involved in the controversy in which the judgment shall have been rendered. To further this end, the provisions of this article are hereby declared to be severable.

Section 4. This Local Law shall take effect on December 15, 2010.