

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 314

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO CIVIL FORFEITURE OF PROPERTY; ENACTING THE
FORFEITURE ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF
THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 12 of this act may be cited as the "Forfeiture Act".

Section 2. [NEW MATERIAL] PURPOSE OF ACT. -- The purpose of
the Forfeiture Act is to make uniform the standards and
procedures for the seizure and forfeiture of property used or
intended to be used in the commission of a crime.

Section 3. [NEW MATERIAL] DEFINITIONS. -- As used in the
Forfeiture Act:

A. "conviction" means an alleged violator has

1 entered a plea of guilty or nolo contendere or been found
2 guilty in the trial court and has waived or exhausted all
3 rights to an appeal;

4 B. "crime" means an offense punishable by
5 imprisonment for one year or more, a violation of laws or rules
6 regarding hunting or fishing or a violation of laws regarding
7 gambling;

8 C. "law enforcement officer" means a state or
9 municipal police officer, county sheriff, deputy sheriff,
10 conservation officer, motor transportation enforcement officer
11 or other state employee authorized by state law to enforce
12 criminal statutes, but "law enforcement officer" does not
13 include correctional officers;

14 D. "owner" means a person who has a legal or
15 equitable ownership interest in property;

16 E. "property" means tangible or intangible personal
17 property or real property; and

18 F. "property subject to forfeiture" means property
19 described and declared to be subject to forfeiture by a state
20 law outside of the Forfeiture Act.

21 Section 4. [NEW MATERIAL] JURISDICTION AND VENUE OF
22 FORFEITURE PROCEEDINGS. -- A district court has jurisdiction of
23 forfeiture proceedings. Venue for:

24 A. the issuance of a pre-seizure order and
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1 subsequent forfeiture proceedings pursuant to the order is in
2 the district court for the county where the property alleged to
3 be subject to forfeiture is located unless the property is a
4 business, in which case venue is in the district court for the
5 county where the principal office of the business is located;
6 and

7 B. forfeiture proceedings of property seized
8 without a prior court order is in the district court for the
9 county in which the property was seized.

10 Section 5. [NEW MATERIAL] SEIZURE OF PROPERTY. --Property
11 subject to forfeiture may be seized by a law enforcement
12 agency:

13 A. pursuant to an order of seizure issued by a
14 district court having jurisdiction based on a sworn application
15 of a law enforcement officer from which a determination is made
16 by the court that:

17 (1) there is a substantial probability that
18 the state will prevail on the issue of forfeiture and that
19 failure to enter the order will result in the property being
20 destroyed, removed from the jurisdiction of the court or
21 otherwise made unavailable for forfeiture; and

22 (2) the need to preserve the availability of
23 the property through the entry of the requested order outweighs
24 the hardship to the alleged owner and other parties known to be
25

1 claiming interests in the property; and

2 B. if the property alleged to be subject to
3 forfeiture is not a residence or a business, it may be seized
4 by a law enforcement agency without a prior court order when:

5 (1) the seizure is incident to an arrest for a
6 crime, a search conducted pursuant to a search warrant or an
7 inspection conducted pursuant to an administrative inspection
8 warrant and the law enforcement officer making the arrest or
9 executing the search or inspection warrant has probable cause
10 to believe the property to be subject to forfeiture and that
11 the subject of the arrest, search warrant or administrative
12 inspection warrant is an owner of the property;

13 (2) the property seized has been the subject
14 of a prior judgment in favor of the state or a political
15 subdivision in a criminal injunction or forfeiture proceeding;
16 or

17 (3) the law enforcement officer making the
18 seizure has probable cause to believe the property is subject
19 to forfeiture and that the delay occasioned by the need to
20 obtain a court order would frustrate the seizure.

21 Section 6. [NEW MATERIAL] POST-SEIZURE REQUIREMENTS. --
22 Within thirty days after the seizure of property alleged to be
23 subject to forfeiture, the law enforcement agency making the
24 seizure shall:

1 A. if the property was seized without a prior court
2 order:

3 (1) immediately apply for a court order of
4 seizure;

5 (2) provide notice and an opportunity to be
6 heard on the application by persons known to claim ownership or
7 other interests in the property; and

8 (3) if the application for a seizure order is
9 denied, return the property immediately to the owner unless
10 possession of the property is illegal; and

11 B. if the property was seized pursuant to a court
12 order or if the court enters an order of seizure pursuant to
13 Subsection A of this section and the law enforcement agency
14 determines to go forward with forfeiture proceedings against
15 the property, it shall prosecute the crime in relation to which
16 the property is alleged to be subject to forfeiture and the
17 forfeiture proceedings in a bifurcated trial.

18 Section 7. [NEW MATERIAL] APPLICABLE RULES OF PROCEDURE. -
19 -In a bifurcated trial pursuant to the Forfeiture Act, the
20 Rules of Criminal Procedure for the District Courts shall apply
21 in the criminal prosecution, and the Rules of Civil Procedure
22 for the District Courts shall apply to the forfeiture.

23 Section 8. [NEW MATERIAL] BURDEN OF PROOF-- TRIER OF
24 FACTS. --

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1 A. The state shall prove the elements necessary to
2 adjudicate a forfeiture by clear and convincing evidence.

3 B. The court shall be the trier of facts in the
4 forfeiture proceeding.

5 Section 9. ~~[NEW MATERIAL]~~ DETERMINATION OF OWNERSHIP--
6 COMPLAINT--SUMMONS--NOTICE OF HEARING--SERVICE OF PROCESS.--

7 A. Within ten days of its determination to proceed
8 with forfeiture, the state shall file a complaint of
9 forfeiture, have a summons issued by the court and obtain a
10 court order scheduling a hearing on determination of ownership.
11 The hearing date shall be not less than thirty-five days or
12 more than sixty days after the date of filing the complaint.
13 Notice of the hearing shall be served with the summons. The
14 notice shall include:

15 (1) a description of the property alleged to
16 be subject to forfeiture;

17 (2) the date and place of seizure of the
18 property;

19 (3) the name and address of the law
20 enforcement agency making the seizure;

21 (4) the reason the property is alleged to be
22 subject to forfeiture; and

23 (5) a summary of the procedures and procedural
24 rights of parties applicable to the forfeiture proceeding.
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1 B. Service of process shall be made in the manner
2 required by Rule 1-004 NMRA for the service of a summons in a
3 civil action and shall be served upon the person from whom the
4 property was seized, the owner and all persons known or
5 reasonably believed by the state to have an interest, whether
6 ownership or some other interest, in the property.

7 C. In addition to service of the notice, it shall
8 be published once in each of the three weeks immediately
9 following the week in which the complaint was filed. The
10 publication shall be made in a newspaper of general circulation
11 in the county in which the seizure of the property occurred.

12 D. If the property alleged to be subject to
13 forfeiture is real property or a motor vehicle, the law
14 enforcement agency seizing the property shall have a title
15 search performed and shall include as persons to be served
16 pursuant to Subsection B of this section, all persons shown to
17 have an ownership or security interest in the property.

18 Section 10. [NEW MATERIAL] COURT DETERMINATION. --

19 A. Claims to the property shall be filed by way of
20 answer to the complaint of forfeiture and shall be filed within
21 twenty days of the date of service of the complaint or the last
22 date of publication if the claimant was not served personally.

23 B. On the date set for hearing, the court shall
24 proceed to adjudicate all claims to the property alleged to be
25

1 subject to forfeiture. If no claims have been filed, the court
2 may enter a judgment of forfeiture by default.

3 C. If the court determines that the person charged
4 with the crime for which the property is alleged to be subject
5 to forfeiture is not the owner of the property, the forfeiture
6 proceeding shall be dismissed and the property shall be
7 delivered to the person determined to be the owner unless
8 possession of the property is illegal.

9 D. A party prevailing in its claim against the
10 state that the person charged with the crime for which the
11 property is alleged to be subject to forfeiture is not the
12 owner of the property shall be awarded costs and reasonable
13 attorney fees and shall not be subject to any charges by the
14 state for storage of the property or expenses incurred in the
15 preservation of the property. Costs and attorney fees shall
16 not be awarded to the state. The law enforcement agency making
17 the seizure of the property is liable for the costs and
18 attorney fees awarded.

19 E. In an opposed proceeding for forfeiture, a
20 claimant has the right to a jury trial if the property alleged
21 to be subject to forfeiture has a value in excess of ten
22 thousand dollars (\$10,000).

23 F. If claims have been filed and, after hearing,
24 the court determines that the property is subject to
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1 forfeiture, it shall enter a judgment of forfeiture if

2 (1) the criminal prosecution of the owner
3 results in a conviction; and

4 (2) the value of the property forfeited does
5 not unreasonably exceed the pecuniary gain derived or sought to
6 be derived by the crime, the pecuniary loss caused or sought to
7 be caused by the crime or the value of the convicted owner's
8 interest in the property.

9 Section 11. [NEW MATERIAL] DISPOSITION OF FORFEITED
10 PROPERTY. -- Forfeited property, if it is not currency, shall be
11 sold at public sale by the law enforcement agency making the
12 seizure, or shall be otherwise disposed of according to law.
13 Forfeited currency and the proceeds of the sale of forfeited
14 property shall be distributed:

15 A. first, to pay reasonable expenses incurred for
16 storage and protection of the property;

17 B. second, the balance shall be paid as restitution
18 to or on behalf of victims, if any, of the crime related to the
19 forfeiture if the defendant is convicted of that crime; and

20 C. third, the balance to the general fund except
21 for forfeitures of property subject to forfeiture pursuant to
22 Chapter 17 NMSA 1978, in which case the balance shall be
23 deposited in the game protection fund in an amount equal to the
24 expenditures to prosecute the forfeiture and the crime, with
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1 the net balance to be deposited to the general fund.

2 Section 12. [NEW MATERIAL] SAFEKEEPING OF SEIZED PROPERTY
3 PENDING DISPOSITION. --

4 A. Seized currency alleged to be subject to
5 forfeiture shall be deposited with the clerk of the district
6 court in an interest-bearing account.

7 B. Seized property other than currency or real
8 property, not required by federal or state law to be destroyed,
9 shall be:

- 10 (1) placed under seal; and
11 (2) removed to a place designated by the
12 district court; or
13 (3) held in the custody of the seizing law
14 enforcement agency.

15 C. Property shall be kept by the custodian in a
16 manner to protect it from theft or damage and, if ordered by
17 the district court, insured against those risks.

18 Section 13. Section 17-2-20.1 NMSA 1978 (being Laws 1979,
19 Chapter 321, Section 1, as amended) is amended to read:

20 "17-2-20.1. SEIZURE AND FORFEITURE--PROPERTY SUBJECT. --

21 A. All firearms and bows and arrows may be subject
22 to seizure and forfeiture when used as instrumentalities in the
23 commission of the following crimes:

- 24 (1) illegal possession or transportation of
25

1 big game during closed season;

2 (2) taking big game during closed season;

3 (3) attempting to take big game by the use of
4 spotlight or artificial light; and

5 (4) exceeding the bag limit on any big game
6 species during open season.

7 ~~[B. Provided that no firearms or bows and arrows
8 shall be subject to forfeiture if the violation was without the
9 knowledge or consent of the owner.]~~

10 ~~[C.]~~ B. Any motor vehicle shall be subject to
11 seizure and forfeiture when operated in violation of the
12 provisions of Section 17-2-31 NMSA 1978, regarding hunting by
13 spotlight. ~~[In the event of seizure and forfeiture under this
14 subsection, the motor vehicle shall be disposed of in
15 accordance with the provisions of Section 17-2-20.2 NMSA 1978.]~~

16 ~~D. No conveyance is subject to forfeiture under
17 this section by reason of any act or omission established for
18 the owner to have been committed or omitted without his
19 knowledge or consent. A forfeiture of a conveyance encumbered
20 by a bona fide security interest shall be subject to the
21 interest of a secured party if the secured party neither had
22 knowledge of nor consented to the act or omission.]~~

23 C. Seizure and forfeiture proceedings shall be
24 conducted pursuant to the provisions of the Forfeiture Act."

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1 Section 14. Section 18-6-9.3 NMSA 1978 (being Laws 1993,
2 Chapter 176, Section 11) is amended to read:

3 "18-6-9.3. CULTURAL PROPERTY--SEIZURE AND FORFEITURE OF
4 INSTRUMENTS. -- ~~[A.] Any instrument, vehicle, tool or equipment~~
5 ~~used or intended to be used to violate the provisions of the~~
6 ~~Cultural Properties Act is subject to seizure and forfeiture~~
7 ~~[except that no instrument, vehicle, tool or equipment shall be~~
8 ~~subject to forfeiture if the violation was without the~~
9 ~~knowledge or consent of the owner of the property subject to~~
10 ~~forfeiture.~~

11 ~~B. Property subject to forfeiture pursuant to the~~
12 ~~provisions of this section may be seized by a conservation~~
13 ~~officer, sheriff, state police officer or law enforcement~~
14 ~~officer upon an order of the district court in the county~~
15 ~~having jurisdiction over the offense.~~

16 ~~C. Seizure without a court order may occur if:~~

17 ~~(1) the seizure is incident to an arrest or a~~
18 ~~search pursuant to a search warrant; or~~

19 ~~(2) the enforcement officer has probable cause~~
20 ~~to believe that the property was used or intended for use to~~
21 ~~violate the Cultural Properties Act.~~

22 ~~D. In the event of seizure pursuant to this~~
23 ~~section, proceedings shall be instituted within thirty days~~
24 ~~from the date of seizure. A proceeding brought pursuant to~~
25

1 ~~this section shall be in rem. The claim shall not be filed~~
 2 ~~against the owner or any other person and shall be filed only~~
 3 ~~as a civil case.~~

4 ~~E. Property taken or detained pursuant to the~~
 5 ~~provisions of this section shall not be subject to replevin,~~
 6 ~~but is deemed to be in the custody of the state agency~~
 7 ~~employing the enforcing officer, subject only to the orders and~~
 8 ~~decrees of the district court. When property is seized~~
 9 ~~pursuant to the Cultural Properties Act, the state agency~~
 10 ~~seizing it shall remove the property to a place designated by~~
 11 ~~the state agency for disposition in accordance with law.~~

12 ~~F. Except as otherwise specifically provided by~~
 13 ~~law, property forfeited due to a violation of the Cultural~~
 14 ~~Properties Act shall be sold at public auction pursuant to a~~
 15 ~~court order. The proceeds of the court-ordered sale of~~
 16 ~~forfeited property are subject first to the claims, verified by~~
 17 ~~the court, of innocent persons and the legitimate rights to~~
 18 ~~restitution of actual victims of the criminal acts. Where~~
 19 ~~proceeds are derived from violations:~~

20 ~~(1) on lands controlled by the commissioner of~~
 21 ~~public lands, one half of the proceeds from the sale shall~~
 22 ~~accrue to the state agency of which the law enforcement officer~~
 23 ~~seizing that property is a member and one half shall be~~
 24 ~~deposited in the cultural properties restoration fund; and~~

1 ~~(2) on any other state lands, one-half of the~~
2 ~~proceeds from the sale shall accrue to the state agency of~~
3 ~~which the law enforcement officer seizing that property is a~~
4 ~~member and one-half of the proceeds shall be deposited in the~~
5 ~~cultural properties restoration fund] pursuant to the~~
6 provisions of the Forfeiture Act. Notwithstanding the
7 provisions of that act regarding the disposition of forfeited
8 property, when proceeds from a court-ordered sale of forfeited
9 property are derived from a violation of cultural property, the
10 proceeds from the sale shall be used for the restoration,
11 stabilization, protection and preservation of the cultural
12 property. Any proceeds remaining shall be deposited in the
13 general fund. "

14 Section 15. Section 30-3-8.1 NMSA 1978 (being Laws 1993,
15 Chapter 78, Section 2) is amended to read:

16 "30-3-8.1. SEIZURE AND FORFEITURE OF MOTOR VEHICLE--
17 PROCEDURE [EXCEPTION]. --

18 A. A motor vehicle shall be subject to seizure and
19 forfeiture when the vehicle is used or intended for use in the
20 commission of the offense of shooting at or from a motor
21 vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978.

22 B. A motor vehicle subject to seizure and
23 forfeiture [~~may be seized by a law enforcement officer:~~

24 ~~(1) upon an order issued by the district court~~
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1 ~~having jurisdiction;~~

2 ~~(2) without an order if the seizure is~~
3 ~~incident to an arrest; or~~

4 ~~(3) without an order if the seizure is~~
5 ~~incident to a search under a valid search warrant.~~

6 ~~C. In the event of seizure pursuant to Subsection B~~
7 ~~of this section, proceedings under the Rules of Civil Procedure~~
8 ~~for the District Courts and Subsection D of this section shall~~
9 ~~be instituted promptly.~~

10 ~~D. A motor vehicle seized under this section shall~~
11 ~~not be subject to replevin, but is deemed to be in the custody~~
12 ~~of the seizing law enforcement agency, subject only to the~~
13 ~~orders and decrees of the district court. When a motor vehicle~~
14 ~~is seized pursuant to the provisions of this section, a law~~
15 ~~enforcement officer may remove the property to a place~~
16 ~~designated by the district court or by the head of the~~
17 ~~officer's agency for disposition in accordance with the law.~~

18 ~~E. When a vehicle is forfeited pursuant to this~~
19 ~~section, the seizing law enforcement agency shall sell the~~
20 ~~motor vehicle at a public auction, and the proceeds, after all~~
21 ~~costs for impoundment, forfeiture and sale are repaid, shall be~~
22 ~~forwarded to the state treasurer for credit to the crime~~
23 ~~victims reparation fund pursuant to Section 31-22-21 NMSA 1978~~
24 ~~within thirty days. If the sale of the motor vehicle does not~~

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1 ~~cover the cost of impounding, forfeiting and selling the motor~~
2 ~~vehicle, the law enforcement agency may deduct the uncovered~~
3 ~~portion of the cost from the proceeds of the next sale.~~

4 F. ~~No motor vehicle shall be subject to forfeiture~~
5 ~~when the owner of the motor vehicle establishes that the~~
6 ~~offense of shooting at or from a motor vehicle pursuant to~~
7 ~~Subsection B of Section 30-3-8 NMSA 1978 was committed without~~
8 ~~his knowledge or consent. A forfeiture of a motor vehicle~~
9 ~~encumbered by a recorded bona fide security interest shall be~~
10 ~~subject to the interest of the secured party if the secured~~
11 ~~party did not have knowledge of or did not consent to the~~
12 ~~offense of shooting at or from a motor vehicle pursuant to~~
13 ~~Subsection B of Section 30-3-8 NMSA 1978] shall be seized and~~
14 ~~forfeited pursuant to the provisions of the Forfeiture Act."~~

15 Section 16. Section 30-16B-9 NMSA 1978 (being Laws 1991,
16 Chapter 112, Section 9) is amended to read:

17 "30-16B-9. SEIZURE AND FORFEITURE- - PROCEDURE. -- [A.]
18 Property subject to forfeiture [~~under~~] pursuant to the
19 Unauthorized Recording Act may be seized [~~by any enforcement~~
20 ~~officer upon an order issued by the district court having~~
21 ~~jurisdiction.~~

22 B. ~~Seizure without such an order may be made if:~~

23 (1) ~~the seizure is incident to an arrest or~~
24 ~~search under a valid search warrant or an inspection under an~~

1 ~~administrative inspection warrant;~~

2 ~~(2) the property subject to seizure has been~~
3 ~~the subject of a prior judgment in favor of the state in an~~
4 ~~injunction or forfeiture proceeding based upon the Unauthorized~~
5 ~~Recording Act; or~~

6 ~~(3) the enforcement officer has probable cause~~
7 ~~to believe that the property was used or is intended to be used~~
8 ~~in violation of the Unauthorized Recording Act.~~

9 ~~C. In the event of seizure pursuant to Subsection A~~
10 ~~of this section, proceedings under Subsection D of this section~~
11 ~~and the Rules of Civil Procedure for the District Court shall~~
12 ~~be instituted promptly and not later than thirty days after~~
13 ~~seizure.~~

14 ~~D. Property taken or detained under this section~~
15 ~~shall not be subject to replevin but is deemed to be in the~~
16 ~~custody of the seizing police department or agency subject only~~
17 ~~to the orders and decrees of the district court. When property~~
18 ~~is seized under the Unauthorized Recording Act, the enforcement~~
19 ~~officer may:~~

20 ~~(1) place the property under seal; or~~

21 ~~(2) remove the property to a place designated~~
22 ~~by the court or head of the officer's department or agency for~~
23 ~~disposition in accordance with law.~~

24 ~~E. When property is forfeited under the~~

1 ~~Unauthorized Recording Act, the seizing police department or~~
2 ~~agency shall:~~

3 ~~(1) sell that which is not required to be~~
4 ~~destroyed by law and the proceeds shall revert to the general~~
5 ~~fund;~~

6 ~~(2) take custody of the property for use by~~
7 ~~law enforcement agencies in the enforcement of the Unauthorized~~
8 ~~Recording Act for disposition in accordance with law; or~~

9 ~~(3) forward property, the proceeds from the~~
10 ~~sale of which are not required to revert to the general fund,~~
11 ~~to the property control division of the general services~~
12 ~~department for disposition] and forfeited pursuant to the~~
13 ~~provisions of the Forfeiture Act.~~ "

14 Section 17. Section 30-19-10 NMSA 1978 (being Laws 1963,
15 Chapter 303, Section 19-10) is amended to read:

16 "30-19-10. SEIZURE AND FORFEITURE OF [PRIZES AND]
17 EQUIPMENT. -- [Any] An illegal gambling device or other equipment
18 [of any type] used in gambling shall be seized [by the law
19 enforcement officers discovering such device or equipment, and
20 it shall be the duty of such officers to retain custody of the
21 property seized until such property is disposed of by order of
22 the district court. Upon proper application by the district
23 attorney to the judge of the district court, the judge of the
24 district court may by proper order direct the destruction of

1 ~~any gambling device, paraphernalia or equipment of any kind or~~
 2 ~~character seized by law enforcement officers] and forfeited~~
 3 ~~pursuant to the provisions of the Forfeiture Act. "~~

4 Section 18. Section 30-31-35 NMSA 1978 (being Laws 1972,
 5 Chapter 84, Section 34, as amended) is amended to read:

6 "30-31-35. SEIZURE AND FORFEITURE--PROCEDURE. -- [A.]

7 Property subject to forfeiture and disposal [~~under~~] pursuant
 8 to the Controlled Substances Act may be seized [~~by any~~
 9 ~~enforcement officer upon an order issued by the district court~~
 10 ~~having jurisdiction.~~

11 B. ~~Seizure without such an order may be made if:~~

12 (1) ~~the seizure is incident to an arrest or~~
 13 ~~search under a search warrant or an inspection under an~~
 14 ~~administrative inspection warrant;~~

15 (2) ~~the property subject to seizure has been~~
 16 ~~the subject of a prior judgment in favor of the state in an~~
 17 ~~injunction or forfeiture proceeding based upon the Controlled~~
 18 ~~Substances Act;~~

19 (3) ~~the enforcement officer has probable cause~~
 20 ~~to believe that the property, which is a controlled substance,~~
 21 ~~is directly or indirectly dangerous to health or safety; or~~

22 (4) ~~the enforcement officer has probable cause~~
 23 ~~to believe that the property was used or is intended to be used~~
 24 ~~in violation of the Controlled Substances Act.~~

1 C. ~~In the event of seizure pursuant to Subsection A~~
2 ~~or Subsection B of this section, proceedings under Subsection D~~
3 ~~of this section and the Rules of Civil Procedure for the~~
4 ~~District Courts of New Mexico shall be instituted promptly and~~
5 ~~not later than thirty days after seizure.~~

6 D. ~~Property taken or detained under this section~~
7 ~~shall not be subject to replevin, but is deemed to be in the~~
8 ~~custody of the law enforcement agency seizing it subject only~~
9 ~~to the orders and decrees of the district court. When property~~
10 ~~is seized under the Controlled Substances Act, the enforcement~~
11 ~~officer may:~~

12 (1) ~~place the property under seal;~~

13 (2) ~~remove the property to a place designated~~
14 ~~by the enforcement officer; or~~

15 (3) ~~require the law enforcement agency to take~~
16 ~~custody of the property and remove it to an appropriate~~
17 ~~location for disposition in accordance with law.~~

18 E. ~~When property is forfeited under the Controlled~~
19 ~~Substances Act, the law enforcement agency seizing it shall:~~

20 (1) ~~sell that which is not required to be~~
21 ~~destroyed by law. The proceeds shall revert to the general~~
22 ~~fund of the state, county or municipality as the case may be;~~

23 (2) ~~take custody of the property for use by~~
24 ~~law enforcement agencies in the enforcement of the Controlled~~
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1 ~~Substances Act or remove it for disposition in accordance with~~
 2 ~~law; provided that where a motor vehicle has been seized by a~~
 3 ~~municipal police department or a county sheriff's department~~
 4 ~~with its respective jurisdictional boundaries, such department~~
 5 ~~shall institute forfeiture proceedings; or~~

6 ~~(3) in case of property seized by the state~~
 7 ~~police, forward property, the proceeds from the sale of which~~
 8 ~~are not required to revert to the general fund, to the state~~
 9 ~~police, bureau of narcotics for disposition; provided that~~
 10 ~~motor vehicles seized by the state police may be loaned to the~~
 11 ~~governor's organized crime prevention commission for use in~~
 12 ~~undercover work, the entire cost of operating such vehicles to~~
 13 ~~be borne by the governor's organized crime prevention~~
 14 ~~commission] and forfeited pursuant to the provisions of the~~
 15 ~~Forfeiture Act. "~~

16 Section 19. Section 30-31A-10 NMSA 1978 (being Laws 1983,
 17 Chapter 148, Section 10) is amended to read:

18 "30-31A-10. SEIZURE AND FORFEITURE- - PROCEDURE. - - [A-]
 19 Property subject to forfeiture and disposal [~~under~~] pursuant
 20 to the Imitation Controlled Substances Act may be seized [~~by~~
 21 ~~any law enforcement officer upon an order issued by the~~
 22 ~~district court having jurisdiction.~~

23 B. ~~Seizure without such an order may be made if:~~

24 (1) ~~the seizure is incident to an arrest or~~
 25

1 ~~search under a search warrant; or~~

2 ~~(2) the property subject to seizure has been~~
3 ~~the subject of a prior judgment in favor of the state in an~~
4 ~~injunction or forfeiture proceeding based upon the Imitation~~
5 ~~Controlled Substances Act.~~

6 ~~C. In the event of seizure pursuant to Subsection A~~
7 ~~or B of this section, proceedings under Subsection D of this~~
8 ~~section and the rules of civil procedure for the district~~
9 ~~courts of New Mexico shall be instituted promptly and not later~~
10 ~~than thirty days after seizure.~~

11 ~~D. Property taken or detained under this section~~
12 ~~shall not be subject to replevin but is deemed to be in the~~
13 ~~custody of the law enforcement agency seizing it subject only~~
14 ~~to the orders and decrees of the district court. When property~~
15 ~~is seized under the Imitation Controlled Substances Act, the~~
16 ~~enforcement officer may:~~

- 17 ~~(1) place the property under seal;~~
18 ~~(2) remove the property to a place designated~~
19 ~~by the enforcement officer; or~~
20 ~~(3) require the law enforcement agency to take~~
21 ~~custody of the property and remove it to an appropriate~~
22 ~~location for disposition in accordance with law.~~

23 ~~E. When property is forfeited under the Imitation~~
24 ~~Controlled Substances Act, the law enforcement agency seizing~~

1 ~~it shall take custody of the property for use by law~~
 2 ~~enforcement agencies in the enforcement of the Imitation~~
 3 ~~Controlled Substances Act and the Controlled Substances Act and~~
 4 ~~remove it for disposition in accordance with law} and forfeited~~
 5 pursuant to the provisions of the Forfeiture Act."

6 Section 20. Section 30-42-4 NMSA 1978 (being Laws 1980,
 7 Chapter 40, Section 4) is amended to read:

8 "30-42-4. PROHIBITED ACTIVITIES--PENALTIES--SEIZURE AND
 9 FORFEITURE. --

10 A. It is unlawful for any person who has received
 11 any proceeds derived, directly or indirectly, from a pattern of
 12 racketeering activity in which the person has participated, to
 13 use or invest, directly or indirectly, any part of the proceeds
 14 or the proceeds derived from the investment or use thereof in
 15 the acquisition of any interest in, or the establishment or
 16 operation of, any enterprise. Whoever violates this subsection
 17 is guilty of a second degree felony.

18 B. It is unlawful for any person to engage in a
 19 pattern of racketeering activity in order to acquire or
 20 maintain, directly or indirectly, any interest in or control of
 21 any enterprise. Whoever violates this subsection is guilty of
 22 a second degree felony.

23 C. It is unlawful for any person employed by or
 24 associated with any enterprise to conduct or participate,
 25

1 directly or indirectly, in the conduct of [~~such~~] the
2 enterprise's affairs by engaging in a pattern of racketeering
3 activity. Whoever violates this subsection is guilty of a
4 second degree felony.

5 D. It is unlawful for any person to conspire to
6 violate any of the provisions of Subsections A through C of
7 this section. Whoever violates this subsection is guilty of a
8 third degree felony.

9 E. Whoever violates Subsection A, B, C or D of this
10 section in addition to the prescribed penalties shall forfeit
11 to the state of New Mexico:

12 (1) any interest acquired or maintained in
13 violation of the Racketeering Act; and

14 (2) any interest in, security of, claim
15 against or property or contractual right of any kind affording
16 a source of influence over any enterprise [~~which~~] that he has
17 established, operated, controlled, conducted or participated in
18 the conduct of in violation of the Racketeering Act.

19 F. In any action brought by the state [~~under~~]
20 pursuant to the Racketeering Act, [~~the district court shall~~
21 ~~have jurisdiction to enter such restraining orders or~~
22 ~~prohibitions, or to take such other actions, including but not~~
23 ~~limited to the acceptance of satisfactory performance bonds, in~~
24 ~~connection with any property or other interest subject to~~
25

1 ~~forfeiture under this section, as it shall deem proper.~~

2 ~~G. Upon conviction of a person under this section,~~
 3 ~~the court shall authorize the attorney general or the district~~
 4 ~~attorney to seize all property or other interest declared~~
 5 ~~forfeited under this section upon such terms and conditions as~~
 6 ~~the court shall deem proper, making due provision for the~~
 7 ~~rights of innocent persons. If a property right or other~~
 8 ~~interest is not exercisable or transferable for value by the~~
 9 ~~convicted person, it shall expire and shall not revert to the~~
 10 ~~convicted person] seizure and forfeiture proceedings shall be~~
 11 ~~conducted pursuant to the provisions of the Forfeiture Act."~~

12 Section 21. Section 30-45-7 NMSA 1978 (being Laws 1989,
 13 Chapter 215, Section 7) is amended to read:

14 "30-45-7. SEIZURE AND FORFEITURE OF PROPERTY. --

15 A. The following are subject to forfeiture:

16 (1) all computer property, equipment or
 17 products of any kind [~~which~~] that have been used, manufactured,
 18 acquired or distributed in violation of the Computer Crimes
 19 Act;

20 [~~(2) all materials, products and equipment of~~
 21 ~~any kind which are used or intended for use in manufacturing,~~
 22 ~~using, accessing, altering, disrupting, copying, concealing,~~
 23 ~~destroying, transferring, delivering, importing or exporting~~
 24 ~~any computer property or computer service in violation of the~~
 25

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1 ~~Computer Crimes Act;~~

2 ~~(3)]~~ (2) all books, records and research
3 products and materials involving formulas, microfilm, tapes and
4 data [~~which]~~ that are used or intended for use in violation of
5 the Computer Crimes Act;

6 ~~[(4) all conveyances, including aircraft,~~
7 ~~vehicles or vessels, which are used or intended for use to~~
8 ~~transport or in any manner to facilitate the transportation of~~
9 ~~property described in Subsection A, B or C of this section for~~
10 ~~the purpose of violating the Computer Crimes Act;~~

11 ~~(5) all property, real, personal or mixed,~~
12 ~~which has been used or intended for use, maintained or acquired~~
13 ~~in violation of the Computer Crimes Act;]~~ and

14 ~~[(6)]~~ (3) all money or proceeds that
15 constitute an instrumentality or derive from a violation of the
16 Computer Crimes Act.

17 ~~[B. Notwithstanding the provisions of Paragraphs~~
18 ~~(1) through (6) of Subsection A of this section:~~

19 ~~(1) no conveyance used by any person as a~~
20 ~~common carrier in the transaction of business as a common~~
21 ~~carrier is subject to forfeiture under this section unless it~~
22 ~~appears that the owner or other person in charge of the~~
23 ~~conveyance is a consenting party to a violation of the Computer~~
24 ~~Crimes Act;~~

underscored material = new
[bracketed material] = delete

1 ~~(2) no conveyance, computer property,~~
 2 ~~equipment or other material is subject to forfeiture under this~~
 3 ~~section by reason of any act or omission established by the~~
 4 ~~owner to have been committed or omitted without his knowledge~~
 5 ~~or consent;~~

6 ~~(3) a conveyance, computer property, equipment~~
 7 ~~or other material is not subject to forfeiture for a violation~~
 8 ~~of law the penalty for which is a misdemeanor or petty~~
 9 ~~misdemeanor; and~~

10 ~~(4) a forfeiture of a conveyance, computer~~
 11 ~~property, equipment or material encumbered by a bona fide~~
 12 ~~security interest shall be subject to the interest of a secured~~
 13 ~~party if the secured party neither had knowledge of nor~~
 14 ~~consented to the act or omission.~~

15 ~~C.] B.~~ Property subject to seizure and forfeiture
 16 and disposal [~~under~~] pursuant to the Computer Crimes Act may be
 17 seized [~~by any law enforcement officer upon an order issued by~~
 18 ~~the district court having jurisdiction.~~

19 ~~D.~~ Seizure without such an order may be made if:

20 ~~(1) the seizure is incident to an arrest or~~
 21 ~~search under a search warrant;~~

22 ~~(2) the property subject to seizure had been~~
 23 ~~the subject of a prior judgment in favor of the state in an~~
 24 ~~injunction or forfeiture proceeding based upon the Computer~~
 25

1 ~~Crimes Act; or~~

2 ~~(3) the enforcement officer has probable cause~~
3 ~~to believe that the property, whether real, personal or mixed,~~
4 ~~was used or intended for use, maintained or acquired in~~
5 ~~violation of the Computer Crimes Act.~~

6 ~~E. In the event of a seizure pursuant to Subsection~~
7 ~~C or Subsection D of this section, a proceeding under the~~
8 ~~Computer Crimes Act and the rules of civil procedure for the~~
9 ~~district courts shall be instituted promptly and not later than~~
10 ~~thirty days after seizure. The proceeding to forfeit property~~
11 ~~under the Computer Crimes Act is against the property and not~~
12 ~~against the owner or any other person. It is in rem wholly and~~
13 ~~not in personam. It is a civil case and not a criminal~~
14 ~~proceeding. The forfeiture proceeding is required, not to~~
15 ~~complete the forfeiture, but to prove the illegal use for which~~
16 ~~the forfeiture was suffered.~~

17 ~~F. Except as otherwise specifically provided by~~
18 ~~law, whenever any property is forfeited to the state by reason~~
19 ~~of the violation of any law, the court by which the offender is~~
20 ~~convicted shall order the sale or other disposition of the~~
21 ~~property and the proceeds of any such sale as provided for in~~
22 ~~this section are subject to the court making due provisions for~~
23 ~~the rights of innocent persons and the legitimate rights to~~
24 ~~restitution on behalf of actual victims of the criminal acts.~~

1 ~~G. Property taken or detained under this section~~
2 ~~shall not be subject to replevin but is deemed to be in the~~
3 ~~custody of the law enforcement agency seizing it, subject only~~
4 ~~to the orders and decrees of the district court. When property~~
5 ~~is seized under the Computer Crimes Act, the enforcement~~
6 ~~officer may:~~

7 ~~(1) place the property under seal;~~

8 ~~(2) remove the property to a place designated~~
9 ~~by the law enforcement officer or by the district court; or~~

10 ~~(3) require the law enforcement agency to take~~
11 ~~custody of the property and remove it to an appropriate~~
12 ~~location for disposition in accordance with law.~~

13 ~~H. When property is forfeited under the Computer~~
14 ~~Crimes Act, the law enforcement agency seizing it shall:~~

15 ~~(1) deliver custody of the property to the~~
16 ~~information systems council attached to the general services~~
17 ~~department. The council, based upon a plan, shall advertise~~
18 ~~and make available the forfeited property to state agencies and~~
19 ~~political subdivisions of the state based upon a demonstrated~~
20 ~~need and plan of use for that property. The information systems~~
21 ~~council shall advertise and make the forfeited property~~
22 ~~available by bid for a minimum of one hundred twenty days and~~
23 ~~dispose of that property within another sixty days. All~~
24 ~~proceeds from the sale of forfeited property shall be deposited~~
25

1 ~~in the general fund; or~~

2 ~~(2) where the court orders the property to be~~
3 ~~sold, the proceeds of the sale shall be paid into the general~~
4 ~~fund] and forfeited pursuant to the provisions of the~~
5 Forfeiture Act. "

6 Section 22. Section 60-7A-4.1 NMSA 1978 (being Laws 1985,
7 Chapter 179, Section 1, as amended) is amended to read:

8 "60-7A-4.1. UNLAWFUL SALE OF ALCOHOLIC BEVERAGES--
9 CRIMINAL PENALTY-- SEIZURE AND FORFEITURE. --

10 A. It is unlawful for any person to sell or attempt
11 to sell alcoholic beverages at any place other than a licensed
12 premises or as otherwise provided by the Liquor Control Act.

13 B. Any person who violates the provisions of
14 Subsection A of this section is guilty of a fourth degree
15 felony.

16 C. Any conveyance used or intended to be used for
17 the purpose of unlawful sale of alcoholic beverages or money
18 [~~which~~] that is the fruit or instrumentality of the crime may
19 be seized and [~~upon conviction, in the discretion of the court,~~
20 ~~be forfeited and disposed of under the procedures set forth in~~
21 ~~Section 30-31-35 NMSA 1978] forfeited pursuant to the
22 provisions of the Forfeiture Act. "~~

23 Section 23. REPEAL. -- Sections 17-2-20.2 and 17-2-21 NMSA
24 1978 (being Laws 1979, Chapter 321, Section 2 and Laws 1912,

1 Chapter 85, Section 23, as amended) are repealed.

2 Section 24. EFFECTIVE DATE. -- The effective date of the
3 provisions of this act is July 1, 2001.

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