

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
entered a plea of guilty or nolo contendere or been found

1 guilty in the trial court and has waived or exhausted all
2 rights to an appeal;

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

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

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

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

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

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

23 A. the issuance of a pre-seizure order and
24 subsequent forfeiture proceedings pursuant to the order is in
25 the district court for the county where the property alleged

1 to be subject to forfeiture is located unless the property is
2 a business, in which case venue is in the district court for
3 the county where the principal office of the business is
4 located; and

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

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

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

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

20 (2) the need to preserve the availability of
21 the property through the entry of the requested order
22 outweighs the hardship to the alleged owner and other parties
23 known to be claiming interests in the property; and

24 B. if the property alleged to be subject to
25 forfeiture is not a residence or a business, it may be seized

1 by a law enforcement agency without a prior court order when:

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

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

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

18 Section 6. [NEW MATERIAL] POST-SEIZURE REQUIREMENTS. --

19 Within thirty days after the seizure of property alleged to be
20 subject to forfeiture, the law enforcement agency making the
21 seizure shall:

22 A. if the property was seized without a prior
23 court order:

24 (1) immediately apply for a court order of
25 seizure;

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

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

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

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

20 Section 8. [NEW MATERIAL] BURDEN OF PROOF-- TRIER OF
21 FACTS. --

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

24 B. The court shall be the trier of facts in the
25 forfeiture proceeding.

1 Section 9. [NEW MATERIAL] DETERMINATION OF OWNERSHIP--
2 COMPLAINT--SUMMONS--NOTICE OF HEARING--SERVICE OF PROCESS.--

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

11 (1) a description of the property alleged to
12 be subject to forfeiture;

13 (2) the date and place of seizure of the
14 property;

15 (3) the name and address of the law
16 enforcement agency making the seizure;

17 (4) the reason the property is alleged to be
18 subject to forfeiture; and

19 (5) a summary of the procedures and
20 procedural rights of parties applicable to the forfeiture
21 proceeding.

22 B. Service of process shall be made in the manner
23 required by Rule 1-004 NMRA for the service of a summons in a
24 civil action and shall be served upon the person from whom the
25 property was seized, the owner and all persons known or

underscored material = new
[bracketed material] = delete

1 reasonably believed by the state to have an interest, whether
2 ownership or some other interest, in the property.

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

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

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

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

21 B. On the date set for hearing, the court shall
22 proceed to adjudicate all claims to the property alleged to be
23 subject to forfeiture. If no claims have been filed, the
24 court may enter a judgment of forfeiture by default.

25 C. If the court determines that the person charged

1 with the crime for which the property is alleged to be subject
2 to forfeiture is not the owner of the property, the forfeiture
3 proceeding shall be dismissed and the property shall be
4 delivered to the person determined to be the owner unless
5 possession of the property is illegal.

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

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

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

23 (1) the criminal prosecution of the owner
24 results in a conviction; and

25 (2) the value of the property forfeited does

1 not unreasonably exceed the pecuniary gain derived or sought
 2 to be derived by the crime, the pecuniary loss caused or
 3 sought to be caused by the crime or the value of the convicted
 4 owner's interest in the property.

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

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

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

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

23 Section 12. [NEW MATERIAL] SAFEKEEPING OF SEIZED
 24 PROPERTY PENDING DISPOSITION. --

25 A. Seized currency alleged to be subject to

1 forfeiture shall be deposited with the clerk of the district
2 court in an interest-bearing account.

3 B. Seized property other than currency or real
4 property, not required by federal or state law to be
5 destroyed, shall be:

- 6 (1) placed under seal; and
7 (2) removed to a place designated by the
8 district court; or
9 (3) held in the custody of the seizing law
10 enforcement agency.

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

14 Section 13. Section 17-2-20.1 NMSA 1978 (being Laws
15 1979, Chapter 321, Section 1, as amended) is amended to read:

16 "17-2-20.1. SEIZURE AND FORFEITURE--PROPERTY SUBJECT.--

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

- 20 (1) illegal possession or transportation of
21 big game during closed season;
22 (2) taking big game during closed season;
23 (3) attempting to take big game by the use of
24 spotlight or artificial light; and
25 (4) exceeding the bag limit on any big game

1 species during open season.

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

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

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

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

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

22 "18-6-9.3. CULTURAL PROPERTY-- SEIZURE AND FORFEITURE OF
23 INSTRUMENTS. -- ~~[A.]~~ Any instrument, vehicle, tool or equipment
24 used or intended to be used to violate the provisions of the
25 Cultural Properties Act is subject to seizure and forfeiture

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1 ~~[except that no instrument, vehicle, tool or equipment shall~~
2 ~~be subject to forfeiture if the violation was without the~~
3 ~~knowledge or consent of the owner of the property subject to~~
4 ~~forfeiture.]~~

5 ~~B. Property subject to forfeiture pursuant to the~~
6 ~~provisions of this section may be seized by a conservation~~
7 ~~officer, sheriff, state police officer or law enforcement~~
8 ~~officer upon an order of the district court in the county~~
9 ~~having jurisdiction over the offense.]~~

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

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

13 ~~(2) the enforcement officer has probable~~
14 ~~cause to believe that the property was used or intended for~~
15 ~~use to violate the Cultural Properties Act.]~~

16 ~~D. In the event of seizure pursuant to this~~
17 ~~section, proceedings shall be instituted within thirty days~~
18 ~~from the date of seizure. A proceeding brought pursuant to~~
19 ~~this section shall be in rem. The claim shall not be filed~~
20 ~~against the owner or any other person and shall be filed only~~
21 ~~as a civil case.]~~

22 ~~E. Property taken or detained pursuant to the~~
23 ~~provisions of this section shall not be subject to replevin,~~
24 ~~but is deemed to be in the custody of the state agency~~
25 ~~employing the enforcing officer, subject only to the orders~~

1 ~~and decrees of the district court. When property is seized~~
 2 ~~pursuant to the Cultural Properties Act, the state agency~~
 3 ~~seizing it shall remove the property to a place designated by~~
 4 ~~the state agency for disposition in accordance with law.~~

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

13 (1) ~~on lands controlled by the commissioner~~
 14 ~~of public lands, one-half of the proceeds from the sale shall~~
 15 ~~accrue to the state agency of which the law enforcement~~
 16 ~~officer seizing that property is a member and one-half shall~~
 17 ~~be deposited in the cultural properties restoration fund; and~~

18 (2) ~~on any other state lands, one-half of the~~
 19 ~~proceeds from the sale shall accrue to the state agency of~~
 20 ~~which the law enforcement officer seizing that property is a~~
 21 ~~member and one-half of the proceeds shall be deposited in the~~
 22 ~~cultural properties restoration fund] pursuant to the~~
 23 ~~provisions of the Forfeiture Act. Notwithstanding the~~
 24 ~~provisions of that act regarding the disposition of forfeited~~
 25 ~~property, when proceeds from a court-ordered sale of forfeited~~

1 property are derived from a violation of cultural property,
2 the proceeds from the sale shall be used for the restoration,
3 stabilization, protection and preservation of the cultural
4 property. Any proceeds remaining shall be deposited in the
5 general fund. "

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

8 "30-3-8.1. SEIZURE AND FORFEITURE OF MOTOR VEHICLE--
9 PROCEDURE [~~EXCEPTION~~]. --

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

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

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

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

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

22 C. ~~In the event of seizure pursuant to Subsection~~
23 ~~B of this section, proceedings under the Rules of Civil~~
24 ~~Procedure for the District Courts and Subsection D of this~~
25 ~~section shall be instituted promptly.~~

1 ~~D. A motor vehicle seized under this section shall~~
 2 ~~not be subject to replevin, but is deemed to be in the custody~~
 3 ~~of the seizing law enforcement agency, subject only to the~~
 4 ~~orders and decrees of the district court. When a motor~~
 5 ~~vehicle is seized pursuant to the provisions of this section,~~
 6 ~~a law enforcement officer may remove the property to a place~~
 7 ~~designated by the district court or by the head of the~~
 8 ~~officer's agency for disposition in accordance with the law.~~

9 ~~E. When a vehicle is forfeited pursuant to this~~
 10 ~~section, the seizing law enforcement agency shall sell the~~
 11 ~~motor vehicle at a public auction, and the proceeds, after all~~
 12 ~~costs for impoundment, forfeiture and sale are repaid, shall~~
 13 ~~be forwarded to the state treasurer for credit to the crime~~
 14 ~~victims reparation fund pursuant to Section 31-22-21 NMSA 1978~~
 15 ~~within thirty days. If the sale of the motor vehicle does not~~
 16 ~~cover the cost of impounding, forfeiting and selling the motor~~
 17 ~~vehicle, the law enforcement agency may deduct the uncovered~~
 18 ~~portion of the cost from the proceeds of the next sale.~~

19 ~~F. No motor vehicle shall be subject to forfeiture~~
 20 ~~when the owner of the motor vehicle establishes that the~~
 21 ~~offense of shooting at or from a motor vehicle pursuant to~~
 22 ~~Subsection B of Section 30-3-8 NMSA 1978 was committed without~~
 23 ~~his knowledge or consent. A forfeiture of a motor vehicle~~
 24 ~~encumbered by a recorded bona fide security interest shall be~~
 25 ~~subject to the interest of the secured party if the secured~~

1 ~~party did not have knowledge of or did not consent to the~~
2 ~~offense of shooting at or from a motor vehicle pursuant to~~
3 ~~Subsection B of Section 30-3-8 NMSA 1978]~~ shall be seized and
4 forfeited pursuant to the provisions of the Forfeiture Act. "

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

7 "30-16B-9. SEIZURE AND FORFEITURE- - PROCEDURE. - - [A.]

8 Property subject to forfeiture [~~under~~] pursuant to the
9 Unauthorized Recording Act may be seized [~~by any enforcement~~
10 ~~officer upon an order issued by the district court having~~
11 ~~jurisdiction.~~

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

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

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

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

23 C. ~~In the event of seizure pursuant to Subsection~~
24 ~~A of this section, proceedings under Subsection D of this~~
25 ~~section and the Rules of Civil Procedure for the District~~

1 ~~Court shall be instituted promptly and not later than thirty~~
 2 ~~days after seizure.~~

3 ~~D. Property taken or detained under this section~~
 4 ~~shall not be subject to replevin but is deemed to be in the~~
 5 ~~custody of the seizing police department or agency subject~~
 6 ~~only to the orders and decrees of the district court. When~~
 7 ~~property is seized under the Unauthorized Recording Act, the~~
 8 ~~enforcement officer may:~~

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

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

13 ~~E. When property is forfeited under the~~
 14 ~~Unauthorized Recording Act, the seizing police department or~~
 15 ~~agency shall:~~

16 ~~(1) sell that which is not required to be~~
 17 ~~destroyed by law and the proceeds shall revert to the general~~
 18 ~~fund;~~

19 ~~(2) take custody of the property for use by~~
 20 ~~law enforcement agencies in the enforcement of the~~
 21 ~~Unauthorized Recording Act for disposition in accordance with~~
 22 ~~law; or~~

23 ~~(3) forward property, the proceeds from the~~
 24 ~~sale of which are not required to revert to the general fund,~~
 25 ~~to the property control division of the general services~~

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1 ~~department for disposition]~~ and forfeited pursuant to the
2 provisions of the Forfeiture Act. "

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

5 "30-19-10. SEIZURE AND FORFEITURE OF [PRIZES AND]
6 EQUIPMENT. -- [Any] An illegal gambling device or other
7 equipment [~~of any type~~] used in gambling shall be seized [by
8 ~~the law enforcement officers discovering such device or~~
9 ~~equipment, and it shall be the duty of such officers to retain~~
10 ~~custody of the property seized until such property is disposed~~
11 ~~of by order of the district court. Upon proper application by~~
12 ~~the district attorney to the judge of the district court, the~~
13 ~~judge of the district court may by proper order direct the~~
14 ~~destruction of any gambling device, paraphernalia or equipment~~
15 ~~of any kind or character seized by law enforcement officers]~~
16 and forfeited pursuant to the provisions of the Forfeiture
17 Act. "

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

20 "30-31-35. SEIZURE AND FORFEITURE- - PROCEDURE. -- [A-]
21 Property subject to forfeiture and disposal [~~under~~] pursuant
22 to the Controlled Substances Act may be seized [by any
23 ~~enforcement officer upon an order issued by the district court~~
24 ~~having jurisdiction.~~

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

1 ~~(1) the seizure is incident to an arrest or~~
2 ~~search under a search warrant or an inspection under an~~
3 ~~administrative inspection warrant;~~

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

8 ~~(3) the enforcement officer has probable~~
9 ~~cause to believe that the property, which is a controlled~~
10 ~~substance, is directly or indirectly dangerous to health or~~
11 ~~safety; or~~

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

15 ~~C. In the event of seizure pursuant to Subsection~~
16 ~~A or Subsection B of this section, proceedings under~~
17 ~~Subsection D of this section and the Rules of Civil Procedure~~
18 ~~for the District Courts of New Mexico shall be instituted~~
19 ~~promptly and not later than thirty days after seizure.~~

20 ~~D. Property taken or detained under this section~~
21 ~~shall not be subject to replevin, but is deemed to be in the~~
22 ~~custody of the law enforcement agency seizing it subject only~~
23 ~~to the orders and decrees of the district court. When~~
24 ~~property is seized under the Controlled Substances Act, the~~
25 ~~enforcement officer may:~~

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

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

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

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

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

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

19 ~~(3) in case of property seized by the state~~
20 ~~police, forward property, the proceeds from the sale of which~~
21 ~~are not required to revert to the general fund, to the state~~
22 ~~police, bureau of narcotics for disposition; provided that~~
23 ~~motor vehicles seized by the state police may be loaned to the~~
24 ~~governor's organized crime prevention commission for use in~~
25 ~~undercover work, the entire cost of operating such vehicles to~~

1 ~~be borne by the governor's organized crime prevention~~
 2 ~~commission]~~ and forfeited pursuant to the provisions of the
 3 Forfeiture Act. "

4 Section 19. Section 30-31A-10 NMSA 1978 (being Laws
 5 1983, Chapter 148, Section 10) is amended to read:

6 "30-31A-10. SEIZURE AND FORFEITURE- - PROCEDURE. - - [A-]
 7 Property subject to forfeiture and disposal [~~under~~] pursuant
 8 to the Imitation Controlled Substances Act may be seized [by
 9 ~~any law enforcement officer upon an order issued by the~~
 10 ~~district court 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~~

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

18 C. ~~In the event of seizure pursuant to Subsection~~
 19 ~~A or B of this section, proceedings under Subsection D of this~~
 20 ~~section and the rules of civil procedure for the district~~
 21 ~~courts of New Mexico shall be instituted promptly and not~~
 22 ~~later than thirty days after seizure.~~

23 D. ~~Property taken or detained under this section~~
 24 ~~shall not be subject to replevin but is deemed to be in the~~
 25 ~~custody of the law enforcement agency seizing it subject only~~

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1 ~~to the orders and decrees of the district court. When~~
2 ~~property is seized under the Imitation Controlled Substances~~
3 ~~Act, the enforcement officer may:~~

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

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

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

10 E. ~~When property is forfeited under the Imitation~~
11 ~~Controlled Substances Act, the law enforcement agency seizing~~
12 ~~it shall take custody of the property for use by law~~
13 ~~enforcement agencies in the enforcement of the Imitation~~
14 ~~Controlled Substances Act and the Controlled Substances Act~~
15 ~~and remove it for disposition in accordance with law} and~~
16 ~~forfeited pursuant to the provisions of the Forfeiture Act.~~"

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

19 "30-42-4. PROHIBITED ACTIVITIES--PENALTIES--SEIZURE AND
20 FORFEITURE. --

21 A. It is unlawful for any person who has received
22 any proceeds derived, directly or indirectly, from a pattern
23 of racketeering activity in which the person has participated,
24 to use or invest, directly or indirectly, any part of the
25 proceeds or the proceeds derived from the investment or use

1 thereof in the acquisition of any interest in, or the
2 establishment or operation of, any enterprise. Whoever
3 violates this subsection is guilty of a second degree felony.

4 B. It is unlawful for any person to engage in a
5 pattern of racketeering activity in order to acquire or
6 maintain, directly or indirectly, any interest in or control
7 of any enterprise. Whoever violates this subsection is guilty
8 of a second degree felony.

9 C. It is unlawful for any person employed by or
10 associated with any enterprise to conduct or participate,
11 directly or indirectly, in the conduct of [~~such~~] the
12 enterprise's affairs by engaging in a pattern of racketeering
13 activity. Whoever violates this subsection is guilty of a
14 second degree felony.

15 D. It is unlawful for any person to conspire to
16 violate any of the provisions of Subsections A through C of
17 this section. Whoever violates this subsection is guilty of a
18 third degree felony.

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

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

24 (2) any interest in, security of, claim
25 against or property or contractual right of any kind affording

1 a source of influence over any enterprise [~~which~~] that he has
2 established, operated, controlled, conducted or participated
3 in the conduct of in violation of the Racketeering Act.

4 F. In any action brought by the state [~~under~~]
5 pursuant to the Racketeering Act, [the district court shall
6 ~~have jurisdiction to enter such restraining orders or~~
7 ~~prohibitions, or to take such other actions, including but not~~
8 ~~limited to the acceptance of satisfactory performance bonds,~~
9 ~~in connection with any property or other interest subject to~~
10 ~~forfeiture under this section, as it shall deem proper.~~

11 G. ~~Upon conviction of a person under this section,~~
12 ~~the court shall authorize the attorney general or the district~~
13 ~~attorney to seize all property or other interest declared~~
14 ~~forfeited under this section upon such terms and conditions as~~
15 ~~the court shall deem proper, making due provision for the~~
16 ~~rights of innocent persons. If a property right or other~~
17 ~~interest is not exercisable or transferable for value by the~~
18 ~~convicted person, it shall expire and shall not revert to the~~
19 ~~convicted person] seizure and forfeiture proceedings shall be
20 conducted pursuant to the provisions of the Forfeiture Act."~~

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

23 "30-45-7. SEIZURE AND FORFEITURE OF PROPERTY. --

24 A. The following are subject to forfeiture:

25 (1) all computer property, equipment or

1 products of any kind [~~which~~] that have been used,
 2 manufactured, acquired or distributed in violation of the
 3 Computer Crimes Act;

4 [~~(2) all materials, products and equipment of~~
 5 ~~any kind which are used or intended for use in manufacturing,~~
 6 ~~using, accessing, altering, disrupting, copying, concealing,~~
 7 ~~destroying, transferring, delivering, importing or exporting~~
 8 ~~any computer property or computer service in violation of the~~
 9 ~~Computer Crimes Act;~~

10 ~~(3)]~~ (2) all books, records and research
 11 products and materials involving formulas, microfilm, tapes
 12 and data [~~which~~] that are used or intended for use in
 13 violation of the Computer Crimes Act;

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

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

22 [~~(6)]~~ (3) all money or proceeds that
 23 constitute an instrumentality or derive from a violation of
 24 the Computer Crimes Act.

25 [~~B. Notwithstanding the provisions of Paragraphs~~

1 ~~(1) through (6) of Subsection A of this section:~~

2 ~~(1) no conveyance used by any person as a~~
3 ~~common carrier in the transaction of business as a common~~
4 ~~carrier is subject to forfeiture under this section unless it~~
5 ~~appears that the owner or other person in charge of the~~
6 ~~conveyance is a consenting party to a violation of the~~
7 ~~Computer Crimes Act;~~

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

13 ~~(3) a conveyance, computer property,~~
14 ~~equipment or other material is not subject to forfeiture for a~~
15 ~~violation of law the penalty for which is a misdemeanor or~~
16 ~~petty misdemeanor; and~~

17 ~~(4) a forfeiture of a conveyance, computer~~
18 ~~property, equipment or material encumbered by a bona fide~~
19 ~~security interest shall be subject to the interest of a~~
20 ~~secured party if the secured party neither had knowledge of~~
21 ~~nor consented to the act or omission.~~

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

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

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

4 (2) ~~the property subject to seizure had been~~
5 ~~the subject of a prior judgment in favor of the state in an~~
6 ~~injunction or forfeiture proceeding based upon the Computer~~
7 ~~Crimes Act; or~~

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

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

23 F. ~~Except as otherwise specifically provided by~~
24 ~~law, whenever any property is forfeited to the state by reason~~
25 ~~of the violation of any law, the court by which the offender~~

1 ~~is convicted shall order the sale or other disposition of the~~
2 ~~property and the proceeds of any such sale as provided for in~~
3 ~~this section are subject to the court making due provisions~~
4 ~~for the rights of innocent persons and the legitimate rights~~
5 ~~to restitution on behalf of actual victims of the criminal~~
6 ~~acts.~~

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

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

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

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

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

21 ~~(1) deliver custody of the property to the~~
22 ~~information systems council attached to the general services~~
23 ~~department. The council, based upon a plan, shall advertise~~
24 ~~and make available the forfeited property to state agencies~~
25 ~~and political subdivisions of the state based upon a~~

1 ~~demonstrated need and plan of use for that property. The~~
 2 ~~information systems council shall advertise and make the~~
 3 ~~forfeited property available by bid for a minimum of one~~
 4 ~~hundred twenty days and dispose of that property within~~
 5 ~~another sixty days. All proceeds from the sale of forfeited~~
 6 ~~property shall be deposited in the general fund; or~~

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

11 Section 22. Section 60-7A-4.1 NMSA 1978 (being Laws
 12 1985, Chapter 179, Section 1, as amended) is amended to read:

13 "60-7A-4.1. UNLAWFUL SALE OF ALCOHOLIC BEVERAGES--
 14 CRIMINAL PENALTY--SEIZURE AND FORFEITURE. --

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

19 B. Any person who violates the provisions of
 20 Subsection A of this section is guilty of a fourth degree
 21 felony.

22 C. Any conveyance used or intended to be used for
 23 the purpose of unlawful sale of alcoholic beverages or money
 24 [~~which~~] that is the fruit or instrumentality of the crime may
 25 be seized and [~~upon conviction, in the discretion of the~~

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1 ~~court, be forfeited and disposed of under the procedures set~~
2 ~~forth in Section 30-31-35 NMSA 1978]~~ forfeited pursuant to the
3 provisions of the Forfeiture Act. "

4 Section 23. REPEAL. -- Sections 17-2-20.2 and 17-2-21 NMSA
5 1978 (being Laws 1979, Chapter 321, Section 2 and Laws 1912,
6 Chapter 85, Section 23, as amended) are repealed.

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

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