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SENATE BILL 5

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Manny M Aragon

AN ACT

RELATING TO FORFEITURE OF PROPERTY; ENACTING THE FORFEITURE ACT; PROVIDING PROCEDURES FOR THE SEIZURE, FORFEITURE AND DISPOSAL OF CERTAIN PROPERTY SUBJECT TO FORFEITURE; 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 8 of this act may be cited as the "Forfeiture Act".

Section 2. [NEW MATERIAL] PURPOSE OF ACT--  
APPLICABILITY. --

A. The purposes of the Forfeiture Act are:

(1) to make uniform the standards and procedures for the seizure and forfeiture of property subject to forfeiture; and

(2) to protect the constitutional rights of

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1 persons accused of a crime and of innocent persons holding  
2 interests in property subject to forfeiture.

3 B. The Forfeiture Act applies to:

4 (1) seizures, forfeitures and dispositions of  
5 property subject to forfeiture pursuant to laws that  
6 specifically apply the Forfeiture Act; and

7 (2) seizures, forfeitures and dispositions of  
8 property subject to forfeiture pursuant to other laws; but  
9 only to the extent that the procedures in the Forfeiture Act  
10 for seizing, forfeiting or disposing of property are  
11 consistent with any procedures specified in those laws.

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

14 A. "conviction" or "convicted" means that a person  
15 has been found guilty of a crime in the trial court whether by  
16 a plea of guilty or nolo contendere or otherwise and whether  
17 the sentence is deferred or suspended;

18 B. "crime" means a violation of a criminal statute  
19 for which property of the offender is subject to seizure and  
20 forfeiture;

21 C. "law enforcement officer" means a state or  
22 municipal police officer, county sheriff, deputy sheriff,  
23 conservation officer, motor transportation enforcement officer  
24 or other state employee authorized by state law to enforce  
25 criminal statutes, but "law enforcement officer" does not

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1 include correctional officers;

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

4 E. "property" means tangible or intangible  
5 personal property or real property;

6 F. "property subject to forfeiture" means property  
7 described and declared to be subject to forfeiture by a state  
8 law outside of the Forfeiture Act; and

9 G. "secured party" means a person with a security  
10 or other protected interest in property, whether arising by  
11 mortgage, security agreement, lien, lease or otherwise; the  
12 purpose of which interest is to secure the payment of a debt  
13 or protect a potential debt owed to the secured party.

14 Section 4. [NEW MATERIAL] SEIZURE OF PROPERTY. --Property  
15 may be seized by a law enforcement officer:

16 A. pursuant to an order of seizure issued by a  
17 district court based on a sworn application of a law  
18 enforcement officer from which a determination is made by the  
19 court that:

20 (1) there is a substantial probability that:

21 (a) the property is subject to  
22 forfeiture;

23 (b) the state will prevail on the issue  
24 of forfeiture; and

25 (c) failure to enter the order will

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1 result in the property being destroyed, removed from the state  
2 or otherwise made unavailable for forfeiture; and

3 (2) the need to preserve the availability of  
4 the property through the entry of the requested order  
5 outweighs the hardship to the owner and other parties known to  
6 be claiming interests in the property; and

7 B. without a prior court order, if the property  
8 alleged to be property subject to forfeiture is not a  
9 residence or a business, when:

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

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

22 Section 5. [NEW MATERIAL] COMPLAINT OF FORFEITURE--  
23 SERVICE OF PROCESS. --

24 A. Within thirty days of making a seizure, the  
25 state shall file a complaint of forfeiture or return the

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1 property to the person from whom it was seized. A complaint  
2 of forfeiture shall include:

3 (1) a description of the property seized;

4 (2) the date and place of seizure of the  
5 property;

6 (3) the name and address of the law  
7 enforcement agency making the seizure;

8 (4) the specific statutory and factual  
9 grounds for the seizure;

10 (5) if the property was seized pursuant to an  
11 order of seizure, the sworn application of the law enforcement  
12 officer for the order, and if the property was seized without  
13 an order of seizure, an affidavit from a law enforcement  
14 officer stating the legal and factual grounds why an order of  
15 seizure was not required; and

16 (6) the names of persons known to the state  
17 who may claim an interest in the property set forth in both  
18 the caption and in the complaint and the basis for each  
19 person's alleged interest.

20 B. The complaint shall be served upon the person  
21 from whom the property was seized and all persons known or  
22 reasonably believed by the state to claim an interest in the  
23 property.

24 Section 6. [NEW MATERIAL] COURT HEARING AND  
25 DETERMINATION. --

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1           A. Claims to the property shall be filed by way of  
2 answer to the complaint of forfeiture and shall be filed  
3 within thirty days of the date of service of the complaint.

4           B. The district courts have jurisdiction over  
5 forfeiture proceedings, and venue for a forfeiture proceeding  
6 is in the same court in which venue lies for the criminal  
7 matter for which the property is alleged to be subject to  
8 forfeiture.

9           C. The forfeiture proceeding shall be brought in  
10 the same proceeding as the criminal matter and presented to  
11 the same trier of fact; provided:

12                   (1) the two issues shall be bifurcated; and

13                   (2) the rules of criminal procedure shall  
14 apply in the criminal matter and the rules of civil procedure  
15 shall apply in the forfeiture proceeding.

16           D. If the state fails to prove, by clear and  
17 convincing evidence, that the person charged with the crime  
18 for which the property is alleged to be property subject to  
19 forfeiture is the owner of the property:

20                   (1) the forfeiture proceeding shall be  
21 dismissed and the property shall be delivered to the owner,  
22 unless possession of the property is illegal;

23                   (2) the owner shall be awarded costs and  
24 reasonable attorney fees payable by the law enforcement agency  
25 that seized the property, unless possession of the property is

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1 illegal; and

2 (3) the owner shall not be subject to any  
3 charges by the state for storage of the property or expenses  
4 incurred in the preservation of the property.

5 E. The court shall enter a judgment of forfeiture  
6 and the property shall be forfeited to the state if the state  
7 proves by clear and convincing evidence that:

8 (1) the property is subject to forfeiture;

9 (2) the criminal prosecution of the owner has  
10 resulted in a conviction; and

11 (3) the value of the property to be forfeited  
12 does not unreasonably exceed:

13 (a) the pecuniary gain derived or  
14 sought to be derived by the crime;

15 (b) the pecuniary loss caused or sought  
16 to be caused by the crime; or

17 (c) the value of the convicted owner's  
18 interest in the property.

19 Section 7. [NEW MATERIAL] DISPOSITION OF FORFEITED  
20 PROPERTY. --

21 A. Unless possession of the property is illegal or  
22 a different disposition is specifically provided for by law  
23 and except as provided in Subsection C of this section,  
24 forfeited property, if it is not currency, shall be sold at  
25 public sale by the law enforcement agency in possession of the

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1 property. Forfeited currency and all sale proceeds of the  
2 sale of forfeited property shall be distributed:

3 (1) first, to pay reasonable expenses  
4 incurred for storage, protection and sale of the property;

5 (2) second, any remaining balance to pay  
6 restitution to or on behalf of victims, if any, of the crime  
7 related to the forfeiture; and

8 (3) third, any remaining balance to the  
9 general fund except:

10 (a) for forfeitures of property arising  
11 from Chapter 17 NMSA 1978, the balance shall be deposited in  
12 the game protection fund in an amount equal to the  
13 expenditures to prosecute the forfeiture and the crime, with  
14 the net balance to be deposited in the general fund; and

15 (b) for forfeiture of property arising  
16 from Chapter 18, Article 6 NMSA 1978, the balance shall be  
17 used for the restoration, stabilization, protection and  
18 preservation of the affected cultural property, with the net  
19 balance to be deposited in the general fund.

20 B. Any property interest forfeited to the state  
21 and disposed of pursuant to the Forfeiture Act is subject to  
22 the interest of a secured party unless, at the forfeiture  
23 proceeding, the state proves by clear and convincing evidence  
24 that the secured party knew or should have known of the crime.

25 C. If, at the forfeiture proceeding, the state



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1 proves, by clear and convincing evidence, that the person  
2 convicted of the crime for which the property is subject to  
3 forfeiture is a co-owner of the property but fails to prove  
4 that the other co-owner knew or should have known of the crime  
5 then, at the option of the co-owner not convicted of the  
6 crime:

7 (1) the co-owner not convicted of the crime  
8 may buy the forfeited interest from the law enforcement agency  
9 at a private sale for the fair market value. Proceeds  
10 received by the state from the sale shall be disposed of  
11 pursuant to Paragraphs (1) through (3) of Subsection A of this  
12 section;

13 (2) the law enforcement agency shall sell the  
14 entire ownership interest at a public sale pursuant to  
15 Subsection A of this section except that the proceeds shall  
16 first be used to purchase the ownership interest, at fair  
17 market value, of the co-owner not convicted of the crime; or

18 (3) the law enforcement agency shall sell  
19 only the forfeited interest at a public sale pursuant to  
20 Subsection A of this section and the purchaser becomes a co-  
21 owner with the co-owner not convicted of the crime.

22 D. The law enforcement agency shall notify all  
23 known co-owners of forfeited property that were not convicted  
24 of the crime not less than thirty days before a proposed  
25 public sale of the property. If, within the thirty days, the

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1 co-owners notify the law enforcement agency of an option made  
2 pursuant to Subsection C of this section, the law enforcement  
3 agency shall make the sale pursuant to the option selected.  
4 If no option is selected by the co-owners or if all of the co-  
5 owners not convicted of the crime cannot agree on one option,  
6 then the sale shall be made pursuant to Paragraph (3) of  
7 Subsection C of this section.

8 Section 8. [NEW MATERIAL] SAFEKEEPING OF SEIZED PROPERTY  
9 PENDING DISPOSITION. --

10 A. Seized currency alleged to be subject to  
11 forfeiture shall be deposited with the clerk of the district  
12 court in an interest-bearing account.

13 B. Seized property other than currency or real  
14 property, not required by federal or state law to be  
15 destroyed, shall be:

- 16 (1) placed under seal; and  
17 (2) removed to a place designated by the  
18 district court; or  
19 (3) held in the custody of a law enforcement  
20 agency.

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

24 Section 9. Section 17-2-20.1 NMSA 1978 (being Laws 1979,  
25 Chapter 321, Section 1, as amended) is amended to read:

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1 "17-2-20.1. SEIZURE AND FORFEITURE--PROPERTY SUBJECT.--

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

5 (1) illegal possession or transportation of  
6 big game during closed season;

7 (2) taking big game during closed season;

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

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

12 ~~B. Provided that no firearms or bows and arrows~~  
13 ~~shall be subject to forfeiture if the violation was without~~  
14 ~~the knowledge or consent of the owner.~~

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

21 ~~D. No conveyance is subject to forfeiture under~~  
22 ~~this section by reason of any act or omission established for~~  
23 ~~the owner to have been committed or omitted without his~~  
24 ~~knowledge or consent. A forfeiture of a conveyance encumbered~~  
25 ~~by a bona fide security interest shall be subject to the~~

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1 ~~interest of a secured party if the secured party neither had~~  
2 ~~knowledge of nor consented to the act or omission.]~~

3 C. The provisions of the Forfeiture Act apply to  
4 the seizure, forfeiture and disposal of property subject to  
5 forfeiture pursuant to Subsections A and B of this section."

6 Section 10. Section 18-6-9.3 NMSA 1978 (being Laws 1993,  
7 Chapter 176, Section 11) is amended to read:

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

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

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

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

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

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1                   D. ~~In the event of seizure pursuant to this~~  
2 ~~section, proceedings shall be instituted within thirty days~~  
3 ~~from the date of seizure. A proceeding brought pursuant to~~  
4 ~~this section shall be in rem. The claim shall not be filed~~  
5 ~~against the owner or any other person and shall be filed only~~  
6 ~~as a civil case.~~

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

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

23                               (1) ~~on lands controlled by the commissioner~~  
24 ~~of public lands, one half of the proceeds from the sale shall~~  
25 ~~accrue to the state agency of which the law enforcement~~

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1 ~~officer seizing that property is a member and one-half shall~~  
2 ~~be deposited in the cultural properties restoration fund; and~~  
3 ~~(2) on any other state lands, one-half of the~~  
4 ~~proceeds from the sale shall accrue to the state agency of~~  
5 ~~which the law enforcement officer seizing that property is a~~  
6 ~~member and one-half of the proceeds shall be deposited in the~~  
7 ~~cultural properties restoration fund] and the provisions of~~  
8 ~~the Forfeiture Act apply to the seizure, forfeiture and~~  
9 ~~disposal of such property. "~~

10 Section 11. Section 30-3-8.1 NMSA 1978 (being Laws 1993,  
11 Chapter 78, Section 2) is amended to read:

12 "30-3-8.1. SEIZURE AND FORFEITURE OF MOTOR VEHICLE--  
13 PROCEDURE [~~EXCEPTION~~]. --

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

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

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

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

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

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1           C. ~~In the event of seizure pursuant to Subsection~~  
2 ~~B of this section, proceedings under the Rules of Civil~~  
3 ~~Procedure for the District Courts and Subsection D of this~~  
4 ~~section shall be instituted promptly.~~

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

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

23           F. ~~No motor vehicle shall be subject to forfeiture~~  
24 ~~when the owner of the motor vehicle establishes that the~~  
25 ~~offense of shooting at or from a motor vehicle pursuant to~~

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1 ~~Subsection B of Section 30-3-8 NMSA 1978 was committed without~~  
2 ~~his knowledge or consent. A forfeiture of a motor vehicle~~  
3 ~~encumbered by a recorded bona fide security interest shall be~~  
4 ~~subject to the interest of the secured party if the secured~~  
5 ~~party did not have knowledge of or did not consent to the~~  
6 ~~offense of shooting at or from a motor vehicle pursuant to~~  
7 ~~Subsection B of Section 30-3-8 NMSA 1978.]~~

8 B. The provisions of the Forfeiture Act apply to  
9 the seizure, forfeiture and disposal of a motor vehicle  
10 subject to forfeiture pursuant to Subsection A of this  
11 section. "

12 Section 12. Section 30-7-2.3 NMSA 1978 (being Laws 1994,  
13 Chapter 22, Section 3) is amended to read:

14 "30-7-2.3. SEIZURE AND FORFEITURE OF A HANDGUN POSSESSED  
15 OR TRANSPORTED BY A PERSON IN VIOLATION OF UNLAWFUL POSSESSION  
16 OF A HANDGUN BY A PERSON [EXCEPTION]. --

17 A. A handgun is subject to seizure and forfeiture  
18 by a law enforcement agency when the handgun is possessed or  
19 transported by a person in violation of the offense of  
20 unlawful possession of a handgun by a person.

21 ~~[B. A handgun seized pursuant to a violation of~~  
22 ~~unlawful possession of a handgun by a person shall not be~~  
23 ~~subject to replevin, but is deemed to be in the custody of the~~  
24 ~~law enforcement agency, subject only to orders and decrees of~~  
25 ~~the district court.~~

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1                   C. ~~When a handgun is seized pursuant to the~~  
2 ~~provisions of this section, the handgun may be disposed of~~  
3 ~~pursuant to the provisions of Section 29-1-14 NMSA 1978.~~

4                   D. ~~A handgun shall not be forfeited when the owner~~  
5 ~~of the handgun establishes that the offense of unlawful~~  
6 ~~possession of a handgun by a person was committed without the~~  
7 ~~knowledge and consent of that owner. A forfeiture of a~~  
8 ~~handgun encumbered by a bona fide security interest shall be~~  
9 ~~subject to the interest of a secured party if the secured~~  
10 ~~party did not have knowledge of or did not consent to the~~  
11 ~~offense of unlawful possession of a handgun by a person.]~~

12                   B. The provisions of the Forfeiture Act apply to  
13 the seizure, forfeiture and disposal of a handgun subject to  
14 forfeiture pursuant to Subsection A of this section."

15                   Section 13. Section 30-16B-9 NMSA 1978 (being Laws 1991,  
16 Chapter 112, Section 9) is amended to read:

17                   "30-16B-9. FORFEITURE--PROCEDURE. -- [A.] The provisions  
18 of the Forfeiture Act apply to the seizure, forfeiture and  
19 disposal of property subject to forfeiture under the  
20 Unauthorized Recording Act. [may be seized by any enforcement  
21 officer upon an order issued by the district court having  
22 jurisdiction.

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

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

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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~~  
5 ~~Unauthorized Recording Act; or~~

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

9 ~~C. In the event of seizure pursuant to Subsection~~  
10 ~~A of this section, proceedings under Subsection D of this~~  
11 ~~section and the Rules of Civil Procedure for the District~~  
12 ~~Court shall be instituted promptly and not later than thirty~~  
13 ~~days after 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~~  
17 ~~only to the orders and decrees of the district court. When~~  
18 ~~property is seized under the Unauthorized Recording Act, the~~  
19 ~~enforcement 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~~  
25 ~~Unauthorized Recording Act, the seizing police department or~~

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1 ~~agency shall:~~

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

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

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

15 "30-19-10. FORFEITURE OF [PRIZES AND] EQUIPMENT. -- Any  
16 gambling device or other equipment of any type used in  
17 gambling [~~shall be seized by the law enforcement officers~~  
18 ~~discovering such device or equipment, and it shall be the duty~~  
19 ~~of such officers to retain custody of the property seized~~  
20 ~~until such property is disposed of by order of the district~~  
21 ~~court. Upon proper application by the district attorney to~~  
22 ~~the judge of the district court, the judge of the district~~  
23 ~~court may by proper order direct the destruction of any~~  
24 ~~gambling device, paraphernalia or equipment of any kind or~~  
25 ~~character seized by law enforcement officers] is subject to~~

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1 forfeiture, and the provisions of the Forfeiture Act apply to  
2 the seizure, forfeiture and disposal of such property. "

3 Section 15. Section 30-31-35 NMSA 1978 (being Laws 1972,  
4 Chapter 84, Section 34, as amended) is amended to read:

5 "30-31-35. FORFEITURE- -PROCEDURE. - - [A-] The provisions  
6 of the Forfeiture Act apply to the seizure, forfeiture and  
7 disposal of property subject to forfeiture and disposal under  
8 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~~  
20 ~~cause to believe that the property, which is a controlled~~  
21 ~~substance, is directly or indirectly dangerous to health or~~  
22 ~~safety; or~~

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

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1                   C. ~~In the event of seizure pursuant to Subsection~~  
2 ~~A or Subsection B of this section, proceedings under~~  
3 ~~Subsection D of this section and the Rules of Civil Procedure~~  
4 ~~for the District Courts of New Mexico shall be instituted~~  
5 ~~promptly and 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~~  
10 ~~property is seized under the Controlled Substances Act, the~~  
11 ~~enforcement 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~~  
16 ~~take 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~~  
25 ~~Substances Act or remove it for disposition in accordance with~~

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1 ~~law; provided that where a motor vehicle has been seized by a~~  
2 ~~municipal police department or a county sheriff's department~~  
3 ~~with its respective jurisdictional boundaries, such department~~  
4 ~~shall institute forfeiture proceedings; or~~

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

14 Section 16. Section 30-31A-10 NMSA 1978 (being Laws  
15 1983, Chapter 148, Section 10) is amended to read:

16 "30-31A-10. FORFEITURE--PROCEDURE. -- [A.] The provisions  
17 of the Forfeiture Act apply to the seizure, forfeiture and  
18 disposal of property subject to forfeiture and disposal under  
19 the Imitation Controlled Substances Act. [~~may be seized by any~~  
20 ~~law enforcement officer upon an order issued by the district~~  
21 ~~court having 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 search warrant; or~~

25 ~~(2) the property subject to seizure has been~~

1 ~~the subject of a prior judgment in favor of the state in an~~  
2 ~~injunction or forfeiture proceeding based upon the Imitation~~  
3 ~~Controlled Substances Act.~~

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

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

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

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

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

21 ~~E. When property is forfeited under the Imitation~~  
22 ~~Controlled Substances Act, the law enforcement agency seizing~~  
23 ~~it shall take custody of the property for use by law~~  
24 ~~enforcement agencies in the enforcement of the Imitation~~  
25 ~~Controlled Substances Act and the Controlled Substances Act~~

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1 ~~and remove it for disposition in accordance with law.]"~~

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

4 "30-42-4. PROHIBITED ACTIVITIES--PENALTIES. --

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

13 B. It is unlawful for any person to engage in a  
14 pattern of racketeering activity in order to acquire or  
15 maintain, directly or indirectly, any interest in or control  
16 of any enterprise. Whoever violates this subsection is guilty  
17 of a second degree felony.

18 C. It is unlawful for any person employed by or  
19 associated with any enterprise to conduct or participate,  
20 directly or indirectly, in the conduct of [~~such~~] the  
21 enterprise's affairs by engaging in a pattern of racketeering  
22 activity. Whoever violates this subsection is guilty of a  
23 second degree felony.

24 D. It is unlawful for any person to conspire to  
25 violate any of the provisions of Subsections A through C of

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1 this section. Whoever violates this subsection is guilty of a  
2 third degree felony.

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

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

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

13 [~~F.—In any action brought by the state under the~~  
14 ~~Racketeering Act, the district court shall have jurisdiction~~  
15 ~~to enter such restraining orders or prohibitions, or to take~~  
16 ~~such other actions, including but not limited to the~~  
17 ~~acceptance of satisfactory performance bonds, in connection~~  
18 ~~with any property or other interest subject to forfeiture~~  
19 ~~under this section, as it shall deem proper.~~

20 G. ~~Upon conviction of a person under this section,~~  
21 ~~the court shall authorize the attorney general or the district~~  
22 ~~attorney to seize all property or other interest declared~~  
23 ~~forfeited under this section upon such terms and conditions as~~  
24 ~~the court shall deem proper, making due provision for the~~  
25 ~~rights of innocent persons. If a property right or other~~

1 ~~interest is not exercisable or transferable for value by the~~  
2 ~~convicted person, it shall expire and shall not revert to the~~  
3 ~~convicted person.]~~

4 F. The provisions of the Forfeiture Act apply to  
5 the seizure, forfeiture and disposal of property described in  
6 Subsection E of this section."

7 Section 18. Section 30-45-7 NMSA 1978 (being Laws 1989,  
8 Chapter 215, Section 7) is amended to read:

9 "30-45-7. FORFEITURE OF PROPERTY. --

10 A. The following are subject to forfeiture:

11 (1) all computer property, equipment or  
12 products of any kind [~~whi-eh~~] that have been used,  
13 manufactured, acquired or distributed in violation of the  
14 Computer Crimes Act;

15 (2) all materials, products and equipment of  
16 any kind [~~whi-eh~~] that are used or intended for use in  
17 manufacturing, using, accessing, altering, disrupting,  
18 copying, concealing, destroying, transferring, delivering,  
19 importing or exporting any computer property or computer  
20 service in violation of the Computer Crimes Act;

21 (3) all books, records and research products  
22 and materials involving formulas, microfilm, tapes and data  
23 [~~whi-eh~~] that are used or intended for use in violation of the  
24 Computer Crimes Act;

25 (4) all conveyances, including aircraft,

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1 vehicles or vessels, [~~which~~] that are used or intended for use  
2 to transport or in any manner to facilitate the transportation  
3 of property described in this subsection [~~A, B or C of this~~  
4 ~~section~~] for the purpose of violating the Computer Crimes Act;

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

8 (6) all money or proceeds that constitute an  
9 instrumentality or derive from a violation of the Computer  
10 Crimes Act.

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

13 (1) ~~no conveyance used by any person as a~~  
14 ~~common carrier in the transaction of business as a common~~  
15 ~~carrier is subject to forfeiture under this section unless it~~  
16 ~~appears that the owner or other person in charge of the~~  
17 ~~conveyance is a consenting party to a violation of the~~  
18 ~~Computer Crimes Act;~~

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

24 (3) ~~a conveyance, computer property,~~  
25 ~~equipment or other material is not subject to forfeiture for a~~

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1 ~~violation of law the penalty for which is a misdemeanor or~~  
2 ~~petty misdemeanor; and~~

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

8 ~~C. Property subject to forfeiture and disposal~~  
9 ~~under the Computer Crimes Act may be seized by any law~~  
10 ~~enforcement officer upon an order issued by the district court~~  
11 ~~having jurisdiction.~~

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

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

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

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

23 ~~E. In the event of a seizure pursuant to~~  
24 ~~Subsection C or Subsection D of this section, a proceeding~~  
25 ~~under the Computer Crimes Act and the rules of civil procedure~~

1 ~~for the district courts shall be instituted promptly and not~~  
2 ~~later than thirty days after seizure. The proceeding to~~  
3 ~~forfeit property under the Computer Crimes Act is against the~~  
4 ~~property and not against the owner or any other person. It is~~  
5 ~~in rem wholly and not in personam. It is a civil case and not~~  
6 ~~a criminal proceeding. The forfeiture proceeding is required,~~  
7 ~~not to complete the forfeiture, but to prove the illegal use~~  
8 ~~for which the forfeiture was suffered.~~

9 F. ~~Except as otherwise specifically provided by~~  
10 ~~law, whenever any property is forfeited to the state by reason~~  
11 ~~of the violation of any law, the court by which the offender~~  
12 ~~is convicted shall order the sale or other disposition of the~~  
13 ~~property and the proceeds of any such sale as provided for in~~  
14 ~~this section are subject to the court making due provisions~~  
15 ~~for the rights of innocent persons and the legitimate rights~~  
16 ~~to restitution on behalf of actual victims of the criminal~~  
17 ~~acts.~~

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

- 24 (1) ~~place the property under seal;~~  
25 (2) ~~remove the property to a place designated~~

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1 ~~by the law enforcement officer or by the district court; or~~  
2 ~~(3) require the law enforcement agency to~~  
3 ~~take custody of the property and remove it to an appropriate~~  
4 ~~location for disposition in accordance with law.~~

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

7 ~~(1) deliver custody of the property to the~~  
8 ~~information systems council attached to the general services~~  
9 ~~department. The council, based upon a plan, shall advertise~~  
10 ~~and make available the forfeited property to state agencies~~  
11 ~~and political subdivisions of the state based upon a~~  
12 ~~demonstrated need and plan of use for that property. The~~  
13 ~~information systems council shall advertise and make the~~  
14 ~~forfeited property available by bid for a minimum of one~~  
15 ~~hundred twenty days and dispose of that property within~~  
16 ~~another sixty days. All proceeds from the sale of forfeited~~  
17 ~~property shall be deposited in the general fund; or~~

18 ~~(2) where the court orders the property to be~~  
19 ~~sold, the proceeds of the sale shall be paid into the general~~  
20 ~~fund.]~~

21 B. The provisions of the Forfeiture Act apply to  
22 the seizure, forfeiture and disposal of property subject to  
23 forfeiture pursuant to Subsection A of this section."

24 Section 19. Section 60-7A-4.1 NMSA 1978 (being Laws  
25 1985, Chapter 179, Section 1, as amended) is amended to read:

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1 "60- 7A- 4. 1. UNLAWFUL SALE OF ALCOHOLIC BEVERAGES--  
2 CRIMINAL PENALTY-- FORFEITURE. --

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

7 B. Any person who violates the provisions of  
8 Subsection A of this section is guilty of a fourth degree  
9 felony.

10 C. Any conveyance used or intended to be used for  
11 the purpose of unlawful sale of alcoholic beverages or money  
12 which is the fruit or instrumentality of the crime [~~may be~~  
13 ~~seized and upon conviction, in the discretion of the court, be~~  
14 ~~forfeited and disposed of under the procedures set forth in~~  
15 ~~Section 30-31-35 NMSA 1978] is subject to forfeiture, and the  
16 provisions of the Forfeiture Act apply to the seizure,  
17 forfeiture and disposal of such property. "~~

18 Section 20. Section 60-7A-5 NMSA 1978 (being Laws 1981,  
19 Chapter 39, Section 51, as amended) is amended to read:

20 "60- 7A- 5. MANUFACTURE, SALE OR POSSESSION FOR SALE WHEN  
21 NOT PERMITTED BY LIQUOR CONTROL ACT-- CRIMINAL PENALTY--  
22 FORFEITURE. --

23 A. It is unlawful for any person to manufacture  
24 for the purpose of sale, possess for the purpose of sale,  
25 offer for sale or sell any alcoholic beverages in the state

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1 except under the terms and conditions of the Liquor Control  
2 Act.

3 B. Any person who violates the provisions of  
4 Subsection A of this section is guilty of a fourth degree  
5 felony and shall be sentenced pursuant to the provisions of  
6 Section 31-18-15 NMSA 1978.

7 C. Any conveyance used or intended to be used for  
8 the unlawful manufacture or sale of alcoholic beverages or any  
9 money that is the fruit or instrumentality of unlawful  
10 manufacture or sale of alcoholic beverages [~~may be seized and,~~  
11 ~~upon conviction, in the discretion of the court, forfeited and~~  
12 ~~disposed of pursuant to the provisions of Section 30-31-35~~  
13 ~~NMSA 1978~~] is subject to forfeiture, and the provisions of the  
14 Forfeiture Act apply to the seizure, forfeiture and disposal  
15 of such property. "

16 Section 21. Section 60-7A-6 NMSA 1978 (being Laws 1981,  
17 Chapter 39, Section 52, as amended) is amended to read:

18 "60-7A-6. POSSESSION OF LIQUOR MANUFACTURED OR SHIPPED  
19 IN VIOLATION OF LAW - FOURTH DEGREE FELONY - - PENALTY - -  
20 FORFEITURE. - -

21 A. It is unlawful for any person to have in his  
22 possession with the intent to sell or resell any alcoholic  
23 beverages which to that person's knowledge have been  
24 manufactured or transported into this state in violation of  
25 the laws of this state.



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B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Any conveyance used or intended to be used for the unlawful manufacture or transportation of alcoholic beverages or any money that is the fruit or instrumentality of unlawful manufacture or transportation of alcoholic beverages ~~[may be seized and, upon conviction, in the discretion of the court, forfeited or disposed of pursuant to the provisions of Section 30-31-35 NMSA 1978]~~ is subject to forfeiture, and the provisions of the Forfeiture Act apply to the seizure, forfeiture and disposal of such property. "

Section 22. REPEAL. --Section 17-2-20.2 NMSA 1978 (being Laws 1979, Chapter 321, Section 2) is repealed.

Section 23. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2002.