

AN ACT

RELATING TO FORFEITURE; PROVIDING THAT FORFEITURE PURSUANT TO THE FORFEITURE ACT SHALL FOLLOW A CRIMINAL CONVICTION; REVISING SEIZURE AND FORFEITURE PROCEDURES; REQUIRING LAW ENFORCEMENT AGENCIES TO SUBMIT ANNUAL REPORTS RELATING TO FORFEITURE; PROVIDING FOR THE TRANSFER OF SEIZED PROPERTY; EXCLUDING CONTRABAND FROM THE FORFEITURE ACT; REQUIRING FORFEITURE PROCEEDINGS TO FOLLOW A RELATED CRIMINAL PROCEEDING; PROVIDING FOR PROCEEDS FROM THE SALE OF FORFEITED AND ABANDONED PROPERTY AND FORFEITED CURRENCY TO BE DEPOSITED IN THE GENERAL FUND; PROVIDING FOR AN INNOCENT OWNER TO ASSERT AN INTEREST IN SEIZED PROPERTY.

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

**SECTION 1.** Section 31-27-1 NMSA 1978 (being Laws 2002, Chapter 4, Section 1) is amended to read:

"31-27-1. SHORT TITLE.--Chapter 31, Article 27 NMSA 1978 may be cited as the "Forfeiture Act"."

**SECTION 2.** Section 31-27-2 NMSA 1978 (being Laws 2002, Chapter 4, Section 2) is amended to read:

"31-27-2. PURPOSE OF ACT--APPLICABILITY--NO ADDITIONAL REMEDIES.--

A. The purposes of the Forfeiture Act are to:

(1) make uniform the standards and

procedures for the seizure and forfeiture of property subject

to forfeiture;

(2) protect the constitutional rights of persons whose property is subject to forfeiture and of innocent owners holding interests in property subject to forfeiture;

(3) deter criminal activity by reducing its economic incentives;

(4) increase the pecuniary loss from criminal activity;

(5) protect against the wrongful forfeiture of property; and

(6) ensure that only criminal forfeiture is allowed in this state.

B. The Forfeiture Act:

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

(2) does not apply to contraband, which is subject to seizure pursuant to applicable state laws, but is not subject to forfeiture pursuant to the Forfeiture Act."

**SECTION 3.** Section 31-27-3 NMSA 1978 (being Laws 2002, Chapter 4, Section 3) is amended to read:

"31-27-3. DEFINITIONS.--As used in the Forfeiture Act:

A. "abandoned property":

(1) means personal property the rights to

which and the control of which an owner has intentionally relinquished; and

(2) does not mean real property;

B. "actual knowledge" means a direct and clear awareness of information, a fact or a condition;

C. "contraband" means goods that may not be lawfully imported, exported or possessed, including drugs that are listed in Schedule I, II, III, IV or V of the Controlled Substances Act and that are possessed without a valid prescription;

D. "conveyance" means a device used for transportation and:

(1) includes a motor vehicle, trailer, snowmobile, airplane, vessel and any equipment attached to the conveyance; but

(2) does not include property that is stolen or taken in violation of a law;

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

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

G. "instrumentality" means all property that is

otherwise lawful to possess that is used in the furtherance or commission of an offense to which forfeiture applies and includes land, a building, a container, a conveyance, equipment, materials, a product, a computer, computer software, a telecommunications device, a firearm, ammunition, a tool, money, a security and a negotiable instrument and other devices used for exchange of property;

H. "law enforcement agency" means the employer of a law enforcement officer that is authorized to seize or has seized property pursuant to the Forfeiture Act;

I. "law enforcement officer" means:

(1) a state or municipal police officer, county sheriff, deputy sheriff, conservation officer, motor transportation enforcement officer or other state employee authorized by state law to enforce criminal statutes; but

(2) does not mean a correctional officer;

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

K. "property" means tangible or intangible personal property or real property;

L. "property subject to forfeiture" means property or an instrumentality described and declared to be subject to forfeiture by the Forfeiture Act or a state law outside of the Forfeiture Act; and

M. "secured party" means a person with a security

or other protected interest in property, whether the interest arose by mortgage, security agreement, lien, lease or otherwise; the purpose of which interest is to secure the payment of a debt or protect a potential debt owed to the secured party."

**SECTION 4.** Section 31-27-4 NMSA 1978 (being Laws 2002, Chapter 4, Section 4) is amended to read:

"31-27-4. FORFEITURE--CONVICTION REQUIRED--SEIZURE OF PROPERTY--WITH PROCESS--WITHOUT PROCESS.--

A. A person's property is subject to forfeiture if:

(1) the person was arrested for an offense to which forfeiture applies;

(2) the person is convicted by a criminal court of the offense; and

(3) the state establishes by clear and convincing evidence that the property is subject to forfeiture as provided in Subsection B of this section.

B. Following a person's conviction for an offense to which forfeiture applies, a court may order the person to forfeit:

(1) property the person acquired through commission of the offense;

(2) property directly traceable to property acquired through the commission of the offense; and

(3) any instrumentality the person used in the commission of the offense.

C. Nothing in this section shall prevent property from being forfeited by the terms of a plea agreement that is approved by a court or by other agreement of the parties to a criminal proceeding.

D. Subject to the provisions of Section 31-27-5 NMSA 1978, at any time, at the request of the state, a court may issue an ex parte preliminary order to seize property that is subject to forfeiture and for which forfeiture is sought and to provide for the custody of the property. The execution on the order to seize the property and the return of the property, if applicable, are subject to the Forfeiture Act and other applicable state laws. Before issuing an order pursuant to this subsection, the court shall make a determination that:

- (1) there is a substantial probability that:
  - (a) the property is subject to forfeiture;
  - (b) the state will prevail on the issue of forfeiture; and
  - (c) failure to enter the order will result in the property being destroyed, removed from the state or otherwise made unavailable for forfeiture; and
- (2) the need to preserve the availability of the property through the entry of the requested order

outweighs the hardship to the owner and other parties known to be claiming interests in the property.

E. Property subject to forfeiture may be seized at any time, without a prior court order, if:

(1) the seizure is incident to a lawful arrest for a crime or a search lawfully conducted pursuant to a search warrant and the law enforcement officer making the arrest or executing the search has probable cause to believe the property is subject to forfeiture and that the subject of the arrest or search warrant is an owner of the property;

(2) the property subject to seizure is the subject of a previous judgment in favor of the state; or

(3) the law enforcement officer making the seizure has probable cause to believe the property is subject to forfeiture and that the delay occasioned by the need to obtain a court order would result in the removal or destruction of the property or otherwise frustrate the seizure."

**SECTION 5.** A new Section 31-27-4.1 NMSA 1978 is enacted to read:

"31-27-4.1. RECEIPT FOR SEIZED PROPERTY--REPLEVIN HEARING.--

A. When a law enforcement officer seizes property that is subject to forfeiture, the officer shall provide an itemized receipt to the person possessing the property or, in

the absence of a person to whom the receipt could be given, shall leave the receipt in the place where the property was found, if possible.

B. Following the seizure of property, the defendant in the related criminal matter or another person who claims an interest in seized property may, at any time before sixty days prior to a related criminal trial, claim an interest in seized property by a motion to the court to issue a writ of replevin. A motion filed pursuant to this section shall include facts to support the person's alleged interest in the property.

C. A person who makes a timely motion pursuant to this section shall have a right to a hearing on the motion before the resolution of any related criminal matter or forfeiture proceeding and within thirty days of the date on which the motion is filed.

D. At least ten days before a hearing on a motion filed pursuant to this section, the state shall file an answer or responsive motion that shows probable cause for the seizure.

E. A court shall grant a claimant's motion if the court finds that:

(1) it is likely that the final judgment will require the state to return the property to the claimant;



(2) the property is not reasonably required to be held for investigatory reasons; or

(3) the property is the only reasonable means for a defendant to pay for legal representation in a related criminal or forfeiture proceeding.

F. In its discretion, the court may order the return of funds or property sufficient to obtain legal counsel but less than the total amount seized, and it may require an accounting.

G. In lieu of ordering the issuance of the writ of replevin, a court may order:

(1) the state to give security or written assurance for satisfaction of any judgment, including damages, that may be rendered in a related forfeiture action; or

(2) any other relief the court deems to be just."

**SECTION 6.** Section 31-27-5 NMSA 1978 (being Laws 2002, Chapter 4, Section 5) is amended to read:

"31-27-5. COMPLAINT OF FORFEITURE--SERVICE OF PROCESS.--

A. Within thirty days of making a seizure of property or simultaneously upon filing a related criminal indictment, the state shall file a complaint of ancillary forfeiture proceedings or return the property to the person from whom it was seized. A complaint of ancillary forfeiture

proceedings shall include:

- (1) a description of the property seized;
- (2) the date and place of seizure of the property;
- (3) the name and address of the law enforcement agency making the seizure;
- (4) the specific statutory and factual grounds for the seizure;
- (5) whether the property was seized pursuant to an order of seizure, and if the property was seized without an order of seizure, an affidavit from a law enforcement officer stating the legal and factual grounds why an order of seizure was not required; and
- (6) in the complaint caption and in the complaint, the names of persons known to the state who may claim an interest in the property and the basis for each person's alleged interest.

B. The complaint shall be served upon the person from whom the property was seized, the person's attorney of record and all persons known or reasonably believed by the state to claim an interest in the property. A copy of the complaint shall also be published at least three times in a newspaper of general circulation in the district of the court having jurisdiction or on the sunshine portal until the forfeiture proceeding is resolved."

**SECTION 7.** Section 31-27-6 NMSA 1978 (being Laws 2002, Chapter 4, Section 6) is amended to read:

"31-27-6. FORFEITURE PROCEEDINGS--DETERMINATION--  
SUBSTITUTION OF PROPERTY--CONSTITUTIONALITY--APPEAL.--

A. A person who claims an interest in seized property shall file an answer to the complaint of forfeiture within thirty days of the date of service of the complaint. The answer shall include facts to support the claimant's alleged interest in the property.

B. The district courts have jurisdiction over forfeiture proceedings, and venue for a forfeiture proceeding is in the same court in which venue lies for the criminal matter related to the seized property.

C. The forfeiture proceeding shall begin after the conclusion of the trial for the related criminal matter in an ancillary proceeding that relates to a defendant's property before the same judge and jury, if applicable, and the court, and the jury, if applicable, may consider the forfeiture of property seized from other persons at the same time or in a later proceeding. If the criminal defendant in the related criminal matter is represented by the public defender department, the chief public defender or the district public defender may authorize department representation of the defendant in the forfeiture proceeding.

D. Discovery conducted in an ancillary forfeiture

proceeding is subject to the rules of criminal procedure.

E. An ancillary forfeiture proceeding that relates to the forfeiture of property valued at less than twenty thousand dollars (\$20,000) shall be held before a judge only.

F. If the state fails to prove, by clear and convincing evidence, that a person whose property is alleged to be subject to forfeiture is an owner of the property:

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

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

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

(1) the property is subject to forfeiture;

(2) the criminal prosecution of the owner of the seized property resulted in a conviction; and

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

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

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

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

H. A court shall not accept a plea agreement or other arrangement by which a defendant contributes or donates property to a person, charity or other organization in full or partial fulfillment of responsibility established in the court's proceeding.

I. Following a person's conviction, the state may make a motion for forfeiture of substitute property owned by the person that is equal to but does not exceed the value of property that is subject to forfeiture but that the state is unable to seize. The court shall order the forfeiture of substitute property only if the state proves by a preponderance of the evidence that the person intentionally transferred, sold or deposited property with a third party to avoid the court's jurisdiction and the forfeiture of the property.

J. A person is not jointly and severally liable for orders for forfeiture of another person's property. When ownership of property is unclear, a court may order each person to forfeit the person's property on a pro rata basis or by another means the court deems equitable.

K. At any time following the conclusion of a forfeiture proceeding, the person whose property was forfeited may petition the court to determine whether the forfeiture was

unconstitutionally excessive pursuant to the state or federal constitution.

L. At a non-jury hearing on the petition, the petitioner has the burden of establishing by a preponderance of the evidence that the forfeiture was grossly disproportional to the seriousness of the criminal offense for which the person was convicted.

M. In determining whether the forfeiture is unconstitutionally excessive, the court may consider all relevant factors, including:

(1) the seriousness of the criminal offense and its impact on the community, the duration of the criminal activity and the harm caused by the defendant;

(2) the extent to which the defendant participated in the offense;

(3) the extent to which the property was used in committing the offense;

(4) the sentence imposed for the commission of the crime that relates to the property that is subject to forfeiture; and

(5) whether the criminal offense was completed or attempted.

N. In determining the value of the property subject to forfeiture, the court may consider relevant factors, including the:

(1) fair market value of the property;  
(2) value of the property to the defendant,  
including hardship that the defendant will suffer if the  
forfeiture is realized; and

(3) hardship from the loss of a primary  
residence, motor vehicle or other property to the defendant's  
family members or others if the property is forfeited.

O. The court shall not consider the value of the  
property to the state when it determines whether the  
forfeiture of property is constitutionally excessive.

P. A party to a forfeiture proceeding may appeal a  
district court's decision regarding the seizure, forfeiture  
and distribution of property pursuant to the Forfeiture Act."

**SECTION 8.** Section 31-27-7 NMSA 1978 (being Laws 2002,  
Chapter 4, Section 7) is amended to read:

"31-27-7. TITLE TO SEIZED PROPERTY--DISPOSITION OF  
FORFEITED PROPERTY AND PROCEEDS.--

A. The state acquires provisional title to seized  
property at the time the property was used or acquired in  
connection with an offense that subjects the property to  
forfeiture. Provisional title authorizes the state to hold  
and protect the property. Title to the property shall vest  
with the state when a trier of fact renders a final forfeiture  
verdict and the title relates back to the time when the state  
acquired provisional title; provided that the title is subject

to claims by third parties that are adjudicated pursuant to the Forfeiture Act.

B. Unless possession of the property is illegal or a different disposition is specifically provided for by law and except as provided in this section, forfeited property that is not currency shall be delivered along with any abandoned property to the state treasurer for disposition at a public auction. Forfeited currency and all sale proceeds of the sale of forfeited or abandoned property shall be deposited in the general fund.

C. Proceeds from the sale of forfeited property received by the state from another jurisdiction shall be deposited in the general fund.

D. A property interest forfeited to the state pursuant to the Forfeiture Act is subject to the interest of a secured party unless, in the forfeiture proceeding, the state proves by clear and convincing evidence that the secured party had actual knowledge of the crime that relates to the seizure of the property."

**SECTION 9.** A new Section 31-27-7.1 NMSA 1978 is enacted to read:

"31-27-7.1. INNOCENT OWNERS.--

A. The property of an innocent owner, as provided in this section, shall not be forfeited.

B. A person who claims to be an innocent owner has



the burden of production to show that the person:

(1) holds a legal right, title or interest in the property seized; and

(2) held an ownership interest in the seized property at the time the illegal conduct that gave rise to the seizure of the property occurred or was a bona fide purchaser for fair value.

C. The state shall immediately return property to an established innocent owner who has an interest in homesteaded property, a motor vehicle valued at less than ten thousand dollars (\$10,000) or a conveyance that is encumbered by a security interest that was perfected pursuant to state law or that is subject to a lease or rental agreement, unless the secured party or lessor had actual knowledge of the criminal act upon which the forfeiture was based.

D. If a person establishes that the person is an innocent owner pursuant to Subsection B of Section 31-27-7.1 NMSA 1978 and the state pursues a forfeiture proceeding with respect to that person's property, other than property described in Subsection D of Section 31-27-7 NMSA 1978, to successfully forfeit the property, the state shall prove by clear and convincing evidence that the innocent owner had actual knowledge of the underlying crime giving rise to the forfeiture.

E. A person who acquired an ownership interest in

property subject to forfeiture after the commission of a crime that gave rise to the forfeiture and who claims to be an innocent owner has the burden of production to show that the person has legal right, title or interest in the property seized under this section.

F. If a person establishes that the person is an innocent owner as provided in Subsection B of this section and the state pursues a forfeiture proceeding against the person's property, to successfully forfeit the property, the state shall prove by clear and convincing evidence that at the time the person acquired the property, the person:

(1) had actual knowledge that the property was subject to forfeiture; or

(2) was not a bona fide purchaser who was without notice of any defect in title and who gave valuable consideration.

G. If the state fails to meet its burdens as provided in Subsections C and D of this section, the court shall find that the person is an innocent owner and shall order the state to relinquish all claims of title to the innocent owner's property."

**SECTION 10.** Section 31-27-8 NMSA 1978 (being Laws 2002, Chapter 4, Section 8) is amended to read:

"31-27-8. SAFEKEEPING OF SEIZED PROPERTY PENDING  
DISPOSITION--SELLING OR RETAINING SEIZED PROPERTY

PROHIBITED.--

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

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

(1) placed under seal; and

(2) removed to a place designated by the district court; or

(3) held in the custody of a law enforcement agency.

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

D. A law enforcement agency shall not retain forfeited or abandoned property."

**SECTION 11.** A new section of the Forfeiture Act is enacted to read:

"REPORTING.--

A. Every law enforcement agency shall prepare an annual report of the agency's seizures and forfeitures conducted pursuant to the Forfeiture Act, and seizures and forfeitures conducted pursuant to federal forfeiture law, and the report shall include:

(1) the total number of seizures of currency and the total amount of currency seized in each seizure;

(2) the total number of seizures of property and the number and types of items seized in each seizure;

(3) the market value of each item of property seized; and

(4) the total number of occurrences of each class of crime that resulted in the agency's seizure of property.

B. A law enforcement agency shall submit its annual reports to the department of public safety and to the district attorney's office in the agency's district. An agency that did not engage in seizure or forfeiture pursuant to the Forfeiture Act or federal forfeiture law, or both, shall report that fact in its annual report.

C. The department of public safety shall compile the reports submitted by each law enforcement agency and issue an aggregate report of all forfeitures in the state.

D. By April 1 of each year, the department of public safety shall publish on its web site the department's aggregate report and individual law enforcement agency reports submitted for the previous year."

**SECTION 12.** A new section of the Forfeiture Act is enacted to read:

"RETURN OF PROPERTY--DAMAGES--COSTS.--

A. A law enforcement agency that holds seized property shall return the seized property to the owner of the property within a reasonable period of time that does not exceed five days after:

(1) a court finds that a person had a bona fide security interest in the property;

(2) a court finds that the owner was an innocent owner;

(3) the acquittal of or dismissal of related criminal charges against the owner of the property; or

(4) the disposal of the criminal charge that was the basis of the forfeiture proceedings by nolle prosequi.

B. A law enforcement agency that holds seized property is responsible for any damages, storage fees and related costs applicable to property that is returned to an owner pursuant to this section."

**SECTION 13.** A new section of the Forfeiture Act is enacted to read:

"TRANSFER OF FORFEITABLE PROPERTY TO THE FEDERAL GOVERNMENT.--

A. A law enforcement agency shall not directly or indirectly transfer seized property to a federal law enforcement authority or other federal agency unless:

(1) the value of the seized property exceeds fifty thousand dollars (\$50,000), excluding the potential

value of the sale of contraband; and

(2) the law enforcement agency determines that the criminal conduct that gave rise to the seizure is interstate in nature and sufficiently complex to justify the transfer of the property; or

(3) the seized property may only be forfeited under federal law.

B. The law enforcement agency shall not transfer property to the federal government if the transfer would circumvent the protections of the Forfeiture Act that would otherwise be available to a putative interest holder in the property."

**SECTION 14.** Section 18-6-11 NMSA 1978 (being Laws 1977, Chapter 75, Section 1, as amended) is amended to read:

"18-6-11. PERMIT REQUIRED FOR EXCAVATION OF  
ARCHAEOLOGICAL SITES--PENALTY.--

A. It is unlawful for a person or the person's agent or employee to excavate with the use of mechanical earthmoving equipment an archaeological site for the purpose of collecting or removing objects of antiquity if the archaeological site is located on private land in this state, unless the person has first obtained a permit issued pursuant to the provisions of this section for the excavation. As used in this section, "archaeological site" means a location where there exists material evidence of the past life and culture of

human beings in this state but excludes the sites of burial of human beings.

B. Permits for excavation pursuant to Subsection A of this section may be issued by the committee upon approval by the state archaeologist and the state historic preservation officer if the applicant:

(1) submits written authorization for the excavation from the owner of the land;

(2) furnishes satisfactory evidence of being qualified to perform the archaeological excavation by experience, training and knowledge;

(3) submits a satisfactory plan of excavation for the archaeological site and states in the plan the method by which excavation will be undertaken; and

(4) agrees in writing, upon the completion of the excavation, to submit a summary report to the committee of the excavation, which report shall contain relevant maps, documents, drawings and photographs, together with a description of the archaeological specimens removed as a result of the excavation. Failure to file the summary report shall be grounds for refusing issuance of a future permit to the person.

C. All archaeological specimens collected or removed from the archaeological site as a result of excavation pursuant to Subsections A and B of this section shall be the

property of the person owning the land on which the site is located.

D. Nothing in this section shall be deemed to limit or prohibit the use of the land on which the archaeological site is located by the owner of the land or to require the owner to obtain a permit for personal excavation on the owner's own land; provided that no transfer of ownership is made with the intent of excavating archaeological sites as prohibited in this section; and provided further that this exemption does not apply to marked or unmarked burial grounds.

E. A person convicted of violating the provisions of this section is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000) and, in accordance with the provisions of the Forfeiture Act, shall forfeit to the state all equipment used in committing the violation for which the person is convicted."

**SECTION 15.** Section 18-6-11.2 NMSA 1978 (being Laws 1989, Chapter 267, Section 1) is amended to read:

"18-6-11.2. PERMIT REQUIRED FOR EXCAVATION OF UNMARKED BURIALS--PENALTY.--

A. Each human burial in the state interred in any unmarked burial ground is accorded the protection of law and shall receive appropriate and respectful treatment and disposition.



B. A person who knowingly, willfully and intentionally excavates, removes, disturbs or destroys any human burial buried, entombed or sepulchered in any unmarked burial ground in the state, or any person who knowingly, willfully and intentionally procures or employs any other person to excavate, remove, disturb or destroy any human burial buried, entombed or sepulchered in any unmarked burial ground in the state, except by authority of a permit issued by the state medical investigator or by the committee with the concurrence of the state archaeologist and state historic preservation officer, is guilty of a fourth degree felony and shall be punished by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment for a definite term of eighteen months or both. The offender shall upon conviction forfeit to the state all objects, artifacts and human burials excavated or removed from an unmarked burial ground in violation of this section, and any proceeds from the sale by the offender of any of the foregoing shall also be forfeited. The provisions of the Forfeiture Act shall apply to a forfeiture provided for in this section. As used in this section:

(1) "unmarked burial ground" means a location where there exists a burial of any human being that is not visibly marked on the surface of the ground in any manner traditionally or customarily used for marking burials

and includes any funerary object, material object or artifact associated with the burial; and

(2) "human burial" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

C. Any person who discovers a human burial in any unmarked burial ground shall cease any activity that may disturb that burial or any object or artifact associated with that burial and shall notify the local law enforcement agency having jurisdiction in the area. The local law enforcement agency shall notify the state medical investigator and the state historic preservation officer.

D. The state medical investigator may, consistent with the statutes governing medical investigations, have authority over or take possession of any human burial discovered in the state, in which case the provisions of Subsections E and F of this section shall not apply.

E. Permits for excavation of a human burial discovered in an unmarked burial ground shall be issued by the committee within sixty days of receipt of application when the applicant:

(1) submits written authorization for that excavation from the owner of the land on which the human burial is located or the applicant is the owner of the land;

(2) demonstrates appropriate efforts to determine the age of the human burial and to identify and consult with any living person who may be related to the human burial interred in the unmarked burial ground;

(3) complies with permit procedures and requirements established by regulations authorized in this section to ensure the complete removal of the human burial and the collection of all pertinent scientific information in accordance with proper archaeological methods; and

(4) provides for the lawful disposition or reinterment of the human burial either in the original or another appropriate location and of any objects or artifacts associated with that human burial, consistent with regulations issued by the state historic preservation officer, except that the committee shall not require, as a condition of issuance of a permit, reinterment or disposition, any action that unduly interferes with the owner's use of the land.

F. Permits for the excavation of any human burial discovered in the course of construction or other land modification may be issued by the committee with the concurrence of the state archaeologist and the state historic preservation officer on an annual basis to professional archaeological consultants or organizations.

G. Except when the committee requires as a condition of the permit that any object or artifact associated

with a human burial be reinterred or disposed of with that burial, that object or artifact shall be the property of the person owning the land on which that burial is located.

H. Any object or artifact and any human burial excavated or removed from an unmarked burial ground in violation of this section shall be forfeited to the state and shall be lawfully disposed of or reinterred in accordance with regulations issued by the state historic preservation officer; provided that no object or artifact so forfeited shall ever be sold by the state; and provided further that any object or artifact removed from the land without the owner's consent and in violation of this section shall be returned to the lawful owner consistent with Subsection G of this section.

I. The state historic preservation officer shall issue regulations with the concurrence of the state medical investigator for the implementation of this section."

**SECTION 16.** Section 30-16B-8 NMSA 1978 (being Laws 1991, Chapter 112, Section 8) is amended to read:

"30-16B-8. FORFEITURES--PROPERTY SUBJECT.--Pursuant to the provisions of the Forfeiture Act, the following are subject to forfeiture:

A. all equipment, devices or articles that have been produced, reproduced, manufactured, distributed, dispensed or acquired in violation of the Unauthorized Recording Act;

B. all devices, materials, products and equipment of any kind that are used or intended for use in producing, reproducing, manufacturing, processing, delivering, importing or exporting any item set forth in and in violation of the Unauthorized Recording Act;

C. all books, business records, materials and other data that are used or intended for use in violation of Section 30-16B-3, 30-16B-4 or 30-16B-5 NMSA 1978; and

D. money or negotiable instruments that are the fruit or instrumentality of the crime."

**SECTION 17.** Section 30-31-34 NMSA 1978 (being Laws 1972, Chapter 84, Section 33, as amended) is amended to read:

"30-31-34. FORFEITURES--PROPERTY SUBJECT.--The following are subject to forfeiture pursuant to the provisions of the Forfeiture Act:

A. all raw materials, products and equipment of any kind, including firearms that are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or controlled substance analog in violation of the Controlled Substances Act;

B. all property that is used or intended for use as a container for property described in Subsection A of this section;

C. all conveyances, including aircraft, vehicles

or vessels that are used or intended for use to transport or in any manner to facilitate the transportation for the purpose of sale of property described in Subsection A of this section;

D. all books, records and research products and materials, including formulas, microfilm, tapes and data that are used or intended for use in violation of the Controlled Substances Act;

E. narcotics paraphernalia or money that is a fruit or instrumentality of the crime;

F. notwithstanding Subsection C of this section and the provisions of the Forfeiture Act:

(1) a conveyance used by a person as a common carrier in the transaction of business as a common carrier shall not be subject to forfeiture pursuant to this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of the Controlled Substances Act;

(2) a conveyance shall not be subject to forfeiture pursuant to this section by reason of an act or omission established for the owner to have been committed or omitted without the owner's knowledge or consent;

(3) a conveyance is not subject to forfeiture for a violation of law the penalty for which is a misdemeanor; and

(4) a forfeiture of a conveyance encumbered

by a bona fide security interest shall be subject to the interest of a secured party if the secured party neither had knowledge of nor consented to the act or omission; and

G. all drug paraphernalia as defined by Subsection V of Section 30-31-2 NMSA 1978."

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

"30-31-35. FORFEITURE--PROCEDURE.--The provisions of the Forfeiture Act apply to the seizure, forfeiture and disposal of property subject to forfeiture and disposal pursuant to the Controlled Substances Act."

**SECTION 19.** Section 30-31A-9 NMSA 1978 (being Laws 1983, Chapter 148, Section 9) is amended to read:

"30-31A-9. FORFEITURES--PROPERTY SUBJECT.--The following are subject to forfeiture:

A. all raw materials, products and equipment of any kind that are used in the manufacturing, compounding or processing of any imitation controlled substance in violation of the Imitation Controlled Substances Act;

B. all property that is used or intended for use as a container for property described in Subsection A of this section; and

C. all books, records and research products and materials, including formulas, microfilm, tapes and data, that are used or intended for use in violation of the Imitation

Controlled Substances Act."

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

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

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

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

C. It is unlawful for a person employed by or associated with an enterprise to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs by engaging in a pattern of racketeering activity. Whoever violates this subsection is guilty of a second degree felony.

D. It is unlawful for a person to conspire to violate the provisions of Subsections A through C of this



