

1 SENATE BILL 157

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

4 Katy M. Duhigg and Art De La Cruz

5
6
7
8
9
10 AN ACT

11 RELATING TO FORFEITURE; ALLOWING CERTAIN SEIZURES OF PROPERTY
12 BY A LAW ENFORCEMENT AGENCY THAT PARTICIPATES IN FEDERAL
13 EQUITABLE SHARING PROGRAMS; PROVIDING THAT FORFEITURE PROCEEDS
14 SEIZED BY LAW ENFORCEMENT GO TO DRUG TREATMENT REHABILITATION.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 31-27-2 NMSA 1978 (being Laws 2002,
18 Chapter 4, Section 2, as amended) is amended to read:

19 "31-27-2. PURPOSE OF ACT--APPLICABILITY--NO ADDITIONAL
20 REMEDIES.--

21 A. The purposes of the Forfeiture Act are to:

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

25 (2) protect the constitutional rights of

.229451.1

underscored material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 persons whose property is subject to forfeiture and of innocent
2 owners holding interests in property subject to forfeiture;

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

5 (4) increase the pecuniary loss from criminal
6 activity;

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

9 (6) ensure that only criminal forfeiture is
10 allowed in this state and only pursuant to state law.

11 B. Except as provided in Section 31-27-11 NMSA
12 1978, the Forfeiture Act:

13 (1) applies to all seizures, forfeitures and
14 dispositions of property subject to forfeiture pursuant to laws
15 that specifically apply the Forfeiture Act in this state; and

16 (2) does not apply to:

17 (a) contraband, which is subject to
18 seizure pursuant to applicable state laws, but is not subject
19 to forfeiture pursuant to the Forfeiture Act;

20 (b) animals that are subject to seizure,
21 impoundment, alteration, permanent removal from custody or
22 destruction for animal welfare, public health and safety or
23 compliance and enforcement purposes pursuant to applicable
24 state and local laws;

25 (c) real property or personal property

.229451.1

underscored material = new
[bracketed material] = delete

1 that is located on that real property that is subject to
2 destruction pursuant to state and local laws to protect public
3 health and safety; and

4 (d) forfeiture that results from a lien
5 for charges or assessments that are provided for or fixed by
6 state or local laws."

7 SECTION 2. Section 31-27-7 NMSA 1978 (being Laws 2002,
8 Chapter 4, Section 7, as amended) is amended to read:

9 "31-27-7. TITLE TO SEIZED PROPERTY--DISPOSITION OF
10 FORFEITED PROPERTY AND ABANDONED PROPERTY--PROCEEDS--
11 EXEMPTION.--

12 A. Except as provided in Section 31-27-11 NMSA
13 1978, when a law enforcement agency in New Mexico seizes
14 property for a federal law enforcement authority as a
15 participant in a federal equitable sharing program, the state
16 acquires provisional title to seized property at the time the
17 property was used or acquired in connection with an offense
18 that subjects the property to forfeiture. Provisional title
19 authorizes the state to hold and protect the property. Title
20 to the property shall vest with the state when a trier of fact
21 renders a final forfeiture verdict and the title relates back
22 to the time when the state acquired provisional title; provided
23 that the title is not subject to claims by third parties that
24 are adjudicated pursuant to the Forfeiture Act.

25 B. Unless possession of the property is illegal or
.229451.1

underscored material = new
[bracketed material] = delete

1 a different disposition is specifically provided for by law and
2 except as provided in this section, forfeited property that is
3 not currency shall be delivered along with any abandoned
4 property to the state treasurer or the state treasurer's
5 designee for disposition at a public auction. Forfeited
6 currency and all proceeds of the sale of forfeited or abandoned
7 property shall be distributed by the state treasurer as
8 follows:

9 (1) first, to reimburse the reasonable
10 expenses related to the storage, protection and transfer of the
11 property incurred by a law enforcement agency or the state
12 treasurer;

13 (2) second, to pay any reasonable expenses
14 incurred to dispose of the property by a law enforcement agency
15 or the state treasurer; ~~and~~

16 (3) third, any remaining balance shall be
17 deposited in the general fund except as provided in Paragraph
18 (4) of this subsection; and

19 (4) fourth, when a person is convicted of a
20 drug-related crime as provided in the Controlled Substances
21 Act, money obtained by forfeiture proceeds pursuant to Section
22 30-31-34 NMSA 1978 shall be subject to appropriation by the
23 legislature for drug treatment rehabilitation of minors and
24 adults.

25 C. Except as provided in Section 31-27-11 NMSA

.229451.1

underscored material = new
[bracketed material] = delete

1 1978, proceeds from the sale of forfeited property received by
2 the state from another jurisdiction shall be deposited in the
3 general fund.

4 D. A law enforcement agency or public body that
5 receives reimbursement pursuant to Subsection B of this section
6 shall inform the state auditor of that fact at the time of the
7 agency's or body's annual audit.

8 E. A forfeited property interest is subject to the
9 interest of a secured party unless, in the forfeiture
10 proceeding, the state proves by clear and convincing evidence
11 that the secured party had actual knowledge of the crime that
12 relates to the seizure of the property.

13 F. Abandoned property shall be disposed of in the
14 same manner as provided in Subsection B of this section.

15 G. Property subject to forfeiture that is in a law
16 enforcement agency's possession becomes abandoned property and
17 may be disposed of as such without a conviction if:

18 (1) there is no innocent owner; and
19 (2) the criminal prosecution of the owner of
20 the seized property cannot proceed because for a period in
21 excess of one year and one day:

22 (a) a bench warrant has been pending as
23 a result of the defendant failing to appear; or

24 (b) the owner [~~fugitates~~] was
25 fugitated."

underscored material = new
[bracketed material] = delete

1 SECTION 3. Section 31-27-11 NMSA 1978 (being Laws 2015,
2 Chapter 152, Section 13) is amended to read:

3 "31-27-11. TRANSFER OF FORFEITABLE PROPERTY TO THE
4 FEDERAL GOVERNMENT--EXPENDITURE OF MONEY DISBURSED BY FEDERAL
5 EQUITABLE SHARING PROGRAMS.--

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

9 (1) the value of the seized property exceeds
10 fifty thousand dollars (\$50,000), excluding the potential value
11 of the sale of contraband; and

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

16 ~~(3) the seized property may only be forfeited~~
17 ~~under federal law]~~

18 (2) the federal government has filed criminal
19 charges against the owner of the seized property, there is no
20 innocent owner and the seized property is required as evidence
21 in the federal prosecution.

22 B. ~~[The]~~ A law enforcement agency shall not
23 transfer property to the federal government if the transfer
24 would circumvent the protections of the Forfeiture Act that
25 would otherwise be available to a putative interest holder in

.229451.1

underscored material = new
[bracketed material] = delete

1 the property. A law enforcement agency may share information
2 and cooperate with the federal government.

3 C. A law enforcement agency may participate in
4 federal equitable sharing programs as authorized by Section
5 29-1-10.1 NMSA 1978 and allowed in this section; provided that
6 no equitable sharing money shall be accepted by the law
7 enforcement agency unless the owner of the property is
8 convicted in federal court.

9 D. A law enforcement agency participating in
10 federal equitable sharing programs shall spend money received
11 from a program on drug prevention or awareness programs,
12 including costs associated with conducting law enforcement
13 agency awareness programs."

14 SECTION 4. APPLICABILITY.--The provisions of this act
15 apply to seized and disclaimed property in the possession of a
16 law enforcement agency or the state treasurer on and after the
17 effective date of this act.