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SENATE BILL 314

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

INTRODUCED BY

Manny M. Aragon

AN ACT

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

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

Section 1. A new section of the Criminal Code is enacted to read:

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

Section 2. A new section of the Criminal Code is enacted to read:

"[NEW MATERIAL] PURPOSE OF ACT. -- The purpose of the Forfeiture Act is to provide uniform standards and procedures for law enforcement officers and agencies for the seizure and forfeiture of property used or intended to be used in the

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1 commission of a crime. "

2 Section 3. A new section of the Criminal Code is enacted  
3 to read:

4 "[NEW MATERIAL] DEFINITIONS. -- As used in the Forfeiture  
5 Act:

6 A. "conviction" means a final adjudication of  
7 guilt by a district or magistrate court or, if the court  
8 decision is appealed, a final adjudication of guilt by an  
9 appellate court;

10 B. "crime" means an offense punishable by  
11 imprisonment for one year or more, a violation of laws or  
12 rules regarding hunting or fishing or a violation of laws  
13 regarding gambling;

14 C. "law enforcement officer" means a state or  
15 municipal police officer, county sheriff, deputy sheriff,  
16 conservation officer, motor transportation enforcement officer  
17 or other state employee authorized by state law to enforce  
18 criminal statutes, but "law enforcement officer" does not  
19 include correctional officers;

20 D. "owner" means an individual who possesses a  
21 legal or equitable ownership in property, or if title to the  
22 property is held in the name of a partnership, trust,  
23 corporation or other legal entity, an individual who possesses  
24 a substantial legal or equitable ownership interest in the  
25 partnership, trust, corporation or other legal entity; and

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1 E. "property" means tangible or intangible  
2 personal property, real property or an interest in tangible or  
3 intangible personal property or real property."

4 Section 4. A new section of the Criminal Code is enacted  
5 to read:

6 "[NEW MATERIAL] FORFEITURE REQUIREMENTS. --

7 A. A judgment for the forfeiture of property may  
8 be entered only upon:

9 (1) conviction of an owner of the property  
10 for a crime related to the forfeiture, but a forfeiture  
11 proceeding may be commenced prior to the conclusion of the  
12 criminal prosecution in the trial court; and

13 (2) proof by clear and convincing evidence  
14 that the property is forfeitable under state law and that a  
15 person convicted of a crime related to the forfeiture is an  
16 owner of the property.

17 B. The value of the property forfeited shall not  
18 unreasonably exceed the pecuniary gain derived or sought to be  
19 derived by the crime, the pecuniary loss caused or sought to  
20 be caused by the crime or the value of the convicted owner's  
21 interest in the property. "

22 Section 5. A new section of the Criminal Code is enacted  
23 to read:

24 "[NEW MATERIAL] SEIZURE-- COURT ORDER-- EXCEPTIONS. --

25 A. Property subject to forfeiture may be seized by

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1 a law enforcement officer upon an order issued by the district  
2 court having jurisdiction.

3 B. The court may issue an order pursuant to  
4 Subsection A of this section if it determines that:

5 (1) there is a substantial probability that  
6 the state will prevail on the issue of forfeiture and that  
7 failure to enter the order will result in the property's being  
8 destroyed, removed from the jurisdiction of the court or  
9 otherwise made unavailable for forfeiture; and

10 (2) the need to preserve the availability of  
11 the property through the entry of the requested order  
12 outweighs the hardship to a party of interest.

13 C. A seizure of property other than a residence or  
14 business may be made without a court order when:

15 (1) the seizure is incident to an arrest or a  
16 search pursuant to a search warrant or an inspection pursuant  
17 to an administrative inspection warrant;

18 (2) the property subject to seizure has been  
19 the subject of a prior judgment in favor of the state or a  
20 political subdivision in a criminal injunction or forfeiture  
21 proceeding;

22 (3) there is probable cause to believe that  
23 the property is directly or indirectly dangerous to health or  
24 safety; or

25 (4) there is probable cause to believe that

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1 the property is forfeitable under state law and that the delay  
2 occasioned by the need to secure an order will frustrate the  
3 seizure; provided, however, that a law enforcement agency  
4 making a seizure pursuant to this paragraph shall, within  
5 thirty days of the seizure, apply for an order pursuant to  
6 Subsection A of this section; and provided further that the  
7 property shall be released to the owner immediately if the  
8 order is denied. The law enforcement agency making the  
9 seizure shall make a reasonable effort to notify the person  
10 from whom the property was seized of the location, date and  
11 time of the hearing on the application for an order allowing  
12 seizure, so the person has a reasonable opportunity to appear  
13 at the hearing and oppose the order.

14 D. The seizure of a residence or business shall  
15 occur only after a pre-seizure hearing, with notice provided  
16 in accordance with the provisions of Section 6 of the  
17 Forfeiture Act.

18 E. The owner shall be given a receipt whenever  
19 practicable for the property seized. "

20 Section 6. A new section of the Criminal Code is enacted  
21 to read:

22 " [NEW MATERIAL] SEIZURE-- NOTICE-- CLAIMS. --

23 A. All forfeiture proceedings shall be brought in  
24 the name of the state. All forfeiture proceedings shall be  
25 initiated in district court in the county in which the

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1 property was seized or, in the case of a pre-seizure hearing  
2 on seizure of a residence or business, in the county where the  
3 residence or the primary office of the business is located;  
4 provided that, for good cause shown upon application of any  
5 interested party, the court may consolidate proceedings filed  
6 in different counties or allow transfer of proceedings to  
7 another county.

8 B. All forfeiture proceedings, except a pre-  
9 seizure hearing, shall be initiated by the issuance of a  
10 notice of pending forfeiture by the prosecuting attorney. The  
11 notice shall be issued within twenty days from the date the  
12 property was seized. The notice shall include a description  
13 of the property sought to be forfeited, the date and place of  
14 the seizure of the property, the name and address of the  
15 seizing agency, the reason the property is alleged to be  
16 forfeitable, a summary of the procedures and the procedural  
17 rights applicable to the forfeiture action and a notification  
18 alerting a trustee of the state's obligations under the  
19 Forfeiture Act.

20 C. The notice shall be given to the person from  
21 whom the property was seized and to each owner and secured  
22 interest holder and is effective upon personal service.

23 D. If personal service of the notice is not  
24 possible after good-faith attempts at all known residences and  
25 places of business, the seizing law enforcement agency shall

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1 publish a notice of seizure, including a list of seized  
2 property, in five consecutive editions of a newspaper of  
3 general circulation in the county in which the property has  
4 been seized. The notice shall include a statement of the  
5 rights of an owner to claim return of the property.

6 E. Any person claiming seized property shall file  
7 with the appropriate law enforcement agency a claim stating  
8 his interest in the property. All claims shall be filed  
9 within sixty days of the date of personal service on the  
10 claimant or, if personal service was not effected, within  
11 sixty days of the last date of publication in the newspaper of  
12 the notice of seizure.

13 F. Within twenty days of receipt by a law  
14 enforcement agency of any claim to seized property, a  
15 complaint seeking forfeiture of the property shall be filed in  
16 district court, and copies of the complaint shall be served on  
17 all claimants. If additional claims to the property are made  
18 in a timely manner after the complaint is filed, those  
19 additional claimants shall be made parties to the action by  
20 amendment of the complaint. The Rules of Civil Procedure for  
21 the District Courts shall apply to all forfeiture proceedings.  
22 The district court shall determine the extent and priority of  
23 interest for all claimants to the property.

24 G. No bond of any kind shall be required as a  
25 prerequisite to making a claim for the return of seized

1 property.

2 H. Reasonable attorney fees and costs shall be  
3 awarded to a claimant who prevails in a forfeiture proceeding.  
4 The attorney fees and costs shall be paid by the state.

5 I. If there is opposition to the forfeiture, the  
6 claimant shall have the right to a jury trial in determining  
7 the propriety of a forfeiture of any property valued in excess  
8 of ten thousand dollars (\$10,000).

9 J. If the owner of the seized property is  
10 financially unable to obtain representation of counsel, the  
11 court may appoint appropriate counsel to represent that person  
12 in the forfeiture proceedings. The court shall set  
13 compensation for that representation as appropriate.  
14 Compensation for appointed counsel shall be paid by the state.

15 K. The district court shall file a decision  
16 regarding a forfeiture complaint within sixty days of the  
17 filing of an answer by a claimant or, if there is more than  
18 one claimant, within sixty days of the filing of an answer by  
19 the last claimant. The sixty-day time limitation may be  
20 extended by a consent of the parties or by the district court  
21 for good cause shown. Good cause includes the pendency of  
22 related criminal proceedings. Upon agreement of the parties,  
23 the court may render a decision regarding whether and to what  
24 extent the property is forfeitable prior to the time that  
25 related criminal proceedings become final. When related



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1 criminal proceedings become final, a judgment in the  
2 forfeiture action shall be entered.

3 L. When no claims to property are filed in a  
4 timely manner, the property shall be forfeited. Forfeited  
5 property, if it is not currency, shall be sold or otherwise  
6 disposed of in accordance with law, and all sale proceeds and  
7 forfeited currency shall be deposited in the general fund, or,  
8 if forfeited pursuant to Chapter 17 NMSA 1978, the proceeds  
9 shall be deposited in the game protection fund, in an amount  
10 equal to the amount expended from the game protection fund to  
11 prosecute the case, and the surplus shall be deposited in the  
12 general fund. Notwithstanding the provisions of this  
13 subsection, proceeds from the sale of forfeited property or  
14 forfeited currency shall be applied first as restitution to or  
15 on behalf of actual victims of the criminal acts related to  
16 the forfeiture proceedings. "

17 Section 7. A new section of the Criminal Code is enacted  
18 to read:

19 "[NEW MATERIAL] RETURN OF PROPERTY TO NONDEFENDANT. -- If  
20 the ownership interest of a person convicted for a crime  
21 related to the seizure of property cannot be proven by clear  
22 and convincing evidence, the court shall determine its  
23 ownership and order the property returned in accordance with  
24 that determination. "

25 Section 8. A new section of the Criminal Code is enacted

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1 to read:

2 "[NEW MATERIAL] REAL PROPERTY AND MOTOR VEHICLES--TITLE  
3 SEARCH--NOTICE. --

4 A. In addition to the procedures set forth in  
5 Section 6 of the Forfeiture Act, when the seized property is  
6 real property or a motor vehicle, the seizing law enforcement  
7 agency shall perform a title search on the property.  
8 Subsequent to the title search, the seizing law enforcement  
9 agency shall give a notice of seizure as provided in Section 6  
10 of the Forfeiture Act to all persons whom the agency knows or  
11 reasonably should know to have an interest in the property.

12 B. When the seizing law enforcement agency  
13 determines that the seized real property or motor vehicle does  
14 not belong to a person charged with a crime related to the  
15 seizure of the property or motor vehicle, the agency shall  
16 return the real property or motor vehicle to the owner of the  
17 property. "

18 Section 9. A new section of the Criminal Code is enacted  
19 to read:

20 "[NEW MATERIAL] ACTIONS--TIME LIMITS--BURDEN OF PROOF. --

21 A. No action to forfeit property shall be brought  
22 more than one year from the date of the conviction of a person  
23 for a crime related to the proposed forfeiture of the  
24 property.

25 B. The burden of proof is on the prosecution to

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1 establish, by clear and convincing evidence, that the property  
2 is subject to forfeiture. "

3 Section 10. A new section of the Criminal Code is  
4 enacted to read:

5 "[NEW MATERIAL] PROPERTY IMMUNE FROM FORFEITURE- -  
6 EXCEPTION. - -

7 A. No property shall be forfeited under the  
8 provisions of the Forfeiture Act to the extent of the interest  
9 of any owner or lienholder who is not convicted of a crime  
10 related to the forfeiture or by reason of a criminal act  
11 committed without the knowledge or consent of that owner or  
12 lienholder.

13 B. Notwithstanding other provisions of this  
14 section, if the court determines that property was transferred  
15 by the owner or otherwise disposed of to circumvent the  
16 provisions of the Forfeiture Act or other state law that  
17 provides for forfeiture or limits use or disposal of property,  
18 that property shall be subject to forfeiture as if the person  
19 convicted of the crime were the sole owner. "

20 Section 11. A new section of the Criminal Code is  
21 enacted to read:

22 "[NEW MATERIAL] SAFEKEEPING OF SEIZED PROPERTY PRIOR TO  
23 FORFEITURE- - RETURN TO DEFENDANT. - -

24 A. All currency seized pursuant to the provisions  
25 of the Forfeiture Act shall be remitted to the state treasurer

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1 or the clerk of the court for deposit in an interest-bearing  
2 trust account.

3 B. Other seized property not required by state or  
4 federal law to be destroyed may be:

5 (1) placed under seal;

6 (2) removed to a place designated by the law  
7 enforcement agency or the district court;

8 (3) removed to the custody of the law  
9 enforcement agency;

10 (4) sold or disposed of pursuant to  
11 Subsection L of Section 6 of the Forfeiture Act, when no  
12 claims are filed in a timely manner; or

13 (5) otherwise disposed of as provided by  
14 court order.

15 C. Property shall be kept by the law enforcement  
16 agency in such a manner as to protect it from theft or damage.

17 D. If an owner whose property was seized is not  
18 convicted of the crime in connection with which his property  
19 was seized, the property shall be returned to him, including  
20 interest accrued on escrow accounts. "

21 Section 12. A new section of the Criminal Code is  
22 enacted to read:

23 " [NEW MATERIAL] DISPOSAL OF FORFEITED PROPERTY. --

24 A. Whenever property is forfeited to the state by  
25 a court judgment pursuant to the Forfeiture Act, the court

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1 shall provide for the sale or other disposition of the  
2 property. Forfeited currency and proceeds from the sale of  
3 forfeited property shall be applied first to restitution to or  
4 on behalf of actual victims of the criminal acts of the  
5 convicted owner related to the forfeiture proceedings.

6 B. After payments have been made pursuant to the  
7 provisions of Subsection A of this section, the court shall  
8 order the balance deposited in the general fund.

9 C. If forfeited property consists of a partial  
10 interest in property, the court may, at its discretion and to  
11 the benefit of the state's taxpayers, allow the other owners  
12 to purchase the state's share at the current market value. "

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

15 "17-2-20.1. SEIZURE AND FORFEITURE--PROPERTY SUBJECT.--

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

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

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

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

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

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

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

21           "18-6-9.3. CULTURAL PROPERTY--SEIZURE AND FORFEITURE OF  
22 INSTRUMENTS. -- ~~[A.]~~ Any instrument, vehicle, tool or equipment  
23 used or intended to be used to violate the provisions of the  
24 Cultural Properties Act is subject to seizure and forfeiture  
25 ~~[except that no instrument, vehicle, tool or equipment shall~~

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1 ~~be subject to forfeiture if the violation was without the~~  
2 ~~knowledge or consent of the owner of the property subject to~~  
3 ~~forfeiture.~~

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

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

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

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

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

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

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1 ~~pursuant to the Cultural Properties Act, the state agency~~  
2 ~~seizing it shall remove the property to a place designated by~~  
3 ~~the state agency for disposition in accordance with law.~~

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

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

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



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

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

7 "30-3-8.1. SEIZURE AND FORFEITURE OF MOTOR VEHICLE--  
8 PROCEDURE [~~EXCEPTION~~]. --

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

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

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

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

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

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

25 D. ~~A motor vehicle seized under this section shall~~

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

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

18 F. ~~No motor vehicle shall be subject to forfeiture~~  
19 ~~when the owner of the motor vehicle establishes that the~~  
20 ~~offense of shooting at or from a motor vehicle pursuant to~~  
21 ~~Subsection B of Section 30-3-8 NMSA 1978 was committed without~~  
22 ~~his knowledge or consent. A forfeiture of a motor vehicle~~  
23 ~~encumbered by a recorded bona fide security interest shall be~~  
24 ~~subject to the interest of the secured party if the secured~~  
25 ~~party did not have knowledge of or did not consent to the~~

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1 ~~offense of shooting at or from a motor vehicle pursuant to~~  
2 ~~Subsection B of Section 30-3-8 NMSA 1978]~~ shall be seized and  
3 forfeited pursuant to the provisions of the Forfeiture Act."

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

6 "30-16B-9. SEIZURE AND FORFEITURE- - PROCEDURE. - - [A-]

7 Property subject to forfeiture [~~under~~] pursuant to the  
8 Unauthorized Recording Act may be seized [by any enforcement  
9 officer upon an order issued by the district court having  
10 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 valid 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~~  
18 ~~Unauthorized Recording Act; or~~

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

22 C. ~~In the event of seizure pursuant to Subsection~~  
23 ~~A of this section, proceedings under Subsection D of this~~  
24 ~~section and the Rules of Civil Procedure for the District~~  
25 ~~Court shall be instituted promptly and not later than thirty~~

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1 ~~days after seizure.~~

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

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

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

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

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

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

22 (3) ~~forward property, the proceeds from the~~  
23 ~~sale of which are not required to revert to the general fund,~~  
24 ~~to the property control division of the general services~~  
25 ~~department for disposition] and forfeited pursuant to the~~

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1 provisions of the Forfeiture Act. "

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

4 "30-19-10. SEIZURE AND FORFEITURE OF [PRIZES AND]  
5 EQUIPMENT. -- [Any] An illegal gambling device or other  
6 equipment [~~of any type~~] used in gambling shall be seized [~~by~~  
7 ~~the law enforcement officers discovering such device or~~  
8 ~~equipment, and it shall be the duty of such officers to retain~~  
9 ~~custody of the property seized until such property is disposed~~  
10 ~~of by order of the district court. Upon proper application by~~  
11 ~~the district attorney to the judge of the district court, the~~  
12 ~~judge of the district court may by proper order direct the~~  
13 ~~destruction of any gambling device, paraphernalia or equipment~~  
14 ~~of any kind or character seized by law enforcement officers]~~  
15 and forfeited pursuant to the provisions of the Forfeiture  
16 Act. "

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

19 "30-31-35. SEIZURE AND FORFEITURE- - PROCEDURE. -- [A-]  
20 Property subject to forfeiture and disposal [~~under~~] pursuant  
21 to the Controlled Substances Act may be seized [~~by any~~  
22 ~~enforcement officer upon an order issued by the district court~~  
23 ~~having jurisdiction.~~

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

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

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1 ~~search under a search warrant or an inspection under an~~  
2 ~~administrative inspection warrant;~~

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

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

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

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

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

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

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

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

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

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

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

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

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1 ~~commission]~~ and forfeited pursuant to the provisions of the  
2 Forfeiture Act. "

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

5 "30-31A-10. SEIZURE AND FORFEITURE- - PROCEDURE. - - [A-]  
6 Property subject to forfeiture and disposal [~~under~~] pursuant  
7 to the Imitation Controlled Substances Act may be seized [by  
8 ~~any law enforcement officer upon an order issued by the~~  
9 ~~district court having jurisdiction.~~

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

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

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

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

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

. 135251. 1



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1 ~~property is seized under the Imitation Controlled Substances~~  
2 ~~Act, the enforcement officer may:~~

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

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

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

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

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

18 "30-42-4. PROHIBITED ACTIVITIES--PENALTIES--SEIZURE AND  
19 FORFEITURE. --

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

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1 establishment or operation of, any enterprise. Whoever  
2 violates this subsection is guilty of a second degree felony.

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

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

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

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

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

23 (2) any interest in, security of, claim  
24 against or property or contractual right of any kind affording  
25 a source of influence over any enterprise [~~which~~] that he has

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1 established, operated, controlled, conducted or participated  
2 in the conduct of in violation of the Racketeering Act.

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

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

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

22 "30-45-7. SEIZURE AND FORFEITURE OF PROPERTY. --

23 A. The following are subject to forfeiture:

24 (1) all computer property, equipment or  
25 products of any kind [~~which~~] that have been used,

. 135251. 1

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1 manufactured, acquired or distributed in violation of the  
2 Computer Crimes Act;

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

9 (3)] (2) all books, records and research  
10 products and materials involving formulas, microfilm, tapes  
11 and data [which] that are used or intended for use in  
12 violation of the Computer Crimes Act;

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

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

21 [(6)] (3) all money or proceeds that  
22 constitute an instrumentality or derive from a violation of  
23 the Computer Crimes Act.

24 [B. Notwithstanding the provisions of Paragraphs  
25 (1) through (6) of Subsection A of this section:

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

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

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

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

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

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

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

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

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

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

22                   ~~F. Except as otherwise specifically provided by~~  
23 ~~law, whenever any property is forfeited to the state by reason~~  
24 ~~of the violation of any law, the court by which the offender~~  
25 ~~is convicted shall order the sale or other disposition of the~~

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

6 ~~G. 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 Computer Crimes 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 law enforcement officer or by the district court; 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 ~~H. When property is forfeited under the Computer~~  
19 ~~Crimes Act, the law enforcement agency seizing it shall:~~

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

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

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

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

12 "60-7A-4.1. UNLAWFUL SALE OF ALCOHOLIC BEVERAGES--  
13 CRIMINAL PENALTY--SEIZURE AND FORFEITURE. --

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

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

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

. 135251. 1



1 ~~forth in Section 30-31-35 NMSA 1978]~~ forfeited pursuant to the  
2 provisions of the Forfeiture Act. "

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

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

8 - 33 -

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