

1 SENATE BILL 26

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Mary Jane M. Garcia

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10 AN ACT

11 RELATING TO CRIMINAL LAW; PROVIDING ADDITIONAL PENALTIES FOR
12 UNLAWFUL TAKING OF A VEHICLE OR MOTOR VEHICLE; CREATING NEW
13 CRIMINAL OFFENSES OF EMBEZZLEMENT OF A VEHICLE OR MOTOR VEHICLE
14 AND FRAUDULENTLY OBTAINING A VEHICLE OR MOTOR VEHICLE;
15 INCLUDING OFFENSES RELATING TO MOTOR VEHICLES IN THE CRIMINAL
16 OFFENSE OF RACKETEERING; PROVIDING FOR SENTENCING ENHANCEMENTS
17 IF AN UNLAWFULLY OBTAINED VEHICLE OR MOTOR VEHICLE IS USED IN
18 THE COMMISSION OF A FELONY; AMENDING AND ENACTING SECTIONS OF
19 THE CRIMINAL CODE; AMENDING AND RECOMPILING SECTIONS OF THE
20 MOTOR VEHICLE CODE.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

23 Section 1. Section 66-3-504 NMSA 1978 (being Laws 1978,
24 Chapter 35, Section 91, as amended) is recompiled as Section
25 30-16D-1 NMSA 1978 and is amended to read:

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1 "30-16D-1. UNLAWFUL TAKING OF A VEHICLE OR MOTOR
2 VEHICLE.--

3 A. ~~[Any person who takes]~~ Unlawful taking of a
4 vehicle or motor vehicle consists of a person taking any
5 vehicle or motor vehicle as defined by the Motor Vehicle Code
6 intentionally and without consent of the owner. Whoever
7 commits unlawful taking of a vehicle or motor vehicle is guilty
8 of a:

9 (1) ~~[of a]~~ fourth degree felony if the vehicle
10 or motor vehicle has a value of ~~[less]~~ not more than two
11 thousand five hundred dollars (\$2,500); ~~[and]~~

12 (2) ~~[of a]~~ third degree felony if the vehicle
13 or motor vehicle has a value of more than two thousand five
14 hundred dollars (\$2,500) ~~[or more]~~ but less than twenty
15 thousand dollars (\$20,000); and

16 (3) second degree felony if the vehicle or
17 motor vehicle has a value of twenty thousand dollars (\$20,000)
18 or more.

19 B. The consent of the owner of the vehicle or motor
20 vehicle to its taking shall not in any case be presumed or
21 implied because of the owner's consent on a previous occasion
22 to the taking of the vehicle or motor vehicle by the same or a
23 different person.

24 ~~[C. The district courts are given exclusive~~
25 ~~jurisdiction to hear and try offenses prescribed under this~~

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1 ~~section.~~

2 ~~D.]~~ C. Nothing in this section shall be construed
3 to prohibit the holder of a lien duly recorded with the motor
4 vehicle division of the taxation and revenue department from
5 taking possession of a vehicle to which possession the
6 lienholder is legally entitled under the provisions of the
7 instrument evidencing the lien. A holder of a duly recorded
8 lien who takes possession of a vehicle without the knowledge of
9 the owner of the vehicle shall immediately notify the local
10 police authority of the fact that [~~he~~] the holder has taken
11 possession of the vehicle."

12 Section 2. A new Section 30-16D-2 NMSA 1978 is enacted to
13 read:

14 "30-16D-2. [NEW MATERIAL] EMBEZZLEMENT OF A VEHICLE OR
15 MOTOR VEHICLE.--

16 A. Embezzlement of a vehicle or motor vehicle
17 consists of a person embezzling or converting to the person's
18 own use a vehicle or motor vehicle as defined by the Motor
19 Vehicle Code, with which the person has been entrusted, with
20 the intent to deprive the owner of the vehicle or motor
21 vehicle. Each separate incident of embezzlement constitutes a
22 separate and distinct offense.

23 B. Whoever commits embezzlement of a vehicle or
24 motor vehicle is guilty of a:

25 (1) fourth degree felony if the vehicle or

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1 motor vehicle has a value of not more than two thousand five
2 hundred dollars (\$2,500);

3 (2) third degree felony if the vehicle or
4 motor vehicle has a value of more than two thousand five
5 hundred dollars (\$2,500) but less than twenty thousand dollars
6 (\$20,000); and

7 (3) second degree felony if the vehicle or
8 motor vehicle has a value of twenty thousand dollars (\$20,000)
9 or more."

10 Section 3. A new Section 30-16D-3 NMSA 1978 is enacted to
11 read:

12 "30-16D-3. [NEW MATERIAL] FRAUDULENTLY OBTAINING A
13 VEHICLE OR MOTOR VEHICLE.--

14 A. Fraudulently obtaining a vehicle or motor
15 vehicle consists of a person intentionally misappropriating or
16 taking a vehicle or motor vehicle as defined by the Motor
17 Vehicle Code that belongs to another person by means of
18 fraudulent conduct, practices or representations.

19 B. Whoever commits fraudulently obtaining a vehicle
20 or motor vehicle is guilty of a:

21 (1) fourth degree felony if the vehicle or
22 motor vehicle has a value of not more than two thousand five
23 hundred dollars (\$2,500);

24 (2) third degree felony if the vehicle or
25 motor vehicle has a value of more than two thousand five

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1 hundred dollars (\$2,500) but less than twenty thousand dollars
2 (\$20,000); and

3 (3) second degree felony if the vehicle or
4 motor vehicle has a value of twenty thousand dollars (\$20,000)
5 or more."

6 Section 4. Section 66-3-505 NMSA 1978 (being Laws 1978,
7 Chapter 35, Section 92) is recompiled as Section 30-16D-4 NMSA
8 1978 and is amended to read:

9 "30-16D-4. RECEIVING OR TRANSFERRING STOLEN VEHICLES OR
10 MOTOR VEHICLES.--[Any]

11 A. Receiving or transferring a stolen vehicle or
12 motor vehicle consists of a person who, with intent to procure
13 or pass title to a vehicle or motor vehicle [which he] as
14 defined by the Motor Vehicle Code that the person knows or has
15 reason to believe has been stolen or unlawfully taken, receives
16 or transfers possession of the [same] vehicle or motor vehicle
17 from or to another or who has in [his] the person's possession
18 any vehicle [which he] that the person knows or has reason to
19 believe has been stolen or unlawfully taken [and who is not].
20 This section shall not apply to an officer of the law engaged
21 at the time in the performance of [his] the officer's duty as
22 [such] an officer [is guilty of a fourth degree felony and upon
23 conviction shall be sentenced to imprisonment for not less than
24 one nor more than five years or to the payment of a fine of not
25 more than five thousand dollars (\$5,000) or to both such

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1 ~~imprisonment and fine in the discretion of the judge].~~

2 B. Whoever commits receiving or transferring a
3 stolen vehicle or motor vehicle is guilty of a:

4 (1) fourth degree felony if the vehicle or
5 motor vehicle has a value of not more than two thousand five
6 hundred dollars (\$2,500);

7 (2) third degree felony if the vehicle or
8 motor vehicle has a value of more than two thousand five
9 hundred dollars (\$2,500) but less than twenty thousand dollars
10 (\$20,000); and

11 (3) second degree felony if the vehicle or
12 motor vehicle has a value of twenty thousand dollars (\$20,000)
13 or more."

14 Section 5. Section 66-3-506 NMSA 1978 (being Laws 1978,
15 Chapter 35, Section 93) is recompiled as Section 30-16D-5 NMSA
16 1978 and is amended to read:

17 "30-16D-5. INJURING OR TAMPERING WITH A MOTOR VEHICLE.--
18 [Any]

19 A. Injuring or tampering with a motor vehicle
20 consists of a person [who shall], individually or in
21 association with [one or more others do any of the following
22 shall be guilty of a misdemeanor and upon conviction thereof
23 shall be imprisoned in the county jail for not less than six
24 months nor more than one year] another person:

25 [A.] (1) purposely and without authority from

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1 the owner [~~start~~] starting or [~~cause~~] causing to be started the
2 engine of any motor vehicle;

3 [~~B.~~] (2) purposely and maliciously [~~shift~~]
4 shifting or [~~change~~] changing the starting device or gears of a
5 standing motor vehicle to a position other than that in which
6 they were left by the owner or driver of [~~said~~] the motor
7 vehicle;

8 [~~C.~~] (3) purposely [~~scratch~~] scratching or
9 [~~damage~~] damaging the chassis, running gear, body, sides, top
10 covering or upholstering of a motor vehicle [~~which~~] that is the
11 property of another;

12 [~~D.~~] (4) purposely [~~destroy~~] destroying any
13 part of a motor vehicle or purposely [~~cut, mash, mark~~] cutting,
14 mashing or marking or in any other way [~~destroy~~] destroying or
15 [~~damage~~] damaging any part, attachment, fastening or
16 appurtenance of a motor vehicle without the permission of the
17 owner;

18 [~~E.~~] (5) purposely [~~drain~~] draining or [~~start~~]
19 starting the drainage of any radiator, oil tank or gas tank
20 upon a motor vehicle without the permission of the owner;

21 [~~F.~~] (6) purposely [~~put~~] putting any metallic
22 or other substance or liquid in the radiator, carburetor, oil
23 tank, grease cup, oilers, lamps, gas tanks or machinery of the
24 motor vehicle with the intent to injure or damage [~~the same~~] or
25 impede the working of the machinery [~~thereof~~] of the motor

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1 vehicle;

2 [G.] (7) maliciously [~~tighten~~] tightening or
3 [~~loosen~~] loosening any bracket, bolt, wire, nut, screw or other
4 fastening on a motor vehicle; or

5 [H.] (8) purposely [~~release~~] releasing the
6 brake upon a standing motor vehicle with the intent to injure
7 [~~said machine~~] the motor vehicle.

8 B. Whoever commits injuring or tampering with a
9 motor vehicle is guilty of a misdemeanor.

10 C. As used in this section, "motor vehicle" means a
11 motor vehicle as defined by the Motor Vehicle Code."

12 Section 6. Section 66-3-508 NMSA 1978 (being Laws 1978,
13 Chapter 35, Section 95) is recompiled as Section 30-16D-6 NMSA
14 1978 and is amended to read:

15 "30-16D-6. ALTERING OR CHANGING ENGINE OR OTHER
16 NUMBERS.--

17 A. No person shall, with fraudulent intent, deface,
18 remove, cover, destroy or alter the manufacturer's serial [~~or~~]
19 number, engine number, decal or other distinguishing number or
20 identification mark or number placed [~~thereon~~] under assignment
21 of the motor vehicle division of the taxation and revenue
22 department of a vehicle required to be registered under the
23 Motor Vehicle Code or any vehicle, motor vehicle or motor
24 vehicle engine or component as defined by the Motor Vehicle
25 Code for which a dismantler's notification form has been

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1 processed through the division, nor shall any person place or
2 stamp any serial, engine, decal or other number or mark upon
3 [~~such~~] the vehicle except one assigned [~~thereto~~] by the
4 division. Any violation of this provision is a fourth degree
5 felony.

6 B. This section shall not prohibit the restoration
7 by an owner of an original serial, engine, decal or other
8 number or mark when [~~such~~] the restoration is made under permit
9 issued by the division nor prevent any manufacturer from
10 placing, in the ordinary course of business, numbers, decals or
11 marks upon vehicles or parts thereof."

12 Section 7. Section 30-42-3 NMSA 1978 (being Laws 1980,
13 Chapter 40, Section 3, as amended) is amended to read:

14 "30-42-3. DEFINITIONS.--As used in the Racketeering Act:

15 A. "racketeering" means any act that is chargeable
16 or indictable under the laws of New Mexico and punishable by
17 imprisonment for more than one year, involving any of the
18 following cited offenses:

19 (1) murder, as provided in Section 30-2-1 NMSA
20 1978;

21 (2) robbery, as provided in Section 30-16-2
22 NMSA 1978;

23 (3) kidnapping, as provided in Section 30-4-1
24 NMSA 1978;

25 (4) forgery, as provided in Section 30-16-10

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1 NMSA 1978;

2 (5) larceny, as provided in Section 30-16-1

3 NMSA 1978;

4 (6) fraud, as provided in Section 30-16-6 NMSA
5 1978;

6 (7) embezzlement, as provided in Section
7 30-16-8 NMSA 1978;

8 (8) receiving stolen property, as provided in
9 Section 30-16-11 NMSA 1978;

10 (9) bribery, as provided in Sections 30-24-1
11 through ~~[30-24-3]~~ 30-24-3.1 NMSA 1978;

12 (10) gambling, as provided in Sections
13 30-19-3, 30-19-13 and 30-19-15 NMSA 1978;

14 (11) illegal kickbacks, as provided in
15 Sections 30-41-1 and 30-41-2 NMSA 1978;

16 (12) extortion, as provided in Section 30-16-9
17 NMSA 1978;

18 (13) trafficking in controlled substances, as
19 provided in Section 30-31-20 NMSA 1978;

20 (14) arson and aggravated arson, as provided
21 in Subsection A of Section 30-17-5 and Section 30-17-6 NMSA
22 1978;

23 (15) promoting prostitution, as provided in
24 Section 30-9-4 NMSA 1978;

25 (16) criminal solicitation, as provided in

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1 Section 30-28-3 NMSA 1978;

2 (17) fraudulent securities practices, as
3 provided in the New Mexico Securities Act of 1986;

4 (18) loan sharking, as provided in Sections
5 30-43-1 through 30-43-5 NMSA 1978;

6 (19) distribution of controlled substances or
7 controlled substance analogues, as provided in Sections
8 30-31-21 and 30-31-22 NMSA 1978; [~~and~~]

9 (20) a violation of the provisions of Section
10 [~~4 of the Money Laundering Act~~] 30-51-4 NMSA 1978;

11 (21) unlawful taking of a vehicle or motor
12 vehicle, as provided in Section 30-16D-1 NMSA 1978;

13 (22) embezzlement of a vehicle or motor
14 vehicle, as provided in Section 30-16D-2 NMSA 1978;

15 (23) fraudulently obtaining a vehicle or motor
16 vehicle, as provided in Section 30-16D-3 NMSA 1978;

17 (24) receiving or transferring stolen vehicles
18 or motor vehicles, as provided in Section 30-16D-4 NMSA 1978;

19 and

20 (25) altering or changing the serial number,
21 engine number, decal or other numbers or marks of a vehicle or
22 motor vehicle, as provided in Section 30-16D-6 NMSA 1978;

23 B. "person" means an individual or entity capable
24 of holding a legal or beneficial interest in property;

25 C. "enterprise" means a sole proprietorship,

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1 partnership, corporation, business, labor union, association or
2 other legal entity or a group of individuals associated in fact
3 although not a legal entity and includes illicit as well as
4 licit entities; and

5 D. "pattern of racketeering activity" means
6 engaging in at least two incidents of racketeering with the
7 intent of accomplishing any of the prohibited activities set
8 forth in Subsections A through D of Section 30-42-4 NMSA 1978;
9 provided at least one of the incidents occurred after [~~the~~
10 ~~effective date of the Racketeering Act~~] February 28, 1980 and
11 the last incident occurred within five years after the
12 commission of a prior incident of racketeering."

13 Section 8. A new section of Chapter 31, Article 18 NMSA
14 1978 is enacted to read:

15 "[NEW MATERIAL] USE OF A STOLEN VEHICLE OR MOTOR VEHICLE--
16 ALTERATION OF BASIC SENTENCE.--

17 A. When a separate finding of fact by the court or
18 jury shows that a vehicle or motor vehicle unlawfully taken,
19 embezzled or fraudulently obtained was used in the commission
20 of a noncapital felony, the basic sentence of imprisonment
21 prescribed for the offense in Section 31-18-15 NMSA 1978 shall
22 be increased by one year; provided that when the offender is a
23 serious youthful offender or a youthful offender, the sentence
24 may be increased by one year. The sentence imposed by this
25 subsection shall be the first year served and shall not be

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1 suspended or deferred.

2 B. For a second or subsequent noncapital felony in
3 which a vehicle or motor vehicle unlawfully taken, embezzled or
4 fraudulently obtained is used, the basic sentence of
5 imprisonment prescribed in Section 31-18-15 NMSA 1978 shall be
6 increased by three years; provided that when the offender is a
7 serious youthful offender or a youthful offender, the sentence
8 may be increased by three years. The sentence imposed by this
9 subsection shall be the first three years served and shall not
10 be suspended or deferred.

11 C. If the case is tried before a jury and if a
12 prima facie case has been established showing that a vehicle or
13 motor vehicle unlawfully taken, embezzled or fraudulently
14 obtained was used in the commission of the noncapital felony,
15 the court shall submit the issue to the jury by special
16 interrogatory. If the case is tried by the court and if a
17 prima facie case has been established showing that a vehicle or
18 motor vehicle unlawfully taken, embezzled or fraudulently
19 obtained was used in the commission of the noncapital felony,
20 the court shall decide the issue and shall make a separate
21 finding of fact regarding the unlawful taking, embezzlement or
22 fraud."

23 Section 9. Section 66-3-501 NMSA 1978 (being Laws 1978,
24 Chapter 35, Section 88, as amended) is amended to read:

25 "66-3-501. REPORT OF STOLEN AND RECOVERED VEHICLES OR

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1 MOTOR VEHICLES.--

2 A. Every sheriff, chief of police or peace officer
3 upon receiving reliable information that any vehicle
4 [~~registered under the Motor Vehicle Code~~] or motor vehicle has
5 been stolen shall immediately, but in no case later than one
6 week after receiving the information, report the theft to the
7 New Mexico state police or other appropriate law enforcement
8 agency unless, prior thereto, information has been received of
9 the recovery of the vehicle or motor vehicle. Any officer,
10 upon receiving information that any vehicle [~~which he~~] or motor
11 vehicle that the officer has previously reported as stolen has
12 been recovered, shall immediately report the fact of recovery
13 to the local sheriff's office or police department and to the
14 New Mexico state police.

15 B. The requirement that the theft or recovery of a
16 vehicle or motor vehicle be reported to the New Mexico state
17 police is satisfied if the report is made to the national crime
18 information center."

19 Section 10. Section 66-3-502 NMSA 1978 (being Laws 1978,
20 Chapter 35, Section 89) is amended to read:

21 "66-3-502. REPORTS BY OWNERS OF STOLEN AND RECOVERED
22 VEHICLES OR MOTOR VEHICLES.--

23 A. The owner or person having a lien or encumbrance
24 upon a [~~registered~~] vehicle [~~which~~] or motor vehicle that has
25 been stolen or embezzled may notify the New Mexico state police

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1 or other appropriate law enforcement agency of [~~such~~] the theft
2 or embezzlement but, in the event of an embezzlement, may make
3 [~~such~~] a report only after having procured the issuance of a
4 warrant for the arrest of the person charged with [~~such~~] the
5 embezzlement.

6 B. Every owner or other person who has given any
7 such notice shall immediately notify the New Mexico state
8 police or the law enforcement agency that took the report of a
9 recovery of [~~such~~] the vehicle."

10 Section 11. Section 66-3-507 NMSA 1978 (being Laws 1978,
11 Chapter 35, Section 94) is amended to read:

12 "66-3-507. ALTERED VEHICLE IDENTIFICATION NUMBERS--
13 CONTRABAND.--

14 A. Any person receiving, disposing of, offering to
15 dispose of or having in [~~his~~] the person's possession any
16 vehicle, [~~or~~] motor vehicle or motor vehicle engine or
17 component shall make adequate inquiry and inspection to
18 determine that no manufacturer's serial number, engine or
19 component number or other distinguishing number or mark or
20 identification mark or number placed [~~there on~~] under
21 assignment of the division has been removed, defaced, covered,
22 altered or destroyed.

23 B. When the inspection of a vehicle, [~~or~~] motor
24 vehicle or motor vehicle engine or component by any law
25 enforcement officer indicates that the manufacturer's serial

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1 number or decal, engine or component number or other
2 distinguishing number or mark or identification mark or number
3 placed [~~thereon~~] under assignment of the division has been
4 removed, defaced, covered, altered or destroyed, that vehicle,
5 motor vehicle or motor vehicle engine or component may be
6 impounded for a period of time not to exceed ninety-six hours
7 unless part of that time [~~shall fall~~] falls upon a Saturday,
8 Sunday or a legal holiday, in which case the vehicle, motor
9 vehicle or motor vehicle engine or component may be impounded
10 for a period of time not to exceed six days. At the expiration
11 of the stated time period, the vehicle, [~~or~~] motor vehicle or
12 motor vehicle engine or component shall be returned to the
13 person from whom it was taken at no cost unless an ex parte
14 order allowing continued impoundment is issued by a magistrate
15 or district court judge after finding that probable cause
16 exists to believe that the manufacturer's serial number, engine
17 or component number or other distinguishing number or mark or
18 identification mark or number placed [~~thereon~~] under assignment
19 of the division has been removed, defaced, covered, altered or
20 destroyed. Within ten days of the issuance of [~~such an~~] the
21 order, the law enforcement agency shall cause to have the
22 matter of the vehicle, [~~or~~] motor vehicle or motor vehicle
23 engine or component brought before a district court by filing
24 in that court a petition requesting that the vehicle or item be
25 declared contraband unless the court grants an extension of

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1 time for [~~such~~] the filing based on some reasonable requirement
2 for extension of [~~such~~] the filing by the law enforcement
3 agency. If at the time of the hearing on that petition the
4 court finds that the manufacturer's serial number, engine or
5 component number or other distinguishing number or mark or
6 identification mark or number placed [~~thereon~~] under assignment
7 of the division has been removed, defaced, covered, altered or
8 destroyed, the court shall declare the vehicle, motor vehicle
9 or motor vehicle engine or component to be contraband unless
10 one of the exceptions enumerated in this section applies. At
11 the time the vehicle, motor vehicle or motor vehicle engine or
12 component is declared to be contraband, the court shall order
13 that it be disposed of according to Subsection D of this
14 section. Any vehicle, motor vehicle or motor vehicle engine or
15 component in such condition shall not be subject to replevin
16 except by an owner who can trace [~~his~~] the owner's ownership of
17 that vehicle, motor vehicle or motor vehicle engine or
18 component from the manufacturer by furnishing the court records
19 indicating the identity of all intermediate owners. The law
20 enforcement agency seizing [~~such a~~] the vehicle, motor vehicle
21 or motor vehicle engine or component shall provide the person
22 from whom it was taken a receipt for [~~such~~] the vehicle, motor
23 vehicle or motor vehicle engine or component.

24 C. [~~Such~~] The vehicle, motor vehicle or motor
25 vehicle engine or component shall not be considered contraband

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1 when:

2 (1) it has been determined that [~~such~~] the
3 vehicle, motor vehicle or motor vehicle engine or component has
4 been reported as stolen;

5 (2) [~~that~~] the vehicle, motor vehicle or motor
6 vehicle engine or component is recovered in the condition
7 described in Subsection B of this section;

8 (3) it clearly appears that the true owner is
9 [~~in no way~~] not responsible for the altering, concealing,
10 defacing or destroying [~~or alteration~~] of the vehicle, motor
11 vehicle or motor vehicle engine or component;

12 (4) the true owner obtains an assigned number
13 issued by the division for [~~such~~] the vehicle, motor vehicle or
14 motor vehicle engine or component;

15 (5) the new assigned numbers have been issued
16 for and placed upon the vehicle, motor vehicle or motor vehicle
17 engine or component by the division [~~of motor vehicles~~]
18 utilizing a unique numbering system for that purpose; or

19 (6) a person licensed under the provisions of
20 Sections [~~214 through 222 of this act~~] 66-4-1 through 66-4-9
21 NMSA 1978, when in the course of [~~his~~] the person's business
22 and consistent with the provisions of Section [~~95 of this act~~]
23 30-16D-6 NMSA 1978 and the rules and regulations promulgated by
24 the division, removes, defaces, covers, alters or destroys the
25 manufacturer's serial or engine or component number or other

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1 distinguishing number or identification mark or number placed
2 under assignment of the division of a vehicle required to be
3 registered under the Motor Vehicle Code [~~or number placed~~
4 ~~thereon under assignment of the division~~].

5 D. If it is impossible to locate a true owner who
6 meets the provisions of Subsection C of this section to claim
7 [~~such a~~] the vehicle, motor vehicle or motor vehicle engine or
8 component, it may be retained by the law enforcement agency
9 confiscating it as long as it is used for police purposes,
10 after which time, or if not suitable for police use, it shall
11 be destroyed."

12 Section 12. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2009.