

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 26

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

AN ACT

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

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

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

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underscoring material = new
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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~~
10 ~~vehicle or motor vehicle has a value of less than two thousand~~
11 ~~five hundred dollars (\$2,500); and]~~ for a first offense;

12 (2) ~~[of a]~~ third degree felony ~~[if the vehicle~~
13 ~~or motor vehicle has a value of two thousand five hundred~~
14 ~~dollars (\$2,500) or more]~~ for a second offense; and

15 (3) second degree felony for a third or
16 subsequent offense.

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

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

25 ~~D.]~~ C. Nothing in this section shall be construed

1 to prohibit the holder of a lien duly recorded with the motor
 2 vehicle division of the taxation and revenue department from
 3 taking possession of a vehicle to which possession the
 4 lienholder is legally entitled under the provisions of the
 5 instrument evidencing the lien. A holder of a duly recorded
 6 lien who takes possession of a vehicle without the knowledge of
 7 the owner of the vehicle shall immediately notify the local
 8 police authority of the fact that [~~he~~] the holder has taken
 9 possession of the vehicle."

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

12 "30-16D-2. [NEW MATERIAL] EMBEZZLEMENT OF A VEHICLE OR
 13 MOTOR VEHICLE.--

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

21 B. Whoever commits embezzlement of a vehicle or
 22 motor vehicle is guilty of a:

23 (1) fourth degree felony for a first offense;

24 (2) third degree felony for a second offense;

25 and

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1 (3) second degree felony for a third or
2 subsequent offense."

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

5 "30-16D-3. [NEW MATERIAL] FRAUDULENTLY OBTAINING A
6 VEHICLE OR MOTOR VEHICLE.--

7 A. Fraudulently obtaining a vehicle or motor
8 vehicle consists of a person intentionally misappropriating or
9 taking a vehicle or motor vehicle as defined by the Motor
10 Vehicle Code that belongs to another person by means of
11 fraudulent conduct, practices or representations.

12 B. Whoever commits fraudulently obtaining a vehicle
13 or motor vehicle is guilty of a:

14 (1) fourth degree felony for a first offense;

15 (2) third degree felony for a second offense;

16 and

17 (3) second degree felony for a third or
18 subsequent offense."

19 Section 4. Section 66-3-505 NMSA 1978 (being Laws 1978,
20 Chapter 35, Section 92) is recompiled as Section 30-16D-4 NMSA
21 1978 and is amended to read:

22 "30-16D-4. RECEIVING OR TRANSFERRING STOLEN VEHICLES OR
23 MOTOR VEHICLES.--[~~Any~~]

24 A. Receiving or transferring a stolen vehicle or
25 motor vehicle consists of a person who, with intent to procure

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1 or pass title to a vehicle or motor vehicle ~~[which he]~~ as
 2 defined by the Motor Vehicle Code that the person knows or has
 3 reason to believe has been stolen or unlawfully taken, receives
 4 or transfers possession of the ~~[same]~~ vehicle or motor vehicle
 5 from or to another or who has in ~~[his]~~ the person's possession
 6 any vehicle ~~[which he]~~ that the person knows or has reason to
 7 believe has been stolen or unlawfully taken ~~[and who is not]~~.
 8 This section shall not apply to an officer of the law engaged
 9 at the time in the performance of ~~[his]~~ the officer's duty as
 10 ~~[such] an officer [is guilty of a fourth degree felony and upon~~
 11 ~~conviction shall be sentenced to imprisonment for not less than~~
 12 ~~one nor more than five years or to the payment of a fine of not~~
 13 ~~more than five thousand dollars (\$5,000) or to both such~~
 14 ~~imprisonment and fine in the discretion of the judge].~~

15 B. Whoever commits receiving or transferring a
 16 stolen vehicle or motor vehicle is guilty of a:

17 (1) fourth degree felony for a first offense;

18 (2) third degree felony for a second offense;

19 and

20 (3) second degree felony for a third or
 21 subsequent offense."

22 Section 5. Section 66-3-506 NMSA 1978 (being Laws 1978,
 23 Chapter 35, Section 93) is recompiled as Section 30-16D-5 NMSA
 24 1978 and is amended to read:

25 "30-16D-5. INJURING OR TAMPERING WITH A MOTOR VEHICLE.--

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1 [Any]

2 A. Injuring or tampering with a motor vehicle
3 consists of a person [~~who shall~~], individually or in
4 association with [~~one or more others do any of the following~~
5 ~~shall be guilty of a misdemeanor and upon conviction thereof~~
6 ~~shall be imprisoned in the county jail for not less than six~~
7 ~~months nor more than one year] another person:~~

8 [A.] (1) purposely and without authority from
9 the owner [~~start~~] starting or [~~cause~~] causing to be started the
10 engine of any motor vehicle;

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

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

20 [D.] (4) purposely [~~destroy~~] destroying any
21 part of a motor vehicle or purposely [~~cut, mash, mark~~] cutting,
22 mashing or marking or in any other way [~~destroy~~] destroying or
23 [~~damage~~] damaging any part, attachment, fastening or
24 appurtenance of a motor vehicle without the permission of the
25 owner;

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

4 [~~F.~~] (6) purposely [~~put~~] putting any metallic
5 or other substance or liquid in the radiator, carburetor, oil
6 tank, grease cup, oilers, lamps, gas tanks or machinery of the
7 motor vehicle with the intent to injure or damage [~~the same~~] or
8 impede the working of the machinery [~~thereof~~] of the motor
9 vehicle;

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

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

16 B. Whoever commits injuring or tampering with a
17 motor vehicle is guilty of a misdemeanor.

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

20 Section 6. Section 66-3-508 NMSA 1978 (being Laws 1978,
21 Chapter 35, Section 95) is recompiled as Section 30-16D-6 NMSA
22 1978 and is amended to read:

23 "30-16D-6. ALTERING OR CHANGING ENGINE OR OTHER
24 NUMBERS.--

25 A. No person shall, with fraudulent intent, deface,
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1 remove, cover, destroy or alter the manufacturer's serial [~~or~~
2 number, engine number, decal or other distinguishing number or
3 identification mark or number placed [~~thereon~~] under assignment
4 of the motor vehicle division of the taxation and revenue
5 department of a vehicle required to be registered under the
6 Motor Vehicle Code or any vehicle, motor vehicle or motor
7 vehicle engine or component as defined by the Motor Vehicle
8 Code for which a dismantler's notification form has been
9 processed through the division, nor shall any person place or
10 stamp any serial, engine, decal or other number or mark upon
11 [~~such~~] the vehicle except one assigned [~~thereto~~] by the
12 division. Any violation of this [~~provision~~] section is a
13 fourth degree felony.

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

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

22 "30-42-3. DEFINITIONS.--As used in the Racketeering Act:

23 A. "racketeering" means any act that is chargeable
24 or indictable under the laws of New Mexico and punishable by
25 imprisonment for more than one year, involving any of the

1 following cited offenses:

2 (1) murder, as provided in Section 30-2-1 NMSA
3 1978;

4 (2) robbery, as provided in Section 30-16-2
5 NMSA 1978;

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

8 (4) forgery, as provided in Section 30-16-10
9 NMSA 1978;

10 (5) larceny, as provided in Section 30-16-1
11 NMSA 1978;

12 (6) fraud, as provided in Section 30-16-6 NMSA
13 1978;

14 (7) embezzlement, as provided in Section
15 30-16-8 NMSA 1978;

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

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

20 (10) gambling, as provided in Sections
21 30-19-3, 30-19-13 and 30-19-15 NMSA 1978;

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

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

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

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

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

8 (16) criminal solicitation, as provided in
9 Section 30-28-3 NMSA 1978;

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

12 (18) loan sharking, as provided in Sections
13 30-43-1 through 30-43-5 NMSA 1978;

14 (19) distribution of controlled substances or
15 controlled substance analogues, as provided in Sections
16 30-31-21 and 30-31-22 NMSA 1978; [~~and~~]

17 (20) a violation of the provisions of Section
18 [~~4 of the Money Laundering Act~~] 30-51-4 NMSA 1978;

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

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

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

25 (24) receiving or transferring stolen vehicles

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1 or motor vehicles, as provided in Section 30-16D-4 NMSA 1978;

2 and

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

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

8 C. "enterprise" means a sole proprietorship,
9 partnership, corporation, business, labor union, association or
10 other legal entity or a group of individuals associated in fact
11 although not a legal entity and includes illicit as well as
12 licit entities; and

13 D. "pattern of racketeering activity" means
14 engaging in at least two incidents of racketeering with the
15 intent of accomplishing any of the prohibited activities set
16 forth in Subsections A through D of Section 30-42-4 NMSA 1978;
17 provided at least one of the incidents occurred after [~~the~~
18 ~~effective date of the Racketeering Act~~] February 28, 1980 and
19 the last incident occurred within five years after the
20 commission of a prior incident of racketeering."

21 Section 8. A new section of Chapter 31, Article 18 NMSA
22 1978 is enacted to read:

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

25 A. When a separate finding of fact by the court or

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1 jury shows that a vehicle or motor vehicle unlawfully taken,
2 embezzled or fraudulently obtained was used in the commission
3 of a noncapital felony, the basic sentence of imprisonment
4 prescribed for the offense in Section 31-18-15 NMSA 1978 shall
5 be increased by one year; provided that when the offender is a
6 serious youthful offender or a youthful offender, the sentence
7 shall not be increased. The sentence imposed by this
8 subsection shall be the first year served and shall not be
9 suspended or deferred.

10 B. For a second or subsequent noncapital felony in
11 which a vehicle or motor vehicle unlawfully taken, embezzled or
12 fraudulently obtained is used, the basic sentence of
13 imprisonment prescribed in Section 31-18-15 NMSA 1978 shall be
14 increased by three years; provided that when the offender is a
15 serious youthful offender or a youthful offender, the sentence
16 shall not be increased. The sentence imposed by this
17 subsection shall be the first three years served and shall not
18 be suspended or deferred.

19 C. If the case is tried before a jury and if a
20 prima facie case has been established showing that a vehicle or
21 motor vehicle unlawfully taken, embezzled or fraudulently
22 obtained was used in the commission of the noncapital felony,
23 the court shall submit the issue to the jury by special
24 interrogatory. If the case is tried by the court and if a
25 prima facie case has been established showing that a vehicle or

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1 motor vehicle unlawfully taken, embezzled or fraudulently
2 obtained was used in the commission of the noncapital felony,
3 the court shall decide the issue and shall make a separate
4 finding of fact regarding the unlawful taking, embezzlement or
5 fraud."

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

8 "66-3-501. REPORT OF STOLEN AND RECOVERED VEHICLES OR
9 MOTOR VEHICLES.--

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

23 B. The requirement that the theft or recovery of a
24 vehicle or motor vehicle be reported to the New Mexico state
25 police is satisfied if the report is made to the national crime

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1 information center."

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

4 "66-3-502. REPORTS BY OWNERS OF STOLEN AND RECOVERED
5 VEHICLES OR MOTOR VEHICLES.--

6 A. The owner or person having a lien or encumbrance
7 upon a [~~registered~~] vehicle [~~which~~] or motor vehicle that has
8 been stolen or embezzled may notify the New Mexico state police
9 or other appropriate law enforcement agency of [~~such~~] the theft
10 or embezzlement but, in the event of an embezzlement, may make
11 [~~such~~] a report only after having procured the issuance of a
12 warrant for the arrest of the person charged with [~~such~~] the
13 embezzlement.

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

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

20 "66-3-507. ALTERED VEHICLE IDENTIFICATION NUMBERS--
21 CONTRABAND.--

22 A. Any person receiving, disposing of, offering to
23 dispose of or having in [~~his~~] the person's possession any
24 vehicle, [~~or~~] motor vehicle or motor vehicle engine or
25 component shall make adequate inquiry and inspection to

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1 determine that no manufacturer's serial number, engine or
2 component number or other distinguishing number or mark or
3 identification mark or number placed [~~there on~~] under
4 assignment of the division has been removed, defaced, covered,
5 altered or destroyed.

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

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1 identification mark or number placed [~~thereon~~] under assignment
2 of the division has been removed, defaced, covered, altered or
3 destroyed. Within ten days of the issuance of [~~such an~~] the
4 order, the law enforcement agency shall cause to have the
5 matter of the vehicle, [~~or~~] motor vehicle or motor vehicle
6 engine or component brought before a district court by filing
7 in that court a petition requesting that the vehicle or item be
8 declared contraband unless the court grants an extension of
9 time for [~~such~~] the filing based on some reasonable requirement
10 for extension of [~~such~~] the filing by the law enforcement
11 agency. If at the time of the hearing on that petition the
12 court finds that the manufacturer's serial number, engine or
13 component number or other distinguishing number or mark or
14 identification mark or number placed [~~thereon~~] under assignment
15 of the division has been removed, defaced, covered, altered or
16 destroyed, the court shall declare the vehicle, motor vehicle
17 or motor vehicle engine or component to be contraband unless
18 one of the exceptions enumerated in this section applies. At
19 the time the vehicle, motor vehicle or motor vehicle engine or
20 component is declared to be contraband, the court shall order
21 that it be disposed of according to Subsection D of this
22 section. Any vehicle, motor vehicle or motor vehicle engine or
23 component in such condition shall not be subject to replevin
24 except by an owner who can trace [~~his~~] the owner's ownership of
25 that vehicle, motor vehicle or motor vehicle engine or

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1 component from the manufacturer by furnishing the court records
2 indicating the identity of all intermediate owners. The law
3 enforcement agency seizing [~~such a~~] the vehicle, motor vehicle
4 or motor vehicle engine or component shall provide the person
5 from whom it was taken a receipt for [~~such~~] the vehicle, motor
6 vehicle or motor vehicle engine or component.

7 C. [~~Such~~] The vehicle, motor vehicle or motor
8 vehicle engine or component shall not be considered contraband
9 when:

10 (1) it has been determined that [~~such~~] the
11 vehicle, motor vehicle or motor vehicle engine or component has
12 been reported as stolen;

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

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

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

23 (5) the new assigned numbers have been issued
24 for and placed upon the vehicle, motor vehicle or motor vehicle
25 engine or component by the division [~~of motor vehicles~~]

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1 utilizing a unique numbering system for that purpose; or

2 (6) a person licensed under the provisions of
3 Sections ~~[214 through 222 of this act]~~ 66-4-1 through 66-4-9
4 NMSA 1978, when in the course of ~~[his]~~ the person's business
5 and consistent with the provisions of Section ~~[95 of this act]~~
6 30-16D-6 NMSA 1978 and the rules and regulations promulgated by
7 the division, removes, defaces, covers, alters or destroys the
8 manufacturer's serial or engine or component number or other
9 distinguishing number or identification mark or number placed
10 under assignment of the division of a vehicle required to be
11 registered under the Motor Vehicle Code ~~[or number placed~~
12 ~~thereon under assignment of the division]~~.

13 D. If it is impossible to locate a true owner who
14 meets the provisions of Subsection C of this section to claim
15 ~~[such a]~~ the vehicle, motor vehicle or motor vehicle engine or
16 component, it may be retained by the law enforcement agency
17 confiscating it as long as it is used for police purposes,
18 after which time, or if not suitable for police use, it shall
19 be destroyed."

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