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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; 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:

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

A. Unlawful taking of a vehicle or motor vehicle consists of a person taking any vehicle or motor vehicle as defined by the Motor Vehicle Code intentionally and without consent of the owner. Whoever commits unlawful taking of a vehicle or motor vehicle is guilty of a:

(1) fourth degree felony for a first offense;

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

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

3 B. The consent of the owner of the vehicle or
4 motor vehicle to its taking shall not in any case be presumed
5 or implied because of the owner's consent on a previous
6 occasion to the taking of the vehicle or motor vehicle by the
7 same or a different person.

8 C. Nothing in this section shall be construed to
9 prohibit the holder of a lien duly recorded with the motor
10 vehicle division of the taxation and revenue department from
11 taking possession of a vehicle to which possession the
12 lienholder is legally entitled under the provisions of the
13 instrument evidencing the lien. A holder of a duly recorded
14 lien who takes possession of a vehicle without the knowledge
15 of the owner of the vehicle shall immediately notify the
16 local police authority of the fact that the holder has taken
17 possession of the vehicle."

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

20 "30-16D-2. EMBEZZLEMENT OF A VEHICLE OR MOTOR
21 VEHICLE.--

22 A. Embezzlement of a vehicle or motor vehicle
23 consists of a person embezzling or converting to the person's
24 own use a vehicle or motor vehicle as defined by the Motor
25 Vehicle Code, with which the person has been entrusted, with

1 the fraudulent intent to deprive the owner of the vehicle or
2 motor vehicle.

3 B. Whoever commits embezzlement of a vehicle or
4 motor vehicle is guilty of a:

5 (1) fourth degree felony for a first
6 offense;

7 (2) third degree felony for a second
8 offense; and

9 (3) second degree felony for a third or
10 subsequent offense."

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

13 "30-16D-3. FRAUDULENTLY OBTAINING A VEHICLE OR MOTOR
14 VEHICLE.--

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

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

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

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

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

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

6 "30-16D-4. RECEIVING OR TRANSFERRING STOLEN VEHICLES OR
7 MOTOR VEHICLES.--

8 A. Receiving or transferring a stolen vehicle or
9 motor vehicle consists of a person who, with intent to
10 procure or pass title to a vehicle or motor vehicle as
11 defined by the Motor Vehicle Code that the person knows or
12 has reason to believe has been stolen or unlawfully taken,
13 receives or transfers possession of the vehicle or motor
14 vehicle from or to another or who has in the person's
15 possession any vehicle that the person knows or has reason to
16 believe has been stolen or unlawfully taken. This section
17 shall not apply to an officer of the law engaged at the time
18 in the performance of the officer's duty as an officer.

19 B. Whoever commits receiving or transferring a
20 stolen vehicle or motor vehicle is guilty of a:

21 (1) fourth degree felony for a first
22 offense;

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

25 (3) second degree felony for a third or

1 subsequent offense."

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

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

7 A. Injuring or tampering with a motor vehicle
8 consists of a person, individually or in association with
9 another person:

10 (1) purposely and without authority from the
11 owner starting or causing to be started the engine of any
12 motor vehicle;

13 (2) purposely and maliciously shifting or
14 changing the starting device or gears of a standing motor
15 vehicle to a position other than that in which they were left
16 by the owner or driver of the motor vehicle;

17 (3) purposely scratching or damaging the
18 chassis, running gear, body, sides, top covering or
19 upholstery of a motor vehicle that is the property of
20 another;

21 (4) purposely destroying any part of a motor
22 vehicle or purposely cutting, mashing or marking or in any
23 other way destroying or damaging any part, attachment,
24 fastening or appurtenance of a motor vehicle without the
25 permission of the owner;

1 (5) purposely draining or starting the
2 drainage of any radiator, oil tank or gas tank upon a motor
3 vehicle without the permission of the owner;

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

9 (7) maliciously tightening or loosening any
10 bracket, bolt, wire, nut, screw or other fastening on a motor
11 vehicle; or

12 (8) purposely releasing the brake upon a
13 standing motor vehicle with the intent to injure the motor
14 vehicle.

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

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

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

22 "30-16D-6. ALTERING OR CHANGING ENGINE OR OTHER
23 NUMBERS.--

24 A. No person shall, with fraudulent intent,
25 deface, remove, cover, destroy or alter the manufacturer's

1 serial number, engine number, decal or other distinguishing
2 number or identification mark or number placed under
3 assignment of the motor vehicle division of the taxation and
4 revenue department of a vehicle required to be registered
5 under the Motor Vehicle Code or any vehicle, motor vehicle or
6 motor vehicle engine or component as defined by the Motor
7 Vehicle Code for which a dismantler's notification form has
8 been processed through the division, nor shall any person
9 place or stamp any serial, engine, decal or other number or
10 mark upon the vehicle except one assigned by the division.
11 Any violation of this section is a fourth degree felony.

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

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

20 "30-42-3. DEFINITIONS.--As used in the Racketeering
21 Act:

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

- 1 (1) murder, as provided in Section 30-2-1
- 2 NMSA 1978;
- 3 (2) robbery, as provided in Section 30-16-2
- 4 NMSA 1978;
- 5 (3) kidnapping, as provided in Section
- 6 30-4-1 NMSA 1978;
- 7 (4) forgery, as provided in Section 30-16-10
- 8 NMSA 1978;
- 9 (5) larceny, as provided in Section 30-16-1
- 10 NMSA 1978;
- 11 (6) fraud, as provided in Section 30-16-6
- 12 NMSA 1978;
- 13 (7) embezzlement, as provided in Section
- 14 30-16-8 NMSA 1978;
- 15 (8) receiving stolen property, as provided
- 16 in Section 30-16-11 NMSA 1978;
- 17 (9) bribery, as provided in Sections 30-24-1
- 18 through 30-24-3.1 NMSA 1978;
- 19 (10) gambling, as provided in Sections
- 20 30-19-3, 30-19-13 and 30-19-15 NMSA 1978;
- 21 (11) illegal kickbacks, as provided in
- 22 Sections 30-41-1 and 30-41-2 NMSA 1978;
- 23 (12) extortion, as provided in Section
- 24 30-16-9 NMSA 1978;
- 25 (13) trafficking in controlled substances,

1 as provided in Section 30-31-20 NMSA 1978;

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

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

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

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

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

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

16 (20) a violation of the provisions of
17 Section 30-51-4 NMSA 1978;

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

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

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

24 (24) receiving or transferring stolen
25 vehicles or motor vehicles, as provided in Section 30-16D-4

1 NMSA 1978; and

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

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

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

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

20 Section 8. Section 66-3-501 NMSA 1978 (being Laws 1978,
21 Chapter 35, Section 88, as amended) is amended to read:

22 "66-3-501. REPORT OF STOLEN AND RECOVERED VEHICLES OR
23 MOTOR VEHICLES.--

24 A. Every sheriff, chief of police or peace officer
25 upon receiving reliable information that any vehicle or motor

1 vehicle has been stolen shall immediately, but in no case
2 later than one week after receiving the information, report
3 the theft to the New Mexico state police or other appropriate
4 law enforcement agency unless, prior thereto, information has
5 been received of the recovery of the vehicle or motor
6 vehicle. Any officer, upon receiving information that any
7 vehicle or motor vehicle that the officer has previously
8 reported as stolen has been recovered, shall immediately
9 report the fact of recovery to the local sheriff's office or
10 police department and to the New Mexico state police.

11 B. The requirement that the theft or recovery of a
12 vehicle or motor vehicle be reported to the New Mexico state
13 police is satisfied if the report is made to the national
14 crime information center."

15 Section 9. Section 66-3-502 NMSA 1978 (being Laws 1978,
16 Chapter 35, Section 89) is amended to read:

17 "66-3-502. REPORTS BY OWNERS OF STOLEN AND RECOVERED
18 VEHICLES OR MOTOR VEHICLES.--

19 A. The owner or person having a lien or
20 encumbrance upon a vehicle or motor vehicle that has been
21 stolen or embezzled may notify the New Mexico state police or
22 other appropriate law enforcement agency of the theft or
23 embezzlement but, in the event of an embezzlement, may make a
24 report only after having procured the issuance of a warrant
25 for the arrest of the person charged with the embezzlement.

1 B. Every owner or other person who has given any
2 such notice shall immediately notify the New Mexico state
3 police or the law enforcement agency that took the report of
4 a recovery of the vehicle."

5 Section 10. Section 66-3-507 NMSA 1978 (being Laws
6 1978, Chapter 35, Section 94) is amended to read:

7 "66-3-507. ALTERED VEHICLE IDENTIFICATION NUMBERS--
8 CONTRABAND.--

9 A. Any person receiving, disposing of, offering to
10 dispose of or having in the person's possession any vehicle,
11 motor vehicle or motor vehicle engine or component shall make
12 adequate inquiry and inspection to determine that no
13 manufacturer's serial number, engine or component number or
14 other distinguishing number or mark or identification mark or
15 number placed under assignment of the division has been
16 removed, defaced, covered, altered or destroyed.

17 B. When the inspection of a vehicle, motor vehicle
18 or motor vehicle engine or component by any law enforcement
19 officer indicates that the manufacturer's serial number or
20 decal, engine or component number or other distinguishing
21 number or mark or identification mark or number placed under
22 assignment of the division has been removed, defaced,
23 covered, altered or destroyed, that vehicle, motor vehicle or
24 motor vehicle engine or component may be impounded for a
25 period of time not to exceed ninety-six hours unless part of

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

1 covered, altered or destroyed, the court shall declare the
2 vehicle, motor vehicle or motor vehicle engine or component
3 to be contraband unless one of the exceptions enumerated in
4 this section applies. At the time the vehicle, motor vehicle
5 or motor vehicle engine or component is declared to be
6 contraband, the court shall order that it be disposed of
7 according to Subsection D of this section. Any vehicle,
8 motor vehicle or motor vehicle engine or component in such
9 condition shall not be subject to replevin except by an owner
10 who can trace the owner's ownership of that vehicle, motor
11 vehicle or motor vehicle engine or component from the
12 manufacturer by furnishing the court records indicating the
13 identity of all intermediate owners. The law enforcement
14 agency seizing the vehicle, motor vehicle or motor vehicle
15 engine or component shall provide the person from whom it was
16 taken a receipt for the vehicle, motor vehicle or motor
17 vehicle engine or component.

18 C. The vehicle, motor vehicle or motor vehicle
19 engine or component shall not be considered contraband when:

20 (1) it has been determined that the vehicle,
21 motor vehicle or motor vehicle engine or component has been
22 reported as stolen;

23 (2) the vehicle, motor vehicle or motor
24 vehicle engine or component is recovered in the condition
25 described in Subsection B of this section;

1 (3) it clearly appears that the true owner
2 is not responsible for the altering, concealing, defacing or
3 destroying of the vehicle, motor vehicle or motor vehicle
4 engine or component;

5 (4) the true owner obtains an assigned
6 number issued by the division for the vehicle, motor vehicle
7 or motor vehicle engine or component;

8 (5) the new assigned numbers have been
9 issued for and placed upon the vehicle, motor vehicle or
10 motor vehicle engine or component by the division utilizing a
11 unique numbering system for that purpose; or

12 (6) a person licensed under the provisions
13 of Sections 66-4-1 through 66-4-9 NMSA 1978, when in the
14 course of the person's business and consistent with the
15 provisions of Section 30-16D-6 NMSA 1978 and the rules and
16 regulations promulgated by the division, removes, defaces,
17 covers, alters or destroys the manufacturer's serial or
18 engine or component number or other distinguishing number or
19 identification mark or number placed under assignment of the
20 division of a vehicle required to be registered under the
21 Motor Vehicle Code.

22 D. If it is impossible to locate a true owner who
23 meets the provisions of Subsection C of this section to claim
24 the vehicle, motor vehicle or motor vehicle engine or
25 component, it may be retained as long as it is used for

1 police purposes, after which time, or if not suitable for
2 police use, it shall be destroyed."

3 Section 11. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2009. _____

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