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HOUSE BILL 560

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Zachary J. Cook

AN ACT

RELATING TO FORFEITURE; PROVIDING THAT FORFEITURE PURSUANT TO THE FORFEITURE ACT SHALL FOLLOW A CRIMINAL CONVICTION; REVISING SEIZURE AND FORFEITURE PROCEDURES; REQUIRING LAW ENFORCEMENT AGENCIES TO SUBMIT ANNUAL REPORTS RELATING TO FORFEITURE; PROVIDING FOR THE TRANSFER OF SEIZED PROPERTY; EXCLUDING CONTRABAND FROM THE FORFEITURE ACT; REQUIRING FORFEITURE PROCEEDINGS TO FOLLOW A RELATED CRIMINAL PROCEEDING; PROVIDING FOR PROCEEDS FROM THE SALE OF FORFEITED AND ABANDONED PROPERTY AND FORFEITED CURRENCY TO BE DEPOSITED IN THE GENERAL FUND; PROVIDING FOR AN INNOCENT OWNER TO ASSERT AN INTEREST IN SEIZED PROPERTY.

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

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

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1 "31-27-1. SHORT TITLE.--~~[Sections 1 through 8 of this~~
2 ~~act]~~ Chapter 31, Article 27 NMSA 1978 may be cited as the
3 "Forfeiture Act"."

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

6 "31-27-2. PURPOSE OF ACT--APPLICABILITY--NO ADDITIONAL
7 REMEDIES.--

- 8 A. The purposes of the Forfeiture Act are to:
- 9 (1) ~~[to]~~ make uniform the standards and
10 procedures for the seizure and forfeiture of property subject
11 to forfeiture; ~~[and]~~
 - 12 (2) ~~[to]~~ protect the constitutional rights of
13 persons ~~[accused of a crime]~~ whose property is subject to
14 forfeiture and of innocent ~~[persons]~~ owners holding interests
15 in property subject to forfeiture;
 - 16 (3) deter criminal activity by reducing its
17 economic incentives;
 - 18 (4) increase the pecuniary loss from criminal
19 activity;
 - 20 (5) protect against the wrongful forfeiture of
21 property; and
 - 22 (6) ensure that only criminal forfeiture is
23 allowed in this state.

- 24 B. The Forfeiture Act:
- 25 (1) applies to ~~[(+)]~~ seizures, forfeitures and

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1 dispositions of property subject to forfeiture pursuant to laws
2 that specifically apply the Forfeiture Act; and

3 (2) [~~seizures, forfeitures and dispositions of~~
4 ~~property subject to forfeiture pursuant to other laws; but only~~
5 ~~to the extent that the procedures in the Forfeiture Act for~~
6 ~~seizing, forfeiting or disposing of property are consistent~~
7 ~~with any procedures specified in those laws]~~ does not apply to
8 contraband, which is subject to seizure pursuant to applicable
9 state laws, but is not subject to forfeiture pursuant to the
10 Forfeiture Act."

11 SECTION 3. Section 31-27-3 NMSA 1978 (being Laws 2002,
12 Chapter 4, Section 3) is amended to read:

13 "31-27-3. DEFINITIONS.--As used in the Forfeiture Act:

14 A. "abandoned property":

15 (1) means personal property the rights to
16 which and the control of which an owner has intentionally
17 relinquished; and

18 (2) does not mean real property;

19 B. "actual knowledge" means a direct and clear
20 awareness of information, a fact or a condition;

21 C. "contraband" means goods that may not be
22 lawfully imported, exported or possessed, including drugs that
23 are listed in Schedule I, II, III, IV or V of the Controlled
24 Substances Act and that are possessed without a valid
25 prescription;

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1 D. "conveyance" means a device used for
2 transportation and:

3 (1) includes a motor vehicle, trailer,
4 snowmobile, airplane, vessel and any equipment attached to the
5 conveyance; but

6 (2) does not include property that is stolen
7 or taken in violation of a law;

8 [~~A-~~] E. "conviction" or "convicted" means that a
9 person has been found guilty of a crime in [the] a trial court
10 whether by a plea of guilty or nolo contendere or otherwise and
11 whether the sentence is deferred or suspended;

12 [~~B-~~] F. "crime" means a violation of a criminal
13 statute for which property of the offender is subject to
14 seizure and forfeiture;

15 G. "instrumentality" means all property that is
16 otherwise lawful to possess that is used in the furtherance or
17 commission of an offense to which forfeiture applies and
18 includes land, a building, a container, a conveyance,
19 equipment, materials, a product, a computer, computer software,
20 a telecommunications device, a firearm, ammunition, a tool,
21 money, a security and a negotiable instrument and other devices
22 used for exchange of property;

23 [~~G-~~] H. "law enforcement agency" means the employer
24 of a law enforcement officer that [has made a seizure of] is
25 authorized to seize or has seized property pursuant to the

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1 Forfeiture Act;

2 [D-] I. "law enforcement officer" means:

3 (1) a state or municipal police officer,
4 county sheriff, deputy sheriff, conservation officer, motor
5 transportation enforcement officer or other state employee
6 authorized by state law to enforce criminal statutes; but [~~"law
7 enforcement officer"~~]

8 (2) does not [~~include~~] mean a correctional
9 [~~officers~~] officer;

10 [E-] J. "owner" means a person who has a legal or
11 equitable ownership interest in property;

12 [F-] K. "property" means tangible or intangible
13 personal property or real property;

14 [G-] L. "property subject to forfeiture" means
15 property or an instrumentality described and declared to be
16 subject to forfeiture by the Forfeiture Act or a state law
17 outside of the Forfeiture Act; and

18 [H-] M. "secured party" means a person with a
19 security or other protected interest in property, whether
20 [~~arising~~] the interest arose by mortgage, security agreement,
21 lien, lease or otherwise; the purpose of which interest is to
22 secure the payment of a debt or protect a potential debt owed
23 to the secured party."

24 SECTION 4. Section 31-27-4 NMSA 1978 (being Laws 2002,
25 Chapter 4, Section 4) is amended to read:

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1 "31-27-4. FORFEITURE--CONVICTION REQUIRED--SEIZURE OF
2 PROPERTY--WITH PROCESS--WITHOUT PROCESS.--[~~Property may be~~
3 ~~seized by a law enforcement officer:~~

4 ~~A. pursuant to an order of seizure issued by a~~
5 ~~district court based on a sworn application of a law~~
6 ~~enforcement officer from which a determination is made by the~~
7 ~~court]~~

8 A. A person's property is subject to forfeiture if:

9 (1) the person was arrested for an offense to
10 which forfeiture applies;

11 (2) the person is convicted by a criminal
12 court of the offense; and

13 (3) the state establishes by clear and
14 convincing evidence that the property is subject to forfeiture
15 as provided in Subsection B of this section.

16 B. Following a person's conviction for an offense
17 to which forfeiture applies, a court may order the person to
18 forfeit:

19 (1) property the person acquired through
20 commission of the offense;

21 (2) property directly traceable to property
22 acquired through the commission of the offense; and

23 (3) any instrumentality the person used in the
24 commission of the offense.

25 C. Nothing in this section shall prevent property

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1 from being forfeited by the terms of a plea agreement that is
2 approved by a court or by other agreement of the parties to a
3 criminal proceeding.

4 D. Subject to the provisions of Section 31-27-5
5 NMSA 1978, at any time, at the request of the state, a court
6 may issue an ex parte preliminary order to seize property that
7 is subject to forfeiture and for which forfeiture is sought and
8 to provide for the custody of the property. The execution on
9 the order to seize the property and the return of the property,
10 if applicable, are subject to the Forfeiture Act and other
11 applicable state laws. Before issuing an order pursuant to
12 this subsection, the court shall make a determination that:

13 (1) there is a substantial probability that:

14 (a) the property is subject to
15 forfeiture;

16 (b) the state will prevail on the issue
17 of forfeiture; and

18 (c) failure to enter the order will
19 result in the property being destroyed, removed from the state
20 or otherwise made unavailable for forfeiture; and

21 (2) the need to preserve the availability of
22 the property through the entry of the requested order outweighs
23 the hardship to the owner and other parties known to be
24 claiming interests in the property. [~~and~~

25 ~~B.] E. Property subject to forfeiture may be seized~~

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1 at any time, without a prior court order, if [~~the property~~
2 ~~alleged to be property subject to forfeiture is not a residence~~
3 ~~or a business, when~~]:

4 (1) the seizure is incident to [~~an~~] a lawful
5 arrest for a crime or a search lawfully conducted pursuant to a
6 search warrant [~~or an inspection conducted pursuant to an~~
7 ~~administrative inspection warrant~~] and the law enforcement
8 officer making the arrest or executing the search [~~or~~
9 ~~inspection warrant~~] has probable cause to believe the property
10 [~~to be property~~] is subject to forfeiture and that the subject
11 of the arrest or search warrant [~~or inspection warrant~~] is an
12 owner of the property; [~~or~~]

13 (2) the property subject to seizure is the
14 subject of a previous judgment in favor of the state; or

15 [~~(2)~~] (3) the law enforcement officer making
16 the seizure has probable cause to believe the property is
17 [~~property~~] subject to forfeiture and that the delay occasioned
18 by the need to obtain a court order would result in the removal
19 or destruction of the property or otherwise frustrate the
20 seizure."

21 SECTION 5. A new Section 31-27-4.1 NMSA 1978 is enacted
22 to read:

23 "31-27-4.1. [NEW MATERIAL] RECEIPT FOR SEIZED PROPERTY--
24 REPLEVIN HEARING.--

25 A. When a law enforcement officer seizes property
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1 that is subject to forfeiture, the officer shall provide an
2 itemized receipt to the person possessing the property or, in
3 the absence of a person to whom the receipt could be given,
4 shall leave the receipt in the place where the property was
5 found, if possible.

6 B. Following the seizure of property, the defendant
7 in the related criminal matter or another person who claims an
8 interest in seized property may, at any time before sixty days
9 prior to a related criminal trial, claim an interest in seized
10 property by a motion to the court to issue a writ of replevin.
11 A motion filed pursuant to this section shall include facts to
12 support the person's alleged interest in the property.

13 C. A person who makes a timely motion pursuant to
14 this section shall have a right to a hearing on the motion
15 before the resolution of any related criminal matter or
16 forfeiture proceeding and within thirty days of the date on
17 which the motion is filed.

18 D. At least ten days before a hearing on a motion
19 filed pursuant to this section, the state shall file an answer
20 or responsive motion that shows probable cause for the seizure.

21 E. A court shall grant a claimant's motion if the
22 court finds that:

23 (1) it is likely that the final judgment will
24 require the state to return the property to the claimant;

25 (2) the property is not reasonably required to

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1 be held for investigatory reasons; or

2 (3) the property is the only reasonable means
3 for a defendant to pay for legal representation in a related
4 criminal or forfeiture proceeding.

5 F. In its discretion, the court may order the
6 return of funds or property sufficient to obtain legal counsel
7 but less than the total amount seized, and it may require an
8 accounting.

9 G. In lieu of ordering the issuance of the writ of
10 replevin, a court may order:

11 (1) the state to give security or written
12 assurance for satisfaction of any judgment, including damages,
13 that may be rendered in a related forfeiture action; or

14 (2) any other relief the court deems to be
15 just."

16 SECTION 6. Section 31-27-5 NMSA 1978 (being Laws 2002,
17 Chapter 4, Section 5) is amended to read:

18 "31-27-5. COMPLAINT OF FORFEITURE--SERVICE OF PROCESS.--

19 A. Within thirty days of making a seizure of
20 property or simultaneously upon filing a related criminal
21 indictment, the state shall file a complaint of ancillary
22 forfeiture proceedings or return the property to the person
23 from whom it was seized. A complaint of ancillary forfeiture
24 proceedings shall include:

25 (1) a description of the property seized;

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1 (2) the date and place of seizure of the
2 property;

3 (3) the name and address of the law
4 enforcement agency making the seizure;

5 (4) the specific statutory and factual grounds
6 for the seizure;

7 (5) ~~[if]~~ whether the property was seized
8 pursuant to an order of seizure, ~~[the sworn application of the~~
9 ~~law enforcement officer for the order]~~ and if the property was
10 seized without an order of seizure, an affidavit from a law
11 enforcement officer stating the legal and factual grounds why
12 an order of seizure was not required; and

13 (6) in the complaint caption and in the
14 complaint, the names of persons known to the state who may
15 claim an interest in the property ~~[set forth in both the~~
16 ~~caption and in the complaint]~~ and the basis for each person's
17 alleged interest.

18 B. The complaint shall be served upon the person
19 from whom the property was seized, ~~[and, if that person is a~~
20 ~~criminal defendant, upon]~~ the person's attorney of record and
21 ~~[upon]~~ all persons known or reasonably believed by the state to
22 claim an interest in the property. A copy of the complaint
23 shall also be published ~~[no less than]~~ at least three times in
24 a newspaper of general circulation in the district of the court
25 having jurisdiction or on the sunshine portal until the

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1 forfeiture proceeding is resolved."

2 SECTION 7. Section 31-27-6 NMSA 1978 (being Laws 2002,
3 Chapter 4, Section 6) is amended to read:

4 "31-27-6. [~~COURT HEARING AND~~] FORFEITURE PROCEEDINGS--
5 DETERMINATION--SUBSTITUTION OF PROPERTY--CONSTITUTIONALITY--
6 APPEAL.--

7 A. A person who claims [~~to the~~] an interest in
8 seized property shall [~~be filed by way of~~] file an answer to
9 the complaint of forfeiture [~~and shall be filed~~] within thirty
10 days of the date of service of the complaint. The answer shall
11 include facts to support the claimant's alleged interest in the
12 property.

13 B. The district courts have jurisdiction over
14 forfeiture proceedings, and venue for a forfeiture proceeding
15 is in the same court in which venue lies for the criminal
16 matter [~~for which~~] related to the seized property [~~is alleged~~
17 ~~to be subject to forfeiture~~].

18 C. The forfeiture proceeding shall [~~be brought in~~
19 ~~the same proceeding as the criminal matter and presented to the~~
20 ~~same trier of fact; provided:~~

- 21 (1) ~~the two issues shall be bifurcated;~~
- 22 (2) ~~the rules of criminal procedure shall~~
23 ~~apply in the criminal matter and the rules of civil procedure~~
24 ~~shall apply in the forfeiture proceeding; and~~

25 (3) begin after the conclusion of the trial

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1 for the related criminal matter in an ancillary proceeding that
2 relates to a defendant's property before the same judge and
3 jury, if applicable, and the court, and the jury, if
4 applicable, may consider the forfeiture of property seized from
5 other persons at the same time or in a later proceeding. If
6 the criminal defendant in the related criminal matter is
7 represented by the public defender department, the chief public
8 defender or the district public defender may authorize
9 department representation of the defendant in the forfeiture
10 proceeding.

11 D. Discovery conducted in an ancillary forfeiture
12 proceeding is subject to the rules of criminal procedure.

13 E. An ancillary forfeiture proceeding that relates
14 to the forfeiture of property valued at less than twenty
15 thousand dollars (\$20,000) shall be held before a judge only.

16 [~~D-~~] F. If the state fails to prove, by clear and
17 convincing evidence, that [~~the~~] a person [~~charged with the~~
18 ~~crime for which the~~] whose property is alleged to be [~~property~~]
19 subject to forfeiture is [~~the~~] an owner of the property:

20 (1) the forfeiture proceeding shall be
21 dismissed and the property shall be delivered to the owner,
22 unless the owner's possession of the property is illegal; and

23 (2) the owner shall not be subject to any
24 charges by the state for storage of the property or expenses
25 incurred in the preservation of the property.

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1 ~~[E-]~~ G. The court shall enter a judgment of
2 forfeiture and the seized property shall be forfeited to the
3 state if the state proves by clear and convincing evidence
4 that:

5 (1) the property is subject to forfeiture;
6 (2) the criminal prosecution of the owner
7 ~~[has]~~ of the seized property resulted in a conviction; and

8 (3) the value of the property to be forfeited
9 does not unreasonably exceed:

10 (a) the pecuniary gain derived or sought
11 to be derived by the crime;

12 (b) the pecuniary loss caused or sought
13 to be caused by the crime; or

14 (c) the value of the convicted owner's
15 interest in the property.

16 H. A court shall not accept a plea agreement or
17 other arrangement by which a defendant contributes or donates
18 property to a person, charity or other organization in full or
19 partial fulfillment of responsibility established in the
20 court's proceeding.

21 I. Following a person's conviction, the state may
22 make a motion for forfeiture of substitute property owned by
23 the person that is equal to but does not exceed the value of
24 property that is subject to forfeiture but that the state is
25 unable to seize. The court shall order the forfeiture of

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1 substitute property only if the state proves by a preponderance
2 of the evidence that the person intentionally transferred, sold
3 or deposited property with a third party to avoid the court's
4 jurisdiction and the forfeiture of the property.

5 J. A person is not jointly and severally liable for
6 orders for forfeiture of another person's property. When
7 ownership of property is unclear, a court may order each person
8 to forfeit the person's property on a pro rata basis or by
9 another means the court deems equitable.

10 K. At any time following the conclusion of a
11 forfeiture proceeding, the person whose property was forfeited
12 may petition the court to determine whether the forfeiture was
13 unconstitutionally excessive pursuant to the state or federal
14 constitution.

15 L. At a non-jury hearing on the petition, the
16 petitioner has the burden of establishing by a preponderance of
17 the evidence that the forfeiture was grossly disproportional to
18 the seriousness of the criminal offense for which the person
19 was convicted.

20 M. In determining whether the forfeiture is
21 unconstitutionally excessive, the court may consider all
22 relevant factors, including:

23 (1) the seriousness of the criminal offense
24 and its impact on the community, the duration of the criminal
25 activity and the harm caused by the defendant;

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1 (2) the extent to which the defendant
2 participated in the offense;

3 (3) the extent to which the property was used
4 in committing the offense;

5 (4) the sentence imposed for the commission of
6 the crime that relates to the property that is subject to
7 forfeiture; and

8 (5) whether the criminal offense was completed
9 or attempted.

10 N. In determining the value of the property subject
11 to forfeiture, the court may consider relevant factors,
12 including the:

13 (1) fair market value of the property;

14 (2) value of the property to the defendant,
15 including hardship that the defendant will suffer if the
16 forfeiture is realized; and

17 (3) hardship from the loss of a primary
18 residence, motor vehicle or other property to the defendant's
19 family members or others if the property is forfeited.

20 O. The court shall not consider the value of the
21 property to the state when it determines whether the forfeiture
22 of property is constitutionally excessive.

23 P. A party to a forfeiture proceeding may appeal a
24 district court's decision regarding the seizure, forfeiture and
25 distribution of property pursuant to the Forfeiture Act."

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

3 "31-27-7. TITLE TO SEIZED PROPERTY--DISPOSITION OF
4 FORFEITED PROPERTY AND PROCEEDS.--

5 A. The state acquires provisional title to seized
6 property at the time the property was used or acquired in
7 connection with an offense that subjects the property to
8 forfeiture. Provisional title authorizes the state to hold and
9 protect the property. Title to the property shall vest with
10 the state when a trier of fact renders a final forfeiture
11 verdict and the title relates back to the time when the state
12 acquired provisional title; provided that the title is subject
13 to claims by third parties that are adjudicated pursuant to the
14 Forfeiture Act.

15 ~~[A.]~~ B. Unless possession of the property is
16 illegal or a different disposition is specifically provided for
17 by law and except as provided in ~~[Subsection C of]~~ this
18 section, forfeited property ~~[if it]~~ that is not currency shall
19 be ~~[sold at public sale by the law enforcement agency in~~
20 ~~possession of the property]~~ delivered along with any abandoned
21 property to the state treasurer for disposition at a public
22 auction. Forfeited currency and all sale proceeds of the sale
23 of forfeited or abandoned property shall be ~~[distributed~~

24 ~~(1) first, to pay reasonable expenses incurred~~
25 ~~for storage, protection and sale of the property;~~

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1 ~~(2) second, any remaining balance to pay~~
2 ~~restitution to or on behalf of victims, if any, of the crime~~
3 ~~related to the forfeiture; and~~

4 ~~(3) third, any remaining balance to~~ deposited
5 in the general fund ~~[of the governing body of the seizing law~~
6 ~~enforcement agency to be used for drug abuse treatment~~
7 ~~services, for drug prevention and education programs, for other~~
8 ~~substance abuse demand-reduction initiatives or for enforcing~~
9 ~~narcotics law violations, except:~~

10 ~~(a) for forfeitures of property arising~~
11 ~~from Chapter 17 NMSA 1978, the balance shall be deposited in~~
12 ~~the game protection fund in an amount equal to the expenditures~~
13 ~~to prosecute the forfeiture and the crime, with the net balance~~
14 ~~to be deposited in the general fund; and~~

15 ~~(b) for forfeiture of property arising~~
16 ~~from Chapter 18, Article 6 NMSA 1978, the balance shall be used~~
17 ~~for the restoration, stabilization, protection and preservation~~
18 ~~of the affected cultural property, with the net balance to be~~
19 ~~deposited in the general fund].~~

20 C. Proceeds from the sale of forfeited property
21 received by the state from another jurisdiction shall be
22 deposited in the general fund.

23 [B.—Any] D. A property interest forfeited to the
24 state ~~[and disposed of]~~ pursuant to the Forfeiture Act is
25 subject to the interest of a secured party unless, ~~[at]~~ in the

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1 forfeiture proceeding, the state proves by clear and convincing
2 evidence that the secured party [~~knew or should have known~~] had
3 actual knowledge of the crime that relates to the seizure of
4 the property.

5 ~~[G. If, at the forfeiture proceeding, the state~~
6 ~~proves, by clear and convincing evidence, that the person~~
7 ~~convicted of the crime for which the property is subject to~~
8 ~~forfeiture is a co-owner of the property but fails to prove~~
9 ~~that the other co-owner knew or should have known of the crime,~~
10 ~~then, at the option of the co-owner not convicted of the crime:~~

11 ~~(1) the co-owner not convicted of the crime~~
12 ~~may buy the forfeited interest from the law enforcement agency~~
13 ~~at a private sale for the fair market value. Proceeds received~~
14 ~~by the state from the sale shall be disposed of pursuant to~~
15 ~~Paragraphs (1) through (3) of Subsection A of this section;~~

16 ~~(2) the law enforcement agency shall sell the~~
17 ~~entire ownership interest at a public sale pursuant to~~
18 ~~Subsection A of this section, except that the proceeds shall~~
19 ~~first be used to purchase the ownership interest, at fair~~
20 ~~market value, of the co-owner not convicted of the crime; or~~

21 ~~(3) the law enforcement agency shall sell only~~
22 ~~the forfeited interest at a public sale pursuant to Subsection~~
23 ~~A of this section and the purchaser becomes a co-owner with the~~
24 ~~co-owner not convicted of the crime.~~

25 ~~D. The law enforcement agency shall notify all~~

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1 ~~known co-owners of forfeited property that were not convicted~~
2 ~~of the crime not less than thirty days before a proposed public~~
3 ~~sale of the property. If, within the thirty days, the co-~~
4 ~~owners notify the law enforcement agency of an option made~~
5 ~~pursuant to Subsection C of this section, the law enforcement~~
6 ~~agency shall make the sale pursuant to the option selected. If~~
7 ~~no option is selected by the co-owners or if all of the co-~~
8 ~~owners not convicted of the crime cannot agree on one option,~~
9 ~~then the sale shall be made pursuant to Paragraph (3) of~~
10 ~~Subsection C of this section.]"~~

11 SECTION 9. A new Section 31-27-7.1 NMSA 1978 is enacted
12 to read:

13 "31-27-7.1. [NEW MATERIAL] INNOCENT OWNERS.--

14 A. The property of an innocent owner, as provided
15 in this section, shall not be forfeited.

16 B. A person who claims to be an innocent owner has
17 the burden of production to show that the person:

18 (1) holds a legal right, title or interest in
19 the property seized; and

20 (2) held an ownership interest in the seized
21 property at the time the illegal conduct that gave rise to the
22 seizure of the property occurred or was a bona fide purchaser
23 for fair value.

24 C. The state shall immediately return property to
25 an established innocent owner who has an interest in

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1 homesteaded property, a motor vehicle valued at less than ten
2 thousand dollars (\$10,000) or a conveyance that is encumbered
3 by a security interest that was perfected pursuant to state law
4 or that is subject to a lease or rental agreement, unless the
5 secured party or lessor had actual knowledge of the criminal
6 act upon which the forfeiture was based.

7 D. If a person establishes that the person is an
8 innocent owner pursuant to Subsection B of Section 31-27-7 NMSA
9 1978 and the state pursues a forfeiture proceeding with respect
10 to that person's property, other than property described in
11 Subsection D of Section 31-27-7 NMSA 1978, to successfully
12 forfeit the property, the state shall prove by clear and
13 convincing evidence that the innocent owner had actual
14 knowledge of the underlying crime giving rise to the
15 forfeiture.

16 E. A person who acquired an ownership interest in
17 property subject to forfeiture after the commission of a crime
18 that gave rise to the forfeiture and who claims to be an
19 innocent owner has the burden of production to show that the
20 person has legal right, title or interest in the property
21 seized under this section.

22 F. If a person establishes that the person is an
23 innocent owner as provided in Subsection B of this section and
24 the state pursues a forfeiture proceeding against the person's
25 property, to successfully forfeit the property, the state shall

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1 prove by clear and convincing evidence that at the time the
2 person acquired the property, the person:

3 (1) had actual knowledge that the property was
4 subject to forfeiture; or

5 (2) was not a bona fide purchaser who was
6 without notice of any defect in title and who gave valuable
7 consideration.

8 G. If the state fails to meet its burdens as
9 provided in Subsections C and E of this section, the court
10 shall find that the person is an innocent owner and shall order
11 the state to relinquish all claims of title to the innocent
12 owner's property."

13 SECTION 10. Section 31-27-8 NMSA 1978 (being Laws 2002,
14 Chapter 4, Section 8) is amended to read:

15 "31-27-8. SAFEKEEPING OF SEIZED PROPERTY PENDING
16 DISPOSITION--SELLING OR RETAINING SEIZED PROPERTY PROHIBITED.--

17 A. Seized currency alleged to be subject to
18 forfeiture shall be deposited with the clerk of the district
19 court in an interest-bearing account.

20 B. Seized property other than currency or real
21 property, not required by federal or state law to be destroyed,
22 shall be:

23 (1) placed under seal; and

24 (2) removed to a place designated by the
25 district court; or

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1 (3) held in the custody of a law enforcement
2 agency.

3 C. Seized property shall be kept by the custodian
4 in a manner to protect it from theft or damage and, if ordered
5 by the district court, insured against those risks.

6 D. A law enforcement agency shall not retain
7 forfeited or abandoned property."

8 SECTION 11. A new section of the Forfeiture Act is
9 enacted to read:

10 "[NEW MATERIAL] REPORTING.--

11 A. Every law enforcement agency shall prepare an
12 annual report of the agency's seizures and forfeitures
13 conducted pursuant to the Forfeiture Act, and seizures and
14 forfeitures conducted pursuant to federal forfeiture law, and
15 the report shall include:

16 (1) the total number of seizures of currency
17 and the total amount of currency seized in each seizure;

18 (2) the total number of seizures of property
19 and the number and types of items seized in each seizure;

20 (3) the market value of each item of property
21 seized; and

22 (4) the total number of occurrences of each
23 class of crime that resulted in the agency's seizure of
24 property.

25 B. A law enforcement agency shall submit its annual

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1 reports to the department of public safety and to the district
2 attorney's office in the agency's district. An agency that did
3 not engage in seizure or forfeiture pursuant to the Forfeiture
4 Act or federal forfeiture law, or both, shall report that fact
5 in its annual report.

6 C. The department of public safety shall compile
7 the reports submitted by each law enforcement agency and issue
8 an aggregate report of all forfeitures in the state.

9 D. By April 1 of each year, the department of
10 public safety shall publish on its web site the department's
11 aggregate report and individual law enforcement agency reports
12 submitted for the previous year."

13 SECTION 12. A new section of the Forfeiture Act is
14 enacted to read:

15 "[NEW MATERIAL] RETURN OF PROPERTY--DAMAGES--COSTS.--

16 A. A law enforcement agency that holds seized
17 property shall return the seized property to the owner of the
18 property within a reasonable period of time that does not
19 exceed five days after:

20 (1) a court finds that a person had a bona
21 fide security interest in the property;

22 (2) a court finds that the owner was an
23 innocent owner;

24 (3) the acquittal of or dismissal of related
25 criminal charges against the owner of the property; or

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1 (4) the disposal of the criminal charge that
2 was the basis of the forfeiture proceedings by nolle presequi.

3 B. A law enforcement agency that holds seized
4 property is responsible for any damages, storage fees and
5 related costs applicable to property that is returned to an
6 owner pursuant to this section."

7 SECTION 13. A new section of the Forfeiture Act is
8 enacted to read:

9 "[NEW MATERIAL] TRANSFER OF FORFEITABLE PROPERTY TO THE
10 FEDERAL GOVERNMENT.--

11 A. A law enforcement agency shall not directly or
12 indirectly transfer seized property to a federal law
13 enforcement authority or other federal agency unless:

14 (1) the value of the seized property exceeds
15 fifty thousand dollars (\$50,000), excluding the potential value
16 of the sale of contraband; and

17 (2) the law enforcement agency determines that
18 the criminal conduct that gave rise to the seizure is
19 interstate in nature and sufficiently complex to justify the
20 transfer of the property; or

21 (3) the seized property may only be forfeited
22 under federal law.

23 B. The law enforcement agency shall not transfer
24 property to the federal government if the transfer would
25 circumvent the protections of the Forfeiture Act that would

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1 otherwise be available to a putative interest holder in the
2 property."

3 SECTION 14. Section 18-6-11 NMSA 1978 (being Laws 1977,
4 Chapter 75, Section 1, as amended) is amended to read:

5 "18-6-11. PERMIT REQUIRED FOR EXCAVATION OF
6 ARCHAEOLOGICAL SITES--PENALTY.--

7 A. It is unlawful for [~~any~~] a person or [~~his~~] the
8 person's agent or employee to excavate with the use of
9 mechanical earthmoving equipment an archaeological site for the
10 purpose of collecting or removing objects of antiquity [~~when~~]
11 if the archaeological site is located on private land in this
12 state, unless the person has first obtained a permit issued
13 pursuant to the provisions of this section for the excavation.
14 As used in this section, [~~an~~] "archaeological site" means a
15 location where there exists material evidence of the past life
16 and culture of human beings in this state but excludes the
17 sites of burial of human beings.

18 B. Permits for excavation pursuant to Subsection A
19 of this section may be issued by the committee upon approval by
20 the state archaeologist and the state historic preservation
21 officer [~~when~~] if the applicant:

22 (1) submits written authorization for the
23 excavation from the owner of the land;

24 (2) furnishes satisfactory evidence of being
25 qualified to perform the archaeological excavation by

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1 experience, training and knowledge;

2 (3) submits a satisfactory plan of excavation
3 for the archaeological site and states in the plan the method
4 by which excavation will be undertaken; and

5 (4) agrees in writing, upon the completion of
6 the excavation, to submit a summary report to the committee of
7 the excavation, which report shall contain relevant maps,
8 documents, drawings and photographs, together with a
9 description of the archaeological specimens removed as a result
10 of the excavation. Failure to file the summary report shall be
11 grounds for refusing issuance of a future permit to the person.

12 C. All archaeological specimens collected or
13 removed from the archaeological site as a result of excavation
14 pursuant to Subsections A and B of this section shall be the
15 property of the person owning the land on which the site is
16 located.

17 D. Nothing in this section shall be deemed to limit
18 or prohibit the use of the land on which the archaeological
19 site is located by the owner of the land or to require the
20 owner to obtain a permit for personal excavation on ~~[his]~~ the
21 owner's own land; provided that no transfer of ownership is
22 made with the intent of excavating archaeological sites as
23 prohibited in this section; and provided further that this
24 exemption does not apply to marked or unmarked burial grounds.

25 E. ~~[Any]~~ A person convicted of violating the

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1 provisions of this section is guilty of a misdemeanor and shall
2 be punished by a fine not to exceed one thousand dollars
3 (\$1,000) and, in [~~addition thereto~~] accordance with the
4 provisions of the Forfeiture Act, shall forfeit to the state
5 all equipment used in committing the violation for which the
6 person is convicted."

7 SECTION 15. Section 18-6-11.2 NMSA 1978 (being Laws 1989,
8 Chapter 267, Section 1) is amended to read:

9 "18-6-11.2. PERMIT REQUIRED FOR EXCAVATION OF UNMARKED
10 BURIALS--PENALTY.--

11 A. Each human burial in the state interred in any
12 unmarked burial ground is accorded the protection of law and
13 shall receive appropriate and respectful treatment and
14 disposition.

15 B. A person who knowingly, willfully and
16 intentionally excavates, removes, disturbs or destroys any
17 human burial buried, entombed or sepulchered in any unmarked
18 burial ground in the state, or any person who knowingly,
19 willfully and intentionally procures or employs any other
20 person to excavate, remove, disturb or destroy any human burial
21 buried, entombed or sepulchered in any unmarked burial ground
22 in the state, except by authority of a permit issued by the
23 state medical investigator or by the committee with the
24 concurrence of the state archaeologist and state historic
25 preservation officer, is guilty of a fourth degree felony and

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1 shall be punished by a fine not to exceed five thousand dollars
2 (\$5,000) or by imprisonment for a definite term of eighteen
3 months or both. The offender shall upon conviction forfeit to
4 the state all objects, artifacts and human burials excavated or
5 removed from an unmarked burial ground in violation of this
6 section, and any proceeds from the sale by the offender of any
7 of the foregoing shall also be forfeited. The provisions of
8 the Forfeiture Act shall apply to a forfeiture provided for in
9 this section. As used in this section:

10 (1) "unmarked burial ground" means a location
11 where there exists a burial [~~or burials~~] of any human being
12 [~~which~~] that is not visibly marked on the surface of the ground
13 in any manner traditionally or customarily used for marking
14 burials and includes any funerary object, material object or
15 artifact associated with the burial [~~or burials~~]; and

16 (2) "human burial" means a human body or human
17 skeletal remains and includes any funerary object, material
18 object or artifact buried, entombed or sepulchered with that
19 human body or skeletal remains.

20 C. Any person who discovers a human burial in any
21 unmarked burial ground shall cease any activity that may
22 disturb that burial or any object or artifact associated with
23 that burial and shall notify the local law enforcement agency
24 having jurisdiction in the area. The local law enforcement
25 agency shall notify the state medical investigator and the

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1 state historic preservation officer.

2 D. The state medical investigator may, consistent
3 with the statutes governing medical investigations, have
4 authority over or take possession of any human burial
5 discovered in the state, in which case the provisions of
6 Subsections E and F of this section shall not apply.

7 E. Permits for excavation of a human burial
8 discovered in an unmarked burial ground shall be issued by the
9 committee within sixty days of receipt of application when the
10 applicant:

11 (1) submits written authorization for that
12 excavation from the owner of the land on which the human burial
13 is located or the applicant is the owner of the land;

14 (2) demonstrates appropriate efforts to
15 determine the age of the human burial and to identify and
16 consult with any living person who may be related to the human
17 burial interred in the unmarked burial ground;

18 (3) complies with permit procedures and
19 requirements established by regulations authorized in this
20 section to ensure the complete removal of the human burial and
21 the collection of all pertinent scientific information in
22 accordance with proper archaeological methods; and

23 (4) provides for the lawful disposition or
24 reinterment of the human burial either in the original or
25 another appropriate location and of any objects or artifacts

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1 associated with that human burial, consistent with regulations
2 issued by the state historic preservation officer, except that
3 the committee shall not require, as a condition of issuance of
4 a permit, reinterment or disposition, any action that unduly
5 interferes with the owner's use of the land.

6 F. Permits for the excavation of any human burial
7 discovered in the course of construction or other land
8 modification may be issued by the committee with the
9 concurrence of the state archaeologist and the state historic
10 preservation officer on an annual basis to professional
11 archaeological consultants or organizations.

12 G. Except when the committee requires as a
13 condition of the permit that any object or artifact associated
14 with a human burial be reinterred or disposed of with that
15 burial, that object or artifact shall be the property of the
16 person owning the land on which that burial is located.

17 H. Any object or artifact and any human burial
18 excavated or removed from an unmarked burial ground in
19 violation of this section shall be forfeited to the state and
20 shall be lawfully disposed of or reinterred in accordance with
21 regulations issued by the state historic preservation officer;
22 provided that no object or artifact so forfeited shall ever be
23 sold by the state; and provided further that any object or
24 artifact removed from the land without the owner's consent and
25 in violation of this section shall be returned to the lawful

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1 owner consistent with Subsection G of this section.

2 I. The state historic preservation officer shall
3 issue regulations with the concurrence of the state medical
4 investigator for the implementation of this section."

5 SECTION 16. Section 30-16B-8 NMSA 1978 (being Laws 1991,
6 Chapter 112, Section 8) is amended to read:

7 "30-16B-8. FORFEITURES--PROPERTY SUBJECT.--Pursuant to
8 the provisions of the Forfeiture Act, the following are subject
9 to forfeiture:

10 A. all equipment, devices or articles that have
11 been produced, reproduced, manufactured, distributed, dispensed
12 or acquired in violation of the Unauthorized Recording Act;

13 B. all devices, materials, products and equipment
14 of any kind that are used or intended for use in producing,
15 reproducing, manufacturing, processing, delivering, importing
16 or exporting any item set forth in and in violation of the
17 Unauthorized Recording Act;

18 C. all books, business records, materials and other
19 data that are used or intended for use in violation of Section
20 [~~3, 4 or 5 of the Unauthorized Recording Act~~] 30-16B-3, 30-16B-4
21 or 30-16B-5 NMSA 1978; and

22 D. money or negotiable instruments that are the
23 fruit or instrumentality of the crime."

24 SECTION 17. Section 30-31-34 NMSA 1978 (being Laws 1972,
25 Chapter 84, Section 33, as amended) is amended to read:

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1 "30-31-34. FORFEITURES--PROPERTY SUBJECT.--The following
2 are subject to forfeiture

3 ~~[A. all controlled substances and all controlled~~
4 ~~substance analogs which have been manufactured, distributed,~~
5 ~~dispensed or acquired in violation of the Controlled Substances~~
6 ~~Act;~~

7 ~~B.]~~ pursuant to the provisions of the Forfeiture
8 Act:

9 A. all raw materials, products and equipment of any
10 kind, including firearms ~~[which]~~ that are used or intended for
11 use in manufacturing, compounding, processing, delivering,
12 importing or exporting any controlled substance or controlled
13 substance analog in violation of the Controlled Substances Act;

14 ~~[G.]~~ B. all property ~~[which]~~ that is used or
15 intended for use as a container for property described in
16 Subsection A ~~[or B]~~ of this section;

17 ~~[D.]~~ C. all conveyances, including aircraft,
18 vehicles or vessels ~~[which]~~ that are used or intended for use
19 to transport or in any manner to facilitate the transportation
20 for the purpose of sale of property described in Subsection A
21 ~~[or B]~~ of this section;

22 ~~[E.]~~ D. all books, records and research products
23 and materials, including formulas, microfilm, tapes and data
24 ~~[which]~~ that are used or intended for use in violation of the
25 Controlled Substances Act;

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1 ~~[F.]~~ E. narcotics paraphernalia or money ~~[which]~~
2 that is a fruit or instrumentality of the crime;

3 ~~[G.]~~ F. notwithstanding Subsection ~~[D]~~ C of this
4 section and the provisions of the Forfeiture Act:

5 (1) ~~[no]~~ a conveyance used by ~~[any]~~ a person
6 as a common carrier in the transaction of business as a common
7 carrier ~~[is]~~ shall not be subject to forfeiture ~~[under]~~
8 pursuant to this section unless it appears that the owner or
9 other person in charge of the conveyance is a consenting party
10 or privy to a violation of the Controlled Substances Act;

11 (2) ~~[no]~~ a conveyance ~~[is]~~ shall not be
12 subject to forfeiture ~~[under]~~ pursuant to this section by
13 reason of ~~[any]~~ an act or omission established for the owner to
14 have been committed or omitted without ~~[his]~~ the owner's
15 knowledge or consent;

16 (3) a conveyance is not subject to forfeiture
17 for a violation of law the penalty for which is a misdemeanor;
18 and

19 (4) a forfeiture of a conveyance encumbered by
20 a bona fide security interest shall be subject to the interest
21 of a secured party if the secured party neither had knowledge
22 of nor consented to the act or omission; and

23 ~~[H.]~~ G. all drug paraphernalia as defined by
24 Subsection ~~[W]~~ V of Section 30-31-2 NMSA 1978."

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

2 "30-31-35. FORFEITURE--PROCEDURE.--The provisions of the
3 Forfeiture Act apply to the seizure, forfeiture and disposal of
4 property subject to forfeiture and disposal [~~under~~] pursuant to
5 the Controlled Substances Act."

6 SECTION 19. Section 30-31A-9 NMSA 1978 (being Laws 1983,
7 Chapter 148, Section 9) is amended to read:

8 "30-31A-9. FORFEITURES--PROPERTY SUBJECT.--The following
9 are subject to forfeiture:

10 [~~A. all imitation controlled substances which have~~
11 ~~been manufactured, distributed, dispensed or acquired in~~
12 ~~violation of the Imitation Controlled Substances Act;~~

13 ~~B.]~~ A. all raw materials, products and equipment of
14 any kind [~~which~~] that are used in the manufacturing,
15 compounding or processing of any imitation controlled substance
16 in violation of the Imitation Controlled Substances Act;

17 [~~G.]~~ B. all property [~~which~~] that is used or
18 intended for use as a container for property described in
19 Subsection A [~~or B~~] of this section; and

20 [~~D.]~~ C. all books, records and research products
21 and materials, including formulas, microfilm, tapes and data,
22 [~~which~~] that are used or intended for use in violation of the
23 Imitation Controlled Substances Act."

24 SECTION 20. Section 30-42-4 NMSA 1978 (being Laws 1980,
25 Chapter 40, Section 4, as amended) is amended to read:

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1 "30-42-4. PROHIBITED ACTIVITIES--PENALTIES.--

2 A. It is unlawful for [~~any~~] a person who has
3 received [~~any~~] proceeds derived, directly or indirectly, from a
4 pattern of racketeering activity in which the person has
5 participated, to use or invest, directly or indirectly, any
6 part of the proceeds or the proceeds derived from the
7 investment or use [~~thereof~~] in the acquisition of [~~any~~] an
8 interest in, or the establishment or operation of, [~~any~~] an
9 enterprise. Whoever violates this subsection is guilty of a
10 second degree felony.

11 B. It is unlawful for [~~any~~] a person to engage in a
12 pattern of racketeering activity in order to acquire or
13 maintain, directly or indirectly, [~~any~~] an interest in or
14 control of [~~any~~] an enterprise. Whoever violates this
15 subsection is guilty of a second degree felony.

16 C. It is unlawful for [~~any~~] a person employed by or
17 associated with [~~any~~] an enterprise to conduct or participate,
18 directly or indirectly, in the conduct of the enterprise's
19 affairs by engaging in a pattern of racketeering activity.
20 Whoever violates this subsection is guilty of a second degree
21 felony.

22 D. It is unlawful for [~~any~~] a person to conspire to
23 violate [~~any~~] the provisions of Subsections A through C of
24 this section. Whoever violates this subsection is guilty of a
25 third degree felony.

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1 E. Whoever [~~violates~~] is convicted of a violation
2 of Subsection A, B, C or D of this section in addition to the
3 prescribed penalties shall forfeit to the state of New Mexico:

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

6 (2) any interest in, security of, claim
7 against or property or contractual right of any kind affording
8 a source of influence over [~~any~~] an enterprise that [~~he~~] the
9 person has established, operated, controlled, conducted or
10 participated in the conduct of in violation of the Racketeering
11 Act.

12 F. The provisions of the Forfeiture Act apply to
13 the seizure, forfeiture and disposal of property described in
14 Subsection E of this section."

15 **SECTION 21. EFFECTIVE DATE.**--The effective date of the
16 provisions of this act is July 1, 2015.