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SENATE BILL 202

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Daniel A. Ivey-Soto

AN ACT

RELATING TO FORFEITURE; REVISING DEFINITIONS; REVISING PROCEDURES RELATED TO FORFEITURE PROCEEDINGS; PROVIDING FOR DISTRIBUTION OF PROCEEDS FROM THE SALE OF FORFEITED OR DISCLAIMED PROPERTY; PROVIDING FOR DESTRUCTION OF CERTAIN SEIZED PROPERTY; REVISING PROCEDURES RELATED TO STORAGE, TRANSFER AND DESTRUCTION OF SEIZED PROPERTY; REVISING REPORTING REQUIREMENTS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

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

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

A. The purposes of the Forfeiture Act are to:

(1) make uniform the standards and procedures

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1 for the seizure and forfeiture of property subject to
2 forfeiture;

3 (2) protect the constitutional rights of
4 persons whose property is subject to forfeiture and of innocent
5 owners holding interests in property subject to forfeiture;

6 (3) deter criminal activity by reducing its
7 economic incentives;

8 (4) increase the pecuniary loss from criminal
9 activity;

10 (5) protect against the wrongful forfeiture of
11 property; and

12 (6) ensure that only criminal forfeiture is
13 allowed in this state.

14 B. The Forfeiture Act:

15 (1) applies to all seizures, forfeitures and
16 dispositions of property subject to forfeiture [~~pursuant to~~
17 ~~laws that specifically apply the Forfeiture Act~~] in this state;
18 and

19 (2) does not apply to contraband, which is
20 subject to seizure pursuant to applicable state laws, but is
21 not subject to forfeiture pursuant to the Forfeiture Act."

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

24 "31-27-3. DEFINITIONS.--As used in the Forfeiture Act:

25 [A. ~~"abandoned property"~~;

1 ~~(1) means personal property the rights to~~
2 ~~which and the control of which an owner has intentionally~~
3 ~~relinquished; and~~

4 ~~(2) does not mean real property;~~

5 ~~B. "actual knowledge" means a direct and clear~~
6 ~~awareness of information, a fact or a condition;~~

7 ~~G.]~~ A. "contraband" means goods that may not be
8 lawfully imported, exported or possessed, including drugs that
9 are listed in Schedule I, II, III, IV or V of the Controlled
10 Substances Act and that are possessed without a valid
11 prescription;

12 ~~[D.]~~ B. "conveyance" means a device used for
13 transportation and:

14 (1) includes a motor vehicle, trailer,
15 snowmobile, airplane, vessel and any equipment attached to the
16 conveyance; but

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

19 ~~[E.]~~ C. "conviction" or "convicted" means that a
20 person has been found guilty of a crime in a trial court
21 whether by a plea of guilty or nolo contendere or otherwise and
22 whether the sentence is deferred or suspended;

23 ~~[F.]~~ D. "crime" means a violation of a criminal
24 statute for which property of the offender is subject to
25 seizure and forfeiture;

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1 E. "disclaimed property":

2 (1) means property:

3 (a) that a law enforcement officer has
4 reasonable cause to believe is subject to forfeiture;

5 (b) the ownership of which has been
6 disclaimed by the person in possession of the property at the
7 time the property is seized; and

8 (c) that is not otherwise subject to
9 forfeiture; and

10 (2) is otherwise subject to the provisions of
11 Section 29-1-14 NMSA 1978, except that it shall be disposed of
12 pursuant to Subsection B of Section 31-27-7 NMSA 1978;

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

21 G. "knowledge" means actual or constructive
22 awareness that can be proved either through direct or
23 circumstantial evidence of information, a fact or a condition;

24 H. "law enforcement agency" means the employer of a
25 law enforcement officer ~~[that]~~ who is authorized to seize or

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1 has seized property [~~pursuant to the Forfeiture Act~~] and
2 includes an entity authorized by law to file a forfeiture
3 action;

4 I. "law enforcement officer" [~~means~~]:

5 (1) means a state or municipal police officer,
6 county sheriff, deputy sheriff, conservation officer, motor
7 transportation enforcement officer or other state employee
8 authorized by state law to enforce criminal statutes; but

9 (2) does not mean a correctional officer;

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

12 K. "property" means tangible or intangible personal
13 property or real property;

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

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

24 **SECTION 3.** Section 31-27-4 NMSA 1978 (being Laws 2002,
25 Chapter 4, Section 4, as amended) is amended to read:

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1 "31-27-4. FORFEITURE--CONVICTION REQUIRED--SEIZURE OF
2 PROPERTY--WITH PROCESS--WITHOUT PROCESS.--

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

4 (1) the person was arrested for an offense to
5 which forfeiture applies;

6 (2) the person is convicted by a criminal
7 court of the offense; and

8 (3) the ~~[state]~~ law enforcement agency
9 establishes by clear and convincing evidence that the property
10 is subject to forfeiture as provided in Subsection B of this
11 section.

12 B. Following a person's conviction for an offense
13 to which forfeiture applies, a court may order the person to
14 forfeit:

15 (1) property the person acquired through
16 commission of the offense;

17 (2) property directly traceable to property
18 acquired through the commission of the offense; and

19 (3) any instrumentality the person used in the
20 commission of the offense.

21 C. Nothing in this section shall prevent property
22 from being forfeited by the terms of a plea agreement that is
23 approved by a court or by other agreement of the parties to a
24 criminal proceeding.

25 D. Subject to the provisions of Section 31-27-5

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1 NMSA 1978, at any time, at the request of the ~~[state]~~ law
2 enforcement agency, a court may issue an ex parte preliminary
3 order to seize property that is subject to forfeiture and for
4 which forfeiture is sought and to provide for the custody of
5 the property. The execution on the order to seize the property
6 and the return of the property, if applicable, are subject to
7 the Forfeiture Act and other applicable state laws or local
8 ordinances. Before issuing an order pursuant to this
9 subsection, the court shall make a determination that:

- 10 (1) there is a substantial probability that:
 - 11 (a) the property is subject to
 - 12 forfeiture;
 - 13 (b) the ~~[state]~~ law enforcement agency
 - 14 will prevail on the issue of forfeiture; and
 - 15 (c) failure to enter the order will
 - 16 result in the property being destroyed, removed from the state
 - 17 or otherwise made unavailable for forfeiture; and
- 18 (2) the need to preserve the availability of
- 19 the property through the entry of the requested order outweighs
- 20 the hardship to the owner and other parties known to be
- 21 claiming interests in the property.

22 E. Property subject to forfeiture may be seized at
23 any time, without a prior court order, if:

- 24 (1) the seizure is incident to a lawful arrest
- 25 for a crime or a search lawfully conducted pursuant to a search

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1 warrant and the law enforcement officer making the arrest or
2 executing the search has probable cause to believe the property
3 is subject to forfeiture and that the subject of the arrest or
4 search warrant is an owner of the property;

5 (2) the property subject to seizure is the
6 subject of a previous judgment in favor of the [~~state~~] law
7 enforcement agency; or

8 (3) the law enforcement officer making the
9 seizure has probable cause to believe the property is subject
10 to forfeiture and that the delay occasioned by the need to
11 obtain a court order would result in the removal or destruction
12 of the property or otherwise frustrate the seizure."

13 SECTION 4. Section 31-27-4.1 NMSA 1978 (being Laws 2015,
14 Chapter 152, Section 5) is amended to read:

15 "31-27-4.1. RECEIPT FOR SEIZED PROPERTY--REPLEVIN
16 HEARING.--

17 A. When a law enforcement officer seizes property
18 that is subject to forfeiture, the officer shall provide an
19 itemized receipt to the person possessing the property or, in
20 the absence of a person to whom the receipt could be given,
21 shall leave the receipt in the place where the property was
22 found, if possible.

23 B. Following the seizure of property, the defendant
24 in the related criminal matter or another person who claims an
25 interest in the seized property may, at any time before [~~sixty~~

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1 ~~days prior to a related criminal trial]~~ the one-hundred-
2 twentieth day following the filing of the forfeiture action in
3 court, claim an interest in the seized property by a motion
4 [~~to~~] requesting the court to issue a writ of replevin. A
5 motion filed pursuant to this section shall include facts to
6 support the person's alleged interest in the seized property.

7 C. A person who makes a timely motion pursuant to
8 this section shall have a right to a hearing on the motion
9 before the resolution of any related criminal matter or
10 forfeiture proceeding and within [~~thirty~~] ninety days of the
11 date on which the motion is filed.

12 D. At least ten days before a hearing on a motion
13 filed pursuant to this section, the [~~state~~] law enforcement
14 agency shall file an answer or responsive motion that shows
15 probable cause for the seizure.

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

18 (1) it is likely that the final judgment will
19 require the [~~state~~] law enforcement agency to return the
20 property that was seized without a court order to the claimant;

21 (2) the property is not reasonably required to
22 be held for investigatory reasons; or

23 (3) the property is the only reasonable means
24 for a defendant to pay for legal representation in a related
25 criminal or forfeiture proceeding and the law enforcement

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1 agency did not make a prima facie showing that the property was
2 stolen or proceeds from or an instrumentality of a crime.

3 F. In its discretion, the court may order the
4 return of funds or property sufficient for a defendant to
5 obtain legal counsel but less than the total amount seized [~~and~~
6 ~~it may~~]. If the court makes such an order, it shall require an
7 accounting. An accounting report of reasonable legal fees held
8 before the resolution of the relevant criminal and forfeiture
9 proceedings shall be held in camera. If the court finds in
10 favor of the law enforcement agency in both the criminal and
11 forfeiture proceedings, the court shall:

12 (1) hear arguments by the parties as to what
13 portion of the funds or property should be paid to the
14 defendant's counsel and what portion should be forfeited; and

15 (2) issue an order on how the funds or
16 property shall be distributed.

17 G. In lieu of ordering the issuance of [~~the~~] a writ
18 of replevin, a court may order:

19 (1) the [~~state~~] law enforcement agency to give
20 security or written assurance for satisfaction of any judgment,
21 including damages, that may be rendered in a related forfeiture
22 action; or

23 (2) any other relief the court deems to be
24 just."

25 SECTION 5. Section 31-27-5 NMSA 1978 (being Laws 2002,

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1 Chapter 4, Section 5, as amended) is amended to read:

2 "31-27-5. COMPLAINT OF FORFEITURE--SERVICE OF PROCESS.--

3 A. Within thirty days of making a seizure of
4 property or simultaneously upon filing a related criminal
5 indictment, the [~~state~~] law enforcement agency shall file a
6 complaint of ancillary forfeiture proceedings or return the
7 property to the person from whom it was seized. A complaint of
8 ancillary forfeiture proceedings shall include:

- 9 (1) a description of the property seized;
- 10 (2) the date and place of seizure of the
11 property;
- 12 (3) the name and address of the law
13 enforcement agency making the seizure;
- 14 (4) the specific statutory and factual grounds
15 for the seizure;
- 16 (5) whether the property was seized pursuant
17 to an order of seizure, and if the property was seized without
18 an order of seizure, an affidavit from a law enforcement
19 officer stating the legal and factual grounds why an order of
20 seizure was not required; and
- 21 (6) in the complaint caption and in the
22 complaint, the names of persons known to the [~~state~~] law
23 enforcement agency who may claim an interest in the property
24 and the basis for each person's alleged interest.

25 B. The complaint shall be served upon the person

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1 from whom the property was seized, the person's attorney of
2 record and all persons known or reasonably believed by the
3 [~~state~~] law enforcement agency to claim an interest in the
4 property. A copy of the complaint shall also be published [~~at~~
5 ~~least three times in a newspaper of general circulation in the~~
6 ~~district of the court having jurisdiction or~~] on the sunshine
7 portal until the forfeiture proceeding is resolved."

8 SECTION 6. Section 31-27-6 NMSA 1978 (being Laws 2002,
9 Chapter 4, Section 6, as amended) is amended to read:

10 "31-27-6. FORFEITURE PROCEEDINGS--DETERMINATION--
11 SUBSTITUTION OF PROPERTY--CONSTITUTIONALITY--APPEAL.--

12 A. A person who claims an interest in seized
13 property shall file an answer to the complaint of forfeiture
14 within thirty days of the date of service of the complaint.
15 The answer shall include facts to support the claimant's
16 alleged interest in the property.

17 B. The district courts have jurisdiction over
18 forfeiture proceedings, and venue for a forfeiture proceeding
19 is in the same court in which venue lies for the criminal
20 matter related to the seized property.

21 C. The forfeiture proceeding shall begin after the
22 conclusion of the trial for the related criminal matter in an
23 ancillary proceeding that relates to a defendant's property
24 before the same judge and jury, if applicable, and the court,
25 and the jury, if applicable, may consider the forfeiture of

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1 property seized from other persons at the same time or in a
2 later proceeding. If the criminal defendant in the related
3 criminal matter is represented by the public defender
4 department, the chief public defender or the district public
5 defender may authorize department representation of the
6 defendant in the forfeiture proceeding.

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

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

12 F. If the [~~state~~] law enforcement agency fails to
13 prove, by clear and convincing evidence, that a person whose
14 property is alleged to be subject to forfeiture is an owner of
15 the property:

16 (1) the forfeiture proceeding shall be
17 dismissed and the property shall be delivered to the owner,
18 unless the owner's possession of the property is illegal; and

19 (2) the owner shall not be subject to any
20 charges by the [~~state~~] law enforcement agency for storage of
21 the property or expenses incurred in the preservation of the
22 property.

23 G. The court shall enter a judgment of forfeiture
24 and the seized property shall be forfeited to the [~~state~~] law
25 enforcement agency if the [~~state~~] law enforcement agency proves

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1 by clear and convincing evidence that:

2 (1) the seized property is subject to
3 forfeiture;

4 (2) the criminal prosecution of the owner of
5 the seized property resulted in a conviction; and

6 (3) the value of the property to be forfeited
7 does not unreasonably exceed:

8 (a) the pecuniary gain derived or sought
9 to be derived by the crime;

10 (b) the pecuniary loss caused or sought
11 to be caused by the crime; or

12 (c) the value of the convicted owner's
13 interest in the property.

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

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

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1 proves by a preponderance of the evidence that the person
2 intentionally transferred, sold or deposited property with a
3 third party to avoid the court's jurisdiction and the
4 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]~~ Within the time period for filing
11 an appeal following the conclusion of a forfeiture proceeding,
12 the person whose property was forfeited may petition the court
13 to determine whether the forfeiture was unconstitutionally
14 excessive pursuant to the state or federal 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 [~~(1)~~] fair market value of the property
13 [~~(2)~~ value of the property to the defendant,
14 including hardship that the defendant will suffer if the
15 forfeiture is realized; and

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

20 O. The court shall not consider the value of the
21 property to the [~~state~~] law enforcement agency when it
22 determines whether the forfeiture of the property is
23 constitutionally excessive.

24 P. A party to a forfeiture proceeding may appeal a
25 district court's decision regarding the seizure, forfeiture and

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1 distribution of property [~~pursuant to the Forfeiture Act~~]."

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

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

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

18 B. Unless possession of the property is illegal or
19 a different disposition is specifically provided for by law and
20 except as provided in this section, forfeited property that is
21 not currency shall be delivered along with any [~~abandoned~~]
22 disclaimed property to the state treasurer or the state
23 treasurer's designee for disposition at a public auction.
24 Forfeited currency and all [~~sale~~] proceeds of the sale of
25 forfeited or [~~abandoned~~] disclaimed property shall be

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1 distributed by the state treasurer as follows:

2 (1) first, to reimburse the reasonable
3 expenses related to the storage, protection and transfer of the
4 property and to prepare reports required by the provisions of
5 Subsection A of Section 31-27-9 NMSA 1978;

6 (2) second, to pay any reasonable expenses
7 incurred to dispose of the property; and

8 (3) third, any remaining balance shall be
9 deposited in the general fund.

10 ~~[G. Proceeds from the sale of forfeited property~~
11 ~~received by the state from another jurisdiction shall be~~
12 ~~deposited in the general fund.~~

13 ~~D.]~~ C. A forfeited property interest [~~forfeited to~~
14 ~~the state pursuant to the Forfeiture Act]~~ is subject to the
15 interest of a secured party unless, in the forfeiture
16 proceeding, the [~~state~~] law enforcement agency proves by clear
17 and convincing evidence that the secured party had [~~actual~~]
18 knowledge of the crime that relates to the seizure of the
19 property.

20 D. Disclaimed property shall be disposed of
21 pursuant to Subsection B of this section but is otherwise
22 subject to the provisions of Section 29-1-14 NMSA 1978.

23 E. Property subject to forfeiture that is in a law
24 enforcement agency's possession becomes disclaimed property and
25 may be disposed of as such without a conviction if:

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- 1 (1) there is no innocent owner; and
- 2 (2) the criminal prosecution of the owner of
- 3 the seized property cannot proceed because the owner fugitates
- 4 for a period in excess of one year and one day."

5 **SECTION 8.** Section 31-27-7.1 NMSA 1978 (being Laws 2015,
6 Chapter 152, Section 9) is amended to read:

7 "31-27-7.1. INNOCENT OWNERS.--

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

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

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

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

18 C. The [~~state~~] law enforcement agency shall
19 immediately return property to an established innocent owner
20 who has an interest in homesteaded property, a motor vehicle
21 valued at less than ten thousand dollars (\$10,000) or a
22 conveyance that is encumbered by a security interest that was
23 perfected pursuant to state law or that is subject to a lease
24 or rental agreement, unless the secured party or lessor had
25 [~~actual~~] knowledge of the criminal act upon which the

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1 forfeiture was based.

2 D. If a person establishes that the person is an
3 innocent owner pursuant to Subsection B of this section
4 [~~31-27-7.1 NMSA 1978~~] and the [~~state~~] law enforcement agency
5 pursues a forfeiture proceeding with respect to that person's
6 property, other than property described in Subsection D of
7 Section 31-27-7 NMSA 1978, to successfully forfeit the
8 property, the [~~state~~] law enforcement agency shall prove by
9 clear and convincing evidence that the innocent owner had
10 [~~actual~~] knowledge of the underlying crime giving rise to the
11 forfeiture.

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

18 F. If a person establishes that the person is an
19 innocent owner as provided in Subsection B of this section and
20 the [~~state~~] law enforcement agency pursues a forfeiture
21 proceeding against the person's property, to successfully
22 forfeit the property, the [~~state~~] law enforcement agency shall
23 prove by clear and convincing evidence that at the time the
24 person acquired the property, the person:

25 (1) had [~~actual~~] knowledge that the property

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1 was subject to forfeiture; or

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

5 G. If the ~~[state]~~ law enforcement agency fails to
6 meet its burdens as provided in Subsections C and D of this
7 section, the court shall find that the person is an innocent
8 owner and shall order the ~~[state]~~ law enforcement agency to
9 relinquish all claims of title to the innocent owner's
10 property.

11 H. Seized property that is firearms, ammunition or
12 explosives subject to forfeiture under the protections of this
13 section and that is not returned to an innocent owner may be
14 destroyed upon a motion by the law enforcement agency and an
15 order of the court."

16 SECTION 9. Section 31-27-8 NMSA 1978 (being Laws 2002,
17 Chapter 4, Section 8, as amended) is amended to read:

18 "31-27-8. SAFEKEEPING OF SEIZED PROPERTY PENDING
19 DISPOSITION [~~SELLING OR RETAINING SEIZED PROPERTY~~
20 ~~PROHIBITED~~].--

21 A. Seized currency alleged to be subject to
22 forfeiture shall be deposited with the clerk of the district
23 court in an interest-bearing account.

24 B. Seized property other than currency or real
25 property, not required by federal or state law to be destroyed,

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1 shall be:

- 2 (1) placed under seal; and
- 3 (2) removed to a place designated by the
- 4 district court; or
- 5 (3) held in the custody of a law enforcement
- 6 agency.

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

10 ~~[D. A law enforcement agency shall not retain~~
11 ~~forfeited or abandoned property.]"~~

12 SECTION 10. Section 31-27-9 NMSA 1978 (being Laws 2015,
13 Chapter 152, Section 11) is amended to read:

14 "31-27-9. REPORTING.--

15 A. Within sixty days following the conclusion of
16 each fiscal year, every law enforcement agency shall prepare an
17 annual report of the agency's seizures and forfeitures
18 conducted pursuant to ~~[the Forfeiture Act]~~ applicable state law
19 and local ordinances, and seizures and forfeitures conducted
20 pursuant to federal forfeiture law, and the report shall
21 include:

- 22 (1) the total number of seizures of currency
- 23 and the total amount of currency seized in each seizure;
- 24 (2) the total number of seizures of property
- 25 and the number and types of items seized in each seizure;

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1 (3) the market value of each item of property
2 seized; ~~and~~

3 (4) the total number of occurrences of each
4 class of crime that resulted in the agency's seizure of
5 property;

6 (5) the costs incurred by the agency for
7 storage, maintenance and transportation of seized property;

8 (6) any proceeds received through equitable
9 sharing, along with the federal case number and the final
10 disposition of the case; and

11 (7) any costs incurred by the agency to
12 prepare its report in accordance with this subsection.

13 B. A law enforcement agency shall submit its annual
14 reports to the department of public safety and to the district
15 attorney's office in the agency's district. An agency that did
16 not engage in seizure or forfeiture pursuant to ~~[the Forfeiture~~
17 ~~Act]~~ local, state or federal forfeiture law ~~[or both]~~ shall
18 report that fact in its annual report.

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

22 D. By April 1 of each year, the department of
23 public safety shall publish on its ~~[web site]~~ website the
24 department's aggregate report and individual law enforcement
25 agency reports submitted for the previous year."

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underscored material = new
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1 SECTION 11. Section 31-27-11 NMSA 1978 (being Laws 2015,
2 Chapter 152, Section 13) is amended to read:

3 "31-27-11. TRANSFER OF FORFEITABLE PROPERTY TO THE
4 FEDERAL GOVERNMENT.--

5 A. A law enforcement agency shall not directly or
6 indirectly transfer seized property to a federal law
7 enforcement authority or other federal agency unless:

8 (1) the value of the seized property exceeds
9 fifty thousand dollars (\$50,000), excluding the potential value
10 of the sale of contraband; ~~[and~~

11 ~~(2) the law enforcement agency determines that~~
12 ~~the criminal conduct that gave rise to the seizure is~~
13 ~~interstate in nature and sufficiently complex to justify the~~
14 ~~transfer of the property; or~~

15 ~~(3) the seized property may only be forfeited~~
16 ~~under federal law;] or~~

17 (2) the federal government has filed criminal
18 charges against the owner of the seized property, there is no
19 innocent owner and the seized property is required as evidence
20 in the federal prosecution.

21 B. ~~[The]~~ A law enforcement agency shall not
22 transfer property to the federal government if the transfer
23 would circumvent the protections of the Forfeiture Act that
24 would otherwise be available to a putative interest holder in
25 the property. A law enforcement agency may share information

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1 and cooperate with the federal government, provided that the
2 information-sharing and cooperation is not part of a broader
3 pattern, practice or policy that operates to circumvent the
4 protections of the Forfeiture Act.

5 C. A law enforcement agency may participate in
6 equitable sharing programs with the federal government as
7 authorized by Section 29-1-10.1 NMSA 1978 and permitted in this
8 section; provided that no equitable sharing proceeds shall be
9 accepted by the law enforcement agency unless an owner of the
10 property is convicted in federal court."

11 SECTION 12. TEMPORARY PROVISION.--Abandoned property in
12 the possession of a law enforcement agency or the state
13 treasurer on the effective date of this act shall be disposed
14 of pursuant to Section 29-1-14 NMSA 1978.

15 SECTION 13. APPLICABILITY.--The provisions of this act
16 apply to seized and disclaimed property in the possession of a
17 law enforcement agency or the state treasurer on and after the
18 effective day of this act.

19 SECTION 14. EMERGENCY.--It is necessary for the public
20 peace, health and safety that this act take effect immediately.