

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

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

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

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

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

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

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

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

B. Whoever commits embezzlement 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

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

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

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

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

B. Whoever commits fraudulently obtaining 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

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

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

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

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

B. Whoever commits receiving or transferring a stolen 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

(3) second degree felony for a third or

subsequent offense."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NMSA 1978; and

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

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

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

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

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

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

A. Every sheriff, chief of police or peace officer upon receiving reliable information that any vehicle or motor vehicle has been stolen shall immediately, but in no case

later than one week after receiving the information, report the theft to the New Mexico state police or other appropriate law enforcement agency unless, prior thereto, information has been received of the recovery of the vehicle or motor vehicle. Any officer, upon receiving information that any vehicle or motor vehicle that the officer has previously reported as stolen has been recovered, shall immediately report the fact of recovery to the local sheriff's office or police department and to the New Mexico state police.

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

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

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

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

B. Every owner or other person who has given any

such notice shall immediately notify the New Mexico state police or the law enforcement agency that took the report of a recovery of the vehicle."

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

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

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

B. When the inspection of a vehicle, motor vehicle or motor vehicle engine or component by any law enforcement officer indicates that the manufacturer's serial number or decal, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed, that vehicle, motor vehicle or motor vehicle engine or component may be impounded for a period of time not to exceed ninety-six hours unless part of that time falls upon a Saturday, Sunday or a legal holiday, in which

case the vehicle, motor vehicle or motor vehicle engine or component may be impounded for a period of time not to exceed six days. At the expiration of the stated time period, the vehicle, motor vehicle or motor vehicle engine or component shall be returned to the person from whom it was taken at no cost unless an ex parte order allowing continued impoundment is issued by a magistrate or district court judge after finding that probable cause exists to believe that the manufacturer's serial number, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed. Within ten days of the issuance of the order, the law enforcement agency shall cause to have the matter of the vehicle, motor vehicle or motor vehicle engine or component brought before a district court by filing in that court a petition requesting that the vehicle or item be declared contraband unless the court grants an extension of time for the filing based on some reasonable requirement for extension of the filing by the law enforcement agency. If at the time of the hearing on that petition the court finds that the manufacturer's serial number, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed, the court shall declare the vehicle, motor vehicle

or motor vehicle engine or component to be contraband unless one of the exceptions enumerated in this section applies. At the time the vehicle, motor vehicle or motor vehicle engine or component is declared to be contraband, the court shall order that it be disposed of according to Subsection D of this section. Any vehicle, motor vehicle or motor vehicle engine or component in such condition shall not be subject to replevin except by an owner who can trace the owner's ownership of that vehicle, motor vehicle or motor vehicle engine or component from the manufacturer by furnishing the court records indicating the identity of all intermediate owners. The law enforcement agency seizing the vehicle, motor vehicle or motor vehicle engine or component shall provide the person from whom it was taken a receipt for the vehicle, motor vehicle or motor vehicle engine or component.

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

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

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

(3) it clearly appears that the true owner is not responsible for the altering, concealing, defacing or

destroying of the vehicle, motor vehicle or motor vehicle engine or component;

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

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

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

D. If it is impossible to locate a true owner who meets the provisions of Subsection C of this section to claim the vehicle, motor vehicle or motor vehicle engine or component, it may be retained as long as it is used for police purposes, after which time, or if not suitable for police use, it shall be destroyed."

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009. \_\_\_\_\_

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