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HOUSE BILL 532

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Zachary J. Cook

AN ACT

RELATING TO FORFEITURES; PROVIDING FOR SEIZURE AND FORFEITURE OF A MOTOR VEHICLE DRIVEN BY A PERSON WHOSE DRIVER'S LICENSE IS REVOKED FOR DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING SEIZURE OF A MOTOR VEHICLE UPON ARREST FOR DWI WHEN THE DRIVER HAS PREVIOUSLY BEEN CONVICTED OF DWI; PROVIDING FOR THE FORFEITURE OF THE VEHICLE; ALLOWING LOCAL GOVERNMENTS TO USE PROCEEDS OF FORFEITED PROPERTY FOR ALCOHOL TREATMENT AND PREVENTION PROGRAMS AND FOR DWI ENFORCEMENT.

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:

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

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

3 "31-27-7. DISPOSITION OF FORFEITED PROPERTY.--

4 A. Unless possession of the property is illegal or
5 a different disposition is specifically provided for by law and
6 except as provided in Subsection C of this section, forfeited
7 property, if it is not currency, shall be sold at public sale
8 by the law enforcement agency in possession of the property.
9 Forfeited currency and all sale proceeds of the sale of
10 forfeited property shall be distributed:

11 (1) first, to pay reasonable expenses incurred
12 for storage, protection and sale of the property;

13 (2) second, any remaining balance to pay
14 restitution to or on behalf of victims, if any, of the crime
15 related to the forfeiture; and

16 (3) third, any remaining balance to the
17 general fund of the governing body of the seizing law
18 enforcement agency to be used for drug and alcohol abuse
19 treatment services, for drug and alcohol prevention and
20 education programs, for other substance abuse demand-reduction
21 initiatives or for ~~[enforcing]~~ DWI enforcement and enforcement
22 of narcotics law violations, except:

23 (a) for ~~[forfeitures]~~ forfeiture of
24 property arising from Chapter 17 NMSA 1978, the balance shall
25 be deposited in the game protection fund in an amount equal to

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1 the expenditures to prosecute the forfeiture and the crime,
2 with the net balance to be deposited in the general fund; and

3 (b) for forfeiture of property arising
4 from Chapter 18, Article 6 NMSA 1978, the balance shall be used
5 for the restoration, stabilization, protection and preservation
6 of the affected cultural property, with the net balance to be
7 deposited in the general fund.

8 B. ~~Any~~ A property interest forfeited to the state
9 and disposed of pursuant to the Forfeiture Act is subject to
10 the interest of a secured party unless, at the forfeiture
11 proceeding, the state proves by clear and convincing evidence
12 that the secured party knew or should have known of the crime.

13 C. If, at the forfeiture proceeding, the state
14 proves, by clear and convincing evidence, that the person
15 convicted of the crime for which the property is subject to
16 forfeiture is a co-owner of the property but fails to prove
17 that the other co-owner knew or should have known of the crime
18 then, at the option of the co-owner not convicted of the crime:

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

24 (2) the law enforcement agency shall sell the
25 entire ownership interest at a public sale pursuant to

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1 Subsection A of this section, except that the proceeds shall
2 first be used to purchase the ownership interest, at fair
3 market value, of the co-owner not convicted of the crime; or

4 (3) the law enforcement agency shall sell only
5 the forfeited interest at a public sale pursuant to Subsection
6 A of this section and the purchaser [~~becomes~~] will become a co-
7 owner with the co-owner not convicted of the crime.

8 D. The law enforcement agency shall notify all
9 known co-owners of forfeited property that were not convicted
10 of the crime not less than thirty days before a proposed public
11 sale of the property. If, within the thirty days, the co-
12 owners notify the law enforcement agency of an option made
13 pursuant to Subsection C of this section, the law enforcement
14 agency shall make the sale pursuant to the option selected. If
15 no option is selected by the co-owners or if all of the co-
16 owners not convicted of the crime cannot agree on one option,
17 then the sale shall be made pursuant to Paragraph (3) of
18 Subsection C of this section."

19 **SECTION 3.** Section 66-5-39 NMSA 1978 (being Laws 1978,
20 Chapter 35, Section 261, as amended) is amended to read:

21 "66-5-39. DRIVING WHILE LICENSE SUSPENDED OR REVOKED--
22 PROVIDING PENALTIES.--

23 A. Any person who drives a motor vehicle on any
24 public highway of this state at a time when [~~his~~] the person's
25 privilege to do so is suspended or revoked and who knows or

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1 should have known that ~~[his]~~ the person's license was suspended
2 or revoked is guilty of a misdemeanor and shall be charged with
3 a violation of this section. Upon conviction, the person shall
4 be punished, notwithstanding the provisions of Section 31-18-13
5 NMSA 1978, by imprisonment for not less than four days or more
6 than three hundred sixty-four days or participation for an
7 equivalent period of time in a certified alternative sentencing
8 program, and there may be imposed in addition a fine of not
9 more than one thousand dollars (\$1,000). When a person pays
10 any or all of the cost of participating in a certified
11 alternative sentencing program, the court may apply that
12 payment as a deduction to any fine imposed by the court.
13 Notwithstanding any other provision of law for suspension or
14 deferment of execution of a sentence, if the person's privilege
15 to drive was revoked for driving while under the influence of
16 intoxicating liquor or drugs or a violation of the Implied
17 Consent Act, upon conviction under this section, that person
18 shall be punished by imprisonment for not less than seven
19 consecutive days and shall be fined not less than three hundred
20 dollars (\$300) or not more than one thousand dollars (\$1,000)
21 and the fine and imprisonment shall not be suspended, deferred
22 or taken under advisement. No other disposition by plea of
23 guilty to any other charge in satisfaction of a charge under
24 this section shall be authorized if the person's privilege to
25 drive was revoked for driving while under the influence of

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1 intoxicating liquor or drugs or a violation of the Implied
2 Consent Act. Any municipal ordinance prohibiting driving with
3 a suspended or revoked license shall provide penalties no less
4 stringent than provided in this section.

5 B. ~~[In addition to any other penalties imposed~~
6 ~~pursuant to the provisions of this section]~~ When a person is
7 arrested pursuant to the provisions of this section and the
8 person's privilege to drive was revoked due to a conviction for
9 driving under the influence of intoxicating liquor or drugs or
10 a violation of the Implied Consent Act, the motor vehicle that
11 the person was driving shall be seized and shall be subject to
12 forfeiture pursuant to the provisions of the Forfeiture Act.

13 C. Except for a person whose license was revoked
14 for driving under the influence of intoxicating liquor or drugs
15 or for a violation of the Implied Consent Act, when a person is
16 convicted pursuant to the provisions of this section or a
17 municipal ordinance that prohibits driving on a suspended or
18 revoked license, the motor vehicle that the person was driving
19 shall be immobilized by an immobilization device for thirty
20 days, unless immobilization of the motor vehicle poses an
21 imminent danger to the health, safety or employment of the
22 convicted person's immediate family or the family of the owner
23 of the motor vehicle. The convicted person shall bear the cost
24 of immobilizing the motor vehicle.

25 ~~[G-]~~ D. The division, upon receiving a record of

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1 the conviction of any person under this section upon a charge
2 of driving a vehicle while the license of the person was
3 suspended, shall extend the period of suspension for an
4 additional like period, and if the conviction was upon a charge
5 of driving while a license was revoked, the division shall not
6 issue a new license for an additional period of one year from
7 the date the person would otherwise have been entitled to apply
8 for a new license."

9 SECTION 4. A new section of Chapter 66, Article 8 1978
10 NMSA is enacted to read:

11 "[NEW MATERIAL] SEIZURE OF MOTOR VEHICLE UPON ARREST OF
12 PERSON PREVIOUSLY CONVICTED OF DRIVING UNDER THE INFLUENCE OF
13 INTOXICATING LIQUOR OR DRUGS--FORFEITURE OF VEHICLE.--A law
14 enforcement officer who arrests a person for driving under the
15 influence of intoxicating liquor or drugs shall seize the motor
16 vehicle that the person was driving if the person has
17 previously been convicted of driving under the influence of
18 intoxicating liquor or drugs pursuant to state, federal or
19 tribal law or a municipal ordinance, regardless of whether the
20 person's sentence was suspended or deferred. The vehicle
21 seized shall be subject to forfeiture pursuant to the
22 provisions of the Forfeiture Act."

23 SECTION 5. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2011.

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