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HOUSE BILL 160

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Conrad D. James and George K. Munoz

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 DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS WHEN THE DRIVER HAS PREVIOUSLY BEEN CONVICTED OF DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING FOR THE FORFEITURE OF THE VEHICLE; ALLOWING LOCAL GOVERNMENTS TO USE PROCEEDS OF FORFEITED PROPERTY FOR ALCOHOL TREATMENT AND PREVENTION PROGRAMS AND FOR ENFORCEMENT OF DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS VIOLATIONS.

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

6           "31-27-7. DISPOSITION OF FORFEITED PROPERTY.--

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

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

16                   (2) second, any remaining balance to pay  
17 restitution to or on behalf of victims, if any, of the crime  
18 related to the forfeiture; and

19                   (3) third, any remaining balance to the  
20 general fund of the governing body of the seizing law  
21 enforcement agency to be used for drug and alcohol abuse  
22 treatment services, for drug and alcohol prevention and  
23 education programs, for other substance abuse demand-reduction  
24 initiatives or for enforcing driving under the influence of  
25 intoxicating liquor or drugs or narcotics law violations,

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1 except:

2 (a) for [~~forfeitures~~] forfeiture of  
3 property arising from Chapter 17 NMSA 1978, the balance shall  
4 be deposited in the game protection fund in an amount equal to  
5 the expenditures to prosecute the forfeiture and the crime,  
6 with the net balance to be deposited in the general fund; and

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

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

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

23 (1) the co-owner not convicted of the crime  
24 may buy the forfeited interest from the law enforcement agency  
25 at a private sale for the fair market value. Proceeds received

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1 by the state from the sale shall be disposed of pursuant to  
2 Paragraphs (1) through (3) of Subsection A of this section;

3 (2) the law enforcement agency shall sell the  
4 entire ownership interest at a public sale pursuant to  
5 Subsection A of this section, except that the proceeds shall  
6 first be used to purchase the ownership interest, at fair  
7 market value, of the co-owner not convicted of the crime; or

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

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

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

25 "66-5-39. DRIVING WHILE LICENSE SUSPENDED OR REVOKED--

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1 PROVIDING PENALTIES.--

2 A. Any person who drives a motor vehicle on any  
3 public highway of this state at a time when [~~his~~] the person's  
4 privilege to do so is suspended or revoked and who knows or  
5 should have known that [~~his~~] the person's license was suspended  
6 or revoked is guilty of a misdemeanor and shall be charged with  
7 a violation of this section. Upon conviction, the person shall  
8 be punished, notwithstanding the provisions of Section 31-18-13  
9 NMSA 1978, by imprisonment for not less than four days or more  
10 than three hundred sixty-four days or participation for an  
11 equivalent period of time in a certified alternative sentencing  
12 program, and there may be imposed in addition a fine of not  
13 more than one thousand dollars (\$1,000). When a person pays  
14 any or all of the cost of participating in a certified  
15 alternative sentencing program, the court may apply that  
16 payment as a deduction to any fine imposed by the court.

17 Notwithstanding any other provision of law for suspension or  
18 deferment of execution of a sentence, if the person's privilege  
19 to drive was revoked for driving while under the influence of  
20 intoxicating liquor or drugs or a violation of the Implied  
21 Consent Act, upon conviction under this section, that person  
22 shall be punished by imprisonment for not less than seven  
23 consecutive days and shall be fined not less than three hundred  
24 dollars (\$300) or not more than one thousand dollars (\$1,000)  
25 and the fine and imprisonment shall not be suspended, deferred

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1 or taken under advisement. No other disposition by plea of  
2 guilty to any other charge in satisfaction of a charge under  
3 this section shall be authorized if the person's privilege to  
4 drive was revoked for driving while under the influence of  
5 intoxicating liquor or drugs or a violation of the Implied  
6 Consent Act. Any municipal ordinance prohibiting driving with  
7 a suspended or revoked license shall provide penalties no less  
8 stringent than provided in this section.

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

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

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1 convicted person's immediate family or the family of the owner  
2 of the motor vehicle. The convicted person shall bear the cost  
3 of immobilizing the motor vehicle.

4 ~~[G.]~~ D. The division, upon receiving a record of  
5 the conviction of any person under this section upon a charge  
6 of driving a vehicle while the license of the person was  
7 suspended, shall extend the period of suspension for an  
8 additional like period, and if the conviction was upon a charge  
9 of driving while a license was revoked, the division shall not  
10 issue a new license for an additional period of one year from  
11 the date the person would otherwise have been entitled to apply  
12 for a new license."

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

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

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1 provisions of the Forfeiture Act."

2 SECTION 5. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2012.

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