

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 312

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

AN ACT

RELATING TO FORFEITURE; REVISING DEFINITIONS; REVISING  
PROCEDURES RELATED TO FORFEITURE PROCEEDINGS; PROVIDING FOR  
DISTRIBUTION OF PROCEEDS FROM THE SALE OF FORFEITED OR  
ABANDONED 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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underscored material = new  
[bracketed material] = delete

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 and only pursuant to state law.

14 B. The Forfeiture Act:

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

18 (2) does not apply to:

19 (a) contraband, which is subject to  
20 seizure pursuant to applicable state laws, but is not subject  
21 to forfeiture pursuant to the Forfeiture Act;

22 (b) animals that are subject to seizure,  
23 impoundment, alteration, permanent removal from custody or  
24 destruction for animal welfare, public health and safety or  
25 compliance and enforcement purposes pursuant to applicable

1 state and local laws;

2 (c) real property or personal property  
3 that is located on that real property that is subject to  
4 destruction pursuant to state and local laws to protect public  
5 health and safety; and

6 (d) forfeiture that results from a lien  
7 for charges or assessments that are provided for or fixed by  
8 state or local laws."

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

11 "31-27-3. DEFINITIONS.--As used in the Forfeiture Act:

12 A. "abandoned property":

13 (1) is not subject to the provisions of  
14 Section 29-1-14 NMSA 1978;

15 [~~1~~] (2) means personal property the rights  
16 to which and the control of which an owner has intentionally  
17 relinquished; and

18 [~~2~~] (3) 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           E. "conviction" or "convicted" means that a person  
9 has been found guilty of a crime in a trial court whether by a  
10 plea of guilty or nolo contendere or otherwise and whether the  
11 sentence is deferred or suspended;

12           F. "crime" means a violation of a criminal statute  
13 for which property of the offender is subject to seizure and  
14 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           H. "law enforcement agency" means the employer of a  
24 law enforcement officer [~~that~~] who is authorized to seize or  
25 has seized property pursuant to the Forfeiture Act;

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

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

6 (2) does not mean a correctional officer;

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

9 K. "property" means tangible or intangible personal  
10 property or real property;

11 L. "property subject to forfeiture" means property  
12 or an instrumentality [~~described and~~] declared to be subject to  
13 forfeiture by the Forfeiture Act or a state law outside of the  
14 Forfeiture Act; and

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

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

23 "31-27-4. FORFEITURE--CONVICTION REQUIRED--SEIZURE OF  
24 PROPERTY--WITH PROCESS--WITHOUT PROCESS.--

25 A. A person's property is subject to forfeiture

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1 pursuant to state law if:

2 (1) the person was arrested for an offense to  
3 which forfeiture applies;

4 (2) the person is convicted by a criminal  
5 court of the offense; and

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

9 B. Following a person's conviction for an offense  
10 to which forfeiture applies, a court may order the person to  
11 forfeit:

12 (1) property the person acquired through  
13 commission of the offense;

14 (2) property directly traceable to property  
15 acquired through the commission of the offense; and

16 (3) any instrumentality the person used in the  
17 commission of the offense.

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

22 D. Subject to the provisions of Section 31-27-5  
23 NMSA 1978, at any time, at the request of the state, a court  
24 may issue an ex parte preliminary order to seize property that  
25 is subject to forfeiture and for which forfeiture is sought and

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1 to provide for the custody of the property. The execution on  
2 the order to seize the property and the return of the property,  
3 if applicable, are subject to the Forfeiture Act and other  
4 applicable state laws. Before issuing an order pursuant to  
5 this subsection, the court shall make a determination that:

6 (1) there is a substantial probability that:

7 (a) the property is subject to  
8 forfeiture;

9 (b) the state will prevail on the issue  
10 of forfeiture; and

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

14 (2) the need to preserve the availability of  
15 the property through the entry of the requested order outweighs  
16 the hardship to the owner and other parties known to be  
17 claiming interests in the property.

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

20 (1) the seizure is incident to a lawful arrest  
21 for a crime or a search lawfully conducted pursuant to a search  
22 warrant and the law enforcement officer making the arrest or  
23 executing the search has probable cause to believe the property  
24 is subject to forfeiture and that the subject of the arrest or  
25 search warrant is an owner of the property;

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

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

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

10 "31-27-4.1. RECEIPT FOR SEIZED PROPERTY--REPLEVIN  
11 HEARING.--

12 A. When a law enforcement officer seizes property  
13 that is subject to forfeiture, the officer shall provide an  
14 itemized receipt to the person possessing the property or, in  
15 the absence of a person to whom the receipt could be given,  
16 shall leave the receipt in the place where the property was  
17 found, if possible.

18 B. Within five business days of the seizure, the  
19 law enforcement officer shall provide notice by personal  
20 service or first class mail to all owners of record of the  
21 seized property.

22 [~~B.~~] C. Following the seizure of property, the  
23 defendant in the related criminal matter or another person who  
24 claims an interest in the seized property may, at any time  
25 before [~~sixty days prior to a related criminal trial~~] the one-



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

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

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

15 [~~E.~~] F. A court shall grant a claimant's motion if  
16 the court finds that:

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

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

21 (3) the property is the only reasonable means  
22 for a defendant to pay for legal representation in a related  
23 criminal or forfeiture proceeding and the law enforcement  
24 agency did not make a prima facie showing that the property was  
25 stolen or proceeds from or is an instrumentality of a crime.

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

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

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

15           [G-] H. In lieu of ordering the issuance of [~~the~~] a  
16 writ of replevin, a court may order:

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

20                   (2) any other relief the court deems to be  
21 just; provided that the relief does not prejudice an innocent  
22 owner, including a secured lienholder."

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

25           "31-27-5. [~~COMPLAINT OF FORFEITURE~~] NOTICE OF INTENT TO

1 FORFEIT--SERVICE OF PROCESS.--

2 A. Within thirty days of making a seizure of  
3 property or simultaneously upon filing a related criminal  
4 indictment, the state shall file a [~~complaint of ancillary~~  
5 ~~forfeiture proceedings~~] notice of intent to forfeit or return  
6 the property to the person from whom it was seized. [A  
7 ~~complaint of ancillary forfeiture proceedings~~] The notice shall  
8 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~~] notice, the names of persons known to the state who  
23 may claim an interest in the property and the basis for each  
24 person's alleged interest.

25 B. The [~~complaint~~] notice shall be served upon the

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1 person from whom the property was seized, the person's attorney  
2 of record and all persons known or reasonably believed by the  
3 state to claim an interest in the property. A copy of the  
4 ~~[complaint]~~ notice shall also be published ~~[at least three~~  
5 ~~times in a newspaper of general circulation in the district of~~  
6 ~~the court having jurisdiction or]~~ on the sunshine portal until  
7 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 a response within thirty days of the date of service of the  
15 ~~[complaint]~~ notice of intent to forfeit. The ~~[answer]~~ response  
16 shall include facts to support the claimant's alleged interest  
17 in the property.

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

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

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

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

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

13 F. If the state fails to prove, by clear and  
14 convincing evidence, that a person whose property is alleged to  
15 be subject to forfeiture is an owner of 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 for storage of the property or expenses  
21 incurred in the preservation of the property.

22 G. The court shall enter a judgment of forfeiture  
23 and the seized property shall be forfeited to the state if the  
24 state proves by clear and convincing evidence that:

25 (1) the seized property is subject to

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1 forfeiture;

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

4 (3) the value of the property to be forfeited  
5 does not unreasonably exceed:

6 (a) the pecuniary gain derived or sought  
7 to be derived by the crime;

8 (b) the pecuniary loss caused or sought  
9 to be caused by the crime; or

10 (c) the value of the convicted owner's  
11 interest in the property.

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

17 I. Following a person's conviction, the state may  
18 make a motion for forfeiture of substitute property owned by  
19 the person that is equal to but does not exceed the value of  
20 the property that is subject to forfeiture but that the state  
21 is unable to seize. The court shall order the forfeiture of  
22 substitute property only if the state proves by a preponderance  
23 of the evidence that the person intentionally transferred, sold  
24 or deposited property with a third party to avoid the court's  
25 jurisdiction and the forfeiture of the property.

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

6 K. ~~[At any time]~~ Within the time period for filing  
7 an appeal following the conclusion of a forfeiture proceeding,  
8 the person whose property was forfeited may petition the court  
9 to determine whether the forfeiture was unconstitutionally  
10 excessive pursuant to the state or federal constitution.

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

16 M. In determining whether the forfeiture is  
17 unconstitutionally excessive, the court may consider all  
18 relevant factors, including:

19 (1) the seriousness of the criminal offense  
20 and its impact on the community, the duration of the criminal  
21 activity and the harm caused by the defendant;

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

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

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1 (4) the sentence imposed for the commission of  
2 the crime that relates to the property that is subject to  
3 forfeiture; and

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

6 N. In determining the value of the property subject  
7 to forfeiture, the court may consider relevant factors,  
8 including the ~~[(1)]~~ fair market value of the property

9 ~~[(2) value of the property to the defendant,~~  
10 ~~including hardship that the defendant will suffer if the~~  
11 ~~forfeiture is realized; and~~

12 ~~(3)]~~ and the hardship from the loss of a  
13 primary residence, motor vehicle or other property to the  
14 defendant's family members or others if the property is  
15 forfeited, in addition to any non-monetary intrinsic value of  
16 property that would cause the defendant to suffer if the  
17 forfeiture is realized.

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

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

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

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1 "31-27-7. TITLE TO SEIZED PROPERTY--DISPOSITION OF  
2 FORFEITED PROPERTY AND ABANDONED PROPERTY--PROCEEDS.--

3 A. The state acquires provisional title to seized  
4 property at the time the property was used or acquired in  
5 connection with an offense that subjects the property to  
6 forfeiture. Provisional title authorizes the state to hold and  
7 protect the property. Title to the property shall vest with  
8 the state when a trier of fact renders a final forfeiture  
9 verdict and the title relates back to the time when the state  
10 acquired provisional title; provided that the title is not  
11 subject to claims by third parties that are adjudicated  
12 pursuant to the Forfeiture Act.

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

22 (1) first, to reimburse the reasonable  
23 expenses related to the storage, protection and transfer of the  
24 property incurred by a law enforcement agency or the state  
25 treasurer;

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1                   (2) second, to pay any reasonable expenses  
2 incurred to dispose of the property by a law enforcement agency  
3 or the state treasurer; and

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

6                   C. Proceeds from the sale of forfeited property  
7 received by the state from another jurisdiction shall be  
8 deposited in the general fund.

9                   D. A law enforcement agency or public body that  
10 receives reimbursement pursuant to Subsection B of this section  
11 shall inform the state auditor of that fact at the time of the  
12 agency's or body's annual audit.

13                   ~~[D.]~~ E. 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 proves by clear and convincing evidence  
17 that the secured party had actual knowledge of the crime that  
18 relates to the seizure of the property.

19                   F. Abandoned property shall be disposed of in the  
20 same manner as provided in Subsection B of this section.

21                   G. Property subject to forfeiture that is in a law  
22 enforcement agency's possession becomes abandoned property and  
23 may be disposed of as such without a conviction if:

24                   (1) there is no innocent owner; and

25                   (2) the criminal prosecution of the owner of

1 the seized property cannot proceed because for a period in  
2 excess of one year and one day:

3 (a) a bench warrant has been pending as  
4 a result of the defendant failing to appear; or

5 (b) the owner fugitates."

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

8 "31-27-7.1. INNOCENT OWNERS.--

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

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

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

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

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

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1 act upon which the 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 pursues a forfeiture  
5 proceeding with respect to that person's property, other than  
6 property described in Subsection D of Section 31-27-7 NMSA  
7 1978, to successfully forfeit the property, the state shall  
8 prove by clear and convincing evidence that the innocent owner  
9 had actual knowledge of the underlying crime giving rise to the  
10 forfeiture.

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

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

24 (1) had actual knowledge that the property was  
25 subject to forfeiture; or

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

4 G. If the state fails to meet its burdens as  
5 provided in Subsections C and D of this section, the court  
6 shall find that the person is an innocent owner and shall order  
7 the state to relinquish all claims of title to the innocent  
8 owner's property without delay and the property shall be  
9 released without assessment of fees or costs.

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

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

17 "31-27-8. SAFEKEEPING OF SEIZED PROPERTY PENDING  
18 DISPOSITION [~~SELLING OR RETAINING SEIZED PROPERTY~~  
19 ~~PROHIBITED~~].--With regard to seized property in the state  
20 courts:

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

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

9 D. unless it is returned to an owner, a law  
10 enforcement agency shall [~~not retain~~] dispose of forfeited or  
11 abandoned property as provided in Section 31-27-7 NMSA 1978."

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 on  
17 a form approved by the department of public safety an annual  
18 report of the agency's seizures and forfeitures conducted  
19 pursuant to [~~the Forfeiture Act~~] applicable state law, and  
20 seizures and forfeitures conducted pursuant to federal  
21 forfeiture law, and the report shall 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;

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; and

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

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

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

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

25 SECTION 11. TEMPORARY PROVISION.--The New Mexico supreme

.213603.3

1 court shall issue procedural court rules to implement the  
2 provisions of this act.

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

7 SECTION 13. APPLICABILITY.--The provisions of this act  
8 apply to seized and abandoned property in the possession of a  
9 law enforcement agency or the state treasurer on and after the  
10 effective date of this act.

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