

1 HOUSE BILL 316

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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5 and Martin Hickey and Alan T. Martinez  
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10 AN ACT

11 RELATING TO FORFEITURE; ALLOWING CERTAIN SEIZURES OF PROPERTY  
12 BY A LAW ENFORCEMENT AGENCY THAT PARTICIPATES IN FEDERAL  
13 EQUITABLE SHARING PROGRAMS.  
14

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

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

18 "31-27-2. PURPOSE OF ACT--APPLICABILITY--NO ADDITIONAL  
19 REMEDIES.--

20 A. The purposes of the Forfeiture Act are to:

21 (1) make uniform the standards and procedures  
22 for the seizure and forfeiture of property subject to  
23 forfeiture;

24 (2) protect the constitutional rights of  
25 persons whose property is subject to forfeiture and of innocent

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1 owners holding interests in property subject to forfeiture;

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

4 (4) increase the pecuniary loss from criminal  
5 activity;

6 (5) protect against the wrongful forfeiture of  
7 property; and

8 (6) ensure that only criminal forfeiture is  
9 allowed in this state and only pursuant to state law.

10 B. Except as provided in Section 31-27-11 NMSA  
11 1978, the Forfeiture Act:

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

15 (2) does not apply to:

16 (a) contraband, which is subject to  
17 seizure pursuant to applicable state laws, but is not subject  
18 to forfeiture pursuant to the Forfeiture Act;

19 (b) animals that are subject to seizure,  
20 impoundment, alteration, permanent removal from custody or  
21 destruction for animal welfare, public health and safety or  
22 compliance and enforcement purposes pursuant to applicable  
23 state and local laws;

24 (c) real property or personal property  
25 that is located on that real property that is subject to

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1 destruction pursuant to state and local laws to protect public  
2 health and safety; and

3 (d) forfeiture that results from a lien  
4 for charges or assessments that are provided for or fixed by  
5 state or local laws."

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

8 "31-27-7. TITLE TO SEIZED PROPERTY--DISPOSITION OF  
9 FORFEITED PROPERTY AND ABANDONED PROPERTY--PROCEEDS.--

10 A. Except as provided in Section 31-27-11 NMSA 1978  
11 when a law enforcement agency in New Mexico seizes property for  
12 a federal law enforcement authority as a participant in a  
13 federal equitable sharing program, the state acquires  
14 provisional title to seized property at the time the property  
15 was used or acquired in connection with an offense that  
16 subjects the property to forfeiture. Provisional title  
17 authorizes the state to hold and protect the property. Title  
18 to the property shall vest with the state when a trier of fact  
19 renders a final forfeiture verdict and the title relates back  
20 to the time when the state acquired provisional title; provided  
21 that the title is not subject to claims by third parties that  
22 are adjudicated pursuant to the Forfeiture Act.

23 B. Unless possession of the property is illegal or  
24 a different disposition is specifically provided for by law and  
25 except as provided in this section, forfeited property that is

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1 not currency shall be delivered along with any abandoned  
2 property to the state treasurer or the state treasurer's  
3 designee for disposition at a public auction. Forfeited  
4 currency and all proceeds of the sale of forfeited or abandoned  
5 property shall be distributed by the state treasurer as  
6 follows:

7 (1) first, to reimburse the reasonable  
8 expenses related to the storage, protection and transfer of the  
9 property incurred by a law enforcement agency or the state  
10 treasurer;

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

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

16 C. Except as provided in Section 31-27-11 NMSA  
17 1978, proceeds from the sale of forfeited property received by  
18 the state from another jurisdiction shall be deposited in the  
19 general fund.

20 D. A law enforcement agency or public body that  
21 receives reimbursement pursuant to Subsection B of this section  
22 shall inform the state auditor of that fact at the time of the  
23 agency's or body's annual audit.

24 E. A forfeited property interest is subject to the  
25 interest of a secured party unless, in the forfeiture

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1 proceeding, the state proves by clear and convincing evidence  
2 that the secured party had actual knowledge of the crime that  
3 relates to the seizure of the property.

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

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

9 (1) there is no innocent owner; and

10 (2) the criminal prosecution of the owner of  
11 the seized property cannot proceed because for a period in  
12 excess of one year and one day:

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

15 (b) the owner [~~fugitates~~] was  
16 fugitated."

17 SECTION 3. Section 31-27-11 NMSA 1978 (being Laws 2015,  
18 Chapter 152, Section 13) is amended to read:

19 "31-27-11. TRANSFER OF FORFEITABLE PROPERTY TO THE  
20 FEDERAL GOVERNMENT--EXPENDITURE OF MONEY DISBURSED BY FEDERAL  
21 EQUITABLE SHARING PROGRAMS.--

22 A. A law enforcement agency shall not directly or  
23 indirectly transfer seized property to a federal law  
24 enforcement authority or other federal agency unless:

25 (1) the value of the seized property exceeds

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1 fifty thousand dollars (\$50,000), excluding the potential value  
2 of the sale of contraband; and

3 ~~[(2) the law enforcement agency determines~~  
4 ~~that the criminal conduct that gave rise to the seizure is~~  
5 ~~interstate in nature and sufficiently complex to justify the~~  
6 ~~transfer of the property; or~~

7 ~~(3) the seized property may only be forfeited~~  
8 ~~under federal law]~~

9 (2) the federal government has filed criminal  
10 charges against the owner of the seized property, there is no  
11 innocent owner and the seized property is required as evidence  
12 in the federal prosecution.

13 B. ~~[The]~~ A law enforcement agency shall not  
14 transfer property to the federal government if the transfer  
15 would circumvent the protections of the Forfeiture Act that  
16 would otherwise be available to a putative interest holder in  
17 the property. A law enforcement agency may share information  
18 and cooperate with the federal government.

19 C. A law enforcement agency may participate in  
20 federal equitable sharing programs as authorized by Section  
21 29-1-10.1 NMSA 1978 and allowed in this section; provided that  
22 no equitable sharing money shall be accepted by the law  
23 enforcement agency unless the owner of the property is  
24 convicted in federal court.

25 D. A law enforcement agency participating in

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1 federal equitable sharing programs shall spend money received  
2 from a program on drug prevention or awareness programs,  
3 including costs associated with conducting law enforcement  
4 agency awareness programs."

5 SECTION 4. APPLICABILITY.--The provisions of this act  
6 apply to seized and disclaimed property in the possession of a  
7 law enforcement agency or the state treasurer on and after the  
8 effective date of this act.

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