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SENATE BILL 742

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

L. SKIP VERNON

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE MONEY LAUNDERING ACT;
PROVIDING CRIMINAL PENALTIES AND CIVIL REMEDIES; AMENDING AND
ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Criminal Code is enacted
to read:

"[NEW MATERIAL] SHORT TITLE. -- Sections 1 through 17 of
this act may be cited as the "Money Laundering Act". "

Section 2. A new section of the Criminal Code is enacted
to read:

"[NEW MATERIAL] DEFINITIONS. -- As used in the Money
Laundering Act:

A. "attorney for the state" means an attorney
designated by the attorney general, by a county attorney or by a

1 city attorney to investigate, commence and prosecute an action;

2 B. "financial institution" means:

3 (1) a bank, thrift institution or agency, trust
4 company or a branch thereof;

5 (2) a broker or dealer in securities or
6 commodities;

7 (3) an investment banker;

8 (4) an investment company;

9 (5) an issuer, redeemer or cashier of
10 traveler's checks, checks, money orders or similar instruments;

11 (6) an operator of a credit card system;

12 (7) an insurance company;

13 (8) a dealer in precious metals, stones or
14 jewels;

15 (9) a pawnbroker;

16 (10) a loan or finance company;

17 (11) a travel agency;

18 (12) a licensed sender of money;

19 (13) a telegraph company;

20 (14) a business engaged in vehicle sales,
21 including automobile, airplane or boat sales;

22 (15) a person involved in real estate closings
23 and settlements;

24 (16) an agency or authority of a state or local
25 government carrying out a duty or power of a business described

1 in this subsection; or

2 (17) any person or business involved in the
3 exchange of currency or transmission of monetary instruments;

4 C. "injured person" means a person who has sustained
5 economic loss, including medical loss, as a result of injury to
6 his person, business or property by the conduct giving rise to
7 the forfeiture of property, and who is not an owner of or an
8 interest holder in the property. "Injured person" does not
9 include a person who is responsible for the conduct giving rise
10 to forfeiture or a person whose interest would not be exempt
11 from forfeiture if the person were an owner of or interest
12 holder in the property;

13 D. "interest holder" means a person in whose favor
14 there is a security interest or who is the beneficiary of a
15 perfected encumbrance pertaining to an interest in property;

16 E. "monetary instrument" means coin or currency of
17 the United States or any other country, traveler's checks,
18 personal checks, bank checks, money orders, investment
19 securities in bearer form or in such form that title passes upon
20 delivery of the security and negotiable instruments in bearer
21 form or in such form that title passes upon delivery of the
22 instrument;

23 F. "owner" means a person who is not a secured party
24 within the meaning of Section 55-9-105 NMSA 1978 and who has an
25 interest in property, whether legal or equitable. A person who

1 holds property for the benefit of or as agent or nominee for
2 another is not an owner. A purported interest that is not in
3 compliance with any statute requiring its recordation or
4 reflection in public records in order to perfect the interest
5 against a bona fide purchaser for value shall not be recognized
6 as an interest against this state in an action pursuant to the
7 Money Laundering Act. An owner with power to convey property
8 binds other owners, and a spouse binds his spouse, by his act or
9 omission;

10 G. "person" means any individual, corporation,
11 partnership, trust or estate, joint stock company, association,
12 syndicate, joint venture, unincorporated organization or group
13 and all entities treated as legal personalities;

14 H. "person known to have an interest" means a person
15 whose interest in property is reflected in the public records in
16 which his interest is required by law to be recorded or
17 reflected in order to perfect his interest. If a person's
18 interest in property is not required by law to be reflected in
19 public records in order to perfect his interest in the property,
20 a person shall be known to have an interest only if his interest
21 can be readily ascertained at the time of the commencement of
22 the forfeiture action pursuant the Money Laundering Act;

23 I. "personal property" includes all interests in
24 property in whatever form, except real estate as defined in
25 Section 47-1-1 NMSA 1978 and fixtures as defined in Section

1 55-9-313 NMSA 1978;

2 J. "proceeds" means property acquired or derived
3 directly or indirectly from, produced through or realized
4 through an act or omission;

5 K. "property" means anything of value and includes
6 any interest in property, including any benefit, privilege,
7 claim or right with respect to anything of value, whether real
8 or personal, tangible or intangible;

9 L. "seizing agency" means any department or agency
10 of this state or its political subdivisions that regularly
11 employs peace officers and that employs the peace officer who
12 seizes property for forfeiture, or such other agency as the
13 seizing agency may designate in a particular case by its chief
14 executive officer or his designee;

15 M. "seizure for forfeiture" means seizure of
16 property by a peace officer coupled with an assertion by the
17 seizing agency or by an attorney for the state that the property
18 is subject to forfeiture;

19 N. "specified unlawful activity" means any act or
20 omission, including any initiatory, preparatory or completed
21 offense or omission, committed for financial gain that is
22 punishable as a felony under the laws of New Mexico or, if the
23 act occurred outside New Mexico, would be punishable as a felony
24 under the laws of the state in which it occurred and under the
25 laws of New Mexico, including:

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1 (1) trafficking in controlled substances,
2 murder, robbery, kidnapping, forgery, larceny, fraud,
3 embezzlement, bribery, gambling, illegal kickbacks, extortion,
4 arson and aggravated arson, trafficking in explosives or
5 weapons, receiving stolen property, promoting prostitution,
6 criminal solicitation, fraudulent securities practices, loan
7 sharking, distribution of controlled substances, unlawful sale
8 or possession or transportation of explosives or explosive
9 incendiary devices, violation of the Computer Crimes Act or
10 unauthorized recording; and

11 (2) racketeering and its predicate offenses;
12 and

13 0. "transaction" includes a purchase, sale, trade,
14 loan, pledge, investment, gift, transfer, transmission,
15 delivery, deposit, withdrawal, payment, transfer between
16 accounts, exchange of currency, extension of credit, purchase or
17 sale of any monetary instrument, use of a safe-deposit box, or
18 any other acquisition or disposition of property by whatever
19 means effected. "

20 Section 3. A new section of the Criminal Code is enacted
21 to read:

22 " [NEW MATERIAL] REPORTS TO THE ATTORNEY GENERAL--
23 PENALTIES. --

24 A. Any person, corporation, partnership, sole
25 proprietorship, business or financial institution that is

1 required to file any report regarding business conducted in this
2 state pursuant to the provisions of the federal Currency and
3 Foreign Transaction Reporting Act and the regulations
4 promulgated pursuant to that act shall file a duplicate of that
5 report with the attorney general and the department of public
6 safety.

7 B. All persons engaged in a trade or business who
8 receive ten thousand dollars (\$10,000) or more in money in one
9 transaction, or who receive ten thousand dollars (\$10,000) or
10 more in money through two or more related transactions, must
11 complete and file with the attorney general the information
12 required by 26 U.S.C. Section 6050 I and regulations promulgated
13 pursuant to that section, concerning returns relating to cash
14 received in trade or business.

15 C. The timely filing of a report required by this
16 section with the appropriate federal agency shall be deemed in
17 compliance with the reporting requirements of this section,
18 provided that the person responsible for filing the report
19 arranges for the report to be promptly transmitted by the
20 federal agency to the attorney general and the department of
21 public safety.

22 D. This section does not preclude a financial
23 institution or a person engaged in a trade or business, in his
24 discretion, from instituting contact with and thereafter
25 communicating with and disclosing customer financial records to

1 appropriate state or local law enforcement agencies when the
2 financial institution or person has information that may be
3 relevant to a possible violation of any criminal statute or to
4 the evasion or attempted evasion of any reporting requirement in
5 the Money Laundering Act.

6 E. A financial institution, a person engaged in a
7 trade or business or any officer, employee or agent of either,
8 that keeps and files a record pursuant to this section or that
9 communicates or discloses information or records under
10 Subsection D of this section, shall not be liable to its
11 customer, to a state or local agency or to any person for any
12 loss or damage caused in whole or in part by the making, filing
13 or governmental use of the report or any information contained
14 therein.

15 F. The attorney general and the department of public
16 safety may report any possible violations indicated by analysis
17 of the reports required by the Money Laundering Act to any
18 appropriate law enforcement agency for use in the proper
19 discharge of its official duties. Any person who releases
20 information received pursuant to this subsection except in the
21 proper discharge of his official duties is guilty of a
22 misdemeanor.

23 G. Any person who:

24 (1) knowingly violates any provision of the
25 Money Laundering Act is guilty of a second degree felony;

1 (2) with the intent to disguise the fact that
2 money or a payment instrument is the proceeds of criminal
3 conduct; or to promote, manage, establish, carry on or
4 facilitate the promotion, management, establishment or carrying
5 on of any criminal conduct, knowingly furnishes or provides to a
6 financial institution, a person engaged in a trade or business
7 or any officer, employee, or agent thereof or to the attorney
8 general or the department of public safety any false, inaccurate
9 or incomplete information or knowingly conceals a material fact
10 in connection with a transaction for which a report is required
11 to be filed pursuant to this section is guilty of a second
12 degree felony; or

13 (3) with the intent to disguise the fact that
14 money or a payment instrument is the proceeds of criminal
15 conduct or to promote, manage, establish, carry on or facilitate
16 the promotion, management, establishment or carrying on of any
17 criminal conduct or to evade the making or filing of a report
18 required under this section or to cause the making or filing of
19 a report that contains a material omission or misstatement of
20 fact, conducts or structures a transaction or series of
21 transactions by or through one or more financial institutions or
22 persons engaged in a trade or business is guilty of a second
23 degree felony.

24 H. Notwithstanding any other provisions of law, any
25 violation of this section constitutes a separate, punishable

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1 offense as to each transaction or exemption.

2 I. Any report, record, information, analysis or
3 request obtained by the attorney general, the department of
4 public safety or agency pursuant to the Money Laundering Act is
5 not a public record as defined in Section 14-3-2 NMSA 1978 and
6 is not subject to disclosure pursuant to Subsection E Section
7 14-2-1 NMSA 1978.

8 J. Any financial institution or person required to
9 file a report required by this section shall, at the request of
10 the attorney general or the department of public safety, provide
11 the attorney general or the department of public safety with
12 access to a copy of the report during the period of time that
13 the financial institution or person is required to maintain the
14 report. "

15 Section 4. A new section of the Criminal Code is enacted
16 to read:

17 " [NEW MATERIAL] INVESTIGATIONS. --

18 A. The attorney general, any district attorney or
19 any law enforcement agency with authority to enforce the
20 Criminal Code may conduct investigations within or outside New
21 Mexico to determine if any person, corporation, partnership,
22 sole proprietorship, business, financial institution or person
23 engaged in a trade or business has failed to file a report
24 required by the Money Laundering Act or has engaged or is
25 engaging in any act, practice or transaction that constitutes a

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1 violation of that act.

2 B. All persons, corporations, partnerships, sole
3 proprietorships, businesses and financial institutions shall,
4 upon request of the attorney general, a district attorney or any
5 law enforcement agency with authority to enforce the Criminal
6 Code, make their books and records available to the attorney
7 general, district attorney or any law enforcement agency with
8 authority to enforce the Criminal Code for inspection and
9 examination in connection with an investigation pursuant to this
10 section."

11 Section 5. A new section of the Criminal Code is enacted
12 to read:

13 "[NEW MATERIAL] MONEY LAUNDERING AND ILLEGAL INVESTMENT--
14 CRIMINAL PENALTY-- CIVIL REMEDIES. --

15 A. It is unlawful for any person:

16 (1) who knows that the property involved is the
17 proceeds of some form of unlawful activity, to knowingly
18 transport, receive or acquire the property or to conduct a
19 transaction involving the property, when, in fact, the property
20 is the proceeds of specified unlawful activity;

21 (2) to make property available to another, by
22 transaction, transportation or otherwise, knowing that it is
23 intended to be used for the purpose of committing or furthering
24 the commission of a specified unlawful activity;

25 (3) knowing that the property involved in the

1 transaction is the proceeds of some form of unlawful activity,
2 to knowingly conduct a transaction that, in fact, involves
3 proceeds of specified unlawful activity, the purpose of which,
4 in whole or in part, is either to conceal or disguise the
5 nature, location, source, ownership or control of the property
6 or to avoid a transaction reporting requirement under state or
7 federal law; or

8 (4) knowing that the property involved in the
9 transaction is the proceeds of some form of unlawful activity,
10 to knowingly engage in the business of conducting, directing,
11 planning, organizing, initiating, financing, managing,
12 supervising or facilitating transactions involving property
13 that, in fact, is the proceeds of a specified unlawful activity.

14 B. A person who violates Paragraph (1), (2), (3) or
15 (4) of Subsection A of this section is guilty of a second degree
16 felony and upon conviction may be fined twice the value of the
17 property involved.

18 C. A person who violates any subsection of this
19 section is subject to civil damages of three times the value of
20 the property involved in the transaction, in addition to any
21 criminal sanction imposed.

22 D. Nothing contained in the Money Laundering Act
23 shall preclude any remedies, be they civil or criminal,
24 available under the Racketeering Act or the Controlled
25 Substances Act or by any other statute or act. Those remedies

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1 shall be in addition to and not in lieu of those provided for in
2 the Money Laundering Act.

3 E. All proceeds traceable to a violation of the
4 Money Laundering Act are subject to seizure and forfeiture
5 pursuant to Section 9, 13 or 14 of the Money Laundering Act. "

6 Section 6. A new section of the Criminal Code is enacted
7 to read:

8 "[NEW MATERIAL] JURISDICTION. --The state may commence a
9 civil in rem proceeding in the district court if the property
10 for which forfeiture is sought is within New Mexico at the time
11 of the filing of the action or a civil in personam proceeding if
12 the courts of New Mexico have in personam jurisdiction of an
13 owner of or interest holder in the property for which forfeiture
14 is sought. "

15 Section 7. A new section Criminal Code is enacted to read:

16 "[NEW MATERIAL] VENUE. --A civil action brought pursuant to
17 the Money Laundering Act may be brought in the county in which
18 the property is seized or in any county in which an owner or
19 interest holder could be civilly or criminally complained
20 against for the conduct alleged to give rise to the forfeiture
21 of the property or where the seizing agency is domiciled. "

22 Section 8. A new section of the Criminal Code is enacted
23 to read:

24 "[NEW MATERIAL] PROPERTY SUBJECT TO FORFEITURE--
25 EXEMPTIONS. --All property, including all interests in such

1 property, described in a statute providing for its forfeiture is
2 subject to forfeiture; however:

3 A. no vehicle used by any person as a common carrier
4 in the transaction of business as a common carrier may be
5 forfeited under the provisions of the Money Laundering Act
6 unless it appears that the owner or other person in charge of
7 the vehicle was a consenting party or privy to the act or
8 omission giving rise to forfeiture or knew or had reason to know
9 of it;

10 B. no vehicle may be forfeited under the provisions
11 of the Money Laundering Act for any act or omission established
12 by the owner to have been committed or omitted by a person other
13 than the owner while the vehicle was unlawfully in the
14 possession of a person other than the owner in violation of the
15 criminal laws of this state or of the United States;

16 C. no property may be forfeited pursuant to
17 Paragraph (1) or (3) of Subsection A of Section 15 of the Money
18 Laundering Act if the conduct giving rise to the forfeiture was
19 not committed for financial gain;

20 D. no owner's or interest holder's interest may be
21 forfeited under the Money Laundering Act if the owner or
22 interest holder establishes all of the following:

23 (1) he acquired the interest before or during
24 the conduct giving rise to forfeiture;

25 (2) he did not empower any person whose act or

1 omission gives rise to forfeiture with legal or equitable power
2 to convey the interest, as to a bona fide purchaser for value
3 and he was not married to any such person or if married to such
4 a person, held the property as separate property; and

5 (3) he did not know and could not reasonable
6 have known of the act or omission or that it was likely to
7 occur; and

8 E. no owner's or interest holder's interest may be
9 forfeited under the Money Laundering Act if the owner or
10 interest holder establishes all of the following:

11 (1) he acquired the interest after the conduct
12 giving rise to forfeiture;

13 (2) he is a bona fide purchaser for value not
14 knowingly taking part in an illegal transaction; and

15 (3) he was at the time of purchase and at all
16 times after the purchase and before the filing of a money
17 laundering lien notice or the filing and notice of a civil or
18 criminal proceeding relating to the property, whichever is
19 earlier, reasonably without notice of the act or omission giving
20 rise to forfeiture and reasonably without cause to believe that
21 the property was subject to forfeiture."

22 Section 9. A new section of the Criminal Code is enacted
23 to read:

24 "[NEW MATERIAL] SEIZURE OF PROPERTY. --

25 A. Property subject to forfeiture under the Money

1 Laundering Act may be seized for forfeiture by a peace officer:

2 (1) on process issued pursuant to the Rules of
3 Civil Procedure for the District Courts or the provisions of the
4 Money Laundering Act, including a seizure warrant;

5 (2) by making a seizure for forfeiture on
6 property seized on process issued pursuant to law; or

7 (3) by making a seizure for forfeiture without
8 court process if any of the following is true:

9 (a) the seizure for forfeiture is of
10 property seized incident to an arrest or search;

11 (b) the property subject to seizure for
12 forfeiture has been the subject of a prior judgment in favor of
13 New Mexico or any other state or the federal government in a
14 forfeiture proceeding; or

15 (c) the peace officer has probable cause
16 to believe that the property is subject to forfeiture.

17 B. Property subject to forfeiture under the Money
18 Laundering Act may be seized for forfeiture by placing the
19 property under constructive seizure. Constructive seizure may
20 be made by posting notice of seizure for forfeiture on the
21 property or by filing notice of seizure for forfeiture or notice
22 of pending forfeiture in any appropriate public record relating
23 to the property.

24 C. The court shall determine probable cause for
25 seizure before real property may be seized for forfeiture,

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1 unless the seizure is pursuant to a constructive seizure or the
2 filing of a money laundering lien or lis pendens. The court may
3 make its determination ex parte if the state demonstrates that
4 notice and an opportunity to appear would create a risk of harm
5 to the public safety or welfare, including the risk of physical
6 injury or the likelihood of property damage or financial loss.

7 D. The court shall determine probable cause for
8 seizure before property may be seized for forfeiture as a
9 substitute asset or pursuant to Subsection A of Section 15 of
10 the Money Laundering Act, unless the seizure is pursuant to a
11 constructive seizure or the filing of a money laundering lien or
12 lis pendens. The court may issue a seizure warrant for such
13 property if it determines that there is probable cause to
14 believe that the property is subject to forfeiture and is not
15 available for seizure for forfeiture for any reason described in
16 Subsection A of Section 15 of the Money Laundering Act. The
17 determinations shall be made ex parte unless real property is to
18 be seized and Subsection C of this section requires notice and
19 an opportunity to appear.

20 E. In establishing a preponderance of the evidence
21 or in determining probable cause for seizure and for forfeiture,
22 a rebuttable presumption exists that the property of any person
23 is subject to forfeiture if the state establishes all of the
24 following by the standard of proof applicable to that
25 proceeding:

1 (1) conduct giving rise to forfeiture occurred;

2 (2) the person acquired the property during the
3 period of the conduct giving rise to forfeiture or within a
4 reasonable time after that period; and

5 (3) there is no likely source for the property
6 other than the conduct giving rise to forfeiture.

7 F. In establishing a preponderance of the evidence
8 or in determining probable cause for seizure and for forfeiture,
9 the fact that money or any negotiable instrument was found in
10 proximity to contraband or to instrumentalities of an offense
11 gives rise to an inference that the money or instrument was the
12 proceeds of contraband or was used or intended to be used to
13 facilitate commission of the offense."

14 Section 10. A new section of the Criminal Code is enacted
15 to read:

16 "[NEW MATERIAL] POWERS AND DUTIES OF PEACE OFFICERS AND
17 AGENCIES. --

18 A. In the event of a seizure for forfeiture under
19 Section 9 of the Money Laundering Act, the property is not
20 subject to replevin, conveyance, sequestration or attachment,
21 but is deemed to be in the custody of the law enforcement agency
22 making the seizure for forfeiture. The seizing agency or the
23 attorney for the state may authorize the release of the seizure
24 for forfeiture of the property if forfeiture or retention is
25 unnecessary, may transfer the property to any other state or

1 federal agency or may transfer the action to another attorney
2 for the state by discontinuing forfeiture proceedings in favor
3 of forfeiture proceedings initiated by the other agency or
4 attorney. An action pursuant to the Money Laundering Act shall
5 be consolidated with any other action or proceeding relating to
6 the same property on motion by the attorney for the state in
7 either action.

8 B. If property is seized for forfeiture under
9 Section 9 of the Money Laundering Act, pending forfeiture and
10 final disposition, the seizing agency may do any of the
11 following:

12 (1) remove the property to a storage area for
13 safekeeping or, if the property is a negotiable instrument or
14 money, deposit it in an interest-bearing account;

15 (2) remove the property to a place designated
16 by the court; or

17 (3) provide for another custodian or agency to
18 take custody of the property and remove it to an appropriate
19 location within the jurisdiction of the court.

20 C. A person who acts in good faith and in a
21 reasonable manner to comply with an order of the court or a
22 request of a peace officer is not liable to any person for acts
23 done in compliance with the order or request.

24 D. A possessory lien of a person from whose
25 possession property is seized is not affected by the seizure."

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1 Section 11. A new section of the Criminal Code is enacted
2 to read:

3 " [NEW MATERIAL] COMMENCEMENT OF PROCEEDINGS. --

4 A. If the state fails to initiate forfeiture
5 proceedings against property seized for forfeiture by filing a
6 complaint, pursuant to Section 13 or 14 of the Money Laundering
7 Act, within sixty days after seizure or notice of seizure
8 forfeiture, whichever is later, such property shall be released
9 from its seizure for forfeiture on the request of an owner or
10 interest holder, pending further proceedings pursuant to the
11 Money Laundering Act, which shall be commenced within seven
12 years after actual discovery of the last act giving rise to
13 forfeiture.

14 B. If the property sought to be forfeited is real
15 property, including fixtures, the attorney for the state may
16 file a lis pendens or a notice of pending forfeiture with
17 respect to the property with the county recorder of the county
18 in which the property is located, in addition to any lien
19 provided by law, without a filing fee or other charge. "

20 Section 12. A new section of the Criminal Code is enacted
21 to read:

22 " [NEW MATERIAL] JUDICIAL FORFEITURE PROCEEDINGS--
23 GENERAL. --

24 A. In any proceeding pursuant to the Money
25 Laundering Act, the court, on application of the state, may

1 enter any restraining order or injunction, require the execution
2 of satisfactory performance bonds, create receiverships, appoint
3 conservators, appraisers, accountants or trustees or take any
4 other action to seize, secure, maintain or preserve the
5 availability of property subject to forfeiture, including a
6 warrant or order for its seizure, whether prior or subsequent to
7 the filing of a notice of seizure, notice of pending forfeiture
8 or complaint.

9 B. If property is seized for forfeiture without a
10 prior judicial determination of probable cause, an order of
11 forfeiture or a hearing pursuant to Subsection D of Section 14
12 of the Money Laundering Act, the court, on an application filed
13 by an owner of or interest holder in the property within thirty
14 days after notice of its seizure for forfeiture or actual
15 knowledge of it, whichever is earlier, may issue an order to
16 show cause to the seizing agency for a hearing on the sole issue
17 of whether probable cause for forfeiture of the property then
18 exists. Notice of the order to show cause hearing must be
19 served upon the attorney for the state at least five working
20 days before the hearing is held. If the court finds that no
21 probable cause for forfeiture of the property then exists or if
22 the state elects not to contest the issue, the property seized
23 for forfeiture from the applicant shall be released to the
24 custody of the applicant pending the outcome of a judicial
25 proceeding pursuant to the Money Laundering Act. If the court

1 finds that probable cause for the forfeiture of the property
2 then exists, the court shall not order the property released.

3 C. A defendant convicted in any criminal proceeding
4 shall be precluded from subsequently denying the essential
5 allegations of the criminal offense of which he was convicted in
6 any proceeding pursuant to the Money Laundering Act. For the
7 purposes of that act, a conviction may result from a verdict or
8 pleas including a no contest plea.

9 D. In any judicial forfeiture hearing, determination
10 or other proceeding pursuant to the Money Laundering Act, the
11 applicant, petitioner or claimant must establish by a
12 preponderance of the evidence that he is an owner of or interest
13 holder in the property seized for forfeiture before other
14 evidence is taken. The burden of proving the standing of the
15 claimant and the existence of the exemption is on the claimant
16 or party raising the claim, and it is not necessary to negate
17 the standing of any claimant or the existence of any exemption
18 in any notice, application, complaint or other pleading.

19 E. In hearings and determinations pursuant to the
20 Money Laundering Act:

21 (1) the law of evidence relating to civil
22 actions applies equally to all parties, including the state, an
23 applicant, a petitioner, a claimant and a defendant, on all
24 issues required to be established by a preponderance of the
25 evidence; and

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1 (2) the court shall receive and consider, in
2 making any determination of probable cause or reasonable cause,
3 all evidence and information that would be permissible in
4 determining probable cause at a preliminary hearing, at a grand
5 jury or by a magistrate, together with inferences from the
6 evidence and information.

7 F. All property, including all interests in such
8 property, declared forfeited vests in this state on the
9 commission of the act or omission giving rise to forfeiture,
10 together with the proceeds of the property after such time. Any
11 such property or proceeds subsequently transferred to any person
12 are subject to forfeiture and thereafter shall be ordered
13 forfeited unless the transferee claims and establishes in a
14 hearing the showings set out in Section 8 of the Money
15 Laundering Act.

16 G. The court may order a sale or any other
17 disposition of the property if the property may perish, waste,
18 be foreclosed on or otherwise be significantly reduced in value
19 or if the expenses of maintaining the property are or will
20 become greater than its fair market value. If the court orders
21 a sale, the court shall designate a third party or state
22 property manager to dispose of the property by public sale or
23 other commercially reasonable method and shall distribute the
24 proceeds in the following order of priority:

25 (1) payment of reasonable expenses incurred in

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1 connection with the sale;

2 (2) satisfaction of exempt interests in the
3 order of their priority; and

4 (3) preservation of the balance, if any, in the
5 actual or constructive custody of the court in an interest
6 bearing account, subject to further proceedings under the Money
7 Laundering Act.

8 H. No person claiming to be an owner of or interest
9 holder in property seized for forfeiture under the Money
10 Laundering Act may commence or maintain any action against the
11 state concerning the validity of the alleged interest other than
12 as provided in that act."

13 Section 13. A new section of the Criminal Code is enacted
14 to read:

15 "[NEW MATERIAL] JUDICIAL IN REM FORFEITURE PROCEEDINGS. --

16 A. If a forfeiture is authorized by law, it shall be
17 ordered by a court on an action in rem brought by the state
18 pursuant to a complaint for forfeiture. The state may serve the
19 complaint in the manner provided by the Rules of Civil Procedure
20 for the District Courts.

21 B. A civil in rem action may be brought by the state
22 in addition to or in lieu of the civil in personam forfeiture
23 procedures set forth in Sections 14 and 15 of the Money
24 Laundering Act. Judicial in rem forfeiture proceedings are in
25 the nature of an action in rem and are governed by the Rules of

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1 Civil Procedure for the District Courts. "

2 Section 14. A new section of the Criminal Code is enacted
3 to read:

4 " [NEW MATERIAL] JUDICIAL IN PERSONAM FORFEITURE
5 PROCEEDINGS. - -

6 A. If a forfeiture is authorized by law, it shall be
7 ordered by a court on proceedings by the state in an in personam
8 civil action.

9 B. In any proceedings pursuant to this section, the
10 court, on application of the state, may enter any order
11 authorized by Subsection A of Section 12 of the Money Laundering
12 Act or take any other action to seize, secure, maintain or
13 preserve the availability of property subject to forfeiture,
14 including a warrant for its seizure, whether before or after the
15 filing of a complaint, indictment or information.

16 C. Notwithstanding the provisions of Subsection D of
17 this section, a temporary restraining order may be entered on
18 application of the state without notice or an opportunity for a
19 hearing if the state demonstrates both that:

20 (1) there is probable cause to believe that the
21 property with respect to which the order is sought would, in the
22 event of final judgment or conviction, be subject to forfeiture;
23 and

24 (2) provision of notice will jeopardize the
25 availability of the property for forfeiture. A temporary

1 restraining order expires within ten days after the date on
2 which it is entered unless the party against whom it is entered
3 consents to an extension for a longer period or unless after
4 commencing a hearing the court enters or is considering a
5 preliminary injunction.

6 D. Notice of the entry of the restraining order and
7 an opportunity for a hearing shall be afforded to persons known
8 to have an interest in the property, whether or not a temporary
9 restraining order is entered without notice. The hearing,
10 however, is limited to the issues of whether both:

11 (1) there is a probability that the state will
12 prevail on the issue of forfeiture and that failure to enter the
13 order will result in the property being destroyed, conveyed,
14 encumbered or further encumbered, removed from the jurisdiction
15 of the court, concealed or otherwise made unavailable for
16 forfeiture; and

17 (2) the need to preserve the availability of
18 property through the entry of the requested order outweighs the
19 hardship on any owner, interest holder or defendant against whom
20 the order is to be entered.

21 E. The filing of the order of forfeiture in the
22 appropriate public records perfects the interest of the state in
23 the property described in the order as of the earlier of the
24 date of the act or omission giving rise to forfeiture or the
25 date that a notice of seizure for forfeiture or notice of

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1 pending forfeiture or money laundering lien was first filed in
2 the records, which entitles the state to all rights of a secured
3 party as to that property in addition to any other rights or
4 remedies of the state in relation to the property. Any income
5 accruing to, or derived from, an enterprise or any interest in
6 an enterprise or other property interest that is forfeited is
7 also forfeited from the time of the conduct giving rise to
8 forfeiture. It may be used pending procedures subsequent to a
9 verdict or finding of liability to offset ordinary and necessary
10 expenses of the enterprise or property as required by law or
11 that are necessary to protect the interests of New Mexico or a
12 political subdivision of the state. "

13 Section 15. A new section of the Criminal Code is enacted
14 to read:

15 " [NEW MATERIAL] SUPPLEMENTAL REMEDIES. --

16 A. The court shall order the forfeiture of any other
17 property of a claimant or an in personam civil defendant up to
18 the value of the claimant's or defendant's property that the
19 court finds is subject to forfeiture if any of the following
20 circumstances apply to the property:

- 21 (1) it cannot be located;
- 22 (2) it has been transferred or conveyed to,
23 sold to or deposited with a third party;
- 24 (3) it has been placed beyond the jurisdiction
25 of the court;

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1 (4) it has been substantially diminished in
2 value by any act or omission of the defendant;

3 (5) it has been commingled with other property
4 that cannot be divided without difficulty; or

5 (6) it is subject to any interest that is
6 exempt from forfeiture.

7 B. In addition to any other remedy provided for by
8 law, if property subject to forfeiture is conveyed, alienated,
9 encumbered, disposed of, received, removed from the jurisdiction
10 of the court, concealed or otherwise rendered unavailable for
11 forfeiture after the filing of a money laundering lien notice or
12 provision of notice of pending forfeiture or after the filing
13 and notice of a civil proceeding alleging forfeiture under the
14 Money Laundering Act, whichever is earlier, the state may
15 institute an action in district court against the person named
16 in the money laundering lien or notice of pending forfeiture or
17 the defendant in the civil proceeding in an amount equal to the
18 fair market value of the property, together with reasonable
19 investigative expenses and attorney fees. If a civil proceeding
20 under the Money Laundering Act is pending, the action shall be
21 filed only in the court where the civil proceeding is pending.

22 C. This section does not limit the right of the
23 state to obtain any order or injunction, receivership, writ,
24 attachment, garnishment or other remedy authorized under this
25 title or appropriate to protect the interests of the state or

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1 available under other applicable law. "

2 Section 16. A new section of the Criminal Code is enacted
3 to read:

4 " [NEW MATERIAL] DISPOSITION BY COURT. --

5 A. After the court's disposition of all claims
6 timely filed under the Money Laundering Act, the state has clear
7 title to the forfeited property and the court shall so order.
8 Title to the forfeited property and its proceeds is deemed to
9 have vested in the state on the commission of the act or
10 omission giving rise to the forfeiture.

11 B. On entry of judgment for a claimant in any
12 proceeding to forfeit property under the Money Laundering Act,
13 such property or interest in property shall be returned or
14 conveyed to the claimant designated by the court. If it appears
15 that there was reasonable cause for the seizure for forfeiture
16 or for the filing of the notice of pending forfeiture or
17 complaint, the court shall cause a finding to be entered, and
18 the claimant is not, in such case, entitled to costs, nor is the
19 person or seizing agent that made the seizure, nor is the
20 attorney for the state liable to suit or judgment on account of
21 such seizure, suit or prosecution. "

22 Section 17. A new section of the Criminal Code is enacted
23 to read:

24 " [NEW MATERIAL] ALLOCATION OF FORFEITED PROPERTY. --

25 A. Any property, including all interests in

1 property, forfeited to the state shall be transferred as
2 requested by the attorney for the state to the seizing agency or
3 to the agency or political subdivision employing the attorney
4 for the state, which may do any of the following:

5 (1) sell, lease, lend or transfer the property
6 to any local or state government entity or agency or political
7 subdivision, law enforcement agency or prosecutorial agency or
8 any federal law enforcement agency that operates within the
9 state for official federal, state or political subdivision use
10 within the state, with expenses for keeping and transferring
11 such property to be paid by the recipient;

12 (2) sell forfeited property by public or
13 otherwise commercially reasonable sale with expenses of keeping
14 and selling the property and the amount of all valid interests
15 established by claimants paid out of the proceeds of the sale
16 with the balance paid into the anti-money laundering fund of the
17 state or of the county in which the political subdivision
18 seizing the property or prosecuting the action is located;

19 (3) destroy or use for investigative purposes
20 any illegal or controlled substances or other contraband at any
21 time more than twenty days after seizure, on written approval of
22 the district court, preserving only such material as may be
23 necessary for evidence;

24 (4) sell, use or destroy all raw materials,
25 products and equipment of any kind used or intended for use in

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1 manufacturing, compounding or processing a controlled substance;

2 (5) compromise and pay claims against property
3 forfeited pursuant to any provision of this section; or

4 (6) make any other disposition of forfeited
5 property authorized by law for the disposition of property of
6 the state, government entity, agency or political subdivision.

7 B. Notwithstanding the provisions of Subsection A of
8 this section or any other provision of law to the contrary:

9 (1) if the property forfeited is money, and a
10 law enforcement agency can specifically identify money as being
11 from its investigative funds or as being exchanged for property
12 from its investigative property, the money shall be remitted to
13 the investigative fund. If there is additional forfeited money
14 or money tendered on satisfaction by an interest holder that
15 cannot be specifically identified, the court shall order the
16 money returned to each law enforcement agency that makes a
17 showing of costs or expenses that it incurred in connection with
18 the investigation and prosecution of the matter and shall order
19 all excess money remaining after such returns deposited in the
20 anti-money laundering fund of this state or of the county in
21 which the political subdivision seizing the money or prosecuting
22 the action is located; or

23 (2) if the property declared forfeited is an
24 interest in a vehicle, the court shall order it forfeited to the
25 local, state or other law enforcement agency seizing the vehicle

1 for forfeiture or to the seizing agency.

2 C. Money in any anti-money laundering fund may be
3 used, in addition to any other lawful use, for:

4 (1) the payment of any expenses necessary to
5 seize, detain, appraise, inventory, protect, maintain, preserve
6 the availability of, advertise or sell property that is subject
7 to forfeiture and that is seized, detained or forfeited or of
8 any other necessary expenses incident to the seizure, detention,
9 preservation or forfeiture of the property. The payments may
10 include payments for contract services and payments to reimburse
11 any federal, state or local agency for any expenditures made to
12 perform the functions of the seizing agency; or

13 (2) the payment of awards for information or
14 assistance leading to a civil or criminal proceeding. "

15 Section 18. Section 30-42-3 NMSA 1978 (being Laws 1980,
16 Chapter 40, Section 3, as amended) is amended to read:

17 "30-42-3. DEFINITIONS. --As used in the Racketeering Act:

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

22 (1) murder, as provided in Section 30-2-1 NMSA
23 1978;

24 (2) robbery, as provided in Section 30-16-2
25 NMSA 1978;

- 1 (3) kidnapping, as provided in Section 30-4-1
2 NMSA 1978;
- 3 (4) forgery, as provided in Section 30-16-10
4 NMSA 1978;
- 5 (5) larceny, as provided in Section 30-16-1
6 NMSA 1978;
- 7 (6) fraud, as provided in Section 30-16-6 NMSA
8 1978;
- 9 (7) embezzlement, as provided in Section
10 30-16-8 NMSA 1978;
- 11 (8) receiving stolen property, as provided in
12 Section 30-16-11 NMSA 1978;
- 13 (9) bribery, as provided in Sections 30-24-1
14 through 30-24-3 NMSA 1978;
- 15 (10) gambling, as provided in Sections 30-19-3,
16 30-19-13 and 30-19-15 NMSA 1978;
- 17 (11) illegal kickbacks, as provided in Sections
18 30-41-1 and 30-41-2 NMSA 1978;
- 19 (12) extortion, as provided in Section 30-16-9
20 NMSA 1978;
- 21 (13) trafficking in controlled substances, as
22 provided in Section 30-31-20 NMSA 1978;
- 23 (14) arson and aggravated arson, as provided in
24 Subsection A of Section 30-17-5 and Section 30-17-6 NMSA 1978;
- 25 (15) promoting prostitution, as provided in

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1 Section 30-9-4 NMSA 1978;
2 (16) criminal solicitation, as provided in
3 Section 30-28-3 NMSA 1978;
4 (17) fraudulent securities practices, as
5 provided in the New Mexico Securities Act of 1986;
6 (18) loan sharking, as provided in Sections
7 30-43-1 through 30-43-5 NMSA 1978; ~~and~~
8 (19) distribution of controlled substances or
9 controlled substance ~~analogues~~ analogs as provided for in
10 Sections 30-31-21 and 30-31-22 NMSA 1978; and
11 (20) money laundering as provided in the Money
12 Laundering Act:
13 B. "person" ~~includes~~ means any individual or
14 entity capable of holding a legal or beneficial interest in
15 property;
16 C. "enterprise" means any sole proprietorship,
17 partnership, corporation, business, labor union, association or
18 other legal entity or any group of individuals associated in
19 fact although not a legal entity and includes illicit as well as
20 licit entities; and
21 D. "pattern of racketeering activity" means engaging
22 in at least two incidents of racketeering with the intent of
23 accomplishing any of the prohibited activities set forth in
24 Subsections A through D of Section 30-42-4 NMSA 1978; provided
25 at least one of ~~such~~ the incidents occurred after the

1 effective date of the Racketeering Act and the last ~~[of which]~~
2 incident occurred within five years after the commission of a
3 prior incident of racketeering. "

4 Section 19. SEVERABILITY. -- If any part or application of
5 this act is held invalid, the remainder or its application to
6 other situations or persons shall not be affected.

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