

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO FORFEITURES; MODIFYING THE DISPOSITION OF FORFEITED
PROPERTY.

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

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

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

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

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

A. Unless possession of the property is illegal or
a different disposition is specifically provided for by law and
except as provided in Subsection C of this section, forfeited

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 property, if it is not currency, shall be sold at public sale
2 by the law enforcement agency in possession of the property.
3 Forfeited currency and all sale proceeds of the sale of
4 forfeited property shall be distributed:

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

7 (2) second, [~~any remaining balance~~] to pay
8 restitution to or on behalf of victims, if any, of the crime
9 related to the forfeiture; [~~and~~]

10 (3) third, [~~any remaining balance to the~~
11 ~~general fund of the governing body of~~] up to sixty-five percent
12 of forfeited currency or proceeds of any sale, to the seizing
13 law enforcement agency or agencies to be used for drug abuse
14 treatment services, for drug prevention and education programs,
15 for other substance abuse demand-reduction initiatives or for
16 enforcing [~~narcotics~~] criminal law violations, except:

17 (a) for [~~forfeitures~~] forfeiture of
18 property arising from Chapter 17 NMSA 1978, [~~the~~] payment shall
19 be made as provided in Paragraphs (1) and (2) of this
20 subsection and any remaining balance shall be deposited in the
21 game protection fund in an amount equal to the expenditures to
22 prosecute the forfeiture and the crime, with the net balance to
23 be deposited in the general fund; and

24 (b) for forfeiture of property arising
25 from Chapter 18, Article 6 NMSA 1978, [~~the~~] payment shall be

.190325.1SA

underscored material = new
[bracketed material] = delete

1 made as provided in Paragraphs (1) and (2) of this subsection
2 and any remaining balance shall be used for the restoration,
3 stabilization, protection and preservation of the affected
4 cultural property, with the net balance to be deposited in the
5 general fund; and

6 (4) fourth, any remaining balance to the
7 general fund of the governing body of the seizing law
8 enforcement agency to be used for community investment,
9 including youth programs, programs for the elderly, community
10 centers and parks.

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

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

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

.190325.1SA

underscored material = new
[bracketed material] = delete

1 Paragraphs (1) through [~~(3)~~] (4) of Subsection A of this
2 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. EFFECTIVE DATE.**--The effective date of the
24 provisions of this act is July 1, 2013.