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HOUSE BILL 263

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

James R.J. Strickler

AN ACT

RELATING TO FORFEITURES; PROVIDING FOR SEIZURE AND FORFEITURE OF A MOTOR VEHICLE DRIVEN BY A PERSON WHOSE DRIVER'S LICENSE IS REVOKED FOR DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING SEIZURE OF A MOTOR VEHICLE UPON ARREST FOR DWI WHEN THE DRIVER HAS TWO PRIOR DWI CONVICTIONS; PROVIDING FOR THE FORFEITURE OF THE VEHICLE; REMOVING RESTRICTIONS ON HOW LOCAL GOVERNMENTS MAY USE PROCEEDS 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, .184238.1

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1 Chapter 4, Section 7) is amended to read:

2 "31-27-7. DISPOSITION OF FORFEITED PROPERTY.--

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

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

12 (2) second, any remaining balance to pay  
13 restitution to or on behalf of victims, if any, of the crime  
14 related to the forfeiture; and

15 (3) third, any remaining balance to the  
16 general fund of the governing body of the seizing law  
17 enforcement agency [~~to be used for drug abuse treatment~~  
18 ~~services, for drug prevention and education programs, for other~~  
19 ~~substance abuse demand-reduction initiatives or for enforcing~~  
20 ~~narcotics law violations~~], except:

21 (a) for [~~forfeitures~~] forfeiture of  
22 property arising from Chapter 17 NMSA 1978, the balance shall  
23 be deposited in the game protection fund in an amount equal to  
24 the expenditures to prosecute the forfeiture and the crime,  
25 with the net balance to be deposited in the general fund; and

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1 (b) for forfeiture of property arising  
2 from Chapter 18, Article 6 NMSA 1978, the balance shall be used  
3 for the restoration, stabilization, protection and preservation  
4 of the affected cultural property, with the net balance to be  
5 deposited in the general fund.

6 B. ~~Any~~ A property interest forfeited to the state  
7 and disposed of pursuant to the Forfeiture Act is subject to  
8 the interest of a secured party unless, at the forfeiture  
9 proceeding, the state proves by clear and convincing evidence  
10 that the secured party knew or should have known of the crime.

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

17 (1) the co-owner not convicted of the crime  
18 may buy the forfeited interest from the law enforcement agency  
19 at a private sale for the fair market value. Proceeds received  
20 by the state from the sale shall be disposed of pursuant to  
21 Paragraphs (1) through (3) of Subsection A of this section;

22 (2) the law enforcement agency shall sell the  
23 entire ownership interest at a public sale pursuant to  
24 Subsection A of this section, except that the proceeds shall  
25 first be used to purchase the ownership interest, at fair

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1 market value, of the co-owner not convicted of the crime; or

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

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

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

19 "66-5-39. DRIVING WHILE LICENSE SUSPENDED OR REVOKED--  
20 PROVIDING PENALTIES.--

21 A. Any person who drives a motor vehicle on any  
22 public highway of this state at a time when [~~his~~] the person's  
23 privilege to do so is suspended or revoked and who knows or  
24 should have known that [~~his~~] the person's license was suspended  
25 or revoked is guilty of a misdemeanor and shall be charged with

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1 a violation of this section. Upon conviction, the person shall  
2 be punished, notwithstanding the provisions of Section 31-18-13  
3 NMSA 1978, by imprisonment for not less than four days or more  
4 than three hundred sixty-four days or participation for an  
5 equivalent period of time in a certified alternative sentencing  
6 program, and there may be imposed in addition a fine of not  
7 more than one thousand dollars (\$1,000). When a person pays  
8 any or all of the cost of participating in a certified  
9 alternative sentencing program, the court may apply that  
10 payment as a deduction to any fine imposed by the court.  
11 Notwithstanding any other provision of law for suspension or  
12 deferment of execution of a sentence, if the person's privilege  
13 to drive was revoked for driving while under the influence of  
14 intoxicating liquor or drugs or a violation of the Implied  
15 Consent Act, upon conviction under this section, that person  
16 shall be punished by imprisonment for not less than seven  
17 consecutive days and shall be fined not less than three hundred  
18 dollars (\$300) or not more than one thousand dollars (\$1,000)  
19 and the fine and imprisonment shall not be suspended, deferred  
20 or taken under advisement. No other disposition by plea of  
21 guilty to any other charge in satisfaction of a charge under  
22 this section shall be authorized if the person's privilege to  
23 drive was revoked for driving while under the influence of  
24 intoxicating liquor or drugs or a violation of the Implied  
25 Consent Act. Any municipal ordinance prohibiting driving with

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1 a suspended or revoked license shall provide penalties no less  
2 stringent than provided in this section.

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

11 C. Except for a person whose license was revoked  
12 for driving under the influence of intoxicating liquor or drugs  
13 or for a violation of the Implied Consent Act, when a person is  
14 convicted pursuant to the provisions of this section or a  
15 municipal ordinance that prohibits driving on a suspended or  
16 revoked license, the motor vehicle that the person was driving  
17 shall be immobilized by an immobilization device for thirty  
18 days, unless immobilization of the motor vehicle poses an  
19 imminent danger to the health, safety or employment of the  
20 convicted person's immediate family or the family of the owner  
21 of the motor vehicle. The convicted person shall bear the cost  
22 of immobilizing the motor vehicle.

23 ~~[G.]~~ D. The division, upon receiving a record of  
24 the conviction of any person under this section upon a charge  
25 of driving a vehicle while the license of the person was

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1 suspended, shall extend the period of suspension for an  
2 additional like period, and if the conviction was upon a charge  
3 of driving while a license was revoked, the division shall not  
4 issue a new license for an additional period of one year from  
5 the date the person would otherwise have been entitled to apply  
6 for a new license."

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

9 "[NEW MATERIAL] SEIZURE OF MOTOR VEHICLE UPON ARREST OF  
10 PERSON TWICE CONVICTED OF DRIVING UNDER THE INFLUENCE OF  
11 INTOXICATING LIQUOR OR DRUGS--FORFEITURE OF VEHICLE.--A law  
12 enforcement officer who arrests a person for driving under the  
13 influence of intoxicating liquor or drugs shall seize the motor  
14 vehicle that the person was driving if the person has two  
15 convictions for driving under the influence of intoxicating  
16 liquor or drugs pursuant to state, federal or tribal law or a  
17 municipal ordinance, regardless of whether the person's  
18 sentence was suspended or deferred. The vehicle seized shall  
19 be subject to forfeiture pursuant to the provisions of the  
20 Forfeiture Act."

21 SECTION 5. EFFECTIVE DATE.--The effective date of the  
22 provisions of this act is July 1, 2011.