

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 160

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

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; MODIFYING 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,
Chapter 4, Section 7) is amended to read:

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

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underscored material = new
[bracketed material] = delete

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

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

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

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

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

24 (b) for forfeiture of property arising
25 from Chapter 18, Article 6 NMSA 1978, the balance shall be used

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underscoring material = new
~~[bracketed material] = delete~~

1 for the restoration, stabilization, protection and preservation
2 of the affected cultural property, with the net balance to be
3 deposited in the general fund.

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

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

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

20 (2) the law enforcement agency shall sell the
21 entire ownership interest at a public sale pursuant to
22 Subsection A of this section, except that the proceeds shall
23 first be used to purchase the ownership interest, at fair
24 market value, of the co-owner not convicted of the crime; or

25 (3) the law enforcement agency shall sell only

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1 the forfeited interest at a public sale pursuant to Subsection
2 A of this section and the purchaser [~~becomes~~] will become a co-
3 owner with the co-owner not convicted of the crime.

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

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

17 "66-5-39. DRIVING WHILE LICENSE SUSPENDED OR REVOKED--
18 PROVIDING PENALTIES.--

19 A. Any person who drives a motor vehicle on any
20 public highway of this state at a time when [~~his~~] the person's
21 privilege to do so is suspended or revoked and who knows or
22 should have known that [~~his~~] the person's license was suspended
23 or revoked is guilty of a misdemeanor and shall be charged with
24 a violation of this section. Upon conviction, the person shall
25 be punished, notwithstanding the provisions of Section 31-18-13

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

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

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

22 ~~[G.]~~ D. The division, upon receiving a record of
23 the conviction of any person under this section upon a charge
24 of driving a vehicle while the license of the person was
25 suspended, shall extend the period of suspension for an

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

6 SECTION 4. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2012.

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