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SENATE BILL 379

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

INTRODUCED BY

CISCO MCSORLEY

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO FORFEITURE OF PROPERTY; ENACTING THE FORFEITURE ACT;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN
APPROPRIATION.

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 12 of
this act may be cited as the "Forfeiture Act". "

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

"[NEW MATERIAL] PURPOSE OF ACT. -- The purpose of the
Forfeiture Act is to provide uniform standards and procedures
for law enforcement officers and agencies for the seizure and
forfeiture of property used or intended to be used in the

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1 commission of a crime. "

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

4 "[NEW MATERIAL] DEFINITIONS. -- As used in the Forfeiture
5 Act:

6 A. "conviction" means a final adjudication of guilt
7 by a district or magistrate court or, if the court decision is
8 appealed, a final adjudication of guilt by an appellate court;

9 B. "crime" means an offense punishable by
10 imprisonment for one year or more, a violation of laws or
11 regulations regarding hunting or fishing or a violation of laws
12 regarding gambling;

13 C. "law enforcement officer" means a state or
14 municipal police officer, county sheriff, deputy sheriff,
15 conservation officer, motor transportation enforcement officer
16 or other state employee authorized by state law to enforce
17 criminal statutes; provided that "law enforcement officer" does
18 not include correctional officers;

19 D. "owner" means an individual who possesses a legal
20 or equitable ownership in property or, if title to the property
21 is held in the name of a partnership, trust, corporation or
22 other legal entity, an individual who possesses a substantial
23 legal or equitable ownership interest in the partnership, trust,
24 corporation or other legal entity; and

25 E. "property" means tangible or intangible personal

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1 property, real property or an interest in tangible or intangible
2 personal property or real property. "

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

5 "[NEW MATERIAL] FORFEITURE REQUIREMENTS. --

6 A. A judgment for the forfeiture of property shall
7 be entered only upon:

8 (1) conviction of an owner of the property for
9 a crime related to the forfeiture; provided that a forfeiture
10 proceeding may be commenced prior to the conclusion of the
11 criminal prosecution in the trial court; and

12 (2) proof by clear and convincing evidence that
13 the property is forfeitable under state law and that a person
14 convicted of a crime related to the forfeiture is an owner of
15 the property.

16 B. The value of the property forfeited shall not
17 unreasonably exceed the pecuniary gain derived or sought to be
18 derived by the crime, the pecuniary loss caused or sought to be
19 caused by the crime or the value of the convicted owner's
20 interest in the property. "

21 Section 5. A new section of the Criminal Code is enacted
22 to read:

23 "[NEW MATERIAL] SEIZURE-- COURT ORDER-- EXCEPTIONS. --

24 A. Property subject to forfeiture may be seized by a
25 law enforcement officer upon an order issued by the district

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1 court having jurisdiction.

2 B. The court may issue an order pursuant to
3 Subsection A of this section if it determines that:

4 (1) there is a substantial probability that the
5 state will prevail on the issue of forfeiture and that failure
6 to enter the order will result in the property's being
7 destroyed, removed from the jurisdiction of the court or
8 otherwise made unavailable for forfeiture; and

9 (2) the need to preserve the availability of
10 the property through the entry of the requested order outweighs
11 the hardship to a party of interest.

12 C. A seizure of property other than a residence or
13 business may be made without a court order when:

14 (1) the seizure is incident to an arrest or a
15 search pursuant to a search warrant or an inspection pursuant to
16 an administrative inspection warrant;

17 (2) the property subject to seizure has been
18 the subject of a prior judgment in favor of the state or a
19 political subdivision in a criminal injunction or forfeiture
20 proceeding;

21 (3) there is probable cause to believe that the
22 property is directly or indirectly dangerous to health or
23 safety; or

24 (4) there is probable cause to believe that the
25 property is forfeitable under state law and that the delay

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1 occasioned by the need to secure an order will frustrate the
2 seizure; provided, however, that a law enforcement agency making
3 a seizure pursuant to this paragraph shall, within ten days of
4 the seizure, apply for an order pursuant to Subsection A of this
5 section; and provided further that the property shall be
6 released to the owner immediately if the order is denied. The
7 law enforcement agency making the seizure shall make a
8 reasonable effort to notify the person from whom the property
9 was seized of the location, date and time of the hearing on the
10 application for an order allowing seizure, so the person has a
11 reasonable opportunity to appear at the hearing and oppose the
12 order.

13 D. The seizure of a residence or business shall
14 occur only after a pre-seizure hearing, with notice provided in
15 accordance with the provisions of Section 6 of the Forfeiture
16 Act.

17 E. The owner shall be given a receipt whenever
18 practicable for the property seized. "

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

21 " [NEW MATERIAL] SEIZURE--NOTICE--CLAIMS. --

22 A. All forfeiture proceedings shall be brought in
23 the name of the state. All forfeiture proceedings shall be
24 initiated in district court in the county in which the property
25 was seized; provided that, for good cause shown upon application

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1 of any interested party, the court may consolidate proceedings
2 filed in different counties or allow transfer of proceedings to
3 another county.

4 B. All forfeiture proceedings shall be initiated by
5 the issuance of a notice of pending forfeiture by the
6 prosecuting attorney. The notice shall be issued within twenty
7 days from the date the property was seized. The notice shall
8 include a description of the property sought to be forfeited,
9 the date and place of the seizure of the property, the name and
10 address of the seizing law enforcement agency, the reason the
11 property is alleged to be forfeitable, a summary of the
12 procedures and the procedural rights applicable to the
13 forfeiture action and a notification alerting a trustee of the
14 state's obligations under the Forfeiture Act.

15 C. The notice shall be given to the person from whom
16 the property was seized and to each owner and secured interest
17 holder and is effective upon personal service.

18 D. If personal service of the notice is not possible
19 after good-faith attempts at all known residences and places of
20 business, the seizing law enforcement agency shall publish a
21 notice of pending forfeiture, including a list of seized
22 property, in five consecutive editions of a newspaper of general
23 circulation in the county in which the property has been seized.
24 The notice shall include a statement of the rights of an owner
25 or secured interest holder to claim return of the property.

1 E. Any person claiming seized property shall file
2 with the seizing law enforcement agency a claim stating his
3 interest in the property. All claims shall be filed within
4 sixty days of the date of personal service on the claimant of
5 the notice of pending forfeiture or, if personal service was not
6 effected, within sixty days of the last date of publication in
7 the newspaper of the notice of seizure.

8 F. Within twenty days of receipt by a seizing law
9 enforcement agency of any claim to property, a complaint seeking
10 forfeiture of the property shall be filed in district court, and
11 copies of the complaint shall be served on all claimants. If
12 additional claims to the property are made in a timely manner
13 after the complaint is filed, those additional claimants shall
14 be made parties to the action by amendment of the complaint.
15 The Rules of Civil Procedure for the District Courts shall apply
16 to all forfeiture proceedings. The district court shall
17 determine the extent and priority of interest for all claimants
18 to property.

19 G. No bond of any kind shall be required as a
20 prerequisite to making a claim for the return of seized
21 property.

22 H. Reasonable attorney fees and costs shall be
23 awarded to a claimant who prevails in a forfeiture proceeding.
24 The attorneys' fees and costs shall be paid by the seizing law
25 enforcement agency.

1 I. If there is opposition to the forfeiture, the
2 claimant shall have the right to a jury trial in determining the
3 propriety of a forfeiture of any property valued in excess of
4 ten thousand dollars (\$10,000).

5 J. If the owner of the seized property is
6 financially unable to obtain representation of counsel, the
7 court may appoint appropriate counsel to represent that person
8 with respect to the claim. The court shall set compensation for
9 that representation as appropriate. Compensation for appointed
10 counsel shall be paid by the seizing law enforcement agency.

11 K. The district court shall file a decision
12 regarding a forfeiture complaint within sixty days of the filing
13 of an answer by a claimant or, if there is more than one
14 claimant, within sixty days of the filing of an answer by the
15 last claimant. The sixty-day time limitation may be extended by
16 consent of the parties or by the district court for good cause
17 shown. Good cause includes the pendency of related criminal
18 proceedings. Upon agreement of the parties, the court may
19 render a decision regarding whether and to what extent the
20 property is forfeitable prior to the time that related criminal
21 proceedings become final. When related criminal proceedings
22 become final, a final order regarding the forfeiture action
23 shall be entered.

24 L. When no claims to property are filed in a timely
25 manner, the property shall be forfeited. Forfeited property, if

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1 it is not currency, may be sold or otherwise disposed of in
2 accordance with law, and all sale proceeds and forfeited
3 currency shall be deposited in the general fund of the state,
4 county or municipality served by the law enforcement agency that
5 seized the forfeited property or currency, or, if forfeited
6 under Chapter 17 NMSA 1978, the proceeds shall be deposited in
7 the game protection fund, in an amount equal to the amount
8 expended from the game protection fund to prosecute the case,
9 and the surplus shall be deposited in the general fund.
10 Notwithstanding the provisions of this subsection, proceeds from
11 the sale of forfeited property or forfeited currency shall be
12 applied first as restitution to or on behalf of actual victims
13 of the criminal acts related to the forfeiture proceedings. "

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

16 "[NEW MATERIAL] RETURN OF PROPERTY TO NONDEFENDANT. -- If
17 the ownership interest of a person convicted of a crime related
18 to the seizure of property cannot be proven by clear and
19 convincing evidence, the court shall order the property returned
20 to its other claimants. "

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

23 "[NEW MATERIAL] REAL PROPERTY AND MOTOR VEHICLES-- TITLE
24 SEARCH-- NOTICE. --

25 A. In addition to the procedures set forth in

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1 Section 6 of the Forfeiture Act, when the seized property is
2 real property or a motor vehicle, the seizing law enforcement
3 agency shall perform a title search on the property. Subsequent
4 to the title search, the seizing law enforcement agency shall
5 give a notice of pending forfeiture as provided in Section 6 of
6 the Forfeiture Act to all persons whom the law enforcement
7 agency knows or reasonably should know to have an interest in
8 the property.

9 B. If the seizing law enforcement agency determines
10 that the seized real property or motor vehicle does not belong
11 to a person charged with a crime related to the seizure of the
12 real property or motor vehicle, the law enforcement agency shall
13 return the real property or motor vehicle to the owner of the
14 property. "

15 Section 9. A new section of the Criminal Code is enacted
16 to read:

17 " [NEW MATERIAL] ACTIONS--TIME LIMITS--BURDEN OF PROOF. --

18 A. No action to forfeit property shall be brought
19 more than one year from the date of the conviction of a person
20 for a crime related to the proposed forfeiture of the property.

21 B. The burden of proof is on the prosecution to
22 establish, by clear and convincing evidence, that the property
23 is subject to forfeiture. "

24 Section 10. A new section of the Criminal Code is enacted
25 to read:

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1 " [NEW MATERIAL] PROPERTY IMMUNE FROM FORFEITURE--
2 EXCEPTION. --

3 A. No property shall be forfeited under the
4 provisions of the Forfeiture Act to the extent of the interest
5 of any owner or secured interest holder who is not convicted of
6 a crime related to the forfeiture or by reason of a criminal act
7 committed without the knowledge or consent of that owner or
8 secured interest holder.

9 B. Notwithstanding other provisions of this section,
10 if the court determines that property was transferred by the
11 owner or otherwise disposed of to circumvent the provisions of
12 the Forfeiture Act or other state law that provides for
13 forfeiture or limits use or disposal of property, that property
14 shall be subject to forfeiture as if the person convicted of the
15 crime were the sole owner. "

16 Section 11. A new section of the Criminal Code is enacted
17 to read:

18 " [NEW MATERIAL] SAFEKEEPING OF SEIZED PROPERTY PRIOR TO
19 FORFEITURE--RETURN TO DEFENDANT. --

20 A. All currency seized pursuant to the provisions of
21 the Forfeiture Act shall be remitted to the state treasurer or
22 the clerk of the court for deposit in an interest-bearing trust
23 account.

24 B. Other seized property not required by state or
25 federal law to be destroyed may be:

- 1 (1) placed under seal;
2 (2) removed to a place designated by the law
3 enforcement agency or the district court;
4 (3) removed to the custody of the law
5 enforcement agency;
6 (4) sold or disposed of pursuant to Subsection
7 L of Section 6 of the Forfeiture Act, when no claims are filed
8 in a timely manner; or
9 (5) otherwise disposed of as provided by court
10 order.

11 C. Seized property shall be kept by the law
12 enforcement agency in such a manner as to protect it from theft
13 or damage.

14 D. If an owner whose property was seized is not
15 convicted of the crime for which his property was seized, the
16 property shall be returned to him, including interest accrued on
17 trust accounts.

18 E. Notwithstanding the immunity provided in the Tort
19 Claims Act, an owner of seized property that is returned
20 pursuant to the Forfeiture Act may have a cause of action
21 against the law enforcement agency. "

22 Section 12. A new section of the Criminal Code is enacted
23 to read:

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

25 A. Whenever property is forfeited to the state

1 pursuant to a court order under the Forfeiture Act, the court
2 shall provide for the sale or other disposition of the property.
3 Forfeited currency and proceeds from the sale of forfeited
4 property shall be applied first to restitution to or on behalf
5 of actual victims of the criminal acts of the convicted owner.

6 B. After payments have been made pursuant to the
7 provisions of Subsection A of this section, the court shall
8 order the balance deposited in the general fund of the state,
9 county or municipality served by the law enforcement agency that
10 seized the forfeited property.

11 C. If forfeited property consists of a partial
12 interest in property, the court may, at its discretion and to
13 the benefit of the state's taxpayers, allow the other owners to
14 purchase the forfeited share of the property at the current
15 market value. "

16 Section 13. Section 17-2-20.1 NMSA 1978 (being Laws 1979,
17 Chapter 321, Section 1, as amended) is amended to read:

18 "17-2-20.1. SEIZURE AND FORFEITURE--PROPERTY SUBJECT. --

19 A. All firearms and bows and arrows may be subject
20 to seizure and forfeiture when used as instrumentalities in the
21 commission of the following crimes:

22 (1) illegal possession or transportation of big
23 game during closed season;

24 (2) taking big game during closed season;

25 (3) attempting to take big game by the use of

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1 spotlight or other artificial light; and

2 (4) exceeding the bag limit on any big game
3 species during open season.

4 ~~[B. Provided that no firearms or bows and arrows~~
5 ~~shall be subject to forfeiture if the violation was without the~~
6 ~~knowledge or consent of the owner.]~~

7 ~~€.]~~ B. Any motor vehicle shall be subject to seizure
8 and forfeiture when operated in violation of the provisions of
9 Section 17-2-31 NMSA 1978, regarding hunting by spotlight [~~In~~
10 ~~the event of seizure and forfeiture under this subsection, the~~
11 ~~motor vehicle shall be disposed of in accordance with the~~
12 ~~provisions of Section 17-2-20.2 NMSA 1978.]~~

13 ~~D. No conveyance is subject to forfeiture under this~~
14 ~~section by reason of any act or omission established for the~~
15 ~~owner to have been committed or omitted without his knowledge or~~
16 ~~consent. A forfeiture of a conveyance encumbered by a bona fide~~
17 ~~security interest shall be subject to the interest of a secured~~
18 ~~party if the secured party neither had knowledge of nor~~
19 ~~consented to the act or omission.]~~ or other artificial light.

20 C. Seizure and forfeiture proceedings shall be
21 conducted pursuant to the provisions of the Forfeiture Act. "

22 Section 14. Section 18-6-9.3 NMSA 1978 (being Laws 1993,
23 Chapter 176, Section 11) is amended to read:

24 "18-6-9.3. CULTURAL PROPERTY--SEIZURE AND FORFEITURE OF
25 INSTRUMENTS. -- ~~[A.]~~ Any instrument, vehicle, tool or equipment

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1 used or intended to be used to violate the provisions of the
2 Cultural Properties Act is subject to seizure and forfeiture
3 ~~[except that no instrument, vehicle, tool or equipment shall be~~
4 ~~subject to forfeiture if the violation was without the knowledge~~
5 ~~or consent of the owner of the property subject to forfeiture.~~

6 B. ~~Property subject to forfeiture pursuant to the~~
7 ~~provisions of this section may be seized by a conservation~~
8 ~~officer, sheriff, state police officer or law enforcement~~
9 ~~officer upon an order of the district court in the county having~~
10 ~~jurisdiction over the offense.~~

11 C. ~~Seizure without a court order may occur if:~~

12 (1) ~~the seizure is incident to an arrest or a~~
13 ~~search pursuant to a search warrant; or~~

14 (2) ~~the enforcement officer has probable cause~~
15 ~~to believe that the property was used or intended for use to~~
16 ~~violate the Cultural Properties Act.~~

17 D. ~~In the event of seizure pursuant to this section,~~
18 ~~proceedings shall be instituted within thirty days from the date~~
19 ~~of seizure. A proceeding brought pursuant to this section shall~~
20 ~~be in rem. The claim shall not be filed against the owner or~~
21 ~~any other person and shall be filed only as a civil case.~~

22 E. ~~Property taken or detained pursuant to the~~
23 ~~provisions of this section shall not be subject to replevin, but~~
24 ~~is deemed to be in the custody of the state agency employing the~~
25 ~~enforcing officer, subject only to the orders and decrees of the~~

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1 ~~district court. When property is seized pursuant to the~~
2 ~~Cultural Properties Act, the state agency seizing it shall~~
3 ~~remove the property to a place designated by the state agency~~
4 ~~for disposition in accordance with law.~~

5 F. ~~Except as otherwise specifically provided by law,~~
6 ~~property forfeited due to a violation of the Cultural Properties~~
7 ~~Act shall be sold at public auction pursuant to a court order.~~
8 ~~The proceeds of the court ordered sale of forfeited property are~~
9 ~~subject first to the claims, verified by the court, of innocent~~
10 ~~persons and the legitimate rights to restitution of actual~~
11 ~~victims of the criminal acts. Where proceeds are derived from~~
12 ~~violations:~~

13 (1) ~~on lands controlled by the commissioner of~~
14 ~~public lands, one half of the proceeds from the sale shall~~
15 ~~accrue to the state agency of which the law enforcement officer~~
16 ~~seizing that property is a member and one half shall be~~
17 ~~deposited in the cultural properties restoration fund; and~~

18 (2) ~~on any other state lands, one half of the~~
19 ~~proceeds from the sale shall accrue to the state agency of which~~
20 ~~the law enforcement officer seizing that property is a member~~
21 ~~and one half of the proceeds shall be deposited in the cultural~~
22 ~~properties restoration fund.] pursuant to the provisions of the~~

23 Forfeiture Act. Notwithstanding the provisions of the
24 Forfeiture Act regarding the disposition of forfeited property,
25 when proceeds from a court-ordered sale of forfeited property

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1 are derived from a violation of cultural property, the proceeds
2 from the sale shall be used for restoration, stabilization,
3 protection and preservation of the cultural property. Any
4 proceeds remaining shall be deposited in the general fund. "

5 Section 15. Section 30-3-8.1 NMSA 1978 (being Laws 1993,
6 Chapter 78, Section 2) is amended to read:

7 "30-3-8.1. SEIZURE AND FORFEITURE OF MOTOR VEHICLE--
8 PROCEDURE[~~—EXCEPTION~~]. --

9 A. A motor vehicle shall be subject to seizure and
10 forfeiture when the motor vehicle is used or intended for use in
11 the commission of the offense of shooting at or from a motor
12 vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978.

13 B. A motor vehicle subject to seizure and forfeiture
14 may be seized [by a law enforcement officer:

15 (1) ~~upon an order issued by the district court~~
16 ~~having jurisdiction;~~

17 (2) ~~without an order if the seizure is incident~~
18 ~~to an arrest; or~~

19 (3) ~~without an order if the seizure is incident~~
20 ~~to a search under a valid search warrant.~~

21 ~~C. In the event of seizure pursuant to Subsection B~~
22 ~~of this section, proceedings under the Rules of Civil Procedure~~
23 ~~for the District Courts and Subsection D of this section shall~~
24 ~~be instituted promptly.~~

25 ~~D. A motor vehicle seized under this section shall~~

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1 ~~not be subject to replevin, but is deemed to be in the custody~~
2 ~~of the seizing law enforcement agency, subject only to the~~
3 ~~orders and decrees of the district court. When a motor vehicle~~
4 ~~is seized pursuant to the provisions of this section, a law~~
5 ~~enforcement officer may remove the property to a place~~
6 ~~designated by the district court or by the head of the officer's~~
7 ~~agency for disposition in accordance with the law.~~

8 ~~E. When a vehicle is forfeited pursuant to this~~
9 ~~section, the seizing law enforcement agency shall sell the motor~~
10 ~~vehicle at a public auction, and the proceeds, after all costs~~
11 ~~for impoundment, forfeiture and sale are repaid, shall be~~
12 ~~forwarded to the state treasurer for credit to the crime victims~~
13 ~~reparation fund pursuant to Section 31-22-21 NMSA 1978 within~~
14 ~~thirty days. If the sale of the motor vehicle does not cover~~
15 ~~the cost of impounding, forfeiting and selling the motor~~
16 ~~vehicle, the law enforcement agency may deduct the uncovered~~
17 ~~portion of the cost from the proceeds of the next sale.~~

18 ~~F. No motor vehicle shall be subject to forfeiture~~
19 ~~when the owner of the motor vehicle establishes that the offense~~
20 ~~of shooting at or from a motor vehicle pursuant to Subsection B~~
21 ~~of Section 30-3-8 NMSA 1978 was committed without his knowledge~~
22 ~~or consent. A forfeiture of a motor vehicle encumbered by a~~
23 ~~recorded bona fide security interest shall be subject to the~~
24 ~~interest of the secured party if the secured party did not have~~
25 ~~knowledge of or did not consent to the offense of shooting at or~~

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1 ~~from a motor vehicle pursuant to Subsection B of Section 30-3-8~~
2 ~~NMSA 1978]~~ and forfeited pursuant to the provisions of the
3 Forfeiture Act. "

4 Section 16. Section 30-16B-9 NMSA 1978 (being Laws 1991,
5 Chapter 112, Section 9) is amended to read:

6 "30-16B-9. SEIZURE AND FORFEITURE- -PROCEDURE. - - [A.]

7 Property subject to forfeiture under the Unauthorized Recording
8 Act may be seized [~~by any enforcement officer upon an order~~
9 ~~issued by the district court having jurisdiction.~~

10 B. ~~Seizure without such an order may be made if:~~

11 (1) ~~the seizure is incident to an arrest or~~
12 ~~search under a valid search warrant or an inspection under an~~
13 ~~administrative inspection warrant;~~

14 (2) ~~the property subject to seizure has been~~
15 ~~the subject of a prior judgment in favor of the state in an~~
16 ~~injunction or forfeiture proceeding based upon the Unauthorized~~
17 ~~Recording Act; or~~

18 (3) ~~the enforcement officer has probable cause~~
19 ~~to believe that the property was used or is intended to be used~~
20 ~~in violation of the Unauthorized Recording Act.~~

21 C. ~~In the event of seizure pursuant to Subsection A~~
22 ~~of this section, proceedings under Subsection D of this section~~
23 ~~and the Rules of Civil Procedure for the District Court shall be~~
24 ~~instituted promptly and not later than thirty days after~~
25 ~~seizure.~~

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1 D. ~~Property taken or detained under this section~~
2 ~~shall not be subject to replevin but is deemed to be in the~~
3 ~~custody of the seizing police department or agency subject only~~
4 ~~to the orders and decrees of the district court. When property~~
5 ~~is seized under the Unauthorized Recording Act, the enforcement~~
6 ~~officer may:~~

7 (1) ~~place the property under seal; or~~

8 (2) ~~remove the property to a place designated~~
9 ~~by the court or head of the officer's department or agency for~~
10 ~~disposition in accordance with law.~~

11 E. ~~When property is forfeited under the Unauthorized~~
12 ~~Recording Act, the seizing police department or agency shall:~~

13 (1) ~~sell that which is not required to be~~
14 ~~destroyed by law and the proceeds shall revert to the general~~
15 ~~fund;~~

16 (2) ~~take custody of the property for use by law~~
17 ~~enforcement agencies in the enforcement of the Unauthorized~~
18 ~~Recording Act for disposition in accordance with law; or~~

19 (3) ~~forward property, the proceeds from the~~
20 ~~sale of which are not required to revert to the general fund, to~~
21 ~~the property control division of the general services department~~
22 ~~for disposition] and forfeited pursuant to the provisions of the~~
23 ~~Forfeiture Act.~~ "

24 Section 17. Section 30-19-10 NMSA 1978 (being Laws 1963,
25 Chapter 303, Section 19-10) is amended to read:

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1 "30-19-10. SEIZURE AND FORFEITURE OF PRIZES AND
2 EQUIPMENT. -- Any illegal gambling device or other illegal
3 equipment of any type used in gambling [~~shall be seized by the~~
4 ~~law enforcement officers discovering such device or equipment,~~
5 ~~and it shall be the duty of such officers to retain custody of~~
6 ~~the property seized until such property is disposed of by order~~
7 ~~of the district court. Upon proper application by the district~~
8 ~~attorney to the judge of the district court, the judge of the~~
9 ~~district court may by proper order direct the destruction of any~~
10 ~~gambling device, paraphernalia or equipment of any kind or~~
11 ~~character seized by law enforcement officers] may be seized and
12 forfeited pursuant to the provisions of the Forfeiture Act."~~

13 Section 18. Section 30-31-35 NMSA 1978 (being Laws 1972,
14 Chapter 84, Section 34, as amended) is amended to read:

15 "30-31-35. SEIZURE AND FORFEITURE- -PROCEDURE. -- [A-]
16 Property subject to forfeiture and disposal under the Controlled
17 Substances Act may be seized [~~by any enforcement officer upon an~~
18 ~~order issued by the district court having jurisdiction.~~

19 B. ~~Seizure without such an order may be made if:~~

20 (1) ~~the seizure is incident to an arrest or~~
21 ~~search under a search warrant or an inspection under an~~
22 ~~administrative inspection warrant;~~

23 (2) ~~the property subject to seizure has been~~
24 ~~the subject of a prior judgment in favor of the state in an~~
25 ~~injunction or forfeiture proceeding based upon the Controlled~~

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1 ~~Substances Act;~~

2 ~~(3) the enforcement officer has probable cause~~
3 ~~to believe that the property, which is a controlled substance,~~
4 ~~is directly or indirectly dangerous to health or safety; or~~

5 ~~(4) the enforcement officer has probable cause~~
6 ~~to believe that the property was used or is intended to be used~~
7 ~~in violation of the Controlled Substances Act.~~

8 ~~C. In the event of seizure pursuant to Subsection A~~
9 ~~or Subsection B of this section, proceedings under Subsection D~~
10 ~~of this section and the Rules of Civil Procedure for the~~
11 ~~District Courts of New Mexico shall be instituted promptly and~~
12 ~~not later than thirty days after seizure.~~

13 ~~D. Property taken or detained under this section~~
14 ~~shall not be subject to replevin, but is deemed to be in the~~
15 ~~custody of the law enforcement agency seizing it subject only to~~
16 ~~the orders and decrees of the district court. When property is~~
17 ~~seized under the Controlled Substances Act, the enforcement~~
18 ~~officer may:~~

19 ~~(1) place the property under seal;~~

20 ~~(2) remove the property to a place designated~~
21 ~~by the enforcement officer; or~~

22 ~~(3) require the law enforcement agency to take~~
23 ~~custody of the property and remove it to an appropriate location~~
24 ~~for disposition in accordance with law.~~

25 ~~E. When property is forfeited under the Controlled~~

Underscored material = new
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1 ~~Substances Act, the law enforcement agency seizing it shall:~~

2 ~~(1) sell that which is not required to be~~
3 ~~destroyed by law. The proceeds shall revert to the general fund~~
4 ~~of the state, county or municipality as the case may be;~~

5 ~~(2) take custody of the property for use by law~~
6 ~~enforcement agencies in the enforcement of the Controlled~~
7 ~~Substances Act or remove it for disposition in accordance with~~
8 ~~law; provided that where a motor vehicle has been seized by a~~
9 ~~municipal police department or a county sheriff's department~~
10 ~~with its respective jurisdictional boundaries, such department~~
11 ~~shall institute forfeiture proceedings; or~~

12 ~~(3) in case of property seized by the state~~
13 ~~police, forward property, the proceeds from the sale of which~~
14 ~~are not required to revert to the general fund, to the state~~
15 ~~police, bureau of narcotics for disposition; provided that motor~~
16 ~~vehicles seized by the state police may be loaned to the~~
17 ~~governor's organized crime prevention commission for use in~~
18 ~~undercover work, the entire cost of operating such vehicles to~~
19 ~~be borne by the governor's organized crime prevention~~
20 ~~commission] and forfeited pursuant to the provisions of the~~
21 ~~Forfeiture Act. "~~

22 Section 19. Section 30-31A-10 NMSA 1978 (being Laws 1983,
23 Chapter 148, Section 10) is amended to read:

24 "30-31A-10. SEIZURE AND FORFEITURE- -PROCEDURE. -- [A.]
25 Property subject to forfeiture and disposal under the Imitation

. 113181.3

1 ~~Controlled Substances Act may be seized [by any law enforcement~~
2 ~~officer upon an order issued by the district court having~~
3 ~~jurisdiction.~~

4 ~~B. Seizure without such an order may be made if:~~

5 ~~(1) the seizure is incident to an arrest or~~
6 ~~search under a search warrant; or~~

7 ~~(2) the property subject to seizure has been~~
8 ~~the subject of a prior judgment in favor of the state in an~~
9 ~~injunction or forfeiture proceeding based upon the Imitation~~
10 ~~Controlled Substances Act.~~

11 ~~C. In the event of seizure pursuant to Subsection A~~
12 ~~or B of this section, proceedings under Subsection D of this~~
13 ~~section and the rules of civil procedure for the district courts~~
14 ~~of New Mexico shall be instituted promptly and not later than~~
15 ~~thirty days after seizure.~~

16 ~~D. Property taken or detained under this section~~
17 ~~shall not be subject to replevin but is deemed to be in the~~
18 ~~custody of the law enforcement agency seizing it subject only to~~
19 ~~the orders and decrees of the district court. When property is~~
20 ~~seized under the Imitation Controlled Substances Act, the~~
21 ~~enforcement officer may:~~

22 ~~(1) place the property under seal;~~

23 ~~(2) remove the property to a place designated~~
24 ~~by the enforcement officer; or~~

25 ~~(3) require the law enforcement agency to take~~

Underscored material = new
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1 ~~custody of the property and remove it to an appropriate location~~
2 ~~for disposition in accordance with law.~~

3 E. ~~When property is forfeited under the Imitation~~
4 ~~Controlled Substances Act, the law enforcement agency seizing it~~
5 ~~shall take custody of the property for use by law enforcement~~
6 ~~agencies in the enforcement of the Imitation Controlled~~
7 ~~Substances Act and the Controlled Substances Act and remove it~~
8 ~~for disposition in accordance with law] and forfeited pursuant~~
9 ~~to the provisions of the Forfeiture Act. "~~

10 Section 20. Section 30-42-4 NMSA 1978 (being Laws 1980,
11 Chapter 40, Section 4) is amended to read:

12 "30-42-4. PROHIBITED ACTIVITIES--PENALTIES--SEIZURE AND
13 FORFEITURE PROCEDURE. --

14 A. It is unlawful for any person who has received
15 any proceeds derived, directly or indirectly, from a pattern of
16 racketeering activity in which the person has participated, to
17 use or invest, directly or indirectly, any part of the proceeds
18 or the proceeds derived from the investment or use thereof in
19 the acquisition of any interest in, or the establishment or
20 operation of, any enterprise. Whoever violates this subsection
21 is guilty of a second degree felony.

22 B. It is unlawful for any person to engage in a
23 pattern of racketeering activity in order to acquire or
24 maintain, directly or indirectly, any interest in or control of
25 any enterprise. Whoever violates this subsection is guilty of a

Underscored material = new
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1 second degree felony.

2 C. It is unlawful for any person employed by or
3 associated with any enterprise to conduct or participate,
4 directly or indirectly, in the conduct of [~~sueh~~] the
5 enterprise's affairs by engaging in a pattern of racketeering
6 activity. Whoever violates this subsection is guilty of a
7 second degree felony.

8 D. It is unlawful for any person to conspire to
9 violate any of the provisions of Subsections A through C of this
10 section. Whoever violates this subsection is guilty of a third
11 degree felony.

12 E. Whoever violates Subsection A, B, C or D of this
13 section in addition to the prescribed penalties shall forfeit to
14 the state [~~of New Mexico~~]:

15 (1) any interest acquired or maintained in
16 violation of the Racketeering Act; and

17 (2) any interest in, security of, claim against
18 or property or contractual right of any kind affording a source
19 of influence over any enterprise [~~whieh~~] that he has
20 established, operated, controlled, conducted or participated in
21 the conduct of in violation of the Racketeering Act.

22 F. In any action brought by the state [~~under~~]
23 pursuant to the provisions of the Racketeering Act, [~~the~~
24 ~~district court shall have jurisdiction to enter such restraining~~
25 ~~orders or prohibitions, or to take such other actions, including~~

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1 ~~but not limited to the acceptance of satisfactory performance~~
2 ~~bonds, in connection with any property or other interest subject~~
3 ~~to forfeiture under this section, as it shall deem proper.~~

4 ~~G. Upon conviction of a person under this section,~~
5 ~~the court shall authorize the attorney general or the district~~
6 ~~attorney to seize all property or other interest declared~~
7 ~~forfeited under this section upon such terms and conditions as~~
8 ~~the court shall deem proper, making due provision for the rights~~
9 ~~of innocent persons. If a property right or other interest is~~
10 ~~not exercisable or transferable for value by the convicted~~
11 ~~person, it shall expire and shall not revert to the convicted~~
12 ~~person] seizure and forfeiture of property shall be in~~
13 ~~accordance with the provisions of the Forfeiture Act."~~

14 Section 21. Section 30-45-7 NMSA 1978 (being Laws 1989,
15 Chapter 215, Section 7) is amended to read:

16 "30-45-7. SEIZURE AND FORFEITURE OF PROPERTY. --

17 A. The following are subject to seizure and
18 forfeiture:

19 (1) all computer property, equipment or
20 products of any kind [which] that have been used, manufactured,
21 acquired or distributed in violation of the Computer Crimes Act;

22 [~~(2) all materials, products and equipment of~~
23 ~~any kind which are used or intended for use in manufacturing,~~
24 ~~using, accessing, altering, disrupting, copying, concealing,~~
25 ~~destroying, transferring, delivering, importing or exporting any~~

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1 ~~computer property or computer service in violation of the~~
2 ~~Computer Crimes Act;~~

3 ~~(3)]~~ (2) all books, records and research
4 products and materials involving formulas, microfilm, tapes and
5 data [~~which~~] that are used or intended for use in violation of
6 the Computer Crimes Act; and

7 ~~[(4) all conveyances, including aircraft,~~
8 ~~vehicles or vessels, which are used or intended for use to~~
9 ~~transport or in any manner to facilitate the transportation of~~
10 ~~property described in Subsection A, B or C of this section for~~
11 ~~the purpose of violating the Computer Crimes Act;~~

12 ~~(5) all property, real, personal or mixed,~~
13 ~~which has been used or intended for use, maintained or acquired~~
14 ~~in violation of the Computer Crimes Act; and~~

15 ~~(6)]~~ (3) all money or proceeds that constitute
16 an instrumentality or derive from a violation of the Computer
17 Crimes Act.

18 ~~[B. Notwithstanding the provisions of Paragraphs (1)~~
19 ~~through (6) of Subsection A of this section:~~

20 ~~(1) no conveyance used by any person as a~~
21 ~~common carrier in the transaction of business as a common~~
22 ~~carrier is subject to forfeiture under this section unless it~~
23 ~~appears that the owner or other person in charge of the~~
24 ~~conveyance is a consenting party to a violation of the Computer~~
25 ~~Crimes Act;~~

Underscored material = new
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1 ~~(2) no conveyance, computer property, equipment~~
2 ~~or other material is subject to forfeiture under this section by~~
3 ~~reason of any act or omission established by the owner to have~~
4 ~~been committed or omitted without his knowledge or consent;~~

5 ~~(3) a conveyance, computer property, equipment~~
6 ~~or other material is not subject to forfeiture for a violation~~
7 ~~of law the penalty for which is a misdemeanor or petty~~
8 ~~misdemeanor; and~~

9 ~~(4) a forfeiture of a conveyance, computer~~
10 ~~property, equipment or material encumbered by a bona fide~~
11 ~~security interest shall be subject to the interest of a secured~~
12 ~~party if the secured party neither had knowledge of nor~~
13 ~~consented to the act or omission.~~

14 ~~C.]~~ B. Property subject to seizure and forfeiture
15 ~~[and disposal]~~ under the Computer Crimes Act may be seized ~~[by~~
16 ~~any law enforcement officer upon an order issued by the district~~
17 ~~court having jurisdiction.~~

18 ~~D. Seizure without such an order may be made if:~~

19 ~~(1) the seizure is incident to an arrest or~~
20 ~~search under a search warrant;~~

21 ~~(2) the property subject to seizure had been~~
22 ~~the subject of a prior judgment in favor of the state in an~~
23 ~~injunction or forfeiture proceeding based upon the Computer~~
24 ~~Crimes Act; or~~

25 ~~(3) the enforcement officer has probable cause~~

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1 ~~to believe that the property, whether real, personal or mixed,~~
2 ~~was used or intended for use, maintained or acquired in~~
3 ~~violation of the Computer Crimes Act.~~

4 E. ~~In the event of a seizure pursuant to Subsection~~
5 ~~C or Subsection D of this section, a proceeding under the~~
6 ~~Computer Crimes Act and the rules of civil procedure for the~~
7 ~~district courts shall be instituted promptly and not later than~~
8 ~~thirty days after seizure. The proceeding to forfeit property~~
9 ~~under the Computer Crimes Act is against the property and not~~
10 ~~against the owner or any other person. It is in rem wholly and~~
11 ~~not in personam. It is a civil case and not a criminal~~
12 ~~proceeding. The forfeiture proceeding is required, not to~~
13 ~~complete the forfeiture, but to prove the illegal use for which~~
14 ~~the forfeiture was suffered.~~

15 F. ~~Except as otherwise specifically provided by law,~~
16 ~~whenever any property is forfeited to the state by reason of the~~
17 ~~violation of any law, the court by which the offender is~~
18 ~~convicted shall order the sale or other disposition of the~~
19 ~~property and the proceeds of any such sale as provided for in~~
20 ~~this section are subject to the court making due provisions for~~
21 ~~the rights of innocent persons and the legitimate rights to~~
22 ~~restitution on behalf of actual victims of the criminal acts.~~

23 G. ~~Property taken or detained under this section~~
24 ~~shall not be subject to replevin but is deemed to be in the~~
25 ~~custody of the law enforcement agency seizing it, subject only~~

Underscored material = new
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1 ~~to the orders and decrees of the district court. When property~~
2 ~~is seized under the Computer Crimes Act, the enforcement officer~~
3 ~~may:~~

4 (1) ~~place the property under seal;~~

5 (2) ~~remove the property to a place designated~~
6 ~~by the law enforcement officer or by the district court; or~~

7 (3) ~~require the law enforcement agency to take~~
8 ~~custody of the property and remove it to an appropriate location~~
9 ~~for disposition in accordance with law.~~

10 H. ~~When property is forfeited under the Computer~~
11 ~~Crimes Act, the law enforcement agency seizing it shall:~~

12 (1) ~~deliver custody of the property to the~~
13 ~~information systems council attached to the general services~~
14 ~~department. The council, based upon a plan, shall advertise and~~
15 ~~make available the forfeited property to state agencies and~~
16 ~~political subdivisions of the state based upon a demonstrated~~
17 ~~need and plan of use for that property. The information systems~~
18 ~~council shall advertise and make the forfeited property~~
19 ~~available by bid for a minimum of one hundred twenty days and~~
20 ~~dispose of that property within another sixty days. All~~
21 ~~proceeds from the sale of forfeited property shall be deposited~~
22 ~~in the general fund; or~~

23 (2) ~~where the court orders the property to be~~
24 ~~sold, the proceeds of the sale shall be paid into the general~~
25 ~~fund] and forfeited pursuant to the provisions of the Forfeiture~~

Underscored material = new
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1 Act. "

2 Section 22. Section 60-7A-4.1 NMSA 1978 (being Laws 1985,
3 Chapter 179, Section 1, as amended) is amended to read:

4 "60-7A-4.1. UNLAWFUL SALE OF ALCOHOLIC BEVERAGES--CRIMINAL
5 PENALTY--SEIZURE AND FORFEITURE. --

6 A. It is unlawful for any person to sell or attempt
7 to sell alcoholic beverages at any place other than a licensed
8 premises or as otherwise provided by the Liquor Control Act.

9 B. Any person who violates the provisions of
10 Subsection A of this section is guilty of a fourth degree
11 felony.

12 C. Any conveyance used or intended to be used for
13 the purpose of unlawful sale of alcoholic beverages or money
14 [~~which~~] that is the fruit or instrumentality of the crime may be
15 seized and [~~upon conviction, in the discretion of the court, be~~
16 ~~forfeited and disposed of under the procedures set forth in~~
17 ~~Section 30-31-35 NMSA 1978] forfeited pursuant to the provisions
18 of the Forfeiture Act. "~~

19 Section 23. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 1997.

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 21, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

SENATE BILL 379

has had it under consideration and reports same with
recommendation that it DO NOT PASS, but that

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 379

DO PASS, and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

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Fernando R. Macias, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

No: None

Excused: 0

Absent: None

S0379JU1

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 379

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

AN ACT

RELATING TO FORFEITURE OF PROPERTY; ENACTING THE FORFEITURE ACT;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN
APPROPRIATION.

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 11 of this
act may be cited as the "Forfeiture Act". "

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

"[NEW MATERIAL] PURPOSE OF ACT. -- The purpose of the
Forfeiture Act is to provide uniform standards and procedures
for law enforcement officers and agencies for the seizure and
forfeiture of property used or intended to be used in the

commission of a crime. "

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

1 " [NEW MATERIAL] DEFINITIONS. -- As used in the Forfeiture
2 Act:

3 A. "crime" means an offense punishable by imprisonment
4 for one year or more, a violation of laws or regulations
5 regarding hunting or fishing or a violation of laws regarding
6 gambling;

7 B. "law enforcement officer" means a state or
8 municipal police officer, county sheriff, deputy sheriff,
9 conservation officer, motor transportation enforcement officer
10 or other state employee authorized by state law to enforce
11 criminal statutes; provided that "law enforcement officer" does
12 not include correctional officers;

13 C. "owner" means an individual who possesses a legal
14 or equitable ownership in property or, if title to the property
15 is held in the name of a partnership, trust, corporation or
16 other legal entity, an individual who possesses a substantial
17 legal or equitable ownership interest in the partnership, trust,
18 corporation or other legal entity; and

19 D. "property" means tangible or intangible personal
20 property, real property or an interest in tangible or intangible
21 personal property or real property. "

22 Section 4. A new section of the Criminal Code is enacted to
23 read:

24 " [NEW MATERIAL] FORFEITURE REQUIREMENTS. -- A judgment for
25 the forfeiture of property shall be entered only upon proof by

. 117576.2

1 clear and convincing evidence that the property is forfeitable
2 under state law and that the forfeiture is based upon the
3 commission of a crime or an attempt to commit a crime."

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

6 "[NEW MATERIAL] SEIZURE-- COURT ORDER-- EXCEPTIONS. --

7 A. Property subject to forfeiture may be seized by a law
8 enforcement officer upon an order issued by the district court
9 having jurisdiction.

10 B. The court may issue an order pursuant to Subsection A
11 of this section if it determines that there is probable cause to
12 believe that the law enforcement agency seeking forfeiture will
13 prevail on the issue of forfeiture and that failure to enter the
14 order will result in the property's being destroyed, removed from
15 the jurisdiction of the court or otherwise made unavailable for
16 forfeiture, unless the hardship caused to a party of interest by
17 entry of the order outweighs the need to preserve the availability
18 of the property through the entry of the order.

19 C. A seizure of property other than a residence or
20 business may be made without a court order when:

21 (1) the seizure is incident to an arrest or a search
22 pursuant to a search warrant or an inspection pursuant to an
23 administrative inspection warrant;

24 (2) the property subject to seizure has been the
25 subject of a prior judgment in favor of the state or a political

1 subdivision in a criminal injunction or forfeiture proceeding;

2 (3) there is probable cause to believe that the
3 property is directly or indirectly dangerous to health or safety;
4 or

5 (4) there is probable cause to believe that the
6 property is forfeitable under state law and that the delay
7 occasioned by the need to secure an order will frustrate the
8 seizure; provided, however, that a law enforcement agency making a
9 seizure pursuant to this paragraph shall, within ten days of the
10 seizure, apply for an order pursuant to Subsection A of this
11 section; and provided further that the property shall be released
12 to the owner immediately if the order is denied. The law
13 enforcement agency making the seizure shall make a reasonable
14 effort to notify the person from whom the property was seized of
15 the location, date and time of the hearing on the application for
16 an order allowing seizure, so the person has a reasonable
17 opportunity to appear at the hearing and oppose the order.

18 D. The seizure of a residence or business shall occur
19 only after a pre-seizure hearing, with notice provided in
20 accordance with the provisions of Section 6 of the Forfeiture Act.

21 E. The owner shall be given a receipt whenever
22 practicable for the property seized."

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

25 "[NEW MATERIAL] SEIZURE-- NOTICE-- CLAIMS. --

Underscored material = new
[bracketed material] = delete

1 A. All forfeiture proceedings shall be brought in the
2 name of the law enforcement agency that seized the property. All
3 forfeiture proceedings shall be initiated in district court in the
4 county in which the property was seized; provided that, for good
5 cause shown upon application of any interested party, the court may
6 consolidate proceedings filed in different counties or allow
7 transfer of proceedings to another county.

8 B. All forfeiture proceedings shall be initiated by the
9 issuance of a notice of pending forfeiture by the law enforcement
10 agency that seized the property. The notice shall be issued within
11 twenty days from the date the property was seized and in the case
12 of real property, the notice shall be recorded in the county
13 clerk's office for the county in which the real property is
14 located. The notice shall include a description of the property
15 sought to be forfeited, the date and place of the seizure of the
16 property, the name and address of the seizing law enforcement
17 agency, the reason the property is alleged to be forfeitable, a
18 summary of the procedures and the procedural rights applicable to
19 the forfeiture action and a notification alerting a trustee of the
20 law enforcement agency's obligations under the Forfeiture Act.

21 C. The notice shall be given to the person from whom the
22 property was seized and to each owner and secured interest holder
23 and is effective upon personal service.

24 D. If personal service of the notice is not possible
25 after good-faith attempts at all known residences and places of

1 business, the seizing law enforcement agency shall publish a notice
2 of pending forfeiture, including a list of seized property, once a
3 week for four consecutive weeks in a newspaper of general
4 circulation in the county in which the property has been seized.
5 The notice shall include a statement of the rights of an owner or
6 secured interest holder to claim return of the property.

7 E. Any person claiming seized property shall file with
8 the seizing law enforcement agency a claim stating his interest in
9 the property. All claims shall be filed within sixty days of the
10 date of personal service on the claimant of the notice of pending
11 forfeiture or, if personal service was not effected, within forty
12 days of the last date of publication in the newspaper of the notice
13 of seizure.

14 F. Within twenty days of receipt by a seizing law
15 enforcement agency of any claim to property, a complaint seeking
16 forfeiture of the property shall be filed in district court, and
17 copies of the complaint shall be served on all claimants. If
18 additional claims to the property are made in a timely manner after
19 the complaint is filed, those additional claimants shall be made
20 parties to the action by amendment of the complaint. The Rules of
21 Civil Procedure for the District Courts shall apply to all
22 forfeiture proceedings. The district court shall determine the
23 extent and priority of interest for all claimants to property.

24 G. No bond of any kind shall be required as a
25 prerequisite to making a claim for the return of seized property.

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1 H. Reasonable attorney fees and costs may be awarded to a
2 claimant who prevails in a forfeiture proceeding. Any attorney
3 fees and costs awarded by the court shall be paid by the state,
4 county or municipality served by the seizing law enforcement
5 agency.

6 I. If there is opposition to the forfeiture, the parties
7 shall have the right to a jury trial in determining the propriety
8 of a forfeiture of any property valued in excess of ten thousand
9 dollars (\$10,000).

10 J. The district court shall file a decision regarding a
11 forfeiture complaint within one hundred eighty days of the filing
12 of an answer by a claimant or, if there is more than one claimant,
13 within one hundred eighty days of the filing of an answer by the
14 last claimant. The one hundred eighty-day time limitation may be
15 extended by consent of the parties or by the district court for
16 good cause shown.

17 K. When no claims to property are filed in a timely
18 manner, the property shall be forfeited. Forfeited property, if it
19 is not currency, may be sold or otherwise disposed of in accordance
20 with law, and all sale proceeds and forfeited currency shall be
21 deposited in the general fund of the state, county or municipality
22 served by the law enforcement agency that seized the forfeited
23 property or currency, or, if forfeited under Chapter 17 NMSA 1978,
24 the proceeds shall be deposited in the game protection fund, in an
25 amount equal to the amount expended from the game protection fund

1 to prosecute the case, and the surplus shall be deposited in the
 2 general fund. Notwithstanding the provisions of this subsection,
 3 proceeds from the sale of forfeited property or forfeited currency
 4 shall be applied first as restitution to or on behalf of actual
 5 victims of the criminal acts related to the forfeiture
 6 proceedings. "

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

9 " [NEW MATERIAL] REAL PROPERTY AND MOTOR VEHICLES--TITLE
 10 SEARCH--NOTICE. --

11 A. In addition to the procedures set forth in Section 6
 12 of the Forfeiture Act, when the seized property is real property or
 13 a motor vehicle, the seizing law enforcement agency shall perform a
 14 title search on the property. Subsequent to the title search, the
 15 seizing law enforcement agency shall give a notice of pending
 16 forfeiture as provided in Section 6 of the Forfeiture Act to all
 17 persons whom the law enforcement agency knows or reasonably should
 18 know to have an interest in the property and in the case of real
 19 property, the notice shall be recorded in the county clerk's office
 20 for the county in which the real property is located.

21 B. If the seizing law enforcement agency determines that
 22 the seized real property or motor vehicle is owned by a person who
 23 is not charged with a crime related to the seizure and there is no
 24 probable cause to believe that the owner of the real property or
 25 motor vehicle consented to or had knowledge of the criminal act on

. 117576.2

1 which the seizure was based, the law enforcement agency shall
2 return the real property or motor vehicle to the owner."

3 Section 8. A new section of the Criminal Code is enacted to
4 read:

5 "[NEW MATERIAL] ACTIONS--TIME LIMITS--BURDEN OF PROOF.--

6 A. No action to forfeit property shall be brought more
7 than three years from the date of the last criminal act on which
8 the proposed forfeiture is based.

9 B. The burden of proof is on the prosecution to
10 establish, by clear and convincing evidence, that the property is
11 subject to forfeiture."

12 Section 9. A new section of the Criminal Code is enacted to
13 read:

14 "[NEW MATERIAL] PROPERTY IMMUNE FROM FORFEITURE--EXCEPTION.--

15 No property shall be forfeited under the provisions of the
16 Forfeiture Act to the extent of the interest of any owner or
17 secured interest holder who the prosecution cannot prove, by clear
18 and convincing evidence, consented to or had knowledge of the last
19 criminal act on which the proposed forfeiture is based."

20 Section 10. A new section of the Criminal Code is enacted to
21 read:

22 "[NEW MATERIAL] SAFEKEEPING OF SEIZED PROPERTY PRIOR TO
23 FORFEITURE--RETURN TO OWNER.--

24 A. All currency seized pursuant to the provisions of the
25 Forfeiture Act shall be remitted to the state, county or municipal

1 treasurer or the clerk of the court for deposit in an interest-
2 bearing trust account.

3 B. Other seized property not required by state or federal
4 law to be destroyed may be:

5 (1) placed under seal;

6 (2) removed to a place designated by the law
7 enforcement agency or the district court;

8 (3) removed to the custody of the law enforcement
9 agency;

10 (4) sold or disposed of pursuant to Subsection K of
11 Section 6 of the Forfeiture Act, when no claims are filed in a
12 timely manner; or

13 (5) otherwise disposed of as provided by court
14 order.

15 C. Seized property shall be kept by the law enforcement
16 agency in such a manner as to protect it from theft or damage.

17 D. If property is not forfeited or if notice of seizure
18 is not provided in a timely manner or if the forfeiture complaint
19 is not filed in a timely manner, as provided in the Forfeiture Act,
20 the seized property shall be returned to the owner of the property,
21 including all interest accrued on seized currency placed in a trust
22 account.

23 E. Notwithstanding the immunity provided in the Tort
24 Claims Act, an owner of seized property that is returned pursuant
25 to the Forfeiture Act may have a cause of action against the law

1 enforcement agency. "

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

4 " [NEW MATERIAL] DISPOSAL OF FORFEITED PROPERTY. --

5 A. Whenever property is forfeited pursuant to a court
6 order under the Forfeiture Act, the court shall provide for the
7 sale or other disposition of the property. Forfeited currency and
8 proceeds from the sale of forfeited property shall be applied first
9 to restitution to or on behalf of actual victims of the criminal
10 acts of the convicted owner.

11 B. After payments have been made pursuant to the
12 provisions of Subsection A of this section, the court shall order
13 the balance deposited in the general fund of the state, county or
14 municipality served by the law enforcement agency that seized the
15 forfeited property; provided, if the property was forfeited
16 pursuant to the provisions of Chapter 17 NMSA 1978, the court shall
17 order a deposit of money in the game protection fund in an amount
18 equal to the amount expended from the game protection fund to
19 prosecute the crime that led to the forfeiture and any balance
20 remaining shall be deposited in the general fund.

21 C. If forfeited property consists of a partial interest
22 in property, the court may, at its discretion and to the benefit of
23 the taxpayers, allow the other owners whose interests have not been
24 forfeited to purchase the forfeited share of the property at the
25 current market value. Proceeds of the purchase shall be disposed

1 of in accordance with the provisions of Subsections A and B of this
2 section. "

3 Section 12. Section 17-2-20.1 NMSA 1978 (being Laws 1979,
4 Chapter 321, Section 1, as amended) is amended to read:

5 "17-2-20.1. SEIZURE AND FORFEITURE--PROPERTY SUBJECT. --

6 A. All firearms and bows and arrows may be subject to
7 seizure and forfeiture when used as instrumentalities in the
8 commission of the following crimes:

9 (1) illegal possession or transportation of big game
10 during closed season;

11 (2) taking big game during closed season;

12 (3) attempting to take big game by the use of
13 spotlight or other artificial light; and

14 (4) exceeding the bag limit on any big game species
15 during open season.

16 ~~[B. Provided that no firearms or bows and arrows shall be~~
17 ~~subject to forfeiture if the violation was without the knowledge or~~
18 ~~consent of the owner.~~

19 ~~E.] B.~~ Any motor vehicle shall be subject to seizure and
20 forfeiture when operated in violation of the provisions of Section
21 17-2-31 NMSA 1978, regarding hunting by spotlight ~~[In the event of~~
22 ~~seizure and forfeiture under this subsection, the motor vehicle~~
23 ~~shall be disposed of in accordance with the provisions of Section~~
24 ~~17-2-20.2 NMSA 1978.~~

25 ~~D. No conveyance is subject to forfeiture under this~~

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1 ~~section by reason of any act or omission established for the owner~~
2 ~~to have been committed or omitted without his knowledge or consent.~~
3 ~~A forfeiture of a conveyance encumbered by a bona fide security~~
4 ~~interest shall be subject to the interest of a secured party if the~~
5 ~~secured party neither had knowledge of nor consented to the act or~~
6 ~~omission] or other artificial light.~~

7 C. Seizure and forfeiture proceedings shall be conducted
8 pursuant to the provisions of the Forfeiture Act. "

9 Section 13. Section 18-6-9.3 NMSA 1978 (being Laws 1993,
10 Chapter 176, Section 11) is amended to read:

11 "18-6-9.3. CULTURAL PROPERTY--SEIZURE AND FORFEITURE OF
12 INSTRUMENTS. -- [A.] Any instrument, vehicle, tool or equipment used
13 or intended to be used to violate the provisions of the Cultural
14 Properties Act is subject to seizure and forfeiture
15 ~~[except that no instrument, vehicle, tool or equipment shall be~~
16 ~~subject to forfeiture if the violation was without the knowledge or~~
17 ~~consent of the owner of the property subject to forfeiture.~~

18 ~~B. Property subject to forfeiture pursuant to the~~
19 ~~provisions of this section may be seized by a conservation officer,~~
20 ~~sheriff, state police officer or law enforcement officer upon an~~
21 ~~order of the district court in the county having jurisdiction over~~
22 ~~the offense.~~

23 ~~C. Seizure without a court order may occur if:~~

24 ~~(1) the seizure is incident to an arrest or a search~~
25 ~~pursuant to a search warrant; or~~

1 ~~(2) the enforcement officer has probable cause to~~
 2 ~~believe that the property was used or intended for use to violate~~
 3 ~~the Cultural Properties Act.~~

4 ~~D. In the event of seizure pursuant to this section,~~
 5 ~~proceedings shall be instituted within thirty days from the date of~~
 6 ~~seizure. A proceeding brought pursuant to this section shall be in~~
 7 ~~rem. The claim shall not be filed against the owner or any other~~
 8 ~~person and shall be filed only as a civil case.~~

9 ~~E. Property taken or detained pursuant to the provisions~~
 10 ~~of this section shall not be subject to replevin, but is deemed to~~
 11 ~~be in the custody of the state agency employing the enforcing~~
 12 ~~officer, subject only to the orders and decrees of the district~~
 13 ~~court. When property is seized pursuant to the Cultural Properties~~
 14 ~~Act, the state agency seizing it shall remove the property to a~~
 15 ~~place designated by the state agency for disposition in accordance~~
 16 ~~with law.~~

17 ~~F. Except as otherwise specifically provided by law,~~
 18 ~~property forfeited due to a violation of the Cultural Properties~~
 19 ~~Act shall be sold at public auction pursuant to a court order. The~~
 20 ~~proceeds of the court-ordered sale of forfeited property are~~
 21 ~~subject first to the claims, verified by the court, of innocent~~
 22 ~~persons and the legitimate rights to restitution of actual victims~~
 23 ~~of the criminal acts. Where proceeds are derived from violations:~~

24 ~~(1) on lands controlled by the commissioner of~~
 25 ~~public lands, one-half of the proceeds from the sale shall accrue~~

1 ~~to the state agency of which the law enforcement officer seizing~~
2 ~~that property is a member and one half shall be deposited in the~~
3 ~~cultural properties restoration fund; and~~

4 (2) ~~on any other state lands, one half of the~~
5 ~~proceeds from the sale shall accrue to the state agency of which~~
6 ~~the law enforcement officer seizing that property is a member and~~
7 ~~one half of the proceeds shall be deposited in the cultural~~
8 ~~properties restoration fund] pursuant to the provisions of the~~
9 Forfeiture Act. Notwithstanding the provisions of the Forfeiture
10 Act regarding the disposition of forfeited property, when proceeds
11 from a court-ordered sale of forfeited property are derived from a
12 violation of cultural property, the proceeds from the sale shall be
13 used for restoration, stabilization, protection and preservation of
14 the cultural property. Any proceeds remaining shall be deposited
15 in the general fund. "

16 Section 14. Section 30-3-8.1 NMSA 1978 (being Laws 1993,
17 Chapter 78, Section 2) is amended to read:

18 "30-3-8.1. SEIZURE AND FORFEITURE OF MOTOR VEHICLE--
19 PROCEDURE[~~EXCEPTION~~].--

20 A. A motor vehicle shall be subject to seizure and
21 forfeiture when the motor vehicle is used or intended for use in
22 the commission of the offense of shooting at or from a motor
23 vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978.

24 B. A motor vehicle subject to seizure and forfeiture may
25 be seized [~~by a law enforcement officer:~~

1 ~~(1) upon an order issued by the district court~~
2 ~~having jurisdiction;~~

3 ~~(2) without an order if the seizure is incident to~~
4 ~~an arrest; or~~

5 ~~(3) without an order if the seizure is incident to a~~
6 ~~search under a valid search warrant.~~

7 ~~C. In the event of seizure pursuant to Subsection B of~~
8 ~~this section, proceedings under the Rules of Civil Procedure for~~
9 ~~the District Courts and Subsection D of this section shall be~~
10 ~~instituted promptly.~~

11 ~~D. A motor vehicle seized under this section shall not be~~
12 ~~subject to replevin, but is deemed to be in the custody of the~~
13 ~~seizing law enforcement agency, subject only to the orders and~~
14 ~~decrees of the district court. When a motor vehicle is seized~~
15 ~~pursuant to the provisions of this section, a law enforcement~~
16 ~~officer may remove the property to a place designated by the~~
17 ~~district court or by the head of the officer's agency for~~
18 ~~disposition in accordance with the law.~~

19 ~~E. When a vehicle is forfeited pursuant to this section,~~
20 ~~the seizing law enforcement agency shall sell the motor vehicle at~~
21 ~~a public auction, and the proceeds, after all costs for~~
22 ~~impoundment, forfeiture and sale are repaid, shall be forwarded to~~
23 ~~the state treasurer for credit to the crime victims reparation fund~~
24 ~~pursuant to Section 31-22-21 NMSA 1978 within thirty days. If the~~
25 ~~sale of the motor vehicle does not cover the cost of impounding,~~

1 ~~forfeiting and selling the motor vehicle, the law enforcement~~
2 ~~agency may deduct the uncovered portion of the cost from the~~
3 ~~proceeds of the next sale.~~

4 F. ~~No motor vehicle shall be subject to forfeiture when~~
5 ~~the owner of the motor vehicle establishes that the offense of~~
6 ~~shooting at or from a motor vehicle pursuant to Subsection B of~~
7 ~~Section 30-3-8 NMSA 1978 was committed without his knowledge or~~
8 ~~consent. A forfeiture of a motor vehicle encumbered by a recorded~~
9 ~~bona fide security interest shall be subject to the interest of the~~
10 ~~secured party if the secured party did not have knowledge of or did~~
11 ~~not consent to the offense of shooting at or from a motor vehicle~~
12 ~~pursuant to Subsection B of Section 30-3-8 NMSA 1978] and forfeited~~
13 ~~pursuant to the provisions of the Forfeiture Act. "~~

14 Section 15. Section 30-16B-9 NMSA 1978 (being Laws 1991,
15 Chapter 112, Section 9) is amended to read:

16 "30-16B-9. SEIZURE AND FORFEITURE- -PROCEDURE. - - [A.] Property
17 subject to forfeiture under the Unauthorized Recording Act may be
18 seized [by any enforcement officer upon an order issued by the
19 district court having jurisdiction.

20 B. ~~Seizure without such an order may be made if:~~

21 (1) ~~the seizure is incident to an arrest or search~~
22 ~~under a valid search warrant or an inspection under an~~
23 ~~administrative inspection warrant;~~

24 (2) ~~the property subject to seizure has been the~~
25 ~~subject of a prior judgment in favor of the state in an injunction~~

1 ~~or forfeiture proceeding based upon the Unauthorized Recording Act;~~
2 ~~or~~

3 ~~(3) the enforcement officer has probable cause to~~
4 ~~believe that the property was used or is intended to be used in~~
5 ~~violation of the Unauthorized Recording Act.~~

6 ~~C. In the event of seizure pursuant to Subsection A of~~
7 ~~this section, proceedings under Subsection D of this section and~~
8 ~~the Rules of Civil Procedure for the District Court shall be~~
9 ~~instituted promptly and not later than thirty days after seizure.~~

10 ~~D. Property taken or detained under this section shall~~
11 ~~not be subject to replevin but is deemed to be in the custody of~~
12 ~~the seizing police department or agency subject only to the orders~~
13 ~~and decrees of the district court. When property is seized under~~
14 ~~the Unauthorized Recording Act, the enforcement officer may:~~

15 ~~(1) place the property under seal; or~~

16 ~~(2) remove the property to a place designated by the~~
17 ~~court or head of the officer's department or agency for disposition~~
18 ~~in accordance with law.~~

19 ~~E. When property is forfeited under the Unauthorized~~
20 ~~Recording Act, the seizing police department or agency shall:~~

21 ~~(1) sell that which is not required to be destroyed~~
22 ~~by law and the proceeds shall revert to the general fund;~~

23 ~~(2) take custody of the property for use by law~~
24 ~~enforcement agencies in the enforcement of the Unauthorized~~
25 ~~Recording Act for disposition in accordance with law; or~~

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1 ~~(3) forward property, the proceeds from the sale of~~
2 ~~which are not required to revert to the general fund, to the~~
3 ~~property control division of the general services department for~~
4 ~~disposition] and forfeited pursuant to the provisions of the~~
5 Forfeiture Act. "

6 Section 16. Section 30-19-10 NMSA 1978 (being Laws 1963,
7 Chapter 303, Section 19-10) is amended to read:

8 "30-19-10. SEIZURE AND FORFEITURE OF PRIZES AND EQUIPMENT. --
9 Any illegal gambling device or other illegal equipment of any type
10 used in gambling [~~shall be seized by the law enforcement officers~~
11 ~~discovering such device or equipment, and it shall be the duty of~~
12 ~~such officers to retain custody of the property seized until such~~
13 ~~property is disposed of by order of the district court. Upon~~
14 ~~proper application by the district attorney to the judge of the~~
15 ~~district court, the judge of the district court may by proper order~~
16 ~~direct the destruction of any gambling device, paraphernalia or~~
17 ~~equipment of any kind or character seized by law enforcement~~
18 ~~officers] may be seized and forfeited pursuant to the provisions of~~
19 the Forfeiture Act. "

20 Section 17. Section 30-31-35 NMSA 1978 (being Laws 1972,
21 Chapter 84, Section 34, as amended) is amended to read:

22 "30-31-35. SEIZURE AND FORFEITURE--PROCEDURE. -- [A.] Property
23 subject to forfeiture and disposal under the Controlled Substances
24 Act may be seized [~~by any enforcement officer upon an order issued~~
25 ~~by the district court having jurisdiction.~~

~~B. Seizure without such an order may be made if:~~

~~(1) the seizure is incident to an arrest or search under a search warrant or an inspection under an administrative inspection warrant;~~

~~(2) the property subject to seizure has been the subject of a prior judgment in favor of the state in an injunction or forfeiture proceeding based upon the Controlled Substances Act;~~

~~(3) the enforcement officer has probable cause to believe that the property, which is a controlled substance, is directly or indirectly dangerous to health or safety; or~~

~~(4) the enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of the Controlled Substances Act.~~

~~C. In the event of seizure pursuant to Subsection A or Subsection B of this section, proceedings under Subsection D of this section and the Rules of Civil Procedure for the District Courts of New Mexico shall be instituted promptly and not later than thirty days after seizure.~~

~~D. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the law enforcement agency seizing it subject only to the orders and decrees of the district court. When property is seized under the Controlled Substances Act, the enforcement officer may:~~

~~(1) place the property under seal;~~

~~(2) remove the property to a place designated by the~~

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1 ~~enforcement officer; or~~

2 ~~(3) require the law enforcement agency to take cus-~~
3 ~~tody of the property and remove it to an appropriate location for~~
4 ~~disposition in accordance with law.~~

5 ~~E. When property is forfeited under the Controlled Sub-~~
6 ~~stances Act, the law enforcement agency seizing it shall:~~

7 ~~(1) sell that which is not required to be destroyed~~
8 ~~by law. The proceeds shall revert to the general fund of the~~
9 ~~state, county or municipality as the case may be;~~

10 ~~(2) take custody of the property for use by law en-~~
11 ~~forcement agencies in the enforcement of the Controlled Substances~~
12 ~~Act or remove it for disposition in accordance with law; provided~~
13 ~~that where a motor vehicle has been seized by a municipal police~~
14 ~~department or a county sheriff's department with its respective~~
15 ~~jurisdictional boundaries, such department shall institute~~
16 ~~forfeiture proceedings; or~~

17 ~~(3) in case of property seized by the state police,~~
18 ~~forward property, the proceeds from the sale of which are not re-~~
19 ~~quired to revert to the general fund, to the state police, bureau~~
20 ~~of narcotics for disposition; provided that motor vehicles seized~~
21 ~~by the state police may be loaned to the governor's organized crime~~
22 ~~prevention commission for use in undercover work, the entire cost~~
23 ~~of operating such vehicles to be borne by the governor's organized~~
24 ~~crime prevention commission] and forfeited pursuant to the~~
25 ~~provisions of the Forfeiture Act.~~

1 Section 18. Section 30-31A-10 NMSA 1978 (being Laws 1983,
2 Chapter 148, Section 10) is amended to read:

3 "30-31A-10. SEIZURE AND FORFEITURE- - PROCEDURE. - - [A.-]
4 Property subject to forfeiture and disposal under the Imitation
5 Controlled Substances Act may be seized [~~by any law enforcement~~
6 ~~officer upon an order issued by the district court having~~
7 ~~jurisdiction.~~

8 ~~B. Seizure without such an order may be made if:~~

9 ~~(1) the seizure is incident to an arrest or search~~
10 ~~under a search warrant; or~~

11 ~~(2) the property subject to seizure has been the~~
12 ~~subject of a prior judgment in favor of the state in an injunction~~
13 ~~or forfeiture proceeding based upon the Imitation Controlled~~
14 ~~Substances Act.~~

15 ~~C. In the event of seizure pursuant to Subsection A or B~~
16 ~~of this section, proceedings under Subsection D of this section and~~
17 ~~the rules of civil procedure for the district courts of New Mexico~~
18 ~~shall be instituted promptly and not later than thirty days after~~
19 ~~seizure.~~

20 ~~D. Property taken or detained under this section shall~~
21 ~~not be subject to replevin but is deemed to be in the custody of~~
22 ~~the law enforcement agency seizing it subject only to the orders~~
23 ~~and decrees of the district court. When property is seized under~~
24 ~~the Imitation Controlled Substances Act, the enforcement officer~~
25 ~~may:~~

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1 ~~(1) place the property under seal;~~

2 ~~(2) remove the property to a place designated by the~~
3 ~~enforcement officer; or~~

4 ~~(3) require the law enforcement agency to take~~
5 ~~custody of the property and remove it to an appropriate location~~
6 ~~for disposition in accordance with law.~~

7 ~~E. When property is forfeited under the Imitation~~
8 ~~Controlled Substances Act, the law enforcement agency seizing it~~
9 ~~shall take custody of the property for use by law enforcement~~
10 ~~agencies in the enforcement of the Imitation Controlled Substances~~
11 ~~Act and the Controlled Substances Act and remove it for disposition~~
12 ~~in accordance with law] and forfeited pursuant to the provisions of~~
13 ~~the Forfeiture Act. "~~

14 Section 19. Section 30-42-4 NMSA 1978 (being Laws 1980,
15 Chapter 40, Section 4) is amended to read:

16 "30-42-4. PROHIBITED ACTIVITIES--PENALTIES--SEIZURE AND
17 FORFEITURE PROCEDURE. --

18 A. It is unlawful for any person who has received any
19 proceeds derived, directly or indirectly, from a pattern of
20 racketeering activity in which the person has participated, to use
21 or invest, directly or indirectly, any part of the proceeds or the
22 proceeds derived from the investment or use thereof in the
23 acquisition of any interest in, or the establishment or operation
24 of, any enterprise. Whoever violates this subsection is guilty of
25 a second degree felony.

1 B. It is unlawful for any person to engage in a pattern
2 of racketeering activity in order to acquire or maintain, directly
3 or indirectly, any interest in or control of any enterprise.
4 Whoever violates this subsection is guilty of a second degree
5 felony.

6 C. It is unlawful for any person employed by or
7 associated with any enterprise to conduct or participate, directly
8 or indirectly, in the conduct of [~~such~~] the enterprise's affairs by
9 engaging in a pattern of racketeering activity. Whoever violates
10 this subsection is guilty of a second degree felony.

11 D. It is unlawful for any person to conspire to violate
12 any of the provisions of Subsections A through C of this section.
13 Whoever violates this subsection is guilty of a third degree
14 felony.

15 E. Whoever violates Subsection A, B, C or D of this
16 section in addition to the prescribed penalties shall forfeit to
17 the state [~~of New Mexico~~]:

18 (1) any interest acquired or maintained in violation
19 of the Racketeering Act; and

20 (2) any interest in, security of, claim against or
21 property or contractual right of any kind affording a source of
22 influence over any enterprise [~~which~~] that he has established,
23 operated, controlled, conducted or participated in the conduct of
24 in violation of the Racketeering Act.

25 F. In any action brought by the state [~~under~~] pursuant to

1 ~~the provisions of~~ the Racketeering Act, ~~[the district court shall~~
2 ~~have jurisdiction to enter such restraining orders or prohibitions,~~
3 ~~or to take such other actions, including but not limited to the~~
4 ~~acceptance of satisfactory performance bonds, in connection with~~
5 ~~any property or other interest subject to forfeiture under this~~
6 ~~section, as it shall deem proper.~~

7 G. ~~Upon conviction of a person under this section, the~~
8 ~~court shall authorize the attorney general or the district attorney~~
9 ~~to seize all property or other interest declared forfeited under~~
10 ~~this section upon such terms and conditions as the court shall deem~~
11 ~~proper, making due provision for the rights of innocent persons.~~

12 ~~If a property right or other interest is not exercisable or~~
13 ~~transferable for value by the convicted person, it shall expire and~~
14 ~~shall not revert to the convicted person]~~ seizure and forfeiture of
15 property shall be in accordance with the provisions of the
16 Forfeiture Act. "

17 Section 20. Section 30-45-7 NMSA 1978 (being Laws 1989, Chap-
18 ter 215, Section 7) is amended to read:

19 "30-45-7. SEIZURE AND FORFEITURE OF PROPERTY. --

20 A. The following are subject to seizure and forfeiture:

21 (1) all computer property, equipment or products of
22 any kind ~~[which]~~ that have been used, manufactured, acquired or
23 distributed in violation of the Computer Crimes Act;

24 ~~[(2) all materials, products and equipment of any~~
25 ~~kind which are used or intended for use in manufacturing, using,~~

1 ~~accessing, altering, disrupting, copying, concealing, destroying,~~
 2 ~~transferring, delivering, importing or exporting any computer~~
 3 ~~property or computer service in violation of the Computer Crimes~~
 4 ~~Act;~~

5 ~~(3)]~~ (2) all books, records and research products
 6 and materials involving formulas, microfilm, tapes and data [which]
 7 that are used or intended for use in violation of the Computer
 8 Crimes Act; and

9 ~~[(4) all conveyances, including aircraft, vehicles~~
 10 ~~or vessels, which are used or intended for use to transport or in~~
 11 ~~any manner to facilitate the transportation of property described~~
 12 ~~in Subsection A, B or C of this section for the purpose of~~
 13 ~~violating the Computer Crimes Act;~~

14 ~~(5) all property, real, personal or mixed, which has~~
 15 ~~been used or intended for use, maintained or acquired in violation~~
 16 ~~of the Computer Crimes Act; and~~

17 ~~(6)]~~ (3) all money or proceeds that constitute an
 18 instrumentality or derive from a violation of the Computer Crimes
 19 Act.

20 ~~[B. Notwithstanding the provisions of Paragraphs (1)~~
 21 ~~through (6) of Subsection A of this section:~~

22 ~~(1) no conveyance used by any person as a common~~
 23 ~~carrier in the transaction of business as a common carrier is~~
 24 ~~subject to forfeiture under this section unless it appears that the~~
 25 ~~owner or other person in charge of the conveyance is a consenting~~

1 ~~party to a violation of the Computer Crimes Act;~~

2 ~~(2) no conveyance, computer property, equipment or~~
3 ~~other material is subject to forfeiture under this section by~~
4 ~~reason of any act or omission established by the owner to have been~~
5 ~~committed or omitted without his knowledge or consent;~~

6 ~~(3) a conveyance, computer property, equipment or~~
7 ~~other material is not subject to forfeiture for a violation of law~~
8 ~~the penalty for which is a misdemeanor or petty misdemeanor; and~~

9 ~~(4) a forfeiture of a conveyance, computer property,~~
10 ~~equipment or material encumbered by a bona fide security interest~~
11 ~~shall be subject to the interest of a secured party if the secured~~
12 ~~party neither had knowledge of nor consented to the act or~~
13 ~~omission.~~

14 ~~C.] B. Property subject to seizure and forfeiture [and~~
15 ~~disposal] under the Computer Crimes Act may be seized [by any law~~
16 ~~enforcement officer upon an order issued by the district court~~
17 ~~having jurisdiction.~~

18 ~~D. Seizure without such an order may be made if:~~

19 ~~(1) the seizure is incident to an arrest or search~~
20 ~~under a search warrant;~~

21 ~~(2) the property subject to seizure had been the~~
22 ~~subject of a prior judgment in favor of the state in an injunction~~
23 ~~or forfeiture proceeding based upon the Computer Crimes Act; or~~

24 ~~(3) the enforcement officer has probable cause to~~
25 ~~believe that the property, whether real, personal or mixed, was~~

1 ~~used or intended for use, maintained or acquired in violation of~~
2 ~~the Computer Crimes Act.~~

3 ~~E. In the event of a seizure pursuant to Subsection C or~~
4 ~~Subsection D of this section, a proceeding under the Computer~~
5 ~~Crimes Act and the rules of civil procedure for the district courts~~
6 ~~shall be instituted promptly and not later than thirty days after~~
7 ~~seizure. The proceeding to forfeit property under the Computer~~
8 ~~Crimes Act is against the property and not against the owner or any~~
9 ~~other person. It is in rem wholly and not in personam. It is a~~
10 ~~civil case and not a criminal proceeding. The forfeiture~~
11 ~~proceeding is required, not to complete the forfeiture, but to~~
12 ~~prove the illegal use for which the forfeiture was suffered.~~

13 ~~F. Except as otherwise specifically provided by law,~~
14 ~~whenever any property is forfeited to the state by reason of the~~
15 ~~violation of any law, the court by which the offender is convicted~~
16 ~~shall order the sale or other disposition of the property and the~~
17 ~~proceeds of any such sale as provided for in this section are~~
18 ~~subject to the court making due provisions for the rights of~~
19 ~~innocent persons and the legitimate rights to restitution on behalf~~
20 ~~of actual victims of the criminal acts.~~

21 ~~G. Property taken or detained under this section shall~~
22 ~~not be subject to replevin but is deemed to be in the custody of~~
23 ~~the law enforcement agency seizing it, subject only to the orders~~
24 ~~and decrees of the district court. When property is seized under~~
25 ~~the Computer Crimes Act, the enforcement officer may:~~

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1 ~~(1) place the property under seal;~~

2 ~~(2) remove the property to a place designated by the~~
3 ~~law enforcement officer or by the district court; or~~

4 ~~(3) require the law enforcement agency to take~~
5 ~~custody of the property and remove it to an appropriate location~~
6 ~~for disposition in accordance with law.~~

7 ~~H. When property is forfeited under the Computer Crimes~~
8 ~~Act, the law enforcement agency seizing it shall:~~

9 ~~(1) deliver custody of the property to the~~
10 ~~information systems council attached to the general services~~
11 ~~department. The council, based upon a plan, shall advertise and~~
12 ~~make available the forfeited property to state agencies and~~
13 ~~political subdivisions of the state based upon a demonstrated need~~
14 ~~and plan of use for that property. The information systems council~~
15 ~~shall advertise and make the forfeited property available by bid~~
16 ~~for a minimum of one hundred twenty days and dispose of that~~
17 ~~property within another sixty days. All proceeds from the sale of~~
18 ~~forfeited property shall be deposited in the general fund; or~~

19 ~~(2) where the court orders the property to be sold,~~
20 ~~the proceeds of the sale shall be paid into the general fund] and~~
21 forfeited pursuant to the provisions of the Forfeiture Act. "

22 Section 21. Section 60-7A-4.1 NMSA 1978 (being Laws 1985,
23 Chapter 179, Section 1, as amended) is amended to read:

24 "60-7A-4.1. UNLAWFUL SALE OF ALCOHOLIC BEVERAGES-- CRIMINAL
25 PENALTY-- SEIZURE AND FORFEITURE. --

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 5, 1997

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 379

has had it under consideration and reports same with recommendation
that it DO PASS, amended as follows:

1. On page 7, line 5, strike "a claimant" and insert "the party".
2. On page 7, lines 11 and 12 strike "ten thousand dollars (\$10,000)" and insert "twenty five thousand dollars (25,000)".

Respectfully submitted,

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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Ben D. Altamirano, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: None

Excused: Aragon, Campos, Ingle, Smith

Absent: None

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SJC/SB 379

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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