

HOUSE BILL 316

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

RELATING TO FORFEITURE; ALLOWING CERTAIN SEIZURES OF PROPERTY
BY A LAW ENFORCEMENT AGENCY THAT PARTICIPATES IN FEDERAL
EQUITABLE SHARING PROGRAMS.

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

SECTION 1. Section 31-27-2 NMSA 1978 (being Laws 2002,
Chapter 4, Section 2, as amended) is amended to read:

"31-27-2. PURPOSE OF ACT--APPLICABILITY--NO ADDITIONAL
REMEDIES.--

A. The purposes of the Forfeiture Act are to:

(1) make uniform the standards and procedures
for the seizure and forfeiture of property subject to
forfeiture;

(2) protect the constitutional rights of
persons whose property is subject to forfeiture and of innocent

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1 owners holding interests in property subject to forfeiture;

2 (3) deter criminal activity by reducing its
3 economic incentives;

4 (4) increase the pecuniary loss from criminal
5 activity;

6 (5) protect against the wrongful forfeiture of
7 property; and

8 (6) ensure that only criminal forfeiture is
9 allowed in this state and only pursuant to state law.

10 B. Except as provided in Section 31-27-11 NMSA
11 1978, the Forfeiture Act:

12 (1) applies to all seizures, forfeitures and
13 dispositions of property subject to forfeiture pursuant to laws
14 that specifically apply the Forfeiture Act in this state; and

15 (2) does not apply to:

16 (a) contraband, which is subject to
17 seizure pursuant to applicable state laws, but is not subject
18 to forfeiture pursuant to the Forfeiture Act;

19 (b) animals that are subject to seizure,
20 impoundment, alteration, permanent removal from custody or
21 destruction for animal welfare, public health and safety or
22 compliance and enforcement purposes pursuant to applicable
23 state and local laws;

24 (c) real property or personal property
25 that is located on that real property that is subject to

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1 destruction pursuant to state and local laws to protect public
2 health and safety; and

3 (d) forfeiture that results from a lien
4 for charges or assessments that are provided for or fixed by
5 state or local laws."

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

8 "31-27-7. TITLE TO SEIZED PROPERTY--DISPOSITION OF
9 FORFEITED PROPERTY AND ABANDONED PROPERTY--PROCEEDS.--

10 A. Except as provided in Section 31-27-11 NMSA 1978
11 when a law enforcement agency in New Mexico seizes property for
12 a federal law enforcement authority as a participant in a
13 federal equitable sharing program, the state acquires
14 provisional title to seized property at the time the property
15 was used or acquired in connection with an offense that
16 subjects the property to forfeiture. Provisional title
17 authorizes the state to hold and protect the property. Title
18 to the property shall vest with the state when a trier of fact
19 renders a final forfeiture verdict and the title relates back
20 to the time when the state acquired provisional title; provided
21 that the title is not subject to claims by third parties that
22 are adjudicated pursuant to the Forfeiture Act.

23 B. Unless possession of the property is illegal or
24 a different disposition is specifically provided for by law and
25 except as provided in this section, forfeited property that is

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1 not currency shall be delivered along with any abandoned
2 property to the state treasurer or the state treasurer's
3 designee for disposition at a public auction. Forfeited
4 currency and all proceeds of the sale of forfeited or abandoned
5 property shall be distributed by the state treasurer as
6 follows:

7 (1) first, to reimburse the reasonable
8 expenses related to the storage, protection and transfer of the
9 property incurred by a law enforcement agency or the state
10 treasurer;

11 (2) second, to pay any reasonable expenses
12 incurred to dispose of the property by a law enforcement agency
13 or the state treasurer; and

14 (3) third, any remaining balance shall be
15 deposited in the general fund.

16 C. Except as provided in Section 31-27-11 NMSA
17 1978, proceeds from the sale of forfeited property received by
18 the state from another jurisdiction shall be deposited in the
19 general fund.

20 D. A law enforcement agency or public body that
21 receives reimbursement pursuant to Subsection B of this section
22 shall inform the state auditor of that fact at the time of the
23 agency's or body's annual audit.

24 E. A forfeited property interest is subject to the
25 interest of a secured party unless, in the forfeiture

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1 proceeding, the state proves by clear and convincing evidence
2 that the secured party had actual knowledge of the crime that
3 relates to the seizure of the property.

4 F. Abandoned property shall be disposed of in the
5 same manner as provided in Subsection B of this section.

6 G. Property subject to forfeiture that is in a law
7 enforcement agency's possession becomes abandoned property and
8 may be disposed of as such without a conviction if:

9 (1) there is no innocent owner; and

10 (2) the criminal prosecution of the owner of
11 the seized property cannot proceed because for a period in
12 excess of one year and one day:

13 (a) a bench warrant has been pending as
14 a result of the defendant failing to appear; or

15 (b) the owner [~~fugitates~~] was
16 fugitated."

17 SECTION 3. Section 31-27-11 NMSA 1978 (being Laws 2015,
18 Chapter 152, Section 13) is amended to read:

19 "31-27-11. TRANSFER OF FORFEITABLE PROPERTY TO THE
20 FEDERAL GOVERNMENT--EXPENDITURE OF MONEY DISBURSED BY FEDERAL
21 EQUITABLE SHARING PROGRAMS.--

22 A. A law enforcement agency shall not directly or
23 indirectly transfer seized property to a federal law
24 enforcement authority or other federal agency unless:

25 (1) the value of the seized property exceeds

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1 fifty thousand dollars (\$50,000), excluding the potential value
2 of the sale of contraband; and

3 ~~[(2) the law enforcement agency determines~~
4 ~~that the criminal conduct that gave rise to the seizure is~~
5 ~~interstate in nature and sufficiently complex to justify the~~
6 ~~transfer of the property; or~~

7 ~~(3) the seized property may only be forfeited~~
8 ~~under federal law]~~

9 (2) the federal government has filed criminal
10 charges against the owner of the seized property, there is no
11 innocent owner and the seized property is required as evidence
12 in the federal prosecution.

13 B. ~~[The]~~ A law enforcement agency shall not
14 transfer property to the federal government if the transfer
15 would circumvent the protections of the Forfeiture Act that
16 would otherwise be available to a putative interest holder in
17 the property. A law enforcement agency may share information
18 and cooperate with the federal government.

19 C. A law enforcement agency may participate in
20 federal equitable sharing programs as authorized by Section
21 29-1-10.1 NMSA 1978 and allowed in this section; provided that
22 no equitable sharing money shall be accepted by the law
23 enforcement agency unless the owner of the property is
24 convicted in federal court.

25 D. A law enforcement agency participating in

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1 federal equitable sharing programs shall spend money received
2 from a program on drug prevention or awareness programs,
3 including costs associated with conducting law enforcement
4 agency awareness programs."

5 SECTION 4. APPLICABILITY.--The provisions of this act
6 apply to seized and disclaimed property in the possession of a
7 law enforcement agency or the state treasurer on and after the
8 effective date of this act.

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