

**STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT**

CITY OF ALBUQUERQUE, EX REL.,  
ALBUQUERQUE POLICE DEPARTMENT,

Plaintiff,

v.

ONE (1) 2014 NISSAN 4DR SILVER  
V.I.N. 3N1CN7AP4EL842551,  
NEW MEXICO LICENSE NO. 116SM2,

Defendant.

Civil Action No. D-202-CV-2016-03614

**CLAIMANT ARLENE HARJO'S MOTION  
FOR PARTIAL JUDGMENT ON THE PLEADINGS**

Claimant Arlene Harjo hereby respectfully moves for partial judgment on the pleadings pursuant to Rule 1-012(C) NMRA. The City of Albuquerque's Forfeiture Complaint can be resolved on the ground that the City's forfeiture ordinance is preempted by state law, and Count I of Claimant's Counterclaims can be resolved on that same basis. And, because preemption "raises issues of law only," *W. Commerce Bank v. Reliance Ins. Co.*, 1987-NMSC-009, ¶ 3, 105 N.M. 346, the Court can decide that preemption issue entirely on the pleadings. The Court should find the City's civil forfeiture ordinance preempted, order the immediate return of Claimant's vehicle, award declaratory and injunctive relief barring further enforcement of the City's ordinance, and retain jurisdiction to resolve Claimant's additional counterclaims.

**INTRODUCTION**

Arlene Harjo has not been accused of a crime. Yet, for seven months, Arlene's car has sat in the City's impound lot while Arlene (making loan payments all the while) has been forced to

fight for its return. The City seized Arlene’s car because *her son* borrowed it and allegedly drove drunk. Arlene was not present for the alleged offense and would not have allowed her son to borrow her car if she thought he would break the law. Yet now Arlene must prove her innocence to avoid the permanent forfeiture of her car. Just as remarkably, the City readily admits (*see* Reply to Counterclaims ¶¶ 14, 17, 81) that proceeds from the sale of Arlene’s car will go to pay the salaries of the very people who operate this civil forfeiture program.

This is not supposed to happen in New Mexico. In 2015, the State enacted historic legislation—referred to hereinafter as the Reform Law—abolishing civil forfeiture. *See* House Bill 560, attached as Ex. A. The Reform Law says at its outset that it is intended to “ensure that *only criminal forfeiture* is allowed in this state.” *Id.* § 2 (codified at NMSA 1978, § 31-27-2(A)(6) (2015)) (emphasis added). In other words, a person’s property is only “subject to forfeiture if . . . the person is convicted by a criminal court.” *Id.* § 4 (codified at § 31-27-4(A)). And, just as significant, forfeiture proceeds are to be deposited in the general fund, not retained by law enforcement. *Id.* § 8 (codified at § 31-27-7(B)). The City’s program violates this law.

The City has nevertheless managed to keep its program alive in the trial courts, although the legality of the City’s program notably has not yet been addressed by the courts of appeals. *See* City’s Affirmative Defenses to Counterclaims ¶ 1. These default judgments and summary orders upholding the City’s program have all rested on language from Section 2(B) of the Forfeiture Act specifying where the Forfeiture Act—the main statute amended by the Reform Law—“applies.” *See* Ex. A § 2 (codified at NMSA 1978, § 31-27-2(B)(1) (2015)).

Respectfully, these non-binding decisions all rest on a profound misreading of Section 2(B). The relevant language from Section 2(B) predates the Reform Law and has been authoritatively interpreted by the New Mexico Court of Appeals as governing only the inter-

relationship of various provisions of *state* law—not the relationship of state law to *other* sources of legal authority, such as municipal ordinances. *See Albin v. Bakas*, 2007-NMCA-076 ¶¶ 26-28, 141 N.M. 742. Section 2(B) is thus entirely irrelevant to the preemption issue.

Putting aside the confusion introduced by the City’s erroneous reliance on Section 2(B), this is a simple case. The State has outlawed civil forfeiture, and yet the City admits that it continues to take property using civil forfeiture. *See Reply to Counterclaims* ¶ 2. This conflict requires preemption. *See Protection and Advocacy Sys. v. City of Albuquerque*, 2008-NMCA-149, ¶ 48, 145 N.M. 156 (where an “ordinance is inconsistent with a general State statute then the State statute controls”); *see also ACLU v. City of Albuquerque*, 1999-NMSC-044, ¶¶ 10-11, 128 N.M. 315; *O’Connell v. City of Stockton*, 162 P.3d 583 (Cal. 2007).

This brief clears away the underbrush that has obscured this simple conclusion, and it does so in four parts. **First**, the City’s reading of Section 2(B) is contrary to binding appellate precedent. **Second**, the City’s view of the law would impermissibly frustrate the Reform Law’s expressly-stated purpose. **Third**, the City’s view of the law is contrary to the broader structure of the Reform Law, which made comprehensive changes to state law to abolish civil forfeiture. **Fourth**, and finally, the City’s view of the law must be rejected under the presumption against forfeiture, which commands that state law be read strictly against forfeiture. If there is any doubt about the proper interpretation of the Reform Law, that doubt must be resolved against forfeiture and in favor of preemption.

Arlene is prepared to come forward with evidence of her innocence. Arlene also is prepared to challenge the constitutionality of the City’s civil forfeiture program. But none of that should be necessary. New Mexico has *already* outlawed civil forfeiture. This Court should enforce the Reform Law and bring the City’s program to an end.

## ARGUMENT

### I. The City’s Reliance On Section 2(B) Of The Forfeiture Act To Defeat Preemption Is Foreclosed By *Albin v. Bakas*.

The City’s defense to preemption rests on Section 2(B) of the Forfeiture Act, which states that the Forfeiture Act “applies” to “seizures, forfeitures, and dispositions of property subject to forfeiture *pursuant to laws* that specifically apply the Forfeiture Act.” Ex. A § 2 (codified at NMSA 1978, § 31-27-2(B)(1) (2015)) (emphasis added). The City claims its ordinance is not preempted because it “does not specifically apply the Forfeiture Act” and therefore falls outside the scope of Section 2(B). Affirmative Defenses to Counterclaims ¶ 1. But this misreads Section 2(B), which governs whether the Forfeiture Act applies to other state “laws” but says nothing at all about how it applies to municipal ordinances. Properly understood, Section 2(B) does not address, and is therefore irrelevant to, the preemption issue raised by this case.

The City’s interpretation of Section 2(B) is foreclosed by *Albin v. Bakas*, 2007-NMCA-076, 141 N.M. 742. In *Albin*, state law enforcement officials claimed that the relevant language in Section 2(B)—which predates the Reform Law—allowed them to ignore the Forfeiture Act’s procedures so long as they seized property in order to transfer it to the federal government for forfeiture under federal law. *Id.* ¶ 23. They argued that they were not subject to the Forfeiture Act because federal forfeiture laws are not among the “laws” to which the Forfeiture Act “applies” under Section 2(B). *Id.* That is precisely the same argument the City is making here, except that, in this case, law enforcement is attempting to circumvent the Forfeiture Act using a municipal ordinance. But the Court of Appeals rejected this argument in *Albin*, holding that the word “laws” in Section 2(B) refers to *state statutes* and that Section 2(B) therefore says nothing about how the Forfeiture Act applies to *non-state-law* forfeitures. *Id.* ¶ 28; *see also id.* ¶¶ 25-27. Having determined that Section 2(B) was irrelevant, *Albin* looked to the “purposes” and

“structure” of the Forfeiture Act to hold that law enforcement could not use federal forfeiture statutes to circumvent state law. *Id.* ¶ 28.<sup>1</sup>

*Albin* teaches that Section 2(B) is irrelevant to the preemption issue in this case and directs this Court to look instead to the broader purpose and structure of the Reform Law. *Albin* authoritatively interpreted the relevant language in Section 2(B) and held that it tells courts whether the Forfeiture Act applies to forfeitures under a particular *state statute*—for instance, forfeitures under *state statutes* providing for forfeiture of “adulterated or misbranded food” or “cruelly treated livestock.” 2007-NMCA-076, ¶ 27 (citing state statutes).<sup>2</sup> But in cases like this one—where forfeiture is to occur under an authority *other than* a state statute, such as a federal law or municipal ordinance—Section 2(B) is irrelevant and courts must look to the Forfeiture Act’s purpose and structure to determine how the Forfeiture Act applies. *Id.* ¶ 28. Turning from Section 2(B) to the proper focus of the inquiry—the purpose and structure of the Forfeiture Act, as it was recently amended by the Reform Law—there can be little question that the City’s civil forfeiture ordinance is preempted.

## **II. The City’s Interpretation Of The Reform Law Directly Conflicts With The Reform Law’s Expressly-Stated Purpose.**

*Albin* directs this Court to look to the structure and purpose of the Reform Law, and in this case the Reform Law’s purpose is clear: The Reform Law explicitly says that it is intended to “ensure that *only criminal forfeiture* is allowed *in this state*.” Ex. A § 2 (codified at NMSA

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<sup>1</sup> While the Reform Law amended Section 2(B) in some respects, those amendments do not affect *Albin*’s relevance to this case. The Reform Law broadened the Forfeiture Act’s applicability, striking language in Section 2(B) that said the Forfeiture Act did not apply to “other laws” if they were “consistent” with the Forfeiture Act and replacing it with a narrower exception for “contraband.” *See* Ex. A § 2 (codified at NMSA 1978, § 31-27-2(B)(2) (2015)). These changes left in place the critical terms “applies” and “laws,” which are the terms on which the City’s interpretation of Section 2(B) ultimately rises or falls.

<sup>2</sup> Other provisions of state law that do not “specifically apply” the Forfeiture Act include “forfeitures” of bail bonds, NMSA 1978, § 31-3-2 (1993), and water rights, § 72-12-8 (2002).

1978, § 31-27-2(A)(6) (2015)) (emphases added). In other words, the purpose of the Reform Law is to abolish civil forfeiture across New Mexico. The City’s interpretation of the Reform Law—including the City’s interpretation of Section 2(B)—must be rejected because it would directly conflict with that clearly-articulated purpose.

The New Mexico Supreme Court relied on an equally explicit statement of purpose to find an ordinance preempted in *ACLU v. City of Albuquerque*, 1999-NMSC-044, 128 N.M. 315. The question in *ACLU* was whether the protections afforded to juveniles by the State’s Delinquency Act preempted Albuquerque’s curfew ordinance. *Id.* ¶ 10. Just as the City does with Section 2(B) here, the City argued that its ordinance fell outside the express terms of the state statute. The Delinquency Act’s scope encompassed “delinquent acts,” as defined by the Act, and the City argued that a violation of its curfew ordinance did not meet the Act’s definition of that term. *Id.* ¶ 12. The Court “agree[d] that a violation of the City Curfew is not a ‘delinquent act,’” *id.*, but held that was irrelevant for essentially the same reason that Section 2(B) is irrelevant here: The definition of a “delinquent act” told courts how to decide questions arising *within* the four corners of the State’s statutory scheme but did not tell courts whether the State’s statutory scheme preempted a municipal ordinance. *Id.* Instead, the Court looked to the Delinquency Act’s express statement of purpose to decide that preemption question. The Delinquency Act expressly said that its purpose was “to remove from children . . . the adult consequences of criminal behavior.” *Id.* ¶ 13 (quoting NMSA 1978, § 32A-2-2(A) (1996)). Because the City’s ordinance treated curfew violations by juveniles as criminal offenses, it “circumvent[ed] and thereby frustrat[ed]” the Delinquency Act’s expressly-stated purpose and was preempted. *Id.*

*ACLU* and this case are indistinguishable. As in this case, the City in *ACLU* advanced a cramped interpretation of state law in order to defeat preemption. 1999-NMSC-044, ¶ 12. And,

as in this case, the City’s cramped interpretation would have fatally undermined the state law’s explicitly-articulated purpose, as municipalities would have been able to enact ordinances that would achieve exactly the result state law was intended to prevent. *Id.* ¶ 13. The Supreme Court rejected the City’s cramped interpretation of state law in *ACLU* and instead held that preemption was required to achieve state law’s expressly-stated purpose. *Id.* ¶ 13. The result here should be the same. The City’s civil forfeiture ordinance cannot be squared with the Reform Law’s express purpose and is accordingly preempted.

### **III. The City’s Interpretation Of The Reform Law Is Contrary To The Reform Law’s Basic Structure, Which Made Comprehensive Reforms To Abolish Civil Forfeiture.**

The overall structure of the Reform Law confirms that municipalities cannot be allowed to circumvent New Mexico’s abolition of civil forfeiture. The Reform Law made comprehensive changes to state law to abolish civil forfeiture, and all of those changes would be effectively meaningless if cities could reauthorize civil forfeiture through the back door. Preemption is therefore required by the basic rule of statutory interpretation that courts should “presume that the legislature . . . does not intend to enact a nullity.” *Inc. Cty. of Los Alamos v. Johnson*, 1989-NMSC-045, ¶ 4, 108 N.M. 633.

The Reform Law did not merely *say* that it was intended to abolish civil forfeiture; it also overhauled state forfeiture laws to achieve that result. The Reform Law amended the Forfeiture Act to provide that property can be forfeited *only* if the owner “is convicted by a criminal court.” Ex. A § 4 (codified at NMSA 1978, § 31-27-4(A) (2015)). The Reform Law then systematically amended forfeiture provisions in other state statutes to make clear that forfeitures under those statutes must proceed under the *criminal* forfeiture procedures now spelled out in the Forfeiture Act. *Id.* §§ 14-19 (codified throughout NMSA). The Reform Law authorized only one limited exception to this scheme, providing that forfeitures of contraband (*e.g.*, illegal drugs) can

proceed without a conviction. *Id.* § 2 (codified at § 31-27-2(B)(2)). And, finally, the Reform Law prohibited law enforcement from circumventing the abolition of civil forfeiture by transferring property to the federal government. *Id.* § 13 (codified at § 31-27-11). With carefully limited exceptions, this scheme ensures that law enforcement can forfeit property based on its use in an alleged criminal offense *only* if law enforcement convicts the property’s owner of a crime. In other words, the Reform Law acted comprehensively to abolish civil forfeiture.

The City’s interpretation would effectively gut the Reform Law. While this case involves forfeiture of a car for an alleged drunk driving offense, the City’s interpretation of the Reform Law would allow the City to authorize civil forfeiture of *any* property based on *any* alleged offense. *See* Affirmative Defenses to Counterclaims ¶ 1 (“[T]he City is *statutorily exempt* from the Forfeiture Act.” (emphasis added)). This is not speculation: Even today the City’s civil forfeiture ordinances go beyond drunk driving and authorize civil forfeiture for any state-law felony offense involving use of a firearm. ROA § 7-9-3(A)(1); *see also* ROA § 7-14-2 (allowing civil forfeiture for prostitution offenses). The City’s interpretation would free it to enact even more sweeping ordinances that would effectively undo the State’s abolition of civil forfeiture.

Courts consistently find that the kind of statewide comprehensive scheme enacted by the Reform Law—designed to protect individual rights—preempts municipal ordinances that would circumvent that scheme. Three cases illustrate the point:

- ***ACLU v. City of Albuquerque, 1999-NMSC-044***: In addition to the Legislature’s express statement of intent, the Court in *ACLU* looked to the structure of the State’s Delinquency Act and held that it was “clearly intended to protect and preserve the legal rights of children.” *Id.* ¶ 11. Having acted “comprehensively” and “exhaustively” to protect children from criminal

sanctions, the Legislature could not possibly have intended to allow municipalities to impose such sanctions via ordinance. *Id.* ¶¶ 13, 15.

- ***Protection and Advocacy System v. City of Albuquerque, 2008-NMCA-149***: Here, the Court of Appeals found that a state law that created a comprehensive scheme governing compulsory treatment of the mentally ill preempted an Albuquerque ordinance that would allow compulsory treatment in *additional* circumstances. *Id.* ¶ 48. The Court of Appeals emphasized that the state law protected individual rights: “[T]he Legislature has evinced an intent . . . to provide the specific protections . . . before treating an individual with mental illness.” *Id.* ¶ 71. Preemption was required because allowing “each municipality to create different schemes” would “frustrate the purpose of the Legislature in creating the detailed scheme.” *Id.*

- ***O’Connell v. City of Stockton, 162 P.3d 583 (Cal. 2007)***: Finally, in *O’Connell*, the California Supreme Court found that state forfeiture law preempted a city’s vehicle forfeiture ordinance.<sup>3</sup> California law permitted forfeiture for certain drug crimes only upon proof “beyond a reasonable doubt.” *Id.* at 589. But the City of Stockton’s ordinance—just like Albuquerque’s ordinance here—“allow[ed] the harsh penalty of vehicle forfeiture upon proof merely by a preponderance of evidence.” *Id.* The California Supreme Court observed that state forfeiture law limited the availability of forfeiture in order to protect the rights of property owners and held that Stockton’s ordinance was preempted because it would undermine that protection. *Id.*

These three cases all demand rejection of the expansive authority claimed by the City. In all three cases, state law protected individuals by limiting the government’s ability to infringe

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<sup>3</sup> The home rule provision in the New Mexico Constitution is patterned on the home rule provision of the California Constitution, and the New Mexico Supreme Court has looked to California precedent when deciding preemption issues. *See Apodaca v. Wilson, 1974-NMSC-071, ¶ 12, 86 N.M. 516.*

individual rights. In all three cases, municipalities claimed authority to disregard those limits. And, in all three cases, the courts disagreed: Where a state law exists to protect individual rights, that state law preempts municipal ordinances that would circumvent those protections. *See also In re Mahdjid B.*, 2015-NMSC-003, ¶ 32, 342 P.3d 698 (rejecting interpretation that would “undermine the spirit” of law enacted to protect individual rights). Because Albuquerque’s vehicle forfeiture ordinance would effectively gut the Reform Law, preemption is required.

#### **IV. The City’s Interpretation Of The Reform Law Must Be Rejected Under The Presumption Against Forfeiture.**

Finally, to the extent that there can be any question as to the proper interpretation of the Reform Law, *Albin* teaches that the issue must be resolved against forfeiture and—accordingly—in favor of preemption. As discussed above, *supra* p. 4, *Albin* asked if law enforcement could circumvent the Forfeiture Act by pursuing forfeiture under federal law. The court held that circumvention was not allowed and, in doing so, repeatedly invoked the presumption against forfeiture, under which courts “construe the statute strictly against forfeiture.” 2007-NMCA-076, ¶¶ 24, 28; *see also State v. Ozarek*, 1978-NMSC-001, ¶ 4, 91 N.M. 275. The *Albin* court, in light of this presumption, interpreted state law in the way that would result in the fewest forfeitures—which meant interpreting the Forfeiture Act to stop law enforcement from circumventing state law. The same reasoning applies here: If there is any doubt about the proper interpretation of the Reform Law, that doubt must be resolved against forfeiture and in favor of preemption.

### **CONCLUSION**

Claimant’s Motion for Partial Judgment on the Pleadings should be granted, the City should be ordered to return Claimant’s vehicle without delay, and Claimant should be awarded declaratory and injunctive relief barring further enforcement of the City’s civil forfeiture ordinance.

Dated: December 12, 2016

Respectfully submitted,

/s/ Arash "Asher" Kashanian

/s/ Robert Everett Johnson

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on December 12, 2016, a true and correct copy of the foregoing **MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS** along with a **REQUEST FOR HEARING** was submitted to the Odyssey File and Serve electronic filing system and served via email to counsel for all parties at [khibner@cabq.gov](mailto:khibner@cabq.gov) and [khammar@abqlawnm.com](mailto:khammar@abqlawnm.com). Because of a technical error with the Odyssey system, the filing was resubmitted to the Odyssey system on December 15, 2016.

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# EXHIBIT A

AN ACT

RELATING TO FORFEITURE; PROVIDING THAT FORFEITURE PURSUANT TO THE FORFEITURE ACT SHALL FOLLOW A CRIMINAL CONVICTION; REVISING SEIZURE AND FORFEITURE PROCEDURES; REQUIRING LAW ENFORCEMENT AGENCIES TO SUBMIT ANNUAL REPORTS RELATING TO FORFEITURE; PROVIDING FOR THE TRANSFER OF SEIZED PROPERTY; EXCLUDING CONTRABAND FROM THE FORFEITURE ACT; REQUIRING FORFEITURE PROCEEDINGS TO FOLLOW A RELATED CRIMINAL PROCEEDING; PROVIDING FOR PROCEEDS FROM THE SALE OF FORFEITED AND ABANDONED PROPERTY AND FORFEITED CURRENCY TO BE DEPOSITED IN THE GENERAL FUND; PROVIDING FOR AN INNOCENT OWNER TO ASSERT AN INTEREST IN SEIZED PROPERTY.

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

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

"31-27-1. SHORT TITLE.--Chapter 31, Article 27 NMSA 1978 may be cited as the "Forfeiture Act". "

**SECTION 2.** Section 31-27-2 NMSA 1978 (being Laws 2002, Chapter 4, Section 2) 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

HB 560  
Page 1

to forfeiture;

(2) protect the constitutional rights of persons whose property is subject to forfeiture and of innocent owners holding interests in property subject to forfeiture;

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

(4) increase the pecuniary loss from criminal activity;

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

(6) ensure that only criminal forfeiture is allowed in this state.

B. The Forfeiture Act:

(1) applies to seizures, forfeitures and dispositions of property subject to forfeiture pursuant to laws that specifically apply the Forfeiture Act; and

(2) does not apply to contraband, which is subject to seizure pursuant to applicable state laws, but is not subject to forfeiture pursuant to the Forfeiture Act."

**SECTION 3.** Section 31-27-3 NMSA 1978 (being Laws 2002, Chapter 4, Section 3) is amended to read:

"31-27-3. DEFINITIONS.--As used in the Forfeiture Act:  
A. "abandoned property":

(1) means personal property the rights to

HB 560  
Page 2

which and the control of which an owner has intentionally relinquished; and

(2) does not mean real property;

B. "actual knowledge" means a direct and clear awareness of information, a fact or a condition;

C. "contraband" means goods that may not be

lawfully imported, exported or possessed, including drugs that are listed in Schedule I, II, III, IV or V of the Controlled Substances Act and that are possessed without a valid prescription;

D. "conveyance" means a device used for transportation and:

(1) includes a motor vehicle, trailer, snowmobile, airplane, vessel and any equipment attached to the conveyance; but

(2) does not include property that is stolen or taken in violation of a law;

E. "conviction" or "convicted" means that a person has been found guilty of a crime in a trial court whether by a plea of guilty or nolo contendere or otherwise and whether the sentence is deferred or suspended;

F. "crime" means a violation of a criminal statute for which property of the offender is subject to seizure and forfeiture;

G. "instrumentality" means all property that is

HB 560  
Page 3

otherwise lawful to possess that is used in the furtherance or commission of an offense to which forfeiture applies and includes land, a building, a container, a conveyance, equipment, materials, a product, a computer, computer software, a telecommunications device, a firearm, ammunition, a tool, money, a security and a negotiable instrument and other devices used for exchange of property;

H. "law enforcement agency" means the employer of a law enforcement officer that is authorized to seize or has seized property pursuant to the Forfeiture Act;

I. "law enforcement officer" means:

(1) a state or municipal police officer, county sheriff, deputy sheriff, conservation officer, motor transportation enforcement officer or other state employee authorized by state law to enforce criminal statutes; but

(2) does not mean a correctional officer;

J. "owner" means a person who has a legal or equitable ownership interest in property;

K. "property" means tangible or intangible personal property or real property;

L. "property subject to forfeiture" means property or an instrumentality described and declared to be subject to forfeiture by the Forfeiture Act or a state law outside of the Forfeiture Act; and

M. "secured party" means a person with a security

HB 560  
Page 4

or other protected interest in property, whether the interest arose by mortgage, security agreement, lien, lease or otherwise; the purpose of which interest is to secure the payment of a debt or protect a potential debt owed to the secured party."

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

"31-27-4. FORFEITURE--CONVICTION REQUIRED--SEIZURE OF PROPERTY--WITH PROCESS--WITHOUT PROCESS.--

A. A person's property is subject to forfeiture if:

(1) the person was arrested for an offense to which forfeiture applies;

(2) the person is convicted by a criminal court of the offense; and

(3) the state establishes by clear and convincing evidence that the property is subject to forfeiture as provided in Subsection B of this section.

B. Following a person's conviction for an offense

to which forfeiture applies, a court may order the person to forfeit:

(1) property the person acquired through commission of the offense;

(2) property directly traceable to property acquired through the commission of the offense; and

HB 560  
Page 5

(3) any instrumentality the person used in the commission of the offense.

C. Nothing in this section shall prevent property from being forfeited by the terms of a plea agreement that is approved by a court or by other agreement of the parties to a criminal proceeding.

D. Subject to the provisions of Section 31-27-5 NMSA 1978, at any time, at the request of the state, a court may issue an ex parte preliminary order to seize property that is subject to forfeiture and for which forfeiture is sought and to provide for the custody of the property. The execution on the order to seize the property and the return of the property, if applicable, are subject to the Forfeiture Act and other applicable state laws. Before issuing an order pursuant to this subsection, the court shall make a determination that:

(1) there is a substantial probability that:

(a) the property is subject to forfeiture;

(b) the state will prevail on the issue of forfeiture; and

(c) failure to enter the order will result in the property being destroyed, removed from the state or otherwise made unavailable for forfeiture; and

(2) the need to preserve the availability of the property through the entry of the requested order

HB 560  
Page 6

outweighs the hardship to the owner and other parties known to be claiming interests in the property.

E. Property subject to forfeiture may be seized at any time, without a prior court order, if:

(1) the seizure is incident to a lawful arrest for a crime or a search lawfully conducted pursuant to a search warrant and the law enforcement officer making the arrest or executing the search has probable cause to believe the property is subject to forfeiture and that the subject of the arrest or search warrant is an owner of the property;

(2) the property subject to seizure is the subject of a previous judgment in favor of the state; or

(3) the law enforcement officer making the seizure has probable cause to believe the property is subject to forfeiture and that the delay occasioned by the need to obtain a court order would result in the removal or destruction of the property or otherwise frustrate the seizure."

**SECTION 5.** A new Section 31-27-4.1 NMSA 1978 is enacted to read:

"31-27-4.1. RECEIPT FOR SEIZED PROPERTY--REPLEVIN HEARING.--

A. When a law enforcement officer seizes property that is subject to forfeiture, the officer shall provide an itemized receipt to the person possessing the property or, in

HB 560  
Page 7

the absence of a person to whom the receipt could be given, shall leave the receipt in the place where the property was found, if possible.

B. Following the seizure of property, the defendant in the related criminal matter or another person who claims an interest in seized property may, at any time before sixty days prior to a related criminal trial, claim an interest in seized property by a motion to the court to issue a writ of replevin. A motion filed pursuant to this section shall include facts to support the person's alleged interest in the property.

C. A person who makes a timely motion pursuant to this section shall have a right to a hearing on the motion before the resolution of any related criminal matter or forfeiture proceeding and within thirty days of the date on which the motion is filed.

D. At least ten days before a hearing on a motion filed pursuant to this section, the state shall file an answer or responsive motion that shows probable cause for the seizure.

E. A court shall grant a claimant's motion if the court finds that:

(1) it is likely that the final judgment will require the state to return the property to the claimant;

HB 560  
Page 8

(2) the property is not reasonably required to be held for investigatory reasons; or

(3) the property is the only reasonable means for a defendant to pay for legal representation in a related criminal or forfeiture proceeding.

F. In its discretion, the court may order the return of funds or property sufficient to obtain legal counsel but less than the total amount seized, and it may require an accounting.

G. In lieu of ordering the issuance of the writ of replevin, a court may order:

(1) the state to give security or written assurance for satisfaction of any judgment, including damages, that may be rendered in a related forfeiture action; or

(2) any other relief the court deems to be just."

**SECTION 6.** Section 31-27-5 NMSA 1978 (being Laws 2002, Chapter 4, Section 5) is amended to read:

"31-27-5. COMPLAINT OF FORFEITURE--SERVICE OF PROCESS.--

A. Within thirty days of making a seizure of property or simultaneously upon filing a related criminal indictment, the state shall file a complaint of ancillary forfeiture proceedings or return the property to the person from whom it was seized. A complaint of ancillary forfeiture

HB 560  
Page 9

proceedings shall include:

(1) a description of the property seized;

(2) the date and place of seizure of the property;

(3) the name and address of the law enforcement agency making the seizure;

(4) the specific statutory and factual grounds for the seizure;

(5) whether the property was seized pursuant to an order of seizure, and if the property was seized without an order of seizure, an affidavit from a law enforcement officer stating the legal and factual grounds why an order of seizure was not required; and

(6) in the complaint caption and in the complaint, the names of persons known to the state who may claim an interest in the property and the basis for each person's alleged interest.

B. The complaint shall be served upon the person from whom the property was seized, the person's attorney of record and all persons known or reasonably believed by the state to claim an interest in the property. A copy of the complaint shall also be published at least three times in a newspaper of general circulation in the district of the court having jurisdiction or on the sunshine portal until the forfeiture proceeding is resolved."

HB 560  
Page 10

**SECTION 7.** Section 31-27-6 MSA 1978 (being Laws 2002,

Chapter 4, Section 6) is amended to read:

"31-27-6. FORFEITURE PROCEEDINGS--DETERMINATION--  
SUBSTITUTION OF PROPERTY--CONSTITUTIONALITY--APPEAL.--

A. A person who claims an interest in seized property shall file an answer to the complaint of forfeiture within thirty days of the date of service of the complaint. The answer shall include facts to support the claimant's alleged interest in the property.

B. The district courts have jurisdiction over forfeiture proceedings, and venue for a forfeiture proceeding is in the same court in which venue lies for the criminal matter related to the seized property.

C. The forfeiture proceeding shall begin after the conclusion of the trial for the related criminal matter in an ancillary proceeding that relates to a defendant's property before the same judge and jury, if applicable, and the court, and the jury, if applicable, may consider the forfeiture of property seized from other persons at the same time or in a later proceeding. If the criminal defendant in the related criminal matter is represented by the public defender department, the chief public defender or the district public defender may authorize department representation of the defendant in the forfeiture proceeding.

D. Discovery conducted in an ancillary forfeiture

HB 560  
Page 11

proceeding is subject to the rules of criminal procedure.

E. An ancillary forfeiture proceeding that relates to the forfeiture of property valued at less than twenty thousand dollars (\$20,000) shall be held before a judge only.

F. If the state fails to prove, by clear and convincing evidence, that a person whose property is alleged to be subject to forfeiture is an owner of the property:

- (1) the forfeiture proceeding shall be dismissed and the property shall be delivered to the owner, unless the owner's possession of the property is illegal; and
- (2) the owner shall not be subject to any charges by the state for storage of the property or expenses incurred in the preservation of the property.

G. The court shall enter a judgment of forfeiture and the seized property shall be forfeited to the state if the state proves by clear and convincing evidence that:

- (1) the property is subject to forfeiture;
- (2) the criminal prosecution of the owner of the seized property resulted in a conviction; and
- (3) the value of the property to be forfeited does not unreasonably exceed:
  - (a) the pecuniary gain derived or sought to be derived by the crime;
  - (b) the pecuniary loss caused or sought to be caused by the crime; or

HB 560  
Page 12

(c) the value of the convicted owner's interest in the property.

H. A court shall not accept a plea agreement or other arrangement by which a defendant contributes or donates property to a person, charity or other organization in full or partial fulfillment of responsibility established in the court's proceeding.

I. Following a person's conviction, the state may make a motion for forfeiture of substitute property owned by the person that is equal to but does not exceed the value of property that is subject to forfeiture but that the state is unable to seize. The court shall order the forfeiture of substitute property only if the state proves by a preponderance of the evidence that the person intentionally transferred, sold or deposited property with a third party to avoid the court's jurisdiction and the forfeiture of the property.

J. A person is not jointly and severally liable for orders for forfeiture of another person's property. When ownership of property is unclear, a court may order each person to forfeit the person's property on a pro rata basis or by another means the court deems equitable.

K. At any time following the conclusion of a forfeiture proceeding, the person whose property was forfeited may petition the court to determine whether the forfeiture was

unconstitutionally excessive pursuant to the state or federal constitution.

L. At a non-jury hearing on the petition, the petitioner has the burden of establishing by a preponderance of the evidence that the forfeiture was grossly disproportional to the seriousness of the criminal offense for which the person was convicted.

M. In determining whether the forfeiture is unconstitutionally excessive, the court may consider all relevant factors, including:

(1) the seriousness of the criminal offense and its impact on the community, the duration of the criminal activity and the harm caused by the defendant;

(2) the extent to which the defendant participated in the offense;

(3) the extent to which the property was used in committing the offense;

(4) the sentence imposed for the commission of the crime that relates to the property that is subject to forfeiture; and

(5) whether the criminal offense was completed or attempted.

N. In determining the value of the property subject to forfeiture, the court may consider relevant factors, including the:

(1) fair market value of the property;

(2) value of the property to the defendant,

including hardship that the defendant will suffer if the forfeiture is realized; and

(3) hardship from the loss of a primary

residence, motor vehicle or other property to the defendant's family members or others if the property is forfeited.

O. The court shall not consider the value of the property to the state when it determines whether the forfeiture of property is constitutionally excessive.

P. A party to a forfeiture proceeding may appeal a district court's decision regarding the seizure, forfeiture and distribution of property pursuant to the Forfeiture Act."

**SECTION 8.** Section 31-27-7 NMSA 1978 (being Laws 2002,

Chapter 4, Section 7) is amended to read:

"31-27-7. TITLE TO SEIZED PROPERTY--DISPOSITION OF

FORFEITED PROPERTY AND PROCEEDS.--

A. The state acquires provisional title to seized property at the time the property was used or acquired in connection with an offense that subjects the property to forfeiture. Provisional title authorizes the state to hold and protect the property. Title to the property shall vest with the state when a trier of fact renders a final forfeiture verdict and the title relates back to the time when the state acquired provisional title; provided that the title is subject

HB 560  
Page 15

to claims by third parties that are adjudicated pursuant to the Forfeiture Act.

B. Unless possession of the property is illegal or a different disposition is specifically provided for by law and except as provided in this section, forfeited property that is not currency shall be delivered along with any abandoned property to the state treasurer for disposition at a public auction. Forfeited currency and all sale proceeds of the sale of forfeited or abandoned property shall be deposited in the general fund.

C. Proceeds from the sale of forfeited property received by the state from another jurisdiction shall be deposited in the general fund.

D. A property interest forfeited to the state pursuant to the Forfeiture Act is subject to the interest of a secured party unless, in the forfeiture proceeding, the state proves by clear and convincing evidence that the secured party had actual knowledge of the crime that relates to the seizure of the property."

**SECTION 9.** A new Section 31-27-7.1 NMSA 1978 is enacted to read:

"31-27-7.1. INNOCENT OWNERS.--

A. The property of an innocent owner, as provided in this section, shall not be forfeited.

B. A person who claims to be an innocent owner has

HB 560  
Page 16

the burden of production to show that the person:

(1) holds a legal right, title or interest in the property seized; and

(2) held an ownership interest in the seized property at the time the illegal conduct that gave rise to the seizure of the property occurred or was a bona fide purchaser for fair value.

C. The state shall immediately return property to an established innocent owner who has an interest in homesteaded property, a motor vehicle valued at less than ten thousand dollars (\$10,000) or a conveyance that is encumbered by a security interest that was perfected pursuant to state law or that is subject to a lease or rental agreement, unless the secured party or lessor had actual knowledge of the criminal act upon which the forfeiture was based.

D. If a person establishes that the person is an innocent owner pursuant to Subsection B of Section 31-27-7.1 NMSA 1978 and the state pursues a forfeiture proceeding with respect to that person's property, other than property described in Subsection D of Section 31-27-7 NMSA 1978, to successfully forfeit the property, the state shall prove by clear and convincing evidence that the innocent owner had actual knowledge of the underlying crime giving rise to the forfeiture.

E. A person who acquired an ownership interest in

HB 560  
Page 17

property subject to forfeiture after the commission of a crime that gave rise to the forfeiture and who claims to be an innocent owner has the burden of production to show that the person has legal right, title or interest in the property seized under this section.

F. If a person establishes that the person is an innocent owner as provided in Subsection B of this section and the state pursues a forfeiture proceeding against the person's property, to successfully forfeit the property, the state shall prove by clear and convincing evidence that at the time the person acquired the property, the person:

(1) had actual knowledge that the property was subject to forfeiture; or

(2) was not a bona fide purchaser who was without notice of any defect in title and who gave valuable consideration.

G. If the state fails to meet its burdens as provided in Subsections C and D of this section, the court shall find that the person is an innocent owner and shall order the state to relinquish all claims of title to the innocent owner's property."

**SECTION 10.** Section 31-27-8 NMSA 1978 (being Laws 2002, Chapter 4, Section 8) is amended to read:

"31-27-8. SAFEKEEPING OF SEIZED PROPERTY PENDING  
DISPOSITION--SELLING OR RETAINING SEIZED PROPERTY

HB 560  
Page 18

PROHIBITED.--

A. Seized currency alleged to be subject to forfeiture shall be deposited with the clerk of the district court in an interest-bearing account.

B. Seized property other than currency or real property, not required by federal or state law to be destroyed, shall be:

- (1) placed under seal; and
- (2) removed to a place designated by the district court; or
- (3) held in the custody of a law enforcement agency.

C. Seized property shall be kept by the custodian in a manner to protect it from theft or damage and, if ordered by the district court, insured against those risks.

D. A law enforcement agency shall not retain forfeited or abandoned property."

**SECTION 11.** A new section of the Forfeiture Act is enacted to read:

"REPORTING.--

A. Every law enforcement agency shall prepare an annual report of the agency's seizures and forfeitures conducted pursuant to the Forfeiture Act, and seizures and forfeitures conducted pursuant to federal forfeiture law, and the report shall include:

HB 560  
Page 19

(1) the total number of seizures of currency and the total amount of currency seized in each seizure;

(2) the total number of seizures of property and the number and types of items seized in each seizure;

(3) the market value of each item of property seized; and

(4) the total number of occurrences of each class of crime that resulted in the agency's seizure of property.

B. A law enforcement agency shall submit its annual reports to the department of public safety and to the district attorney's office in the agency's district. An agency that did not engage in seizure or forfeiture pursuant to the Forfeiture Act or federal forfeiture law, or both, shall report that fact in its annual report.

C. The department of public safety shall compile the reports submitted by each law enforcement agency and issue an aggregate report of all forfeitures in the state.

D. By April 1 of each year, the department of public safety shall publish on its web site the department's aggregate report and individual law enforcement agency reports submitted for the previous year."

**SECTION 12.** A new section of the Forfeiture Act is enacted to read:

"RETURN OF PROPERTY--DAMAGES--COSTS.--

HB 560  
Page 20

A. A law enforcement agency that holds seized property shall return the seized property to the owner of the property within a reasonable period of time that does not exceed five days after:

(1) a court finds that a person had a bona fide security interest in the property;

(2) a court finds that the owner was an innocent owner;

(3) the acquittal of or dismissal of related criminal charges against the owner of the property; or

(4) the disposal of the criminal charge that was the basis of the forfeiture proceedings by nolle prosequi.

B. A law enforcement agency that holds seized property is responsible for any damages, storage fees and related costs applicable to property that is returned to an owner pursuant to this section."

**SECTION 13.** A new section of the Forfeiture Act is enacted to read:

"TRANSFER OF FORFEITABLE PROPERTY TO THE FEDERAL GOVERNMENT.--

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

(1) the value of the seized property exceeds fifty thousand dollars (\$50,000), excluding the potential

HB 560  
Page 21

value of the sale of contraband; and

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

(3) the seized property may only be forfeited under federal law.

B. The law enforcement agency shall not transfer property to the federal government if the transfer would circumvent the protections of the Forfeiture Act that would otherwise be available to a putative interest holder in the property."

**SECTION 14.** Section 18-6-11 NMSA 1978 (being Laws 1977, Chapter 75, Section 1, as amended) is amended to read:

"18-6-11. PERMIT REQUIRED FOR EXCAVATION OF ARCHAEOLOGICAL SITES--PENALTY.--

A. It is unlawful for a person or the person's agent or employee to excavate with the use of mechanical earthmoving equipment an archaeological site for the purpose of collecting or removing objects of antiquity if the archaeological site is located on private land in this state, unless the person has first obtained a permit issued pursuant to the provisions of this section for the excavation. As used in this section, "archaeological site" means a location where there exists material evidence of the past life and culture of

HB 560  
Page 22

human beings in this state but excludes the sites of burial of human beings.

B. Permits for excavation pursuant to Subsection A of this section may be issued by the committee upon approval by the state archaeologist and the state historic preservation officer if the applicant:

(1) submits written authorization for the excavation from the owner of the land;

(2) furnishes satisfactory evidence of being qualified to perform the archaeological excavation by experience, training and knowledge;

(3) submits a satisfactory plan of excavation for the archaeological site and states in the plan the method by which excavation will be undertaken; and

(4) agrees in writing, upon the completion of the excavation, to submit a summary report to the committee of the excavation, which report shall contain relevant maps, documents, drawings and photographs, together with a description of the archaeological specimens removed as a result of the excavation. Failure to file the summary report shall be grounds for refusing issuance of a future permit to the person.

C. All archaeological specimens collected or removed from the archaeological site as a result of excavation pursuant to Subsections A and B of this section shall be the

HB 560  
Page 23

property of the person owning the land on which the site is located.

D. Nothing in this section shall be deemed to limit or prohibit the use of the land on which the archaeological site is located by the owner of the land or to require the owner to obtain a permit for personal excavation on the owner's own land; provided that no transfer of ownership is made with the intent of excavating archaeological sites as prohibited in this section; and provided further that this exemption does not apply to marked or unmarked burial grounds.

E. A person convicted of violating the provisions of this section is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000) and, in accordance with the provisions of the Forfeiture Act, shall forfeit to the state all equipment used in committing the violation for which the person is convicted."

**SECTION 15.** Section 18-6-11.2 NMSA 1978 (being Laws 1989, Chapter 267, Section 1) is amended to read:

"18-6-11.2. PERMIT REQUIRED FOR EXCAVATION OF UNMARKED BURIALS--PENALTY.--

A. Each human burial in the state interred in any unmarked burial ground is accorded the protection of law and shall receive appropriate and respectful treatment and disposition.

HB 560  
Page 24

B. A person who knowingly, willfully and intentionally excavates, removes, disturbs or destroys any human burial buried, entombed or sepulchered in any unmarked burial ground in the state, or any person who knowingly, willfully and intentionally procures or employs any other person to excavate, remove, disturb or destroy any human burial buried, entombed or sepulchered in any unmarked burial ground in the state, except by authority of a permit issued by the state medical investigator or by the committee with the concurrence of the state archaeologist and state historic preservation officer, is guilty of a fourth degree felony and shall be punished by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment for a definite term of eighteen months or both. The offender shall upon conviction forfeit to the state all objects, artifacts and human burials excavated or removed from an unmarked burial ground in violation of this section, and any proceeds from the sale by the offender of any of the foregoing shall also be forfeited. The provisions of the Forfeiture Act shall apply to a forfeiture provided for in this section. As used in this section:

(1) "unmarked burial ground" means a location where there exists a burial of any human being that is not visibly marked on the surface of the ground in any manner traditionally or customarily used for marking burials

and includes any funerary object, material object or artifact associated with the burial; and

(2) "human burial" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

C. Any person who discovers a human burial in any unmarked burial ground shall cease any activity that may disturb that burial or any object or artifact associated with that burial and shall notify the local law enforcement agency having jurisdiction in the area. The local law enforcement agency shall notify the state medical investigator and the state historic preservation officer.

D. The state medical investigator may, consistent with the statutes governing medical investigations, have authority over or take possession of any human burial discovered in the state, in which case the provisions of Subsections E and F of this section shall not apply.

E. Permits for excavation of a human burial discovered in an unmarked burial ground shall be issued by the committee within sixty days of receipt of application when the applicant:

(1) submits written authorization for that excavation from the owner of the land on which the human burial is located or the applicant is the owner of the land;

(2) demonstrates appropriate efforts to determine the age of the human burial and to identify and consult with any living person who may be related to the human burial interred in the unmarked burial ground;

(3) complies with permit procedures and requirements established by regulations authorized in this section to ensure the complete removal of the human burial and the collection of all pertinent scientific information in accordance with proper archaeological methods; and

(4) provides for the lawful disposition or reinterment of the human burial either in the original or another appropriate location and of any objects or artifacts associated with that human burial, consistent with regulations issued by the state historic preservation officer, except that the committee shall not require, as a condition of issuance of a permit, reinterment or disposition, any action that unduly interferes with the owner's use of the land.

F. Permits for the excavation of any human burial discovered in the course of construction or other land modification may be issued by the committee with the concurrence of the state archaeologist and the state historic preservation officer on an annual basis to professional archaeological consultants or organizations.

G. Except when the committee requires as a condition of the permit that any object or artifact associated

HB 560  
Page 27

with a human burial be reinterred or disposed of with that burial, that object or artifact shall be the property of the person owning the land on which that burial is located.

H. Any object or artifact and any human burial excavated or removed from an unmarked burial ground in violation of this section shall be forfeited to the state and shall be lawfully disposed of or reinterred in accordance with regulations issued by the state historic preservation officer; provided that no object or artifact so forfeited shall ever be sold by the state; and provided further that any object or artifact removed from the land without the owner's consent and in violation of this section shall be returned to the lawful owner consistent with Subsection G of this section.

I. The state historic preservation officer shall issue regulations with the concurrence of the state medical investigator for the implementation of this section."

**SECTION 16.** Section 30-16B-8 NMSA 1978 (Being Laws 1991, Chapter 112, Section 8) is amended to read:

"30-16B-8. FORFEITURES--PROPERTY SUBJECT.--Pursuant to the provisions of the Forfeiture Act, the following are subject to forfeiture:

A. all equipment, devices or articles that have been produced, reproduced, manufactured, distributed, dispensed or acquired in violation of the Unauthorized Recording Act;

HB 560  
Page 28

B. all devices, materials, products and equipment of any kind that are used or intended for use in producing, reproducing, manufacturing, processing, delivering, importing or exporting any item set forth in and in violation of the Unauthorized Recording Act;

C. all books, business records, materials and other data that are used or intended for use in violation of Section 30-16B-3, 30-16B-4 or 30-16B-5 NMSA 1978; and

D. money or negotiable instruments that are the fruit or instrumentality of the crime."

**SECTION 17.** Section 30-31-34 NMSA 1978 (Being Laws 1972, Chapter 84, Section 33, as amended) is amended to read:

"30-31-34. FORFEITURES--PROPERTY SUBJECT.--The following are subject to forfeiture pursuant to the provisions of the Forfeiture Act:

A. all raw materials, products and equipment of any kind, including firearms that are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or controlled substance analog in violation of the Controlled Substances Act;

B. all property that is used or intended for use as a container for property described in Subsection A of this section;

C. all conveyances, including aircraft, vehicles

HB 560  
Page 29

or vessels that are used or intended for use to transport or in any manner to facilitate the transportation for the purpose of sale of property described in Subsection A of this section;

D. all books, records and research products and materials, including formulas, microfilm, tapes and data that are used or intended for use in violation of the Controlled Substances Act;

E. narcotics paraphernalia or money that is a fruit or instrumentality of the crime;

F. notwithstanding Subsection C of this section and the provisions of the Forfeiture Act:

(1) a conveyance used by a person as a common carrier in the transaction of business as a common carrier shall not be subject to forfeiture pursuant to this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of the Controlled Substances Act;

(2) a conveyance shall not be subject to forfeiture pursuant to this section by reason of an act or omission established for the owner to have been committed or omitted without the owner's knowledge or consent;

(3) a conveyance is not subject to forfeiture for a violation of law the penalty for which is a misdemeanor; and

(4) a forfeiture of a conveyance encumbered

HB 560  
Page 30

by a bona fide security interest shall be subject to the interest of a secured party if the secured party neither had knowledge of nor consented to the act or omission; and

G. all drug paraphernalia as defined by Subsection V of Section 30-31-2 NMSA 1978."

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

"30-31-35. FORFEITURE--PROCEDURE.--The provisions of the Forfeiture Act apply to the seizure, forfeiture and disposal of property subject to forfeiture and disposal pursuant to the Controlled Substances Act."

**SECTION 19.** Section 30-31A-9 NMSA 1978 (being Laws 1983, Chapter 148, Section 9) is amended to read:

"30-31A-9. FORFEITURES--PROPERTY SUBJECT.--The following are subject to forfeiture:

A. all raw materials, products and equipment of any kind that are used in the manufacturing, compounding or processing of any imitation controlled substance in violation of the Imitation Controlled Substances Act;

B. all property that is used or intended for use as a container for property described in Subsection A of this section; and

C. all books, records and research products and materials, including formulas, microfilm, tapes and data, that are used or intended for use in violation of the Imitation

HB 560  
Page 31

Controlled Substances Act."

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

"30-42-4. PROHIBITED ACTIVITIES--PENALTIES.--

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

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

C. It is unlawful for a person employed by or associated with an enterprise to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs by engaging in a pattern of racketeering activity. Whoever violates this subsection is guilty of a second degree felony.

D. It is unlawful for a person to conspire to violate the provisions of Subsections A through C of this

HB 560  
Page 32

section. Whoever violates this subsection is guilty of a third degree felony.

E. Whoever is convicted of a violation of Subsection A, B, C or D of this section in addition to the prescribed penalties shall forfeit to the state of New Mexico:

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

(2) any interest in, security of, claim against or property or contractual right of any kind affording a source of influence over an enterprise that the person has established, operated, controlled, conducted or participated in the conduct of in violation of the Racketeering Act.

F. The provisions of the Forfeiture Act apply to the seizure, forfeiture and disposal of property described in Subsection E of this section."

**SECTION 21.** EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015. \_\_\_\_\_