

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4575

(BY DELEGATES MCCUSKEY, FOSTER AND HANSHAW)

[Originating in the Committee on the Judiciary,

February 26, 2016.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5 and §61-14-6, all relating
3 to laundering and concealment of proceeds from criminal activity; defining terms; creating
4 felony crime of conducting financial transactions involving proceeds of criminal activity;
5 creating felony crime of transporting, transmitting or transferring monetary instruments or
6 property involving proceeds of criminal activity; providing for penalties; providing for
7 presumptions when law enforcement or persons acting at the direction of law enforcement
8 are involved with proceeds of criminal activity; denying availability of certain defenses;
9 providing for seizure and forfeiture of property or monetary instruments; clarifying conduct
10 that constitutes separate offenses; and setting forth venue for offenses.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §61-14-1, §61-14-2, §61-14-3, §61-14-4, §61-14-5 and §61-14-6, all to read
3 as follows:

ARTICLE 14. MONEY LAUNDERING.

§61-14-1. Definitions.

1 As used in this article, unless the context clearly indicates otherwise:

2 (a) “Conducts” includes, but is not limited to, initiating, concluding, participating in, or
3 assisting in a transaction.

4 (b) “Criminal activity” means any offense, including any preparatory offense, that is
5 classified as a felony under the laws of this state.

6 (c) “Cryptocurrency” means digital currency in which encryption techniques are used to
7 regulate the generation of units of currency and verify the transfer of funds, and which operates
8 independently of a central bank.

9 (d) “Financial institution” means a financial institution as defined in 31 U.S.C. §5312 which
10 institution is located in this state.

11 (e) "Financial transaction" means a transaction involving the movement of funds by wire
12 or other means or involving one or more monetary instruments, which in any way or degree affects
13 commerce, or a transaction involving the transfer of title to any real property, vehicle, vessel, or
14 aircraft, or a transaction involving the use of a financial institution which is engaged in, or the
15 activities of which affect, commerce in any way or degree.

16 (f) "Knowing that the property involved in a financial transaction represents the proceeds
17 of some form of criminal activity" means that the person knew the property involved in the
18 transaction represented proceeds from some form, though not necessarily which form, of activity
19 that constitutes a felony under state or federal law, regardless of whether or not the activity is
20 specified in subsection (b) of this section.

21 (g) "Monetary instruments" means coin or currency of the United States or of any other
22 country, travelers' checks, personal checks, bank checks, gift card, prepaid credit card, money
23 orders, cryptocurrency, investment securities in bearer form or otherwise in such form that title
24 thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form
25 that title thereto passes upon delivery.

26 (h) "Petitioner" means any local, county, state, or federal prosecutor or law-enforcement
27 official or agency.

28 (i) "Proceeds" means property or monetary instrument acquired or derived, directly or
29 indirectly, from, produced through, realized through, or caused by an act or omission and includes
30 property, real or personal, of any kind.

31 (j) "Property" means anything of value, and includes any interest therein, including any
32 benefit, privilege, claim or right with respect to anything of value, whether real or personal, tangible
33 or intangible, and monetary instruments.

34 (k) "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other
35 disposition. With respect to a financial institution, "transaction" includes a deposit, withdrawal,
36 transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of

37 any stock, bond, certificate of deposit, or other monetary instrument, use of a safety deposit box,
38 or any other payment, transfer, or delivery by, through or to a financial institution, by whatever
39 means effected.

§61-14-2. Laundering through financial transactions.

1 (a) It is unlawful for any person to conduct or attempt to conduct a financial transaction
2 involving the proceeds of criminal activity knowing that the property involved in the financial
3 transaction represents the proceeds of, or is derived directly or indirectly from the proceeds of,
4 criminal activity:

5 (1) With the intent to promote the carrying on of the criminal activity; or

6 (2) Knowing that the transaction is designed in whole or part:

7 (i) To conceal or disguise the nature, location, source, ownership, or control of the
8 proceeds of the criminal activity; or

9 (ii) To avoid any transaction reporting requirement imposed by law.

10 (b) Any person violating subdivision (a) of this section is guilty of a felony and, upon
11 conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor
12 more than five years and fined not more than \$2,500: *Provided*, That if the amount involved in the
13 transaction exceeds \$5,000, the person shall be imprisoned in a state correctional facility for not
14 less than three nor more than fifteen years and fined not more than \$10,000: *Provided, however,*
15 That if the amount involved in the transaction exceeds \$10,000, the person shall be imprisoned
16 in a state correctional facility for not less than five nor more than thirty years and fined not more
17 than \$25,000.

§61-14-3. Transportation, transmission, or transfer of proceeds.

1 (a) It is unlawful for any person to transport, transmit, or transfer, or attempt to transport,
2 transmit or transfer monetary instruments or property involving the proceeds of criminal activity,
3 knowing that the monetary instruments or property are the proceeds of some form of criminal
4 activity:

5 (1) With the intent to promote the carrying on of the criminal activity; or

6 (2) Knowing that transportation, transmission, or transfer is designed in whole or part:

7 (i) To conceal or disguise the nature, location, source, ownership, or control of the
8 proceeds of criminal activity; or

9 (ii) To avoid any transaction reporting requirement imposed by law.

10 (b) Any person violating subdivision (a) of this section is guilty of a felony and, upon
11 conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor
12 more than five years and fined not more than \$2,500: *Provided*, That if the amount involved in the
13 transportation, transmission or transfer exceeds \$5,000, then the person shall be imprisoned in a
14 state correctional facility for not less than three nor more than fifteen years and fined not more
15 than \$10,000: *Provided, however*, That if the amount involved in the transportation, transmission
16 or transfer exceeds \$10,000, then the person shall be imprisoned in a state correctional facility
17 for not less than five nor more than thirty years and fined not more than \$25,000.

§61-14-4. Effect upon proceeds involving law enforcement.

1 (a) For purposes of this section, a person's belief that funds are the proceeds of, or are
2 intended to further the commission of criminal activity, may result from a law-enforcement officer
3 or a person acting at the direction of a law-enforcement officer representing to the person that the
4 funds are proceeds of or are intended to further the commission of criminal activity, as applicable,
5 regardless of whether the law-enforcement officer or person acting at the law-enforcement
6 officer's direction discloses the person's status as a law-enforcement officer or that the person is
7 acting at the direction of a law-enforcement officer.

8 (b) It does not constitute a defense to a prosecution for any violation of this chapter that:

9 (1) Any stratagem or deception, including the use of an undercover operative or law-
10 enforcement officer, was employed;

11 (2) A facility or an opportunity to engage in conduct in violation of this article was provided;

12 or

13 (3) A law-enforcement officer, or person acting under direction of a law-enforcement
14 officer, solicited a person predisposed to engage in conduct in violation of any provision of this
15 chapter to commit a violation of this chapter in order to gain evidence against that person.
16 provided such solicitation would not induce an ordinary law-abiding person to violate this chapter.
17 (c) This section may not be construed to preclude the defense of entrapment.

§61-14-5. Forfeiture.

1 (a) Any property or monetary instruments involved in a violation of this article, and any
2 property or monetary instruments traceable to the violation, may be seized and forfeited to the
3 State of West Virginia consistent with the procedures in the West Virginia Contraband Forfeiture
4 Act, as provided in article seven, chapter sixty-a of this code.

5 (b) Notwithstanding subsection (a) of this section, the court, as part of sentencing for a
6 violation under this chapter, may direct the forfeiture to the state of any property or monetary
7 instruments involved in the violation and any property or monetary instruments traceable to the
8 violation.

§61-14-6. General Provisions.

1 (a) *Separate Offenses.* — Notwithstanding any other provision to the contrary, each
2 transaction, transfer, transportation or transmission in violation of this article constitutes a
3 separate offense.

4 (c) *Venue.* — An offense under this article may be deemed to have been committed where
5 any element of the offense under this article occurred.

NOTE: The purpose of this bill is to create criminal offenses relating to money laundering. The bill specifies two new felonies relating to: (i) Laundering criminal proceeds through financial transaction; and (ii) transportation, transmission, or transfer of criminal proceeds.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.

This bill was recommended for introduction by the following House members of the Joint Interim Committee on the Judiciary: Delegates Shott, Azinger, Byrd, Deem, Fleischauer, Folk, Foster, Hanshaw, Hicks, Ireland, Kessinger, McCuskey, Moore, Overington, Rowe, Shaffer, Skinner, Sobonya, Summers, Weld and B. White.