

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4575

BY DELEGATES MCCUSKEY, FOSTER, HANSHAW AND

SOBONYA AND FRICH

[Introduced February 17, 2016; Referred

to the Committee on the Judiciary.]

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, §61-14-6 and §61-14-7,
 3 all relating to laundering and concealment of proceeds from criminal activity; defining
 4 terms; creating felony crime of conducting financial transactions involving proceeds of
 5 criminal activity; creating felony crime of transporting, transmitting or transferring monetary
 6 instruments or property involving proceeds of criminal activity; creating felony crime of
 7 concealing monetary instruments or property involving proceeds of criminal activity;
 8 providing for penalties; providing for presumptions when law enforcement or persons
 9 acting at the direction of law enforcement are involved with proceeds of criminal activity;
 10 denying availability of certain defenses; providing for seizure and forfeiture of property or
 11 monetary instruments; clarifying conduct that constitutes separate offenses; and setting
 12 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, §61-14-6 and §61-14-7, all
 3 to read 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 (1) Classified as a felony under the laws of this state or the United States; or

6 (2) Punishable by confinement for more than one year under the laws of another state.

7 (c) "Financial institution" means a financial institution as defined in 31 U.S.C. §5312 which
 8 institution is located in this state.

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

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

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

24 (g) "Petitioner" means any local, county, state, or federal prosecutor or law-enforcement
25 official or agency.

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

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

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

35 any stock, bond, certificate of deposit, or other monetary instrument, use of a safety deposit box,
36 or any other payment, transfer, or delivery by, through or to a financial institution, by whatever
37 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. Concealment of proceeds.

- 1 (a) It is unlawful for any person to conceal monetary instruments or funds involving the
- 2 proceeds of criminal activity, knowing that the monetary instruments or property are the proceeds
- 3 of some form of criminal activity:
 - 4 (1) With the intent to promote the carrying on of the criminal activity; or
 - 5 (2) Knowing that the concealment is designed in whole or part:
 - 6 (i) To conceal or disguise the nature, location, source, ownership, or control of the
 - 7 proceeds of criminal activity; or
 - 8 (ii) To avoid any transaction reporting requirement imposed by law.
 - 9 (b) Any person violating subdivision (a) of this section is guilty of a felony and, upon
 - 10 conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor
 - 11 more than five years and fined not more than \$2,500: *Provided*, That if the amount involved in the
 - 12 concealment exceeds \$5,000, then the person shall be imprisoned in a state correctional facility

13 for not less than three nor more than fifteen years and fined not more than \$10,000: *Provided,*
14 *however,* That if the amount involved in the concealment exceeds \$10,000, then the person shall
15 be imprisoned in a state correctional facility for not less than five nor more than thirty years and
16 fined not more than \$25,000.

§61-14-5. 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.

§61-14-6. 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.

§61-14-7. General Provisions.

1 (a) Concealment. -- For purposes of this article, "conceal" includes, but is not limited to,
2 concealment of monetary instruments or property:

3 (i) On the person of any individual, including any article of clothing worn or carried by the
4 individual;

5 (ii) In any luggage, backpack, merchandise, or other container worn or carried by the
6 individual; or

7 (iii) By conversion into a gift card or other debit card.

8 (b) Separate Offenses. -- Notwithstanding any other provision to the contrary, each
9 transaction, transfer, transportation or transmission in violation of this article constitutes a
10 separate offense.

11 (c) Venue. -- An offense under this article may be deemed to have been committed where
12 any element of the offense under this article occurred.

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