

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2585

BY DELEGATES STORCH, ARVON, ROMINE, R., EVANS, A.,

GEARHEART, MOORE, ATKINSON, ZATEZALO, SHOTT,

HANSHAW AND LEWIS

[Originating in 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 and §61-14-5, all relating to
3 laundering of proceeds from specified criminal activities; defining terms; creating felony
4 crime of conducting financial transactions involving proceeds of criminal activity; creating
5 felony crime of transporting, transmitting or transferring monetary instruments or property
6 involving proceeds of criminal activity; providing for penalties; providing for seizure and
7 forfeiture of property or monetary instruments; specifying the burden of proof in a forfeiture
8 proceeding; clarifying conduct that constitutes separate offenses; and setting forth venue
9 for prosecution of 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 and §61-14-5, all 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 a violation of the felony provisions of section eleven, article
5 forty-one, chapter thirty-three of this code; the felony provisions of chapter sixty-a of this code;
6 the felony provisions of article two of this chapter; the provisions of sections one, two, three, four,
7 five, eleven, twelve, subsection (a), section thirteen, fourteen, eighteen, nineteen, twenty, twenty-
8 a, twenty-two, twenty-four, twenty-four-a, twenty-four-b and twenty-four-d, article three of this
9 chapter; the felony provisions of article three-c of this chapter; the felony provisions of article
10 three-e of this chapter; the felony provisions of article four of this chapter; the provisions of section
11 eight, article eight of this chapter; the felony provisions of article eight-a of this chapter and the
12 felony provisions of article eight-c of this chapter.

13 (c) "Cryptocurrency" means digital currency in which encryption techniques are used to
14 regulate the generation of units of currency and verify the transfer of funds, and which operates
15 independently of a central bank.

16 (d) "Financial institution" means a financial institution as defined in 31 U. S. C. §5312 which
17 institution is located in this state.

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

23 (f) "Gift card" means a card, voucher or certificate which contains or represents a specific
24 amount of money issued by a retailer or financial institution to be used as an alternative to cash
25 purposes.

26 (g) "Knowing" means actual knowledge. For purposes of this article, a person may be
27 considered to have actual knowledge even though the belief is based upon or results from a
28 representation of a law-enforcement officer or a person acting at the direction of a law-
29 enforcement officer, and regardless of whether the law-enforcement officer or person acting at
30 the law-enforcement officer's direction discloses the person's status as a law-enforcement officer
31 or that the person is acting at the direction of a law-enforcement officer.

32 (h) "Monetary instruments" means coin or currency of the United States or of any other
33 country, travelers' checks, personal checks, bank checks, gift cards, prepaid credit cards, money
34 orders, cryptocurrency, investment securities in bearer form or otherwise in such form that title
35 thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form
36 that title thereto passes upon delivery.

37 (i) "Petitioner" means any local, county, state, or federal prosecutor or law-enforcement
38 official or agency.

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

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

(l) "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition. With respect to a financial institution, "transaction" includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safety deposit box, or any other payment, transfer, or delivery by, through or to a financial institution, by whatever means effected.

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

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

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

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

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

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

(b) Any person violating subsection (a) of this section is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned: *Provided*, That if the amount involved in the transaction exceeds \$15,000, then the person shall be imprisoned in a

state correctional facility for not less than three nor more than fifteen years, or fined not less than \$5,000 nor more than \$25,000, or both fined and imprisoned.

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

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

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

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

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

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

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

§61-14-4. Forfeiture.

(a) Any property or monetary instruments involved in a violation of this article, and any property or monetary instruments traceable to the violation, may be seized and forfeited consistent with the procedures in the West Virginia Contraband Forfeiture Act, as provided in article seven, chapter sixty-a of this code: *Provided*, That in any forfeiture proceeding pursuant to this section, the burden of proof shall be by clear and convincing evidence.

(b) Notwithstanding subsection (a) of this section, the court, as part of sentencing for a violation under this article, may direct the forfeiture to the state of any property or monetary

8 instruments involved in the violation and any property or monetary instruments traceable to the
9 violation.

§61-14-5. 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 (b) *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. The bill also provides for the forfeiture of proceeds involved or traceable to the laundering.

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