

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2585

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

GEARHEART, MOORE, ATKINSON, ZATEZALO,

SHOTT, HANSHAW AND LEWIS

[Passed April 8, 2017; in effect ninety days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §61-15-1, §61-15-2, §61-15-3 and §61-15-4, all relating to laundering of
3 proceeds from specified criminal activities generally; defining terms; creating
4 misdemeanor and felony offenses of conducting financial transactions involving proceeds
5 of criminal activity; distinguishing between offenses based on monetary value of
6 transaction; providing for penalties; providing for seizure and forfeiture of property or
7 monetary instruments; establishing the burden of proof in a forfeiture proceeding;
8 authorizing sentencing court to order disgorgement at disposition; and clarifying conduct
9 that constitutes separate 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 §61-15-1, §61-15-2, §61-15-3 and §61-15-4, all to read as follows:

ARTICLE 15. MONEY LAUNDERING.

§61-15-1. Definitions.

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

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

4 (2) "Criminal activity" means a violation of:

5 (A) The felony provisions of section eleven, article forty-one, chapter thirty-three of this
6 code;

7 (B) Felony violations of chapter sixty-a of this code;

8 (C) Felony violations of article two of this chapter;

9 (D) The provisions of sections one, two, three, four, five, eleven, twelve, subsection (a),
10 section thirteen, fourteen, eighteen, nineteen, twenty, twenty-a, twenty-two, twenty-four, twenty-
11 four-a, twenty-four-b and twenty-four-d, article three of this chapter;

12 (E) Felony provisions of article three-c, three-e and four of this chapter;

13 (F) The provisions of section eight, article eight of this chapter; and

14 (G) The felony provisions of articles eight-a, eight-c and fourteen of this chapter.

15 (3) "Cryptocurrency" means digital currency in which encryption techniques are used to
16 regulate the generation of units of currency and verify the transfer of funds, and which operate
17 independently of a central bank.

18 (4) "Financial institution" means a financial institution as defined in 31 U.S.C. §5312 which
19 institution is located in this state.

20 (5) "Financial transaction" means a transaction which effects intrastate, interstate or
21 foreign commerce, and:

22 (A) Involves the movement of funds by wire or other means;

23 (B) Involves the use of a monetary instrument;

24 (C) Involves the transfer of title to real or personal property; or

25 (D) Involves the use of a financial institution which is engaged in, or the activities of which
26 effect intrastate, interstate or foreign commerce.

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

30 (7) "Knowing" means actual knowledge. For purposes of this article, a person may be
31 considered to have actual knowledge if the belief is based upon representations of a law-
32 enforcement officer engaged in his or her official duties while acting in an undercover capacity or
33 a person acting at the direction of a law-enforcement officer engaged in his or her official duties.

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

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

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

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

§61-15-2. 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 the provisions of subsection (a) of this section where the amount
11 involved in the transaction is less than \$1,000 is guilty of a misdemeanor and, upon conviction,
12 shall be confined in jail for not more than one year or fined not more than \$1,000, or both confined
13 and fined.

14 (c) Any person violating the provisions of subsection (a) of this section where the amount
15 involved in the transaction is not less than \$1,000 nor more than \$20,000 is guilty of a felony and,
16 upon conviction, shall be imprisoned in a state correctional facility for not less than one nor more
17 than five years, or fined not less than \$1,000 nor more than \$10,000, or both imprisoned and
18 fined.

19 (d) Any person violating the provisions of subsection (a) of this section where the amount
20 involved in the transaction in excess of \$20,000 is guilty of a felony and, upon conviction, shall be
21 imprisoned in a state correctional facility for not less than two nor more than ten years, or fined
22 not less than \$5,000 nor more than \$25,000, or both imprisoned and fined.

§61-15-3. Forfeiture; disgorgement.

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
3 consistent with the procedures in the West Virginia Contraband Forfeiture Act, as provided in
4 article seven, chapter sixty-a of this code: *Provided*, That in any forfeiture proceeding pursuant to
5 this section, the burden of proof shall be by clear and convincing evidence.

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

§61-15-4. Distinguishing transactions for prosecution purposes.

1 (a) Notwithstanding any other provision to the contrary, each transaction committed in
2 violation of this article constitutes a separate offense.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2017.

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Governor