

109--A

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to establishing certain offenses relating to structuring and money laundering

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 470.00 of the penal law is amended by adding three
2 new subdivisions 11, 12 and 13 to read as follows:
3 11. "STRUCTURES" FOR PURPOSES OF SECTIONS 470.30 AND 470.31 OF THIS
4 ARTICLE, A PERSON STRUCTURES A TRANSACTION WHEN, WITH THE INTENT TO
5 EVADE ANY REPORTING REQUIREMENT UNDER THE NEW YORK STATE BANKING LAW OR
6 31 U.S.C. SS 5311 THROUGH 5326, OR ANY REGULATION PRESCRIBED THEREUNDER,
7 HE OR SHE CONDUCTS OR ATTEMPTS TO CONDUCT ONE OR MORE RELATED TRANS-
8 ACTIONS IN CURRENCY, IN ANY AMOUNT, WITH ONE OR MORE FINANCIAL INSTI-
9 TUTIONS, ON ONE OR MORE DAYS. STRUCTURING INCLUDES, BUT IS NOT LIMITED
10 TO, THE BREAKING DOWN OF A SINGLE SUM OF CURRENCY EXCEEDING TEN THOUSAND
11 DOLLARS INTO SMALLER SUMS, INCLUDING SUMS AT OR BELOW TEN THOUSAND
12 DOLLARS, OR THE CONDUCT OF A TRANSACTION, OR SERIES OF CURRENCY TRANS-
13 ACTIONS, INCLUDING TRANSACTIONS AT OR BELOW TEN THOUSAND DOLLARS. THE
14 TRANSACTION OR TRANSACTIONS NEED NOT EXCEED THE TEN THOUSAND DOLLAR
15 REPORTING THRESHOLD AT ANY SINGLE FINANCIAL INSTITUTION OR ON ANY SINGLE
16 DAY IN ORDER TO CONSTITUTE STRUCTURING.
17 12. "MONETARY TRANSACTION" MEANS A DEPOSIT, WITHDRAWAL, TRANSFER
18 BETWEEN ACCOUNTS, EXCHANGE OF CURRENCY, LOAN, EXTENSION OF CREDIT,
19 PURCHASE OR SALE OF ANY STOCK, BOND, CERTIFICATE OF DEPOSIT, OR OTHER
20 MONETARY INSTRUMENT, USE OF A SAFE DEPOSIT BOX, OR ANY OTHER PAYMENT,
21 TRANSFER, OR DELIVERY BY, THROUGH, OR TO A FINANCIAL INSTITUTION, BY

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 WHATEVER MEANS EFFECTED, EXCEPT THAT "MONETARY TRANSACTION" SHALL NOT
2 INCLUDE ANY TRANSACTION INVOLVING BONA FIDE PAYMENTS TO ATTORNEYS FOR
3 LEGAL SERVICES.

4 13. "PROPERTY DERIVED FROM SPECIFIED CRIMINAL CONDUCT" MEANS ANY PROP-
5 ERTY CONSTITUTING, OR DERIVED FROM, PROCEEDS OF SPECIFIED CRIMINAL
6 CONDUCT, AND NEED NOT EXCLUSIVELY CONSTITUTE OR BE DERIVED FROM PROCEEDS
7 OF SPECIFIED CRIMINAL CONDUCT.

8 S 2. The penal law is amended by adding four new sections 470.30,
9 470.31, 470.32 and 470.33 to read as follows:

10 S 470.30 STRUCTURING IN THE SECOND DEGREE.

11 A PERSON IS GUILTY OF STRUCTURING IN THE SECOND DEGREE WHEN, WITH THE
12 INTENT TO EVADE ANY REPORTING REQUIREMENT UNDER THE NEW YORK STATE BANK-
13 ING LAW OR 31 U.S.C. SS 5311 THROUGH 5326, OR ANY REGULATION PRESCRIBED
14 THEREUNDER, HE OR SHE STRUCTURES ONE OR MORE TRANSACTIONS.

15 STRUCTURING IN THE SECOND DEGREE IS A CLASS E FELONY.

16 S 470.31 STRUCTURING IN THE FIRST DEGREE.

17 A PERSON IS GUILTY OF STRUCTURING IN THE FIRST DEGREE WHEN HE OR SHE
18 COMMITS THE CRIME OF STRUCTURING IN THE SECOND DEGREE AND: (1) THE
19 CONDUCT IS COMMITTED WITH AN INTENT TO COMMIT ANOTHER CRIME OR TO AID OR
20 CONCEAL THE COMMISSION OF ANOTHER CRIME; OR (2) THE AGGREGATE VALUE OF
21 THE CURRENCY REPORTED OR THE CURRENCY THAT SHOULD HAVE BEEN REPORTED
22 EXCEEDS ONE HUNDRED THOUSAND DOLLARS IN ANY TWELVE-MONTH PERIOD.

23 STRUCTURING IN THE FIRST DEGREE IS A CLASS D FELONY.

24 S 470.32 CRIMINAL MONETARY TRANSACTION IN THE SECOND DEGREE.

25 A PERSON IS GUILTY OF ENGAGING IN A CRIMINAL MONETARY TRANSACTION IN
26 THE SECOND DEGREE WHEN HE OR SHE KNOWINGLY ENGAGES OR ATTEMPTS TO ENGAGE
27 IN A MONETARY TRANSACTION IN PROPERTY DERIVED FROM CRIMINAL CONDUCT WITH
28 A VALUE GREATER THAN TWENTY THOUSAND DOLLARS AND THE PROPERTY IS DERIVED
29 FROM SPECIFIED CRIMINAL CONDUCT.

30 CRIMINAL MONETARY TRANSACTION IN THE SECOND DEGREE IS A CLASS E FELO-
31 NY.

32 S 470.33 CRIMINAL MONETARY TRANSACTION IN THE FIRST DEGREE.

33 A PERSON IS GUILTY OF ENGAGING IN A CRIMINAL MONETARY TRANSACTION IN
34 THE FIRST DEGREE WHEN HE OR SHE KNOWINGLY ENGAGES OR ATTEMPTS TO ENGAGE
35 IN A MONETARY TRANSACTION IN PROPERTY DERIVED FROM CRIMINAL CONDUCT WITH
36 A VALUE GREATER THAN SIXTY THOUSAND DOLLARS AND THE PROPERTY IS DERIVED
37 FROM SPECIFIED CRIMINAL CONDUCT.

38 CRIMINAL MONETARY TRANSACTION IN THE FIRST DEGREE IS A CLASS D FELONY.

39 S 3. Subdivision 3 of section 470.03 of the penal law, as amended by
40 section 17 of part A of chapter 1 of the laws of 2004, is amended to
41 read as follows:

42 3. FOR PURPOSES OF SECTIONS 470.32 AND 470.33 OF THIS ARTICLE, MONE-
43 TARY TRANSACTIONS MAY BE CONSIDERED TOGETHER AND THE VALUE OF THE PROP-
44 ERTY DERIVED FROM SPECIFIED CRIMINAL CONDUCT MAY BE AGGREGATED, PROVIDED
45 THAT THE MONETARY TRANSACTIONS ARE ALL PART OF A SINGLE "CRIMINAL TRANS-
46 ACTION" AS DEFINED IN SUBDIVISION TWO OF SECTION 40.10 OF THE CRIMINAL
47 PROCEDURE LAW.

48 4. Nothing in sections 470.05, 470.21, 470.22, 470.23 and 470.24;
49 paragraph (b) of subdivision one, paragraph (b) of subdivision two and
50 paragraph (b) of subdivision three of section 470.10; paragraph (b) of
51 subdivision one, paragraph (b) of subdivision two and paragraph (b) of
52 subdivision three of section 470.15; [or] paragraph (b) of subdivision
53 one and paragraph (b) of subdivision two of section 470.20; OR SECTION
54 470.32 OR SECTION 470.33 of this article shall make it unlawful to
55 return funds held in escrow:

1 (a) as a portion of a purchase price for real property pursuant to a
2 contract of sale; or

3 (b) to satisfy the tax or other lawful obligations arising out of an
4 administrative or judicial proceeding concerning the person who provided
5 the escrow funds.

6 S 4. Section 470.25 of the penal law, as amended by chapter 489 of the
7 laws of 2000, is amended to read as follows:

8 S 470.25 Money laundering AND CRIMINAL MONETARY TRANSACTIONS; fines.

9 1. Any person convicted of a violation of section 470.05, 470.10,
10 470.15, or 470.20 of this article may be sentenced to pay a fine not in
11 excess of two times the value of the monetary instruments which are the
12 proceeds of specified criminal activity. When a fine is imposed pursuant
13 to this subdivision, the court shall make a finding as to the value of
14 such monetary instrument or instruments. If the record does not contain
15 sufficient evidence to support such a finding the court may conduct a
16 hearing upon the issue. In imposing a fine, the court shall consider the
17 seriousness of the conduct, whether the amount of the fine is disproportion-
18 ate to the conduct in which he engaged, its impact on victims, as
19 well as the economic circumstances of the convicted person, including
20 the effect of the imposition of such a fine upon his immediate family.

21 2. ANY PERSON CONVICTED OF A VIOLATION OF SECTION 470.32 OR 470.33 OF
22 THIS ARTICLE MAY BE SENTENCED TO PAY A FINE NOT IN EXCESS OF TWO TIMES
23 THE VALUE OF THE MONETARY TRANSACTION WHICH IS THE PROCEEDS OF SPECIFIED
24 CRIMINAL CONDUCT. WHEN A FINE IS IMPOSED PURSUANT TO THIS SUBDIVISION,
25 THE COURT SHALL MAKE A FINDING AS TO THE VALUE OF SUCH MONETARY TRANS-
26 ACTION. IF THE RECORD DOES NOT CONTAIN SUFFICIENT EVIDENCE TO SUPPORT
27 SUCH A FINDING THE COURT MAY CONDUCT A HEARING UPON THE ISSUE. IN IMPOS-
28 ING A FINE, THE COURT SHALL CONSIDER THE SERIOUSNESS OF THE CONDUCT,
29 WHETHER THE AMOUNT OF THE FINE IS DISPROPORTIONATE TO THE CONDUCT IN
30 WHICH HE ENGAGED, ITS IMPACT ON VICTIMS, AS WELL AS THE ECONOMIC CIRCUM-
31 STANCES OF THE CONVICTED PERSON, INCLUDING THE EFFECT OF THE IMPOSITION
32 OF SUCH A FINE UPON HIS IMMEDIATE FAMILY.

33 3. The imposition of a fine pursuant to subdivision one of this
34 section or paragraph b of subdivision one of section 80.00 of this chap-
35 ter, shall preclude the imposition of any other order or judgment of
36 forfeiture or fine based upon the same criminal conduct.

37 S 5. Paragraph (a) of subdivision 1 of section 460.10 of the penal
38 law, as amended by chapter 368 of the laws of 2015, is amended to read
39 as follows:

40 (a) Any of the felonies set forth in this chapter: sections 120.05,
41 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relat-
42 ing to strangulation; sections 125.10 to 125.27 relating to homicide;
43 sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and
44 135.25 relating to kidnapping; sections 135.35 and 135.37 relating to
45 labor trafficking; section 135.65 relating to coercion; sections 140.20,
46 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and
47 145.12 relating to criminal mischief; article one hundred fifty relating
48 to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand
49 larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health
50 care fraud; article one hundred sixty relating to robbery; sections
51 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of
52 stolen property; sections 165.72 and 165.73 relating to trademark coun-
53 terfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and
54 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and
55 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and
56 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating

1 to criminal diversion of prescription medications and prescriptions;
2 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,
3 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 200.56,
4 215.00, 215.05 and 215.19 RELATING TO BRIBERY; sections 187.10, 187.15,
5 187.20 and 187.25 relating to residential mortgage fraud, sections
6 190.40 and 190.42 relating to criminal usury; section 190.65 relating to
7 schemes to defraud; any felony defined in article four hundred ninety-
8 six; sections 205.60 and 205.65 relating to hindering prosecution;
9 sections 210.10, 210.15, and 215.51 relating to perjury and contempt;
10 section 215.40 relating to tampering with physical evidence; sections
11 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41,
12 220.43, 220.46, 220.55, 220.60, 220.65 and 220.77 relating to controlled
13 substances; sections 225.10 and 225.20 relating to gambling; sections
14 230.25, 230.30, and 230.32 relating to promoting prostitution; section
15 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and
16 235.22 relating to obscenity; sections 263.10 and 263.15 relating to
17 promoting a sexual performance by a child; sections 265.02, 265.03,
18 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10
19 which constitute a felony relating to firearms and other dangerous weap-
20 ons; sections 265.14 and 265.16 relating to criminal sale of a firearm;
21 section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized
22 recordings; and sections 470.05, 470.10, 470.15 and 470.20 relating to
23 money laundering; SECTIONS 470.30 AND 470.31 RELATING TO STRUCTURING;
24 AND SECTIONS 470.32 AND 470.33 RELATING TO CRIMINAL MONETARY TRANS-
25 ACTIONS; or

26 S 6. This act shall take effect on the first of November next succeed-
27 ing the date upon which it shall have become a law; provided, however,
28 that if chapter 368 of the laws of 2015 shall have not taken effect on
29 or before such date then section five of this act shall take effect on
30 the same date and in the same manner as such chapter of the laws of 2015
31 takes effect.