

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

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
22 WHATEVER MEANS EFFECTED, EXCEPT THAT "MONETARY TRANSACTION" SHALL NOT
23 INCLUDE ANY TRANSACTION INVOLVING BONA FIDE PAYMENTS TO ATTORNEYS FOR
24 LEGAL SERVICES.

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

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

5 S 2. The penal law is amended by adding four new sections 470.30,
6 470.31, 470.32 and 470.33 to read as follows:

7 S 470.30 STRUCTURING IN THE SECOND DEGREE.

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

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

13 S 470.31 STRUCTURING IN THE FIRST DEGREE.

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

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

21 S 470.32 CRIMINAL MONETARY TRANSACTION IN THE SECOND DEGREE.

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

27 CRIMINAL MONETARY TRANSACTION IN THE SECOND DEGREE IS A CLASS E FELO-
28 NY.

29 S 470.33 CRIMINAL MONETARY TRANSACTION IN THE FIRST DEGREE.

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

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

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

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

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

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

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

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

S 470.25 Money laundering AND CRIMINAL MONETARY TRANSACTIONS; fines.

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

2. ANY PERSON CONVICTED OF A VIOLATION OF SECTION 470.32 OR 470.33 OF THIS ARTICLE MAY BE SENTENCED TO PAY A FINE NOT IN EXCESS OF TWO TIMES THE VALUE OF THE MONETARY TRANSACTION WHICH IS THE PROCEEDS OF SPECIFIED CRIMINAL CONDUCT. WHEN A FINE IS IMPOSED PURSUANT TO THIS SUBDIVISION, THE COURT SHALL MAKE A FINDING AS TO THE VALUE OF SUCH MONETARY TRANSACTION. IF THE RECORD DOES NOT CONTAIN SUFFICIENT EVIDENCE TO SUPPORT SUCH A FINDING THE COURT MAY CONDUCT A HEARING UPON THE ISSUE. IN IMPOSING A FINE, THE COURT SHALL CONSIDER THE SERIOUSNESS OF THE CONDUCT, WHETHER THE AMOUNT OF THE FINE IS DISPROPORTIONATE TO THE CONDUCT IN WHICH HE ENGAGED, ITS IMPACT ON VICTIMS, AS WELL AS THE ECONOMIC CIRCUMSTANCES OF THE CONVICTED PERSON, INCLUDING THE EFFECT OF THE IMPOSITION OF SUCH A FINE UPON HIS IMMEDIATE FAMILY.

3. The imposition of a fine pursuant to subdivision one of this section or paragraph b of subdivision one of section 80.00 of this chapter, shall preclude the imposition of any other order or judgment of forfeiture or fine based upon the same criminal conduct.

S 5. Paragraph (a) of subdivision 1 of section 460.10 of the penal law, as amended by chapter 37 of the laws of 2014, is amended to read as follows:

(a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relating to strangulation; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; section 135.35 relating to labor trafficking; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 165.72 and 165.73 relating to trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,

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