STATE OF NEW YORK

1491

2017-2018 Regular Sessions

IN SENATE

January 9, 2017

Introduced by Sen. AVELLA -- 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, money laundering and defrauding the government; to amend the tax law, in relation to eliminating the one-year time requirement for aggregation payments and in relation to disclosure of certain tax returns to a grand jury; and to amend the criminal procedure law, in relation to geographical jurisdiction of offenses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 470.00 of the penal law is amended by adding three new subdivisions 11, 12 and 13 to read as follows:

11. "Structures" for purposes of sections 470.30 and 470.31 of this article, a person structures a transaction when, with the intent to evade any reporting requirement under the New York state banking law or 31 U.S.C. §§ 5311 through 5326, or any regulation prescribed thereunder, he or she conducts or attempts to conduct one or more related transactions in currency, in any amount, with one or more financial institutions, on one or more days. Structuring includes, but is not limited to, the breaking down of a single sum of currency exceeding ten thousand dollars into smaller sums, including sums at or below ten thousand dollars, or the conduct of a transaction, or series of currency transactions, including transactions at or below ten thousand dollars. The transaction or transactions need not exceed the ten thousand dollar reporting threshold at any single financial institution or on any single day in order to constitute structuring.

12. "Monetary transaction" means 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 safe deposit box, or any other payment,

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

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transfer, or delivery by, through, or to a financial institution, by whatever means effected, except that "monetary transaction" shall not include any transaction involving bona fide payments to attorneys for legal services.

13. "Property derived from specified criminal conduct" means any property constituting, or derived from, proceeds of specified criminal conduct, and need not exclusively constitute or be derived from proceeds of specified criminal conduct.

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

§ 470.30 Structuring in the second degree.

A person is guilty of structuring in the second degree when, with the intent to evade any reporting requirement under the New York state banking law or 31 U.S.C. §§ 5311 through 5326, or any regulation prescribed thereunder, he or she structures one or more transactions.

Structuring in the second degree is a class E felony.

§ 470.31 Structuring in the first degree.

A person is guilty of structuring in the first degree when he or she commits the crime of structuring in the second degree and: (1) the conduct is committed with an intent to commit another crime or to aid or conceal the commission of another crime; or (2) the aggregate value of the currency reported or the currency that should have been reported exceeds one hundred thousand dollars in any twelve-month period.

Structuring in the first degree is a class D felony.

§ 470.32 Criminal monetary transaction in the second degree.

A person is guilty of engaging in a criminal monetary transaction in the second degree when he or she knowingly engages or attempts to engage in a monetary transaction in property derived from criminal conduct with a value greater than twenty thousand dollars and the property is derived from specified criminal conduct.

Criminal monetary transaction in the second degree is a class E felony.

§ 470.33 Criminal monetary transaction in the first degree.

A person is guilty of engaging in a criminal monetary transaction in the first degree when he or she knowingly engages or attempts to engage in a monetary transaction in property derived from criminal conduct with a value greater than sixty thousand dollars and the property is derived from specified criminal conduct.

Criminal monetary transaction in the first degree is a class D felony.

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

3. For purposes of sections 470.32 and 470.33 of this article, monetary transactions may be considered together and the value of the property derived from specified criminal conduct may be aggregated, provided that the monetary transactions are all part of a single "criminal transaction" as defined in subdivision two of section 40.10 of the criminal procedure law.

4. Nothing in sections 470.05, 470.21, 470.22, 470.23 and 470.24; paragraph (b) of subdivision one, paragraph (b) of subdivision two and paragraph (b) of subdivision three of section 470.10; paragraph (b) of subdivision one, paragraph (b) of subdivision two and paragraph (b) of subdivision three of section 470.15; [~~or~~] paragraph (b) of subdivision one and paragraph (b) of subdivision two of section 470.20; or section 470.32 or section 470.33 of this article shall make it unlawful to return funds held in escrow:

(a) as a portion of a purchase price for real property pursuant to a 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.

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

§ 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.

§ 5. Paragraph (a) of subdivision 1 of section 460.10 of the penal law, as amended by chapter 368 of the laws of 2015, 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; sections 135.35 and 135.37 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, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 200.56, 215.00, 215.05 and 215.19 **relating to bribery**; sections 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage fraud, sections 190.40 and 190.42 relating to criminal usury; section 190.65 relating to schemes to defraud; any felony defined in article four hundred ninety-six; sections 205.60 and 205.65 relating to hindering prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and contempt; section 215.40 relating to tampering with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55, 220.60, 220.65 and 220.77 relating to controlled substances; sections 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relating to promoting prostitution; section 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity; sections 263.10 and 263.15 relating to promoting a sexual performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10 which constitute a felony relating to firearms and other dangerous weapons; sections 265.14 and 265.16 relating to criminal sale of a firearm; section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings; [~~and~~] sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering**; sections 470.30 and 470.31 relating to structuring; and sections 470.32 and 470.33 relating to criminal money transactions**; or

§ 6. Section 195.20 of the penal law, as amended by chapter 1 of the laws of 2010, is amended to read as follows:

§ 195.20 Defrauding the government **in the fourth degree**.

A person is guilty of defrauding the government **in the fourth degree** when[~~, being a public servant or party officer,~~] he or she:

(a) engages in a scheme constituting a systematic ongoing course of conduct with intent to:

(i) defraud the state or a political subdivision of the state or a governmental instrumentality within the state or to obtain property, services or other resources from the state or a political subdivision of the state or a governmental instrumentality within the state by false or fraudulent pretenses, representations or promises; or

(ii) defraud the state or a political subdivision of the state or a governmental instrumentality within the state by making use of property, services or resources of the state, political subdivision of the state or a governmental instrumentality within the state for private business purposes or other compensated non-governmental purposes; [~~and~~] **or**

(iii) defraud the state or a political subdivision of the state or a public authority, public benefit corporation, or municipal corporation of the state, or any instrumentality thereof, of one or more forms of revenue, and so evades payment of any tax, insurance premium, contribution, or fee, or any portion thereof, owed to the state or a political subdivision, public authority, public benefit corporation or municipal corporation of the state or any instrumentality thereof, and

(b) **(i) with respect to an offense charged under paragraph (i) or (ii) of subdivision (a) of this section,** so obtains property, services or other resources with a value in excess of one thousand dollars from such state, political subdivision or governmental instrumentality**, or**

(ii) with respect to an offense charged under paragraph (iii) of subdivision (a) of this section, the aggregate unpaid tax, premium, contribution or fee owed exceeds one thousand dollars.

Defrauding the government in the fourth degree is a class E felony.

§ 7. The penal law is amended by adding three new sections 195.22, 195.25 and 195.27 to read as follows:

§ 195.22 Defrauding the government in the third degree.

A person is guilty of defrauding the government in the third degree when he or she:

(a) engages in a scheme constituting a systematic ongoing course of conduct with intent to:

(i) defraud the state or a political subdivision of the state or a governmental instrumentality within the state or to obtain property, services or other resources from the state or a political subdivision of the state or a governmental instrumentality within the state by false or fraudulent pretenses, representations or promises; or

(ii) defraud the state or a political subdivision of the state or a governmental instrumentality within the state by making use of property, services or resources of the state, political subdivision of the state or a governmental instrumentality within the state for private business purposes or other compensated non-governmental purposes; or

(iii) defraud the state or a political subdivision of the state or a public authority, public benefit corporation, or municipal corporation of the state, or any instrumentality thereof, of one or more forms of revenue, and so evades payment of any tax, insurance premium, contribution, or fee, or any portion thereof, owed to the state or a political subdivision, public authority, public benefit corporation or municipal corporation of the state or any instrumentality thereof, and

(b) (i) with respect to an offense charged under paragraph (i) or (ii) of subdivision (a) of this section, so obtains property, services or other resources with a value in excess of ten thousand dollars from such state, political subdivision or governmental instrumentality, or (ii) with respect to an offense charged under paragraph (iii) of subdivision (a) of this section, the aggregate unpaid tax, premium, contribution, or fee owed exceeds ten thousand dollars.

Defrauding the government in the third degree is a class D felony.

§ 195.25 Defrauding the government in the second degree.

A person is guilty of defrauding the government in the second degree when he or she:

(a) engages in a scheme constituting a systematic ongoing course of conduct with intent to:

(i) defraud the state or a political subdivision of the state or governmental instrumentality within the state or to obtain property, services or other resources from the state or a political subdivision of the state or a governmental instrumentality within the state by false or fraudulent pretenses, representations or promises; or

(ii) defraud the state or a political subdivision of the state or a governmental instrumentality within the state by making use of property, services or resources of the state, political subdivision of the state or a governmental instrumentality within the state for private business purposes or other compensated non-governmental purposes; or

(iii) defraud the state or a political subdivision of the state or a public authority, public benefit corporation, or municipal corporation of the state, or any instrumentality thereof, of one or more forms of revenue, and so evades payment of any tax, insurance premium, contribution, or fee, or any portion thereof, owned to the state or a political subdivision, public authority, public benefit corporation or municipal corporation of the state or any instrumentality thereof, and

(b)(i) with respect to an offense charged under paragraph (i) or (ii) of subdivision (a) of this section, so obtains property, services or other resources with a value in excess of twenty-five thousand dollars from such state, political subdivision or governmental instrumentality, or (ii) with respect to an offense charged under paragraph (iii) of subdivision (a) of this section, the aggregate unpaid tax, premium, contribution, or fee owed exceeds twenty-five thousand dollars.

Defrauding the government in the second degree is a class C felony.

§ 195.27 Defrauding the government in the first degree.

A person is guilty of defrauding the government in the first degree when he or she:

(a) engages in a scheme constituting a systematic ongoing course of conduct with intent to:

(i) defraud the state or a political subdivision of the state or a governmental instrumentality within the state or to obtain property, services or other resources from the state or a political subdivision of the state or governmental instrumentality within the state by false or fraudulent pretenses, representations or promises; or

(ii) defraud the state or a political subdivision of the state or a governmental instrumentality within the state by making use of property, services or resources of the state, political subdivision of the state or a governmental instrumentality within the state for private business purposes or other compensated non-governmental purposes; or

(iii) defraud the state or a political subdivision of the state or a public authority, public benefit corporation, or municipal corporation of the state, or any instrumentality thereof, of one or more forms of revenue, and so evades payment of any tax, insurance premium, contribution or fee, or any portion thereof, owed to the state or a political subdivision, public authority, public benefit corporation or municipal corporation of the state or any instrumentality thereof, and

(b) (i) with respect to an offense charged under paragraph (i) or (ii) of subdivision (a) of this section, so obtains property, services or other resources with a value in excess of two hundred fifty thousand dollars from such state, political subdivision or governmental instrumentality, or (ii) with respect to an offense charged under paragraph (iii) of subdivision (a) of this section, the aggregate unpaid tax, premium, contribution or fee owed exceeds two hundred fifty thousand dollars.

Defrauding the government in the first degree is a class B felony.

§ 8. Section 1807 of the tax law, as amended by section 5 of subpart A of part S of chapter 57 of the laws of 2010, is amended to read as follows:

§ 1807. Aggregation. For purposes of this article, the payments due and not paid under a single article of this chapter pursuant to a common scheme or plan or due and not paid, [~~within one year,~~] may be charged in a single count, and the amount of underpaid tax liability incurred, within one year, may be aggregated in a single count.

§ 9. Subsection (e) of section 697 of the tax law is amended by adding a new paragraph (3-b) to read as follows:

(3-b) Notwithstanding the provisions of paragraph one of this subsection, or any other law to the contrary, an officer or employee of the department so designated by the commissioner may disclose tax returns or tax return information in response to a subpoena duces tecum issued by a grand jury pursuant to the criminal procedure law duly served upon the department and an order of the court that empanelled such grand jury determining, based on a written application submitted

under oath or penalty of perjury, that: (i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed; (ii) there is reasonable cause to believe that the return or return of information is or may be relevant to a matter relating to the commission of such act; and (iii) the return or return of information is sought exclusively for use in a criminal investigation or proceeding concerning such act, and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

§ 10. Paragraph (c) of subdivision 2 of section 20.40 of the criminal procedure law is amended to read as follows:

(c) Such conduct had, or was likely to have, a particular effect upon such county or a political subdivision or part thereof, [~~and was performed with intent that it would, or with knowledge that it was likely to, have such particular effect therein~~] or on a city of which such county is a part, whether or not such conduct also had effects on other counties or on the state as a whole; provided that, if such conduct had or was likely to have such particular effect upon the state as a whole, then there shall be proper jurisdiction in the county of Albany in addition to any counties particularly affected; or

§ 11. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.