STATE OF NEW YORK

857

2019-2020 Regular Sessions

IN ASSEMBLY

January 11, 2019

Introduced by M. of A. QUART -- Multi-Sponsored by -- M. of A. SIMON -- read once and referred 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:

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, 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.

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

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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 189 of the laws of 2018, 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; 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; section 230.34-a relating to sex trafficking of a child; 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 monetary transactions;** or

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