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HOUSE BILL 352

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

R. DAVID PEDERSON

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE MONEY LAUNDERING ACT;
PROVIDING CRIMINAL AND CIVIL PENALTIES; AMENDING AND ENACTING
SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Code is enacted
to read:

" NEW MATERIAL SHORT TITLE. -- Sections 1 through 5 of
this act may be cited as the "Money Laundering Act". "

Section 2. A new section of the Criminal Code is enacted
to read:

" NEW MATERIAL DEFINITIONS. -- As used in the Money
Laundering Act:

A. "financial institution" means:

(1) a bank, credit union, trust company or

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1 thrift institution or an agency or branch thereof;

2 (2) a broker or dealer in securities or
3 commodities;

4 (3) an investment banker;

5 (4) an investment company;

6 (5) an issuer, redeemer or cashier of
7 traveler's checks, checks, money orders or similar
8 instruments;

9 (6) an operator of a credit card system;

10 (7) an insurance company;

11 (8) a dealer in precious metals, stones or
12 jewels;

13 (9) a pawnbroker;

14 (10) a loan or finance company;

15 (11) a travel agency;

16 (12) a licensed sender of money;

17 (13) a telegraph company;

18 (14) a business engaged in vehicle sales,
19 including automobile, airplane and boat sales;

20 (15) a currency exchange;

21 (16) a person involved in real estate
22 closings and settlements; or

23 (17) an agency or authority of a state or
24 local government carrying out a duty or power of a business
25 described in this subsection;

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1 B. "financial transaction" means a purchase, sale,
2 loan, pledge, gift, transfer, delivery or other disposition of
3 any monetary instrument or the movement of funds by wire or
4 other means;

5 C. "monetary instrument" means coin or currency of
6 the United States or any other country, traveler's checks,
7 personal checks, bank checks, money orders, investment
8 securities in bearer form or in such other form that title
9 passes upon delivery of the security and negotiable
10 instruments in bearer form or in such other form that title
11 passes upon delivery of the instrument;

12 D. "person" means an individual, corporation,
13 partnership, trust or estate, joint stock company,
14 association, syndicate, joint venture, unincorporated
15 organization or group or other entity;

16 E. "proceeds" means property that is acquired,
17 delivered, produced or realized, whether directly or
18 indirectly, by an act or omission;

19 F. "property" means anything of value, including
20 real, personal, tangible or intangible property; and

21 G. "specified unlawful activity" means an act or
22 omission, including any initiatory, preparatory or completed
23 offense or omission, committed for financial gain that is
24 punishable as a felony under the laws of New Mexico or, if the
25 act occurred outside New Mexico, would be punishable as a

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1 felony under the laws of the state in which it occurred and
2 under the laws of New Mexico. "

3 Section 3. A new section of the Criminal Code is enacted
4 to read:

5 "[NEW MATERIAL] REPORTS FILED WITH THE DEPARTMENT OF
6 PUBLIC SAFETY--CRIMINAL PENALTIES. --

7 A. A financial institution in New Mexico that is
8 required to file a report regarding a financial transaction
9 under the provisions of the federal Currency and Foreign
10 Transactions Reporting Act and the regulations promulgated
11 pursuant to that act shall file a duplicate of that report
12 with the department of public safety; provided, a financial
13 institution that makes a timely filing with an appropriate
14 federal agency shall be deemed to have satisfied the reporting
15 requirements of this subsection.

16 B. A person engaged in a trade or business in New
17 Mexico who, in the course of the trade or business, receives
18 more than ten thousand dollars (\$10,000) in cash in one
19 financial transaction or two or more related financial
20 transactions and who is required to file a report under the
21 provisions of 26 U.S.C. Section 6050I and regulations
22 promulgated pursuant to that section shall file a duplicate of
23 that report with the department of public safety; provided, a
24 person who makes a timely filing with an appropriate federal
25 agency shall be deemed to have satisfied the reporting

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1 requirements of this subsection.

2 C. A financial institution, a person engaged in a
3 trade or business or an officer, employee or agent of either
4 who files or keeps a record pursuant to the provisions of this
5 section or who communicates or discloses information or
6 records pursuant to the provisions of this section shall not
7 be liable to its customer or to any person for any loss or
8 damage caused in whole or in part by the making, filing or
9 governmental use of the report or information contained in the
10 report.

11 D. Any person who releases information received
12 pursuant to the provisions of this section, except in the
13 proper discharge of his official duties, is guilty of a
14 misdemeanor.

15 E. A person who knowingly:

16 (1) fails to file a report with the
17 department of public safety required pursuant to the
18 provisions of this section is subject to a fine of not more
19 than ten percent of the value of the financial transaction
20 required to be reported or five thousand dollars (\$5,000),
21 whichever is greater; or

22 (2) provides any false or inaccurate
23 information or knowingly conceals any material fact in a
24 report required pursuant to Subsections A and B of this
25 section is guilty of a fourth degree felony.

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Underscored material = new
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1 F. Notwithstanding any other provision of law, a
2 violation of this section constitutes a separate, punishable
3 offense for each transaction or exemption.

4 G. Any report, record, information, analysis or
5 request obtained by the department of public safety or other
6 agency pursuant to the provisions of this section is not a
7 public record as defined in Section 14-3-2 NMSA 1978 and is
8 not subject to disclosure pursuant to the provisions of
9 Section 14-2-1 NMSA 1978.

10 H. A financial institution or person required to
11 file a report pursuant to the provisions of Subsection A or B
12 of this section shall, at the request of the department of
13 public safety, provide the department with access to a copy of
14 the report during the period of time that the financial
15 institution or person is required to maintain the report. "

16 Section 4. A new section of the Criminal Code is enacted
17 to read:

18 "[NEW MATERIAL] PROHIBITED ACTIVITY-- CRIMINAL
19 PENALTIES-- CIVIL PENALTIES. --

20 A. It is unlawful for a person who knows that the
21 property involved in a financial transaction is, or was
22 represented to be, the proceeds of a specified unlawful
23 activity to:

24 (1) conduct, structure, engage in or
25 participate in a financial transaction that involves the

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1 property, knowing that the financial transaction is designed
2 in whole or in part to conceal or disguise the nature,
3 location, source, ownership or control of the property or to
4 avoid a transaction reporting requirement under state or
5 federal law;

6 (2) conduct, structure, engage in or
7 participate in a financial transaction that involves the
8 property for the purpose of committing or furthering the
9 commission of any other specified unlawful activity;

10 (3) transport the property with the intent to
11 further a specified unlawful activity, knowing that the
12 transport is designed, in whole or in part, to conceal or
13 disguise the nature, location, source, ownership or control of
14 the monetary instrument or to avoid a transaction reporting
15 requirement under state or federal law; or

16 (4) make the property available to another
17 person by means of a financial transaction or by transporting
18 the property, when he knows that the property is intended for
19 use by the other person to commit or further the commission of
20 a specified unlawful activity.

21 B. A person who violates any provision of
22 Subsection A of this section is guilty of a:

23 (1) second degree felony if the illegal
24 financial transaction involves more than one hundred thousand
25 dollars (\$100,000);

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1 (2) third degree felony if the illegal
2 financial transaction involves more than ten thousand dollars
3 (\$10,000) but not more than one hundred thousand dollars
4 (\$100,000);

5 (3) fourth degree felony if the illegal
6 financial transaction involves more than one thousand dollars
7 (\$1,000) but not more than ten thousand dollars (\$10,000); or

8 (4) misdemeanor if the illegal financial
9 transaction involves one thousand dollars (\$1,000) or less.

10 C. In addition to any criminal penalty, a person
11 who violates any provision of Subsection A of this section is
12 subject to a civil penalty of three times the value of the
13 property involved in the transaction.

14 D. Nothing contained in the Money Laundering Act
15 precludes civil or criminal remedies provided by the
16 Racketeering Act or the Controlled Substances Act or by any
17 other New Mexico law. Those remedies are in addition to and
18 not in lieu of remedies provided in the Money Laundering Act."

19 Section 5. A new section of the Criminal Code is enacted
20 to read:

21 "[NEW MATERIAL] ATTORNEY FEES--EXCEPTION.--No provision
22 of the Money Laundering Act shall apply to a financial
23 transaction involving the bona fide fees an attorney accepts
24 for representing a client in a criminal investigation or a
25 proceeding arising from a criminal investigation."

Underscored material = new
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1 Section 6. Section 30-42-3 NMSA 1978 (being Laws 1980,
2 Chapter 40, Section 3, as amended) is amended to read:

3 "30-42-3. DEFINITIONS. -- As used in the Racketeering Act:

4 A. "racketeering" means any act [~~which~~] that is
5 chargeable or indictable under the laws of New Mexico and
6 punishable by imprisonment for more than one year, involving
7 any of the following cited offenses:

8 (1) murder, as provided in Section 30-2-1
9 NMSA 1978;

10 (2) robbery, as provided in Section 30-16-2
11 NMSA 1978;

12 (3) kidnapping, as provided in Section 30-4-1
13 NMSA 1978;

14 (4) forgery, as provided in Section 30-16-10
15 NMSA 1978;

16 (5) larceny, as provided in Section 30-16-1
17 NMSA 1978;

18 (6) fraud, as provided in Section 30-16-6
19 NMSA 1978;

20 (7) embezzlement, as provided in Section
21 30-16-8 NMSA 1978;

22 (8) receiving stolen property, as provided in
23 Section 30-16-11 NMSA 1978;

24 (9) bribery, as provided in Sections 30-24-1
25 through 30-24-3 NMSA 1978;

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- 1 (10) gambling, as provided in Sections
- 2 30-19-3, 30-19-13 and 30-19-15 NMSA 1978;
- 3 (11) illegal kickbacks, as provided in
- 4 Sections 30-41-1 and 30-41-2 NMSA 1978;
- 5 (12) extortion, as provided in Section
- 6 30-16-9 NMSA 1978;
- 7 (13) trafficking in controlled substances, as
- 8 provided in Section 30-31-20 NMSA 1978;
- 9 (14) arson and aggravated arson, as provided
- 10 in Subsection A of Section 30-17-5 and Section 30-17-6 NMSA
- 11 1978;
- 12 (15) promoting prostitution, as provided in
- 13 Section 30-9-4 NMSA 1978;
- 14 (16) criminal solicitation, as provided in
- 15 Section 30-28-3 NMSA 1978;
- 16 (17) fraudulent securities practices, as
- 17 provided in the New Mexico Securities Act of 1986;
- 18 (18) loan sharking, as provided in Sections
- 19 30-43-1 through 30-43-5 NMSA 1978; [and]
- 20 (19) distribution of controlled substances or
- 21 controlled substance analogues, as provided [for] in Sections
- 22 30-31-21 and 30-31-22 NMSA 1978; and
- 23 (20) a violation of the provisions of Section
- 24 4 of the Money Laundering Act;

B. "person" [~~includes any~~] means an individual or

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1 entity capable of holding a legal or beneficial interest in
2 property;

3 C. "enterprise" means [~~any~~] a sole proprietorship,
4 partnership, corporation, business, labor union, association
5 or other legal entity or [~~any~~] a group of individuals
6 associated in fact although not a legal entity and includes
7 illicit as well as licit entities; and

8 D. "pattern of racketeering activity" means
9 engaging in at least two incidents of racketeering with the
10 intent of accomplishing any of the prohibited activities set
11 forth in Subsections A through D of Section 30-42-4 NMSA 1978;
12 provided at least one of [~~such~~] the incidents occurred after
13 the effective date of the Racketeering Act and the last [~~of~~
14 ~~which~~] incident occurred within five years after the
15 commission of a prior incident of racketeering. "

16 Section 7. SEVERABILITY. --If any part or application of
17 the Money Laundering Act is held invalid, the remainder or its
18 application to other situations or persons shall not be
19 affected.

20 Section 8. EFFECTIVE DATE. --The effective date of the
21 provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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6 February 4, 1998

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9 Mr. Speaker:

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11 Your RULES AND ORDER OF BUSINESS COMMITTEE, to
12 whom has been referred

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15 HOUSE BILL 352

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17 has had it under consideration and finds same to be GERMANE
18 in accordance with constitutional provisions.

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21 Respectfully submitted,

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R. David Pederson, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Gubbels, Hobbs, Lujan, Rodella, Ryan, Sanchez

Absent: None

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1 **FORTY-THIRD LEGISLATURE**

2 **SECOND SESSION, 1998**

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6 **February 13, 1998**

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8 **Mr. Speaker:**

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10 **Your JUDICIARY COMMITTEE, to whom has been referred**

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12 **HOUSE BILL 352**

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14 **has had it under consideration and reports same with**
15 **recommendation that it DO PASS, amended as follows:**

16
17 1. On page 8, lines 2 and 3, strike "ten thousand
18 dollars (\$10,000)" and insert in lieu thereof "fifty
19 thousand dollars (\$50,000)".

20
21 2. On page 8, lines 6 and 7, strike "one thousand
22 dollars (\$1,000)" and insert in lieu thereof "ten thousand
23 dollars (\$10,000)".

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25 3. On page 8, line 7, strike "ten thousand dollars
(\$10,000)" and insert in lieu thereof "fifty thousand
dollars (\$50,000)".

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HJC/HB 352

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4 4. On page 8, line 9, strike "one thousand dollars
5 (\$1,000)" and insert in lieu thereof "ten thousand dollars
6 (\$10,000)".

7
8 and thence referred to the APPROPRIATIONS AND FINANCE
9 COMMITTEE.

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11 Respectfully submitted,

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14 _____
15 Thomas P. Foy, Chairman

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18 Adopted _____
19 (Chief Clerk)

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22 Not Adopted _____
23 (Chief Clerk)

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Date _____

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

HJC/HB 352

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The roll call vote was 9 For 0 Against

Yes: 9

Excused: King, Larranaga, Mallory, Sanchez

Absent: None

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