

ACT 119

A Bill for an Act Relating to Money Laundering.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. (a) The legislature makes the following findings:

- (1) Criminal activity and the networks that are characterized as criminal industries divert millions of dollars nationwide from the legitimate commerce each year through the provision of illicit goods and services, force, fraud, and corruption;
- (2) Individuals and groups conducting criminal activity pose an additional threat to the integrity of legitimate commerce by obtaining control of legitimate enterprises through criminal means, by force or fraud, and by manipulating those enterprises for criminal purposes;
- (3) Money and power generated by criminal activity are being used to obtain control of legitimate enterprises, to invest in legitimate commerce, and to control the resources of legitimate enterprises to facilitate ongoing criminal activity;
- (4) Criminal activity and proceeds of criminal activity subvert the basic goals of a free democracy by undermining the monetary medium of exchange and by subverting the judicial and law enforcement processes that are necessary for the preservation of social justice and equal opportunity;
- (5) Criminal activity impedes free competition, weakens the economy, harms in-state and out-of-state investors, diverts taxable funds, threatens the domestic security, endangers the health, safety, and welfare of the public, and debases the quality of life of the citizens of this State;
- (6) Criminal activity becomes entrenched and powerful when the social sanctions employed to combat it are unnecessarily limited in their vision of the goals that may be achieved, in their legal tools, or in their procedural approach;
- (7) Societal strategies and techniques that emphasize bringing criminal remedies to bear on individual offenders for the commission of specific offenses are inadequate to reach the economic incentive supporting the criminal network, are expensive to implement, and are costly in terms of the loss of personal freedom of low-level participants in criminal networks; and
- (8) Comprehensive strategies are required to complement the criminal enforcement strategies by focusing on the financial components and motivations of criminal networks, enlisting the assistance of private victims, empowering courts with financially oriented tools, and developing new substantive, procedural, and evidentiary laws creating effective financial remedies for criminal activity.

(b) The purposes of this Act are to:

- (1) Defend legitimate commerce from and provide economic disincentives for criminal activity;
- (2) Remedy the economic effects of criminal activity; and
- (3) Lessen the economic and political power of criminal networks nationwide;

by providing to the people and to the victims of criminal activity new preventive measures, through criminal sanctions and civil remedies.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
MONEY LAUNDERING**

§ -1 **Title.** This chapter shall be known and may be cited as the “Money Laundering Act”.

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Proceeds” means property of any kind acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission.

“Property” means anything of value, including any interest, benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible.

“Specified unlawful activity” means any act, or series of acts, that:

- (1) Constitutes a felony under the laws of this State;
- (2) If occurring outside this State, may be punishable by confinement for more than one year under the laws of the state in which the act occurred;
- (3) Involves an act or acts constituting the offenses of gambling, criminal property damage, extortion, theft, prostitution, a drug offense under chapters 329, 329C, or part IV of chapter 712, or any firearm offense; or
- (4) If occurring outside this State, would constitute the offenses of gambling, criminal property damage, extortion, theft, prostitution, a drug offense under chapters 329, 329C, or part IV of chapter 712, or any firearm offense under the laws of this State.

“Transaction” includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase, sale, or exchange of any monetary instrument, use of a safe deposit box, or any other acquisition or disposition of property by whatever means effected.

“Unlawful activity” means any act that is chargeable or indictable as an offense of any degree or class under the laws of this State or under federal law or, if the act occurred in a state other than this State, would be chargeable or indictable as an offense of any degree or class under the laws of this State or under federal law.

§ -3 **Money laundering; criminal penalty.** (a) It is unlawful for any person:

- (1) Who knows that the property involved is the proceeds of some form of unlawful activity, to knowingly transport, transmit, transfer, receive, or acquire the property or to conduct a transaction involving the property, when, in fact, the property is the proceeds of specified unlawful activity:
 - (A) With the intent to promote the carrying on of specified unlawful activity; or
 - (B) Knowing that the transportation, transmission, transfer, receipt, or acquisition of the property or the transaction or transactions is designed in whole or in part to:
 - (i) Conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

- (ii) Avoid a transaction reporting requirement under state or federal law;
- (2) Who knows that the property involved in the transaction is the proceeds of some form of unlawful activity, to knowingly engage in the business of conducting, directing, planning, organizing, initiating, financing, managing, supervising, or facilitating transactions involving the property that, in fact, is the proceeds of specified unlawful activity:
 - (A) With the intent to promote the carrying on of specified unlawful activity; or
 - (B) Knowing that the business is designed in whole or in part to:
 - (i) Conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
 - (ii) Avoid a transaction reporting requirement under state or federal law; or
- (3) To knowingly conduct or attempt to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, with the intent to:
 - (A) Promote the carrying on of specified unlawful activity; or
 - (B) Conceal or disguise the nature, the location, the source, the ownership, or the control of property believed to be the proceeds of specified unlawful activity.

(b) For the purpose of the offense described in subsection (a)(3), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subsection (a)(3) as true, and the defendant's subsequent statements or actions indicate that the defendant believed the representations to be true.

(c) For the purposes of subsection (a)(3), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a state or county official authorized to investigate or prosecute violations of this section.

(d) This section shall not apply to any person who commits any act described in this section unless:

- (1) The person believes the value or aggregate value of the property transported, transmitted, transferred, received, or acquired is \$10,000 or more; or
- (2) The value or the aggregate value of the property transported, transmitted, transferred, received, or acquired is \$10,000 or more.

(e) A person who violates subsection (a) is guilty of a class B felony and may be fined not more than \$25,000 or twice the value of the property involved, whichever is greater, or both."

SECTION 3. Chapter 708, part XI, Hawaii Revised Statutes, is repealed.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 8, 1995.)