

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:

"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:

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

A. "financial institution" means:

- (1) a bank, credit union, trust company or thrift institution or an agency or branch thereof;
- (2) a broker or dealer in securities or commodities;
- (3) an investment banker;
- (4) an investment company;
- (5) an issuer, redeemer or cashier of traveler's checks, checks, money orders or similar instruments;
- (6) an operator of a credit card system;
- (7) an insurance company;

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

(9) a pawnbroker;

(10) a loan or finance company;

(11) a travel agency;

(12) a licensed sender of money;

(13) a telegraph company;

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

(15) a currency exchange;

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

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

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

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

that title passes upon delivery of the instrument;

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

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

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

G. "specified unlawful activity" means an act or omission, including any initiatory, preparatory or completed offense or omission, committed for financial gain that is punishable as a felony under the laws of New Mexico or, if the act occurred outside New Mexico, would be punishable as a felony under the laws of the state in which it occurred and under the laws of New Mexico."

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

"REPORTS FILED WITH THE DEPARTMENT OF PUBLIC SAFETY--
CRIMINAL PENALTIES. --

A. A financial institution in New Mexico that is required to file a report regarding a financial transaction under the provisions of the federal Currency and Foreign Transactions Reporting Act and the regulations promulgated

pursuant to that act shall file a duplicate of that report with the department of public safety; provided, a financial institution that makes a timely filing with an appropriate federal agency shall be deemed to have satisfied the reporting requirements of this subsection.

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

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

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

E. A person who knowingly:

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

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

F. Notwithstanding any other provision of law, a violation of this section constitutes a separate, punishable offense for each transaction or exemption.

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

H. A financial institution or person required to

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

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

"PROHIBITED ACTIVITY-- CRIMINAL PENALTIES-- CIVIL PENALTIES. --

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

(1) conduct, structure, engage in or participate in a financial transaction that involves the property, knowing that the financial transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the property or to avoid a transaction reporting requirement under state or federal law;

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

(3) transport the property with the intent

to further a specified unlawful activity, knowing that the transport is designed, in whole or in part, to conceal or disguise the nature, location, source, ownership or control of the monetary instrument or to avoid a transaction reporting requirement under state or federal law; or

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

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

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

(2) third degree felony if the illegal financial transaction involves over fifty thousand dollars (\$50,000) but not more than one hundred thousand dollars (\$100,000);

(3) fourth degree felony if the illegal financial transaction involves over ten thousand dollars (\$10,000) but not more than fifty thousand dollars (\$50,000); or

(4) misdemeanor if the illegal financial transaction involves ten thousand dollars (\$10,000) or less.

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

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

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

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

Section 6. Section 30-42-3 NMSA 1978 (being Laws 1980, Chapter 40, Section 3, as amended) is amended to read:

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

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

- (1) murder, as provided in Section 30-2-1
NMSA 1978;
- (2) robbery, as provided in Section 30-16-2
NMSA 1978;
- (3) kidnapping, as provided in Section
30-4-1 NMSA 1978;
- (4) forgery, as provided in Section
30-16-10 NMSA 1978;
- (5) larceny, as provided in Section 30-16-1
NMSA 1978;
- (6) fraud, as provided in Section 30-16-6
NMSA 1978;
- (7) embezzlement, as provided in Section
30-16-8 NMSA 1978;
- (8) receiving stolen property, as provided
in Section 30-16-11 NMSA 1978;
- (9) bribery, as provided in Sections
30-24-1 through 30-24-3 NMSA 1978;
- (10) gambling, as provided in Sections
30-19-3, 30-19-13 and 30-19-15 NMSA 1978;
- (11) illegal kickbacks, as provided in
Sections 30-41-1 and 30-41-2 NMSA 1978;
- (12) extortion, as provided in Section
30-16-9 NMSA 1978;
- (13) trafficking in controlled substances,

as provided in Section 30-31-20 NMSA 1978;

(14) arson and aggravated arson, as provided in Subsection A of Section 30-17-5 and Section 30-17-6 NMSA 1978;

(15) promoting prostitution, as provided in Section 30-9-4 NMSA 1978;

(16) criminal solicitation, as provided in Section 30-28-3 NMSA 1978;

(17) fraudulent securities practices, as provided in the New Mexico Securities Act of 1986;

(18) loan sharking, as provided in Sections 30-43-1 through 30-43-5 NMSA 1978;

(19) distribution of controlled substances or controlled substance analogues, as provided in Sections 30-31-21 and 30-31-22 NMSA 1978; and

(20) a violation of the provisions of Section 4 of the Money Laundering Act;

B. "person" means an individual or entity capable of holding a legal or beneficial interest in property;

C. "enterprise" means a sole proprietorship, partnership, corporation, business, labor union, association or other legal entity or a group of individuals associated in fact although not a legal entity and includes illicit as well as licit entities; and

D. "pattern of racketeering activity" means

engaging in at least two incidents of racketeering with the intent of accomplishing any of the prohibited activities set forth in Subsections A through D of Section 30-42-4 NMSA 1978; provided at least one of the incidents occurred after the effective date of the Racketeering Act and the last incident occurred within five years after the commission of a prior incident of racketeering. "

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

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