

CHAPTER 761

H.B. No. 354

AN ACT

relating to the reporting of certain financial transactions, to the creation of offenses relating to certain financial transactions, and to the creation of the attorney general law enforcement account; making an appropriation.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The legislature finds that the banking industry and other financial institutions may be strong allies in the fight against money laundering and that filing certain financial transaction reports required by law does not in itself imply knowledge of an illegal money laundering activity.

SECTION 2. Title 7, Penal Code, is amended by adding Chapter 34 to read as follows:

CHAPTER 34. MONEY LAUNDERING

Sec. 34.01. DEFINITIONS. In this chapter:

(1) *"Criminal activity" means any offense, including any preparatory offense, that is:*

- (A) classified as a felony under the laws of this state or the United States; or*
- (B) punishable by confinement for more than one year under the laws of another state.*

(2) *"Funds" includes:*

- (A) coin or paper money of the United States or any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issue;*
- (B) United States silver certificates, United States Treasury notes, and Federal Reserve System notes; and*

(C) official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country and foreign bank drafts.

(3) "Peace officer" means a person who is elected, appointed, or employed by a governmental entity and who is a peace officer under Article 2.12, Code of Criminal Procedure, or other law.

(4) "Proceeds" means funds acquired or derived directly or indirectly from, produced through, or realized through an act.

Sec. 34.02. MONEY LAUNDERING. (a) A person commits an offense if the person knowingly:

(1) acquires or maintains an interest in, receives, conceals, possesses, transfers, or transports the proceeds of criminal activity;

(2) conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity; or

(3) invests, expends, or receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that the person believes are the proceeds of criminal activity.

(b) For purposes of Subsection (a)(3) of this section, a person is presumed to believe that funds are the proceeds of criminal activity if a peace officer or a person acting at the direction of a peace officer represents to the person that the funds are proceeds of criminal activity, regardless of whether the peace officer or person acting at the peace officer's direction discloses the person's status as a peace officer or that the person is acting at the direction of a peace officer.

(c) It is a defense to prosecution under this section that the person acted with intent to facilitate the lawful seizure, forfeiture, or disposition of funds or other legitimate law enforcement purpose pursuant to the laws of this state or the United States.

(d) It is a defense to prosecution under this section that the transaction was necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment of the United States Constitution and by Article 1, Section 10, of the Texas Constitution or that the funds were received as bona fide legal fees by a licensed attorney and at the time of their receipt, the attorney did not have actual knowledge that the funds were derived from criminal activity.

(e) An offense under this section is:

(1) a felony of the third degree if the value of the funds is \$3,000 or more but less than \$20,000;

(2) a felony of the second degree if the value of the funds is \$20,000 or more but less than \$100,000; or

(3) a felony of the first degree if the value of the funds is \$100,000 or more.

Sec. 34.03. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist in the prosecution of an offense under this chapter.

SECTION 3. Section 71.02, Penal Code, is amended to read as follows:

Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY. (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, or forgery;

(2) any felony gambling offense;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any unlawful employment, authorization, or inducing of a child younger than 17 years of age in an obscene sexual performance;

(8) any felony offense under Chapter 32, Penal Code; [øf]

(9) any offense under Chapter 36, Penal Code; or

(10) any offense under Chapter 34, Penal Code.

(b) Except as provided in Subsection (c) of this section, an offense under this section is one category higher than the most serious offense listed in Subdivisions (1) through (10) [(9)] of Subsection (a) of this section that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a felony of the third degree, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subdivisions (1) through (10) [(9)] of Subsection (a) of this section that the person conspired to commit.

SECTION 4. Sections 71.05(a) and (c), Penal Code, are amended to read as follows:

(a) It is an affirmative defense to prosecution under Section 71.02 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor withdrew from the combination before commission of an offense listed in Subdivisions (1) through (7) or *Subdivision (10)* of Subsection (a) of Section 71.02 of this code and took further affirmative action that prevented the commission of the offense.

(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in Subdivisions (1) through (7) or *Subdivision (10)* of Subsection (a) of Section 71.02 of this code and made substantial effort to prevent the commission of an offense listed in Subdivisions (1) through (7) or *Subdivision (10)* of Subsection (a) of Section 71.02 of this code shall be admissible as mitigation at the hearing on punishment if he has been found guilty under Section 71.02 of this code, and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02 of this code.

SECTION 5. Subdivision (2), Article 59.01, Code of Criminal Procedure, is amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Chapters 29, 30, 31, or 32, Penal Code; or

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code; [øf]

(iii) a felony under Article 350, Revised Statutes;

(iv) any felony under Chapter 34, Penal Code; or

(v) any felony under The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes);

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision; or

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision.

SECTION 6. Title 16, Revised Statutes, is amended by adding Article 351 to read as follows:

Art. 351. FINANCIAL TRANSACTION REPORTING REQUIREMENTS

Sec. 1. CURRENCY AND FOREIGN TRANSACTIONS—CRIMINAL REFERRAL FORM REPORTING REQUIREMENTS. (a) *Except as provided by Subsection (b) of this section, a financial institution in this state that is required to file a report under the Currency and Foreign Transactions Reporting Act (31 U.S.C. Section 5311 et seq.), 31 C.F.R. Part 103, or 12 C.F.R. Section 21.11, and their subsequent amendments, shall file a duplicate copy of the report with the attorney general.*

(b) *A financial institution that timely files a report required by this section with the appropriate federal agency as required by federal law is considered to be in compliance with this section unless the attorney general:*

(1) *notifies the financial institution that the required report is not one that is regularly and comprehensively transmitted by the federal agency to the attorney general following the attorney general's request to that agency;*

(2) *requests that the financial institution provide the attorney general with a duplicate copy of the report; and*

(3) *reimburses the financial institution the actual cost of duplicating and delivering the report or 25 cents per page, whichever is less.*

(c) *In this section, "financial institution" has the meaning assigned by 31 U.S.C. Section 5312 and its subsequent amendments.*

Sec. 2. CASH RECEIPTS OF MORE THAN \$10,000 REPORTING REQUIREMENT.

(a) *Except as provided by Subsection (b) of this section, a person engaged in a trade or business who, in the course of the trade or business, receives more than \$10,000 in one transaction or in two or more related transactions and who is required to file a return under Section 6050I, Internal Revenue Code of 1986 (26 U.S.C. Section 6050I), or 26 C.F.R. Section 1.6050I, and their subsequent amendments, shall file a duplicate copy of the return with the attorney general.*

(b) *A person who timely files a return required by this section with the appropriate federal agency as required by federal law is considered to be in compliance with this section unless the attorney general:*

(1) *notifies the person that the required return is not one that is regularly and comprehensively transmitted by the federal agency to the attorney general; and*

(2) *requests that the person provide the attorney general with a duplicate copy of the return.*

Sec. 3. USE OF REPORTED INFORMATION. *The attorney general may report any possible violation indicated by analysis of a report or return required by this article or information obtained under this article to an appropriate law enforcement agency for use in the proper discharge of the agency's official duties.*

Sec. 4. FAILURE TO COMPLY WITH REPORTING REQUIREMENTS; CRIMINAL OFFENSE; PENALTY. (a) *A person commits an offense if the person:*

(1) *is requested by the attorney general to submit information required by Section 1 or 2 of this article to the attorney general; and*

(2) *knowingly fails to provide the requested information to the attorney general before the 30th day after the date of the request.*

(b) *An offense under this section is a Class A misdemeanor.*

Sec. 5. SUPPRESSION OF PHYSICAL EVIDENCE; CRIMINAL OFFENSE; PENALTY. (a) *A person commits an offense if the person knowingly suppresses physical evidence connected with information contained in a report or return required by this article through concealment, alteration, or destruction.*

(b) *An offense under this section is a Class A misdemeanor.*

Sec. 6. NOTIFICATION TO TARGET OF CRIMINAL INVESTIGATION; CRIMINAL OFFENSE; PENALTY. (a) A person commits an offense if the person:

- (1) is required to submit a report or return under this article; and*
- (2) knowingly notifies an individual who is the target of criminal investigation involving an offense under Chapter 34, Penal Code, that:*
 - (A) the attorney general has requested the person to provide information required by this article related to the targeted individual; or*
 - (B) the individual may be subject to impending criminal prosecution.*

(b) An offense under this section is a Class A misdemeanor.

SECTION 7. Section 402.005, Government Code, is amended to read as follows:

Sec. 402.005. ACCEPTANCE OF GIFTS, GRANTS, AND FORFEITED ASSETS; CREATION OF SPECIAL ACCOUNT [MONEY]. (a) The attorney general may not accept or use money offered by an individual, firm, partnership, corporation, or association for investigating or prosecuting a matter.

(b) The attorney general law enforcement account is created as a dedicated account in the general revenue fund in the state treasury. The account shall consist of law enforcement-related gifts and grants, and forfeited assets, and shall be administered by the attorney general.

(c) The attorney general may accept gifts and grants on behalf of the state for purposes related to law enforcement duties performed by the attorney general, unless the acceptance is prohibited under Subsection (a) or other law. Money received under this subsection shall be deposited in the law enforcement account established pursuant to Subsection (b) and may be appropriated only for the purpose for which the money was given.

SECTION 8. All moneys deposited to the credit of the attorney general law enforcement account, and all interest accruing from the deposit of that money, are appropriated to the Office of the Attorney General for the fiscal biennium ending August 31, 1995, for the purposes provided by Section 402.005, Government Code, as amended by this Act.

SECTION 9. This Act takes effect September 1, 1993.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 23, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 354 on May 26, 1993, by a non-record vote; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas; passed by the Senate, with amendments, on May 22, 1993: Yeas 31, Nays 0; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

Approved June 18, 1993.

Effective Sept. 1, 1993.