

**[CHAPTER 708A]  
MONEY LAUNDERING**

Section

708A-1 Title

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## COMMENTARY ON CHAPTER 708A

Act 119, Session Laws 1995, repealed part XI, chapter 708 (money laundering), and created this chapter to provide a comprehensive strategy to combat the economic effects of money laundering as the legislature found that money laundering is an integral component of criminal networks.

This chapter conforms to the federal money laundering statute, and in particular, prohibits knowingly conducting or attempting to conduct a financial transaction involving property represented to be proceeds of specified unlawful activity, with the intent to further the unlawful activity or knowing the action is designed to conceal or disguise the nature, location, source, ownership, or control of the proceeds.

The prohibited acts and penalties of this chapter are applicable to any person committing the specified unlawful acts if the person believes the value or aggregate value of the property transported, transmitted, transferred, received, or acquired is \$10,000 or more or if the value or aggregate value is, in fact, \$10,000 or more. Conference Committee Report No. 131.

" **[\$708A-1] Title.** This chapter shall be known and may be cited as the "Money Laundering Act". [L 1995, c 119, pt of §2]

" **§708A-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:

- (a) Constitutes a felony under the laws of this State;
- (b) If occurring outside this State, may be punishable by confinement for more than one year under the laws of the jurisdiction in which the act occurred;
- (c) Involves an act or acts constituting the offense of gambling, criminal property damage, extortion, theft, or prostitution or a drug offense under chapters 329, 329C, or part IV of chapter 712 or any firearm offense; or
- (d) If occurring outside this State, would constitute the offense of gambling, criminal property damage, extortion, theft, or prostitution or 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 jurisdiction 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. [L 1995, c 119, pt of §2; am L 1996, c 22, §1]

#### **Revision Note**

Paragraphs in definition of "specified unlawful activity" redesignated pursuant to §23G-15.

#### **COMMENTARY ON §708A-2**

Act 22, Session Laws 1996, amended this section by replacing the word "state" with the word "jurisdiction" in the definitions of "specified unlawful activity" and "unlawful activity." The legislature intended to clarify that the Money Laundering Act applied not only to activities occurring within the State of Hawaii or the United States, but also to activities occurring outside the United States. House Standing Committee Report No. 375-96, Senate Standing Committee Report No. 2602.

" **§708A-3 Money laundering; criminal penalty.** (1) It is unlawful for any person:

(a) 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:

- (i) With the intent to promote the carrying on of specified unlawful activity; or
- (ii) 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:

- (A) Conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
  - (B) Avoid a transaction reporting requirement under state or federal law;
- (b) 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:
  - (i) With the intent to promote the carrying on of specified unlawful activity; or
  - (ii) Knowing that the business is designed in whole or in part to:
    - (A) Conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
    - (B) Avoid a transaction reporting requirement under state or federal law; or
- (c) 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:
  - (i) Promote the carrying on of specified unlawful activity; or
  - (ii) 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.

(2) For the purpose of the offense described in subsection (1)(c), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subsection (1)(c) as true, and the defendant's subsequent statements or actions indicate that the defendant believed the representations to be true.

(3) For the purposes of subsection (1)(c), 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.

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

(a) The person believes the value or aggregate value of the property transported, transmitted, transferred, received, or acquired is \$8,000 or more; or

(b) The value or the aggregate value of the property transported, transmitted, transferred, received, or acquired is \$8,000 or more.

(5) A person who violates subsection (1):

(a) Is guilty of a class C felony where the value or aggregate value of the property transported, transmitted, transferred, received, or acquired is less than \$10,000, and may be fined not more than \$16,000 or twice the value of the property involved, whichever is greater; or

(b) Is guilty of a class B felony where the value or aggregate value of the property transported, transmitted, transferred, received, or acquired is \$10,000 or more, and may be fined not more than \$25,000 or twice the value of the property involved, whichever is greater. [L 1995, c 119, pt of §2; am L 1999, c 226, §1]

#### **COMMENTARY ON §708A-3**

Act 226, Session Laws 1999, amended this section by, among other things, creating a class C felony for persons guilty of money laundering when the value or aggregate value of the property involved is less than \$10,000 but greater than \$8,000, and imposing fines of no more than \$16,000 or no more than twice the value of the property, whichever is greater, upon individuals found guilty of a class C felony. The legislature found that the minimum \$10,000 ceiling for a money laundering transaction enables criminal organizations to avoid prosecution by structuring their illegal transactions to remain below \$10,000. The legislature further found that this frustrates attempts by law enforcement and prosecutors to pursue criminal penalties against money launderers until the amount that they can prove has been laundered surpasses the \$10,000 level. The legislature agreed that adding a lower offense for money laundering a lower sum would appropriately penalize such behavior. Senate Standing Committee Report No. 1494.