

HOUSE BILL NO. 307

INTRODUCED BY PARKER, WANZENRIED, BECKER, BERGREN, BUZZAS, DOWELL, DRISCOLL, EATON, ELLINGSON, EVERETT, GALLIK, GALLUS, GILLAN, HARRIS, FUREY, HANSEN, JACKSON, JOPEK, LANGE, LASLOVICH, CLARK, FRANKLIN, LINDEEN, MAEDJE, MALCOLM, MANGAN, MATTHEWS, MCGEE, MILBURN, NOONAN, ROUSH, SCHMIDT, SONJU, STOKER, WHEAT, WILSON, WINDHAM, WINDY BOY

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF MONEY LAUNDERING; ~~AND~~ PROVIDING FOR THE FORFEITURE AND SALE OF PROPERTY USED IN THE COMMISSION OF THE OFFENSE; AND PROVIDING FOR SALE PROCEEDS TO BE DEPOSITED IN THE STATE GENERAL FUND."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Money laundering. (1) A person commits the offense of money laundering if the person knowingly:

(a) receives or acquires the proceeds of, or engages in transactions involving proceeds of, any activity that is unlawful under the laws of ~~any state or~~ the United States OR THE STATE IN WHICH THE ACTIVITY OCCURRED;

(b) gives, sells, transfers, trades, invests, conceals, transports, or otherwise makes available anything of value that the person knows is intended to be used for the purpose of committing or furthering the commission of any activity that is unlawful under the laws of ~~any state or~~ the United States OR THE STATE IN WHICH THE COMMITTING OR FURTHERING OF THE COMMISSION OF THE ACTIVITY OCCURS;

(c) directs, plans, organizes, initiates, finances, manages, supervises, or facilitates the transportation or transfer of proceeds ~~known to be~~ THAT THE PERSON KNOWS ARE derived from any activity that is unlawful under the laws of ~~any state or~~ the United States OR THE STATE IN WHICH THE ACTIVITY OCCURRED; or

(d) conducts a financial transaction involving proceeds THAT THE PERSON KNOWS ARE derived from any activity that is unlawful under the laws of ~~any state or~~ the United States OR THE STATE IN WHICH THE ACTIVITY OCCURRED when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds or to avoid a transaction reporting requirement under federal law.

(2) A person convicted of money laundering shall be ~~imprisoned in the state prison for a period of not more than 10 years~~ FINED AN AMOUNT NOT TO EXCEED \$1,000 OR BE IMPRISONED IN THE COUNTY JAIL FOR A TERM NOT

1 TO EXCEED 6 MONTHS, OR BOTH. IF THE MONEY LAUNDERING IS PART OF A COMMON SCHEME OR IF THE VALUE OF THE  
 2 PROCEEDS OR ITEM OF VALUE EXCEEDS \$1,000, THE PERSON SHALL BE FINED NOT TO EXCEED \$50,000 OR BE  
 3 IMPRISONED IN THE STATE PRISON FOR A TERM NOT TO EXCEED 20 YEARS, OR BOTH.

4 ~~(3)~~ (3) (A) UPON CONVICTION, THE court shall order the following property possessed by a person  
 5 convicted of money laundering to be forfeited:

6 ~~(a)~~ (i) money, INCLUDING DIGITAL CURRENCY, AND raw materials, products, equipment of any kind, and any  
 7 other personal property involved in the money laundering;

8 ~~(b)~~ (ii) personal property constituting or derived from proceeds obtained directly or indirectly from the  
 9 money laundering; and

10 ~~(c)~~ (iii) real property, including any right, title, and interest in any lot or tract of land and any  
 11 appurtenances or improvements, that is directly used or intended to be used in any manner to commit or  
 12 facilitate the commission of, or that is derived from or maintained by the proceeds resulting from, the money  
 13 laundering.

14 (B) THE SHERIFF OF THE COUNTY WHERE FORFEITED PROPERTY IS LOCATED SHALL SELL THE PROPERTY AT  
 15 AUCTION. THE PROCEEDS OF THE SALE MUST BE DEPOSITED IN THE STATE GENERAL FUND.

16 (4) FOR PURPOSES OF THIS SECTION, "DIGITAL CURRENCY" MEANS MONEY REPRESENTED BY DIGITAL  
 17 INFORMATION THAT IS STORED, SPENT, AND TRANSFERRED ELECTRONICALLY BY A PERSON AS PART OF A FINANCIAL  
 18 TRANSACTION.

19  
 20 ~~NEW SECTION. Section 2. Seizure of forfeited property.~~ Property forfeited under [section 1] may  
 21 be seized by a law enforcement agency under a search warrant issued by a court having jurisdiction over the  
 22 property. The property may be seized without a search warrant if the seizure is incident to an arrest.

23  
 24 ~~NEW SECTION. Section 3. Forfeiture petition and answer.~~ (1) A law enforcement agency that seizes  
 25 property under [section 2] shall, within 45 days of the seizure, file a petition for the sale of the property with the  
 26 clerk of the district court of the county in which the seizure occurred. The clerk shall issue a summons, which  
 27 the law enforcement agency shall serve upon the person from whom the property was seized and any claimants  
 28 of the property, by one of the following methods:

29 ~~(a) upon a person whose name and address are known, by personal service of a copy of the petition~~  
 30 ~~and summons as provided in the Montana Rules of Civil Procedure; or~~

1 ~~\_\_\_\_\_ (b) upon a person whose address is unknown but who is believed to have an interest in the property,~~  
 2 ~~by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure~~  
 3 ~~occurred or, if there is no newspaper of general circulation in the county, by publication in one issue of a~~  
 4 ~~newspaper of general circulation in an adjoining county and by mailing a copy of the petition and summons to~~  
 5 ~~the most recent known address of the person.~~

6 ~~\_\_\_\_\_ (2) Within 20 days after the service of the petition and summons or publication of the summons, a~~  
 7 ~~person may file a verified answer to the allegations concerning the use of the property described in the petition.~~  
 8 ~~An extension of the time for filing the answer may not be granted, and failure to answer within 20 days bars the~~  
 9 ~~person from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances~~  
 10 ~~exist.~~

11  
 12 ~~\_\_\_\_\_ **NEW SECTION. Section 4. Hearing -- presumption.** (1) If a verified answer to the petition is not filed~~  
 13 ~~within 20 days after the service of the petition and summons, the court, upon motion of the law enforcement~~  
 14 ~~agency, shall order the property to be sold.~~

15 ~~\_\_\_\_\_ (2) If a verified answer is filed within 20 days, a date must be set for a hearing without a jury no sooner~~  
 16 ~~than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service~~  
 17 ~~of the petition and summons.~~

18 ~~\_\_\_\_\_ (3) There is a rebuttable presumption that the property was properly forfeited and is subject to sale.~~

19 ~~\_\_\_\_\_ (4) In order to rebut the presumption of forfeiture:~~

20 ~~\_\_\_\_\_ (a) an owner of property who has a verified answer on file shall prove that the property was not used~~  
 21 ~~in money laundering or that if it was, the use was without the owner's knowledge or consent;~~

22 ~~\_\_\_\_\_ (b) a claimant of a security interest in the property who has a verified answer on file shall prove that the~~  
 23 ~~security interest is bona fide and that it was created after a reasonable investigation of the responsibility,~~  
 24 ~~character, and reputation of the purchaser and without knowledge that the property was being or was to be used~~  
 25 ~~for money laundering. However, a person who has a lien dependent upon possession for compensation to which~~  
 26 ~~that person is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for,~~  
 27 ~~or providing storage, repair, or safekeeping of any property and a person doing business under any law of this~~  
 28 ~~state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed~~  
 29 ~~pawnbrokers or who is regularly engaged in the business of selling the property or of purchasing conditional~~  
 30 ~~sales contracts for the property may not be required to prove that the person's security interest was created after~~

1 a reasonable investigation of the responsibility, character, and reputation of the owner, purchaser, or person in  
2 possession of the property when it was brought to that person.

3  
4 ~~NEW SECTION. Section 5. Disposition of property.~~ (1) If the court finds that the property was not  
5 used for money laundering or was used for money laundering without the knowledge or consent of the owner,  
6 it shall order the property released to the owner of record as of the date of the seizure.

7 ~~(2) (a) If the court finds that the property was used for money laundering with the knowledge or consent~~  
8 ~~of the owner, the property must be disposed of as provided in subsections (2)(b) through (2)(d).~~

9 ~~(b) Subject to [section 4(4)(b)], if proper proof of a claim is presented at the hearing by the holder of a~~  
10 ~~security interest, the court shall order the property released to the holder of the security interest if the amount~~  
11 ~~due the holder is equal to or in excess of the value of the property as of the date of seizure. If the amount due~~  
12 ~~the holder of the security interest is less than the value of the property, the property must be sold at public~~  
13 ~~auction by the law enforcement agency that seized the property in the manner provided by law for the sale of~~  
14 ~~property under execution or the law enforcement agency may give the property to the holder of the security~~  
15 ~~interest without proceeding with an auction. The property may not be sold to an officer or employee of the law~~  
16 ~~enforcement agency that seized the property or to a person related to an officer or employee by blood or~~  
17 ~~marriage.~~

18 ~~(c) If no claimant exists and the law enforcement agency wishes to retain the property for its official use,~~  
19 ~~it may do so instead of selling the property.~~

20 ~~(d) If a claimant has presented proper proof of a claim and the law enforcement agency wishes to retain~~  
21 ~~the property for its official use, it may do so if it compensates the claimant in the amount of the security interest~~  
22 ~~outstanding at the time of the seizure.~~

23 ~~(3) In making a disposition of property, the court may take any action to protect the rights of innocent~~  
24 ~~persons.~~

25  
26 ~~NEW SECTION. Section 6. Disposition of proceeds of sale.~~ (1) The net proceeds of a sale must  
27 be distributed as follows:

28 ~~(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the~~  
29 ~~amount of their interests in the property;~~

30 ~~(b) the remainder, if any, to the county treasurer of the county in which the property was seized, who~~

1 shall establish and maintain a criminal forfeiture account and deposit the remainder into the account, except as  
 2 provided in subsections (1)(c) through (1)(e);

3 ~~—— (c) if the property was seized within the corporate limits of a city or town by a law enforcement agency  
 4 of that city or town, the remainder, if any, to the city or town treasurer, who shall establish and maintain a criminal  
 5 forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(d) and  
 6 (1)(e);~~

7 ~~—— (d) if the property was seized by a law enforcement agency of the state, the remainder, if any, to be  
 8 allocated as provided in subsection (3), except as provided in subsection (1)(e); and~~

9 ~~—— (e) if the property was seized as a result of the efforts of more than one law enforcement agency, the  
 10 remainder, if any, to the accounts required by this subsection (1), pro rata in the proportions represented by the  
 11 agencies' expenses in relation to the money laundering offense and the forfeiture and disposition of the property.~~

12 ~~—— (2) All proceeds from any source that are deposited into a county, city, or town criminal forfeiture  
 13 account must in each fiscal year be appropriated to and remain available until expended by the seizing law  
 14 enforcement agency for law enforcement purposes.~~

15 ~~—— (3) (a) Each year, the first \$125,000 of net proceeds received by the state must be deposited in an  
 16 account in the state special revenue fund to the credit of the department of justice. The department may expend  
 17 the money in the account for purposes of enforcement of laws.~~

18 ~~—— (b) Each year, net proceeds in excess of \$125,000 that are received by the state must be deposited  
 19 equally between the state special revenue account and the general fund.~~

20  
 21 NEW SECTION. Section 2. Codification instruction. ~~{Sections 1 through 6} are [SECTION 1] IS~~  
 22 intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45 apply to  
 23 ~~{sections 1 through 6} [SECTION 1].~~

24 - END -