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S. 1371

To combat money laundering and protect the United States financial system by strengthening safeguards in private banking and correspondent banking, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2001

Mr. LEVIN (for himself, Mr. GRASSLEY, Mr. SARBANES, Mr. NELSON of Florida, Mr. KYL, and Mr. DEWINE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To combat money laundering and protect the United States financial system by strengthening safeguards in private banking and correspondent banking, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Money Laundering
5 Abatement Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

1 (1) money laundering, the process by which
2 proceeds from criminal activity are disguised as le-
3 gitimate money, is contrary to the national interest
4 of the United States, because it finances crime, un-
5 dermines the integrity of international financial sys-
6 tems, impedes the international fight against corrup-
7 tion and drug trafficking, distorts economies, and
8 weakens emerging democracies and international
9 stability;

10 (2) United States banks are frequently used to
11 launder dirty money, and private banking, which
12 provides services to individuals with large deposits,
13 and correspondent banking, which occurs when 1
14 bank provides financial services to another bank, are
15 specific banking sectors which are particularly vul-
16 nerable to money laundering;

17 (3) private banking is particularly vulnerable to
18 money laundering by corrupt foreign government of-
19 ficials because the services provided (offshore ac-
20 counts, secrecy, and large international wire trans-
21 fers) are also key tools used to launder money;

22 (4) correspondent banking is vulnerable to
23 money laundering because United States banks—

1 (A) often fail to screen and monitor the
2 transactions of their high-risk foreign bank cli-
3 ents; and

4 (B) enable the owners and clients of the
5 foreign bank to get indirect access to the
6 United States banking system when they would
7 be unlikely to get access directly;

8 (5) the high-risk foreign bank that currently
9 poses the greatest money laundering risks in the
10 United States correspondent banking field is a shell
11 bank, which has no physical presence in any coun-
12 try, is not affiliated with any other bank, and is able
13 to evade day-to-day bank regulation; and

14 (6) United States anti-money laundering efforts
15 are currently impeded by outmoded and inadequate
16 statutory provisions that make United States inves-
17 tigations, prosecutions and forfeitures more difficult
18 when money laundering involves foreign persons, for-
19 eign banks, or foreign countries.

20 (b) PURPOSE.—The purpose of this Act is to mod-
21 ernize and strengthen existing Federal laws to combat
22 money laundering, particularly in the private banking and
23 correspondent banking fields when money laundering of-
24 fenses involve foreign persons, foreign banks, or foreign
25 countries.

1 **SEC. 3. INCLUSION OF FOREIGN CORRUPTION OFFENSES**
2 **AS MONEY LAUNDERING CRIMES.**

3 Section 1956(c)(7)(B) of title 18, United States
4 Code, is amended—

5 (1) in clause (ii), by striking “or destruction of
6 property by means of explosive or fire” and inserting
7 “destruction of property by means of explosive or
8 fire, or a crime of violence (as defined in section
9 16)”;

10 (2) in clause (iii), by striking “1978” and in-
11 serting “1978)”;

12 (3) by adding at the end the following:

13 “(iv) fraud, or any scheme or attempt
14 to defraud, against that foreign nation or
15 an entity of that foreign nation;

16 “(v) bribery of a public official, or the
17 misappropriation, theft, or embezzlement
18 of public funds by or for the benefit of a
19 public official;

20 “(vi) smuggling or export control vio-
21 lations involving—

22 “(I) an item controlled on the
23 United States Munitions List estab-
24 lished under section 38 of the Arms
25 Export Control Act (22 U.S.C. 2778);
26 or

1 “(II) technologies with military
2 applications controlled on any control
3 list established under the Export Ad-
4 ministration Act of 1979 (50 U.S.C.
5 App. 2401 et seq.) or any successor
6 statute;

7 “(vii) an offense with respect to which
8 the United States would be obligated by a
9 multilateral treaty, either to extradite the
10 alleged offender or to submit the case for
11 prosecution, if the offender were found
12 within the territory of the United States;
13 or

14 “(viii) the misuse of funds of, or pro-
15 vided by, the International Monetary Fund
16 in contravention of the Articles of Agree-
17 ment of the Fund or the misuse of funds
18 of, or provided by, any other international
19 financial institution (as defined in section
20 1701(c)(2) of the International Financial
21 Institutions Act (22 U.S.C. 262r(c)(2)) in
22 contravention of any treaty or other inter-
23 national agreement to which the United
24 States is a party, including any articles of

1 agreement of the members of the inter-
 2 national financial institution;”.

3 **SEC. 4. ANTI-MONEY LAUNDERING MEASURES FOR UNITED**
 4 **STATES BANK ACCOUNTS INVOLVING FOR-**
 5 **EIGN PERSONS.**

6 (a) REQUIREMENTS RELATING TO UNITED STATES
 7 BANK ACCOUNTS INVOLVING FOREIGN PERSONS.—Sub-
 8 chapter II of chapter 53 of title 31, United States Code,
 9 is amended by inserting after section 5318 the following:
 10 **“§ 5318A. Requirements relating to United States**
 11 **bank accounts involving foreign persons**

12 “(a) DEFINITIONS.—

13 “(1) IN GENERAL.—In this section, the fol-
 14 lowing definitions shall apply:

15 “(A) ACCOUNT.—The term ‘account’—

16 “(i) means a formal banking or busi-
 17 ness relationship established to provide
 18 regular services, dealings, or financial
 19 transactions; and

20 “(ii) includes a demand deposit, sav-
 21 ings deposit, or other transaction or asset
 22 account, and a credit account or other ex-
 23 tension of credit.

24 “(B) BRANCH OR AGENCY OF A FOREIGN
 25 BANK.—The term ‘branch or agency of a for-

1 eign bank’ has the meanings given those terms
 2 in section 1 of the International Banking Act of
 3 1978 (12 U.S.C. 3101).

4 “(C) CORRESPONDENT ACCOUNT.—The
 5 term ‘correspondent account’ means an account
 6 established for a depository institution, credit
 7 union, or foreign bank.

8 “(D) CORRESPONDENT BANK.—The term
 9 ‘correspondent bank’ means a depository insti-
 10 tution, credit union, or foreign bank that estab-
 11 lishes a correspondent account for and provides
 12 banking services to a depository institution,
 13 credit union, or foreign bank.

14 “(E) COVERED FINANCIAL INSTITUTION.—
 15 The term ‘covered financial institution’
 16 means—

17 “(i) a depository institution;

18 “(ii) a credit union; and

19 “(iii) a branch or agency of a foreign
 20 bank.

21 “(F) CREDIT UNION.—The term ‘credit
 22 union’ means any insured credit union, as de-
 23 fined in section 101 of the Federal Credit
 24 Union Act (12 U.S.C. 1752), or any credit
 25 union that is eligible to make application to be-

1 come an insured credit union pursuant to sec-
 2 tion 201 of the Federal Credit Union Act (12
 3 U.S.C. 1781).

4 “(G) DEPOSITORY INSTITUTION.—The
 5 term ‘depository institution’ has the same
 6 meaning as in section 3 of the Federal Deposit
 7 Insurance Act (12 U.S.C. 1813).

8 “(H) FOREIGN BANK.—The term ‘foreign
 9 bank’ has the same meaning as in section 1 of
 10 the International Banking Act of 1978 (12
 11 U.S.C. 3101).

12 “(I) FOREIGN COUNTRY.—The term ‘for-
 13 eign country’ has the same meaning as in sec-
 14 tion 1 of the International Banking Act of 1978
 15 (12 U.S.C. 3101).

16 “(J) FOREIGN PERSON.—The term ‘for-
 17 eign person’ means any foreign organization or
 18 any individual resident in a foreign country or
 19 any organization or individual owned or con-
 20 trolled by such an organization or individual.

21 “(K) OFFSHORE BANKING LICENSE.—The
 22 term ‘offshore banking license’ means a license
 23 to conduct banking activities which, as a condi-
 24 tion of the license, prohibits the licensed entity
 25 from conducting banking activities with the citi-

zens of, or with the local currency of, the foreign country which issued the license.

“(L) PRIVATE BANK ACCOUNT.—The term ‘private bank account’ means an account (or combination of accounts) that—

“(i) requires a minimum aggregate deposit of funds or assets in an amount equal to not less than \$1,000,000;

“(ii) is established on behalf of 1 or more individuals who have a direct or beneficial ownership interest in the account; and

“(iii) is assigned to, administered, or managed in whole or in part by an employee of a financial institution acting as a liaison between the institution and the direct or beneficial owner of the account.

“(2) OTHER TERMS.—After consultation with the Board of Governors of the Federal Reserve System, the Secretary may, by regulation, order, or otherwise as permitted by law, define any term that is used in this section and that is not otherwise defined in this section or section 5312, as the Secretary deems appropriate.

1 “(b) UNITED STATES BANK ACCOUNTS WITH UN-
2 IDENTIFIED FOREIGN OWNERS.—

3 “(1) RECORDS.—

4 “(A) IN GENERAL.—A covered financial in-
5 stitution shall not establish, maintain, admin-
6 ister, or manage an account in the United
7 States for a foreign person or a representative
8 of a foreign person, unless the covered financial
9 institution maintains in the United States, for
10 each such account, a record identifying, by a
11 verifiable name and account number, each indi-
12 vidual or entity having a direct or beneficial
13 ownership interest in the account.

14 “(B) PUBLICLY TRADED CORPORATIONS.—
15 A record required under subparagraph (A) that
16 identifies an entity, the shares of which are
17 publicly traded on a stock exchange regulated
18 by an organization or agency that is a member
19 of and endorses the principles of the Inter-
20 national Organization of Securities Commis-
21 sions (in this section referred to as ‘publicly
22 traded’), is not required to identify individual
23 shareholders of the entity.

24 “(C) FOREIGN BANKS.—In the case of a
25 correspondent account that is established for a

1 foreign bank, the shares of which are not pub-
2 licly traded, the record required under subpara-
3 graph (A) shall identify each of the owners of
4 the foreign bank, and the nature and extent of
5 the ownership interest of each such owner.

6 “(2) COMPLEX OWNERSHIP INTERESTS.—The
7 Secretary may, by regulation, order, or otherwise as
8 permitted by law, further delineate the information
9 to be maintained in the United States under para-
10 graph (1)(A), including information for accounts
11 with multiple, complex, or changing ownership inter-
12 ests.

13 “(c) PROHIBITION ON UNITED STATES COR-
14 RESPONDENT ACCOUNTS WITH FOREIGN SHELL
15 BANKS.—

16 “(1) IN GENERAL.—A covered financial institu-
17 tion shall not establish, maintain, administer, or
18 manage a correspondent account in the United
19 States for, or on behalf of, a foreign bank that does
20 not have a physical presence in any country.

21 “(2) PREVENTION OF INDIRECT SERVICE TO
22 FOREIGN SHELL BANKS.—A covered financial insti-
23 tution shall take reasonable steps to ensure that any
24 correspondent account established, maintained, ad-
25 ministered, or managed by that covered financial in-

1 stitution in the United States for a foreign bank is
2 not being used by that foreign bank to indirectly
3 provide banking services to another foreign bank
4 that does not have a physical presence in any coun-
5 try.

6 “(3) EXCEPTION.—Paragraphs (1) and (2) do
7 not prohibit a covered financial institution from pro-
8 viding a correspondent account to a foreign bank, if
9 the foreign bank—

10 “(A) is an affiliate of a depository institu-
11 tion, credit union, or other foreign bank that
12 maintains a physical presence in the United
13 States or a foreign country, as applicable; and

14 “(B) is subject to supervision by a banking
15 authority in the country regulating the affili-
16 ated depository institution, credit union, or for-
17 eign bank, described in subparagraph (A), as
18 applicable.

19 “(4) DEFINITIONS.—For purposes of this
20 subsection—

21 “(A) the term ‘affiliate’ means a foreign
22 bank that is controlled by or is under common
23 control with a depository institution, credit
24 union, or foreign bank; and

1 “(B) the term ‘physical presence’ means a
2 place of business that—

3 “(i) is maintained by a foreign bank;

4 “(ii) is located at a fixed address
5 (other than solely an electronic address) in
6 a country in which the foreign bank is au-
7 thorized to conduct banking activities, at
8 which location the foreign bank—

9 “(I) employs 1 or more individ-
10 uals on a full-time basis; and

11 “(II) maintains operating records
12 related to its banking activities; and

13 “(iii) is subject to inspection by the
14 banking authority which licensed the for-
15 eign bank to conduct banking activities.

16 “(d) DUE DILIGENCE FOR UNITED STATES PRIVATE
17 BANK AND CORRESPONDENT BANK ACCOUNTS INVOLV-
18 ING FOREIGN PERSONS.—

19 “(1) IN GENERAL.—Each covered financial in-
20 stitution that establishes, maintains, administers, or
21 manages a private bank account or a correspondent
22 account in the United States for a foreign person or
23 a representative of a foreign person shall establish
24 enhanced due diligence policies, procedures, and con-

1 trols to prevent, detect, and report possible instances
2 of money laundering through those accounts.

3 “(2) MINIMUM STANDARDS.—The enhanced
4 due diligence policies, procedures, and controls re-
5 quired under paragraph (1) of this subsection, shall,
6 at a minimum, ensure that the covered financial
7 institution—

8 “(A) ascertains the identity of each indi-
9 vidual or entity having a direct or beneficial
10 ownership interest in the account, and obtains
11 sufficient information about the background of
12 the individual or entity and the source of funds
13 deposited into the account as is needed to
14 guard against money laundering;

15 “(B) monitors such accounts on an ongo-
16 ing basis to prevent, detect, and report possible
17 instances of money laundering;

18 “(C) conducts enhanced scrutiny of any
19 private bank account requested or maintained
20 by, or on behalf of, a senior foreign political fig-
21 ure, or any immediate family member or close
22 associate of a senior foreign political figure, to
23 prevent, detect, and report transactions that
24 may involve the proceeds of foreign corruption;

1 “(D) conducts enhanced scrutiny of any
2 correspondent account requested or maintained
3 by, or on behalf of, a foreign bank operating—

4 “(i) under an offshore banking li-
5 cense; or

6 “(ii) under a banking license issued
7 by a foreign country that has been
8 designated—

9 “(I) as noncooperative with inter-
10 national anti-money laundering prin-
11 ciples or procedures by an intergov-
12 ernmental group or organization of
13 which the United States is a member;
14 or

15 “(II) by the Secretary as war-
16 ranting special measures due to
17 money laundering concerns; and

18 “(E) ascertains, as part of the enhanced
19 scrutiny under subparagraph (D), whether the
20 foreign bank provides correspondent accounts to
21 other foreign banks and, if so, the identity of
22 those foreign banks and related due diligence
23 information, as appropriate, under paragraph
24 (1).”.

1 (b) REGULATORY AUTHORITY.—After consultation
 2 with the Board of Governors of the Federal Reserve Sys-
 3 tem, the Secretary of the Treasury may, by regulation,
 4 order, or otherwise as permitted by law, take measures
 5 that the Secretary deems appropriate to carry out section
 6 5318A of title 31, United States Code (as added by this
 7 section).

8 (c) CONFORMING AMENDMENTS.—Section 5312(a) of
 9 title 31, United States Code, is amended—

10 (1) by redesignating paragraph (5) as para-
 11 graph (6); and

12 (2) by inserting after paragraph (4) the fol-
 13 lowing:

14 “(5) ‘Secretary’ means the Secretary of the
 15 Treasury, except as otherwise provided in this sub-
 16 chapter.”.

17 (d) CLERICAL AMENDMENT.—The table of sections
 18 for subchapter II of chapter 53 of title 31, United States
 19 Code, is amended by inserting after the item related to
 20 section 5318 the following:

“5318A. Requirements relating to United States bank accounts involving foreign
 persons.”.

21 (e) EFFECTIVE DATE.—Section 5318A of title 31,
 22 United States Code, as added by this section, shall take
 23 effect beginning 180 days after the date of enactment of
 24 this Act with respect to accounts covered by that section

1 that are opened before, on, or after the date of enactment
 2 of this Act.

3 **SEC. 5. LONG-ARM JURISDICTION OVER FOREIGN MONEY**
 4 **LAUNDERERS.**

5 Section 1956(b) of title 18, United States Code, is
 6 amended by—

7 (1) redesignating paragraphs (1) and (2) as
 8 subparagraphs (A) and (B), respectively;

9 (2) inserting “(1)” after “(b)”;

10 (3) inserting “, or section 1957” after “or
 11 (a)(3)”;

12 (4) adding at the end the following:

13 “(2) For purposes of adjudicating an action
 14 filed or enforcing a penalty ordered under this sec-
 15 tion, the district courts shall have jurisdiction over
 16 any foreign person, including any financial institu-
 17 tion authorized under the laws of a foreign country,
 18 against whom the action is brought, if service of
 19 process upon the foreign person is made under the
 20 Federal Rules of Civil Procedure or the laws of the
 21 country in which the foreign person is found, and—

22 “(A) the foreign person commits an offense
 23 under subsection (a) involving a financial trans-
 24 action that occurs in whole or in part in the
 25 United States;

1 “(B) the foreign person converts, to his or
2 her own use, property in which the United
3 States has an ownership interest by virtue of
4 the entry of an order of forfeiture by a court
5 of the United States; or

6 “(C) the foreign person is a financial insti-
7 tution that maintains a bank account at a fi-
8 nancial institution in the United States.

9 “(3) A court, described in paragraph (2), may
10 issue a pretrial restraining order or take any other
11 action necessary to ensure that any bank account or
12 other property held by the defendant in the United
13 States is available to satisfy a judgment under this
14 section.

15 “(4) A court, described in paragraph (2), may
16 appoint a Federal Receiver, in accordance with para-
17 graph (5), to collect, marshal, and take custody, con-
18 trol, and possession of all assets of the defendant,
19 wherever located, to satisfy a judgment under this
20 section or section 981, 982, or 1957, including an
21 order of restitution to any victim of a specified un-
22 lawful activity.

23 “(5) A Federal Receiver, described in para-
24 graph (4)—

1 “(A) may be appointed upon application of
2 a Federal prosecutor or a Federal or State reg-
3 ulator, by the court having jurisdiction over the
4 defendant in the case;

5 “(B) shall be an officer of the court, and
6 the powers of the Federal Receiver shall include
7 the powers set out in section 754 of title 28,
8 United States Code; and

9 “(C) shall have standing equivalent to that
10 of a Federal prosecutor for the purpose of sub-
11 mitting requests to obtain information regard-
12 ing the assets of the defendant—

13 “(i) from the Financial Crimes En-
14 forcement Network of the Department of
15 the Treasury; or

16 “(ii) from a foreign country pursuant
17 to a mutual legal assistance treaty, multi-
18 lateral agreement, or other arrangement
19 for international law enforcement assist-
20 ance, provided that such requests are in
21 accordance with the policies and proce-
22 dures of the Attorney General.”.

1 **SEC. 6. LAUNDERING MONEY THROUGH A FOREIGN BANK.**

2 Section 1956(c) of title 18, United States Code, is
3 amended by striking paragraph (6) and inserting the fol-
4 lowing:

5 “(6) the term ‘financial institution’ includes—

6 “(A) any financial institution, as defined in
7 section 5312(a)(2) of title 31, United States
8 Code, or the regulations promulgated there-
9 under; and

10 “(B) any foreign bank, as defined in sec-
11 tion 1 of the International Banking Act of 1978
12 (12 U.S.C. 3101).”.

13 **SEC. 7. PROHIBITION ON FALSE STATEMENTS TO FINAN-**
14 **CIAL INSTITUTIONS CONCERNING THE IDEN-**
15 **TITY OF A CUSTOMER.**

16 (a) IN GENERAL.—Chapter 47 of title 18, United
17 States Code, is amended by inserting after section 1007
18 the following:

19 **“§ 1008. False statements concerning the identity of**
20 **customers of financial institutions**

21 “(a) IN GENERAL.—Whoever knowingly in any
22 manner—

23 “(1) falsifies, conceals, or covers up, or at-
24 tempts to falsify, conceal, or cover up, the identity
25 of any person in connection with any transaction
26 with a financial institution;

1 “(2) makes, or attempts to make, any materi-
 2 ally false, fraudulent, or fictitious statement or rep-
 3 resentation of the identity of any person in connec-
 4 tion with a transaction with a financial institution;

5 “(3) makes or uses, or attempts to make or
 6 use, any false writing or document knowing the
 7 same to contain any materially false, fictitious, or
 8 fraudulent statement or entry concerning the iden-
 9 tity of any person in connection with a transaction
 10 with a financial institution; or

11 “(4) uses or presents, or attempts to use or
 12 present, in connection with a transaction with a fi-
 13 nancial institution, an identification document or
 14 means of identification the possession of which is a
 15 violation of section 1028;

16 shall be fined under this title, imprisoned not more than
 17 5 years, or both.

18 “(b) DEFINITIONS.—In this section, the following
 19 definitions shall apply:

20 “(1) FINANCIAL INSTITUTION.—The term ‘fi-
 21 nancial institution’—

22 “(A) has the same meaning as in section
 23 20; and

1 “(B) in addition, has the same meaning as
 2 in section 5312(a)(2) of title 31, United States
 3 Code.

4 “(2) IDENTIFICATION DOCUMENT.—The term
 5 ‘identification document’ has the same meaning as
 6 in section 1028(d).

7 “(3) MEANS OF IDENTIFICATION.—The term
 8 ‘means of identification’ has the same meaning as in
 9 section 1028(d).”.

10 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

11 (1) TITLE 18, UNITED STATES CODE.—Section
 12 1956(c)(7)(D) of title 18, United States Code, is
 13 amended by striking “1014 (relating to fraudulent
 14 loan” and inserting “section 1008 (relating to false
 15 statements concerning the identity of customers of
 16 financial institutions), section 1014 (relating to
 17 fraudulent loan”.

18 (2) TABLE OF SECTIONS.—The table of sections
 19 for chapter 47 of title 18, United States Code, is
 20 amended by inserting after the item relating to sec-
 21 tion 1007 the following:

“1008. False statements concerning the identity of customers of financial insti-
 tutions.”.

1 **SEC. 8. CONCENTRATION ACCOUNTS AT FINANCIAL INSTI-**
2 **TUTIONS.**

3 Section 5318(h) of title 31, United States Code, is
4 amended by adding at the end the following:

5 “(3) CONCENTRATION ACCOUNTS.—The Sec-
6 retary shall issue regulations under this subsection
7 that govern maintenance of concentration accounts
8 by financial institutions, in order to ensure that such
9 accounts are not used to prevent association of the
10 identity of an individual customer with the move-
11 ment of funds of which the customer is the direct or
12 beneficial owner, which regulations shall, at a
13 minimum—

14 “(A) prohibit financial institutions from al-
15 lowing clients to direct transactions that move
16 their funds into, out of, or through the con-
17 centration accounts of the financial institution;

18 “(B) prohibit financial institutions and
19 their employees from informing customers of
20 the existence of, or the means of identifying,
21 the concentration accounts of the institution;
22 and

23 “(C) require each financial institution to
24 establish written procedures governing the doc-
25 umentation of all transactions involving a con-
26 centration account, which procedures shall en-

1 sure that, any time a transaction involving a
 2 concentration account commingles funds belong-
 3 ing to 1 or more customers, the identity of, and
 4 specific amount belonging to, each customer is
 5 documented.”.

6 **SEC. 9. CHARGING MONEY LAUNDERING AS A COURSE OF**
 7 **CONDUCT.**

8 Section 1956(h) of title 18, United States Code, is
 9 amended by —

10 (1) inserting “(1)” before “Any person”; and

11 (2) adding at the end the following:

12 “(2) Any person who commits multiple violations of
 13 this section or section 1957 that are part of the same
 14 scheme or continuing course of conduct may be charged,
 15 at the election of the Government, in a single count in
 16 an indictment or information.”.

17 **SEC. 10. FUNGIBLE PROPERTY IN BANK ACCOUNTS.**

18 (a) IN GENERAL.—Section 984 of title 18, United
 19 States Code, is amended by striking subsection (b) and
 20 inserting the following:

21 “(b) The provisions of this section may be invoked
 22 only if the action for forfeiture was commenced by the sei-
 23 zure or restraint of the property, or by the filing of a com-
 24 plaint, within 2 years of the offense that is the basis for
 25 the forfeiture.”.

1 (b) APPLICATION.—The amendment made by this
2 section shall apply to any offense committed on or after
3 the date which is 2 years before the date of enactment
4 of this Act.

5 **SEC. 11. FORFEITURE OF FUNDS IN UNITED STATES INTER-**
6 **BANK ACCOUNTS.**

7 (a) FORFEITURE FROM UNITED STATES INTERBANK
8 ACCOUNT.—Section 981 of title 18, United States Code,
9 is amended by adding at the end the following:

10 “(k) INTERBANK ACCOUNTS.—

11 “(1) IN GENERAL.—For the purpose of a for-
12 feiture under this section or under the Controlled
13 Substances Act (21 U.S.C. 801 et seq.), if funds are
14 deposited into an account at a foreign bank, and
15 that foreign bank has an interbank account in the
16 United States with a covered financial institution (as
17 defined in section 5318A of title 31), the funds shall
18 be deemed to have been deposited into the interbank
19 account in the United States, and any restraining
20 order, seizure warrant, or arrest warrant in rem re-
21 garding the funds may be served on the covered fi-
22 nancial institution, and funds in the interbank ac-
23 count, up to the value of the funds deposited into
24 the account at the foreign bank, may be restrained,
25 seized, or arrested.

1 “(2) NO REQUIREMENT FOR GOVERNMENT TO
 2 TRACE FUNDS.—If a forfeiture action is brought
 3 against funds that are restrained, seized, or arrested
 4 under paragraph (1), it shall not be necessary for
 5 the Government to establish that the funds are di-
 6 rectly traceable to the funds that were deposited into
 7 the foreign bank, nor shall it be necessary for the
 8 Government to rely on the application of section
 9 984.

10 “(3) CLAIMS BROUGHT BY OWNER OF THE
 11 FUNDS.—If a forfeiture action is instituted against
 12 funds restrained, seized, or arrested under para-
 13 graph (1), the owner of the funds deposited into the
 14 account at the foreign bank may contest the for-
 15 feiture by filing a claim under section 983.

16 “(4) DEFINITIONS.—For purposes of this sub-
 17 section, the following definitions shall apply:

18 “(A) INTERBANK ACCOUNT.—The term
 19 ‘interbank account’ has the same meaning as in
 20 section 984(c)(2)(B).

21 “(B) OWNER.—

22 “(i) IN GENERAL.—Except as pro-
 23 vided in clause (ii), the term ‘owner’—

24 “(I) has the same meaning as in
 25 section 983(d)(6); and

1 “(II) does not include any foreign
2 bank or other financial institution act-
3 ing as an intermediary in the transfer
4 of funds into the interbank account
5 and having no ownership interest in
6 the funds sought to be forfeited.

7 “(ii) EXCEPTION.—The foreign bank
8 may be considered the ‘owner’ of the funds
9 (and no other person shall qualify as the
10 owner of such funds) only if—

11 “(I) the basis for the forfeiture
12 action is wrongdoing committed by
13 the foreign bank; or

14 “(II) the foreign bank estab-
15 lishes, by a preponderance of the evi-
16 dence, that prior to the restraint, sei-
17 zure, or arrest of the funds, the for-
18 eign bank had discharged all or part
19 of its obligation to the prior owner of
20 the funds, in which case the foreign
21 bank shall be deemed the owner of the
22 funds to the extent of such discharged
23 obligation.”.

1 (b) BANK RECORDS.—Section 5318 of title 31,
 2 United States Code, is amended by adding at the end the
 3 following:

4 “(i) BANK RECORDS RELATED TO ANTI-MONEY
 5 LAUNDERING PROGRAMS.—

6 “(1) DEFINITIONS.—For purposes of this sub-
 7 section, the following definitions shall apply:

8 “(A) APPROPRIATE FEDERAL BANKING
 9 AGENCY.—The term ‘appropriate Federal bank-
 10 ing agency’ has the same meaning as in section
 11 3 of the Federal Deposit Insurance Act (12
 12 U.S.C. 1813).

13 “(B) INCORPORATED TERMS.—The terms
 14 ‘correspondent account’, ‘covered financial insti-
 15 tution’, and ‘foreign bank’ have the same mean-
 16 ings as in section 5318A.

17 “(2) 48-HOUR RULE.—Not later than 48 hours
 18 after receiving a request by an appropriate Federal
 19 banking agency for information related to anti-
 20 money laundering compliance by a covered financial
 21 institution or a customer of such institution, a cov-
 22 ered financial institution shall provide to the appro-
 23 priate Federal banking agency, or make available at
 24 a location specified by the representative of the ap-
 25 propriate Federal banking agency, information and

1 account documentation for any account opened,
 2 maintained, administered or managed in the United
 3 States by the covered financial institution.

4 “(3) FOREIGN BANK RECORDS.—

5 “(A) SUMMONS OR SUBPOENA OF
 6 RECORDS.—

7 “(i) IN GENERAL.—The Secretary or
 8 the Attorney General may issue a sum-
 9 mons or subpoena to any foreign bank that
 10 maintains a correspondent account in the
 11 United States and request records related
 12 to such correspondent account.

13 “(ii) SERVICE OF SUMMONS OR SUB-
 14 POENA.—A summons or subpoena referred
 15 to in clause (i) may be served on the for-
 16 eign bank in the United States if the for-
 17 eign bank has a representative in the
 18 United States, or in a foreign country pur-
 19 suant to any mutual legal assistance trea-
 20 ty, multilateral agreement, or other request
 21 for international law enforcement assist-
 22 ance.

23 “(B) ACCEPTANCE OF SERVICE.—

24 “(i) MAINTAINING RECORDS IN THE
 25 UNITED STATES.—Any covered financial

1 institution which maintains a cor-
2 respondent account in the United States
3 for a foreign bank shall maintain records
4 in the United States identifying the owners
5 of such foreign bank and the name and ad-
6 dress of a person who resides in the United
7 States and is authorized to accept service
8 of legal process for records regarding the
9 correspondent account.

10 “(ii) LAW ENFORCEMENT REQUEST.—
11 Upon receipt of a written request from a
12 Federal law enforcement officer for infor-
13 mation required to be maintained under
14 this paragraph, the covered financial insti-
15 tution shall provide the information to the
16 requesting officer not later than 7 days
17 after receipt of the request.

18 “(C) TERMINATION OF CORRESPONDENT
19 RELATIONSHIP.—

20 “(i) TERMINATION UPON RECEIPT OF
21 NOTICE.—A covered financial institution
22 shall terminate any correspondent relation-
23 ship with a foreign bank not later than 10
24 days after receipt of written notice from

1 the Secretary or the Attorney General that
2 the foreign bank has failed—

3 “(I) to comply with a summons
4 or subpoena issued under subpara-
5 graph (A); or

6 “(II) to initiate proceedings in a
7 United States court contesting such
8 summons or subpoena.

9 “(ii) LIMITATION ON LIABILITY.—A
10 covered financial institution shall not be
11 liable to any person in any court or arbi-
12 tration proceeding for terminating a cor-
13 respondent relationship in accordance with
14 this subsection.

15 “(iii) FAILURE TO TERMINATE RELA-
16 TIONSHIP.—Failure to terminate a cor-
17 respondent relationship in accordance with
18 this subsection shall render the covered fi-
19 nancial institution liable for a civil penalty
20 of up to \$10,000 per day until the cor-
21 respondent relationship is so terminated.”.

22 (c) AUTHORITY TO ORDER CONVICTED CRIMINAL TO
23 RETURN PROPERTY LOCATED ABROAD.—

24 (1) FORFEITURE OF SUBSTITUTE PROPERTY.—

25 Section 413 of the Controlled Substances Act (21

1 U.S.C. 853) is amended by striking subsection (p)
2 and inserting the following:

3 “(p) FORFEITURE OF SUBSTITUTE PROPERTY.—

4 “(1) IN GENERAL.—Paragraph (2) of this sub-
5 section shall apply, if any property described in sub-
6 section (a), as a result of any act or omission of the
7 defendant—

8 “(A) cannot be located upon the exercise of
9 due diligence;

10 “(B) has been transferred or sold to, or
11 deposited with, a third party;

12 “(C) has been placed beyond the jurisdic-
13 tion of the court;

14 “(D) has been substantially diminished in
15 value; or

16 “(E) has been commingled with other
17 property which cannot be divided without dif-
18 ficulty.

19 “(2) SUBSTITUTE PROPERTY.—In any case de-
20 scribed in any of subparagraphs (A) through (E) of
21 paragraph (1), the court shall order the forfeiture of
22 any other property of the defendant, up to the value
23 of any property described in subparagraphs (A)
24 through (E) of paragraph (1), as applicable.

1 “(3) RETURN OF PROPERTY TO JURISDIC-
 2 TION.—In the case of property described in para-
 3 graph (1)(C), the court may, in addition to any
 4 other action authorized by this subsection, order the
 5 defendant to return the property to the jurisdiction
 6 of the court so that the property may be seized and
 7 forfeited.”.

8 (2) PROTECTIVE ORDERS.—Section 413(e) of
 9 the Controlled Substances Act (21 U.S.C. 853(e)) is
 10 amended by adding at the end the following:

11 “(4) ORDER TO REPATRIATE AND DEPOSIT.—

12 “(A) IN GENERAL.—Pursuant to its au-
 13 thority to enter a pretrial restraining order
 14 under this section, including its authority to re-
 15 strain any property forfeitable as substitute as-
 16 sets, the court may order a defendant to repa-
 17 triate any property that may be seized and for-
 18 feited, and to deposit that property pending
 19 trial in the registry of the court, or with the
 20 United States Marshals Service or the Sec-
 21 retary of the Treasury, in an interest-bearing
 22 account, if appropriate.

23 “(B) FAILURE TO COMPLY.—Failure to
 24 comply with an order under this subsection, or
 25 an order to repatriate property under sub-

1 section (p), shall be punishable as a civil or
2 criminal contempt of court, and may also result
3 in an enhancement of the sentence of the de-
4 fendant under the obstruction of justice provi-
5 sion of the Federal Sentencing Guidelines.”.

6 **SEC. 12. EFFECTIVE DATE.**

7 Except as otherwise provided in this Act, this Act,
8 and the amendments made by this Act, shall take effect
9 90 days after the date of enactment of this Act.

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