

105TH CONGRESS
2D SESSION

H. R. 4691

To amend title 31, United States Code, to prevent the smuggling of large amounts of currency or monetary instruments into or out of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 1998

Mrs. ROUKEMA introduced the following bill; which was referred to the
Committee on Banking and Financial Services

A BILL

To amend title 31, United States Code, to prevent the smuggling of large amounts of currency or monetary instruments into or out of the United States, 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 “Bulk Cash Smuggling
5 Act of 1998”.

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

7 (a) FINDINGS.—The Congress finds the following:

1 (1) The use of large sums of cash is one of the
2 most reliable warning signs of drug trafficking, ter-
3 rorism, money laundering, racketeering, tax evasion,
4 and similar crimes.

5 (2) The prevention, investigation, and prosecu-
6 tion of such crimes depends upon the ability of law
7 enforcement to deter and trace such movements of
8 cash, and the failure to report such movements ac-
9 cordingly undermines law enforcement's ability to
10 prevent and detect serious criminal activity.

11 (3) The nonreporting of large cash transactions
12 or movements, in contravention of the provisions of
13 subchapter II of chapter 53 of title 31, United
14 States Code, and regulations prescribed under such
15 subchapter, is therefore itself a serious crime.

16 (4) The intentional transportation into or out of
17 the United States of large amounts of currency or
18 monetary instruments, in a manner designed to cir-
19 cumvent the mandatory reporting provisions of such
20 subchapter is the equivalent of, and creates the same
21 harm as, the smuggling of goods.

22 (5) The penalties in subchapter II of chapter
23 53 of title 31, United States Code, for nonreporting
24 reflect the potential harm caused by the crimes to
25 which intentional nonreporting is linked, and such

1 penalties accordingly protect the following important
2 governmental interests:

3 (A) The obligation of government to pre-
4 vent the manipulation of commerce and trade
5 by criminals.

6 (B) The cost to the government of inves-
7 tigating criminal activity and enforcing the laws
8 designed to hinder such activity.

9 (C) The government's underlying right to
10 taxes sought to be evaded through the move-
11 ment of unreported cash.

12 (b) PURPOSE.—It is the purpose of this Act to au-
13 thorize forfeiture of any cash or instruments whose move-
14 ments are not reported under the terms of subchapter II
15 of chapter 53 of title 31, United States Code, and regula-
16 tions prescribed under such chapter, to emphasize the seri-
17 ousness of the act of such nonreporting, and to prescribe
18 guidelines for determining the amount of property subject
19 to such forfeiture in various situations.

20 **SEC. 3. BULK CASH SMUGGLING.**

21 (a) ENACTMENT OF BULK CASH SMUGGLING OF-
22 FENSE.—Subchapter II of chapter 53 of title 31, United
23 States Code, is amended by adding at the end the follow-
24 ing:

1 **“§ 5331. Bulk cash smuggling**

2 “(a) CRIMINAL OFFENSE.—Whoever, with the intent
3 to evade a currency reporting requirement under section
4 5316, knowingly conceals more than \$10,000 in currency
5 or other monetary instruments on the person of such indi-
6 vidual or in any conveyance, article of luggage, merchan-
7 dise, or other container, and transports or transfers or at-
8 tempts to transport or transfer such currency or monetary
9 instruments from a place within the United States to a
10 place outside of the United States, or from a place outside
11 the United States to a place within the United States,
12 shall be guilty of a currency smuggling offense and subject
13 to punishment pursuant to subsection (b).

14 “(b) PENALTY.—

15 “(1) TERM OF IMPRISONMENT.—A person con-
16 victed of a currency smuggling offense under sub-
17 section (a), or a conspiracy to commit such offense,
18 shall be imprisoned for not more than 5 years.

19 “(2) FORFEITURE.—In addition, the court, in
20 imposing sentence under paragraph (1), shall order
21 that the defendant forfeit to the United States, any
22 property, real or personal, involved in the offense,
23 and any property traceable to such property, subject
24 to subsection (d) of this section.

1 “(3) PROCEDURE.—The forfeiture of property
2 under this section shall be governed by section 413
3 of the Controlled Substances Act.

4 “(4) PERSONAL MONEY JUDGMENT.—If the
5 property subject to forfeiture under paragraph (2) is
6 unavailable, and the defendant has no substitute
7 property that may be forfeited pursuant to section
8 413(p) of the Controlled Substances Act, the court
9 shall enter a personal money judgment against the
10 defendant for the amount that would be subject to
11 forfeiture.

12 “(c) CIVIL FORFEITURE.—

13 “(1) IN GENERAL.—Any property involved in a
14 violation of subsection (a), or a conspiracy to com-
15 mit such violation, and any property traceable to
16 such violation or conspiracy, may be seized and, sub-
17 ject to subsection (d) of this section, forfeited to the
18 United States.

19 “(2) PROCEDURE.—The seizure and forfeiture
20 shall be governed by the procedures governing civil
21 forfeitures in money laundering cases pursuant to
22 section 981(a)(1)(A) of title 18, United States Code.

23 “(3) TREATMENT OF CERTAIN PROPERTY AS
24 INVOLVED IN THE OFFENSE.—For purposes of this
25 subsection and subsection (b), any currency or other

1 monetary instrument that is concealed or intended
2 to be concealed in violation of subsection (a) or a
3 conspiracy to commit such violation, any article, con-
4 tainer, or conveyance used, or intended to be used,
5 to conceal or transport the currency or other mone-
6 tary instrument, and any other property used, or in-
7 tended to be used, to facilitate the offense, shall be
8 considered property involved in the offense.

9 “(d) PROPORTIONALITY OF FORFEITURE.—

10 “(1) IN GENERAL.—Upon a showing by the
11 property owner by a preponderance of the evidence
12 that the currency or monetary instruments involved
13 in the offense giving rise to the forfeiture were de-
14 rived from a legitimate source, and were intended
15 for a lawful purpose, the court shall reduce the for-
16 feiture to the maximum amount that is not grossly
17 disproportional to the gravity of the offense.

18 “(2) FACTORS TO BE CONSIDERED.—In deter-
19 mining the amount of the forfeiture, the court shall
20 consider all aggravating and mitigating facts and
21 circumstances that have a bearing on the gravity of
22 the offense, including the following:

23 “(A) The value of the currency or other
24 monetary instruments involved in the offense.

1 “(B) Efforts by the person committing the
 2 offense to structure currency transactions, con-
 3 ceal property, or otherwise obstruct justice.

4 “(C) Whether the offense is part of a pat-
 5 tern of repeated violations of this section or any
 6 other currency reporting money laundering of-
 7 fense.”.

8 (b) CONFORMING AMENDMENT.—The table of sec-
 9 tions for subchapter II of chapter 53 of title 31, United
 10 States Code, is amended by inserting after the item relat-
 11 ing to section 5330, the following new item:

“5331. Bulk cash smuggling.”.

12 **SEC. 4. FORFEITURE IN CURRENCY REPORTING CASES.**

13 (a) IN GENERAL.—Subsection (c) of section 5317 of
 14 title 31, United States Code, is amended to read as fol-
 15 lows:

16 “(c) FORFEITURE.—

17 “(1) IN GENERAL.—The court in imposing sen-
 18 tence for any violation of section 5313, 5313A,
 19 5316, or 5324, or any conspiracy to commit such
 20 violation, shall order the defendant to forfeit all
 21 property, real or personal, involved in the offense
 22 and any property traceable thereto.

23 “(2) PROCEDURE.—Forfeitures under this sub-
 24 section shall be governed by the procedures estab-

lished in section 413 of the Controlled Substances Act and the guidelines established in paragraph (4).

“(3) CIVIL FORFEITURE.—Any property involved in a violation of section 5313, 5313A, 5316, or 5324, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and, subject to paragraph (4), forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

“(4) PROPORTIONALITY OF FORFEITURE.—

“(A) IN GENERAL.—Upon a showing by the property owner by a preponderance of the evidence that any currency or monetary instruments involved in the offense giving rise to the forfeiture were derived from a legitimate source, and were intended for a lawful purpose, the court shall reduce the forfeiture to the maximum amount that is not grossly disproportional to the gravity of the offense.

“(B) FACTORS TO BE CONSIDERED.—In determining the amount of the forfeiture, the court shall consider all aggravating and mitigating facts and circumstances that have a bearing

1 on the gravity of the offense, including the fol-
2 lowing:

3 “(i) The value of the currency or
4 other monetary instruments involved in the
5 offense.

6 “(ii) Efforts by the person committing
7 the offense to structure currency trans-
8 actions, conceal property, or otherwise ob-
9 struct justice.

10 “(iii) Whether the offense is part of a
11 pattern of repeated violations.”.

12 (b) CONFORMING AMENDMENTS.—(1) Section
13 981(a)(1)(A) of title 18, United States Code, is amended
14 by striking “of section 5313(a) or 5324(a) of title 31, or”.

15 (2) Section 982(a)(1) of title 18, United States Code,
16 is amended by striking “of 5313(a), 5316, or 5324 of title
17 31, or”.

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