

105TH CONGRESS
2D SESSION

S. 2449

To amend the Controlled Substances Act relating to the forfeiture of currency in connection with illegal drug offenses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 8 (legislative day, AUGUST 31), 1998

Mr. CLELAND (for himself and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Controlled Substances Act relating to the forfeiture of currency in connection with illegal drug offenses, 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 “Drug Currency For-
5 feitures Act”.

6 **SEC. 2. DRUG CURRENCY FORFEITURES.**

7 (a) IN GENERAL.—Section 511 of the Controlled
8 Substances Act (21 U.S.C. 881) is amended by inserting
9 after subsection (j) the following:

10 “(k) REBUTTABLE PRESUMPTION.—

1 “(1) DEFINITIONS.—In this subsection—

2 “(A) the term ‘drug trafficking offense’
3 means—

4 “(i) with respect to an action under
5 subsection (a)(6), any illegal exchange in-
6 volving a controlled substance or other vio-
7 lation for which forfeiture is authorized
8 under that subsection; and

9 “(ii) with respect to an action under
10 section 981(a)(1)(B) of title 18, United
11 States Code, any offense against a foreign
12 nation involving the manufacture, importa-
13 tion, sale, or distribution of a controlled
14 substance for which forfeiture is authorized
15 under that section; and

16 “(B) the term ‘shell corporation’ means
17 any corporation that does not conduct any on-
18 going and significant commercial or manufac-
19 turing business or any other form of commer-
20 cial operation.

21 “(2) PRESUMPTION.—In any action with re-
22 spect to the forfeiture of property described in sub-
23 section (a)(6) of this section, or section
24 981(a)(1)(B) of title 18, United States Code, there
25 is a rebuttable presumption that property is subject

1 to forfeiture, if the Government offers a reasonable
2 basis to believe, based on any circumstance described
3 in subparagraph (A), (B), (C), or (D) of paragraph
4 (3), that there is a substantial connection between
5 the property and a drug trafficking offense.

6 “(3) CIRCUMSTANCES.—The circumstances de-
7 scribed in this paragraph are that—

8 “(A) the property at issue is currency in
9 excess of \$10,000 that was, at the time of sei-
10 zure, being transported through an airport, on
11 a highway, or at a port-of-entry, and—

12 “(i) the property was packaged or
13 concealed in a highly unusual manner;

14 “(ii) the person transporting the prop-
15 erty (or any portion thereof) provided false
16 information to any law enforcement officer
17 or inspector who lawfully stopped the per-
18 son for investigative purposes or for pur-
19 poses of a United States border inspection;

20 “(iii) the property was found in close
21 proximity to a measurable quantity of any
22 controlled substance; or

23 “(iv) the property was the subject of
24 a positive alert by a properly trained dog;

1 “(B) the property at issue was acquired
2 during a period of time when the person who
3 acquired the property was engaged in a drug
4 trafficking offense or within a reasonable time
5 after such period, and there is no likely source
6 for such property other than that offense;

7 “(C)(i) the property at issue was, or was
8 intended to be, transported, transmitted, or
9 transferred to or from a major drug-transit
10 country, a major illicit drug producing country,
11 or a major money laundering country, as deter-
12 mined pursuant to section 481(e) of 490(h) of
13 the Foreign Assistance Act of 1961 (22 U.S.C.
14 2291(e) and 2291j(h)), as applicable; and

15 “(ii) the transaction giving rise to the for-
16 feiture—

17 “(I) occurred in part in a foreign
18 country whose bank secrecy laws render
19 the United States unable to obtain records
20 relating to the transaction by judicial proc-
21 ess, treaty, or executive agreement; or

22 “(II) was conducted by, to, or through
23 a shell corporation that was not engaged in
24 any legitimate business activity in the
25 United States; or

1 “(D) any person involved in the trans-
2 action giving rise to the forfeiture action—

3 “(i) has been convicted in any Fed-
4 eral, State, or foreign jurisdiction of a
5 drug trafficking offense or a felony involv-
6 ing money laundering; or

7 “(ii) is a fugitive from prosecution for
8 any offense described in clause (i).

9 “(4) OTHER PRESUMPTIONS.—The establish-
10 ment of the presumption in this subsection shall not
11 preclude the development of other judicially created
12 presumptions, or the establishment of probable cause
13 based on criteria other than those set forth in this
14 subsection.”.

15 (b) MONEY LAUNDERING FORFEITURES.—Section
16 981 of title 18, United States Code, is amended by adding
17 at the end the following:

18 “(k) REBUTTABLE PRESUMPTION.—In any action
19 with respect to the forfeiture of property described in sub-
20 section (a)(1)(A), there is a rebuttable presumption that
21 the property is the proceeds of an offense involving the
22 felonious manufacture, importation, receiving, conceal-
23 ment, buying, selling, or otherwise dealing in a controlled
24 substance (as defined in section 102 of the Controlled
25 Substances Act), and thus constitutes the proceeds of

1 specified unlawful activity (as defined in section 1956(c)),
2 if any circumstance set forth in subparagraph (A), (B),
3 (C), or (D) section 511(k)(3) of the Controlled Substances
4 Act (21 U.S.C. 881(k)(3)) is present.”.

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