

111TH CONGRESS
2D SESSION

H. R. 4941

To amend title 31, United States Code, to include means of access to funds or the value of funds in certain records and reports on monetary instrument transactions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2010

Mrs. KIRKPATRICK of Arizona (for herself, Mr. FILNER, Ms. TITUS, Mr. RODRIGUEZ, and Mrs. LUMMIS) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend title 31, United States Code, to include means of access to funds or the value of funds in certain records and reports on monetary instrument transactions, 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 “Anti-Cash Smuggling
5 Act of 2010”.

1 **SEC. 2. ADDITION OF MEANS OF ACCESS TO FUNDS OR THE**
2 **VALUE OF FUNDS.**

3 Chapter 53 of subtitle IV of title 31, United States
4 Code, is amended—

5 (1) by inserting after section 5316 the following
6 new section:

7 **“§ 5316A. Reports on exporting and importing means**
8 **of access to funds**

9 “(a) IN GENERAL.—

10 “(1) REPORTS REQUIRED.—The Secretary of
11 the Treasury, in consultation with the Secretary of
12 Homeland Security, shall, by regulation and subject
13 to the limitations of this section, require reports con-
14 cerning means of access to funds or the value of
15 funds belonging or credited to a person.

16 “(2) MEANS OF ACCESS TO FUNDS OR THE
17 VALUE OF FUNDS DEFINED.—The Secretary of the
18 Treasury shall define the term ‘means of access to
19 funds or the value of funds’ for purposes of this sec-
20 tion. Such definition shall—

21 “(A) include means that a person, agent,
22 or bailee can use to electronically—

23 “(i) initiate transfers of funds;

24 “(ii) obtain currency in place of funds
25 or the value of funds; or

26 “(iii) purchase goods or services;

1 “(B) include, but not be limited to, prepaid
2 or stored value cards; and

3 “(C) not include debit cards or credit
4 cards, as such terms are defined under section
5 603(r)(3) of the Fair Credit Reporting Act (15
6 U.S.C. 1681a(r)(3)) and under section 103(k)
7 of the Truth in Lending Act (15 U.S.C.
8 1602(k)), respectively.

9 “(b) REPORTS REQUIRED WHEN EXPORTING OR IM-
10 PORTING.—A person, or an agent or bailee of that person,
11 shall as required by regulation file a report under this sec-
12 tion only when the person, agent, or bailee knowingly—

13 “(1) transports, is about to transport, or has
14 transported a means of access to funds or the value
15 of funds from a place in the United States to or
16 through a place outside the United States or to a
17 place in the United States from or through a place
18 outside the United States; or

19 “(2) receives a means of access to funds or the
20 value of funds transported into the United States
21 from or through a place outside the United States.

22 “(c) TIMING AND CONTENT OF REPORTS.—A report
23 under this section shall be filed at the time and place pre-
24 scribed by the Secretary of the Treasury, in consultation
25 with the Secretary of Homeland Security. The report shall

1 contain the following information, to the extent the Sec-
2 retary of the Treasury, in consultation with the Secretary
3 of Homeland Security, prescribes:

4 “(1) The legal capacity in which the person fil-
5 ing the report is acting.

6 “(2) The origin, destination, and route of the
7 means of access to funds or the value of funds.

8 “(3) When the means of access to funds or the
9 value of funds is not legally and beneficially owned
10 by the person transporting the such means of access,
11 or if the person transporting such means of access
12 personally is not going to use it, the identity of the
13 person that gave such means of access to the person
14 transporting it, the identity of the person who is to
15 receive such means of access, or both.

16 “(4) The amount and kind of funds or the
17 value of funds to which the means of access to funds
18 or the value of funds provides access, and the person
19 to whom the funds or value of funds belong or are
20 credited.

21 “(5) Such additional information as the Sec-
22 retary of the Treasury, in consultation with the Sec-
23 retary of Homeland Security, determines to be ap-
24 propriate.

1 “(d) NONAPPLICABILITY TO CERTAIN COMMON CAR-
2 RIERS.—This section shall not apply to a common carrier
3 of passengers when a passenger is transporting a means
4 of access to funds or the value of funds, or to a common
5 carrier of goods if the shipper does not declare such means
6 of access.

7 “(e) ADDITIONAL INFORMATION NEEDED TO FA-
8 CILITATE REPORTING.—The Secretary of the Treasury, in
9 consultation with the Secretary of Homeland Security,
10 may prescribe regulations under this section requiring a
11 person that holds funds or the value of funds belonging
12 or credited to another person, and that provides such
13 other person a means of access to such funds or value,
14 to provide information at the time and place and in the
15 manner prescribed by the Secretary, in consultation with
16 the Secretary of Homeland Security, in order to facilitate
17 reporting under this section. Such information may in-
18 clude, but is not limited to, placing conspicuous markings
19 on any tangible mechanism that constitutes, or together
20 with a personal identification number, code, or other input
21 comprises, a means of access to funds or the value of
22 funds in order to manifest reportable characteristics of the
23 means of access.”;

24 (2) in section 5316—

1 (A) by amending the heading to read as
2 follows:

3 **“§ 5316. Reports on exporting and importing mone-**
4 **tary instruments and access devices”;**

5 (B) by amending subsection (a) to read as
6 follows:

7 “(a) Except as provided in subsection (c), a person
8 or an agent or bailee of the person shall file a report under
9 subsection (b) when the person, agent, or bailee know-
10 ingly—

11 “(1) transports, is about to transport, or has
12 transported, monetary instruments, funds accessible
13 by means of access to funds or the value of funds
14 (as defined under section 5316A(a)(2)), or a com-
15 bination of monetary instruments and funds acces-
16 sible by such means of access, of more than \$10,000
17 at one time—

18 “(A) from a place in the United States to
19 or through a place outside the United States; or

20 “(B) to a place in the United States from
21 or through a place outside the United States; or

22 “(2) receives monetary instruments, funds ac-
23 cessible by means of access to funds or the value of
24 funds, or a combination of monetary instruments
25 and funds accessible by such means of access, of

1 more than \$10,000 at one time transported into the
2 United States from or through a place outside the
3 United States.”; and

4 (C) in subsection (b), by striking “Sec-
5 retary prescribes” and inserting “Secretary of
6 the Treasury, in consultation with the Secretary
7 of Homeland Security, prescribes”;

8 (3) by amending section 5317 to read as fol-
9 lows:

10 **“§ 5317. Search and forfeiture of monetary instru-**
11 **ments and access devices**

12 “(a) IN GENERAL.—The Secretary of the Treasury
13 or the Secretary of Homeland Security may apply to a
14 court of competent jurisdiction for a search warrant when
15 such Secretary reasonably believes a monetary instrument
16 or a tangible mechanism that constitutes, or together with
17 a personal identification number, code, or other input
18 comprises, a means of access to funds or the value of
19 funds is being transported and a report on the instrument
20 or means of access to funds or the value of funds under
21 section 5316 or 5316A has not been filed or contains a
22 material omission or misstatement. Such Secretary shall
23 include a statement of information in support of the war-
24 rant. On a showing of probable cause, the court may issue
25 a search warrant for a designated person or a designated

1 or described place or physical object. This subsection does
2 not affect the authority of the Secretary of the Treasury
3 or the Secretary of Homeland Security under any other
4 provision of law.

5 “(b) SEARCHES AT BORDER.—For purposes of en-
6 suring compliance with the requirements of section 5316
7 and 5316A, a customs officer may stop and search, at the
8 border and without a search warrant, any vehicle, vessel,
9 aircraft, or other conveyance, any envelope or other con-
10 tainer, and any person entering or departing from the
11 United States.

12 “(c) FORFEITURE.—

13 “(1) CRIMINAL FORFEITURE.—

14 “(A) IN GENERAL.—The court in imposing
15 sentence for any violation of section 5313,
16 5316, 5316A, or 5324, or any conspiracy to
17 commit such violation, shall order the defendant
18 to forfeit all property, real or personal, involved
19 in the offense, including but not limited to any
20 tangible mechanism that constitutes, or to-
21 gether with a personal identification number,
22 code, or other input comprises, a means of ac-
23 cess to funds or the value of funds, and any
24 property traceable thereto.

1 “(B) PROCEDURE.—Forfeitures under this
2 paragraph shall be governed by the procedures
3 established in section 413 of the Controlled
4 Substances Act.

5 “(2) CIVIL FORFEITURE.—Any property in-
6 volved in a violation of section 5313, 5316, 5316A,
7 or 5324, or any conspiracy to commit any such vio-
8 lation, and any property traceable to any such viola-
9 tion or conspiracy, may be seized and forfeited to
10 the United States in accordance with the procedures
11 governing civil forfeitures in money laundering cases
12 pursuant to section 981(a)(1)(A) of title 18, United
13 States Code.”;

14 (4) by amending section 5324(c) to read as fol-
15 lows:

16 “(c) INTERNATIONAL TRANSACTIONS.—No person
17 shall, for the purpose of evading the reporting require-
18 ments of section 5316 or 5316A—

19 “(1) fail to file a report required by section
20 5316 or 5316A, or cause or attempt to cause a per-
21 son to fail to file such a report;

22 “(2) file or cause or attempt to cause a person
23 to file a report required under section 5316 or
24 5316A that contains a material omission or
25 misstatement of fact; or

1 “(3) structure or assist in structuring, or at-
2 tempt to structure or assist in structuring, any im-
3 portation or exportation of monetary instruments or
4 means of access to funds or the value of funds.”;
5 and

6 (5) by amending section 5332 to read as fol-
7 lows:

8 **“§ 5332. Smuggling of cash, monetary instruments,**
9 **and means of access to funds or the value**
10 **of funds into or out of the United States**

11 “(a) CRIMINAL OFFENSE.—

12 “(1) IN GENERAL.—Whoever, with the intent to
13 evade a currency reporting requirement under sec-
14 tion 5316 or 5316A, knowingly conceals more than
15 \$10,000 in currency or other monetary instruments,
16 or any tangible mechanism that constitutes, or to-
17 gether with a personal identification number, code,
18 or other input comprises, a means of access to funds
19 or the value of funds, on the person of such indi-
20 vidual or in any conveyance, article of luggage, mer-
21 chandise, or other container, and transports or
22 transfers or attempts to transport or transfer such
23 currency, other monetary instruments, or tangible
24 mechanism from a place within the United States to
25 a place outside of the United States, or from a place

1 outside the United States to a place within the
2 United States, shall be guilty of a currency smug-
3 gling offense and subject to punishment pursuant to
4 subsection (b).

5 “(2) CONCEALMENT ON PERSON.—For pur-
6 poses of this section, the concealment of currency,
7 other monetary instruments, or tangible mechanisms
8 on the person of any individual includes concealment
9 in any article of clothing worn by the individual or
10 in any luggage, backpack, or other container worn or
11 carried by such individual.

12 “(b) PENALTY.—

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

17 “(2) FORFEITURE.—In addition, the court, in
18 imposing sentence under paragraph (1), shall order
19 that the defendant forfeit to the United States, any
20 property, real or personal, involved in the offense,
21 and any property traceable to such property.

22 “(3) PROCEDURE.—The seizure, restraint, and
23 forfeiture of property under this section shall be gov-
24 erned by section 413 of the Controlled Substances
25 Act.

1 “(4) PERSONAL MONEY JUDGMENT.—If the
2 property subject to forfeiture under paragraph (2) is
3 unavailable, and the defendant has insufficient sub-
4 stitute property that may be forfeited pursuant to
5 section 413(p) of the Controlled Substances Act, the
6 court shall enter a personal money judgment against
7 the defendant for the amount that would be subject
8 to forfeiture.

9 “(c) CIVIL FORFEITURE.—

10 “(1) IN GENERAL.—Any property involved in a
11 violation of subsection (a), or a conspiracy to com-
12 mit such violation, and any property traceable to
13 such violation or conspiracy, may be seized and for-
14 feited to the United States.

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

19 “(3) TREATMENT OF CERTAIN PROPERTY AS
20 INVOLVED IN THE OFFENSE.—For purposes of this
21 subsection and subsection (b), any currency, other
22 monetary instrument, or tangible mechanism that
23 constitutes, or together with a personal identification
24 number, code, or other input comprises, a means of
25 access to funds or the value of funds that is con-

1 cealed or intended to be concealed in violation of
2 subsection (a) or a conspiracy to commit such viola-
3 tion, any article, container, or conveyance used, or
4 intended to be used, to conceal or transport the cur-
5 rency, other monetary instrument, or tangible mech-
6 anism, and any other property used, or intended to
7 be used to facilitate the offense (including the funds
8 or value of funds accessible by such tangible mecha-
9 nism at the time of the offense), shall be considered
10 property involved in the offense.”.

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