

114TH CONGRESS
1ST SESSION

S. 2298

To specify the state of mind required for conviction for criminal offenses that lack an expressly identified state of mind, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2015

Mr. HATCH (for himself, Mr. LEE, Mr. CRUZ, Mr. PERDUE, and Mr. PAUL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To specify the state of mind required for conviction for criminal offenses that lack an expressly identified state of mind, 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 “Mens Rea Reform Act
5 of 2015”.

6 **SEC. 2. STATE OF MIND ELEMENT FOR CRIMINAL OF-**
7 **FENSES.**

8 (a) Chapter 1 of title 18, United States Code, is
9 amended by adding at the end the following:

1 **“§ 28. State of mind when not otherwise specifically**
 2 **provided**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘covered offense’—

5 “(A) means an offense—

6 “(i) specified in—

7 “(I) this title or any other Act of
 8 Congress;

9 “(II) any regulation; or

10 “(III) any law (including regula-
 11 tions) of any State or foreign govern-
 12 ment incorporated by reference into
 13 this title or any other Act of Con-
 14 gress; and

15 “(ii) that is punishable by imprison-
 16 ment, a maximum criminal fine of at least
 17 \$2,500, or both; and

18 “(B) does not include—

19 “(i) any offense set forth in chapter
 20 47 or chapter 47A of title 10;

21 “(ii) any offense incorporated by sec-
 22 tion 13(a) of this title; or

23 “(iii) any offense that involves con-
 24 duct which a reasonable person would
 25 know inherently poses an imminent and
 26 substantial danger to life or limb;

1 “(2) the term ‘knowingly’, as related to an ele-
2 ment of an offense, means—

3 “(A) if the element involves the nature of
4 the conduct of a person or the attendant cir-
5 cumstances, that the person is aware that the
6 conduct of the person is of that nature or that
7 such circumstances exist; and

8 “(B) if the element involves a result of the
9 conduct of a person, that the person is aware
10 that it is practically certain that the conduct of
11 the person will cause such a result;

12 “(3) the term ‘state of mind’ means willfully,
13 intentionally, maliciously, knowingly, recklessly, wan-
14 tonly, negligently, or with reason to believe, or any
15 other word or phrase that is synonymous with or
16 substantially similar to any such term; and

17 “(4) the term ‘willfully’, as related to an ele-
18 ment of an offense, means that the person acted
19 with knowledge that the person’s conduct was un-
20 lawful.

21 “(b) DEFAULT REQUIREMENT.—Except as provided
22 in subsections (c) and (d), a covered offense shall be con-
23 strued to require the Government to prove beyond a rea-
24 sonable doubt that the defendant acted—

1 “(1) with the state of mind specified in the text
 2 of the covered offense for each element for which the
 3 text specifies a state of mind; and

4 “(2) willfully, with respect to any element for
 5 which the text of the covered offense does not speci-
 6 fy a state of mind.

7 “(c) FAILURE TO DISTINGUISH AMONG ELE-
 8 MENTS.—Except as provided in subsection (d), if the text
 9 of a covered offense specifies the state of mind required
 10 for commission of the covered offense without specifying
 11 the elements of the covered offense to which the state of
 12 mind applies, the state of mind specified shall apply to
 13 all elements of the covered offense, unless a contrary pur-
 14 pose plainly appears.

15 “(d) EXCEPTIONS.—

16 “(1) IN GENERAL.—Subsections (b)(2) and (c)
 17 shall not apply with respect to—

18 “(A) any element for which the text of the
 19 covered offense makes clear that Congress af-
 20 firmatively intended not to require the Govern-
 21 ment to prove any state of mind with respect to
 22 such element;

23 “(B) any element of a covered offense, to
 24 the extent that the element establishes—

1 “(i) subject matter jurisdiction over
2 the covered offense; or

3 “(ii) venue with respect to trial of the
4 covered offense; or

5 “(C) any element of a covered offense, to
6 the extent that applying subsections (b)(2) and
7 (c) to such element would lessen the degree of
8 mental culpability that the Government is re-
9 quired to prove with respect to that element
10 under—

11 “(i) precedent of the Supreme Court
12 of the United States; or

13 “(ii) any other provision of this title,
14 any other Act of Congress, or any regula-
15 tion.

16 “(2) MERE ABSENCE INSUFFICIENT.—For pur-
17 poses of paragraph (1)(A), the mere absence of a
18 specified state of mind for an element of a covered
19 offense in the text of the covered offense shall not
20 be construed to mean that Congress affirmatively in-
21 tended not to require the Government to prove any
22 state of mind with respect to that element.

23 “(e) APPLICABILITY.—This section shall apply with
24 respect to a covered offense—

1 “(1) without regard to whether the provision or
2 provisions specifying the covered offense are enacted,
3 promulgated, or finalized before, on, or after the
4 date of enactment of this section; and

5 “(2) that occurred—

6 “(A) on or after the date of enactment of
7 this section; or

8 “(B) before the date of enactment of this
9 section, unless—

10 “(i) applying this section to such cov-
11 ered offense would—

12 “(I) punish as a crime conduct
13 that was innocent when done;

14 “(II) increase the punishment for
15 the covered offense; or

16 “(III) deprive a person charged
17 with the covered offense of any de-
18 fense available according to law at the
19 time the covered offense occurred;

20 “(ii) a jury has been empaneled and
21 sworn in a prosecution for the covered of-
22 fense before the date of enactment of this
23 section;

24 “(iii) the first witness has been sworn
25 in a prosecution for the covered offense

1 tried without a jury before the date of en-
 2 actment of this section; or

3 “(iv) a sentence has been imposed fol-
 4 lowing a plea of guilty or nolo contendere
 5 in a prosecution for the covered offense be-
 6 fore the date of enactment of this section.

7 “(f) SUBSEQUENTLY ENACTED LAWS.—No law en-
 8 acted after the date of enactment of this section shall be
 9 construed to repeal, modify the text or effect of, or super-
 10 sede in whole or in part this section, unless such law spe-
 11 cifically refers to this section and explicitly repeals, modi-
 12 fies the text or effect of, or supersedes in whole or in part
 13 this section.”.

14 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 15 The table of sections for chapter 1 of title 18, United
 16 States Code, is amended by adding at the end the fol-
 17 lowing:

“28. State of mind when not otherwise specifically provided.”.

