

117TH CONGRESS
1ST SESSION

S. 739

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

MARCH 11, 2021

Mr. LEE (for himself, Mr. TILLIS, 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 2021”.

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

8 (a) IN GENERAL.—Chapter 1 of title 18, United
9 States Code, is amended by adding at the end the fol-
10 lowing:

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; or

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

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

25 “(A) if the element involves the nature of
26 the conduct of a person or the attendant cir-

1 cumstances, that the person is aware that the
2 conduct of the person is of that nature or that
3 such circumstances exist; and

4 “(B) if the element involves a result of the
5 conduct of a person, that the person is aware
6 that it is practically certain that the conduct of
7 the person will cause such a result;

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

13 “(4) the term ‘willfully’, as related to an ele-
14 ment of an offense, means—

15 “(A) that the person acted with knowledge
16 that the person’s conduct was unlawful; and

17 “(B) if the element involves the nature, at-
18 tendant circumstances, object, or result of the
19 conduct of a person, that—

20 “(i) the person had knowledge of the
21 nature, attendant circumstances, object, or
22 result of his or her conduct; and

23 “(ii) it was the conscious object of the
24 person to engage in conduct—

25 “(I) of that nature;

1 “(II) with that attendant cir-
2 cumstance;

3 “(III) with that object; or

4 “(IV) to cause such a result.

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

9 “(1) with the state of mind specified in the text
10 of the covered offense for each element of the of-
11 fense for which the text specifies a state of mind;
12 and

13 “(2) willfully, with respect to any element of
14 the offense for which the text of the covered offense
15 does not specify a state of mind.

16 “(c) FAILURE TO DISTINGUISH AMONG ELE-
17 MENTS.—Except as provided in subsection (d), if the text
18 of a covered offense specifies the state of mind required
19 for commission of the covered offense without specifying
20 the elements of the covered offense to which the state of
21 mind applies, the state of mind specified shall apply to
22 all elements of the covered offense, unless a contrary pur-
23 pose plainly appears.

24 “(d) EXCEPTIONS.—

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

3 “(A) any element for which the text of the
4 covered offense makes clear that Congress af-
5 firmatively intended not to require the Govern-
6 ment to prove any state of mind with respect to
7 such element;

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

10 “(i) subject matter jurisdiction over
11 the covered offense; or

12 “(ii) venue with respect to trial of the
13 covered offense; or

14 “(C) any element of a covered offense, to
15 the extent that applying subsections (b)(2) and
16 (c) to such element would lessen the degree of
17 mental culpability that the Government is re-
18 quired to prove with respect to that element
19 under—

20 “(i) precedent of the Supreme Court
21 of the United States; or

22 “(ii) any other provision of this title,
23 any other Act of Congress, or any regula-
24 tion.

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

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

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

14 “(2) that occurred—

15 “(A) on or after the date of enactment of
16 this section; or

17 “(B) before the date of enactment of this
18 section, unless—

19 “(i) applying this section to such cov-
20 ered offense would—

21 “(I) punish as a crime conduct
22 that was innocent when done;

23 “(II) increase the punishment for
24 the covered offense; or

1 “(III) deprive a person charged
2 with the covered offense of any de-
3 fense available according to law at the
4 time the covered offense occurred;

5 “(ii) a jury has been empaneled and
6 sworn in a prosecution for the covered of-
7 fense before the date of enactment of this
8 section;

9 “(iii) the first witness has been sworn
10 in a prosecution for the covered offense
11 tried without a jury before the date of en-
12 actment of this section; or

13 “(iv) a sentence has been imposed fol-
14 lowing a plea of guilty or nolo contendere
15 in a prosecution for the covered offense be-
16 fore the date of enactment of this section.

17 “(f) SUBSEQUENTLY ENACTED LAWS.—No law en-
18 acted after the date of enactment of this section shall be
19 construed to repeal, modify the text or effect of, or super-
20 sede in whole or in part this section, unless such law spe-
21 cifically refers to this section and explicitly repeals, modi-
22 fies the text or effect of, or supersedes in whole or in part
23 this section.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENT.—
25 The table of sections for chapter 1 of title 18, United

- 1 States Code, is amended by adding at the end the fol-
- 2 lowing:

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

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