

105TH CONGRESS
2^D SESSION

H. R. 3745

To prevent money laundering.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1998

Mr. McCOLLUM (for himself, Mr. SCHUMER, Mr. HASTERT, Mr. PORTMAN, Mr. GOSS, and Mr. SOLOMON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prevent money laundering.

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 “Money Laundering Act
5 of 1998”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Illegal money transmitting businesses.
- Sec. 4. Restraint of assets of persons arrested abroad.
- Sec. 5. Access to records in bank secrecy jurisdictions.
- Sec. 6. Civil money laundering jurisdiction.
- Sec. 7. Laundering money through a foreign bank.
- Sec. 8. Specified unlawful activity for money laundering.
- Sec. 9. Criminal forfeiture for money laundering conspiracies.

- Sec. 10. Subpoenas for bank records.
- Sec. 11. Admissibility of foreign business records.
- Sec. 12. Charging money laundering as a course of conduct.
- Sec. 13. Venue in money laundering cases.
- Sec. 14. Technical amendment to restore wiretap authority for certain money laundering offenses.
- Sec. 15. Knowledge that the property is the proceeds of a felony.
- Sec. 16. Money purchased on the black market.
- Sec. 17. Asset forfeiture transfers.
- Sec. 18. Receipt and deposit amendment.
- Sec. 19. Coverage of foreign bank branches in the territories.

1 **SEC. 3. ILLEGAL MONEY TRANSMITTING BUSINESSES.**

2 (a) CIVIL FORFEITURE FOR MONEY TRANSMITTING
 3 VIOLATION.—Section 981(a)(1)(A) of title 18, United
 4 States Code, is amended by striking “or 1957” and insert-
 5 ing “, 1957 or 1960”.

6 (b) SCIENTER REQUIREMENT FOR SECTION 1960
 7 VIOLATION.—Section 1960 of title 18, United States
 8 Code, is amended by adding at the end the following:

9 “(c) For the purposes of proving a violation of this
 10 section involving an illegal money transmitting business
 11 as defined in subsection (b)(1)(A), it shall be sufficient
 12 for the Government to prove that the defendant knew that
 13 the money transmitting business lacked a license required
 14 by State law. It shall not be necessary to show that the
 15 defendant knew that the operation of such a business
 16 without the required license was an offense punishable
 17 under State law.”.

1 **SEC. 4. RESTRAINT OF ASSETS OF PERSONS ARRESTED**
2 **ABROAD.**

3 Section 981(b) of title 18, United States Code, is
4 amended by adding at the end the following:

5 “(3) If any person is arrested or charged in a foreign
6 country in connection with an offense that would give rise
7 to the forfeiture of property in the United States under
8 this section or under the Controlled Substances Act, the
9 Attorney General may apply to any Federal judge or mag-
10 istrate judge in the district where the property is located
11 for an ex parte order restraining the property subject to
12 forfeiture for not more than 30 days, except that the time
13 may be extended for good cause shown at a hearing con-
14 ducted in the manner provided in rule 43(e) of the Federal
15 Rules of Civil Procedure. The application for the restrain-
16 ing order shall set forth the nature and circumstances of
17 the foreign charges and the basis for belief that the person
18 arrested or charged has property in the United States that
19 would be subject to forfeiture, and shall contain a state-
20 ment that the restraining order is needed to preserve the
21 availability of property for such time as is necessary to
22 receive evidence from the foreign country or elsewhere in
23 support of probable cause for the seizure of the property
24 under this subsection.”.

1 **SEC. 5. ACCESS TO RECORDS IN BANK SECRECY JURISDIC-**
2 **TIONS.**

3 Section 986 of title 18, United States Code, is
4 amended by adding at the end the following:

5 “(d) In any civil forfeiture case, or in any ancillary
6 proceeding in any criminal forfeiture case governed by sec-
7 tion 413(n) of the Controlled Substances Act (21 U.S.C.
8 853(n)), where—

9 “(1) financial records located in a foreign coun-
10 try may be material—

11 “(A) to any claim or to the ability of the
12 Government to respond to such claim; or

13 “(B) in a civil forfeiture case, to the Gov-
14 ernment’s ability to establish the forfeitability
15 of the property; and

16 “(2) it is within the capacity of the claimant to
17 waive the claimant’s rights under such secrecy laws,
18 or to obtain the records directly so that the records
19 can be made available,

20 the refusal of the claimant to provide the records in re-
21 sponse to a discovery request or take the action necessary
22 otherwise to make the records available shall result in the
23 dismissal of the claim with prejudice. This subsection does
24 not affect the claimant’s rights to refuse production on
25 the basis of any privilege guaranteed by the Constitution
26 or laws of the United States.”.

1 **SEC. 6. CIVIL MONEY LAUNDERING JURISDICTION.**

2 Section 1956(b) of title 18, United States Code, is
3 amended—

4 (1) by inserting “(1)” after “(b)”;

5 (2) by redesignating present paragraphs (1)
6 and (2) as subparagraphs (A) and (B), respectively;

7 (3) by inserting “, or section 1957” after “or
8 (a)(3)”;

9 (4) by adding at the end the following:

10 “(2) For purposes of adjudicating an action filed or
11 enforcing a penalty ordered under this section, the district
12 courts shall have jurisdiction over any foreign person, in-
13 cluding any financial institution authorized under the laws
14 of a foreign country, that commits an offense under sub-
15 section (a) involving a financial transaction that occurs in
16 whole or in part in the United States, if that service of
17 process upon such foreign person is made under the Fed-
18 eral Rules of Civil Procedure or the laws of the country
19 where the foreign person is found.

20 “(3) The court may issue a pretrial restraining order
21 or take any other action necessary to ensure that any bank
22 account or other property held by the defendant in the
23 United States is available to satisfy a judgment under this
24 section.”.

1 **SEC. 7. LAUNDERING MONEY THROUGH A FOREIGN BANK.**

2 Section 1956(c)(6) of title 18, United States Code,
3 is amended to read as follows:

4 “(6) the term ‘financial institution’ includes any
5 financial institution described in section 5312(a)(2)
6 of title 31, United States Code, or the regulations
7 promulgated thereunder, as well as any foreign
8 bank, as defined in paragraph (7) of section 1(b) of
9 the International Banking Act of 1978 (12 U.S.C.
10 3101(7)).”.

11 **SEC. 8. SPECIFIED UNLAWFUL ACTIVITY FOR MONEY LAUN-**
12 **DERING.**

13 (a) IN GENERAL.—Section 1956(c)(7) of title 18,
14 United States Code, is amended—

15 (1) in subparagraph (B)—

16 (A) so that clause (ii) reads as follows:

17 “(ii) any conduct constituting a crime
18 of violence;”; and

19 (B) by inserting after clause (iii) the fol-
20 lowing:

21 “(iv) fraud, or any scheme to defraud,
22 committed against a foreign government or
23 foreign governmental entity;

24 “(v) bribery of a public official, or the
25 misappropriation, theft, or embezzlement

1 of public funds by or for the benefit of a
2 public official;

3 “(vi) smuggling or export control vio-
4 lations involving munitions listed in the
5 United States Munitions List or tech-
6 nologies with military applications as de-
7 fined in the Commerce Control List of the
8 Export Administration Regulations; or

9 “(vii) an offense with respect to which
10 the United States would be obligated by a
11 multilateral treaty either to extradite the
12 alleged offender or to submit the case for
13 prosecution, if the offender were found
14 within the territory of the United States.”;

15 (2) in subparagraph (D)—

16 (A) by inserting “section 541 (relating to
17 goods falsely classified),” before “section 542”;

18 (B) by inserting “section 924(m) (relating
19 to firearms trafficking),” before “section 956”;

20 (C) by inserting “section 1030 (relating to
21 computer fraud and abuse),” before “1032”;

22 and

23 (D) by inserting “any felony violation of
24 the Foreign Agents Registration Act of 1938,

1 as amended,” before “or any felony violation of
2 the Foreign Corrupt Practices Act”; and

3 (3) in subparagraph (E)—

4 (A) by inserting “section 42 or 43 of this
5 title (commonly called the Lacey Act),” after “a
6 felony violation of”;

7 (B) by inserting “the Clean Air Act (42
8 U.S.C. 7401 et seq.),” after “the Safe Drinking
9 Water Act (42 U.S.C. 300f et seq.),”.

10 (b) NATIONAL SECURITY.—Section 1956(d) of title
11 18, United States Code, is amended by adding at the end
12 the following: “This section does not apply to any official
13 conduct by a representative of, or to an action which is
14 authorized by and conducted on behalf of, the United
15 States Government.”.

16 **SEC. 9. CRIMINAL FORFEITURE FOR MONEY LAUNDERING**
17 **CONSPIRACIES.**

18 Section 982(a)(1) of title 18, United States Code, is
19 amended by inserting “, or a conspiracy to commit any
20 such offense” after “of this title”.

21 **SEC. 10. SUBPOENAS FOR BANK RECORDS.**

22 Section 986 of title 18, United States Code, is
23 amended—

24 (1) in subsection (a)—

1 (A) by striking “section 1956, 1957, or
2 1960 of this title, section 5322 or 5324 of title
3 31, United States Code” and inserting “section
4 981 or 982 of this title”;

5 (B) by inserting “before or” before
6 “after”;

7 (C) by striking “in rem”; and

8 (D) by striking the last sentence; and

9 (2) in subsection (c), by inserting “or the Fed-
10 eral Rules of Criminal Procedure” after “Proce-
11 dure”.

12 **SEC. 11. ADMISSIBILITY OF FOREIGN BUSINESS RECORDS.**

13 (a) IN GENERAL.—Chapter 163 of title 28, United
14 States Code, is amended by adding at the end the follow-
15 ing:

16 **“§ 2466. Foreign records**

17 “(a) In a civil proceeding in a court of the United
18 States, including civil forfeiture proceedings and proceed-
19 ings in the United States Claims Court and the United
20 States Tax Court, a foreign record of regularly conducted
21 activity, or copy of such record, obtained pursuant to an
22 official request, shall not be excluded as evidence by the
23 hearsay rule if a foreign certification, also obtained pursu-
24 ant to the same official request or subsequent official re-

1 quest that adequately identifies such foreign record, at-
2 tests that—

3 “(1) such record was made, at or near the time
4 of the occurrence of the matters set forth, by (or
5 from information transmitted by) a person with
6 knowledge of those matters;

7 “(2) such record was kept in the course of a
8 regularly conducted business activity;

9 “(3) the business activity made such a record
10 as a regular practice; and

11 “(4) if such record is not the original, such
12 record is a duplicate of the original; unless the
13 source of information or the method or cir-
14 cumstances of preparation indicate lack of trust-
15 worthiness.

16 “(b) A foreign certification under this section shall
17 authenticate such record or duplicate.

18 “(c) As soon as practicable after a responsive plead-
19 ing has been filed, a party intending to offer in evidence
20 under this section a foreign record of regularly conducted
21 activity shall provide written notice of that intention to
22 each other party. A motion opposing admission in evidence
23 of such record shall be made by the opposing party and
24 determined by the court before trial. Failure by a party
25 to file such motion before trial shall constitute a waiver

1 of objection to such record or duplicate, but the court for
2 cause shown may grant relief from the waiver.

3 “(d) As used in this section—

4 “(1) the term ‘foreign record of regularly con-
5 ducted activity’ means a memorandum, report,
6 record, or data compilation, in any form, of acts,
7 events, conditions, opinions, or diagnoses, main-
8 tained in a foreign country;

9 “(2) the term ‘foreign certification’ means a
10 written declaration made and signed in a foreign
11 country by the custodian of a record of regularly
12 conducted activity or another qualified person, that
13 if falsely made, would subject the maker to criminal
14 penalty under the law of that country;

15 “(3) the term ‘business’ includes business, insti-
16 tution, association, profession, occupation, and call-
17 ing of every kind whether or not conducted for prof-
18 it; and

19 “(4) the term ‘official request’ means a letter
20 rogatory, a request under an agreement, treaty or
21 convention, or any other request for information or
22 evidence made by a court of the United States or an
23 authority of the United States having law enforce-
24 ment responsibility to a court or other authority of
25 a foreign country.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of chapter 163 of title 28, United States
3 Code, is amended by inserting at the end the following
4 new item:

“2466. Foreign records.”.

5 **SEC. 12. CHARGING MONEY LAUNDERING AS A COURSE OF**
6 **CONDUCT.**

7 Section 1956(h) of title 18, United States Code, is
8 amended—

9 (1) by inserting “(1)” before “Any person”;
10 and

11 (2) by adding at the end the following:

12 “(2) Any person who commits multiple violations of
13 this section or section 1957 that are part of the same
14 scheme or continuing course of conduct may be charged,
15 at the election of the Government, in a single count in
16 an indictment or information.”.

17 **SEC. 13. VENUE IN MONEY LAUNDERING CASES.**

18 Section 1956 of title 18, United States Code, is
19 amended, by adding at the end the following subsection:

20 “(i) VENUE.—(1) Except as provided in paragraph
21 (2), a prosecution for an offense under this section or sec-
22 tion 1957 may be brought in any district in which the
23 financial or monetary transaction is conducted, or where
24 a prosecution for the underlying specified unlawful activity
25 could be brought.

1 “(2) A prosecution for an attempt or conspiracy of-
2 fense under this section or section 1957 may be brought
3 in the district where venue would lie for the completed of-
4 fense under paragraph (1), or in any other district where
5 an act in furtherance of the attempt or conspiracy took
6 place.”.

7 **SEC. 14. TECHNICAL AMENDMENT TO RESTORE WIRETAP**
8 **AUTHORITY FOR CERTAIN MONEY LAUNDER-**
9 **ING OFFENSES.**

10 Section 2516(1)(g) of title 18, United States Code,
11 is amended by striking “a violation of section 5322 of title
12 31, United States Code (dealing with the reporting of cur-
13 rency transactions)” and inserting “a violation of section
14 5322 or 5324 of title 31, United States Code (dealing with
15 the reporting and illegal structuring of currency trans-
16 actions)”.

17 **SEC. 15. KNOWLEDGE THAT THE PROPERTY IS THE PRO-**
18 **CEEDS OF A FELONY.**

19 Section 1956(c)(1) of title 18, United States Code,
20 is amended by inserting “, and regardless of whether or
21 not the person knew that the activity constituted a felony”
22 before the semicolon at the end.

1 **SEC. 16. MONEY PURCHASED ON THE BLACK MARKET.**

2 (a) IN GENERAL.—Section 981(a) of title 18, United
3 States Code, is amended by adding at the end the follow-
4 ing:

5 “(3) A person asserting an innocent owner defense
6 under paragraph (2), or any other provision of law, in cur-
7 rency, monetary instruments or funds purchased from a
8 money broker must be a bona fide purchaser for value
9 without reason to know that the currency, monetary in-
10 struments or funds were subject to forfeiture, and must
11 establish that such person took all reasonable affirmative
12 steps to determine the source of the currency, monetary
13 instruments or funds, or to verify that the currency, mone-
14 tary instruments or funds were not derived from illegal
15 activity.

16 “(4) For purposes of paragraph (3)—

17 “(A) the term ‘money broker’ means any person
18 who sells or exchanges currency, monetary instru-
19 ments or funds, either in the United States or in a
20 foreign country, either independently, or through
21 any parallel market, black market, casa de cambio,
22 or other currency exchange business; and

23 “(B) what constitutes ‘all reasonable affirma-
24 tive steps’ depends on the facts and circumstances
25 surrounding the transaction, but if the money broker
26 is a financial institution, as defined in section 20 of

1 this title, the purchaser takes ‘all reasonable affirm-
2 ative steps’ if the purchaser conducts the transaction
3 at the financial institution during normal business
4 hours in an arms-length transaction and has no rea-
5 son to know that the currency, monetary instru-
6 ments, or funds were derived from or used to com-
7 mit any unlawful activity.”.

8 (b) APPLICATION.—The amendments made by this
9 section shall apply to any case pending on the effective
10 date of this Act.

11 **SEC. 17. ASSET FORFEITURE TRANSFERS.**

12 Section 511(e)(1)(E)(iii) of the Controlled Sub-
13 stances Act (21 U.S.C. 881(e)(1)(E)(iii)) is amended by
14 inserting “, or to a country that has not been so certified,
15 if the Secretary of State finds that transfer to be in the
16 national interest” before the period.

17 **SEC. 18. RECEIPT AND DEPOSIT AMENDMENT.**

18 The United States Sentencing Commission shall
19 amend or promulgate sentencing guidelines to provide that
20 the sentence for an offense under section 1957 of title 18,
21 United States Code, if the transaction in criminally de-
22 rived property consists of a deposit of that property in
23 a financial institution without any intent to disguise or
24 conceal the nature, location, source, ownership, or control
25 of such proceeds, shall not exceed the sentence for the of-

1 fense giving rise to such property by more than one of-
2 fense level.

3 **SEC. 19. COVERAGE OF FOREIGN BANK BRANCHES IN THE**
4 **TERRITORIES.**

5 Section 20(9) of title 18, United States Code, is
6 amended by inserting “, except that, for purposes of the
7 application of that definition, the term ‘State’ as used in
8 such Act includes a commonwealth, territory, or posses-
9 sion of the United States” after “Banking Act of 1978”.

○