

107TH CONGRESS
1ST SESSION

H. R. 2920

To amend title 31, United States Code, to prevent the smuggling of large amounts of currency or monetary instruments into or out of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2001

Mrs. ROUKEMA (for herself and Mr. LAFALCE) introduced the following bill;
which was referred to the Committee on Financial Services

A BILL

To amend title 31, United States Code, to prevent the smuggling of large amounts of currency or monetary instruments into or out of the United States, 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 “Bulk Cash Smuggling
5 Act of 2001”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds the following:

1 (1) Effective enforcement of the currency re-
2 porting requirements of subchapter II of chapter 53
3 of title 31, United States Code, and the regulations
4 prescribed under such subchapter, has forced drug
5 dealers and other criminals engaged in cash-based
6 businesses to avoid using traditional financial insti-
7 tutions.

8 (2) In their effort to avoid using traditional fi-
9 nancial institutions, drug dealers and other criminals
10 are forced to move large quantities of currency in
11 bulk form to and through the airports, border cross-
12 ings, and other ports of entry where the currency
13 can be smuggled out of the United States and placed
14 in a foreign financial institution or sold on the black
15 market.

16 (3) The transportation and smuggling of cash
17 in bulk form may now be the most common form of
18 money laundering, and the movement of large sums
19 of cash is one of the most reliable warning signs of
20 drug trafficking, terrorism, money laundering, rack-
21 eteering, tax evasion and similar crimes.

22 (4) The intentional transportation into or out of
23 the United States of large amounts of currency or
24 monetary instruments, in a manner designed to cir-
25 cumvent the mandatory reporting provisions of sub-

1 chapter II of chapter 53 of title 31, United States
2 Code, is the equivalent of, and creates the same
3 harm as, the smuggling of goods.

4 (5) The arrest and prosecution of bulk cash
5 smugglers are important parts of law enforcement's
6 effort to stop the laundering of criminal proceeds,
7 but the couriers who attempt to smuggle the cash
8 out of the United States are typically low-level em-
9 ployees of large criminal organizations, and thus are
10 easily replaced. Accordingly, only the confiscation of
11 the smuggled bulk cash can effectively break the
12 cycle of criminal activity of which the laundering of
13 the bulk cash is a critical part.

14 (6) The current penalties for violations of the
15 currency reporting requirements are insufficient to
16 provide a deterrent to the laundering of criminal
17 proceeds. In particular, in cases where the only
18 criminal violation under current law is a reporting
19 offense, the law does not adequately provide for the
20 confiscation of smuggled currency. In contrast, if the
21 smuggling of bulk cash were itself an offense, the
22 cash could be confiscated as the corpus delicti of the
23 smuggling offense.

24 (b) PURPOSES.—The purposes of this Act are as fol-
25 lows:

1 (1) To make the act of smuggling bulk cash
2 itself a criminal offense.

3 (2) To authorize forfeiture of any smuggled
4 cash and other monetary instruments, together with
5 any other property involved in the smuggling of-
6 fense.

7 (3) To emphasize the seriousness of the act of
8 bulk cash smuggling.

9 (4) To prescribe guidelines for determining the
10 amount of property subject to forfeiture in various
11 situations.

12 **SEC. 3. BULK CASH SMUGGLING INTO OR OUT OF THE**
13 **UNITED STATES.**

14 (a) ENACTMENT OF BULK CASH SMUGGLING OF-
15 FENSE.—Subchapter II of chapter 53 of title 31, United
16 States Code, is amended by adding at the end the fol-
17 lowing:

18 **“§ 5331. Bulk cash smuggling into or out of the**
19 **United States**

20 “(a) CRIMINAL OFFENSE.—

21 “(1) IN GENERAL.—Whoever, with the intent to
22 evade a currency reporting requirement under sec-
23 tion 5316, knowingly conceals more than \$10,000 in
24 currency or other monetary instruments on the per-
25 son of such individual or in any conveyance, article

1 of luggage, merchandise, or other container, and
2 transports or transfers or attempts to transport or
3 transfer such currency or monetary instruments
4 from a place within the United States to a place out-
5 side of the United States, or from a place outside
6 the United States to a place within the United
7 States, shall be guilty of a currency smuggling of-
8 fense and subject to punishment pursuant to sub-
9 section (b).

10 “(2) CONCEALMENT ON PERSON.—For pur-
11 poses of this section, the concealment of currency on
12 the person of any individual includes concealment in
13 any article of clothing worn by the individual or in
14 any luggage, backpack, or other container worn or
15 carried by such individual.

16 “(b) PENALTY.—

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

21 “(2) FORFEITURE.—In addition, the court, in
22 imposing sentence under paragraph (1), shall order
23 that the defendant forfeit to the United States, any
24 property, real or personal, involved in the offense,

1 and any property traceable to such property, subject
2 to subsection (d) of this section.

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

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

15 “(c) CIVIL FORFEITURE.—

16 “(1) IN GENERAL.—Any property involved in a
17 violation of subsection (a), or a conspiracy to com-
18 mit such violation, and any property traceable to
19 such violation or conspiracy, may be seized and, sub-
20 ject to subsection (d) of this section, forfeited to the
21 United States.

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

1 “(3) TREATMENT OF CERTAIN PROPERTY AS
2 INVOLVED IN THE OFFENSE.—For purposes of this
3 subsection and subsection (b), any currency or other
4 monetary instrument that is concealed or intended
5 to be concealed in violation of subsection (a) or a
6 conspiracy to commit such violation, any article, con-
7 tainer, or conveyance used, or intended to be used,
8 to conceal or transport the currency or other mone-
9 tary instrument, and any other property used, or in-
10 tended to be used, to facilitate the offense, shall be
11 considered property involved in the offense.

12 “(d) PROPORTIONALITY OF FORFEITURE.—

13 “(1) IN GENERAL.—Upon a showing by the
14 property owner by a preponderance of the evidence
15 that the currency or monetary instruments involved
16 in the offense giving rise to the forfeiture were de-
17 rived from a legitimate source, and were intended
18 for a lawful purpose, the court shall reduce the for-
19 feiture to the maximum amount that is not grossly
20 disproportional to the gravity of the offense.

21 “(2) FACTORS TO BE CONSIDERED.—In deter-
22 mining the amount of the forfeiture, the court shall
23 consider all aggravating and mitigating facts and
24 circumstances that have a bearing on the gravity of
25 the offense, including the following:

1 “(A) The value of the currency or other
2 monetary instruments involved in the offense.

3 “(B) Efforts by the person committing the
4 offense to structure currency transactions, con-
5 ceal property, or otherwise obstruct justice.

6 “(C) Whether the offense is part of a pat-
7 tern of repeated violations of Federal law.”.

8 (b) CONFORMING AMENDMENT.—The table of sec-
9 tions for subchapter II of chapter 53 of title 31, United
10 States Code, is amended by inserting after the item relat-
11 ing to section 5330, the following new item:

 “5331. Bulk cash smuggling into or out of the United States.”.

12 **SEC. 4. FORFEITURE IN CURRENCY REPORTING CASES.**

13 (a) IN GENERAL.—Subsection (c) of section 5317 of
14 title 31, United States Code, is amended to read as fol-
15 lows:

16 “(c) FORFEITURE.—

17 “(1) IN GENERAL.—The court in imposing sen-
18 tence for any violation of section 5313, 5316, or
19 5324, or any conspiracy to commit such violation,
20 shall order the defendant to forfeit all property, real
21 or personal, involved in the offense and any property
22 traceable thereto.

23 “(2) PROCEDURE.—Forfeitures under this sub-
24 section shall be governed by the procedures estab-

1 lished in section 413 of the Controlled Substances
2 Act and the guidelines established in paragraph (4).

3 “(3) CIVIL FORFEITURE.—Any property in-
4 volved in a violation of section 5313, 5316, or 5324,
5 or any conspiracy to commit any such violation, and
6 any property traceable to any such violation or con-
7 spiracy, may be seized and, subject to paragraph
8 (4), forfeited to the United States in accordance
9 with the procedures governing civil forfeitures in
10 money laundering cases pursuant to section
11 981(a)(1)(A) of title 18, United States Code.

12 “(4) PROPORTIONALITY OF FORFEITURE.—

13 “(A) IN GENERAL.—Upon a showing by
14 the property owner by a preponderance of the
15 evidence that any currency or monetary instru-
16 ments involved in the offense giving rise to the
17 forfeiture were derived from a legitimate source,
18 and were intended for a lawful purpose, the
19 court shall reduce the forfeiture to the max-
20 imum amount that is not grossly dispropor-
21 tional to the gravity of the offense.

22 “(B) FACTORS TO BE CONSIDERED.—In
23 determining the amount of the forfeiture, the
24 court shall consider all aggravating and miti-
25 gating facts and circumstances that have a

1 bearing on the gravity of the offense, including
2 the following:

3 “(i) The value of the currency or
4 other monetary instruments involved in the
5 offense.

6 “(ii) Efforts by the person committing
7 the offense to structure currency trans-
8 actions, conceal property, or otherwise ob-
9 struct justice.

10 “(iii) Whether the offense is part of a
11 pattern of repeated violations of Federal
12 law.”.

13 (b) CONFORMING AMENDMENTS.—(1) Section
14 981(a)(1)(A) of title 18, United States Code, is amended
15 by striking “of section 5313(a) or 5324(a) of title 31, or”.

16 (2) Section 982(a)(1) of title 18, United States Code,
17 is amended by striking “of 5313(a), 5316, or 5324 of title
18 31, or”.

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