

103^D CONGRESS
2^D SESSION

H. R. 4070

To amend title 18, United States Code, to provide for criminal and civil penalties for mail and wire fraud, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 1994

Miss COLLINS of Michigan (by request) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Post Office and Civil Service

A BILL

To amend title 18, United States Code, to provide for criminal and civil penalties for mail and wire fraud, 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. CRIMINAL AND CIVIL FORFEITURE FOR MAIL**
4 **AND WIRE FRAUD.**

5 (a) IN GENERAL.—Chapter 63 of title 18, United
6 States Code, is amended by adding at the end the follow-
7 ing new sections:

1 **“§ 1347. Criminal forfeiture for violation of section**
2 **1341 or 1343**

3 “(a) IN GENERAL.—A person convicted of a violation
4 of sections 1341 or 1343 of this title shall, notwithstand-
5 ing any provision of State law, forfeit to the United States
6 any property constituting or derived from any proceeds
7 which the person obtained directly or indirectly from a
8 scheme in violation of either section.

9 “(b) PROCEDURES OF CONTROLLED SUBSTANCES
10 ACT APPLICABLE.—With respect to a forfeiture under
11 this section for a violation of this chapter, the provisions
12 of subsections (b), (c), (e), (f), (g), (i), (k), (l), (m), (n),
13 and (o) of section 413 of the Controlled Substances Act
14 apply as they would to a forfeiture under that section for
15 a violation of the Controlled Substances Act.

16 “(c) DISPOSITION OF PROPERTY.—After a seizure of
17 property ordered forfeited under this section, the Attorney
18 General shall dispose of the property under section 1349
19 of this title. The Postal Service shall turn any such seized
20 property over to the Attorney General for disposal under
21 such section.

22 “(d) SUBSTITUTE ASSETS.—If any of the property
23 subject to forfeiture under this section, as a result of con-
24 duct of the defendant—

25 “(1) cannot be located upon the exercise of due
26 diligence;

1 “(2) has been transferred or sold to, or depos-
2 ited with, a third party;

3 “(3) has been placed beyond the jurisdiction of
4 the court;

5 “(4) has been substantially diminished in value;
6 or

7 “(5) has been commingled with other property
8 which cannot be divided without difficulty;

9 the court shall order the forfeiture of any other property
10 of the defendant up to the value of any property described
11 in paragraphs (1) through (5) of this subsection.

12 **“§ 1348. Civil forfeiture for violation of section 1341**
13 **or 1343**

14 “(a) PROPERTY SUBJECT TO CIVIL FORFEITURE.—
15 Any property, as defined by subsection (b) of section 413
16 of the Controlled Substances Act, constituting or derived
17 from any proceeds of a scheme in violation of sections
18 1341 or 1343 of this title shall be subject to forfeiture
19 to the United States.

20 “(b) SEIZURE.—(1) Except as provided in paragraph
21 (4), any property subject to forfeiture to the United States
22 under this section may be seized by the Attorney General
23 or the Postal Service upon process issued pursuant to the
24 Supplemental Rules for Certain Admiralty and Maritime

1 Claims by a district court of the United States having ju-
2 risdiction over the property.

3 “(2) The Attorney General or the Postal Service may
4 seize such property without such process when—

5 “(A) the seizure is incident to a lawful arrest
6 or search; or

7 “(B) such property has been the subject of a
8 prior judgment in favor of the United States in a
9 criminal injunction or forfeiture proceeding under
10 section 1347 of this title.

11 “(3) The Government may seek the issuance of a
12 warrant authorizing the seizure of property subject to for-
13 feiture under this section in the same manner as provided
14 for a search warrant under the Federal Rules of Criminal
15 Procedure.

16 “(4) No property shall be forfeited under this section
17 to the extent of the interest of an owner or lienholder by
18 reason of any act or omission established by that owner
19 or lienholder to have been committed without the knowl-
20 edge of that owner or lienholder.

21 “(c) PROCEDURAL MATTERS.—(1) With respect to a
22 forfeiture of property under this section, the provisions of
23 subsections (c), (d), (h), and (j) of section 511 of the Con-
24 trolled Substances Act apply as they would to a forfeiture
25 of property under that section, and the Postal Service may

1 also perform any of the functions the Attorney General
2 may perform under such subsections.

3 “(2) The filing of an indictment or information alleg-
4 ing a violation of section 1341 or 1343 of this title which
5 is also related to a civil forfeiture proceeding under either
6 section shall, upon motion of the United States and for
7 good cause shown, stay the civil forfeiture proceeding.

8 “(d) DISPOSITION OF PROPERTY.—After a seizure of
9 property ordered forfeited under this section, the Attorney
10 General or the Postal Service shall dispose of the property
11 under section 1349 of this title.

12 **“§ 1349. Disposition of forfeited property**

13 “(a) IN GENERAL.—After making due provision for
14 the rights of any innocent persons, the Attorney General,
15 after deducting the costs incurred by the United States
16 in conducting the seizure, forfeiture, and identification of
17 victims, shall deposit the property forfeited or the proceeds
18 from the sale of property forfeited under sections 1347
19 or 1348 of this title in the Department of Justice Assets
20 Forfeiture Fund established by section 524(c) of title 28.
21 The Postal Service may exercise the authority of the At-
22 torney General in conducting administrative forfeitures
23 and shall deposit the property forfeited or the proceeds
24 of the property forfeited in the Postal Service Fund under
25 section 2003(b)(7) of title 39. Any property right or inter-

1 est not exercisable by, or transferable for value to, the
2 United States shall expire and shall not revert to the de-
3 fendant. Neither the defendant nor any person acting in
4 concert with the defendant or on the defendant's behalf
5 is eligible to purchase forfeited property sold by the United
6 States.

7 “(b) RESTRAINT PENDING APPEAL.—Upon applica-
8 tion of a person other than the defendant or a person act-
9 ing in concert with the defendant or on the defendant's
10 behalf, the court may restrain or stay the sale or disposi-
11 tion of the property pending the conclusion of any appeal
12 in the case giving rise to the forfeiture, if the applicant
13 demonstrates that proceeding with the sale or disposition
14 will result in irreparable harm to the applicant.

15 “(c) RULES FOR DISPOSITION.—The Attorney Gen-
16 eral and the Postal Service shall make rules providing for
17 the disposition of such property and proceeds. The rules
18 shall provide that the Attorney General or the Postal
19 Service may—

20 “(1) retain the property for official use;

21 “(2) transfer the property to Federal, State, or
22 local law enforcement agencies so as to reflect gen-
23 erally the contribution of such agencies to the sei-
24 zure or forfeiture of such property;

1 “(3) sell any forfeited property which is not re-
 2 quired to be destroyed by law and which is not
 3 harmful to the public;

4 “(4) require that the General Services Adminis-
 5 tration take custody of the property and dispose of
 6 it in accordance with law;

7 “(5) restore forfeited property to victims of an
 8 offense described in subsection (a);

9 “(6) destroy the property if it is harmful to the
 10 public or the expense of sale would exceed the
 11 amount realized from the sale; or

12 “(7) dispose of such funds or property as other-
 13 wise provided by law.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
 15 for chapter 63 of title 18, United States Code, is amended
 16 by adding at the end the following new items:

“1347. Criminal forfeiture for violation of section 1341 or 1343.

“1348. Civil forfeiture for violation of section 1341 or 1343.

“1349. Disposition of forfeited property.”.

17 **SEC. 2. POSTAL SERVICE FUND AMENDMENT.**

18 Section 2003(b)(7) of title 39, United States Code,
 19 is amended to read as follows:

20 “(7) amounts (including proceeds from the sale
 21 of forfeited items) from any forfeiture conducted by
 22 the Postal Service and from any forfeiture resulting
 23 from an investigation conducted by the Postal Serv-
 24 ice, except that nothing in this paragraph shall pre-

1 clude the Postal Service from sharing such amounts
2 with any Federal or State agency whose efforts in
3 investigating or litigating the forfeiture contributed
4 to the receipt of such funds.”.

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