

# *The ILLICIT CASH Act*

## *S.2563*

*(Improving Laundering Laws and Increasing Comprehensive Information Tracking of Criminal Activity in Shell Holdings Act)*

Senators Mark Warner (D-VA), Tom Cotton (R-AR), Doug Jones (D-AL), Mike Rounds (R-SD), Robert Menendez (D-NJ), John Kennedy (R-LA), Catherine Cortez Masto (D-NV) and Jerry Moran (R-KS)

### **TITLE I – ANTI-MONEY LAUNDERING PROGRAMS AND FINCEN**

#### **Sec. 101 Establishment of national exam and supervision priorities.**

- Establishes statutory purposes for certain AML-CFT provisions to emphasize the risk-based nature of these programs.
- Updates Treasury's duties and powers consistent with this legislation.
- Requires Treasury to establish national exam and supervision priorities for purposes of BSA compliance.

#### **Sec. 102 FinCEN compensation.**

- Modernizes the staffing structure of FinCEN by putting FinCEN employees on a competitive pay scale.

#### **Sec. 103 Creation of an Innovation Subcommittee and Investigator Research Hub.**

- Creates a new Innovation Subcommittee within the Treasury Department to encourage and support technological innovation in the area of anti-money laundering.
- Creates a team of dedicated financial crime experts to aid and assist AML-CFT investigations.

#### **Sec. 104 Establishment of FinCEN financial institution liaison.**

- Establishes a FinCEN financial institution liaison to seek and receive comments from financial institutions regarding AML-CFT rules, regulations, and examinations.

#### **Sec. 105 Interagency AML-CFT personnel rotation program.**

- Establishes an interagency AML-CFT staffing rotation program among the Treasury Department, financial regulators, and law enforcement for the purposes of improving interagency cooperation and staffing experience.

#### **Sec. 106 Subcommittee on Privacy and Civil Liberties.**

- Establishes a subcommittee to advise the Secretary of the Treasury regarding the civil liberties and privacy implications of regulations, guidance, information sharing programs, and the examination for compliance with and enforcement of the provisions of the Bank Secrecy Act.

### **Sec. 107 International Coordination.**

- Charges the Treasury to work with foreign counterparts, including through the Financial Action Task Force, the International Monetary Fund, the World Bank, and the United Nations, to promote stronger anti-money laundering frameworks and enforcement of anti-money laundering laws.

### **Sec. 108. Strengthening FinCEN.**

- Provides additional clarity to FinCEN's mission, including giving FinCEN the ability to protect against domestic terrorism in addition to its international terrorism prevention role and authorizing FinCEN to work with tribal law enforcement and coordinate efforts and share data.

## **TITLE II – IMPROVING AML-CFT OVERSIGHT, COMMUNICATION, AND PROCESSES**

### **Sec. 201 Annual reporting requirements.**

- Requires law enforcement to provide the Treasury Department with an annual report outlining statistics, metrics, and other information on the use of data derived from financial institutions reporting anti-money laundering information.
- Provides that report should contain a description of retrospective trends and emerging patterns and threats in money laundering and terrorist financing, including national and regional trends, patterns, and threats relevant to financial institutions and use the information to increase the effectiveness of Bank Secrecy Act reporting.

### **Sec. 202 Law enforcement feedback on SARs.**

- Requires periodic feedback from FinCEN to financial institutions regarding SARs.

### **Sec. 203 Streamlining requirements for CTRs and SARs.**

- Requires a formal review of the current financial institution reporting requirements, including the processes used to submit reports under the Bank Secrecy Act, regulations implementing the BSA, and related guidance.
- Calls for changes to these reports in order to reduce any unnecessarily burdensome regulatory requirements and ensure that the information provided is of a high degree of usefulness to law enforcement, intelligence, or national security matters.

### **Sec. 204 CTR and SAR thresholds review.**

- Requires Treasury to study and determine whether the dollar thresholds, including aggregate thresholds, for CTRs and SARs should be adjusted.
- Mandates the study to take into account the effects on law enforcement, the costs likely to be incurred or saved by financial institutions, and conformance with international norms.
- Provides for a public comment period and rulemaking to implement any recommended changes under the report within one year after enactment of the ILLICIT CASH Act.

**Sec. 205 Review of regulations and guidance.**

- Mandates a formal review of the regulations implementing the Bank Secrecy Act to identify those regulations and guidance that may be outdated, redundant, unnecessarily burdensome, or otherwise do not promote a risk-based anti-money laundering compliance and countering the financing of terrorism regime for financial institutions, or that do not conform with the commitments of the United States to meet international standards to combat money laundering, the financing of terrorism, or tax evasion, and make appropriate changes to those regulations and guidance.

**Sec. 206 Penalty coordination.**

- Encourages the Federal financial regulators, FinCEN and the Department of Justice to coordinate penalties with all relevant Federal departments and agencies and State law enforcement and financial regulators contemplating a penalty with respect to the same or similar conduct, and attempts to develop a comprehensive or coordinated penalty or set of penalties to avoid duplicative fines, penalties, and other orders or actions.

**Sec. 207 Cooperation with law enforcement.**

- Establishes a “keep open” letter safe harbor. This process gives guidance to financial institutions who receive formal instruction from law enforcement to maintain accounts that are under investigation.

**Sec. 208 Additional damages for repeat Bank Secrecy Act violators.**

- Authorizes the Secretary to impose additional civil penalties against a repeat BSA violator by permitting additional BSA violations in an amount equal to up to three times the profit gained or loss avoided as a result of the violation.

**Sec. 209 Encouraging information sharing and public-private partnerships.**

- Establishes a supervisory team of relevant Federal agencies, private sector experts in banking, national security and law enforcement, and other stakeholders at FinCEN to examine strategies to increase public-private sector cooperation for purposes of countering proliferation finance and sanctions evasion.

**TITLE III – MODERNIZATION OF THE AML-CFT SYSTEM**

**Sec. 301 Approved systems for identifying suspicious activities.**

- Establishes priorities and standards for consideration by regulators when imposing requirements for the collection of suspicious activity information at financial institutions.
- Establishes streamlined “bulk data” reporting for non-complex categories of suspicious activity reports.
- Provides an optional regime whereby a financial institutions may seek approval to adopt innovative approaches for suspicious transaction monitoring such as machine learning technologies for purposes of BSA-AML compliance.

**Sec. 302 Financial crimes tech symposium.**

- Requires FinCEN to periodically convene a global AML and financial crime symposium focused on how new technology can be used to more effectively combat financial crimes and other illicit activities.

**Sec. 303 Deidentified AML information.**

- Establishes a path for financial institutions to share de-identified AML-CFT information for purposes of identifying suspicious activity.

**Sec. 304 No action letters.**

- Creates a statutory FinCEN no-action letter process for financial institutions

**Sec. 305 OECD pilot program on sharing of SARs within a financial group.**

- Initiates a pilot program for information sharing between a financial institution and its foreign branches and affiliates that are located in OECD jurisdictions.

**Sec. 306 Foreign evidentiary requests.**

- Requires foreign banks to produce records in a manner that establishes their authenticity and reliability for evidentiary purposes, compels foreign bank compliance with subpoenas, authorizes contempt sanctions for failure to comply, and prohibits recipients of subpoenas from disclosing them to potential subjects of an investigation.

**Sec. 307 Updating whistleblower incentives and protection.**

- Updates and strengthens the whistleblower incentives and protection provisions of the BSA.

**Sec. 308 Value that substitutes currency or funds.**

- Updates the definition of “coins and currency” to include digital currency, ensuring the inclusion of current and future payment systems in the AML-CFT regime.

**Sec. 309 Fight illicit networks and detect trafficking.**

- Requires the GAO to conduct a study on how virtual currencies and online marketplaces are used to facilitate human and drug trafficking.

**Sec. 310 Study and strategy on Chinese money laundering.**

- Requires the Treasury Department to carry out a study on the extent and effect of illicit finance risk relating to the Government of the People’s Republic of China and to develop a strategy to combat money laundering through Chinese firms.

**Sec. 311 Study on financial technology.**

- Forms a taskforce at the Treasury Department, comprising financial regulators, technology experts, national security experts, law enforcement, and any other group the Secretary determines is appropriate, to analyze the impact of financial technology on financial crimes compliance, including countering proliferation finance, human trafficking, and sanctions evasion

**Sec. 312 Study on the exploitation of U.S. financial system by authoritarian regimes.**

- Requires the Treasury Department to conduct a study and submit to Congress a report that considers how authoritarian regimes in foreign countries and their proxies use the financial system of the United States to conduct political influence operations, sustain kleptocratic regimes, export corruption, and otherwise undermine democratic governance in the United States.

**Sec. 313 Additional studies.**

- Requires studies to evaluate effect of anti-money laundering and counter-terrorism financing requirements on natural persons and entities, including charities who have been subject to categorical de-risking by financial institutions.

**TITLE IV – BENEFICIAL OWNERSHIP COLLECTION REQUIREMENTS**

**Sec. 401 Beneficial ownership.**

- Requires shell companies to disclosure beneficial ownership information to FinCEN at incorporation and within 90 days of any change in beneficial ownership.
- Requires new collection regime to use existing processes and procedures for purposes of beneficial ownership information collection.
- Adopts key safeguards and protocols to protect beneficial ownership information.

**Sec. 402 Geographic targeting order.**

- Expands FinCEN geographic targeting order authority to commercial real estate.

**Sec. 403 Beneficial ownership studies.**

- Requires a study evaluating whether lack of available beneficial ownership information for partnerships, trusts, or other legal entities impedes investigations into entities suspected of financial misconduct.
- Requires a study evaluating the effectiveness of incorporation practices implemented under the Act.
- Requires a study on the use of technology to avoid duplicative reporting obligations and strategies to increase the accuracy and timeliness of beneficial ownership information.

**TITLE V – STRENGTHENING THE ABILITY OF THE SEC TO PURSUE VIOLATIONS OF THE SECURITIES LAWS**

**Sec. 501 Short title.**

- Securities Fraud Enforcement and Investor Compensation Act of 2019

**Sec. 502 Investigations and prosecution of offenses for violations of the securities laws.**

- Authorizes the SEC to pursue disgorgement of ill-gotten gains by fraudsters up to five years, and authorizes the SEC to pursue restitution for harmed investors up to twelve years after discovery of the fraud.