

**AMENDMENT TO RULES COMMITTEE PRINT 119-8**  
**OFFERED BY MR. BIGGS OF ARIZONA**

Add at the end of subtitle B of title XVII the following:

1 **SEC. 17 \_\_\_\_ . STATE OF MIND ELEMENT FOR CRIMINAL OF-**  
2 **FENSES.**

3 (a) IN GENERAL.—Chapter 1 of title 18, United  
4 States Code, is amended by adding at the end the following:  
5

6 **“§ 28. State of mind when not otherwise specifically**  
7 **provided**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘covered offense’—

10 “(A) means an offense—

11 “(i) specified in—

12 “(I) this title or any other Act of  
13 Congress;

14 “(II) any regulation; or

15 “(III) any law (including regula-  
16 tions) of any State or foreign govern-  
17 ment incorporated by reference into  
18 this title or any other Act of Con-  
19 gress; and

1                   “(ii) that is punishable by imprison-  
2                   ment, a maximum criminal fine of at least  
3                   \$2,500, or both; and

4                   “(B) does not include—

5                   “(i) any offense set forth in chapter  
6                   47 or chapter 47A of title 10; or

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

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

11                  “(A) if the element involves the nature of  
12                  the conduct of a person or the attendant cir-  
13                  cumstances, that the person is aware that the  
14                  conduct of the person is of that nature or that  
15                  such circumstances exist; and

16                  “(B) if the element involves a result of the  
17                  conduct of a person, that the person is aware  
18                  that it is practically certain that the conduct of  
19                  the person will cause such a result;

20                  “(3) the term ‘state of mind’ means willfully,  
21                  intentionally, maliciously, knowingly, recklessly, wan-  
22                  tonly, negligently, with reason to believe, or any  
23                  other word or phrase that is synonymous with or  
24                  substantially similar to any such term; and

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

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

5                   “(B) if the element involves the nature, at-  
6                   tendant circumstances, object, or result of the  
7                   conduct of a person, that—

8                           “(i) the person had knowledge of the  
9                           nature, attendant circumstances, object, or  
10                          result of the conduct of the person; and

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

13                                   “(I) of that nature;

14                                   “(II) with that attendant cir-  
15                                   cumstance;

16                                   “(III) with that object; or

17                                   “(IV) to cause such a result.

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

22                   “(1) with the state of mind specified in the text  
23                   of the covered offense for each element of the of-  
24                   fense for which the text specifies a state of mind;  
25                   and

1           “(2) knowingly, with respect to any element of  
2           the offense for which the text of the covered offense  
3           does not specify a state of mind.

4           “(c) FAILURE TO DISTINGUISH AMONG ELE-  
5           MENTS.—Except as provided in subsection (d), if the text  
6           of a covered offense specifies the state of mind required  
7           for commission of the covered offense without specifying  
8           the elements of the covered offense to which the state of  
9           mind applies, the state of mind specified shall apply to  
10          all elements of the covered offense, unless a contrary pur-  
11          pose plainly appears.

12          “(d) EXCEPTIONS.—

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

15                         “(A) any element for which the text of the  
16                         covered offense makes clear that Congress af-  
17                         firmatively intended not to require the Govern-  
18                         ment to prove any state of mind with respect to  
19                         such element;

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

22                                 “(i) subject matter jurisdiction over  
23                                 the covered offense; or

24                                 “(ii) venue with respect to trial of the  
25                                 covered offense; or

1           “(C) any element of a covered offense, to  
2           the extent that applying subsections (b)(2) and  
3           (c) to such element would lessen the degree of  
4           mental culpability that the Government is re-  
5           quired to prove with respect to that element  
6           under—

7                   “(i) precedent of the Supreme Court  
8                   of the United States; or

9                   “(ii) any other provision of this title,  
10                  any other Act of Congress, or any regula-  
11                  tion.

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

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

21                   “(1) without regard to whether the provision or  
22                   provisions specifying the covered offense are enacted,  
23                   promulgated, or finalized before, on, or after the  
24                   date of enactment of this section; and

25                   “(2) that was committed—

1           “(A) on or after the date of enactment of  
2 this section; or

3           “(B) before the date of enactment of this  
4 section, unless—

5           “(i) applying this section to such cov-  
6 ered offense would—

7           “(I) punish as a crime conduct  
8 that was innocent when done;

9           “(II) increase the punishment for  
10 the covered offense; or

11           “(III) deprive a person charged  
12 with the covered offense of any de-  
13 fense available according to law at the  
14 time the covered offense occurred;

15           “(ii) a jury has been empaneled and  
16 sworn in a prosecution for the covered of-  
17 fense before the date of enactment of this  
18 section;

19           “(iii) the first witness has been sworn  
20 in a prosecution for the covered offense  
21 tried without a jury before the date of en-  
22 actment of this section; or

23           “(iv) a sentence has been imposed fol-  
24 lowing a plea of guilty or nolo contendere

1                   in a prosecution for the covered offense be-  
2                   fore the date of enactment of this section.

3           “(f) **SUBSEQUENTLY ENACTED LAWS.**—No provision  
4 of law enacted after the date of enactment of this section  
5 shall be construed to repeal, modify the text or effect of,  
6 or supersede in whole or in part this section, unless such  
7 law specifically refers to this section and explicitly repeals,  
8 modifies the text or effect of, or supersedes in whole or  
9 in part this section.”.

10           (b) **TECHNICAL AND CONFORMING AMENDMENT.**—  
11 The table of sections for chapter 1 of title 18, United  
12 States Code, is amended by adding at the end the fol-  
13 lowing:

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

