

106TH CONGRESS
1ST SESSION

H. R. 1658

To provide a more just and uniform procedure for Federal civil forfeitures,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 1999

Mr. HYDE (for himself, Mr. CONYERS, Mr. BARR of Georgia, Mr. FRANK of Massachusetts, Mr. BACHUS, Ms. LOFGREN, Mr. SMITH of Texas, Mr. BROWN of Ohio, Mr. CLAY, Mr. CRANE, Mr. CUMMINGS, Mr. CUNNINGHAM, Mr. EWING, Mr. FARR of California, Mr. FOLEY, Mr. GILLMOR, Mr. HAYWORTH, Mr. HINCHEY, Mr. HOLDEN, Mrs. JONES of Ohio, Mr. McDERMOTT, Mr. MANZULLO, Mr. MARTINEZ, Ms. NORTON, Ms. RIVERS, Mr. SCOTT, Mr. SHOWS, Mr. TAYLOR of North Carolina, Mr. WELDON of Pennsylvania, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide a more just and uniform procedure for Federal
civil forfeitures, 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 “Civil Asset Forfeiture
5 Reform Act”.

1 **SEC. 2. CREATION OF GENERAL RULES RELATING TO CIVIL**
2 **FORFEITURE PROCEEDINGS.**

3 Section 981 of title 18, United States Code, is
4 amended—

5 (1) by inserting after subsection (i) the fol-
6 lowing:

7 “(j)(1)(A) In any nonjudicial civil forfeiture pro-
8 ceeding under a civil forfeiture statute, with respect to
9 which the agency conducting a seizure of property must
10 give written notice to interested parties, such notice shall
11 be given as soon as practicable and in no case more than
12 60 days after the later of the date of the seizure or the
13 date the identity of the interested party is first known or
14 discovered by the agency, except that the court may extend
15 the period for filing a notice for good cause shown.

16 “(B) A person entitled to written notice in such pro-
17 ceeding to whom written notice is not given may on motion
18 void the forfeiture with respect to that person’s interest
19 in the property, unless the agency shows—

20 “(i) good cause for the failure to give notice to
21 that person; or

22 “(ii) that the person otherwise had actual notice
23 of the seizure.

24 “(C) If the government does not provide notice of a
25 seizure of property in accordance with subparagraph (A),

1 it shall return the property and may not take any further
2 action to effect the forfeiture of such property.

3 “(2)(A) Any person claiming property seized in a
4 nonjudicial forfeiture proceeding may file a claim with the
5 appropriate official after the seizure.

6 “(B) A claim under subparagraph (A) may not be
7 filed later than 30 days after—

8 “(i) the date of final publication of notice of
9 seizure; or

10 “(ii) in the case of a person entitled to written
11 notice, the date that notice is received.

12 “(C) The claim shall state the claimant’s interest in
13 the property.

14 “(D) Not later than 90 days after a claim has been
15 filed, the Attorney General shall file a complaint for for-
16 feiture in the appropriate court or return the property,
17 except that a court in the district in which the complaint
18 will be filed may extend the period for filing a complaint
19 for good cause shown or upon agreement of the parties.

20 “(E) If the government does not file a complaint for
21 forfeiture of property in accordance with subparagraph
22 (D), it shall return the property and may not take any
23 further action to effect the forfeiture of such property.

1 “(F) Any person may bring a claim under subpara-
2 graph (A) without posting bond with respect to the prop-
3 erty which is the subject of the claim.

4 “(3)(A) In any case where the Government files in
5 the appropriate United States district court a complaint
6 for forfeiture of property, any person claiming an interest
7 in the seized property may file a claim asserting such per-
8 son’s interest in the property within 30 days of service
9 of the Government’s complaint or, where applicable, within
10 30 days of alternative publication notice.

11 “(B) A person asserting an interest in seized property
12 in accordance with subparagraph (A) shall file an answer
13 to the Government’s complaint for forfeiture within 20
14 days of the filing of the claim.

15 “(4)(A) If the person filing a claim is financially un-
16 able to obtain representation by counsel, the court may
17 appoint counsel to represent that person with respect to
18 the claim.

19 “(B) In determining whether to appoint counsel to
20 represent the person filing the claim, the court shall take
21 into account such factors as—

22 “(i) the claimant’s standing to contest the for-
23 feiture; and

24 “(ii) whether the claim appears to be made in
25 good faith or to be frivolous.

1 “(C) The court shall set the compensation for that
2 representation, which shall be equivalent to that provided
3 for court-appointed representation under section 3006A of
4 this title, and to pay such cost there are authorized to
5 be appropriated such sums as are necessary as an addition
6 to the funds otherwise appropriated for the appointment
7 of counsel under such section.

8 “(5) In all suits or actions brought under any civil
9 forfeiture statute for the civil forfeiture of any property,
10 the burden of proof is on the United States Government
11 to establish, by clear and convincing evidence, that the
12 property is subject to forfeiture.

13 “(6)(A) An innocent owner’s interest in property
14 shall not be forfeited under any civil forfeiture statute.

15 “(B) With respect to a property interest in existence
16 at the time the illegal conduct giving rise to forfeiture took
17 place, the term ‘innocent owner’ means an owner who—

18 “(i) did not know of the conduct giving rise to
19 forfeiture; or

20 “(ii) upon learning of the conduct giving rise to
21 the forfeiture, did all that reasonably could be ex-
22 pected under the circumstances to terminate such
23 use of the property.

24 “(C) With respect to a property interest acquired
25 after the conduct giving rise to the forfeiture has taken

1 place, the term ‘innocent owner’ means a person who, at
2 the time that person acquired the interest in the property,
3 was—

4 “(i)(I) a bona fide purchaser or seller for value
5 (including a purchaser or seller of goods or services
6 for value); or

7 “(II) a person who received an interest in prop-
8 erty through probate; and

9 “(ii) at the time of the purchase or receipt rea-
10 sonably without cause to believe that the property
11 was subject to forfeiture.

12 “(D) Where the property subject to forfeiture is real
13 property, and the claimant uses the property as the claim-
14 ant’s primary residence and is the spouse or minor child
15 of the person who committed the offense giving rise to the
16 forfeiture, an otherwise valid innocent owner claim shall
17 not be denied on the ground that the claimant acquired
18 the interest in the property—

19 “(i) in the case of a spouse, through dissolution
20 of marriage or by operation of law, or

21 “(ii) in the case of a minor child, as an inherit-
22 ance upon the death of a parent,

23 and not through a purchase. However, the claimant must
24 establish, in accordance with subparagraph (C), that at
25 the time of the acquisition of the property interest, the

1 claimant was reasonably without cause to believe that the
2 property was subject to forfeiture.

3 “(7) For the purposes of paragraph (6)—

4 “(A) ways in which a person may show that
5 such person did all that reasonably can be expected
6 may include demonstrating that such person, to the
7 extent permitted by law—

8 “(i) gave timely notice to an appropriate
9 law enforcement agency of information that led
10 the person to know the conduct giving rise to
11 a forfeiture would occur or has occurred; and

12 “(ii) in a timely fashion revoked or at-
13 tempted to revoke permission for those engag-
14 ing in such conduct to use the property or took
15 reasonable actions in consultation with a law
16 enforcement agency to discourage or prevent
17 the illegal use of the property; and

18 “(B) in order to do all that can reasonably be
19 expected, a person is not required to take steps that
20 the person reasonably believes would be likely to
21 subject any person (other than the person whose
22 conduct gave rise to the forfeiture) to physical dan-
23 ger.

24 “(8) As used in this subsection:

1 “(1) The term ‘civil forfeiture statute’ means
2 any provision of Federal law (other than the Tariff
3 Act of 1930 or the Internal Revenue Code of 1986)
4 providing for the forfeiture of property other than as
5 a sentence imposed upon conviction of a criminal of-
6 fense.

7 “(2) The term ‘owner’ means a person with an
8 ownership interest in the specific property sought to
9 be forfeited, including a leasehold, lien, mortgage,
10 recorded security device, or valid assignment of an
11 ownership interest. Such term does not include—

12 “(i) a person with only a general unse-
13 cured interest in, or claim against, the property
14 or estate of another;

15 “(ii) a bailee unless the bailor is identified
16 and the bailee shows a colorable legitimate in-
17 terest in the property seized; or

18 “(iii) a nominee who exercises no dominion
19 or control over the property.

20 “(k)(1) A claimant under subsection (j) is entitled to
21 immediate release of seized property if—

22 “(A) the claimant has a possessory interest in
23 the property;

24 “(B) the continued possession by the United
25 States Government pending the final disposition of

1 forfeiture proceedings will cause substantial hard-
2 ship to the claimant, such as preventing the func-
3 tioning of a business, preventing an individual from
4 working, or leaving an individual homeless; and

5 “(C) the claimant’s likely hardship from the
6 continued possession by the United States Govern-
7 ment of the seized property outweighs the risk that
8 the property will be destroyed, damaged, lost, con-
9 cealed, or transferred if it is returned to the claim-
10 ant during the pendency of the proceeding.

11 “(2) A claimant seeking release of property under
12 this subsection must request possession of the property
13 from the appropriate official, and the request must set
14 forth the basis on which the requirements of paragraph
15 (1) are met.

16 “(3) If within 10 days after the date of the request
17 the property has not been released, the claimant may file
18 a motion or complaint in any district court that would
19 have jurisdiction of forfeiture proceedings relating to the
20 property setting forth—

21 “(A) the basis on which the requirements of
22 paragraph (1) are met; and

23 “(B) the steps the claimant has taken to secure
24 release of the property from the appropriate official.

1 “(4) If a motion or complaint is filed under para-
2 graph (3), the district court shall order that the property
3 be returned to the claimant, pending completion of pro-
4 ceedings by the United States Government to obtain for-
5 feiture of the property, if the claimant shows that the re-
6 quirements of paragraph (1) have been met. The court
7 may place such conditions on release of the property as
8 it finds are appropriate to preserve the availability of the
9 property or its equivalent for forfeiture.

10 “(5) The district court shall render a decision on a
11 motion or complaint filed under paragraph (3) no later
12 than 30 days after the date of the filing, unless such 30-
13 day limitation is extended by consent of the parties or by
14 the court for good cause shown.”; and

15 (2) by redesignating existing subsection (j) as
16 subsection (l).

17 **SEC. 3. CONFORMING AMENDMENTS TO TITLE 28, TO**
18 **RULES OF PROCEDURE, AND TO THE CON-**
19 **TROLLED SUBSTANCES ACT.**

20 (a) USE OF ASSETS FORFEITURE FUND FOR ATTOR-
21 NEY FEES.—Section 524(c) of title 28, United States
22 Code, is amended—

23 (1) by striking out “law enforcement pur-
24 poses—” in the matter preceding subparagraph (A)
25 in paragraph (1) and inserting “purposes—”;

1 (2) by redesignating the final 3 subparagraphs
2 in paragraph (1) as subparagraphs (J), (K), and
3 (L), respectively;

4 (3) by inserting after subparagraph (G) of
5 paragraph (1) the following new subparagraph:

6 “(H) payment of court-awarded compensation
7 for representation of claimants pursuant to section
8 981 of title 18;

9 “(I) payment of compensation for damages to
10 property under section 5(b) of the Civil Asset For-
11 feiture Reform Act;” and

12 (4) by striking out “(H)” in subparagraph (A)
13 of paragraph (9) and inserting “(I)”.

14 (b) CONTROLLED SUBSTANCES ACT.—Section 518 of
15 the Controlled Substances Act (21 U.S.C. 888) is re-
16 pealed.

17 **SEC. 4. COMPENSATION FOR DAMAGE TO SEIZED PROP-**
18 **ERTY.**

19 (a) TORT CLAIMS ACT.—Section 2680(c) of title 28,
20 United States Code, is amended—

21 (1) by striking “law-enforcement” and inserting
22 “law enforcement”; and

23 (2) by inserting before the period the following:
24 “, except that the provisions of this chapter and sec-
25 tion 1346(b) of this title do apply to any claim based

1 on the destruction, injury, or loss of goods, merchan-
2 dise, or other property, while in the possession of
3 any officer of customs or excise or any other law en-
4 forcement officer, if the property was seized for the
5 purpose of forfeiture but the interest of the claimant
6 is not forfeited”.

7 (b) DEPARTMENT OF JUSTICE.—

8 (1) IN GENERAL.—With respect to a claim that
9 cannot be settled under chapter 171 of title 28,
10 United States Code, the Attorney General may set-
11 tle, for not more than \$50,000 in any case, a claim
12 for damage to, or loss of, privately owned property
13 caused by an investigative or law enforcement officer
14 (as defined in section 2680(h) of title 28, United
15 States Code) who is employed by the Department of
16 Justice acting within the scope of his or her employ-
17 ment.

18 (2) LIMITATIONS.—The Attorney General may
19 not pay a claim under paragraph (1) that—

20 (A) is presented to the Attorney General
21 more than 1 year after it occurs; or

22 (B) is presented by an officer or employee
23 of the United States Government and arose
24 within the scope of employment.

1 **SEC. 5. PREJUDGMENT AND POSTJUDGMENT INTEREST.**

2 Section 2465 of title 28, United States Code, is
3 amended—

4 (1) by inserting “(a)” before “Upon”; and

5 (2) adding at the end the following:

6 “(b) INTEREST.—

7 “(1) POST-JUDGMENT.—Upon entry of judg-
8 ment for the claimant in any proceeding to condemn
9 or forfeit property seized or arrested under any Act
10 of Congress, the United States shall be liable for
11 post-judgment interest as set forth in section 1961
12 of this title.

13 “(2) PRE-JUDGMENT.—The United States shall
14 not be liable for prejudgment interest, except that in
15 cases involving currency, other negotiable instru-
16 ments, or the proceeds of an interlocutory sale, the
17 United States shall disgorge to the claimant any
18 funds representing—

19 “(A) interest actually paid to the United
20 States from the date of seizure or arrest of the
21 property that resulted from the investment of
22 the property in an interest-bearing account or
23 instrument; and

24 “(B) for any period during which no inter-
25 est is actually paid, an imputed amount of in-
26 terest that such currency, instruments, or pro-

1 ceeds would have earned at the rate described
2 in section 1961.

3 “(3) LIMITATION ON OTHER PAYMENTS.—The
4 United States shall not be required to disgorge the
5 value of any intangible benefits nor make any other
6 payments to the claimant not specifically authorized
7 by this subsection.”.

8 **SEC. 6. APPLICABILITY.**

9 (a) IN GENERAL.—Unless otherwise specified in this
10 Act, the amendments made by this Act apply with respect
11 to claims, suits, and actions filed on or after the date of
12 the enactment of this Act.

13 (b) EXCEPTIONS.—

14 (1) The standard for the required burden of
15 proof set forth in section 981 of title 18, United
16 States Code, as amended by section 2, shall apply in
17 cases pending on the date of the enactment of this
18 Act.

19 (2) The amendment made by section 5 shall
20 apply to any judgment entered after the date of en-
21 actment of this Act.

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