

“(A) CONGRESSIONAL MEMBERS.—Each member of the Commission appointed under subsection (b)(1) shall not receive any additional compensation, allowances, or benefits by reason of their service on the Commission. Such members shall receive travel expenses and per diem in lieu of subsistence in accordance with sections 5702 and 5703 of title 5, United States Code.

“(B) OTHER MEMBERS.—The members of the Commission appointed under paragraphs (2) and (3) of subsection (b) shall, while serving on the business of the Commission (including travel time), receive compensation at the per diem equivalent of the rate provided for individuals under level IV of the Executive Schedule under section 5315 of title 5, United States Code, and while serving away from their home or regular place of business, be allowed travel expenses, as authorized by the chairperson of the Commission.

“(C) OTHER PERSONNEL.—For purposes of compensation (other than compensation of the members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the Senate.

“(2) MEETINGS AND QUORUM.—

“(A) MEETINGS.—The Commission shall meet at the call of the chairperson.

“(B) QUORUM.—A quorum of the Commission shall consist of not less than 12 members, of which—

“(i) not less than 4 of such members shall be appointees under subsection (b)(1);

“(ii) not less than 7 of such members shall be appointees under subsection (b)(2); and

“(iii) not less than 1 of such members shall be an appointee under subsection (b)(3).

“(3) DIRECTOR AND STAFF.—

“(A) EXECUTIVE DIRECTOR.—The members of the Commission shall appoint an executive director of the Commission. The executive director shall be paid the rate of basic pay equal to that under level V of the Executive Schedule under section 5316 of title 5, United States Code.

“(B) STAFF.—With the approval of the Commission, the executive director may appoint such personnel as the executive director deems appropriate.

“(C) APPLICABILITY OF CIVIL SERVICE LAWS.—The staff of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

“(D) EXPERTS AND CONSULTANTS.—With the approval of the Commission, the executive director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

“(E) FACILITIES.—The Administrator of the General Services Administration shall locate suitable office space for the operations of the Commission in the State of Hawaii. The facilities shall serve as the headquarters of the Commission and shall include all necessary equipment and incidentals required for the proper functioning of the Commission.

“(f) POWERS.—

“(I) HEARINGS AND OTHER ACTIVITIES.—For purposes of carrying out its duties, the Commission may hold such hearings and undertake such other activities as the Commission determines to be necessary to carry out its duties, except that at least 8 hearings shall be held on each of the Hawaiian Islands and 3 hearings in the continental United States in areas where large numbers of Native Hawaiians are present. Such hearings shall be held to solicit the views of Native Hawaiians regarding the delivery of health care services to such individuals. To constitute a hearing under this paragraph, at least 4 members of

the Commission, including at least 1 member of Congress, must be present. Hearings held by the study committee established under subsection (d)(3) may be counted towards the number of hearings required under this paragraph.

“(2) STUDIES BY THE GENERAL ACCOUNTING OFFICE.—Upon the request of the Commission, the Comptroller General shall conduct such studies or investigations as the Commission determines to be necessary to carry out its duties.

“(3) COST ESTIMATES.—

“(A) IN GENERAL.—The Director of the Congressional Budget Office or the Chief Actuary of the Health Care Financing Administration, or both, shall provide to the Commission, upon the request of the Commission, such cost estimates as the Commission determines to be necessary to carry out its duties.

“(B) REIMBURSEMENTS.—The Commission shall reimburse the Director of the Congressional Budget Office for expenses relating to the employment in the office of the Director of such additional staff as may be necessary for the Director to comply with requests by the Commission under subparagraph (A).

“(4) DETAIL OF FEDERAL EMPLOYEES.—Upon the request of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employees.

“(5) TECHNICAL ASSISTANCE.—Upon the request of the Commission, the head of any Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

“(6) USE OF MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies and shall, for purposes of the frank, be considered a commission of Congress as described in section 3215 of title 39, United States Code.

“(7) OBTAINING INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable the Commission to carry out its duties, if the information may be disclosed under section 552 of title 5, United States Code. Upon request of the chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

“(8) SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

“(9) PRINTING.—For purposes of costs relating to printing and binding, including the cost of personnel detailed from the Government Printing Office, the Commission shall be deemed to be a committee of Congress.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$1,500,000 to carry out this section. The amount appropriated under this subsection shall not result in a reduction in any other appropriation for health care or health services for Native Hawaiians.

“SEC. 15. RULE OF CONSTRUCTION.

“Nothing in this Act shall be construed to restrict the authority of the State of Hawaii to license health practitioners.

“SEC. 16. COMPLIANCE WITH BUDGET ACT.

“Any new spending authority (described in subparagraph (A) of (B) of section 401(c)(2) of the Congressional Budget Act of 1974 (2 U.S.C. 651(c)(2)(A) or (B))) which is provided under this Act shall be effective for any fis-

cal year only to such extent or in such amounts as are provided for in appropriation Acts.

“SEC. 17. SEVERABILITY.

“If any provision of this Act, or the application of any such provision to any person or circumstances is held to be invalid, the remainder of this Act, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.”

By Mr. HATCH (for himself and Mr. LEAHY):

S. 1931. A bill to provide a more just and uniform procedure for Federal civil forfeitures, and for other purposes; to the Committee on the Judiciary.

CIVIL ASSET FORFEITURE REFORM ACT

Mr. HATCH. Mr. President, today Senator LEAHY and I are introducing a civil asset forfeiture reform bill.

First and foremost, I want to emphasize that civil asset forfeiture is an important tool in America's fight against crime and drugs. Last year, the federal government seized nearly \$500 million in assets. It is vitally important that the fruits of crime and the property used to commit crimes are forfeited to the government. In recent years, however, there have been numerous examples of civil asset forfeiture actions that should not have been taken. While the vast majority of civil asset forfeiture actions are justified, there have been cases in which government officials did not use good judgment. Some would even say that civil asset forfeiture has been abused in some instances by overzealous law enforcement officials.

I will mention just a few examples of such imprudent civil forfeiture actions. In *United States v. \$506,231*, 125 F.3d 442 (7th Cir. 1997), the court dismissed a forfeiture action involving \$506,231 and scolded the government for its conduct. In this case, state authorities obtained a warrant to search a pizzeria for stolen goods. During the search of the restaurant, authorities did not find any stolen goods, but they did discover a large amount of currency. Criminal charges were not filed against the owners of the restaurant. Nevertheless, alleging that the currency was related to narcotics, the federal government filed a civil complaint for forfeiture of the \$506,231.

Four years after the money was seized, the court dismissed the forfeiture complaint and returned the currency to its owner. The court found that the evidence “does not come close to showing any connection between the money and narcotics,” that “there is no evidence that drug trafficking was going on at the pizzeria,” and that “nothing ties this money to any narcotics activities that the government knew about or charged, or to any crime that was occurring when the government attempted to seize the property.” At the conclusion of the case, the court stated that “we believe the government's conduct in forfeiture cases leaves much to be desired.”

Even more disturbing is *United States v. \$14,665*, 33 F. Supp. 2d 47 (D. Mass. 1998). In this case, airline officials informed the police that a passenger, Manuel Espinola, was carrying a large amount of currency in a briefcase. The police questioned Espinola about the \$14,665 in cash. Espinola, a 23-year-old man who purchased the plane ticket in his own name, told the police that he and his brother earned the money selling personal care products for a company called Equinox International. When the police asked Espinola what the money was going to be used for, he stated that he was planning to move to Las Vegas and intended to use the cash as a down payment on a home. Espinola told police that he did not deposit the currency in a bank because he was afraid that it might be attached due to a prior credit problem. Espinola also gave the police a pager number of a co-worker who he said could verify his employment and his plans in Las Vegas.

Based on Espinola's explanation, the police officer seized the money because the officer believed it was related to purchase narcotics. The officer did not arrest Espinola, who had no criminal record.

After the seizure, in an attempt to get his money back, Espinola submitted documents that largely confirmed his explanation of the currency, including receipts for personal care products from Equinox International and copies of a settlement check from a personal injury claim. By contrast, the government offered no additional evidence that the currency was related to drugs and was subject to forfeiture.

The court granted summary judgment to Espinola and, in its order, harshly criticized the forfeiture action. The court stated: "Even in the byzantine world of forfeiture law, this case is an example of overreaching. The government's showing of probable cause is completely inadequate, based on a troubling mix of baseless generalizations, leaps of logic or worse, blatant ethnic stereotyping." Nearly two years after the police seized his money without any evidence it was related to narcotics, the court returned the currency to Espinola.

Other federal courts have also criticized federal civil forfeiture actions. For example, in 1992, the Second Circuit Court of Appeals stated: "We continue to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes."

While I believe that these and other cases prove the need for some reform of civil asset forfeiture law, I want to take this opportunity to praise federal law enforcement officials. Federal law enforcement does an outstanding job fighting crime under the most difficult circumstances. In short, Mr. President, I believe that the problems with civil asset forfeiture have much more to do with defects in the law than with the

character or competency of federal law enforcement officials. Senator LEAHY and I drafted this bill to improve civil asset forfeiture law and ensure the continued use of civil asset forfeiture in appropriate cases.

The Hatch-Leahy bill makes important improvements to existing law. I will describe a few of these improvements today. The first major reform places the burden of proof in civil asset forfeiture cases on the government throughout the proceeding. Under current law, the government is only required to make an initial showing of probable cause that the property is connected to criminal activity and is thus subject to forfeiture. After the government makes this modest showing, the burden then shifts to the property owner to prove that the property was not involved in criminal activity. Not surprisingly, the fact that the property owner bears the burden of proving the property is not subject to forfeiture has been extensively criticized by the federal judiciary and numerous legal commentators. As one federal court that has been particularly critical of civil asset forfeiture noted, placing the burden of proof on the property owner is a "constitutional anomaly." *United States v. \$49,576*, 116 F.3d 425 (9th Cir. 1997). The court in *\$49,576* even questioned whether requiring a property owner to bear the burden of proof in a civil forfeiture action is constitutional: "We would find it surprising were the Constitution to permit such an important decision to turn on a meager burden of proof like probable cause."

I, too, believe that placing the burden of proof on the property owner contradicts our nation's traditional notions of justice and fairness. Under the Hatch-Leahy bill, the government will have the burden in civil forfeiture actions to prove by the preponderance of the evidence that the property is connected with criminal activity and is subject to forfeiture.

Another major reform in the Hatch-Leahy bill involves what is known as the cost bond. Under current civil forfeiture law, a property owner must post a cost bond of the lesser of \$5,000 or 10 percent of the value of the property seized in order to contest a seizure of property. It is important to note that the cost bond merely allows the property owner to contest the forfeiture. It does not entitle the property owner to the return of the property pending trial.

I believe that it is fundamentally unfair to require a person to post a bond in order to be allowed to contest the seizure of property. For example, what if the government required persons who were indicted to post a bond to contest the indictment? Such a requirement would be unconstitutional under the Sixth Amendment. I believe that requiring a property owner to post a bond to contest the seizure of property is no less objectionable. Such a requirement, Mr. President, seems un-Amer-

ican. The framers of our Constitution would be appalled to know that the federal government, after seizing private property, required the property owner to post a bond in order to contest the seizure.

The Justice Department argues that the cost bond requirement reduces frivolous claims. To address this concern, the Hatch-Leahy bill requires that a person who challenges a forfeiture must file his claim to the property under oath, subject to penalty of perjury. I predict that eliminating the cost bond will produce, at most, minor inconveniences because persons who file frivolous claims will be deterred by the substantial legal fees and costs incurred in contesting the forfeiture. After all, who is willing to hire counsel and pay other expenses to litigate a frivolous claim, especially when subject to penalty of perjury?

Another reform in the Hatch-Leahy bill addresses the situation in which the government's possession of seized property pending trial causes hardship to the property owner. Under current law, the government maintains possession of seized property pending trial even if it causes hardship to the property owner. A common example of such hardship is where the government seizes an automobile, and the seizure prevents the property owner or members of the property owner's family from getting to and from work pending the forfeiture trial. The Hatch-Leahy bill changes current law to allow, but not require, the court to release property pending trial if the court determines that the hardship to the property owner of continued possession by the government outweighs the risk that the property will be damaged or lost. This is a common sense reform that allows the court to release property in appropriate cases.

Another reform in the Hatch-Leahy bill involves reimbursement of attorney fees. The Hatch-Leahy bill awards attorney fees and costs to property owners who prevail against the government in civil forfeiture cases. The costs of contesting a civil forfeiture of property can be substantial. The award of attorney fees and costs to property owners who prevail against the government in civil forfeiture cases is justified because unlike criminal forfeiture actions, the property owner is not charged with a crime. Instead, the government proceeds "in rem" against the property. Given that the government does not sue or indict the property owner, it is unfair for the property owner to have to incur attorney fees and costs when the government does not prevail in civil forfeiture actions.

The award of attorney fees is also justified because the government only has to prove its case against the property by a preponderance of the evidence. By contrast, the government must prove beyond a reasonable doubt that property is subject to forfeiture in

criminal forfeiture actions. If the government decides to pursue a civil forfeiture action instead of the more difficult to prove criminal forfeiture action, it should be obligated to pay the attorney fees and costs of the property owner when the property owner prevails.

Mr. President, I would like to emphasize that while the Hatch-Leahy Civil Asset Forfeiture Reform Act contains important reforms; it retains civil forfeiture as an important tool for law enforcement. In fact, the Hatch-Leahy bill is a cautious, responsible reform. Some would even argue that this bill is too modest.

A comparison of the reforms enacted by the State of California in 1993 is instructive. For example, California changed its civil forfeiture law to require the government to prove beyond a reasonable doubt and achieve a related criminal conviction in most civil asset forfeiture cases. The exception to this rule in California involves seizures of currency in excess of \$25,000. In these cases, the State must prove the currency is subject to forfeiture by clear and convincing evidence. Also, California abolished the cost bond in civil forfeiture cases.

In short, California's reforms go far beyond anything in the Hatch-Leahy bill, but these reforms have not undermined civil asset forfeiture as a law enforcement tool. The modest reforms in the Hatch-Leahy bill will add much needed protections for property owners at no significant costs to law enforcement. By making these needed reforms, the Hatch-Leahy bill will preserve civil forfeiture as a law enforcement tool for the future.

Lastly, I would like to thank Senator LEAHY and his staff for their tireless effort on this legislation. Senator LEAHY has been an advocate for civil asset forfeiture reform for many years. He is one of the leading champions of civil liberties in the Senate. This legislation would not have occurred without his interest and persistence, and I thank him for his efforts.

I ask unanimous consent that the bill and a section-by-section summary of the bill be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1931

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Asset Forfeiture Reform Act".

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

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by inserting after section 981 the following:

"§981A. General rules for civil forfeiture proceedings

"(a) NOTICE; CLAIM; COMPLAINT.—(1)(A)(i) Except as provided in clauses (ii) and (iii), in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect

to which the Government must send written notice to interested parties, such notice shall be sent in a manner to achieve proper service as soon as practicable, and in no case more than 60 days after the date of the seizure.

"(ii) In a case in which the property is seized by a State or local law enforcement agency and turned over to a Federal law enforcement agency for the purpose of forfeiture under Federal law, notice shall be sent no more than 90 days after the date of seizure by the State or local law enforcement agency.

"(iii) If the identity or interest of a party is not determined until after the seizure or turnover but is determined before a declaration of forfeiture is entered, notice shall be sent to such interested party not later than 60 days after the determination by the Government of the identity of the party or the party's interest.

"(B) A court shall extend the period for sending notice under subparagraph (A) for a period not to exceed 60 days (which period may be further extended), if the court determines, based on a written ex parte certification of a supervisory official of the seizing agency, that there is reason to believe that notice may have an adverse result, including—

"(i) endangering the life or physical safety of an individual;

"(ii) flight from prosecution;

"(iii) destruction of or tampering with evidence;

"(iv) intimidation of potential witnesses; or

"(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"(C) If the Government does not send notice of a seizure of property in accordance with subparagraph (A) to the person from whom the property was seized, and no extension of time is granted, the Government shall return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time.

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

"(B) A claim under subparagraph (A) may be filed not later than the deadline set forth in a personal notice letter, except that if that letter is not received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure.

"(C) The claim shall state the claimant's interest in the property and be made under oath, subject to penalty of perjury. The seizing agency shall make claim forms generally available on request.

"(D) Any person may make a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

"(3)(A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

"(B) If the Government does not file a complaint for forfeiture or return the property, in accordance with subparagraph (A), it shall return the property and may not take any further action to effect the civil forfeiture of such property.

"(C) In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a

criminal indictment. In such case, the Government's right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.

"(D) No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property by a preponderance of the evidence.

"(4)(A) In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

"(B) A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

"(b) APPOINTMENT OF COUNSEL.—(1) If—

"(A) a person in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel; and

"(B)(i) the property subject to forfeiture is real property that is being used by the person as a primary residence; or

"(ii) the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case;

the court may appoint or authorize counsel to represent that person with respect to the claim, as appropriate.

"(2) In determining whether to appoint or authorize counsel to represent a person asserting a claim under this subsection, the court shall take into account such factors as—

"(A) the person's standing to contest the forfeiture; and

"(B) whether the claim appears to be made in good faith.

"(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

"(c) BURDEN OF PROOF.—In all suits or actions brought under any civil forfeiture statute for the civil forfeiture of any property, the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture. The Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture.

"(d) INNOCENT OWNER DEFENSE.—(1) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that he is an innocent owner by a preponderance of the evidence.

"(2)(A) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term 'innocent owner' means an owner who—

"(i) did not know of the conduct giving rise to forfeiture; or

"(ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

"(B)(i) For the purposes of this paragraph, ways in which a person may show that such person did all that reasonably could be expected may include demonstrating that such person, to the extent permitted by law—

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

“(II) in a timely fashion revoked or attempted to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

“(ii) A person is not required by this subparagraph to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

“(3)(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term ‘innocent owner’ means a person who, at the time that person acquired the interest in the property—

“(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and

“(ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.

“(B) An otherwise valid claim under subparagraph (A) shall not be denied on the ground that the claimant gave nothing of value in exchange for the property if—

“(i) the property is the primary residence of the claimant;

“(ii) depriving the claimant of the property would deprive the claimant of the claimant’s only means of maintaining adequate shelter in the community for the claimant and all dependents residing with the claimant;

“(iii) the property is not, and is not traceable to, the proceeds of any criminal offense; and

“(iv) the claimant acquired his or her interest in the property through marriage, divorce, or legal separation, or the claimant was the spouse or legal dependent of a person whose death resulted in the transfer of the property to the claimant through inheritance or probate; except that the court shall limit the value of any real property interest for which innocent ownership is recognized under this subparagraph to the value necessary to maintain adequate shelter in the community for such claimant and all dependents residing with the claimant.

“(4) Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.

“(e) MOTION TO SET ASIDE FORFEITURE.—(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person’s interest in the property, which motion shall be granted if—

“(A) the Government knew, or reasonably should have known, of the moving party’s interest and failed to take reasonable steps to provide such party with notice; and

“(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.

“(2) If the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the interest of the moving party without prejudice to the right of the Government to commence a subsequent forfeiture proceeding as to the interest of the moving party, which proceeding shall be instituted within 60 days of the entry of the order granting the motion.

“(3) A motion under paragraph (1) may be filed not later than 6 years after the date

that the claimant discovered or had reason to discover that the property was forfeited, subject to the doctrine of laches, except that no motion may be filed more than 11 years after the date that the Government’s forfeiture cause of action accrued.

“(f) RELEASE OF SEIZED PROPERTY.—(1) A claimant under subsection (a) is entitled to immediate release of seized property if—

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

“(B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

“(C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

“(D) the claimant’s likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

“(E) none of the conditions set forth in paragraph (7) applies.

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

“(3) If not later than 10 days after the date of a request under paragraph (2) the property has not been released, the claimant may file a motion or complaint in the district court in which the complaint has been filed or, if no complaint has been filed, any district court that would have jurisdiction of forfeiture proceedings relating to the property, setting forth—

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

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

“(4) The court shall render a decision on a motion or complaint filed under paragraph (3) no later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.

“(5) If—

“(A) a motion or complaint is filed under paragraph (3); and

“(B) the claimant demonstrates that the requirements of paragraph (1) have been met; the district court shall order that the property be returned to the claimant, pending completion of proceedings by the Government to obtain forfeiture of the property.

“(6) If the court grants a motion or complaint under paragraph (3)—

“(A) the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including—

“(i) permitting the inspection, photographing, and inventory of the property;

“(ii) fixing a bond in accordance with rule E(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and

“(iii) requiring the claimant to obtain or maintain insurance on the subject property; and

“(B) the Government may place a lien against the property or file a lis pendens to ensure that the property is not transferred to another person.

“(7) This subsection shall not apply if the seized property—

“(A) is contraband, currency or other monetary instrument, or electronic funds unless

such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;

“(B) is to be used as evidence of a violation of the law;

“(C) by reason of design or other characteristic, is particularly suited for use in illegal activities; or

“(D) is likely to be used to commit additional criminal acts if returned to the claimant.

“(g) PROPORTIONALITY.—The claimant may petition the court to determine whether the forfeiture was constitutionally excessive. In making this determination, the court shall compare the forfeiture to the gravity of the offense giving rise to the forfeiture. If the court finds that the forfeiture is grossly disproportionate to the offense it shall reduce or eliminate the forfeiture as necessary. The claimant shall have the burden of establishing that the forfeiture is grossly disproportionate by a preponderance of the evidence at a hearing conducted by the court without a jury.

“(h) DEFINITIONS.—In this section:

“(1)(A) Except as provided in subparagraph (B), the term ‘civil forfeiture statute’ means any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense.

“(B) The term ‘civil forfeiture statute’ does not include—

“(i) the Tariff Act of 1930 or any other provision of law codified in title 19;

“(ii) the Internal Revenue Code of 1986;

“(iii) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);

“(iv) the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.); or

“(v) section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).

“(2)(A) The term ‘owner’ means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest.

“(B) The term ‘owner’ does not include—

“(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

“(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

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

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 46 of title 18, United States Code, is amended by inserting after the item relating to section 981 the following:

“981A. General rules for civil forfeiture proceedings.”

SEC. 3. COMPENSATION FOR DAMAGE TO SEIZED PROPERTY.

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

(1) by striking “any goods or merchandise” and inserting “any goods, merchandise, or other property”;

(2) by striking “law-enforcement” and inserting “law enforcement”; and

(3) by inserting before the period at the end the following: “, except that the provisions of this chapter and section 1346(b) of this title apply to any claim based on injury or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if—

“(1) the property was seized for the purpose of forfeiture under any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense;

“(2) the interest of the claimant is not forfeited; and

“(3) the claimant is not convicted of a crime for which the interest of the claimant in the property would be subject to forfeiture under a Federal criminal forfeiture law.”.

(b) DEPARTMENT OF JUSTICE.—

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

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

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

(B) is presented by an officer or employee of the Federal Government and arose within the scope of employment.

SEC. 4. ATTORNEY FEES, COSTS, AND INTEREST.

(a) IN GENERAL.—Section 2465 of title 28, United States Code, is amended to read as follows:

“§ 2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest

“(a) Upon the entry of a judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of Federal law—

“(1) such property shall be returned forthwith to the claimant or his agent; and

“(2) if it appears that there was reasonable cause for the seizure or arrest, the court shall cause a proper certificate thereof to be entered and, in such case, neither the person who made the seizure or arrest nor the prosecutor shall be liable to suit or judgment on account of such suit or prosecution, nor shall the claimant be entitled to costs, except as provided in subsection (b).

“(b)(1) Except as provided in paragraph (2), in any civil proceeding to forfeit property under any provision of Federal law in which the claimant substantially prevails, the United States shall be liable for—

“(A) reasonable attorney fees and other litigation costs reasonably incurred by the claimant;

“(B) post-judgment interest, as set forth in section 1961 of this title; and

“(C) in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale—

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

“(ii) an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate described in section 1961, for any period during which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence).

“(2)(A) The United States shall not be required to disgorge the value of any intangible benefits nor make any other payments to the claimant not specifically authorized by this subsection.

“(B) The provisions of paragraph (1) shall not apply if the claimant is convicted of a crime for which the interest of the claimant in the property would be subject to forfeiture under a Federal criminal forfeiture law.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 163 of title

28, United States Code, is amended by striking the item relating to section 2465 and inserting the following:

“2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest.”.

SEC. 5. SEIZURE WARRANT REQUIREMENT.

(a) IN GENERAL.—Section 981(b) of title 18, United States Code, is amended to read as follows:

“(b)(1) Except as provided in section 985, any property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

“(2) Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if—

“(A) a complaint for forfeiture based on probable cause has been filed in the United States district court and the court has issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

“(B) there is probable cause to believe that the property is subject to forfeiture and—

“(i) the seizure is made pursuant to a lawful arrest or search; or

“(ii) another exception to the Fourth Amendment warrant requirement would apply; or

“(C) the property was lawfully seized by a State or local law enforcement agency and has been transferred to a Federal agency in accordance with State law.

“(3) Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and executed in any district in which the property is found.”.

(b) DRUG FORFEITURES.—Section 511(b) of the Controlled Substances Act (21 U.S.C. 881(b)) is amended to read as follows:

“(b) SEIZURE PROCEDURES.—Any property subject to forfeiture to the United States under this section may be seized by the Attorney General in the manner set forth in section 981(b) of title 18, United States Code.”.

SEC. 6. USE OF FORFEITED FUNDS TO PAY RESTITUTION TO CRIME VICTIMS.

Section 981(e) of title 18, United States Code, is amended by striking paragraph (6) and inserting the following:

“(6) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; or”.

SEC. 7. CIVIL FORFEITURE OF REAL PROPERTY.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by inserting after section 984 the following:

“§ 985. Civil forfeiture of real property

“(a) Notwithstanding any other provision of law, all civil forfeitures of real property and interests in real property shall proceed as judicial forfeitures.

“(b)(1) Except as provided in this section—

“(A) real property that is the subject of a civil forfeiture action shall not be seized before entry of an order of forfeiture; and

“(B) the owners or occupants of the real property shall not be evicted from, or otherwise deprived of the use and enjoyment of,

real property that is the subject of a pending forfeiture action.

“(2) The filing of a lis pendens and the execution of a writ of entry for the purpose of conducting an inspection and inventory of the property shall not be considered a seizure under this subsection.

“(c)(1) The Government shall initiate a civil forfeiture action against real property by—

“(A) filing a complaint for forfeiture;

“(B) posting a notice of the complaint on the property; and

“(C) serving notice on the property owner, along with a copy of the complaint.

“(2) If the property owner cannot be served with the notice under paragraph (1) because the owner—

“(A) is a fugitive;

“(B) resides outside the United States and efforts at service pursuant to Rule 4 of the Federal Rules of Civil Procedure are unavailing; or

“(C) cannot be located despite the exercise of due diligence, constructive service may be made in accordance with the laws of the State in which the property is located.

“(3) If real property has been posted in accordance with this subsection, it shall not be necessary for the court to issue an arrest warrant in rem, or to take any other action to establish in rem jurisdiction over the property.

“(d) Real property may be seized prior to the entry of an order of forfeiture if—

“(1) the Government notifies the court that it intends to seize the property before trial; and

“(2) the court—

“(A) issues a notice of application for warrant, causes the notice to be served on the property owner and posted on the property, and conducts a hearing to determine if there is probable cause for the forfeiture; or

“(B) makes an ex parte determination that there is probable cause for the forfeiture and that there are exigent circumstances that permit the government to seize the property without prior notice and an opportunity for the property owner to be heard.

For purposes of paragraph (2)(B), to establish exigent circumstances, the Government shall show that less restrictive measures such as a lis pendens, restraining order, or bond would not suffice to protect the Government's interests in preventing the sale, destruction, or continued unlawful use of the real property.

“(e) If the court authorizes a seizure of real property under subsection (d)(2), it shall conduct a prompt post-seizure hearing during which the property owner shall have an opportunity to contest the basis for the seizure.

“(f) This section—

“(1) applies only to civil forfeitures of real property and interests in real property;

“(2) does not apply to forfeitures of the proceeds of the sale of such property or interests, or of money or other assets intended to be used to acquire such property or interests; and

“(3) shall not affect the authority of the court to enter a restraining order relating to real property.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 46 of title 18, United States Code, is amended by inserting after the item relating to section 984 the following:

“985. Civil forfeiture of real property.”.

SEC. 8. APPLICABILITY.

This Act and the amendments made by this Act shall apply to any forfeiture proceeding commenced on or after the date of enactment of this Act.

HATCH/LEAHY CIVIL ASSET FORFEITURE
REFORM ACT—SECTION-BY-SECTION SUMMARY
OVERVIEW

The Hatch/Leahy Civil Asset Forfeiture Reform Act would provide a more uniform procedure for federal civil asset forfeitures while increasing the due process safeguards for property owners. Among other things, the bill (1) places the burden of proof in civil forfeiture proceedings upon the government, by a preponderance of the evidence; (2) allows for the provision of counsel to indigent claimants where the property at issue is the claimant's primary residence, and where the claimant is represented by court-appointed counsel in connection with a related criminal case; (3) requires the government to pay attorney fees, costs and interest in any civil forfeiture proceeding in which the claimant substantially prevails; (4) eliminates the cost bond requirement; (5) creates a uniform innocent owner defense; (6) allows property owners more time to challenge a seizure; (7) codifies existing practice with respect to Eighth Amendment proportionality review and seizures of real property; (8) permits the pre-adjudication return of property to owners upon a showing of hardship; and (9) allows property owners to sue the government for any damage to their property.

SECTION-BY-SECTION SUMMARY

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

Creates a new section in federal criminal code (18 U.S.C. §981A) that establishes general rules for virtually all proceedings under a federal civil forfeiture statute.

Notice; claim; complaint. Subsection (a) establishes general procedures and deadlines for initiating civil forfeiture proceedings.

Paragraph (1) provides that, in general, a Federal law enforcement agency has 60 days to send notice of a seizure of property. A court shall extend the period for sending notice for 60 days upon written ex parte certification by the seizing agency that notice may have an adverse result. If the government fails to send notice, it must return the property, without prejudice to the right of the Government to commence a forfeiture proceeding at a later time.

Paragraph (2) allows property owners more time to challenge a seizure. Any person claiming an interest in seized property may file a claim not later than the deadline set forth in a personal notice letter, except that if such letter is not received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure. Claims shall be made under oath, subject to penalty of perjury. No cost bond need be posted.

Paragraph (3) allows the government 90 days after a claim has been filed to file a complaint for forfeiture or return the property, except that a court may extend the time for filing a complaint for good cause shown or upon agreement of the parties. If the government does not comply with this rule, it may not take further action to effect forfeiture of the property.

Paragraph (4) provides that any person claiming an interest in seized property must file a claim in court not later than 30 days after service of the government's complaint or, where applicable, not later than 30 days after final publication of notice of seizure. A claimant must file an answer to the government's complaint within 20 days of the filing of such claim.

Appointment of counsel. Subsection (b) permits a court to appoint counsel to represent an indigent claimant in a judicial civil forfeiture proceeding if the property subject to forfeiture is real property used by the claimant as a primary residence, or the

claimant is already represented by a court-appointed attorney in connection with a related Federal criminal case.

Burden of proof. Subsection (c) shifts the burden of proof in civil asset forfeiture cases to the government, by a preponderance of the evidence. It also makes clear that the government may use evidence gathered after the filing of a complaint to meet that burden of proof.

Innocent owner. Subsection (d) codifies a uniform innocent owner defense. With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, "innocent owner" means an owner who did not know of the conduct giving rise to forfeiture or who, upon learning of such conduct, did all that reasonably could be expected under the circumstances to terminate such use of the property. With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, "innocent owner" means a person who, at the time that person acquired the interest in property, was a bona fide purchaser or seller for value and reasonably without cause to believe that the property was subject to forfeiture or, in limited circumstances involving a principal residence, a spouse or legal dependent.

Motion to set aside declaration of forfeiture. Subsection (e) provides that a person who was entitled to notice of a nonjudicial civil forfeiture who did not receive such notice may file a motion to set aside a declaration of forfeiture with respect to his or her interest in the property. This subsection codifies current case law holding that such motion must be filed not later than 6 years after the date that the claimant discovered or had reason to discover that the property was forfeited, but in no event more than 11 years after the government's cause of action in forfeiture accrued. The common law doctrine of laches applies to any motion made under this subsection. If such motion is granted, the government has 60 days to re-institute proceedings against the property.

Release of property to avoid hardship. Subsection (f) entitles a claimant to immediate release of seized property in certain cases of hardship. Among other things, the claimant must have sufficient ties to the community to provide assurance that the property will be available at the time of the trial, the claimant's likely hardship from such continued possession outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding. Hardship return of property does not apply to contraband, currency, electronic funds, property that is evidence of a crime, property that is specially designed to use in a crime, or any other item likely to be used to commit additional crimes if returned.

Proportionality review. Subsection (g) implements *United States v. Bajakajian*, 524 U.S. 321 (1998), which held that a punitive forfeiture violates the Excessive Fines Clause of the Eighth Amendment if it is grossly disproportionate to the gravity of the offense.

SEC. 3. COMPENSATION FOR DAMAGE TO SEIZED PROPERTY.

Amends the federal Tort Claims Act to apply to claims based on injury or loss of property while in the possession of the government, if the property was seized for the purpose of forfeiture but the interest of the claimant was not forfeited.

SEC. 4. ATTORNEY FEES, COSTS AND INTEREST.

Amends 28 U.S.C. §2465 to provide that, with limited exceptions, in any civil proceeding to forfeit property in which the claimant substantially prevails, the United States shall be liable for (1) reasonable at-

torney fees and other litigation costs reasonably incurred by the claimant; (2) post-judgment interest; and (3) in cases involving currency, negotiable instruments, or the proceeds of an interlocutory sale, any interest actually paid to the United States, or imputed interest (except where the property was in use as evidence or for testing).

SEC. 5. SEIZURE WARRANT REQUIREMENT.

Amends 18 U.S.C. §981(b) to require that seizures be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, with limited exceptions.

SEC. 6. CIVIL FORFEITURE OF REAL PROPERTY.

Implements *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993), which held that real property may not be seized, except in exigent circumstances, without giving a property owner notice of the proposed seizure and an opportunity for an adversarial hearing. All forfeitures of real property must proceed as judicial forfeitures. Real property may be seized before entry of an order of forfeiture only if notice has been served on the property owner and the court determines that there is probable cause for the forfeiture, or if the court makes an ex parte determination that there is probable cause for the forfeiture and exigent circumstances justify immediate seizure without a pre-seizure hearing.

SEC. 7. APPLICABILITY.

Provides that all changes in the bill apply prospectively.

Mr. LEAHY. Mr. President, asset forfeiture is a powerful crime-fighting tool. It has been a particularly potent weapon in the war on drugs, allowing the government to take the cars and boats and stash houses amassed by drug dealers and put them to honest use. Last year alone, the government was able to seize nearly half a billion dollars worth of assets, cutting a big chunk out of criminals' profit stream and returning it to the law-abiding community.

Unfortunately, our nation's asset forfeiture is not fail-safe; it can be abused. In hearings on this issue, the Judiciary Committee has heard examples of what happens when prosecutorial zeal skirts the boundaries of due process, leading to the taking of private property regardless of whether the owner is innocent of, or even cognizant of, the property's use in an illegal act.

In recent years, our nation's asset forfeiture system has drawn increasing and exceedingly sharp criticism from scholars and commentators. Federal judges have also added their voices to the growing chorus of concern. In 1992, the Second Circuit Court of Appeals stated, "We continue to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes." Four years later, the Eighth Circuit rebuked the government for capitalizing on the claimants' confusion to forfeit over \$70,000 of their currency, and expressed alarm that:

the war on drugs has brought us to the point where the government may seize . . . a citizen's property without any initial showing of cause, and put the onus on the citizen to perfectly navigate the bureaucratic labyrinth in order to liberate what is presumptively his or hers in the first place. . . .

Should the citizen prove inept, the government may keep the property, without ever having to justify or explain its actions.

Similarly, the Seventh Circuit recently expressed its belief that "the government's conduct in forfeiture cases leaves much to be desired," and ordered the return of over \$500,000 in currency that had been improperly seized from a Chicago pizzeria.

Civil asset forfeiture rests upon the medieval notion that property is somehow guilty when it causes harm to another. The notion of "guilty property" is what enables the government to seize property regardless of the guilt or innocence of the property owner. In many asset forfeiture cases, the person whose property is taken is never charged with any crime.

The "guilty property" notion also explains the topsy-turvy nature of today's civil forfeiture proceedings, in which the property owner—not the government—bears the burden of proof. Under current law, all the government must do is make an initial showing of probable cause that the property is "guilty" and subject to forfeiture; it is then up to the property owner to prove a negative—that the property was not involved in any wrongdoing.

It is time to reexamine the obsolete underpinnings of our civil forfeiture laws and bring these laws in line with more modern principles of due process and fair play. We must be especially careful to ensure that innocent property owners are adequately protected.

The Hatch-Leahy Civil Asset Forfeiture Reform Act provides greater safeguards for individuals whose property has been seized by the government. It incorporates all of the core reforms of H.R. 1658, which passed the House of Representatives in June by an overwhelming bipartisan majority. The Hatch-Leahy bill also includes a number of additional reforms which, among other things, establish a fair and uniform procedure for forfeiting real property, and entitle property owners to challenge a forfeiture as constitutionally excessive.

During our hearing this year on civil asset forfeiture reform, the Justice Department and other law enforcement organizations expressed concern that some of the reforms included in the House bill would interfere with the government's ability to combat crime. The bill we introduce today addresses the legitimate concerns of law enforcement. In particular, the bill puts the burden of proof on the government by a preponderance of the evidence, and not by clear and convincing evidence. The preponderance standard is used in virtually all other civil cases, and we believe it is sufficient to protect the interests of property owners.

We have also removed provisions in H.R. 1658 that would allow criminals to leave their ill-gotten gains to their heirs, and would bar the government from forfeiting property if it inadvertently sent notice of a seizure to the wrong address. These provisions did lit-

tle more than create procedural "gotchas" for criminals and their heirs, and are neither necessary nor desirable as a matter of policy.

The Hatch-Leahy bill also differs from the House bill in its approach to the issue of appointed counsel. Under H.R. 1658, anyone asserting an interest in seized property could apply for a court-appointed lawyer. There is no demonstrated need for such an unprecedented extension of the right to counsel, nor is there any principled distinction between defendants in civil forfeiture actions and defendants in other federal enforcement actions who are not eligible for court-appointed counsel. Moreover, property owners who are indigent may be eligible to obtain representation through various legal aid clinics.

The Hatch-Leahy bill authorizes courts to appoint counsel for indigent claimants in just two limited circumstances. First, a court may appoint counsel in the handful of forfeiture cases in which the property at issue is the claimant's primary residence. When a forfeiture action can result in a claimant's eviction and homelessness, there is more at stake than just a property interest, and it is fair and just that the claimant be provided with an attorney if she cannot otherwise afford one. Second, if a claimant is already represented by a court-appointed attorney in a related federal criminal case, the court may authorize that attorney to represent the claimant in the civil forfeiture action. This is both fair and efficient, and eliminates any appearance that the government chose to pursue the forfeiture in a civil proceeding rather than as part of the criminal case in order to deprive the claimant of his right to counsel.

For claimants who were not appointed counsel by the court, the Hatch-Leahy bill allows for the recovery of reasonable attorney fees and costs if they substantially prevail in court. The bill also makes the government liable for post-judgment interest on any money judgment, and imputed interest in certain cases involving currency or negotiable instruments.

Another core reform of the Hatch-Leahy bill is the elimination of the so-called "cost bond." Under current law, a property owner that seeks to recover his property after it has been seized by the government must pay for privilege by posting a bond with the court. The government has strongly defended the "cost bond," not as a device for ensuring that its court costs are covered, but as a way of deterring frivolous claims. Of course, we are all in favor of deterring frivolous claims, but there are ways to deter frivolous claims without offending the fundamental principle of equal and open access to the courts, a bedrock of our American system of justice. The Hatch-Leahy bill provides that a person who challenges a forfeiture must file his claim on oath, under penalty of perjury. Claimants also remain subject to the general

sanctions for bad faith in instituting or conducting litigation. Further, most claimants will continue to bear the substantial costs of litigating their claims in court. The additional financial burden of the "cost bond" serves no legitimate purpose.

Under current law, a property owner has only 20 days from the date of first publication of the notice of seizure to file a claim challenging an administrative forfeiture, and only 10 days to file a claim challenging a judicial forfeiture. It is therefore unlikely that anyone who misses the first of three published notices will be able to file a timely claim. The Hatch-Leahy bill extends the property owner's time to file a claim following administrative and judicial forfeiture actions to 30 days. The bill also codifies current Department of Justice policy with respect to the time period for sending notice of seizure, and establishes a 90-day period for filing a complaint. The bill leaves undisturbed current laws and procedures with respect to the proper form and content of notices, claims and complaints.

Finally, the Hatch-Leahy bill will allow property owners to hold on to their property while a case in process, if they can show that continued possession of the government will cause substantial hardship to the owner, such as preventing him from working, and that this hardship outweighs the risk that the property will be destroyed or concealed if returned to the owner during the pendency of the case. Unlike H.R. 1658, the Hatch-Leahy bill adopts the primary safeguards that the Justice Department wanted added to the provision—that property owners must have sufficient ties to the community to provide assurance that the property will not disappear and that certain property, such as currency and property particularly suited for use in illegal activities, cannot be returned. As amended, the hardship provision in the Hatch-Leahy bill is substantially similar to the hardship provision in another civil asset forfeiture bill, S. 1701, which the Justice Department has endorsed.

The fact is, the Justice Department has endorsed most of the core reforms contained in the Hatch-Leahy bill. Indeed, the Department has already taken administrative steps to remedy many of the civil forfeiture abuses identified in recent years by the federal courts. For this, the Department is to be commended. But administrative policy can be modified on the whim of whoever is in charge, and the law remains susceptible to abuse.

It is time for Congress to catch up with the Justice Department and the courts on this important issue. Due to internecine fighting among law enforcement officials whose views Congress always wants to take into consideration, action on civil forfeiture reform has been delayed for far too long. The Hatch-Leahy bill strikes the appropriate middle ground between the

House bill and S. 1701, providing comprehensive and meaningful reform while ensuring the continued potency of civil asset forfeiture in the war on crime.

Senator HATCH and I share a long-standing and deeply-held appreciation for law enforcement and the officers who work on the front lines to protect our families and communities, and we have worked together on a number of crime-related issues in the past. I want to commend him for his commitment, not just to law enforcement, but to the rights of all Americans. It has been my pleasure to work with him on this issue, to bring balance back in the relationship between our police forces and the citizens of this country.

By Mr. JEFFORDS:

S. 1932. A bill to amend the Ricky Ray Hemophilia Relief Fund Act of 1998 to revise and extend certain provisions; to the Committee on Health, Education, Labor, and Pensions.

THE RICKY RAY FAIRNESS ACT OF 1999

• Mr. JEFFORDS. Mr. President, last year Congress passed and the President signed a significant measure that will, as funds are provided, provide compassionate compensation payments to hundreds of individuals. Public Law 105-369, the Ricky Ray Hemophilia Relief Act of 1998, authorizes payments for hemophiliacs treated with blood products infected with HIV during the 1980s as well as their infected spouses and children. Last year, Mr. President, you and I, and all of our colleagues gave our unanimous consent to this measure because we all knew it was the right thing to do. But we accomplished only part of the job. We provided compassionate compensation to only a portion of the Americans who, through indecisiveness and inaction on the part of federal government, became infected with HIV. So today I am introducing legislation that will set the record straight and finish what needs to be done, and I hope that our colleagues will once again in the name of fairness and compassion give this measure their unanimous support.

I am on the floor today to introduce legislation that will bring much needed fairness to hundreds of our citizens. This bill, the Ricky Ray Fairness Act of 1999 will finally include those people, other than hemophiliacs, who were infected with HIV and contracted AIDS through HIV contaminated blood products or tissues.

The blood crisis of the 1980s resulted in the HIV infection of thousands of Americans who trusted that the blood or blood product with which they were treated was safe. The tragedy of the blood supply's contamination has brought unbearable pain to families all over the country. I have heard from dozens over the past months. These are people like any of us—like our children and our grandchildren—who went to hospitals for standard procedures, emergency care, or were transfused due to complications in childbirth. Many

children and adults were secondarily infected: children through childbirth or HIV-infected breast milk and adults through their spouses. Lives were lost and futures were ruined. Not only were there physical and emotional costs, but there exists a tremendous drain on personal finances as a result of lost income and extreme medical expenses. In the minds of these and in the minds of members who advocated for the Ricky Ray bill, the federal government played the determining role in the tragedy.

Mr President, these people were infected with HIV because the federal government failed to protect the blood supply during the mid-1980s when it did not use its regulatory authority to implement a wide range of blood and blood-donor screening options recommended by the Centers for Disease Control and Prevention. Had the federal government taken the recommendations of the CDC, thousands of American men, women and children would not have contracted AIDS through HIV-contaminated blood and blood products.

Sadly, and unfairly, the Ricky Ray Hemophilia Relief Fund Act as passed last year does not include all victims of the blood supply crisis. I feel strongly that the Act must be amended to include compensation for not only hemophiliacs, but also people who received a blood transfusion or blood product in the course of medical treatment. Though it was right for us to pass the Ricky Ray Act last year, it remains an inequity and a tragedy that the federal government did so without including victims of transfusion-associated AIDS.

Unlike a few individuals, most people infected with HIV through blood and blood products have been unable to track the source of their infection; nor have they been able to obtain some judicial relief through the courts. The community hit by this tragedy has found it nearly impossible to make recovery through the courts because of blood shield laws in most states that raise the burden of proof for product liability claims for blood and blood products. In addition, all States have statutes of limitations that prohibit litigation if the suit was not filed within a certain period of time.

I am introducing today what can be the final chapter in our Country's responsibility for not adequately protecting the blood supply during the 1980s. The Ricky Ray Fairness Act of 1999 provides compassionate payments to those infected with HIV contaminated blood, blood components, or human tissues. While the change to include transfusion cases increases the cost of this bill, many have already noted that this bill is not about money, it's about fairness. I urge my colleagues to join me in recognizing the terrible tragedy the blood supply crisis of the 1980s cast upon all of its victims. •

By Mr. DODD (for himself and Mr. BENNETT):

S. 1934. A bill to amend the Internal Revenue Code of 1986 to allow a tax credit for business-provided student education and training; to the Committee on Finance.

THE BUSINESSES EDUCATING STUDENTS IN TECHNOLOGY (BEST) ACT

• Mr. DODD. Mr. President, today I rise to introduce legislation with my colleague from Utah, Senator BENNETT, that addresses the serious shortage of students graduating from our nation's colleges and universities with technology-based education and skills.

Technology is reshaping our world at a rapid pace. Competition to meet the needs, wants, and expectations of businesses and consumers has accelerated the rate of technological progress to a level inconceivable even a few years ago. Today, technology is playing an increasingly important role in the lives of every American and is a key ingredient in sustaining America's economic growth. It is the wellspring from which new businesses, high-wage jobs, and a rising quality of life will flow in the 21st century.

This profound technological change, coupled with a period of sustained fiscal discipline in the federal government, has led to an unprecedented period of economic growth in our nation. For the first time in three decades, we are enjoying the prospect of budget surpluses that could total one trillion dollars over the next ten years. We have the lowest unemployment in 29 years. Inflation has fallen to its lowest rate in almost 30 years. Our economy has created 20 million new jobs in the last seven years.

If we want to build on this progress, we must encourage people to develop and use emerging technologies. Technological progress has become the single most important determining factor in sustaining economic growth in our economy. It is estimated that technological innovation has accounted for as much as half the nation's long-term economic growth over the past 50 years and is expected to account for an even higher percentage in the next 50 years.

And yet, there is growing evidence that we are not doing enough to prepare people to make the most of this emerging "New Economy." The explosive growth in the technology industry has resulted in a growing shortage of qualified and educated workers with skills in computer science and other technologically advanced systems. For example, more than 350,000 information technology positions are currently vacant throughout the United States. That is an astounding statistic. While we have managed to erase the budget deficit, our nation faces a rising knowledge deficit that could just as readily impede economic growth.

At this moment, there is little sign that this technology deficit will be erased. The supply of technology-savvy U.S. college graduates appears to be on the wane. In my home state of Connecticut, public and private colleges