

105TH CONGRESS
1ST SESSION

H. R. 1965

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 1997

Mr. HYDE (for himself and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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 AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Civil Asset Forfeiture Reform Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Creation of general rules relating to civil forfeiture proceedings.
- Sec. 3. Compensation for damage to seized property.
- Sec. 4. Prejudgment and postjudgment interest.

- Sec. 5. Seizure warrant requirement.
- Sec. 6. Access to records in bank secrecy jurisdictions.
- Sec. 7. Access to other records.
- Sec. 8. Disclosure of grand jury information to Federal prosecutors.
- Sec. 9. Use of forfeited funds to pay restitution to crime victims and regulatory agencies.
- Sec. 10. Enforcement of foreign forfeiture judgment.
- Sec. 11. Admissibility of foreign business records.
- Sec. 12. Conforming amendments to title 28, to rules of procedure, and to the controlled substances act.
- Sec. 13. Inapplicability of the customs laws.
- Sec. 14. Applicability.
- Sec. 15. Jurisdiction and venue in forfeiture cases.
- Sec. 16. Minor and technical amendments relating to 1992 forfeiture amendments.
- Sec. 17. Drug paraphernalia technical amendments.
- Sec. 18. Certificate of reasonable cause.
- Sec. 19. Authorization to share forfeited property with cooperating foreign governments.
- Sec. 20. Forfeiture of property used to facilitate foreign drug crimes.
- Sec. 21. Forfeiture of proceeds traceable to facilitating property in drug cases.
- Sec. 22. Forfeiture of proceeds of certain foreign crimes.
- Sec. 23. Civil forfeiture of coins and currency in confiscated gambling devices.
- Sec. 24. Clarification of judicial review of forfeiture.
- Sec. 25. Technical amendments relating to obliterated motor vehicles identification numbers.
- Sec. 26. Statute of limitations for civil forfeiture actions.
- Sec. 27. Destruction or removal of property to prevent seizure.
- Sec. 28. In personam judgments.
- Sec. 29. Uniform procedures for criminal forfeiture.
- Sec. 30. Availability of criminal forfeiture.
- Sec. 31. Discovery procedure for locating forfeited assets.
- Sec. 32. Criminal forfeiture for money laundering conspiracies.
- Sec. 33. Correction to criminal forfeiture provision for alien smuggling and other immigration offenses.
- Sec. 34. Repatriation of property placed beyond the jurisdiction of the court.
- Sec. 35. Right of third parties to contest forfeiture of substitute assets.
- Sec. 36. Archeological Resources Protection Act.
- Sec. 37. Forfeiture of instrumentalities of terrorism, telemarketing fraud, and other offenses.
- Sec. 38. Forfeiture of criminal proceeds transported in interstate commerce.
- Sec. 39. Forfeitures of proceeds of Federal Food, Drug, and Cosmetic Act violations.
- Sec. 40. Forfeiture of counterfeit paraphernalia.
- Sec. 41. Closing of loophole to defeat criminal forfeiture through bankruptcy.
- Sec. 42. Collection of criminal forfeiture judgment.
- Sec. 43. Criminal forfeiture of property in Government custody.
- Sec. 44. Delivery of property to the Marshals Service.
- Sec. 45. Forfeiture for odometer tampering offenses.
- Sec. 46. Pre-trial restraint of substitute assets.

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

3 (a) IN GENERAL.—Chapter 46 of title 18, United
4 States Code, is amended by inserting the following new
5 section after section 982:

6 **“§ 983. Civil forfeiture procedures**

7 “(a) ADMINISTRATIVE FORFEITURES.—(1)(A) In
8 any nonjudicial civil forfeiture proceeding under a civil for-
9 feiture statute, with respect to which the agency conduct-
10 ing a seizure of property must send written notice of the
11 seizure under section 607(a) of the Tariff Act of 1930 (19
12 U.S.C. 1607(a)), such notice together with information on
13 the applicable procedures shall be sent not later than 60
14 days after the seizure to each party known to the seizing
15 agency at the time of the seizure to have an ownership
16 or possessory interest, including a lienholder’s interest, in
17 the seized article. If a party’s identity or interest is not
18 determined until after the seizure but is determined before
19 a declaration of forfeiture is entered, such written notice
20 and information shall be sent to such interested party not
21 later than 60 days after the seizing agency’s determination
22 of the identity of the party or the party’s interest.

23 “(B) If the Government does not provide notice of
24 a seizure of property in accordance with subparagraph
25 (A), it shall return the property pending the giving of such
26 notice.

1 “(2) The Government may apply to a Federal mag-
2 istrate judge (as defined in the Federal Rules of Criminal
3 Procedure) in any district where venue for a forfeiture ac-
4 tion would lie under section 1355(b) of title 28 for an ex-
5 tension of time in which to comply with paragraph (1)(A).
6 Such an extension shall be granted based on a showing
7 of good cause.

8 “(3) A person with an ownership or possessory inter-
9 est in the seized article who failed to file a claim within
10 the time period prescribed in subsection (b) may, on mo-
11 tion made not later than 2 years after the date of final
12 publication of notice of seizure of the property, move to
13 set aside a declaration of forfeiture entered pursuant to
14 section 609 of the Tariff Act of 1930 (19 U.S.C. 1609).
15 Such motion shall be granted if—

16 “(A) the Government failed to take reasonable
17 steps to provide the claimant with notice of the for-
18 feiture; and

19 “(B) the person otherwise had no actual notice
20 of the seizure within sufficient time to enable the
21 person to file a timely claim under subsection (b).

22 “(4) If the court grants a motion made under para-
23 graph (3), it shall set aside the declaration of forfeiture
24 as to the moving party’s interest pending forfeiture pro-
25 ceedings in accordance with section 602 et seq. of the Tar-

1 iff Act of 1930 (19 U.S.C. 1602 et seq.), which proceed-
2 ings shall be instituted within 60 days of the entry of the
3 order granting the motion.

4 “(5) If, at the time a motion under this subsection
5 is granted, the forfeited property has been disposed of by
6 the Government in accordance with law, the Government
7 shall institute forfeiture proceedings under paragraph (4).
8 The property which will be the subject of the forfeiture
9 proceedings instituted under paragraph (4) shall be a sum
10 of money equal to the value of the forfeited property at
11 the time it was disposed of plus interest.

12 “(6) The institution of forfeiture proceedings under
13 paragraph (4) shall not be barred by the expiration of the
14 statute of limitations under section 621 of the Tariff Act
15 of 1930 (19 U.S.C. 1621) if the original publication of
16 notice was completed before the expiration of such limita-
17 tions period.

18 “(7) A motion made under this subsection shall be
19 the exclusive means of obtaining judicial review of a dec-
20 laration of forfeiture entered by a seizing agency.

21 “(b) FILING A CLAIM.—(1) Any person claiming such
22 seized property may file a claim with the appropriate offi-
23 cial after the seizure.

24 “(2) A claim under paragraph (1) may not be filed
25 later than 30 days after—

1 “(A) the date of final publication of notice of
2 seizure; or

3 “(B) in the case of a person receiving written
4 notice, the date that such notice is received.

5 “(3) The claim shall set forth the nature and extent
6 of the claimant’s interest in the property.

7 “(c) FILING A COMPLAINT.—(1) In cases where prop-
8 erty has been seized or restrained by the Government and
9 a claim has been filed, the Attorney General shall file a
10 complaint for forfeiture in the appropriate court in the
11 manner set forth in the Supplemental Rules for Certain
12 Admiralty and Maritime Claims, or shall include a forfeit-
13 ure count in a criminal indictment or information, or both,
14 not later than 90 days after the claim was filed, or return
15 the property pending the filing of a complaint or indict-
16 ment. By mutual agreement between the Government and
17 the claimants, the 90-day filing requirement may be
18 waived.

19 “(2) The Government may apply to a Federal mag-
20 istrate judge (as defined in the Federal Rules of Criminal
21 Procedure) in any district where venue for a forfeiture ac-
22 tion would lie under section 1355(b) of title 28 for an ex-
23 tension of time in which to comply with paragraph (1).
24 Such an extension shall be granted based on a showing
25 of good cause. If the reason for the extension is that the

1 filing required by paragraph (1) would jeopardize an ongo-
2 ing criminal investigation or prosecution or court-author-
3 ized electronic surveillance, the application may be made
4 ex parte.

5 “(3) Upon the filing of a civil complaint, the claimant
6 shall file a claim and answer in accordance with the Sup-
7 plemental Rules for Certain Admiralty and Maritime
8 Claims.

9 “(d) APPOINTMENT OF COUNSEL.—(1) If the person
10 filing a claim is financially unable to obtain representation
11 by counsel and requests that counsel be appointed, the
12 court may appoint counsel to represent that person with
13 respect to the claim. In determining whether to appoint
14 counsel to represent the person filing the claim, the court
15 shall take into account—

16 “(A) the nature and value of the property sub-
17 ject to forfeiture, including the hardship to the
18 claimant from the loss of the property seized, com-
19 pared to the expense of appointing counsel;

20 “(B) the claimant’s standing to contest the for-
21 feiture; and

22 “(C) whether the claim appears to be made in
23 good faith or to be frivolous.

24 “(2) The court shall set the compensation for that
25 representation, which shall be the equivalent to that pro-

1 vided for court-appointed representation under section
2 3006A of this title, and to pay such cost, there are author-
3 ized to be appropriated such sums as are necessary as an
4 addition to the funds otherwise appropriated for the ap-
5 pointment of counsel under such section.

6 “(3) The determination of whether to appoint counsel
7 under this subsection shall be made following a hearing
8 at which the Government shall have an opportunity to
9 present evidence and examine the claimant. The testimony
10 of the claimant at such hearing shall not be admitted in
11 any other proceeding except in accordance with the rules
12 which govern the admissibility of testimony adduced in a
13 hearing on a motion to suppress evidence. Nothing in this
14 paragraph shall be construed to prohibit the admission of
15 any evidence that may be obtained in the course of civil
16 discovery in the forfeiture proceeding or through any other
17 lawful investigative means.

18 “(e) BURDEN OF PROOF.—In all suits or actions
19 brought for the civil forfeiture of any property, the burden
20 of proof at trial is on the United States to establish, by
21 a preponderance of the evidence, that the property is sub-
22 ject to forfeiture. If the Government proves that the prop-
23 erty is subject to forfeiture, the claimant shall have the
24 burden of establishing any affirmative defense by a pre-
25 ponderance of the evidence.

1 “(f) INNOCENT OWNERS.—(1) An innocent owner’s
2 interest in property shall not be forfeited in any civil for-
3 feiture action.

4 “(2) With respect to a property interest in existence
5 at the time the illegal conduct giving rise to the forfeiture
6 took place, the term ‘innocent owner’ means an owner
7 who—

8 “(A) did not know of the conduct giving rise to
9 the forfeiture; or

10 “(B) upon learning of the conduct giving rise to
11 the forfeiture, did all that reasonably could be ex-
12 pected under the circumstances to terminate such
13 use of the property.

14 “(3)(A) With respect to a property interest acquired
15 after the conduct giving rise to the forfeiture has taken
16 place, the term ‘innocent owner’ means a person who, at
17 the time that person acquired the interest in the property,
18 was a bona fide purchaser for value and was at the time
19 of the purchase reasonably without cause to believe that
20 the property was subject to forfeiture.

21 “(B) Except as provided in paragraph (4), where the
22 property subject to forfeiture is real property, and the
23 claimant uses the property as his or her primary residence
24 and is the spouse or minor child of the person who com-
25 mitted the offense giving rise to the forfeiture, an other-

1 wise valid innocent owner claim shall not be denied on the
2 ground that the claimant acquired the interest in the prop-
3 erty—

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

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

8 and not through a purchase. However, the claimant must
9 establish, in accordance with subparagraph (A), that at
10 the time of the acquisition of the property interest, the
11 claimant was reasonably without cause to believe that the
12 property was subject to forfeiture, and was an owner of
13 the property, as defined in paragraph (6).

14 “(4) Notwithstanding any provision of this section,
15 no person may assert an ownership interest under this sec-
16 tion—

17 “(A) in contraband or other property that it is
18 illegal to possess; or

19 “(B) in the illegal proceeds of a criminal act
20 unless such person was a bona fide purchaser for
21 value who was reasonably without cause to believe
22 that the property was subject to forfeiture.

23 “(5) For the purposes of paragraph (2) of this sub-
24 section a person does all that reasonably can be expected
25 if the person takes all steps that a reasonable person

1 would take in the circumstances to prevent or terminate
2 the illegal use of the person’s property. There is a rebutta-
3 ble presumption that a property owner took all the steps
4 that a reasonable person would take if the property
5 owner—

6 “(A) gave timely notice to an appropriate law
7 enforcement agency of information that led to the
8 claimant to know the conduct giving rise to a forfeit-
9 ure would occur or has occurred; and

10 “(B) in a timely fashion, revoked permission for
11 those engaging in such conduct to use the property
12 or took reasonable steps in consultation with a law
13 enforcement agency to discourage or prevent the ille-
14 gal use of the property.

15 The person is not required to take extraordinary steps
16 that the person reasonably believes would be likely to sub-
17 ject the person to physical danger.

18 “(6) As used in this subsection—

19 “(A) the term ‘civil forfeiture statute’ means
20 any provision of Federal law providing for the for-
21 feiture of property other than as a sentence imposed
22 upon conviction of a criminal offense;

23 “(B) the term ‘owner’ means a person with an
24 ownership interest in the specific property sought to
25 be forfeited, including a lien, mortgage, recorded se-

1 curity device, or valid assignment of an ownership
2 interest. Such term does not include—

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

6 “(ii) a bailee unless the bailor is identified
7 and the bailee shows a colorable legitimate in-
8 terest in the property seized; or

9 “(iii) a nominee who exercises no dominion
10 or control over the property;

11 “(C) a person shall be considered to have
12 known that the person’s property was being used or
13 was likely to be used in the commission of an illegal
14 act if the person was willfully blind.

15 “(7) If the court determines, in accordance with this
16 subsection, that an innocent owner had a partial interest
17 in property otherwise subject to forfeiture, or a joint ten-
18 ancy or tenancy by the entirety in such property, the court
19 shall enter an appropriate order—

20 “(A) severing the property;

21 “(B) transferring the property to the Govern-
22 ment with a provision that the Government
23 compensate the innocent owner to the extent of his
24 or her ownership interest once a final order of for-

1 feiture has been entered and the property has been
2 reduced to liquid assets; or

3 “(C) permitting the innocent owner to retain
4 the property subject to a lien in favor of the Govern-
5 ment, to the extent of the forfeitable interest in the
6 property, that will permit the Government to realize
7 its forfeitable interest if the property is transferred
8 to another person.

9 To effectuate the purposes of this subsection, a joint ten-
10 ancy or tenancy by the entirety shall be converted to a
11 tenancy in common by order of the court, irrespective of
12 state law.

13 “(8) An innocent owner defense under this subsection
14 is an affirmative defense.

15 “(g) MOTION TO SUPPRESS SEIZED EVIDENCE.—At
16 any time after a claim and answer are filed in a judicial
17 forfeiture proceeding, a claimant with standing to contest
18 the seizure of the property may move to suppress the
19 fruits of the seizure in accordance with the normal rules
20 regarding the suppression of illegally seized evidence. If
21 the claimant prevails on such motion, the fruits of the sei-
22 zure shall not be admitted into evidence as to that claim-
23 ant at the forfeiture trial. However, a finding that evi-
24 dence should be suppressed shall not bar the forfeiture of

1 the property based on evidence obtained independently be-
2 fore or after the seizure.

3 “(h) USE OF HEARSAY AT PRE-TRIAL HEARINGS.—

4 At any pre-trial hearing under this section in which the
5 governing standard is probable cause, the court may ac-
6 cept and consider hearsay otherwise inadmissible under
7 the Federal Rules of Evidence.

8 “(i) STIPULATIONS.—Notwithstanding the claimant’s

9 offer to stipulate to the forfeitability of the property, the
10 Government shall be entitled to present evidence to the
11 finder of fact on that issue before the claimant presents
12 any evidence in support of any affirmative defense.

13 “(j) PRESERVATION OF PROPERTY SUBJECT TO

14 FORFEITURE.—The court, before or after the filing of a
15 forfeiture complaint and on the application of the Govern-
16 ment, may—

17 “(1) enter any restraining order or injunction

18 in the manner set forth in section 413(e) of the Con-
19 trolled Substances Act (21 U.S.C. 853(e));

20 “(2) require the execution of satisfactory per-
21 formance bonds;

22 “(3) create receiverships;

23 “(4) appoint conservators, custodians, apprais-
24 ers, accountants or trustees; or

1 “(5) take any other action to seize, secure,
2 maintain, or preserve the availability of property
3 subject to forfeiture under this section.

4 “(k) EXCESSIVE FINES.—(1) At the conclusion of the
5 trial and following the entry of a verdict of forfeiture, or
6 upon the entry of summary judgment for the Government
7 as to the forfeitability of the property, the claimant may
8 petition the court to determine whether the excessive fines
9 clause of the Eighth Amendment applies, and if so, wheth-
10 er forfeiture is excessive. The claimant shall have the bur-
11 den of establishing that a forfeiture is excessive by a pre-
12 ponderance of the evidence at a hearing conducted in the
13 manner provided in Rule 43(e), Federal Rules of Civil
14 Procedure, by the Court without a jury. If the court deter-
15 mines that the forfeiture is excessive, it shall adjust the
16 forfeiture to the extent necessary to avoid the Constitu-
17 tional violation.

18 “(2) The claimant may not object to the forfeiture
19 on Eighth Amendment grounds other than as set forth
20 in paragraph (1), except that a claimant may, at any time,
21 file a motion for summary judgment asserting that even
22 if the property is subject to forfeiture, the forfeiture would
23 be excessive. The court shall rule on such motion for sum-
24 mary judgment only after the Government has had an op-
25 portunity—

1 “(A) to conduct full discovery on the Eighth
2 Amendment issue; and

3 “(B) to place such evidence as may be relevant
4 to the excessive fines determination before the court
5 in affidavits or at an evidentiary hearing.

6 “(l) PRE-DISCOVERY STANDARD.—In a judicial pro-
7 ceeding on the forfeiture of property, the Government
8 shall not be required to establish the forfeitability of the
9 property before the completion of discovery pursuant to
10 the Federal Rules of Civil Procedure, particularly Rule
11 56(f) as may be ordered by the court or if no discovery
12 is ordered before trial.

13 “(m) APPLICABILITY.—The procedures set forth in
14 this section apply to any civil forfeiture action brought
15 under any provision of this title, the Controlled Substances
16 Act, or the Immigration and Naturalization Act.”.

17 (b) CONFORMING AMENDMENT.—Section 274(b)(5)
18 of the Immigration and Naturalization Act (8 U.S.C.
19 1324(b)(5)) is amended—

20 (1) by striking “the burden of proof shall lie
21 upon such claimant, except that probable cause shall
22 be first shown for the institution of such suit or ac-
23 tion. In determining whether probable cause exists,”;
24 and

1 (2) by adding after and below subparagraph (C)
2 the following:

3 “The procedures set forth in chapter 46 of title 18, United
4 States Code, shall govern judicial forfeiture actions under
5 this section.”

6 (c) STRIKING SUPERSEDED PROVISIONS.—(1) Sec-
7 tion 981(a) of title 18, United States Code, is amended
8 by—

9 (A) striking paragraph (2); and

10 (B) striking “Except as provided in paragraph
11 (2), the” and inserting “The”.

12 (2) Paragraphs (4), (6), and (7) of section 511(a)
13 of the Controlled Substances Act (21 U.S.C. 881(a)) are
14 each amended by striking “, except that” and all that fol-
15 lows, each time it appears and inserting a period.

16 (3) Paragraphs (2) and (3) of section 2254(a) of title
17 18, United States Code, are each amended by striking “,
18 except that” and all that follows, each time it appears and
19 inserting a period.

20 (4) Section 274(b)(1) of the Immigration and Natu-
21 ralization Act (8 U.S.C. 1324(b)(1)) is amended by strik-
22 ing “, except that” and all that follows and inserting a
23 period.

1 (d) RELEASE OF PROPERTY.—Chapter 46 of title 18,
2 United States Code, is amended to add the following sec-
3 tion after section 984:

4 **“§ 985. Release of property to avoid hardship**

5 “(a) A person who has filed a claim under section
6 983 is entitled to release pursuant to subsection (b) of
7 seized property pending trial if—

8 “(1) the claimant has a possessory interest in
9 the property sufficient to establish standing to con-
10 test forfeiture and has filed a nonfrivolous claim on
11 the merits of the forfeiture action;

12 “(2) the claimant has sufficient ties to the com-
13 munity to provide assurance that the property will
14 be available at the time of the trial;

15 “(3) the continued possession by the United
16 States Government pending the final disposition of
17 forfeiture proceedings will cause substantial hard-
18 ship to the claimant, such as preventing the claim-
19 ant from working, leaving the claimant homeless, or
20 preventing the functioning of a business;

21 “(4) the claimant’s hardship outweighs the risk
22 that the property will be destroyed, damaged, lost,
23 concealed, diminished in value or transferred if it is
24 returned to the claimant during the pendency of the
25 proceeding; and

1 “(5) none of the conditions set forth in sub-
2 section (c) applies;

3 “(b)(1) The claimant may make a request for the re-
4 lease of property under this subsection at any time after
5 the claim is filed. If, at the time the request is made, the
6 seizing agency has not yet referred the claim to a United
7 States Attorney pursuant to section 608 of the Tariff Act
8 of 1930 (19 U.S.C. 1608), the request may be filed with
9 the seizing agency; otherwise the request must be filed
10 with the United States Attorney to whom the claim was
11 referred. In either case, the request must set forth the
12 basis on which the requirements of subsection (a)(1) are
13 met.

14 “(2) If the seizing agency, or the United States At-
15 torney, as the case may be, denies the request or fails to
16 act on the request within 20 days, the claimant may file
17 the request as a motion for the return of seized property
18 in the district court for the district represented by the
19 United States Attorney to whom the claim was referred,
20 or if the claim has not yet been referred, in the district
21 court that issued the seizure warrant for the property, or
22 if no warrant was issued, in any district court that would
23 have jurisdiction to consider a motion for the return of
24 seized property under Rule 41(e), Federal Rules of Crimi-
25 nal Procedure. The motion must set forth the basis on

1 which the requirements of subsection (a) have been met
2 and the steps the claimant has taken to secure the release
3 of the property from the appropriate official.

4 “(3) The district court must act on a motion made
5 pursuant to this subsection within 30 days or as soon
6 thereafter as practicable, and must grant the motion if
7 the claimant establishes that the requirements of sub-
8 section (a) have been met. If the court grants the motion,
9 the court must enter any order necessary to ensure that
10 the value of the property is maintained while the forfeiture
11 action is pending, including permitting the inspection,
12 photographing and inventory of the property, and the
13 court may take action in accordance with Rule E of the
14 Supplemental Rules for Certain Admiralty and Maritime
15 Cases. The Government is authorized to place a lien
16 against the property or to file a lis pendens to ensure that
17 it is not transferred to another person. The Government,
18 in responding to a motion under this subsection, may, in
19 appropriate cases, submit evidence ex parte in order to
20 avoid disclosing any matter relating to an ongoing crimi-
21 nal investigation or pending trial.

22 “(4) If property returned to the claimant under this
23 section is lost, stolen, or diminished in value, any insur-
24 ance proceeds shall be paid to the United States and such

1 proceeds shall be subject to forfeiture in place of the prop-
2 erty originally seized.

3 “(c) This section shall not apply if the seized prop-
4 erty—

5 “(1) is contraband, currency or other monetary
6 instrument, or electronic funds unless such currency
7 or other monetary instrument or electronic funds
8 constitutes the assets of a business which has been
9 seized,

10 “(2) is evidence of a violation of the law,

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

13 “(4) is likely to be used to commit additional
14 criminal acts if returned to the claimant.”

15 “(d) Once a motion for the release of property under
16 this section is filed, the person filing the motion may re-
17 quest that the motion be transferred to another district
18 where venue for the forfeiture action would lie under sec-
19 tion 1355(b) of title 28 pursuant to the change of venue
20 provisions in section 1404 of title 28.”

21 (e) CHAPTER ANALYSIS.—The chapter analysis for
22 chapter 46 of title 18, United States Code, is amended—

23 (1) by inserting after the item relating to sec-
24 tion 982 the following:

“983. Civil forfeiture procedures”; and

1 (2) by inserting after the item relating to sec-
2 tion 984 the following:

“985. Release of property to avoid hardship”.

3 (f) CIVIL FORFEITURE OF PROCEEDS.—Section
4 981(a)(1) of title 18, United States Code, is amended—

5 (1) in subparagraph (C) by inserting before the
6 period the following: “or any offense constituting
7 ‘specified unlawful activity’ as defined in section
8 1956(e)(7) of this title or a conspiracy to commit
9 such offense”; and

10 (2) by striking subparagraph (E).

11 (g) CRIMINAL FORFEITURE OF PROCEEDS.—Section
12 982(a)(2) of title 18, United States Code, is amended
13 by—

14 (1) striking “or” at the end of subparagraph
15 (A);

16 (2) inserting “or” after the comma at the end
17 of subparagraph (B); and

18 (3) inserting the following after subparagraph
19 (B):

20 “(C) any offense constituting ‘specified unlaw-
21 ful activity’ as defined in section 1956(e)(7) of this
22 title,”.

23 (h) UNIFORM DEFINITION OF PROCEEDS.—(1) Sec-
24 tion 981(a) of title 18, United States Code, as amended
25 by subsection (c), is amended—

1 (A) in paragraph (1), by striking “gross re-
2 ceipts” and “gross proceeds” wherever those terms
3 appear and inserting “proceeds”; and

4 (B) by adding the following after paragraph
5 (1):

6 “(2) For purposes of paragraph (1), the term ‘pro-
7 ceeds’ means property of any kind obtained, directly or
8 indirectly, as the result of the commission of the offense
9 giving rise to forfeiture, and any property traceable there-
10 to, and is not limited to the net gain or profit realized
11 from the commission of the offense. In a case involving
12 the forfeiture of proceeds of a fraud or false claim under
13 paragraph (1)(C) involving billing for goods or services
14 part of which are legitimate and part of which are not
15 legitimate, the court shall allow the claimant a deduction
16 from the forfeiture for the amount obtained in exchange
17 for the legitimate goods or services. In a case involving
18 goods or services provided by a health care provider, such
19 goods or services are not ‘legitimate’ if they were unneces-
20 sary.

21 “(3) For purposes of the provisions of subparagraphs
22 (B) through (H) of paragraph (1) which provide for the
23 forfeiture of proceeds of an offense or property traceable
24 thereto, where the proceeds have been commingled with
25 or invested in real or personal property, only the portion

1 of such property derived from the proceeds shall be re-
2 garded as property traceable to the forfeitable proceeds.
3 Where the proceeds of the offense have been invested in
4 real or personal property that has appreciated in value,
5 whether the relationship of the property to the proceeds
6 is too attenuated to support the forfeiture of such property
7 shall be determined in accordance with the excessive fines
8 clause of the Eighth Amendment.”

9 (2) Section 982 of title 18, United States Code, is
10 amended—

11 (A) in subsection (a), by striking “gross re-
12 ceipts” and “gross proceeds” wherever those terms
13 appear and inserting “proceeds”; and

14 (B) in subsection (b), by adding at the end the
15 following:

16 “(3) For purposes of subsection (a), the term ‘pro-
17 ceeds’ has the meaning set forth in section 981(a)(2).”

18 **SEC. 3. COMPENSATION FOR DAMAGE TO SEIZED PROP-**

19 **ERTY.**

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

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

24 (2) by inserting before the period the following:

25 “, except that the provisions of this chapter and sec-

1 tion 1346(b) of this title do apply to any claim based
2 on the negligent destruction, injury, or loss of goods,
3 merchandise, or other property, while in the posses-
4 sion of any officer of customs or excise or any other
5 law enforcement officer, if the property was seized
6 for the purpose of forfeiture but the interest of the
7 claimant is not forfeited”.

8 (b) DEPARTMENT OF JUSTICE.—

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

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

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

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

1 **SEC. 4. PREJUDGMENT AND POSTJUDGMENT INTEREST.**

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

4 (1) by inserting “(a) IN GENERAL.—” before
5 “Upon”; and

6 (2) adding at the end the following:

7 “(b) INTEREST.—

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

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

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

25 “(B) for any period during which no inter-
26 est is actually paid, an imputed amount of in-

1 terest that such currency, proceeds, or instru-
2 ments would have earned.

3 The United States shall provide the court with an
4 accounting of the amount actually earned or the
5 amount that would have been earned had the funds
6 been invested in obligations of, or guaranteed by, the
7 United States.

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

13 **SEC. 5. SEIZURE WARRANT REQUIREMENT.**

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

16 “(b)(1) Any property subject to forfeiture to the
17 United States under subsection (a) may be seized by the
18 Attorney General. In addition, in the case of property in-
19 volved in a violation investigated by the Secretary of the
20 Treasury or the United States Postal Service, the property
21 may also be seized by the Secretary of the Treasury or
22 the Postal Service, respectively.

23 “(2) Seizures pursuant to this section shall be made
24 pursuant to a warrant obtained in the same manner as
25 provided for a search warrant under the Federal Rules

1 of Criminal Procedure, except that a seizure may be made
2 without a warrant if—

3 “(A) a complaint for forfeiture has been filed in
4 the United States district court and the court has is-
5 sued an arrest warrant in rem pursuant to the Sup-
6 plemental Rules for Certain Admiralty and Maritime
7 Claims;

8 “(B) the seizure is made pursuant to a lawful
9 arrest or search, or if there is probable cause to be-
10 lieve that the property is subject to forfeiture and
11 another exception to the Fourth Amendment war-
12 rant requirement would apply; or

13 “(C) the property was lawfully seized by a State
14 or local law enforcement agency and has been trans-
15 ferred to a Federal agency in accordance with State
16 law.

17 “(3) Notwithstanding the provisions of Rule 41(a),
18 Federal Rules of Criminal Procedure, a seizure warrant
19 may be issued pursuant to this subsection by a judicial
20 officer in any district in which a forfeiture action against
21 the property may be filed under section 1355(b) of title
22 28, United States Code, and executed in any district in
23 which the property is found. Any motion for the return
24 of property seized under this section shall be filed in the
25 district in which the seizure warrant was issued.

1 “(4) If any person is arrested or charged in a foreign
2 country in connection with an offense that would give rise
3 to the forfeiture of property in the United States under
4 subsection (a) or under the Controlled Substances Act, the
5 Attorney General may apply to any Federal judge or mag-
6 istrate judge in the district where the property is located
7 for an ex parte order restraining the property subject to
8 forfeiture for not more than 30 days, except that the time
9 may be extended for good cause shown at a hearing con-
10 ducted in the manner provided in Rule 43(e) of the Fed-
11 eral Rules of Civil Procedure. The application for the re-
12 straining order shall set forth the nature and cir-
13 cumstances of the foreign charges and the basis for belief
14 that the person arrested or charged has property in the
15 United States that would be subject to forfeiture, and
16 shall contain a statement that the restraining order is
17 needed to preserve the availability of property for such
18 time as is necessary to receive evidence from the foreign
19 country or elsewhere in support of probable cause for the
20 seizure of the property under this subsection.

21 “(5) Once a motion for the return of seized property
22 under Rule 41(e) is filed, the person filing the motion may
23 request that the motion be transferred to another district
24 where venue for the forfeiture action would lie under sec-

1 tion 1355(b) of title 28 pursuant to the change of venue
2 provisions in section 1404 of title 28.”.

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

6 “(b) Any property subject to forfeiture to the United
7 States under this section may be seized by the Attorney
8 General in the manner set forth in Section 981(b) of title
9 18, United States Code.”.

10 **SEC. 6. ACCESS TO RECORDS IN BANK SECRECY JURISDIC-**
11 **TIONS.**

12 Section 986 of title 18, United States Code, is
13 amended by adding at the end the following:

14 “(d) ACCESS TO RECORDS LOCATED ABROAD.—In
15 any civil forfeiture case, or in any ancillary proceeding in
16 any criminal forfeiture case governed by section 413(n)
17 of the Controlled Substances Act (21 U.S.C. 853(n)),
18 where—

19 “(1) financial records located in a foreign coun-
20 try may be material—

21 “(A) to any claim or to the ability of the
22 Government to respond to such claim; or

23 “(B) in a civil forfeiture case, to the Gov-
24 ernment’s ability to establish the forfeitability
25 of the property; and

1 “(2) it is within the capacity of the claimant to
2 waive the claimant’s rights under such secrecy laws
3 or to obtain the records, so that the records can be
4 made available,
5 the refusal of the claimant to provide the records in re-
6 sponse to a discovery request or take the action necessary
7 otherwise to make the records available shall result in the
8 dismissal of the claim with prejudice. This subsection shall
9 not affect the claimant’s rights to refuse production on
10 the basis of any privilege guaranteed by the Constitution
11 or Federal laws of the United States.”.

12 **SEC. 7. ACCESS TO OTHER RECORDS.**

13 Section 6103(i)(1) of the Internal Revenue Code of
14 1986 (26 U.S.C. 6103(i)(1)) is amended—

15 (1) in subparagraph (A)(i) by inserting “or re-
16 lated civil forfeiture” after “enforcement of a specifi-
17 cally designated Federal criminal statute”; and

18 (2) in subparagraph (B)(iii) by inserting “or
19 civil forfeiture investigation or proceeding” after
20 “Federal criminal investigation or proceeding”.

21 **SEC. 8. DISCLOSURE OF GRAND JURY INFORMATION TO**
22 **FEDERAL PROSECUTORS.**

23 Section 3322(a) of title 18, United States Code, is
24 amended—

1 (1) by striking “civil forfeiture under section
2 981 of title 18, United States Code, of property de-
3 scribed in section 981(a)(1)(C) of such title” and in-
4 serting “any civil forfeiture provision of Federal
5 law”; and

6 (2) by striking “concerning a banking law violation”.

7 **SEC. 9. USE OF FORFEITED FUNDS TO PAY RESTITUTION**
8 **TO CRIME VICTIMS AND REGULATORY AGEN-**
9 **CIES.**

10 Section 981 of title 18, United States Code, is
11 amended—

12 (1) by amending subsection (e)(6) to read as
13 follows:

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

18 (2) in subsections (e)(3), (4) and (5), by strik-
19 ing “in the case of property referred to in subsection
20 (a)(1)(C)” and inserting “in the case of property
21 forfeited in connection with an offense resulting in
22 a pecuniary loss to a financial institution or regu-
23 latory agency”; and

24 (3) in subsection (e)(7), by striking “In the
25 case of property referred to in subsection (a)(1)(D)”

1 and inserting “In the case of property forfeited in
2 connection with an offense relating to the sale of as-
3 sets acquired or held by any Federal financial insti-
4 tution or regulatory agency, or person appointed by
5 such agency, as receiver, conservator or liquidating
6 agent for a financial institution”.

7 **SEC. 10. ENFORCEMENT OF FOREIGN FORFEITURE JUDG-**
8 **MENT.**

9 (a) IN GENERAL.—Chapter 163 of title 28, United
10 States Code, is amended by inserting the following new
11 section:

12 **“§ 2466. Enforcement of foreign forfeiture judgment**

13 “(a) DEFINITIONS.—As used in this section:

14 “(1) The term ‘foreign nation’ shall mean a
15 country that has become a party to the United Na-
16 tions Convention Against Illicit Traffic in Narcotic
17 Drugs and Psychotropic Substances (hereafter ‘the
18 United Nations Convention’) or a foreign jurisdic-
19 tion with which the United States has a treaty or
20 other formal international agreement in effect pro-
21 viding for mutual forfeiture assistance.

22 “(2) The term ‘value-based confiscation judg-
23 ment’ shall mean a final order of a foreign nation
24 compelling a defendant, as a consequence of the de-
25 fendant’s criminal conviction for an offense de-

1 scribed in Article 3, Paragraph 1, of the United Na-
2 tions Convention, to pay a sum of money represent-
3 ing the proceeds of such offense or property the
4 value of which corresponds to such proceeds.

5 “(b) REVIEW BY ATTORNEY GENERAL.—A foreign
6 nation seeking to have its value-based confiscation judg-
7 ment registered and enforced by a United States district
8 court under this section must first submit a request to
9 the Attorney General or the Attorney General’s designee.
10 Such request shall include—

11 “(1) a summary of the facts of the case and a
12 description of the criminal proceeding which resulted
13 in the value-based confiscation judgment;

14 “(2) certified copies of the judgment of convic-
15 tion and value-based confiscation judgment;

16 “(3) an affidavit or sworn declaration establish-
17 ing that the defendant received notice of the pro-
18 ceedings in sufficient time to enable the defendant to
19 defend against the charges that the value-based
20 confiscation judgment rendered is in force and is not
21 subject to appeal;

22 “(4) an affidavit or sworn declaration that all
23 reasonable efforts have been undertaken to enforce
24 the value-based confiscation judgment against the

1 defendant's property, if any, in the foreign country;
2 and

3 “(5) such additional information and evidence
4 as may be required by the Attorney General or the
5 Attorney General's designee.

6 The Attorney General or the Attorney General's designee,
7 in consultation with the Secretary of State or the Sec-
8 retary of State's designee, shall determine whether to cer-
9 tify the request, and such decision shall be final and not
10 subject to either judicial review or review under chapter
11 7 of title 5, United States Code.

12 “(c) JURISDICTION AND VENUE.—Where the Attor-
13 ney General or the Attorney General's designee certifies
14 a request under paragraph (b), the foreign nation may file
15 a civil proceeding in United States district court seeking
16 to enforce the foreign value-based confiscation judgment
17 as if the judgment had been entered by a court in the
18 United States. In such a proceeding, the foreign nation
19 shall be the plaintiff and the person against whom the
20 value-based confiscation judgment was entered shall be the
21 defendant. Venue shall lie in the district court for the Dis-
22 trict of Columbia or in any other district in which the de-
23 fendant or the property that may be the basis for satisfac-
24 tion of a judgment under this section may be found. The
25 United States district court shall have personal jurisdic-

1 tion over a defendant residing outside of the United States
2 if the defendant is served with process in accordance with
3 Rule 4 of the Federal Rules of Civil Procedure.

4 “(d) ENTRY AND ENFORCEMENT OF JUDGMENT.—
5 The United States district court shall enter such orders
6 as may be necessary to enforce the value-based
7 confiscation judgment on behalf of the foreign nation
8 where it finds that all of the following requirements have
9 been met:

10 “(1) The value-based confiscation judgment was
11 rendered under a system which provides impartial
12 tribunals or procedures compatible with the require-
13 ments of due process of law.

14 “(2) The foreign court had personal jurisdiction
15 over the defendant.

16 “(3) The foreign court had jurisdiction over the
17 subject matter.

18 “(4) The defendant in the proceedings in the
19 foreign court received notice of the proceedings in
20 sufficient time to enable the defendant to defend.

21 “(5) The judgment was not obtained by fraud.
22 Process to enforce a judgment under this section will be
23 in accordance with Rule 69(a) of the Federal Rules of
24 Civil Procedure.

1 “(e) FINALITY OF FOREIGN FINDINGS.—Upon a
 2 finding by the United States district court that the condi-
 3 tions set forth in subsection (d) have been satisfied, the
 4 court shall be bound by the findings of facts insofar as
 5 they are stated in the foreign judgment of conviction and
 6 value-based confiscation judgment.

7 “(f) CURRENCY CONVERSION.—Insofar as a value-
 8 based confiscation judgment requires the payment of a
 9 sum of money, the rate of exchange in effect at time when
 10 the suit to enforce is filed by the foreign nation shall be
 11 used in calculating the amount stated in the judgment
 12 submitted for registration.”.

13 (b) CONFORMING AMENDMENT.— The table of sec-
 14 tions for chapter 163, title 28, United States Code, is
 15 amended by inserting the following at the end:

“2466. Enforcement of foreign forfeiture judgment.”.

16 **SEC. 11. ADMISSIBILITY OF FOREIGN BUSINESS RECORDS.**

17 (a) IN GENERAL.—Chapter 163 of title 28, United
 18 States Code, is amended by adding at the end the follow-
 19 ing new section:

20 **“§ 2467. Foreign records**

21 “(a) In a civil proceeding in a court of the United
 22 States, including civil forfeiture proceedings and proceed-
 23 ings in the United States Claims Court and the United
 24 States Tax Court, a foreign record of regularly conducted
 25 activity, or copy of such record, obtained pursuant to an

1 official request shall not be excluded as evidence by the
2 hearsay rule if a foreign certification, also obtained pursu-
3 ant to the same official request or subsequent official re-
4 quest that adequately identifies such foreign record, at-
5 tests that—

6 “(1) such record was made, at or near the time
7 of the occurrence of the matters set forth, by (or
8 from information transmitted by) a person with
9 knowledge of those matters;

10 “(2) such record was kept in the course of a
11 regularly conducted business activity;

12 “(3) the business activity made such a record
13 as a regular practice; and

14 “(4) if such record is not the original, such
15 record is a duplicate of the original;

16 unless the source of information or the method or cir-
17 cumstances of preparation indicate lack of trust-
18 worthiness.

19 “(b) A foreign certification under this section shall
20 authenticate such record or duplicate.

21 “(c) As soon as practicable after a responsive plead-
22 ing has been filed, a party intending to offer in evidence
23 under this section a foreign record of regularly conducted
24 activity shall provide written notice of that intention to
25 each other party. A motion opposing admission in evidence

1 of such record shall be made by the opposing party and
2 determined by the court before trial. Failure by a party
3 to file such motion before trial shall constitute a waiver
4 of objection to such record or duplicate, but the court for
5 cause shown may grant relief from the waiver.

6 “(d) As used in this section, the term—

7 “(1) ‘foreign record of regularly conducted ac-
8 tivity’ means a memorandum, report, record, or date
9 compilation, in any form, of acts, events, conditions,
10 opinions, or diagnoses, maintained in a foreign coun-
11 try;

12 “(2) ‘foreign certification’ means a written dec-
13 laration made and signed in a foreign country by the
14 custodian of a record of regularly conducted activity
15 or another qualified person, that if falsely made,
16 would subject the maker to criminal penalty under
17 the law of that country;

18 “(3) ‘business’ includes business, institution,
19 association, profession, occupation, and calling of
20 every kind whether or not conducted for profit; and

21 “(4) ‘official request’ means a letter rogatory, a
22 request under an agreement, treaty or convention, or
23 any other request for information or evidence made
24 by a court of the United States or an authority of
25 the United States having law enforcement respon-

1 sibility, to a court or other authority of a foreign
2 country.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-
4 tions for chapter 163 of title 28, United States Code, is
5 amended by inserting the following at the end:

“2467. Foreign records.”.

6 **SEC. 12. CONFORMING AMENDMENTS TO TITLE 28, TO**
7 **RULES OF PROCEDURE, AND TO THE CON-**
8 **TROLLED SUBSTANCES ACT.**

9 (a) IN GENERAL.—Section 524(c) of title 28, United
10 States Code, is amended—

11 (1) by striking out “law enforcement pur-
12 poses—” in the matter preceding subparagraph (A)
13 of paragraph (1) and inserting “purposes—”;

14 (2) by striking out “(H)” in the first sentence
15 after the last subparagraph in paragraph (1) and in
16 subparagraph (A) of paragraph (8) and inserting
17 “(I)”; and

18 (3) by striking the last subparagraph (I) in
19 paragraph (1) and inserting after and below sub-
20 paragraph (I) the following: “After all reimburse-
21 ments and program related expenses have been met
22 at the end of fiscal year 1989, the Attorney General
23 may transfer deposits from the Fund to the building
24 and facilities account of the Federal prison system
25 for the construction of correctional institutions.”.

1 (b) IN REM PROCEEDINGS.—Paragraph (6) of Rule
2 C of the Supplemental Rules for Certain Admiralty and
3 Maritime Claims to the Federal Rules of Civil Procedure
4 (28 U.S.C. Appendix) is amended by striking “10 days”
5 and inserting “20 days”.

6 (c) CONTROLLED SUBSTANCES ACT.—Section 518
7 and the item relating to section 518 in the table of con-
8 tents of the Controlled Substances Act (21 U.S.C. 888)
9 are repealed.

10 **SEC. 13. INAPPLICABILITY OF THE CUSTOMS LAWS.**

11 (a) TITLE 18, UNITED STATES CODE.—Section
12 981(d) of title 18, United States Code, is amended by in-
13 serting after the first sentence the following: “However,
14 the cost bond provision of section 608 of the Tariff Act
15 of 1930 (19 U.S.C. 1608) and the burden of proof provi-
16 sion of section 615 of the Tariff Act of 1930 (19 U.S.C.
17 1615) shall not apply to any forfeiture governed by the
18 procedures set forth in this chapter.”.

19 (b) CONTROLLED SUBSTANCES ACT.—Section
20 511(d) of the Controlled Substances Act (21 U.S.C.
21 881(d)) is amended by inserting after the first sentence
22 the following: “However, the cost bond provision of section
23 608 of the Tariff Act of 1930 (19 U.S.C. 1608) and the
24 burden of proof provision of section 615 of the Tariff Act
25 of 1930 (19 U.S.C. 1615) shall not apply to any forfeiture

1 governed by the procedures set forth in chapter 46 of title
2 18, United States Code.”.

3 (c) LIBEL IN ADMIRALTY.—Section 2461(b) of title
4 28, United States Code, is amended—

5 (1) by striking “may be enforced by libel in ad-
6 miralty” and inserting “may be enforced under the
7 procedures set forth in chapter 46 of title 18 and
8 libel in admiralty if not in conflict with such proce-
9 dures, except that only the libel in admiralty proce-
10 dures shall apply to forfeitures under the customs
11 laws”; and

12 (2) by striking “may be enforced by a proceed-
13 ing by libel which shall conform as near as may be
14 to proceedings in admiralty” and inserting “may be
15 enforced under the procedures set forth in chapter
16 46 of title 18 and by a proceeding by libel, if not
17 in conflict with such procedures, which shall conform
18 as near as may be to proceedings in admiralty, ex-
19 cept that only such proceeding by libel shall apply to
20 forfeitures under the customs laws”.

21 **SEC. 14. APPLICABILITY.**

22 (a) IN GENERAL.—Unless otherwise specified in this
23 Act, the amendments made by this Act apply to forfeiture
24 proceedings commenced on or after the date of the enact-
25 ment of this Act.

1 (b) ADMINISTRATIVE FORFEITURES.—The amend-
2 ments in this Act relating to seizures and administrative
3 forfeitures shall apply to seizures and forfeitures occurring
4 on or after the 60th day after the date of the enactment
5 of this Act.

6 (c) CIVIL JUDICIAL FORFEITURES.—The amend-
7 ments in this Act relating to judicial procedures applicable
8 once a civil forfeiture complaint is filed by the Government
9 shall apply to all cases in which the forfeiture complaint
10 is filed on or after the date of the enactment of this Act.

11 (d) SUBSTANTIVE LAW.—The amendments in this
12 Act expanding substantive forfeiture law to make property
13 subject to civil or criminal forfeiture which was not pre-
14 viously subject to civil or criminal forfeiture shall apply
15 to offenses occurring after the date of the enactment of
16 this Act.

17 **SEC. 15. JURISDICTION AND VENUE IN FORFEITURE CASES.**

18 (a) ADMINISTRATIVE FORFEITURES.—Section 608 of
19 the Tariff Act of 1930 (19 U.S.C. 1608) is amended by
20 striking “to the United States Attorney for the district
21 in which seizure was made” and inserting “to the United
22 States attorney for a district in which a forfeiture action
23 could be filed pursuant to title 28, United States Code,
24 section 1355(b)”.

1 (b) JUDICIAL FORFEITURES.—Section 610 of the
2 Tariff Act of 1930 (19 U.S.C. 1610) is amended by strik-
3 ing “to the United States attorney for the district in which
4 the seizure was made” and inserting “to the United States
5 attorney for a district in which a forfeiture action could
6 be filed pursuant to title 28, United States Code, Section
7 1355(b)”.

8 (c) ADMIRALTY RULES.—The Supplemental Rules
9 for Certain Admiralty and Maritime Claims are amend-
10 ed—

11 (1) in Rule E(3), by inserting the following at
12 the end of paragraph (a): “This provision shall not
13 apply in forfeiture cases governed by section 1355 of
14 title 28 or any other statute providing for service of
15 process outside of the district.”; and

16 (2) in Rule C(2), by inserting the following
17 after “that it is within the district or will be during
18 the pendency of the action.”: “If the property is lo-
19 cated outside of the district, the complaint shall
20 state the statutory basis for the court’s exercise of
21 jurisdiction over the property”.

22 **SEC. 16. MINOR AND TECHNICAL AMENDMENTS RELATING**
23 **TO 1992 FORFEITURE AMENDMENTS.**

24 (a) CRIMINAL FORFEITURE.—Section 982(b) of title
25 18, United States Code, is amended in subsection (b)(2),

1 by striking “The substitution” and inserting “With re-
2 spect to a forfeiture under subsection (a)(1), the substi-
3 tution”.

4 (b) SUBPOENAS FOR BANK RECORDS.—Section
5 986(a) of title 18, United States Code, is amended by—

6 (1) striking “section 1956, 1957 or 1960 of
7 this title, section 5322 or 5324 of title 31, United
8 States Code” and inserting “section 981 of this
9 title”;

10 (2) striking “after” and inserting “before or
11 after”; and

12 (3) striking the last sentence.

13 (c) Section 981(d) of title 18, United States Code,
14 is amended by striking “sale of this section” and inserting
15 “sale of such property”.

16 **SEC. 17. DRUG PARAPHERNALIA TECHNICAL AMEND-**
17 **MENTS.**

18 (a) Section 511(a)(10) of the Controlled Substances
19 Act (21 U.S.C. 881(a)(10)) is amended by striking “sec-
20 tion 1822 of the Mail Order Drug Paraphernalia Control
21 Act” and inserting “section 422”.

22 (b) Section 422 of the Controlled Substances Act (21
23 U.S.C. 863) is amended—

24 (1) by deleting subsection (c); and

1 (2) by redesignating subsections (d), (e), and
2 (f) to be subsections (c), (d), and (e).

3 **SEC. 18. CERTIFICATE OF REASONABLE CAUSE.**

4 Section 2465 of title 28, United States Code, is
5 amended—

6 (1) by striking “property seized” and inserting
7 “property seized or arrested” and

8 (2) by striking “seizure” each time it appears
9 and inserting “seizure or arrest”.

10 **SEC. 19. AUTHORIZATION TO SHARE FORFEITED PROP-**
11 **ERTY WITH COOPERATING FOREIGN GOV-**
12 **ERNMENTS.**

13 (a) IN GENERAL.—Section 981(i)(1) of title 18,
14 United States Code, is amended by striking “this chapter”
15 and inserting “any provision of Federal law”.

16 (b) CONFORMING AMENDMENT.—Section 511(e)(1)
17 of the Controlled Substances Act (21 U.S.C. 881(e)(1))
18 is amended by inserting “or” at the end of subparagraph
19 (c), by striking “; or” at the end of subparagraph (D)
20 and inserting a period, and by striking subparagraph (E).

21 **SEC. 20. FORFEITURE OF PROPERTY USED TO FACILITATE**
22 **FOREIGN DRUG CRIMES.**

23 Section 981(a)(1)(B) of title 18, United States Code,
24 is amended by inserting “, or any property used to facili-
25 tate such offense” at the end before the period.

1 **SEC. 21. FORFEITURE OF PROCEEDS TRACEABLE TO FA-**
2 **CILITATING PROPERTY IN DRUG CASES.**

3 (a) CONVEYANCES.—Section 511(a)(4) of the Con-
4 trolled Substances Act (21 U.S.C. 881(a)(4)) is amend-
5 ed—

6 (1) by inserting “, and any property traceable
7 to such conveyances” after “property described in
8 paragraph (1), (2), or (9)”;

9 (2) in subparagraph (A) by inserting “, and no
10 property traceable to such conveyance,” before
11 “shall be forfeited”; and

12 (3) in subparagraphs (B) and (C) by inserting
13 “and no property traceable to such conveyance” be-
14 fore “shall be forfeited”.

15 (b) REAL PROPERTY.—Section 511(a)(7) of the Con-
16 trolled Substances Act (21 U.S.C. 881(a)(7)) is amended
17 by inserting “, and any property traceable to such prop-
18 erty” after “one year’s imprisonment”.

19 (c) NEGOTIABLE INSTRUMENTS AND SECURITIES.—
20 Section 511(a)(6) of the Controlled Substances Act (21
21 U.S.C. 881(a)(6)) is amended by inserting “, and any
22 property traceable to such property” after “this title” the
23 second time it appears.

1 **SEC. 22. FORFEITURE OF PROCEEDS OF CERTAIN FOREIGN**
2 **CRIMES.**

3 Section 981(a)(1)(B) of title 18, United States Code,
4 is amended by—

5 (1) inserting “(i)” after “against a foreign na-
6 tion involving”; and

7 (2) inserting “or (ii) any other conduct de-
8 scribed in section 1956(c)(7)(B),” after “(as such
9 term is defined for the purposes of the Controlled
10 Substances Act)”.

11 **SEC. 23. CIVIL FORFEITURE OF COINS AND CURRENCY IN**
12 **CONFISCATED GAMBLING DEVICES.**

13 Section 7 of Public Law 81–906 (15 U.S.C. 1177)
14 is amended—

15 (1) by inserting “Any coin or currency con-
16 tained in any gambling device at the time of its sei-
17 zure pursuant to the preceding sentence shall also be
18 seized and forfeited to the United States.” after the
19 first sentence; and

20 (2) in the last sentence, by inserting “, coins,
21 or currency” after “gambling devices”.

22 **SEC. 24. CLARIFICATION OF JUDICIAL REVIEW OF FOR-**
23 **FEITURE.**

24 Section 507 of the Controlled Substances Act (21
25 U.S.C. 877) is amended by adding at the end the follow-
26 ing: “This section does not apply to any findings, conclu-

1 sions, rulings, decisions, or declarations of the Attorney
 2 General, or any designee of the Attorney General, relating
 3 to the seizure, forfeiture, or disposition of forfeited prop-
 4 erty brought under this subchapter.”.

5 **SEC. 25. TECHNICAL AMENDMENTS RELATING TO OBLITER-**
 6 **ATED MOTOR VEHICLES IDENTIFICATION**
 7 **NUMBERS.**

8 Section 512 of title 18, United States Code, is
 9 amended—

10 (1) in subsection (b), by inserting “and the pro-
 11 visions of chapter 46 of this title relating to civil ju-
 12 dicial forfeitures” before “shall apply”; and

13 (2) in subsection (a)(1), by striking “does not
 14 know” and all that follows up to the semicolon and
 15 inserting “is an innocent owner as defined in section
 16 983 of this title”.

17 **SEC. 26. STATUTE OF LIMITATIONS FOR CIVIL FORFEITURE**
 18 **ACTIONS.**

19 Section 621 of the Tariff Act of 1930 (19 U.S.C.
 20 1621) is amended by inserting “, or in the case of forfeit-
 21 ure, within 2 years after the time when the involvement
 22 of the property in the alleged offense was discovered,
 23 whichever was later” after “within five years after the
 24 time when the alleged offense was discovered”.

1 **SEC. 27. DESTRUCTION OR REMOVAL OF PROPERTY TO**
2 **PREVENT SEIZURE.**

3 (a) Section 2232(a) of title 18, United States Code,
4 is amended by—

5 (1) inserting “OR SEIZURE” after “PHYSICAL
6 INTERFERENCE WITH SEARCH”;

7 (2) inserting “, including seizure for forfeit-
8 ure,” after “after seizure”;

9 (3) striking “searches and seizures” after “au-
10 thorized to make” and inserting “searches or sei-
11 zures”;

12 (4) striking “or” after “wares,”; and

13 (5) inserting “, or other property, real or per-
14 sonal,” after “merchandise.”

15 (b) Section 2232(b) of title 18, United States Code,
16 is amended by—

17 (1) inserting “OR SEIZURE” after “NOTICE OF
18 SEARCH”;

19 (2) striking “searches and seizures” after “au-
20 thorized to make” and inserting “searches or sei-
21 zures”;

22 (3) inserting “, including seizure for forfeiture”
23 after “likely to make a search or seizure”; and

24 (4) inserting “real or personal,” after “mer-
25 chandise or other property,”.

1 **SEC. 28. IN PERSONAM JUDGMENTS.**

2 Section 1963(l)(1) of title 18, United States Code,
3 and section 413(n)(1) of the Controlled Substances Act
4 (21 U.S.C. 853(n)(1)) are each amended by adding the
5 following sentence at the end: “To the extent that the
6 order of forfeiture includes only an in personam money
7 judgment against the defendant, no proceeding under this
8 subsection shall be necessary.”

9 **SEC. 29. UNIFORM PROCEDURES FOR CRIMINAL FORFEIT-**
10 **URE.**

11 (a) IN GENERAL.—Section 982(b)(1) of title 18,
12 United States Code, is amended to read as follows:

13 “(b)(1) The forfeiture of property under this section,
14 including any seizure and disposition of the property and
15 any related administrative or judicial proceeding, shall be
16 governed by the provisions of section 413 of the Com-
17 prehensive Drug Abuse Prevention and Control Act of
18 1970 (21 U.S.C 853), except for subsection 413(d) which
19 shall not apply to forfeitures under this section.”

20 (b) CONFORMING AMENDMENT.—The second para-
21 graph (6) of section 982(a), of title 18, United States
22 Code, is amended by striking “(A)”, by redesignating
23 clauses (i) and (ii) as subparagraphs (A) and (B), respec-
24 tively, by redesignating subclauses (I) and (II) as clauses
25 (i) and (ii), respectively, by striking out “this subpara-

1 graph” and inserting “this subsection”, and by striking
2 all of subparagraph (B).

3 **SEC. 30. AVAILABILITY OF CRIMINAL FORFEITURE.**

4 (a) IN GENERAL.—Section 2461 of title 28, United
5 States Code, is amended by adding the following sub-
6 section:

7 “(c) Whenever a forfeiture of property is authorized
8 in connection with a violation of an Act of Congress but
9 no specific statutory provision is made for criminal forfeit-
10 ure upon conviction or the criminal forfeiture provisions
11 contain no procedural provisions, the government may in-
12 clude the forfeiture in the indictment or information in
13 accordance with the Federal Rules of Criminal Procedure
14 and the procedures set forth in section 982 of title 18,
15 United States Code, and upon conviction, the court shall
16 order the forfeiture of the property.”.

17 (b) ORDER OF FORFEITURE.—Section 3554 of title
18 18, United States Code, is amended—

19 (1) by striking “an offense described in section
20 1962 of this title or in title II or III of the Com-
21 prehensive Drug Abuse Prevention and Control Act
22 of 1970” and inserting “an offense for which crimi-
23 nal forfeiture is authorized”; and

24 (2) by inserting “pursuant to the Federal Rules
25 of Criminal Procedure,” after “shall order,”.

1 **SEC. 31. DISCOVERY PROCEDURE FOR LOCATING FOR-**
2 **FEITED ASSETS.**

3 (a) IN GENERAL.—Section 1963(k) of title 18, Unit-
4 ed States Code, and section 413(m) of the Controlled Sub-
5 stances Act (21 U.S.C. 853(m)) are each amended by—

6 (1) adding the following at the end before the
7 period: “to the extent that the provisions of the Rule
8 are consistent with the purposes for which discovery
9 is conducted under this subsection”; and

10 (2) adding the following additional sentence:
11 “Because this subsection applies only to matters oc-
12 ccurring after the defendant has been convicted and
13 his property has been declared forfeited, the provi-
14 sions of Rule 15 requiring the consent of the defend-
15 ant and the presence of the defendant at the
16 deposition shall not apply.”

17 (b) BANK RECORDS.—Section 986 of title 18, United
18 States Code, is amended—

19 (1) in subsection (a), by striking “in rem”; and

20 (2) in subsection (c), by inserting “or Criminal”
21 after “Civil”.

22 **SEC. 32. CRIMINAL FORFEITURE FOR MONEY LAUNDERING**
23 **CONSPIRACIES.**

24 Section 982(a)(1) of title 18, United States Code, is
25 amended by inserting “, or a conspiracy to commit any
26 such offense” after “of this title”.

1 **SEC. 33. CORRECTION TO CRIMINAL FORFEITURE PROVI-**
2 **SION FOR ALIEN SMUGGLING AND OTHER IM-**
3 **MIGRATION OFFENSES.**

4 Section 982(a) of title 18, United States Code, as
5 amended by section 29(b) is amended—

6 (1) by redesignating the second paragraph (6)
7 as paragraph (7);

8 (2) by inserting “sections 274(a), 274A(a)(1),
9 or 274A(a)(2) of the Immigration and Nationality
10 Act of 1952 (8 U.S.C. 1324(a), 1324A(a)(1), and
11 1324A(a)(2)),” before “section 1425” the first time
12 it appears;

13 (3) in subparagraph (A), by striking “a viola-
14 tion of, or a conspiracy to violate, subsection (a)”
15 and inserting “the offense of which the person is
16 convicted”; and

17 (4) in subparagraph (B)(i) and (ii), by striking
18 “a violation of, or a conspiracy to violate, subsection
19 (a)” through “of this title” and inserting “the of-
20 fense of which the person is convicted”.

21 **SEC. 34. REPATRIATION OF PROPERTY PLACED BEYOND**
22 **THE JURISDICTION OF THE COURT.**

23 (a) ORDER OF FORFEITURE.—Section 413(p) of the
24 Controlled Substances Act (21 U.S.C. 853(p)) is amended
25 by inserting the following at the end: “In the case of prop-
26 erty described in paragraph (3), the court may, in addi-

1 tion, order the defendant to return the property to the
2 jurisdiction of the court so that it may be seized and for-
3 feited.”.

4 (b) PRE-TRIAL RESTRAINING ORDER.—Section
5 413(e) of the Controlled Substances Act (21 U.S.C.
6 853(e)) is amended by adding the following after para-
7 graph (3):

8 “(4) Pursuant to its authority to enter a pre-trial re-
9 straining order under this section, including its authority
10 to restrain any property forfeitable as substitute assets,
11 the court may also order the defendant to repatriate any
12 property subject to forfeiture pending trial, and to deposit
13 that property in the registry of the court, or with the Unit-
14 ed States Marshals Service or the Secretary of the Treas-
15 ury, in an interest-bearing account. Failure to comply with
16 an order under this subsection, or an order to repatriate
17 property under subsection (p), shall be punishable as a
18 civil or criminal contempt of court, and may also result
19 in an enhancement of the sentence for the offense giving
20 rise to the forfeiture under the obstruction of justice provi-
21 sion of section 3C1.1 of the United States Sentencing
22 Guidelines.”.

1 **SEC. 35. RIGHT OF THIRD PARTIES TO CONTEST FORFEIT-**
2 **URE OF SUBSTITUTE ASSETS.**

3 (a) IN GENERAL.—Section 413(c) of the Controlled
4 Substances Act (21 U.S.C. 853(c)), is amended by—

5 (1) inserting the following after the first sen-
6 tence:

7 “All right, title and interest in property described in sub-
8 section (p) of this section vests in the United States at
9 the time an indictment, information or bill of particulars
10 specifically describing the property as substitute assets is
11 filed.”; and

12 (2) by striking “Any such property that is sub-
13 sequently transferred to a person other than the de-
14 fendant” and inserting “Any property that is trans-
15 ferred to a person other than the defendant after the
16 United States’ interest in the property has vested
17 pursuant to this subsection”.

18 (b) CONFORMING AMENDMENT.—Section 413(n)(6)
19 of the Controlled Substances Act (21 U.S.C. 853(n)(6))
20 is amended by adding at the end the following sentence:
21 “In the case of substitute assets, the petitioner must show
22 that his interest in the property existed at the time the
23 property vested in the United States pursuant to sub-
24 section (c), or that he subsequently acquired his interest
25 in the property as a bona fide purchaser for value as pro-
26 vided in this subsection.”.

1 **SEC. 36. ARCHEOLOGICAL RESOURCES PROTECTION ACT.**

2 Section 8(b) of the Archeological Resources Protec-
3 tion Act of 1979 (16 U.S.C. 470gg(b)) is amended by—

4 (1) inserting “all proceeds derived directly or
5 indirectly from such violation or any property trace-
6 able thereto,” before “and all vehicles” in the un-
7 numbered paragraph;

8 (2) inserting “proceeds,” before “vehicles” in
9 paragraph (3); and

10 (3) inserting the following at the end of the
11 subsection: “If a forfeiture count is included within
12 an indictment in accordance with the Federal Rules
13 of Criminal Procedure, and the defendant is con-
14 victed of the offense giving rise to the forfeiture, the
15 forfeiture may be ordered as part of the criminal
16 sentence in accordance with the procedures for
17 criminal forfeitures in chapter 46 of title 18, United
18 States Code. Otherwise, the forfeiture shall be civil
19 in nature in accordance with the procedures for civil
20 forfeiture in said chapter 46 of title 18.”.

21 **SEC. 37. FORFEITURE OF INSTRUMENTALITIES OF TER-**
22 **RORISM, TELEMARKETING FRAUD, AND**
23 **OTHER OFFENSES.**

24 (a) CIVIL FORFEITURE.—Section 981(a)(1) of title
25 18, United States Code is amended by adding the follow-
26 ing subparagraphs:

1 “(G)(i) Any computer, photostatic reproduction
2 machine, electronic communications device or other
3 material, article, apparatus, device or thing made,
4 possessed, fitted, used or intended to be used on a
5 continuing basis to commit a violation of sections
6 513, 514, 1028 through 1032, and 1341, 1343, and
7 1344 of this title, or a conspiracy to commit such of-
8 fense, and any property traceable to such property.

9 “(ii) Any conveyance used on two or more occa-
10 sions to transport the instrumentalities used in the
11 commission of a violation of sections 1028 and 1029
12 of this title, or a conspiracy to commit such offense,
13 and any property traceable to such conveyance.

14 “(H) Any conveyance, chemicals, laboratory
15 equipment, or other material, article, apparatus, de-
16 vice or thing made, possessed, fitted, used or in-
17 tended to be used to commit—

18 “(i) an offense punishable under chapter
19 113B of this title (relating to terrorism);

20 “(ii) a violation of any of the following sec-
21 tions of the Federal explosives laws: subsections
22 (a) (1) and (3), (b) through (d), and (h)(1) of
23 section 842, and subsections (d) through (m) of
24 section 844; or

1 “(iii) any other offense enumerated in sec-
2 tion 2339A(a) of this title;
3 or a conspiracy to commit any such offense, and any
4 property traceable to such property.”.

5 (b) CRIMINAL FORFEITURE.—Section 982(a) of title
6 18, United States Code is amended by redesignating the
7 second paragraph (6) as paragraph (7) and by adding at
8 the end the following:

9 “(8)(A) The court, in imposing a sentence on a per-
10 son convicted of a violation of sections 513, 514, 1028
11 through 1032, and 1341, 1343, and 1344 of this title, or
12 a conspiracy to commit such offense, shall order the per-
13 son to forfeit to the United States any computer, photo-
14 static reproduction machine, electronic communications
15 device or other material, article, apparatus, device or thing
16 made, possessed, fitted, used or intended to be used to
17 commit such offense, and any property traceable to such
18 property.

19 “(B) The court, in imposing a sentence on a person
20 convicted of a violation of sections 1028 or 1029 of this
21 title, or a conspiracy to commit such offense, shall order
22 the person to forfeit to the United States any conveyance
23 used on two or more occasions to transport the instrumen-
24 talities used to commit such offense, and any property
25 traceable to such conveyance.

1 “(9) The court, in imposing a sentence on a person
2 convicted of—

3 “(A) an offense punishable under chapter 113B
4 of this title (relating to terrorism);

5 “(B) a violation of any of the following sections
6 of the Federal explosives laws: subsections (a)(1)
7 and (3), (b) through (d), and (h)(1) of section 842,
8 and subsections (d) through (m) of section 844; or

9 “(C) any other offense enumerated in section
10 2339A(a) of this title;

11 or a conspiracy to commit any such offense, shall order
12 the person to forfeit to the United States any conveyance,
13 chemicals, laboratory equipment, or other material, article,
14 apparatus, device or thing made, possessed, fitted, used
15 or intended to be used to commit such offense, and any
16 property traceable to such property.”.

17 **SEC. 38. FORFEITURE OF CRIMINAL PROCEEDS TRANS-**
18 **PORTED IN INTERSTATE COMMERCE.**

19 Section 1952 of title 18, United States Code, is
20 amended by adding the following subsection:

21 “(d)(1) Any proceeds distributed or intended to be
22 distributed in violation of subsection (a)(1) or a conspiracy
23 to commit such violation, or any property traceable to such
24 property, is subject to forfeiture to the United States in

1 accordance with the procedures set forth in chapter 46 of
2 this title.

3 “(2) The court, in imposing sentence on a person con-
4 victed of an offense in violation of subsection (a)(1) or
5 a conspiracy to commit such offense, shall order that the
6 person forfeit to the United States any proceeds distrib-
7 uted or intended to be distributed in the commission of
8 such offense, or any property traceable to such property,
9 in accordance with the procedures set forth in section 982
10 of this title.”.

11 **SEC. 39. FORFEITURES OF PROCEEDS OF FEDERAL FOOD,**
12 **DRUG, AND COSMETIC ACT VIOLATIONS.**

13 Chapter III of the Federal Food, Drug, and Cosmetic
14 Act is amended by adding at the end the following:

15 “CIVIL FORFEITURE OF PROCEEDS OF FEDERAL FOOD,
16 DRUG, AND COSMETIC ACT VIOLATIONS

17 “SEC. 311. (a) Any property, real or personal, that
18 constitutes, or is derived from or is traceable to the pro-
19 ceeds obtained directly or indirectly from a criminal viola-
20 tion of, or a conspiracy to commit a criminal violation of,
21 a provision of the Federal Food, Drug, and Cosmetic Act
22 (21 U.S.C. 301–395) shall be subject to judicial forfeiture
23 to the United States.

24 “(b) The provisions of chapter 46 of title 18, United
25 States Code, relating to civil forfeitures shall extend to
26 a seizure or forfeiture under this section, insofar as appli-

1 cable and not inconsistent with the provisions hereof, ex-
2 cept that such duties as are imposed upon the Secretary
3 of the Treasury under chapter 46 shall be performed with
4 respect to seizures and forfeitures under this section by
5 such officers, agents, or other persons as may be author-
6 ized or designated for that purpose by the Secretary of
7 Health and Human Services.

8 “CRIMINAL FORFEITURE OF PROCEEDS OF FEDERAL
9 FOOD, DRUG, AND COSMETIC ACT VIOLATIONS

10 “SEC. 312. (a) Any person convicted of a violation
11 of, or a conspiracy to violate, a provision of the Federal
12 Food, Drug, and Cosmetic Act (21 U.S.C. 301–395) shall
13 forfeit to the United States, irrespective of any provision
14 of State law, any property constituting, or derived from,
15 any proceeds the person obtained, directly or indirectly,
16 as the result of such violation. The court, in imposing sen-
17 tence on such person, shall order that the person forfeit
18 to the United States all property described in this sub-
19 section.

20 “(b) Property subject to forfeiture under this section,
21 any seizure and disposition thereof, and any administra-
22 tive or judicial proceeding in relation thereto, shall be gov-
23 erned by the provisions of section 413 of the Comprehen-
24 sive Drug Abuse Prevention and Control Act of 1970 (21
25 U.S.C. 853), except for subsection 413(d) which shall not
26 apply to forfeitures under this section.”.

1 **SEC. 40. FORFEITURE OF COUNTERFEIT PARAPHERNALIA.**

2 Section 492 of title 18, United States Code, is
3 amended—

4 (1) by striking the third and fourth undesig-
5 nated paragraphs;

6 (2) by designating the remaining paragraphs as
7 subsections (a) and (b);

8 (3) by adding the following new subsections:

9 “(c) For the purposes of this section, the provisions
10 of the customs laws relating to the seizure, summary and
11 judicial forfeiture, condemnation of property for violation
12 of the customs laws, the disposition of such property or
13 the proceeds from the sale of such property, the remission
14 or mitigation of such forfeitures, and the compromise of
15 claims (19 U.S.C. 1602 et seq.), insofar as they are appli-
16 cable and not inconsistent with the provisions of this sec-
17 tion, shall apply to seizures and forfeitures incurred, or
18 alleged to have been incurred, under this section, except
19 that the duties as are imposed upon the customs officer
20 or any other person with respect to the seizure and forfeit-
21 ure of property under the customs laws shall be performed
22 with respect to seizures and forfeitures of property under
23 this section by such officers, agents, or other persons as
24 may be authorized or designated for that purpose by the
25 Secretary of the Treasury.

1 “(d) All seizures and civil judicial forfeitures pursu-
2 ant to subsection (a) shall be governed by the procedures
3 set forth in chapter 46 of this title pertaining to civil for-
4 feitures. The Attorney General shall have sole responsibil-
5 ity for disposing of petitions for remission or mitigation
6 with respect to property involved in a judicial forfeiture
7 proceeding.

8 “(e) A court in sentencing a person for a violation
9 of this chapter or of sections 331–33, 335, 336, 642 or
10 1720 of this title, shall order the person to forfeit the
11 property described in subsection (a) in accordance with the
12 procedures set forth in section 982 of this title.”; and

13 (4) in subsection (b), as so designated by this
14 section, by striking “fined not more than \$100” and
15 inserting “fined under this title”.

16 **SEC. 41. CLOSING OF LOOPHOLE TO DEFEAT CRIMINAL**
17 **FORFEITURE THROUGH BANKRUPTCY.**

18 Section 413(a) of the Controlled Substances Act (21
19 U.S.C. 853(a)) is amended by inserting “, or of any bank-
20 ruptcy proceeding instituted after or in contemplation of
21 a prosecution of such violation” after “shall forfeit to the
22 United States, irrespective of any provision of State law”.

1 **SEC. 42. COLLECTION OF CRIMINAL FORFEITURE JUDG-**
2 **MENT.**

3 Section 413 of the Controlled Substances Act (21
4 U.S.C. 853) is amended by redesignating subsection (q)
5 as subsection (r) and by adding after subsection (p) the
6 following:

7 “(q) In addition to the authority otherwise provided
8 in this section, an order of forfeiture may be enforced—

9 “(1) in the manner provided for the collection
10 and payment of fines in subchapter B of chapter
11 229 of title 18, United States Code; or

12 “(2) in the same manner as a judgment in a
13 civil action.”.

14 **SEC. 43. CRIMINAL FORFEITURE OF PROPERTY IN GOVERN-**
15 **MENT CUSTODY.**

16 Section 413(f) of the Controlled Substances Act (21
17 U.S.C. 853(f)) is amended by adding the following at the
18 end: “If property subject to criminal forfeiture under this
19 section is already in the custody of the United States or
20 any agency thereof, it shall not be necessary to seize or
21 restrain the property for the purpose of criminal forfeit-
22 ure.”.

23 **SEC. 44. DELIVERY OF PROPERTY TO THE MARSHALS SERV-**
24 **ICE.**

25 Section 413(j) of the Controlled Substances Act (21
26 U.S.C. 853(j)) is amended by inserting “, and Rule C(5)

1 of the Supplemental Rules for Certain Admiralty and Mar-
2 itime Claims,” before “shall apply to a criminal forfeit-
3 ure”.

4 **SEC. 45. FORFEITURE FOR ODOMETER TAMPERING OF-**
5 **FENSES.**

6 (a) **CRIMINAL FORFEITURE.**—Section 982(a)(5) of
7 title 18, United States Code, is amended—

8 (1) by striking “or” at the end of subparagraph
9 (D);

10 (2) by inserting “or” after the semicolon at the
11 end of subparagraph (E);

12 (3) by inserting the following after subpara-
13 graph (E), as amended:

14 “(F) section 32703 of title 49, United States
15 Code (motor vehicle odometer tampering);”; and

16 (4) by adding the following after the last pe-
17 riod: “If the conviction was for a violation described
18 in subparagraph (F), the court shall also order the
19 forfeiture of any vehicles or other property involved
20 in the commission of the offense.”.

21 (b) **CIVIL FORFEITURE.**—Section 981(a)(1)(F) of
22 title 18, United States Code, is amended—

23 (1) by striking “or” at the end of clause (iv);

24 (2) by striking the period at the end of clause

25 (v) and inserting “; or”;

1 (3) by inserting the following after clause (v),
2 as amended:

3 “(vi) section 32703 of title 49, United
4 States Code (motor vehicle odometer tamper-
5 ing).”; and

6 (4) by adding the following after the last pe-
7 riod: “In the case of a violation described in clause
8 (vi), any vehicles or other property involved in the
9 commission of the offense shall also be subject to
10 forfeiture.”

11 **SEC. 46. PRE-TRIAL RESTRAINT OF SUBSTITUTE ASSETS.**

12 Section 413(e)(1) of the Controlled Substances Act
13 (21 U.S.C. 853(e)(1)) is amended—

14 (1) by striking “(a)” and inserting “(a) or (p)”;
15 and

16 (2) by adding at the end the following:
17 “To the extent that property forfeitable only pursuant to
18 subsection (p) is restrained under this paragraph, the
19 court shall afford the defendant a prompt post-restraint
20 hearing and shall exempt from such restraint such prop-
21 erty as may reasonably be needed by the defendant to pay
22 attorney’s fees, other necessary cost-of-living expenses,
23 and expenses of maintaining restrained assets pending the
24 entry of judgment in the criminal case.”.

1 **SEC. 47. HEARINGS ON PRE-TRIAL RESTRAINING ORDERS;**
2 **ASSETS NEEDED TO PAY ATTORNEY'S FEES.**

3 Section 413(e) of the Controlled Substances Act (21
4 U.S.C. 853(e)) is amended by adding the following new
5 paragraph:

6 “(5)(A) When property is restrained pre-trial
7 subject to paragraph (1)(A), the court may, at the
8 request of the defendant, hold a pre-trial hearing to
9 determine whether the restraining order should be
10 vacated or modified with respect to some or all of
11 the restrained property because—

12 “(i) it restrains property that would not be
13 subject to forfeiture even if all of the facts set
14 forth in the indictment were established as true;

15 “(ii) it causes a substantial hardship to the
16 moving party and less intrusive means exist to
17 preserve the subject property for forfeiture; or

18 “(iii) the defendant establishes that he or
19 she has no assets, other than the restrained
20 property, available to exercise his or her con-
21 stitutional right to retain counsel, and there is
22 no probable cause to believe that the restrained
23 property is subject to forfeiture.

24 “(B) In any hearing under this paragraph
25 where probable cause is at issue, the court shall
26 limit its inquiry to the existence of probable cause

1 for the forfeiture, and shall neither entertain chal-
2 lenges to the validity of the indictment, nor require
3 the Government to produce additional evidence re-
4 garding the facts of the case to support the grand
5 jury's finding of probable cause regarding the crimi-
6 nal offense giving rise to the forfeiture. In all cases,
7 the party requesting the modification of the restrain-
8 ing order shall bear the burden of proof.”.

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