

Union Calendar No. 467

105TH CONGRESS
2^D SESSION

H. R. 1965

[Report No. 105-358, Part I]

A BILL

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

OCTOBER 20, 1998

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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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

OCTOBER 30, 1997

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

OCTOBER 30, 1997

Referral to the Committees on Ways and Means and Commerce extended for a period ending not later than February 27, 1998

FEBRUARY 27, 1998

Referral to the Committees on Ways and Means and Commerce extended for a period ending not later than March 6, 1998

MARCH 6, 1998

Referral to the Committees on Ways and Means and Commerce extended for a period ending not later than March 13, 1998

MARCH 13, 1998

Referral to the Committees on Ways and Means and Commerce extended for a period ending not later than April 24, 1998

APRIL 24, 1998

Referral to the Committees on Ways and Means and Commerce extended for a period ending not later than May 8, 1998

MAY 7, 1998

Referral to the Committees on Ways and Means and Commerce extended for a period ending not later than June 19, 1998

JUNE 19, 1998

Referral to the Committees on Ways and Means and Commerce extended for a period ending not later than August 7, 1998

AUGUST 6, 1998

Referral to the Committees on Ways and Means and Commerce extended for a period ending not later than October 9, 1998

OCTOBER 9, 1998

Referral to the Committees on Ways and Means and Commerce extended for a period ending not later than October 16, 1998

OCTOBER 16, 1998

Referral to the Committees on Ways and Means and Commerce extended for a period ending not later than October 20, 1998

OCTOBER 20, 1998

Additional sponsors: Ms. PRYCE of Ohio, and Mr. GIBBONS

OCTOBER 20, 1998

Committees on Ways and Means and Commerce discharged; committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on June 19, 1997]

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,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

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

4 (b) *TABLE OF CONTENTS.*—*The table of contents of this*
 5 *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 sec-
5 tion after section 982:

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

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

1 *after the seizing agency's determination of the identity of*
2 *the party or the party's interest.*

3 “(B) *If the Government does not provide notice of a*
4 *seizure of property in accordance with subparagraph (A),*
5 *it shall return the property pending the giving of such no-*
6 *tice.*

7 “(2) *The Government may apply to a Federal mag-*
8 *istrate judge (as defined in the Federal Rules of Criminal*
9 *Procedure) in any district where venue for a forfeiture ac-*
10 *tion would lie under section 1355(b) of title 28 for an exten-*
11 *sion of time in which to comply with paragraph (1)(A).*
12 *Such an extension shall be granted based on a showing of*
13 *good cause.*

14 “(3) *A person with an ownership of possessory interest*
15 *in the seized article who failed to file a claim within the*
16 *time period prescribed in subsection (b) may, on motion*
17 *made not later than 2 years after the date of final publica-*
18 *tion of notice of seizure of the property, move to set aside*
19 *a declaration of forfeiture entered pursuant to section 609*
20 *of the Tariff Act of 1930 (19 U.S.C. 1609). Such motion*
21 *shall be granted if—*

22 “(A) *the Government failed to take reasonable*
23 *steps to provide the claimant with notice of the for-*
24 *feiture; and*

1 “(B) the person otherwise had no actual notice
2 of the seizure within sufficient time to enable the per-
3 son to file a timely claim under this subsection (b).

4 “(4) If the court grants a motion made under para-
5 graph (3), it shall set aside the declaration of forfeiture as
6 to the moving party’s interest pending forfeiture proceed-
7 ings in accordance with section 602 et seq. of the Tariff
8 Act of 1930 (19 U.S.C. 1602 et seq.), which proceedings
9 shall be instituted within 60 days of the entry of the order
10 granting the motion.

11 “(5) If, at the time a motion under this subsection is
12 granted, the forfeited property has been disposed of by the
13 Government in accordance with law, the Government shall
14 institute forfeiture proceedings under paragraph (4). The
15 property which will be the subject of the forfeiture proceed-
16 ings instituted under paragraph (4) shall be a sum of
17 money equal to the value of the forfeited property at the
18 time it was disposed of plus interest.

19 “(6) The institution of forfeiture proceedings under
20 paragraph (4) shall not be barred by the expiration of the
21 statute of limitations under section 621 of the Tariff Act
22 of 1930 (19 U.S.C. 1621) if the original publication of no-
23 tice was completed before the expiration of such limitations
24 period.

1 “(7) *A motion made under this subsection shall be the*
2 *exclusive means of obtaining judicial review of a declara-*
3 *tion of forfeiture entered by a seizing agency.*

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

7 “(2) *A claim under paragraph (1) may not be filed*
8 *later than 30 days after—*

9 “(A) *the date of final publication of notice of sei-*
10 *zure; or*

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

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

15 “(c) *FILING A COMPLAINT.—(1) In cases where prop-*
16 *erty has been seized or restrained by the Government and*
17 *a claim has been filed, the Attorney General shall file a*
18 *complaint for forfeiture in the appropriate court in the*
19 *manner set forth in the Supplemental Rules for Certain Ad-*
20 *miralty and Maritime Claims, or shall include a forfeiture*
21 *count in a criminal indictment or information, or both, not*
22 *later than 90 days after the claim was filed, or return the*
23 *property pending the filing of a complaint or indictment.*
24 *By mutual agreement between the Government and the*
25 *claimants, the 90-day filing requirement may be waived.*

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 exten-*
5 *sion of time in which to comply with paragraph (1). Such*
6 *an extension shall be granted based on a showing of good*
7 *cause. If the reason for the extension is that the filing re-*
8 *quired by paragraph (1) would jeopardize an ongoing*
9 *criminal investigation or prosecution or court-authorized*
10 *electronic surveillance, the application may be made ex*
11 *parte.*

12 “(3) *Upon the filing of a civil complaint, the claimant*
13 *shall file a claim and answer in accordance with the Sup-*
14 *plemental Rules for Certain Admiralty and Maritime*
15 *Claims.*

16 “(d) *APPOINTMENT OF COUNSEL.—(1) If the person*
17 *filing a claim is financially unable to obtain representation*
18 *by counsel and requests that counsel be appointed, the court*
19 *may appoint counsel to represent that person with respect*
20 *to the claim. In determining whether to appoint counsel to*
21 *represent the person filing the claim, the court shall take*
22 *into account—*

23 “(A) *the nature and value of the property subject*
24 *to forfeiture, including the hardship to the claimant*

1 *from the loss of the property seized, compared to the*
2 *expense of appointing counsel;*

3 *“(B) the claimant’s standing to contest the for-*
4 *feiture; and*

5 *“(C) whether the claim appears to be made in*
6 *good faith or to be frivolous.*

7 *“(2) The court shall set the compensation for that rep-*
8 *resentation, which shall be the equivalent to that provided*
9 *for court-appointed representation under section 3006A of*
10 *this title, and to pay such cost, there are authorized to be*
11 *appropriated such sums as are necessary as an addition*
12 *to the funds otherwise appropriated for the appointment of*
13 *counsel under such section.*

14 *“(3) The determination of whether to appoint counsel*
15 *under this subsection shall be made following a hearing at*
16 *which the Government shall have an opportunity to present*
17 *evidence and examine the claimant. The testimony of the*
18 *claimant at such hearing shall not be admitted in any other*
19 *proceeding except in accordance with the rules which govern*
20 *the admissibility of testimony adduced in a hearing on a*
21 *motion to suppress evidence. Nothing in this paragraph*
22 *shall be construed to prohibit the admission of any evidence*
23 *that may be obtained in the course of civil discovery in the*
24 *forfeiture proceeding or through any other lawful investiga-*
25 *tive means.*

1 “(e) *BURDEN OF PROOF.*—*In all suits or actions*
2 *brought for the civil forfeiture of any property, the burden*
3 *of proof at trial is on the United States to establish, by*
4 *a preponderance of the evidence, that the property is subject*
5 *to forfeiture. If the Government proves that the property*
6 *is subject to forfeiture, the claimant shall have the burden*
7 *of establishing any affirmative defense by a preponderance*
8 *of the evidence.*

9 “(f) *INNOCENT OWNERS.*—(1) *An innocent owner’s in-*
10 *terest in property shall not be forfeited in any civil forfeit-*
11 *ure action.*

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

16 “(A) *did not know of the conduct giving rise to*
17 *the forfeiture; or*

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

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

1 *was a bona fide purchaser for value and was at the time*
2 *of the purchase reasonably without cause to believe that the*
3 *property was subject to forfeiture.*

4 “(B) *Except as provided in paragraph (4), where the*
5 *property subject to forfeiture is real property, and the*
6 *claimant uses the property as his or her primary residence*
7 *and is the spouse or minor child of the person who commit-*
8 *ted the offense giving rise to the forfeiture, an otherwise*
9 *valid innocent owner claim shall not be denied on the*
10 *ground that the claimant acquired the interest in the*
11 *property—*

12 “(i) *in the case of a spouse, through dissolution*
13 *of marriage or by operation of law, or*

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

16 *and not through a purchase. However the claimant must*
17 *establish, in accordance with subparagraph (A), that at the*
18 *time of the acquisition of the property interest, the claimant*
19 *was reasonably without cause to believe that the property*
20 *was subject to forfeiture, and was an owner of the property,*
21 *as defined in paragraph (6).*

22 “(4) *Notwithstanding any provision of this section, no*
23 *person may assert an ownership interest under this*
24 *section—*

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

3 “(B) in the illegal proceeds of a criminal act un-
4 less such person was a bona fide purchaser for value
5 who was reasonably without cause to believe that the
6 property was subject to forfeiture.

7 “(5) For the purposes of paragraph (2) of this sub-
8 section a person does all that reasonably can be expected
9 if the person takes all steps that a reasonable person would
10 take in the circumstances to prevent or terminate the illegal
11 use of the person’s property. There is a rebuttable
12 presumption that a property owner took all the steps that
13 a reasonable person would take if the property owner—

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

18 “(B) in a timely fashion, revoked permission for
19 those engaging in such conduct to use the property or
20 took reasonable steps in consultation with a law en-
21 forcement agency to discourage or prevent the illegal
22 use of the property.

23 The person is not required to take extraordinary steps that
24 the person reasonably believes would be likely to subject the
25 person to physical danger.

1 “(6) *As used in this subsection:*

2 “(A) *The term ‘civil forfeiture statute’ means*
3 *any provision of Federal law providing for the forfeit-*
4 *ure of property other than as a sentence imposed*
5 *upon conviction of a criminal offense.*

6 “(B) *The term ‘owner’ means a person with an*
7 *ownership interest in the specific property sought to*
8 *be forfeited, including a lien, mortgage, recorded secu-*
9 *rity device, or valid assignment of an ownership in-*
10 *terest. Such term does not include—*

11 “(i) *a person with only a general unsecured*
12 *interest in, or claim against, the property or es-*
13 *tate of another;*

14 “(ii) *a bailee unless the bailor is identified*
15 *and the bailee shows a colorable legitimate inter-*
16 *est in the property seized; or*

17 “(iii) *a nominee who exercises no dominion*
18 *or control over the property;*

19 “(C) *A person shall be considered to have known*
20 *that the person’s property was being used or was like-*
21 *ly to be used in the commission of an illegal act if*
22 *the person was willfully blind.*

23 “(7) *If the court determines, in accordance with this*
24 *subsection, that an innocent owner had a partial interest*
25 *in property otherwise subject to forfeiture, or a joint ten-*

1 *ancy or tenancy by the entirety in such property, the court*
2 *shall enter an appropriate order—*

3 *“(A) severing the property;*

4 *“(B) transferring the property to the Govern-*
5 *ment with a provision that the Government com-*
6 *pensate the innocent owner to the extent of his or her*
7 *ownership interest once a final order of forfeiture has*
8 *been entered and the property has been reduced to liq-*
9 *uid assets; or*

10 *“(C) permitting the innocent owner to retain the*
11 *property subject to a lien in favor of the Government,*
12 *to the extent of the forfeitable interest in the property,*
13 *that will permit the Government to realize its forfeit-*
14 *able interest if the property is transferred to another*
15 *person.*

16 *To effectuate the purposes of this subsection, a joint tenancy*
17 *or tenancy by the entireties shall be converted to a tenancy*
18 *in common by order of the court, irrespective of state law.*

19 *“(8) An innocent owner defense under this subsection*
20 *is an affirmative defense.*

21 *“(g) MOTION TO SUPPRESS SEIZED EVIDENCE.—At*
22 *any time after a claim and answer are filed in a judicial*
23 *forfeiture proceeding, a claimant with standing to contest*
24 *the seizure of the property may move to suppress the fruits*
25 *of the seizure in accordance with the normal rules regarding*

1 *the suppression of illegally seized evidence. If the claimant*
2 *prevails on such motion, the fruits of the seizure shall not*
3 *be admitted into evidence as to that claimant at the forfeit-*
4 *ure trial. However, a finding that evidence should be sup-*
5 *pressed shall not bar the forfeiture of the property based*
6 *on evidence obtained independently before or after the sei-*
7 *zure.*

8 “(h) *USE OF HEARSAY AT PRE-TRIAL HEARINGS.—*
9 *At any pre-trial hearing under this section in which the*
10 *governing standard is probable cause, the court may accept*
11 *and consider hearsay otherwise inadmissible under the Fed-*
12 *eral Rules of Evidence.*

13 “(i) *STIPULATIONS.—Notwithstanding the claimant’s*
14 *offer to stipulate to the forfeitability of the property, the*
15 *Government shall be entitled to present evidence to the find-*
16 *er of fact on that issue before the claimant presents any*
17 *evidence in support of any affirmative defense.*

18 “(j) *PRESERVATION OF PROPERTY SUBJECT TO FOR-*
19 *FEITURE.—The court, before or after the filing of a forfeit-*
20 *ure complaint and on the application of the Government,*
21 *may—*

22 “(1) *enter any restraining order or injunction in*
23 *the manner set forth in section 413(e) of the Con-*
24 *trolled Substances Act (21 U.S.C. 853(e));*

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

3 “(3) create receiverships;

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

6 “(5) take any other action to seize, secure, main-
7 tain, or preserve the availability of property subject
8 to forfeiture under this section.

9 “(k) *EXCESSIVE FINES.*—(1) *At the conclusion of the*
10 *trial and following the entry of a verdict of forfeiture, or*
11 *upon the entry of summary judgment for the Government*
12 *as to the forfeitability of the property, the claimant may*
13 *petition the court to determine whether the excessive fines*
14 *clause of the Eighth Amendment applies, and if so, whether*
15 *forefeiture is excessive. The claimant shall have the burden*
16 *of establishing that a forfeiture is excessive by a preponder-*
17 *ance of the evidence at a hearing conducted in the manner*
18 *provided in Rule 43(e), Federal Rules of Civil Procedure,*
19 *by the Court without a jury. If the court determines that*
20 *the forfeiture is excessive, it shall adjust the forfeiture to*
21 *the extent necessary to avoid the Constitutional violation.*

22 “(2) *The claimant may not object to the forfeiture on*
23 *Eighth Amendment grounds other than as set forth in para-*
24 *graph (1), except that a claimant may, at any time, file*
25 *a motion for summary judgment asserting that even if the*

1 *property is subject to forfeiture, the forfeiture would be ex-*
2 *cessive. The court shall rule on such motion for summary*
3 *judgment only after the Government has had an*
4 *opportunity—*

5 “(A) *to conduct full discovery on the Eighth*
6 *Amendment issue; and*

7 “(B) *to place such evidence as may be relevant*
8 *to the excessive fines determination before the court in*
9 *affidavits or at an evidentiary hearing.*

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

17 “(m) *APPLICABILITY.—The procedures set forth in this*
18 *section apply to any civil forfeiture action brought under*
19 *any provision of this title, the Controlled Substances Act,*
20 *or the Immigration and Naturalization Act.”.*

21 “(b) *CONFORMING AMENDMENT.—Section 274(b)(5) of*
22 *the Immigration and Naturalization Act (8 U.S.C.*
23 *1324(b)(5)) is amended—*

24 (1) *by striking “the burden of proof shall lie*
25 *upon such claimant, except that probable cause shall*

1 *be first shown for the institution of such suite or ac-*
2 *tion. In determining whether probable cause exists,”;*
3 *and*

4 *(2) by adding after and below subparagraph (C)*
5 *the following:*

6 *“The procedures set forth in chapter 46 of title 18, United*
7 *States Code, shall govern judicial forfeiture actions under*
8 *this section.”*

9 *(c) STRIKING SUPERSEDED PROVISIONS.—(1) Section*
10 *981(a) of title 18, United States Code, is amended by—*

11 *(A) striking paragraph (2); and*

12 *(B) striking “Except as provided in paragraph*
13 *(2), the” and inserting “The”.*

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

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

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

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

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

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

8 “(1) *the claimant has a possessory interest in the*
9 *property sufficient to establish standing to contest for-*
10 *feiture and has filed a nonfrivolous claim on the mer-*
11 *its of the forfeiture action;*

12 “(2) *the claimant has sufficient ties to the com-*
13 *munity to provide assurance that the property will be*
14 *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 hardship*
18 *to the claimant, such as preventing the claimant from*
19 *working, leaving the claimant homeless, or preventing*
20 *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 subsection
2 (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 with
10 the United States Attorney to whom the claim was referred.
11 In either case, the request must set forth the basis on which
12 the requirements of subsection (a)(1) are met.

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

1 *has taken to secure the release of the property from the ap-*
2 *propriate official.*

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

21 “(4) *If property returned to the claimant under this*
22 *section is lost, stolen, or diminished in value, any insurance*
23 *proceeds shall be paid to the United States and such pro-*
24 *ceeds shall be subject to forfeiture in place of the property*
25 *originally seized.*

1 “(c) This section shall not apply if the seized
2 property—

3 “(1) is contraband, currency or other monetary
4 instrument, or electronic funds unless such currency
5 or other monetary instrument or electronic funds con-
6 stitutes the assets of a business which has been seized,

7 “(2) is evidence of a violation of the law;

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

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

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

18 “(e) CHAPTER ANALYSIS.—The table of sections for
19 chapter 46 of title 18, United States Code, is amended—

20 “(1) by inserting after the item relating to sec-
21 tion 982 the following:

“983. Civil forfeiture procedures.”; and

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

“985. Release of property to avoid hardship.”

1 “(f) *CIVIL FORFEITURE OF PROCEEDS.*—Section
2 981(a)(1) of title 18, United States Code, is amended—

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

8 “(2) by striking subparagraph (E).

9 “(g) *CRIMINAL FORFEITURE OF PROCEEDS.*—Section
10 982(a)(2) of title 18, United States Code, is amended by—

11 “(1) striking “or” at the end of subparagraph
12 (A);

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

15 “(3) inserting the following after subparagraph
16 (B):

17 “(C) any offense constituting ‘specified unlawful
18 activity’ as defined in section 1956(c)(7) of this
19 title.”.

20 “(h) *UNIFORM DEFINITION OF PROCEEDS.*—(1) Sec-
21 tion 981(a) of title 18, United States Code, as amended by
22 subsection (c), is amended—

23 “(A) in paragraph (1), by striking “gross re-
24 ceipts” and “gross proceeds” wherever those terms ap-
25 pear and inserting “proceeds”; and

1 “(B) by adding the following after paragraph
2 (1):

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

17 “(3) For purposes of the provisions of subparagraphs
18 (B) through (H) of paragraph (1) which provide for the
19 forfeiture of proceeds of an offense or property traceable
20 thereto, where the proceeds have been commingled with or
21 invested in real or personal property, only the portion of
22 such property derived from the proceeds shall be regarded
23 as property traceable to the forfeitable proceeds. Where the
24 proceeds of the offense have been invested in real or personal
25 property that has appreciated in value, whether the rela-

1 *tionship of the property to the proceeds is too attenuated*
 2 *to support the forfeiture of such property shall be deter-*
 3 *mined in accordance with the excessive fines clause of the*
 4 *Eighth Amendment.”.*

5 (2) *Section 982 of title 18, United States Code, is*
 6 *amended—*

7 (A) *in subsection (a), by striking “gross receipts”*
 8 *and “gross proceeds” wherever those terms appear*
 9 *and inserting “proceeds”; and*

10 (B) *in subsection (b), by adding at the end the*
 11 *following:*

12 “(3) *For purposes of subsection (a), the term ‘proceeds’*
 13 *has the meaning set forth in section 981(a)(2).”.*

14 **SEC. 3. COMPENSATION FOR DAMAGE TO SEIZED PROP-**
 15 **ERTY.**

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

18 (1) *by striking “law-enforcement” and inserting*
 19 *“law enforcement”; and*

20 (2) *by inserting before the period the following:*

21 “, *except that the provisions of this chapter and sec-*
 22 *tion 1346(b) of this title do apply to any claim based*
 23 *on the negligent destruction, injury, or loss of goods,*
 24 *merchandise, or other property, while in the posses-*
 25 *sion of any officer of customs or excise or any other*

1 *law enforcement officer, if the property was seized for*
2 *the purpose of forfeiture but the interest of the claim-*
3 *ant is not forfeited”.*

4 *(b) DEPARTMENT OF JUSTICE.—*

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

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

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

18 *“(B) is presented by an officer or employee*
19 *of the United States Government and arose with-*
20 *in the scope of employment.*

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

22 *Section 2465 of title 28, United States Code, is*
23 *amended—*

24 *(1) by inserting “(a) IN GENERAL.—” before*
25 *“Upon”; and*

1 (2) *adding at the end the following:*

2 “(b) *INTEREST.—*

3 “(1) *POST-JUDGMENT.—Upon entry of judgment*
4 *for the claimant in any proceeding to condemn or for-*
5 *feit property seized or arrested under any Act of Con-*
6 *gress, the United States shall be liable for post-judg-*
7 *ment interest as set forth in section 1961 of this title.*

8 “(2) *PRE-JUDGMENT.—The United States shall*
9 *not be liable for prejudgment interest, except that in*
10 *cases involving currency, proceeds of an interlocutory*
11 *sale, or other negotiable instruments, the United*
12 *States shall disgorge to the claimant any funds*
13 *representing—*

14 “(A) *interest actually paid to the United*
15 *States from the date of seizure or arrest of the*
16 *property that resulted from the investment of the*
17 *property in an interest-bearing account or in-*
18 *strument; and*

19 “(B) *for any period during which no inter-*
20 *est is actually paid, an imputed amount of in-*
21 *terest that such currency, proceeds, or instru-*
22 *ments would have earned.*

23 *The United States shall provide the court with an ac-*
24 *counting of the amount actually earned or the*
25 *amount that would have been earned had the funds*

1 *been invested in obligations of, or guaranteed by, the*
2 *United States.*

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

8 **SEC. 5. SEIZURE WARRANT REQUIREMENT.**

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

11 “(b)(1) *Any property subject to forfeiture to the United*
12 *States under subsection (a) may be seized by the Attorney*
13 *General. In addition, in the case of property involved in*
14 *a violation investigated by the Secretary of the Treasury*
15 *or the United States Postal Service, the property may also*
16 *be seized by the Secretary of the Treasury or the Postal*
17 *Service, respectively.*

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

23 “(A) *a complaint for forfeiture has been filed in*
24 *the United States district court and the court has*
25 *issued an arrest warrant in rem pursuant to the Sup-*

1 *plemental Rules for Certain Admiralty and Maritime*
2 *Claims;*

3 “(B) *the seizure is made pursuant to a lawful*
4 *arrest or search, or if there is probable cause to believe*
5 *that the property is subject to forfeiture and another*
6 *exception to the Fourth Amendment warrant require-*
7 *ment would apply; or*

8 “(C) *the property was lawfully seized by a State*
9 *or local law enforcement agency and has been trans-*
10 *ferred to a Federal agency in accordance with State*
11 *law.*

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

21 “(4) *If any person is arrested or charged in a foreign*
22 *country in connection with an offense that would give rise*
23 *to the forfeiture of property in the United States under sub-*
24 *section (a) or under the Controlled Substances Act, the At-*
25 *torney General may apply to any Federal judge or mag-*

1 *istrate judge in the district where the property is located*
2 *for an ex parte order restraining the property subject to*
3 *forfeiture for not more than 30 days, except that the time*
4 *may be extended for good cause shown at a hearing con-*
5 *ducted in the manner provided in Rule 43(e) of the Federal*
6 *Rules of Civil Procedure. The application for the restrain-*
7 *ing order shall set forth the nature and circumstances of*
8 *the foreign charges and the basis for belief that the person*
9 *arrested or charged has property in the United States that*
10 *would be subject to forfeiture, and shall contain a statement*
11 *that the restraining order is needed to preserve the avail-*
12 *ability of property for such time as is necessary to receive*
13 *evidence from the foreign country or elsewhere in support*
14 *of probable cause for the seizure of the property under this*
15 *subsection.*

16 “(5) *Once a motion for the return of seized property*
17 *under Rule 41(e) is filed, the person filing the motion may*
18 *request that the motion be transferred to another district*
19 *where venue for the forfeiture action would lie under section*
20 *1355(b) of title 28 pursuant to the change of venue provi-*
21 *sions in section 1404 of title 28.”.*

22 **(b) DRUG FORFEITURES.**—*Section 511(b) of the Con-*
23 *trolled Substances Act (21 U.S.C. 881(b)) is amended to*
24 *read as follows:*

1 “(b) Any property subject to forfeiture to the United
2 States under this section may be seized by the Attorney
3 General in the manner set forth in Section 981(b) of title
4 18, United States Code.”.

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

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

9 “(d) *ACCESS TO RECORDS LOCATED ABROAD.*—In
10 any civil forfeiture case, or in any ancillary proceeding in
11 any criminal forfeiture case governed by section 413(n) of
12 the Controlled Substances Act (21 U.S.C. 853(n)), where—

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

15 “(A) to any claim or to the ability of the
16 Government to respond to such claim; or

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

20 “(2) it is within the capacity of the claimant to
21 waive the claimant’s rights under such secrecy laws
22 or to obtain the records, so that the records can be
23 made available,

24 the refusal of the claimant to provide the records in response
25 to a discovery request or take the action necessary otherwise

1 *to make the records available shall result in the dismissal*
2 *of the claim with prejudice. This subsection shall not affect*
3 *the claimant’s rights to refuse production on the basis of*
4 *any privilege guaranteed by the Constitution or Federal*
5 *laws of the United States.”.*

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

7 *Section 6103(i)(1) of the Internal Revenue Code of*
8 *1986 (26 U.S.C. 6103(i)(1)) is amended—*

9 *(1) in subparagraph (A)(i) by inserting “or re-*
10 *lated civil forfeiture” after “enforcement of a specifi-*
11 *cally designed Federal criminal statute”; and*

12 *(2) in subparagraph (B)(iii) by inserting “or*
13 *civil forfeiture investigation or proceeding” after*
14 *“Federal criminal investigation or proceeding”.*

15 **SEC. 8. DISCLOSURE OF GRAND JURY INFORMATION TO**
16 **FEDERAL PROSECUTORS.**

17 *Section 3322(a) of title 18, United States Code, is*
18 *amended—*

19 *(1) by striking “civil forfeiture under section 981*
20 *of title 18, United States Code, of property described*
21 *in section 981(a)(1)(C) of such title” and inserting*

22 *“any civil forfeiture provision of Federal law”; and*

23 *(2) by striking “concerning a banking law viola-*
24 *tion”.*

1 **SEC. 9. USE OF FORFEITED FUNDS TO PAY RESTITUTION**
2 **TO CRIME VICTIMS AND REGULATORY AGEN-**
3 **CIES.**

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

6 *(1) by amending subsection (e)(6) to read as fol-*
7 *lows:*

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

12 *(2) in subsections (e)(3), (4) and (5), by striking*
13 *“in the case of property referred to in subsection*
14 *(a)(1)(C)” and inserting “in the case of property for-*
15 *feited in connection with an offense resulting in a pe-*
16 *cuniary loss to a financial institution or regulatory*
17 *agency”;* and

18 *(3) in subsection (e)(7), by striking “In the case*
19 *of property referred to in subsection (a)(1)(D)” and*
20 *inserting “In the case of property forfeited in connec-*
21 *tion with an offense relating to the sale of assets ac-*
22 *quired or held by any Federal financial institution or*
23 *regulatory agency, or person appointed by such agen-*
24 *cy, as receiver, conservator or liquidating agent for a*
25 *financial institution”.*

1 **SEC. 10. ENFORCEMENT OF FOREIGN FORFEITURE JUDG-**
2 **MENT.**

3 (a) *IN GENERAL.*—Chapter 163 of title 28, United
4 States Code, is amended by inserting the following new sec-
5 tion:

6 **“§ 2466. Enforcement of foreign forfeiture judgment**

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

8 “(1) The term ‘foreign nation’ shall mean a
9 country that has become a party to the United Na-
10 tions Convention Against Illicit Traffic in Narcotic
11 Drugs and Psychotropic Substances (hereafter ‘the
12 United Nations Convention’) or a foreign jurisdiction
13 with which the United States has a treaty or other
14 formal international agreement in effect providing for
15 mutual forfeiture assistance.

16 “(2) The term ‘value-based confiscation judg-
17 ment’ shall mean a final order of a foreign nation
18 compelling a defendant, as a consequence of the de-
19 fendant’s criminal conviction for an offense described
20 in Article 3, Paragraph 1, of the United Nations Con-
21 vention, to pay a sum of money representing the pro-
22 ceeds of such offense or property the value of which
23 corresponds to such proceeds.

24 “(b) *REVIEW BY ATTORNEY GENERAL.*—A foreign na-
25 tion seeking to have its value-based confiscation judgment
26 registered and enforced by a United States district court

1 *under this section must first submit a request to the Attor-*
2 *ney General or the Attorney General’s designee. Such re-*
3 *quest shall include—*

4 “(1) *a summary of the facts of the case and a*
5 *description of the criminal proceeding which resulted*
6 *in the value-based confiscation judgment;*

7 “(2) *certified copies of the judgment of conviction*
8 *and value-based confiscation judgment;*

9 “(3) *an affidavit or sworn declaration establish-*
10 *ing that the defendant received notice of the proceed-*
11 *ings in sufficient time to enable the defendant to de-*
12 *fend against the charges that the value-based confisca-*
13 *tion judgment rendered is in force and is not subject*
14 *to appeal;*

15 “(4) *an affidavit or sworn declaration that all*
16 *reasonable efforts have been undertaken to enforce the*
17 *value-based confiscation judgment against the defend-*
18 *ant’s property, if any, in the foreign country; and*

19 “(5) *such additional information and evidence*
20 *as may be required by the Attorney General or the At-*
21 *torney General’s designee.*

22 *The Attorney General or the Attorney General’s designee,*
23 *in consultation with the Secretary of State or the Secretary*
24 *of State’s designee, shall determine whether to certify the*
25 *request, and such decision shall be final and not subject to*

1 *either judicial review or review under chapter 7 of title 5,*
2 *United States Code.*

3 “(c) *JURISDICTION AND VENUE.*—*Where the Attorney*
4 *General or the Attorney General’s designee certifies a re-*
5 *quest under paragraph (b), the foreign nation may file a*
6 *civil proceeding in United States district court seeking to*
7 *enforce the foreign value-based confiscation judgment as if*
8 *the judgment had been entered by a court in the United*
9 *States. In such a proceeding, the foreign nation shall be*
10 *the plaintiff and the person against whom the value-based*
11 *confiscation judgment was entered shall be the defendant.*
12 *Venue shall lie in the district court for the District of Co-*
13 *lumbia or in any other district in which the defendant or*
14 *the property that may be the basis for satisfaction of a judg-*
15 *ment under this section may be found. The United States*
16 *district court shall have personal jurisdiction over a defend-*
17 *ant residing outside of the United States if the defendant*
18 *is served with process in accordance with Rule 4 of the Fed-*
19 *eral Rules of Civil Procedure.*

20 “(d) *ENTRY AND ENFORCEMENT OF JUDGMENT.*—*The*
21 *United States district court shall enter such orders as may*
22 *be necessary to enforce the value-based confiscation judg-*
23 *ment on behalf of the foreign nation where it finds that*
24 *all of the following requirements have been met:*

1 “(1) *The value-based confiscation judgment was*
2 *rendered under a system which provides impartial*
3 *tribunals or procedures compatible with the require-*
4 *ments of due process of law.*

5 “(2) *The foreign court had personal jurisdiction*
6 *over the defendant.*

7 “(3) *The foreign court had jurisdiction over the*
8 *subject matter.*

9 “(4) *The defendant in the proceedings in the for-*
10 *foreign court received notice of the proceedings in suffi-*
11 *cient time to enable the defendant to defend.*

12 “(5) *The judgment was not obtained by fraud.*
13 *Process to enforce a judgment under this section will be in*
14 *accordance with Rule 69(a) of the Federal Rules of Civil*
15 *Procedure.*

16 “(e) *FINALITY OF FOREIGN FINDINGS.—Upon a find-*
17 *ing by the United States district court that the conditions*
18 *set forth in subsection (d) have been satisfied, the court shall*
19 *be bound by the findings of facts insofar as they are stated*
20 *in the foreign judgment of conviction and value-based con-*
21 *fiscation judgment.*

22 “(f) *CURRENCY CONVERSION.—Insofar as a value*
23 *based confiscation judgment requires the payment of a sum*
24 *of money, the rate of exchange in effect at time when the*
25 *suit to enforce is filed by the foreign nation shall be used*

1 *in calculating the amount stated in the judgment submitted*
2 *for registration.”.*

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

“2466. Enforcement of foreign forfeiture judgment.”.

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

7 (a) *IN GENERAL.*—*Chapter 163 of title 28, United*
8 *States Code, is amended by adding at the end the following*
9 *new section:*

10 **“§2467. Foreign records**

11 *“(a) In a civil proceeding in a court of the United*
12 *States, including civil forfeiture proceedings and proceed-*
13 *ings in the United States Claims Court and the United*
14 *States Tax Court, a foreign record of regularly conducted*
15 *activity, or copy of such record, obtained pursuant to an*
16 *official request shall not be excluded as evidence by the hear-*
17 *say rule if a foreign certification, also obtained pursuant*
18 *to the same official request or subsequent official request*
19 *that adequately identifies such foreign record, attests that—*

20 *“(1) such record was made, at or near the time*
21 *of the occurrence of the matters set forth, by (or from*
22 *information transmitted by) a person with knowledge*
23 *of those matters;*

24 *“(2) such record was kept in the course of a reg-*
25 *ularly conducted business activity;*

1 “(3) *the business activity made such a record as*
2 *a regular practice; and*

3 “(4) *if such record is not the original, such*
4 *record is a duplicate of the original;*
5 *unless the source of information or the method or cir-*
6 *cumstances of preparation indicate lack of trustworthiness.*

7 “(b) *A foreign certification under this section shall au-*
8 *thenticate such record or duplicate.*

9 “(c) *As soon as practicable after a responsive pleading*
10 *has been filed, a party intending to offer in evidence under*
11 *this section a foreign record of regularly conducted activity*
12 *shall provide written notice of that intention to each other*
13 *party. A motion opposing admission in evidence of such*
14 *record shall be made by the opposing party and determined*
15 *by the court before trial. Failure by a party to file such*
16 *motion before trial shall constitute a waiver of objection to*
17 *such record or duplicate, but the court for cause shown may*
18 *grant relief from the waiver.*

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

20 “(1) *‘foreign record of regularly conducted activ-*
21 *ity’ means a memorandum, report, record, or data*
22 *compilation, in any form, of acts, events, conditions,*
23 *opinions, or diagnoses, maintained in a foreign coun-*
24 *try;*

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

7 “(3) ‘business’ includes business, institution, as-
 8 sociation, profession, occupation, and calling of every
 9 kind whether or not conducted for profit; and

10 “(4) ‘official request’ means a letter rogatory, a
 11 request under an agreement, treaty or convention, or
 12 any other request for information or evidence made
 13 by a court of the United States or an authority of the
 14 United States having law enforcement responsibility,
 15 to a court or other authority of a foreign country.”.

16 (b) *CONFORMING AMENDMENT.*—The table of sections
 17 for chapter 163 of title 28, United States Code, is amended
 18 by inserting the following at the end:

 “2467. Foreign records.”.

19 **SEC. 12. CONFORMING AMENDMENTS TO TITLE 28, TO**
 20 **RULES OF PROCEDURE, AND TO THE CON-**
 21 **TROLLED SUBSTANCES ACT.**

22 (a) *IN GENERAL.*—Section 524(c) of title 28, United
 23 States Code, is amended—

1 (1) by striking out “law enforcement
2 purposes—” in the matter preceding subparagraph
3 (A) of paragraph (1) and inserting “purposes—”;

4 (2) by striking out “(H)” in the first sentence
5 after the last subparagraph in paragraph (1) and in
6 subparagraph (A) of paragraph (8) and inserting
7 “(I)”; and

8 (3) by striking the last subparagraph (I) in
9 paragraph (1) and inserting after and below subpara-
10 graph (I) the following: “After all reimbursements
11 and program related expenses have been met at the
12 end of fiscal year 1989, the Attorney General may
13 transfer deposits from the Fund to the building and
14 facilities account of the Federal prison system for the
15 construction of correctional institutions.”.

16 (b) *IN REM PROCEEDINGS*.—Paragraph (6) of Rule C
17 of the Supplemental Rules for Certain Admiralty and Mar-
18 itime Claims to the Federal Rules of Civil Procedure (28
19 U.S.C. Appendix) is amended by striking “10 days” and
20 inserting “20 days”.

21 (c) *CONTROLLED SUBSTANCES ACT*.—Section 518 and
22 the item relating to section 518 in the table of contents of
23 the Controlled Substances Act (21 U.S.C. 888) are repealed.

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

2 (a) *TITLE 18, UNITED STATES CODE.*—Section 981(d)
3 of title 18, United States Code, is amended by inserting
4 after the first sentence the following: “However, the cost
5 bond provision of section 608 of the Tariff Act of 1930 (19
6 U.S.C. 1608) and the burden of proof provision of section
7 615 of the Tariff Act of 1930 (19 U.S.C. 1615) shall not
8 apply to any forfeiture governed by the procedures set forth
9 in this chapter.”.

10 (b) *CONTROLLED SUBSTANCES ACT.*—Section 511(d)
11 of the Controlled Substances Act (21 U.S.C. 881(d)) is
12 amended by inserting after the first sentence the following:
13 “However, the cost bond provision of section 608 of the Tar-
14 iff Act of 1930 (19 U.S.C. 1608) and the burden of proof
15 provision of section 615 of the Tariff Act of 1930 (19 U.S.C.
16 1615) shall not apply to any forfeiture governed by the pro-
17 cedures set forth in chapter 46 of title 18, United States
18 Code.”.

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

21 (1) by striking “may be enforced by libel in ad-
22 miralty” and inserting “may be enforced under the
23 procedures set forth in chapter 46 of title 18 and libel
24 in admiralty if not in conflict with such procedures,
25 except that only the libel in admiralty procedures

1 *shall apply to forfeitures under the customs laws*”;
2 *and*

3 (2) *by striking “may be enforced by a proceeding*
4 *by libel which shall conform as near as may be to*
5 *proceedings in admiralty” and inserting “may be en-*
6 *forced under the procedures set forth in chapter 46 of*
7 *title 18 and by a proceeding by libel, if not in conflict*
8 *with such procedures, which shall conform as near as*
9 *may be to proceedings in admiralty, except that only*
10 *such proceeding by libel shall apply to forfeitures*
11 *under the customs laws”.*

12 **SEC. 14. APPLICABILITY.**

13 (a) *IN GENERAL.*—*Unless otherwise specified in this*
14 *Act, the amendments made by this Act apply to forfeiture*
15 *proceedings commenced on or after the date of the enact-*
16 *ment of this Act.*

17 (b) *ADMINISTRATIVE FORFEITURES.*—*The amend-*
18 *ments in this Act relating to seizures and administrative*
19 *forfeitures shall apply to seizures and forfeitures occurring*
20 *on or after the 60th day after the date of the enactment*
21 *of this Act.*

22 (c) *CIVIL JUDICIAL FORFEITURES.*—*The amendments*
23 *in this Act relating to judicial procedures applicable once*
24 *a civil forfeiture complaint is filed by the Government shall*

1 *apply to all cases in which the forfeiture complaint is filed*
2 *on or after the date of the enactment of this Act.*

3 (d) *SUBSTANTIVE LAW.*—*The amendments in this Act*
4 *expanding substantive forfeiture law to make property sub-*
5 *ject to civil or criminal forfeiture which was not previously*
6 *subject to civil or criminal forfeiture shall apply to offenses*
7 *occurring after the date of the enactment of this Act.*

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

9 (a) *ADMINISTRATIVE FORFEITURES.*—*Section 608 of*
10 *the Tariff Act of 1930 (19 U.S.C. 1608) is amended by*
11 *striking “to the United States Attorney for the district in*
12 *which seizure was made” and inserting “to the United*
13 *States attorney for a district in which a forfeiture action*
14 *could be filed pursuant to title 28, United States Code, sec-*
15 *tion 1355(b)”.*

16 (b) *JUDICIAL FORFEITURES.*—*Section 610 of the Tar-*
17 *iff Act of 1930 (19 U.S.C. 1610) is amended by striking*
18 *“to the United States attorney for the district in which the*
19 *seizure was made” and inserting “to the United States at-*
20 *torney for a district in which a forfeiture action could be*
21 *filed pursuant to title 28, United States Code, section*
22 *1355(b)”.*

23 (c) *ADMIRALTY RULES.*—*The Supplemental Rules for*
24 *Certain Admiralty and Maritime Claims are amended—*

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

6 (2) in Rule C(2), by inserting the following after
7 “that it is within the district or will be during the
8 pendency of the action.”: “If the property is located
9 outside of the district, the complaint shall state the
10 statutory basis for the court’s exercise of jurisdiction
11 over the property.”.

12 **SEC. 16. MINOR AND TECHNICAL AMENDMENTS RELATING**
13 **TO 1992 FORFEITURE AMENDMENTS.**

14 (a) **CRIMINAL FORFEITURE.**—Section 982 of title 18,
15 *United States Code*, is amended in subsection (b)(2), by
16 striking “The substitution” and inserting “With respect to
17 a forfeiture under subsection (a)(1), the substitution”.

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

20 (1) striking “section 1956, 1957, or 1960 of this
21 title, section 5322 or 5324 of title 31, *United States*
22 *Code*” and inserting “section 981 of this title”;

23 (2) striking “after” and inserting “before or
24 after”; and

25 (3) striking the last sentence.

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

4 **SEC. 17. DRUG PARAPHERNALIA TECHNICAL AMENDMENTS.**

5 (a) Section 511(a)(10) of the Controlled Substances
6 Act (21 U.S.C. 881(a)(10)) is amended by striking “section
7 1822 of the Mail Order Drug Paraphernalia Control Act”
8 and inserting “section 422”.

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

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

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

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

15 Section 2465 of title 28, United States Code, is
16 amended—

17 (1) by striking “property seized” and inserting
18 “property seized or arrested” and

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

1 **SEC. 19. AUTHORIZATION TO SHARE FORFEITED PROPERTY**
2 **WITH COOPERATING FOREIGN GOVERN-**
3 **MENTS.**

4 (a) *IN GENERAL.*—Section 981(i)(1) of title 18, United
5 States Code, is amended by striking “this chapter” and in-
6 serting “any provision of Federal law”.

7 (b) *CONFORMING AMENDMENT.*—Section 511(e)(1) of
8 the Controlling Substances Act (21 U.S.C. 881(e)(1)) is
9 amended by inserting “or” at the end of subparagraph (C),
10 by striking “; or” at the end of subparagraph (D) and in-
11 serting a period, and by striking subparagraph (E).

12 **SEC. 20. FORFEITURE OF PROPERTY USED TO FACILITATE**
13 **FOREIGN DRUG CRIMES.**

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

17 **SEC. 21. FORFEITURE OF PROCEEDS TRACEABLE TO FACILI-**
18 **TATING PROPERTY IN DRUG CASES.**

19 (a) *CONVEYANCES.*—Section 511(a)(4) of the Con-
20 trolled Substances Act (21 U.S.C. 881(a)(4)) is amended by
21 inserting “, and any property traceable to such conveyance”
22 after “property described in paragraph (1), (2), or (9)”.

23 (b) *REAL PROPERTY.*—Section 511(a)(7) of the Con-
24 trolled Substances Act (21 U.S.C. 881(a)(7)) is amended by
25 inserting “, and any property traceable to such property”
26 after “one year’s imprisonment”.

1 (c) *NEGOTIABLE INSTRUMENTS AND SECURITIES.*—
2 *Section 511(a)(6) of the Controlled Substances Act (21*
3 *U.S.C. 881(a)(6)) is amended by inserting ”, and any prop-*
4 *erty traceable to such property” after “this title” the second*
5 *time it appears.*

6 **SEC. 22. FORFEITURE OF PROCEEDS OF CERTAIN FOREIGN**
7 **CRIMES.**

8 *Section 981(a)(1)(B) of title 18, United States Code,*
9 *is amended by—*

10 (1) *inserting “(i)” after “against a foreign na-*
11 *tion involving”; and*

12 (2) *inserting “or (ii) any other conduct described*
13 *in section 1956(c)(7)(B)” after “(as such term is de-*
14 *efined for the purposes of the Controlled Substances*
15 *Act)”.*

16 **SEC. 23. CIVIL FORFEITURE OF COINS AND CURRENCY IN**
17 **CONFISCATED GAMBLING DEVICES.**

18 *Section 7 of Public Law 81–906 (15 U.S.C. 1177) is*
19 *amended—*

20 (1) *by inserting “Any coin or currency con-*
21 *tained in any gambling device at the time of its sei-*
22 *zure pursuant to the preceding sentence shall also be*
23 *seized and forfeited to the United States.” after the*
24 *first sentence; and*

1 **SEC. 26. STATUTE OF LIMITATIONS FOR CIVIL FORFEITURE**
2 **ACTIONS.**

3 *Section 621 of the Tariff Act of 1930 (19 U.S.C. 1621)*
4 *is amended by inserting “, or in the case of forfeiture, with-*
5 *in 2 years after the time when the involvement of the prop-*
6 *erty in the alleged offense was discovered, whichever was*
7 *later” after “within five years after the time when the al-*
8 *leged offense was discovered”.*

9 **SEC. 27. DESTRUCTION OR REMOVAL OF PROPERTY TO**
10 **PREVENT SEIZURE.**

11 *(a) Section 2232(a) of title 18, United States Code,*
12 *is amended by—*

13 *(1) inserting “OR SEIZURE” after “PHYSICAL*
14 *INTERFERENCE WITH SEARCH”;*

15 *(2) inserting “, including seizure for forfeiture,”*
16 *after “after seizure”;*

17 *(3) striking “searches and seizures” after “au-*
18 *thorized to make” and inserting “searches or sei-*
19 *zures”;*

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

21 *(5) inserting “, or other property, real or per-*
22 *sonal,” after “merchandise”.*

23 *(b) Section 2232(b) of title 18, United States Code, is*
24 *amended by—*

25 *(1) inserting “OR SEIZURE” after “NOTICE OF*
26 *SEARCH”;*

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

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

6 (4) inserting “real or personal,” after “merchan-
7 dise or other property.”.

8 **SEC. 28. IN PERSONAM JUDGMENTS.**

9 Section 1963(l)(1) of title 18, United States Code, and
10 section 413(n)(1) of the Controlled Substances Act (21
11 U.S.C. 853(n)(1)) are each amended by adding the follow-
12 ing sentence at the end: “To the extent that the order of
13 forfeiture includes only an in personam money judgment
14 against the defendant, no proceeding under this subsection
15 shall be necessary.”.

16 **SEC. 29. UNIFORM PROCEDURES FOR CRIMINAL FORFEIT-**
17 **URE.**

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

20 “(b)(1) The forfeiture of property under this section,
21 including any seizure and disposition of the property and
22 any related administrative or judicial proceeding, shall be
23 governed by the provisions of section 413 of the Comprehen-
24 sive Drug Abuse Prevention and Control Act of 1970 (21

1 *U.S.C. 853), except for subsection 413(d) which shall not*
2 *apply to forfeitures under this section.”.*

3 (b) *CONFORMING AMENDMENT.*—*The second para-*
4 *graph (6) of section 982(a), of title 18, United States Code,*
5 *is amended by striking “(A)”, by redesignating clauses (i)*
6 *and (ii) as subparagraphs (A) and (B), respectively, by re-*
7 *designating subclauses (I) and (II) as clauses (i) and (ii),*
8 *respectively, by striking out “this subparagraph” and in-*
9 *serting “this subsection”, and by striking all of subpara-*
10 *graph (B).*

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

12 (a) *IN GENERAL.*—*Section 2461 of title 28, United*
13 *States Code, is amended by adding the following subsection:*

14 “(c) *Whenever a forfeiture of property is authorized*
15 *in connection with a violation of an Act of Congress but*
16 *no specific statutory provision is made for criminal forfeit-*
17 *ure upon conviction or the criminal forfeiture provisions*
18 *contain no procedural provisions, the government may in-*
19 *clude the forfeiture in the indictment or information in ac-*
20 *cordance with the Federal Rules of Criminal Procedure and*
21 *the procedures set forth in section 982 of title 18, United*
22 *States Code, and upon conviction, the court shall order the*
23 *forfeiture of the property.”.*

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

1 (1) *by striking “an offense described in section*
 2 *1962 of this title or in title II or III of the Com-*
 3 *prehensive Drug Abuse Prevention and Control Act of*
 4 *1970” and inserting “an offense for which criminal*
 5 *forfeiture is authorized”;* and

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

8 **SEC. 31. DISCOVERY PROCEDURE FOR LOCATING FOR-**
 9 **FEITED ASSETS.**

10 (a) *IN GENERAL.*—Section 1963(k) of title 18, United
 11 States Code, and section 413(m) of the Controlled Sub-
 12 stances Act (21 U.S.C. 853(m)) are each amended by—

13 (1) *adding the following at the end before the pe-*
 14 *riod: “to the extent that the provisions of the Rule are*
 15 *consistent with the purposes for which discovery is*
 16 *conducted under this subsection”;* and

17 (2) *adding the following additional sentence:*
 18 *“Because this subsection applies only to matters oc-*
 19 *curing after the defendant has been convicted and his*
 20 *property has been declared forfeited, the provisions of*
 21 *Rule 15 requiring the consent of the defendant and*
 22 *the presence of the defendant at the deposition shall*
 23 *not apply.”*

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

1 (1) *in subsection (a), by striking “in rem”; and*
2 (2) *in subsection (c), by inserting “or Criminal”*
3 *after “Civil”.*

4 **SEC. 32. CRIMINAL FORFEITURE FOR MONEY LAUNDERING**
5 **CONSPIRACIES.**

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

9 **SEC. 33. CORRECTION TO CRIMINAL FORFEITURE PROVI-**
10 **SION FOR ALIEN SMUGGLING AND OTHER IM-**
11 **MIGRATION OFFENSES.**

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

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

16 (2) *by inserting “sections 274A(a), 274(a)(1), or*
17 *274A(a)(2) of the Immigration and Nationality Act*
18 *of 1952 (8 U.S.C. 1324(a), 1324A(a)(1), and*
19 *1324A(a)(2)),” before “section 1425” the first time it*
20 *appears;*

21 (3) *in subparagraph (A), by striking “a viola-*
22 *tion of, or a conspiracy to violate, subsection (a)” and*
23 *inserting “the offense of which the person is con-*
24 *victed”; and*

1 *criminal contempt of court, and may also result in an en-*
2 *hancement of the sentence for the offense giving rise to the*
3 *forfeiture under the obstruction of justice provision of sec-*
4 *tion 3C1.1 of the United States Sentencing Guidelines.”.*

5 **SEC. 35. RIGHT OF THIRD PARTIES TO CONTEST FORFEIT-**
6 **URE OF SUBSTITUTE ASSETS.**

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

9 (1) *inserting the following after the first sen-*
10 *tence:*

11 *“All right, title and interest in property described in sub-*
12 *section (p) of this section vests in the United States at the*
13 *time an indictment, information or bill of particulars spe-*
14 *cifically describing the property as substitute assets is*
15 *filed.”; and*

16 (2) *by striking “Any such property that is subse-*
17 *quently transferred to a person other than the defend-*
18 *ant” and inserting “Any property that is transferred*
19 *to a person other than the defendant after the United*
20 *States’ interest in the property has vested pursuant to*
21 *this subsection”.*

22 (b) *CONFORMING AMENDMENT.*—Section 413(n)(6) of
23 the Controlled Substances Act (21 U.S.C. 853(n)(6)) is
24 amended by adding at the end the following sentence: “In
25 the case of substitute assets, the petitioner must show that

1 *his interest in the property existed at the time the property*
2 *vested in the United States pursuant to subsection (c), or*
3 *that he subsequently acquired his interest in the property*
4 *as a bona fide purchaser for value as provided in this sub-*
5 *section.”.*

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

7 *Section 8(b) of the Archeological Resources Protection*
8 *Act of 1979 (16 U.S.C. 470gg(b)) is amended by—*

9 *(1) inserting “all proceeds derived directly or in-*
10 *directly from such violation or any property traceable*
11 *thereto,” before “and all vehicles” in the unnumbered*
12 *paragraph;*

13 *(2) inserting “proceeds,” before “vehicles” in*
14 *paragraph (3); and*

15 *(3) inserting the following at the end of the sub-*
16 *section: “If a forfeiture count is included within an*
17 *indictment in accordance with the Federal Rules of*
18 *Criminal Procedure, and the defendant is convicted of*
19 *the offense giving rise to the forfeiture, the forfeiture*
20 *may be ordered as part of the criminal sentence in*
21 *accordance with the procedures for criminal forfeit-*
22 *ures in chapter 46 of title 18, United States Code.*
23 *Otherwise, the forfeiture shall be civil in nature in ac-*
24 *cordance with the procedures for civil forfeiture in*
25 *said chapter 46 of title 18.”.*

1 **SEC. 37. FORFEITURE OF INSTRUMENTALITIES OF TERROR-**
2 **ISM, TELEMARKETING FRAUD, AND OTHER**
3 **OFFENSES.**

4 (a) *CIVIL FORFEITURE.*—Section 981(a)(1) of title 18,
5 *United States Code*, is amended by adding the following
6 *subparagraphs*:

7 “(G)(i) *Any computer, photostatic reproduction*
8 *machine, electronic communications device or other*
9 *material, article, apparatus, device or thing made,*
10 *possessed, fitted, used or intended to be used on a con-*
11 *tinuing basis to commit a violation of sections 513,*
12 *514, 1028 through 1032, and 1341, 1343, and 1344*
13 *of this title, or a conspiracy to commit such offense,*
14 *and any property traceable to such property.*

15 (ii) *Any conveyance used on two or more occa-*
16 *sions to transport the instrumentalities used in the*
17 *commission of a violation of sections 1028 and 1029*
18 *of this title, or a conspiracy to commit such offense,*
19 *and any property traceable to such conveyance.*

20 “(H) *Any conveyance, chemicals, laboratory*
21 *equipment, or other material, article, apparatus, de-*
22 *vice or thing made, possessed, fitted, used or intended*
23 *to be used to commit—*

24 “(i) *an offense punishable under chapter*
25 *113B of this title (relating to terrorism);*

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

6 “(iii) any other offense enumerated in sec-
7 tion 2339A(a) of this title;
8 or a conspiracy to commit any such offense, and any
9 property traceable to such property.”.

10 (b) *CRIMINAL FORFEITURE*.—Section 982(a) of title
11 18, United States Code, is amended by adding at the end
12 the following:

13 “(8)(A) The court, in imposing a sentence on a person
14 convicted of a violation of sections 513, 514, 1028 through
15 1032, and 1341, 1343, and 1344 of this title, or a conspir-
16 acy to commit such offense, shall order the person to forfeit
17 to the United States any computer, photostatic reproduction
18 machine, electronic communications device or other mate-
19 rial, article, apparatus, device or thing made, possessed,
20 fitted, used or intended to be used to commit such offense,
21 and any property traceable to such property.

22 “(B) The court, in imposing a sentence on a person
23 convicted of a violation of sections 1028 or 1029 of this title,
24 or a conspiracy to commit such offense, shall order the per-
25 son to forfeit to the United States any conveyance used on

1 *two or more occasions to transport the instrumentalities*
2 *used to commit such offense, and any property traceable*
3 *to such conveyance.*

4 “(9) *The court, in imposing a sentence on a person*
5 *convicted of—*

6 “(A) *an offense punishable under chapter 113B*
7 *of this title (relating to terrorism);*

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

12 “(C) *any other offense enumerated in section*
13 *2339A(a) of this title;*

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

20 **SEC. 38. FORFEITURE OF CRIMINAL PROCEEDS TRANS-**
21 **PORTED IN INTERSTATE COMMERCE.**

22 *Section 1952 of title 18, United States Code, is amend-*
23 *ed by adding the following subsection:*

24 “(d)(1) *Any proceeds distributed or intended to be dis-*
25 *tributed in violation of subsection (a)(1) or a conspiracy*

1 *to commit such violation, or any property traceable to such*
 2 *property, is subject to forfeiture to the United States in ac-*
 3 *cordance with the procedures set forth in chapter 46 of this*
 4 *title.*

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

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

14 *Chapter III of the Federal Food, Drug, and Cos-*
 15 *metic Act is amended by adding at the end the follow-*
 16 *ing:*

17 “*CIVIL FORFEITURE OF PROCEEDS OF FEDERAL FOOD,*
 18 *DRUG, AND COSMETIC ACT VIOLATIONS*

19 “*SEC. 311. (a) Any property, real or personal, that*
 20 *constitutes, or is derived from or is traceable to the proceeds*
 21 *obtained directly or indirectly from a criminal violation*
 22 *of, or a conspiracy to commit a criminal violation of, a*
 23 *provision of this Act shall be subject to judicial forfeiture*
 24 *to the United States.*

25 “(b) *The provisions of chapter 46 of title 18, United*
 26 *States Code, relating to civil forfeitures shall extend to a*

1 *seizure or forfeiture under this section, insofar as applicable*
2 *and not inconsistent with the provisions hereof, except that*
3 *such duties as are imposed upon the Secretary of the Treas-*
4 *ury under chapter 46 shall be performed with respect to*
5 *seizures and forfeitures under this section by such officers,*
6 *agents, or other persons as may be authorized or designated*
7 *for that purpose by the Secretary of Health and Human*
8 *Services.*

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

11 *“SEC. 312. (a) Any person convicted of a violation of,*
12 *or a conspiracy to violate, a provision of this Act shall for-*
13 *feit to the United States, irrespective of any provision of*
14 *State law, any property constituting, or derived from, any*
15 *proceeds the person obtained, directly or indirectly, as the*
16 *result of such violation. The court, in imposing sentence on*
17 *such person, shall order that the person forfeit to the United*
18 *States all property described in this subsection.*

19 *“(b) Property subject to forfeiture under this section,*
20 *any seizure and disposition thereof, and any administrative*
21 *or judicial proceeding in relation thereto, shall be governed*
22 *by the provisions of section 413 of the Comprehensive Drug*
23 *Abuse Prevention and Control Act of 1970 (21 U.S.C. 853),*
24 *except for subsection 413(d) which shall not apply to forfeit-*
25 *ures 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 undesignated*
5 *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 of*
10 *the customs laws relating to the seizure, summary and judi-*
11 *cial forfeiture, condemnation of property for violation of the*
12 *customs laws, the disposition of such property or the pro-*
13 *ceeds from the sale of such property, the remission or miti-*
14 *gation of such forfeitures, and the compromise of claims (19*
15 *U.S.C. 1602 et seq.), insofar as they are applicable and not*
16 *inconsistent with the provisions of this section, shall apply*
17 *to seizures and forfeitures incurred, or alleged to have been*
18 *incurred, under this section, except that the duties as are*
19 *imposed upon the customs officer or any other person with*
20 *respect to the seizure and forfeiture of property under the*
21 *customs laws shall be performed with respect to seizures and*
22 *forfeitures of property under this section by such officers,*
23 *agents, or other persons as may be authorized or designated*
24 *for that purpose by the Secretary of the Treasury.*

25 *“(d) All seizures and civil judicial forfeitures pursuant*
26 *to subsection (a) shall be governed by the procedures set*

1 *forth in chapter 46 of this title pertaining to civil forfeit-*
2 *ures. The Attorney General shall have sole responsibility for*
3 *disposing of petitions for remission or mitigation with re-*
4 *spect to property involved in a judicial forfeiture proceed-*
5 *ing.*

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

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

14 **SEC. 41. CLOSING OF LOOPHOLE TO DEFEAT CRIMINAL**
15 **FORFEITURE THROUGH BANKRUPTCY.**

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

21 **SEC. 42. COLLECTION OF CRIMINAL FORFEITURE JUDG-**
22 **MENT.**

23 *Section 413 of the Controlled Substances Act (21*
24 *U.S.C. 853) is amended by redesignating subsection (q) as*

1 subsection (r) and by adding after subsection (p) the follow-
2 ing:

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

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

8 “(2) in the same manner as a judgment in a
9 civil action.”.

10 **SEC. 43. CRIMINAL FORFEITURE OF PROPERTY IN GOVERN-**
11 **MENT CUSTODY.**

12 Section 413(f) of the Controlled Substances Act (21
13 U.S.C. 843(f)) is amended by adding the following at the
14 end: “If property subject to criminal forfeiture under this
15 section is already in the custody of the United States or
16 any agency thereof, it shall not be necessary to seize or re-
17 strain the property for the purpose of criminal forfeiture.”.

18 **SEC. 44. DELIVERY OF PROPERTY OF THE MARSHALS**
19 **SERVICE.**

20 Section 413(j) of the Controlled Substances Act (21
21 U.S.C. 853(j)) is amended by inserting “, and Rule C(5)
22 of the Supplemental Rules for Certain Admiralty and Mar-
23 itime Claims,” before “shall apply to a criminal forfeiture.”

1 **SEC. 45. FORFEITURE FOR ODOMETER TAMPERING**
2 **OFFENSES.**

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

5 (1) by striking “or” at the end of subparagraph
6 (D);

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

9 (3) by inserting the following after subparagraph
10 (E), as amended:

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

13 (4) by adding the following after the last period:
14 “If the conviction was for a violation described in
15 subparagraph (F), the court shall also order the for-
16 feiture of any vehicles or other property involved in
17 the commission of the offense.”.

18 (b) *CIVIL FORFEITURE.*—Section 981(a)(1)(F) of title
19 18, United States Code, is amended—

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

21 (2) by striking the period at the end of clause (v)
22 and inserting “; or”;

23 (3) by inserting the following after clause (v), as
24 amended:

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

4 (4) by adding the following after the last period:
5 *“In the case of a violation described in clause (vi),*
6 *any vehicles or other property involved in the com-*
7 *mission of the offense shall also be subject to forfeit-*
8 *ure.”*

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

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

12 (1) by striking “(a)” and inserting “(a) or (p)”;
13 and

14 (2) by adding at the end the following:
15 *“To the extent that property forfeitable only pursuant to*
16 *subsection (p) is restrained under this paragraph, the court*
17 *shall afford the defendant a prompt post-restraint hearing*
18 *and shall exempt from such restraint such property as may*
19 *reasonably be needed by the defendant to pay attorney’s fees,*
20 *other necessary cost-of-living expenses, and expenses of*
21 *maintaining restrained assets pending the entry of judg-*
22 *ment 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 subject*
7 *to paragraph (1)(A), the court may, at the request of the*
8 *defendant, hold a pre-trial hearing to determine whether the*
9 *restraining order should be vacated or modified with respect*
10 *to some or all of the restrained property because—*

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

14 *“(ii) it causes a substantial hardship to the mov-*
15 *ing party and less intrusive means exist to preserve*
16 *the subject property for forfeiture; or*

17 *“(iii) the defendant establishes that he or she has*
18 *no assets, other than the restrained property, avail-*
19 *able to exercise his or her constitutional right to re-*
20 *tain counsel, and there is no probable cause to believe*
21 *that the restrained property is subject to forfeiture.*

22 *“(B) In any hearing under this paragraph where prob-*
23 *able cause is at issue, the court shall limit its inquiry to*
24 *the existence of probable cause for the forfeiture, and shall*
25 *neither entertain challenges to the validity of the indict-*
26 *ment, nor require the Government to produce additional*

1 *evidence regarding the facts of the case to support the grand*
2 *jury's finding of probable cause regarding the criminal of-*
3 *fense giving rise to the forfeiture. In all cases, the party*
4 *requesting the modification of the restraining order shall*
5 *bear the burden of proof."*