

115TH CONGRESS
1ST SESSION

S. 642

To restore the integrity of the Fifth Amendment to the Constitution of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2017

Mr. PAUL (for himself, Mr. LEE, Mr. CRAPO, Mr. KING, Mr. UDALL, and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To restore the integrity of the Fifth Amendment to the Constitution of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fifth Amendment In-
5 tegrity Restoration Act of 2017” or the “FAIR Act”.

6 **SEC. 2. CIVIL FORFEITURE PROCEEDINGS.**

7 Section 983 of title 18, United States Code, is
8 amended—

9 (1) in subsection (b)(2)(A)—

1 (A) by striking “, and the property subject
 2 to forfeiture is real property that is being used
 3 by the person as a primary residence,”; and

4 (B) by striking “, at the request of the
 5 person, shall insure” and inserting “shall en-
 6 sure”;

7 (2) in subsection (c)—

8 (A) in paragraph (1), by striking “a pre-
 9 ponderance of the evidence” and inserting
 10 “clear and convincing evidence”;

11 (B) in paragraph (2), by striking “a pre-
 12 ponderance of the evidence” and inserting
 13 “clear and convincing evidence”; and

14 (C) by striking paragraph (3) and insert-
 15 ing the following:

16 “(3) if the Government’s theory of forfeiture is
 17 that the property was used to commit or facilitate
 18 the commission of a criminal offense, or was in-
 19 volved in the commission of a criminal offense, the
 20 Government shall establish, by clear and convincing
 21 evidence, that—

22 “(A) there was a substantial connection
 23 between the property and the offense; and

24 “(B) the owner of any interest in the
 25 seized property—

1 “(i) used the property with intent to
2 facilitate the offense; or

3 “(ii) knowingly consented or was will-
4 fully blind to the use of the property by
5 another in connection with the offense.”;
6 and

7 (3) in subsection (d)(2)(A), by striking “an
8 owner who” and all that follows through “upon
9 learning” and inserting “an owner who, upon learn-
10 ing”.

11 **SEC. 3. DISPOSITION OF FORFEITED PROPERTY.**

12 (a) REVISIONS TO CONTROLLED SUBSTANCES
13 ACT.—Section 511(e) of the Controlled Substances Act
14 (21 U.S.C. 881(e)) is amended—

15 (1) in paragraph (1)—

16 (A) in the matter preceding subparagraph
17 (A), by striking “civilly or”;

18 (B) by striking subparagraph (A); and

19 (C) by redesignating subparagraphs (B)
20 through (E) as subparagraphs (A) through (D),
21 respectively;

22 (2) in paragraph (2)—

23 (A) in subparagraph (A), in the matter
24 preceding clause (i), by striking “subparagraph

1 (B) of paragraph (1)” and inserting “para-
 2 graph (1)(A)”;

3 (B) in subparagraph (B), by striking “ac-
 4 cordance with section 524(c) of title 28,” and
 5 inserting “the General Fund of the Treasury of
 6 the United States”;

7 (3) by striking paragraph (3);

8 (4) by redesignating paragraph (4) as para-
 9 graph (3); and

10 (5) in paragraph (3), as redesignated—

11 (A) in subparagraph (A), by striking
 12 “paragraph (1)(B)” and inserting “paragraph
 13 (1)(A)”;

14 (B) in subparagraph (B), in the matter
 15 preceding clause (i), by striking “paragraph
 16 (1)(B) that is civilly or” and inserting para-
 17 graph “(1)(A) that is”.

18 (b) REVISIONS TO TITLE 18.—Chapter 46 of title 18,
 19 United States Code, is amended—

20 (1) in section 981(e)—

21 (A) by striking “is authorized” and all that
 22 follows through “or forfeiture of the property;”
 23 and inserting “shall forward to the Treasurer of
 24 the United States any proceeds of property for-
 25 feited pursuant to this section for deposit in the

1 General Fund of the Treasury or transfer such
 2 property on such terms and conditions as such
 3 officer may determine—”;

4 (B) by redesignating paragraphs (3), (4),
 5 (5), (6), and (7) as paragraphs (1), (2), (3),
 6 (4), and (5), respectively; and

7 (C) in the matter following paragraph (5),
 8 as so redesignated—

9 (i) by striking the first, second, third,
 10 sixth, and eighth sentences; and

11 (ii) by striking “paragraphs (3), (4),
 12 and (5)” and inserting “paragraphs (1),
 13 (2), and (3)”; and

14 (2) in section 983(g)—

15 (A) in paragraph (3), by striking “gross-
 16 ly”; and

17 (B) in paragraph (4), by striking “gross-
 18 ly”.

19 (c) TARIFF ACT OF 1930.—The Tariff Act of 1930
 20 (19 U.S.C. 1304 et seq.) is amended—

21 (1) in section 613A(a) (19 U.S.C. 1613b(a))—

22 (A) in paragraph (1)—

23 (i) in subparagraph (D), by inserting
 24 “and” after the semicolon;

1 (ii) in subparagraph (E), by striking

2 “; and” and inserting a period; and

3 (iii) by striking subparagraph (F);

4 and

5 (B) in paragraph (2)—

6 (i) by striking “(A) Any payment”

7 and inserting “Any payment”; and

8 (ii) by striking subparagraph (B); and

9 (2) in section 616 (19 U.S.C. 1616a)—

10 (A) in the section heading, by striking

11 “**TRANSFER OF FORFEITED PROPERTY**”

12 and inserting “**DISMISSAL IN FAVOR OF**

13 **FORFEITURE UNDER STATE LAW**”;

14 (B) in subsection (a), by striking “(a) The

15 Secretary” and inserting “The Secretary”; and

16 (C) by striking subsections (b) through

17 (d).

18 (d) TITLE 31.—Section 9703 of title 31, United

19 States Code, is amended—

20 (1) in subsection (a)(1)—

21 (A) by striking subparagraph (G); and

22 (B) by redesignating subparagraphs (H)

23 through (J) as subparagraphs (G) through (I),

24 respectively; and

25 (2) in subsection (b)—

1 (A) by striking paragraphs (2) and (4);
 2 and

3 (B) by redesignating paragraphs (3) and
 4 (5) as paragraphs (2) and (3), respectively.

5 **SEC. 4. DEPARTMENT OF JUSTICE ASSETS FORFEITURE**
 6 **FUND DEPOSITS.**

7 Section 524(c)(4) of title 28, United States Code, is
 8 amended—

9 (1) by striking subparagraphs (A) and (B); and
 10 (2) by redesignating subparagraphs (C) and
 11 (D) as subparagraphs (A) and (B), respectively.

12 **SEC. 5. STRUCTURING TRANSACTIONS TO EVADE REPORT-**
 13 **ING REQUIREMENT PROHIBITED.**

14 (a) AMENDMENTS TO TITLE 31.—Section 5324 of
 15 title 31, United States Code, is amended—

16 (1) in subsection (a)—

17 (A) in the matter preceding paragraph (1),
 18 by inserting “knowingly” after “Public Law
 19 91–508”; and

20 (B) in paragraph (3), by inserting “of
 21 funds not derived from a legitimate source”
 22 after “any transaction”;

23 (2) in subsection (b), in the matter preceding
 24 paragraph (1), by inserting “knowingly” after “such
 25 section”; and

1 (3) in subsection (c), in the matter preceding
 2 paragraph (1), by inserting “knowingly” after “sec-
 3 tion 5316”.

4 (b) PROBABLE CAUSE HEARING IN CONNECTION
 5 WITH PROPERTY SEIZURES RELATING TO CERTAIN MON-
 6 ETARY INSTRUMENTS TRANSACTIONS.—

7 (1) AMENDMENT.—Section 5317 of title 31,
 8 United States Code, is amended by adding at the
 9 end the following:

10 “(d) PROBABLE CAUSE HEARING IN CONNECTION
 11 WITH PROPERTY SEIZURES RELATING TO CERTAIN MON-
 12 ETARY INSTRUMENTS TRANSACTIONS.—

13 “(1) IN GENERAL.—Not later than 14 days
 14 after the date on which notice is provided under
 15 paragraph (2)—

16 “(A) a court of competent jurisdiction shall
 17 conduct a hearing on any property seized or re-
 18 strained under subsection (c)(2) with respect to
 19 an alleged violation of section 5324; and

20 “(B) any property described in subpara-
 21 graph (A) shall be returned unless the court
 22 finds that there is probable cause to believe that
 23 there is a violation of section 5324 involving the
 24 property.

1 “(2) NOTICE.—Each person from whom prop-
 2 erty is seized or restrained under subsection (c)(2)
 3 with respect to an alleged violation of section 5324
 4 shall be notified of the right of the person to a hear-
 5 ing under paragraph (1).”.

6 (2) APPLICABILITY.—The amendment made by
 7 paragraph (1) shall apply to property seized or re-
 8 strained after the date of enactment of this Act.

9 **SEC. 6. PROPORTIONALITY.**

10 Section 983(g)(2) of title 18, United States Code, is
 11 amended to read as follows:

12 “(2) In making this determination, the court
 13 shall consider such factors as—

14 “(A) the seriousness of the offense;

15 “(B) the extent of the nexus of the prop-
 16 erty to the offense;

17 “(C) the range of sentences available for
 18 the offense giving rise to forfeiture;

19 “(D) the fair market value of the property;
 20 and

21 “(E) the hardship to the property owner
 22 and dependents.”.

23 **SEC. 7. REPORTING REQUIREMENTS.**

24 Section 524(c)(6)(i) of title 28, United States Code,
 25 is amended by inserting “from each type of forfeiture, and

1 specifically identifying which funds were obtained from in-
2 cluding criminal forfeitures and which were obtained from
3 civil forfeitures,” after “deposits”.

4 **SEC. 8. APPLICABILITY.**

5 The amendments made by this Act shall apply to—

6 (1) any civil forfeiture proceeding pending on or
7 filed on or after the date of enactment of this Act;
8 and

9 (2) any amounts received from the forfeiture of
10 property on or after the date of enactment of this
11 Act.

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