

116TH CONGRESS
2D SESSION

H. R. 8997

To eliminate civil asset forfeiture, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 17, 2020

Mr. AMASH introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To eliminate civil asset forfeiture, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Civil Asset Forfeiture
5 Elimination Act”.

6 **TITLE I—FEDERAL FORFEITURE**

7 **SEC. 101. CONFORMING AMENDMENTS TO TITLE 18.**

8 (a) GENERAL RULES FOR CIVIL FORFEITURE PRO-
9 CEEDINGS.—Section 983 of title 18, United States Code,
10 is amended to read as follows:

1 **“§ 983. Prohibiting civil forfeiture**

2 “No person shall be required, under the laws of the
3 United States, to forfeit to the United States any prop-
4 erty, real or personal, pursuant to a civil forfeiture pro-
5 ceeding, including a nonjudicial civil forfeiture pro-
6 ceeding.”.

7 (b) FOREIGN FORFEITURE.—Section 981 of title 18,
8 United States Code, is amended to read as follows:

9 **“§ 981. Forfeiture involving foreign countries**

10 “(a) ARREST OR CHARGE IN A FOREIGN COUNTRY.—

11 “(1) IN GENERAL.—If any person is arrested or
12 charged in a foreign country in connection with an
13 offense that would give rise to the forfeiture of prop-
14 erty in the United States under the Controlled Sub-
15 stances Act, the Attorney General may apply to any
16 Federal judge or magistrate judge in the district in
17 which the property is located for an ex parte order
18 restraining the property subject to forfeiture for not
19 more than 30 days, except that the time may be ex-
20 tended for good cause shown at a hearing conducted
21 in the manner provided in rule 43(e) of the Federal
22 Rules of Civil Procedure.

23 “(2) APPLICATION.—The application for the re-
24 straining order shall set forth the nature and cir-
25 cumstances of the foreign charges and the basis for
26 belief that the person arrested or charged has prop-

erty in the United States that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection.

“(b) TRANSFER.—

“(1) IN GENERAL.—Whenever property is criminally forfeited under this chapter, the Attorney General or the Secretary of the Treasury, as the case may be, may transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

“(A) has been agreed to by the Secretary of State;

“(B) is authorized in an international agreement between the United States and the foreign country; and

“(C) is made to a country which, if applicable, has been certified under section 490(b) of the Foreign Assistance Act of 1961.

1 A decision by the Attorney General or the Secretary
2 of the Treasury pursuant to this subsection shall not
3 be subject to review. The foreign country shall, in
4 the event of a transfer of property or proceeds of
5 sale of property under this subsection, bear all ex-
6 penses incurred by the United States in the seizure,
7 maintenance, inventory, storage, forfeiture, and dis-
8 position of the property, and all transfer costs. The
9 payment of all such expenses, and the transfer of as-
10 sets pursuant to this paragraph, shall be upon such
11 terms and conditions as the Attorney General or the
12 Secretary of the Treasury may, in his discretion, set.

13 “(2) RULE OF CONSTRUCTION.—The provisions
14 of this section shall not be construed as limiting or
15 superseding any other authority of the United States
16 to provide assistance to a foreign country in obtain-
17 ing property related to a crime committed in the for-
18 eign country, including property which is sought as
19 evidence of a crime committed in the foreign coun-
20 try.

21 “(c) DEFINITIONS.—For purposes of this section—

22 “(1) the term ‘Attorney General’ means the At-
23 torney General or his delegate; and

1 “(2) the term ‘Secretary of the Treasury’
2 means the Secretary of the Treasury or his dele-
3 gate.”.

4 (c) CIVIL FORFEITURE OF FUNGIBLE PROPERTY.—
5 Section 984 of title 18, United States Code, is repealed.

6 (d) CIVIL FORFEITURE OF REAL PROPERTY.—Sec-
7 tion 985 of title 18, United States Code, is repealed.

8 (e) ACCESS TO RECORDS.—Section 986 of title 18,
9 United States Code, is amended to read as follows:

10 **“§ 986. Access to records in bank secrecy jurisdic-**
11 **tions**

12 “(a) IN GENERAL.—In any ancillary proceeding in
13 any criminal forfeiture case governed by section 413(n)
14 of the Controlled Substances Act (21 U.S.C. 853(n)), in
15 which—

16 “(1) financial records located in a foreign coun-
17 try may be material to any claim or to the ability
18 of the Government to respond to such claim; and

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

24 the refusal of the claimant to provide the records in re-
25 sponse to a discovery request or to take the action nec-

1 essary otherwise to make the records available shall be
2 grounds for judicial sanctions, up to and including dis-
3 missal of the claim with prejudice.

4 “(b) PRIVILEGE.—This section shall not affect the
5 right of the claimant to refuse production on the basis of
6 any privilege guaranteed by the Constitution of the United
7 States or any other provision of Federal law.”.

8 (f) ANTI-TERRORIST FORFEITURE PROTECTION.—
9 Section 987 of title 18, United States Code, is repealed.

10 (g) CONFORMING AMENDMENTS.—The table of sec-
11 tions for chapter 46 of title 18, United States Code, is
12 amended—

13 (1) by amending the item related to section 981
14 to read as follows:

“981. Forfeiture involving foreign countries.”;

15 (2) by amending the item related to section 983
16 to read as follows:

“983. Prohibiting civil forfeiture.”;

17 (3) by striking the items related to sections 984
18 and 985;

19 (4) by amending the item related to section 986
20 to read as follows:

“986. Access to records in bank secrecy jurisdictions.”; and

21 (5) by striking the item related to section 987.

1 **SEC. 102. CONFORMING AMENDMENTS TO THE CON-**
2 **TROLLED SUBSTANCES ACT.**

3 (a) CRIMINAL FORFEITURES.—Section 413 of the
4 Controlled Substances Act (21 U.S.C. 853) is amended—

5 (1) in subsection (i)(4), by striking “provisions
6 of section 511(e) of this title (21 U.S.C. 881(e))”
7 and inserting “provisions of section 511(a)”; and

8 (2) in subsection (j)—

9 (A) by amending the heading to read as
10 follows: “APPLICABILITY OF FORFEITURE PRO-
11 VISIONS”;

12 (B) by striking “Except” and inserting
13 “(1) Except”;

14 (C) by striking “section 511(d) of this title
15 (21 U.S.C. 881(d))” and inserting “paragraph
16 (2)”; and

17 (D) by adding at the end the following:

18 “(2) The provisions of law relating to the sei-
19 zure, summary and judicial forfeiture, and con-
20 demnation of property for violation of the customs
21 laws; the disposition of such property or the pro-
22 ceeds from the sale thereof; the remission or mitiga-
23 tion of such forfeitures; and the compromise of
24 claims shall apply to seizures and forfeitures in-
25 curred, or alleged to have been incurred, under any
26 of the provisions of this title, insofar as applicable

1 and not inconsistent with the provisions hereof; ex-
2 cept that such duties as are imposed upon the cus-
3 toms officer or any other person with respect to the
4 seizure and forfeiture of property under the customs
5 laws shall be performed with respect to seizures and
6 forfeitures of property under this title by such offi-
7 cers, agents, or other persons as may be authorized
8 or designated for that purpose by the Attorney Gen-
9 eral, except to the extent that such duties arise from
10 seizures and forfeitures effected by any customs offi-
11 cer.”; and

12 (3) in subsection (n)—

13 (A) in paragraph (2)—

14 (i) by striking “pursuant to this sec-
15 tion may, within thirty days of the final
16 publication of notice or his receipt of notice
17 under paragraph (1), whichever is earlier,”
18 and inserting “may”; and

19 (ii) by striking “The hearing shall be
20 held before the court alone, without a
21 jury.”;

22 (B) in paragraph (5), by striking “the pe-
23 titioner may testify and present evidence and
24 witnesses on his own behalf, and cross-examine
25 witnesses who appear at the hearing.” and in-

serting “the petitioner or counsel for the petitioner may testify and present evidence and witnesses, and cross-examine witnesses who appear at the hearing. Upon any showing by the petitioner or counsel for the petitioner that he has legal interest in property which has been ordered forfeited to the United States, there shall be established a rebuttable presumption that the order of forfeiture is invalid with respect to the petitioner’s interest in property.”;

(C) in paragraph (6)—

(i) in the matter preceding paragraph (A), by striking “If, after the hearing, the court determines that the petitioner has established” and inserting “In the case that there has been established a rebuttable presumption that the order of forfeiture is invalid with respect to the petitioner’s interest in property, the Government may overcome such presumption if the Government establishes”;

(ii) by amending subparagraph (A) to read as follows:

“(A) the defendant has a legal right, title, or interest in the property, and such right, title,

1 or interest renders the order of forfeiture valid
2 in whole or in part because the right, title, or
3 interest was vested in the defendant rather than
4 the petitioner or was superior to any right, title,
5 or interest of the petitioner at the time of the
6 commission of the acts which gave rise to the
7 forfeiture of the property under this section;
8 or”;

9 (iii) by amending subparagraph (B) to
10 read as follows:

11 “(B) the petitioner is not a bona fide pur-
12 chaser for value of the right, title, or interest
13 in the property or, at the time of purchase, had
14 cause to believe that the property was subject
15 to forfeiture under this section.”; and

16 (iv) in the matter following subpara-
17 graph (B)—

18 (I) by striking “the court” and
19 inserting “After the hearing, the
20 court”; and

21 (II) by inserting before the pe-
22 riod at the end the following: “, or, if
23 the forfeited property has already
24 been disposed of by the Government
25 in accordance with law, order the Gov-

1 ernment to compensate the petitioner
2 for an amount equal to the value of
3 the petitioner’s interest in the prop-
4 erty at the time the property was for-
5 feited”;

6 (D) in paragraph (7), by striking “Fol-
7 lowing the court’s disposition of all petitions
8 filed under this subsection, or if no such peti-
9 tions are filed following the expiration of the
10 period provided in paragraph (2) for the filing
11 of such petitions” and inserting “180 days after
12 final publication or receipt of notice under para-
13 graph (1)”;

14 (E) by adding at the end the following:

15 “(8)(A) If a person with standing to contest the
16 forfeiture of property under this subsection is finan-
17 cially unable to obtain representation by counsel,
18 and the property subject to forfeiture is real prop-
19 erty that is being used by the person as a primary
20 residence, the court, at the request of the person,
21 shall ensure that the person is represented by an at-
22 torney for the Legal Services Corporation with re-
23 spect to the claim.

24 “(B)(i) At appropriate times during a represen-
25 tation under subparagraph (A), the Legal Services

1 Corporation shall submit a statement of reasonable
2 attorney fees and costs to the court.

3 “(ii) The court shall enter a judgment in favor of the
4 Legal Services Corporation for reasonable attorney fees
5 and costs submitted pursuant to clause (i) and treat such
6 judgment as payable under section 2465 of title 28,
7 United States Code, regardless of the outcome of the case.

8 “(C) The court shall set the compensation
9 for representation under this subsection, which
10 shall be equivalent to that provided for court-
11 appointed representation under section 3006A
12 of this title.”.

13 (b) FORFEITURES.—Section 511 of the Controlled
14 Substances Act (21 U.S.C. 881) is amended—

15 (1) by striking subsections (a), (b), (c), and (d);

16 (2) by redesignating subsection (e) as sub-
17 section (a);

18 (3) in subsection (a)(1), as redesignated, by
19 striking “civilly or”;

20 (4) by striking subsections (f), (g), (h), (i), and
21 (j); and

22 (5) by redesignating subsection (l) as subsection
23 (b).

1 **TITLE II—STATE FORFEITURE**

2 **SEC. 201. FINDINGS; SENSE OF CONGRESS.**

3 (a) FINDINGS.—Congress finds the following:

4 (1) The Constitution authorizes and obligates
5 each branch of the Federal Government to protect
6 individual rights.

7 (2) Congress is specifically authorized by the
8 Fourteenth Amendment to provide remedies for
9 States' violations of individual rights secured by the
10 Constitution.

11 (3) The Constitution secures the rights of indi-
12 viduals whom the Government seeks to punish for
13 violating its laws.

14 (4) The Government's use of in rem pro-
15 ceedings to forfeit property to punish legal violations
16 without affording property owners the rights of
17 criminal defendants plainly violates their constitu-
18 tionally secured rights.

19 (5) The Government's use of a legal tool at the
20 time of the founding does not preclude its being in-
21 compatible with constitutionally secured rights.

22 (6) The long-term failure of Congress, presi-
23 dents, and the judiciary to recognize the illegitimacy
24 of the Government's civil forfeiture practices does
25 not divest them of the authority to do so.

1 (7) The Government cannot lawfully jettison
2 the rights of the accused for the sake of convenience
3 and profit.

4 (8) The early use of civil forfeiture in the
5 United States was limited to admiralty and revenue
6 contexts, in which the existence of a legal violation
7 and the identity of the property used to effect it
8 were often self-evident, and the owner of the prop-
9 erty to be seized was often unobtainable.

10 (9) Although the limitations on early civil for-
11 feiture practices do not prevent those practices from
12 being constitutionally infirm, they do materially dis-
13 tinguish the early practices from modern civil for-
14 feiture.

15 (10) The modern use of civil forfeiture by
16 States is not limited to admiralty or revenue con-
17 texts, its reach extends far beyond property used to
18 commit an offense, and it is used often to supple-
19 ment, rather than recover, the Government's reve-
20 nues.

21 (11) Civil forfeiture statutes and precedents in-
22 corporate certain protections for property owners
23 that, although limited, erode the nature of the pro-
24 ceedings as truly in rem and betray the punitive
25 character of civil forfeiture.

1 (12) The tortured status of civil forfeiture in
2 current law, in which the fiction of the property as
3 the defendant is sustained, yet the interests of prop-
4 erty owners are, to a limited extent, nonetheless rec-
5 ognized, is the inevitable result of grandfathering
6 civil forfeiture into a constitutional system that oth-
7 erwise secures the rights of the accused.

8 (b) SENSE OF CONGRESS.—It is the sense of Con-
9 gress that the Constitution authorizes and obligates Con-
10 gress to prohibit the use of civil asset forfeiture by the
11 States.

12 **SEC. 202. STATE CIVIL ASSET FORFEITURE.**

13 (a) IN GENERAL.—Property owned by a person may
14 be forfeited to a State pursuant to a civil proceeding only
15 after—

16 (1) criminal conviction of such person for viola-
17 tion of State criminal law; or

18 (2) a civil proceeding in which—

19 (A) the State proves that the person who
20 owns the property has committed the offense
21 giving rise to forfeiture; and

22 (B) the person who owns such property is
23 entitled to all rights applicable to criminal de-
24 fendants under the Constitution, including the

1 right to be represented by counsel and the right
2 to trial by jury.

3 (b) FEDERAL CAUSE OF ACTION.—A person ag-
4 grieved by a violation of subsection (a) may bring a civil
5 action against the State in the appropriate Federal district
6 court for relief, including return of forfeited property and
7 enforcement of the procedures described in subsection (a).

8 **SEC. 203. EFFECTIVE DATE.**

9 This Act and the amendments made by this Act shall
10 apply with respect to—

11 (1) forfeiture proceedings occurring on or after
12 the date of enactment of this Act; and

13 (2) forfeiture proceedings pending on or after
14 such date.

