

118TH CONGRESS
2D SESSION

S. 5512

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

DECEMBER 12, 2024

Mr. PAUL (for himself, Mr. BOOKER, Mr. LEE, Mr. KING, Mr. CRAPO, Ms. LUMMIS, Mr. WYDEN, and Mr. VAN HOLLEN) 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 2024”, or the “FAIR Act of
6 2024”.

7 **SEC. 2. CIVIL FORFEITURE AND NONJUDICIAL FOR-**
8 **FEITURE.**

9 Section 983 of title 18, United States Code, is
10 amended—

1 (1) in subsection (a)—

2 (A) in the subsection heading, by striking
3 “Claim;”;

4 (B) in paragraph (1)—

5 (i) in subparagraph (A)—

6 (I) in clause (i)—

7 (aa) by striking “clauses (ii)
8 through (v), in any nonjudicial”
9 and inserting “clause (ii), in
10 any”; and

11 (bb) by striking “60” and
12 inserting “7”;

13 (II) by striking clauses (ii)
14 through (v); and

15 (III) by inserting after clause (i)
16 the following:

17 “(ii) If the identity or interest of a
18 party is not determined until after the sei-
19 zure or turnover but is determined before
20 a declaration of forfeiture is entered, the
21 Government shall determine the identity
22 and address of the party or interest within
23 7 days after the seizure or turnover, and
24 notice shall be sent to such interested
25 party not later than 7 days after the deter-

mination by the Government of the identity
and address of the party or the party's in-
terest.”;

(ii) by striking subparagraphs (B) and
(C);

(iii) by redesignating subparagraphs
(D) through (F) as subparagraphs (B)
through (D), respectively; and

(iv) in subparagraph (C), as so redesi-
gnated, by striking “nonjudicial”;

(C) by striking paragraph (2);

(D) by redesignating paragraphs (3) and
(4) as paragraphs (2) and (3), respectively; and

(E) in paragraph (2)(A), as so redesi-
gnated—

(i) by striking “90” and inserting
“30”; and

(ii) by striking “after a claim has
been filed” and inserting “after the date of
the seizure”;

(2) in subsection (b)—

(A) in paragraph (1)—

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

“(A) If a person with standing to contest the forfeiture of property in a civil forfeiture proceeding under a civil forfeiture statute is—

“(i) financially unable to obtain representation by counsel; or

“(ii) the cost of obtaining representation would exceed the value of the seized property,

the court may authorize or appoint counsel to represent that person with respect to the claim.”; and

(ii) in subparagraph (B), by inserting “or appoint” after “authorize”; and

(B) in paragraph (2)(A)—

(i) by striking “in a judicial civil forfeiture proceeding” and inserting “in a civil forfeiture proceeding”;

(ii) by inserting “under paragraph (1)” after “counsel”;

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

1 (iv) by striking “, at the request of
2 the person, shall insure” and inserting
3 “shall ensure”;

4 (3) in subsection (c)—

5 (A) in paragraph (1), by striking “a pre-
6 ponderance of the evidence” and inserting
7 “clear and convincing evidence”;

8 (B) in paragraph (2), by striking “a pre-
9 ponderance of the evidence” and inserting
10 “clear and convincing evidence”; and

11 (C) by striking paragraph (3) and insert-
12 ing the following:

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

19 “(A) there was a substantial connection
20 between the property and the offense; and

21 “(B) the owner of any interest in the
22 seized property—

23 “(i) used the property with intent to
24 facilitate the offense; or

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

4 (4) in subsection (d)—

5 (A) in paragraph (1), by striking the sec-
 6 ond sentence and inserting the following: “The
 7 Government shall have the burden of proving
 8 that the claimant is not an innocent owner by
 9 a preponderance of the evidence.”; and

10 (B) in paragraph (2)—

11 (i) in subparagraph (A), by striking
 12 “an owner who” and all that follows
 13 through “upon learning” and inserting “an
 14 owner who, upon learning”; and

15 (ii) in subparagraph (B)(i), by insert-
 16 ing before “For the purposes of this para-
 17 graph” the following: “If the Government
 18 satisfies its burden under paragraph (1),
 19 the claimant may rebut the Government’s
 20 evidence related to his innocent ownership,
 21 including by showing that he did all that
 22 could reasonably be expected under the
 23 law.”;

24 (5) in subsection (e)—

1 (A) in paragraph (1), in the matter pre-
 2 ceding subparagraph (A)—

3 (i) by striking “nonjudicial”; and

4 (ii) by striking “a declaration” and in-
 5 serting “an order”;

6 (B) in paragraph (2)—

7 (i) in subparagraph (A), by striking
 8 “declaration” and inserting “order”; and

9 (ii) by striking subparagraph (B) and
 10 inserting the following:

11 “(B) Any proceeding described in subpara-
 12 graph (A) shall be commenced within 6 months
 13 of the entry of the order granting the motion.”;
 14 and

15 (C) by striking paragraph (5);

16 (6) in subsection (f)(1), in the matter preceding
 17 subparagraph (A), by striking “(a)” and inserting
 18 “(a)(3)(A)”;

19 (7) in subsection (g)—

20 (A) in paragraph (1), by striking “(a)(4)”
 21 and inserting “(a)(3)”;

22 (B) by amending paragraph (2) to read as
 23 follows:

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

1 “(A) the seriousness of the offense;

2 “(B) the extent of the nexus of the prop-
3 erty to the offense;

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

6 “(D) the fair market value of the property;
7 and

8 “(E) the hardship to the property owner
9 and dependents.”; and

10 (8) by adding at the end the following:

11 “(k)(1) Notwithstanding any other provision of law—

12 “(A) no Federal seizing agency may con-
13 duct nonjudicial forfeitures;

14 “(B) no property may be subject to for-
15 feiture except through judicial process; and

16 “(C) no order of forfeiture may be entered
17 except by a United States district court.

18 “(2) In this subsection, the term ‘nonjudicial
19 forfeiture’ means an in rem action that permits the
20 Federal seizing agency to start a forfeiture without
21 judicial involvement.”.

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

23 (a) REVISIONS TO CONTROLLED SUBSTANCES
24 ACT.—Section 511(e) of the Controlled Substances Act
25 (21 U.S.C. 881(e)) is amended—

1 (1) in paragraph (1)—

2 (A) in the matter preceding subparagraph

3 (A), by striking “civilly or”;

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

5 (C) by redesignating subparagraphs (B)

6 through (E) as subparagraphs (A) through (D),

7 respectively;

8 (2) in paragraph (2)—

9 (A) in subparagraph (A), in the matter

10 preceding clause (i), by striking “subparagraph

11 (B) of paragraph (1)” and inserting “para-

12 graph (1)(A)”;

13 (B) in subparagraph (B), by striking “ac-

14 cordance with section 524(c) of title 28,” and

15 inserting “the General Fund of the Treasury of

16 the United States”;

17 (3) by striking paragraph (3);

18 (4) by redesignating paragraph (4) as para-

19 graph (3); and

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

21 (A) in subparagraph (A), by striking

22 “paragraph (1)(B)” and inserting “paragraph

23 (1)(A)”;

24 (B) in subparagraph (B), in the matter

25 preceding clause (i), by striking “paragraph

1 (1)(B) that is civilly or” and inserting “para-
2 graph (1)(A) that is”.

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

5 (1) in section 981(e)—

6 (A) by striking “is authorized” and all that
7 follows through “or forfeiture of the property;”
8 and inserting “shall forward to the Treasurer of
9 the United States any proceeds of property for-
10 feited pursuant to this section for deposit in the
11 General Fund of the Treasury or transfer such
12 property on such terms and conditions as such
13 officer may determine—”;

14 (B) by redesignating paragraphs (3), (4),
15 (5), (6), and (7) as paragraphs (1), (2), (3),
16 (4), and (5), respectively; and

17 (C) in the matter following paragraph (5),
18 as so redesignated—

19 (i) by striking the first, second, third,
20 sixth, and eighth sentences; and

21 (ii) by striking “paragraph (3), (4), or
22 (5)” and inserting “paragraph (1), (2), or
23 (3)”;

24 (2) in section 983(g)—

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

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

5 (c) TARIFF ACT OF 1930.—The Tariff Act of 1930
6 (19 U.S.C. 1304 et seq.) is amended—

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

8 (A) in paragraph (1)—

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

11 (ii) in subparagraph (E), by striking
12 “; and” and inserting a period; and

13 (iii) by striking subparagraph (F);
14 and

15 (B) in paragraph (2)—

16 (i) by striking “(A) Any payment”
17 and inserting “Any payment”; and

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

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

20 (A) in the section heading, by striking
21 “**TRANSFER OF FORFEITED PROPERTY**”
22 and inserting “**DISMISSAL IN FAVOR OF**
23 **FORFEITURE UNDER STATE LAW**”;

24 (B) in subsection (a), by striking “(a) The
25 Secretary” and inserting “The Secretary”; and

1 (C) by striking subsections (b) through
 2 (d).

3 (d) TITLE 31.—Section 9705 of title 31, United
 4 States Code, is amended—

5 (1) in subsection (a)(1)—

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

7 (B) by redesignating subparagraphs (H)
 8 through (J) as subparagraphs (G) through (I),
 9 respectively; and

10 (2) in subsection (b)—

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

12 and

13 (B) by redesignating paragraphs (3) and

14 (5) as paragraphs (2) and (3), respectively.

15 **SEC. 4. DEPARTMENT OF JUSTICE ASSETS FORFEITURE**

16 **FUND DEPOSITS.**

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

19 (1) by striking subparagraphs (A) and (B); and

20 (2) by redesignating subparagraphs (C) and

21 (D) as subparagraphs (A) and (B), respectively.

22 **SEC. 5. STRUCTURING TRANSACTIONS TO EVADE REPORT-**

23 **ING REQUIREMENT PROHIBITED.**

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

1 (1) in subsection (a)—

2 (A) in the matter preceding paragraph (1),
 3 by inserting “knowingly” after “Public Law
 4 91–508”; and

5 (B) in paragraph (3), by inserting “of
 6 funds not derived from a legitimate source”
 7 after “any transaction”;

8 (2) in subsection (b), in the matter preceding
 9 paragraph (1), by inserting “knowingly” after “such
 10 section”; and

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

14 (b) PROBABLE CAUSE HEARING IN CONNECTION
 15 WITH PROPERTY SEIZURES RELATING TO CERTAIN MON-
 16 ETARY INSTRUMENTS TRANSACTIONS.—

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

20 “(d) PROBABLE CAUSE HEARING IN CONNECTION
 21 WITH PROPERTY SEIZURES RELATING TO CERTAIN MON-
 22 ETARY INSTRUMENTS TRANSACTIONS.—

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

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

5 “(B) any property described in subpara-
 6 graph (A) shall be returned unless the court
 7 finds that there is probable cause to believe that
 8 there is a violation of section 5324 involving the
 9 property.

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

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

18 **SEC. 6. REPORTING REQUIREMENTS.**

19 Section 524(c)(6)(A)(i) of title 28, United States
 20 Code, is amended by inserting “from each type of for-
 21 feiture, and specifically identifying which funds were ob-
 22 tained from including criminal forfeitures and which were
 23 obtained from civil forfeitures,” after “deposits”.

24 **SEC. 7. APPLICABILITY.**

25 The amendments made by this Act shall apply to—

- 1 (1) any civil forfeiture proceeding pending on or
2 filed on or after the date of enactment of this Act;
3 and
4 (2) any amounts received from the forfeiture of
5 property on or after the date of enactment of this
6 Act.

