

remove barriers to energy trade and investment and increased access for United States energy firms around the world;

(B) the United States believes that restricting supply in a market that is in demand of additional crude oil does serious damage to the efforts that OPEC members have made to demonstrate that they represent a reliable source of crude oil supply;

(C) the United States believes that stable crude oil prices and supplies are essential for strong economic growth throughout the world; and

(D) the United States seeks an immediate increase in the OPEC crude oil production quotas and not simply an agreement at the March 27, 2000, meeting to lift production quotas at a later date;

(3) the President should be commended for sending Secretary of Energy Richardson to personally communicate with leaders of several members of the Organization of Petroleum Exporting Countries on the need to increase the supply of crude oil;

(4) to ameliorate the long-term problem of the United States dependence on foreign oil sources, the President should—

(A) review all administrative policies, programs, and regulations that put an undue burden on domestic energy producers; and

(B) consider lifting unnecessary regulations that interfere with the ability of United States' domestic oil, gas, coal, hydro-electric, biomass, and other alternative energy industries to supply a greater percentage of the energy needs of the United States; and

(5) to ameliorate the long-term problem of United States dependence on foreign oil sources, the Senate should appropriate sufficient funds for the development of domestic energy sources, including measures to increase the use of biofuels and other renewable resources.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the committee amendment be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the resolution, as amended, be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to this resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 263), as amended, was agreed to.

The preamble was agreed to.

#### MEASURE READ THE FIRST TIME—H.R. 2366

Mr. SESSIONS. Mr. President, I understand that H.R. 2366 is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the title of the bill for the first time.

The legislative clerk read as follows:

A bill (H.R. 2366) to provide small businesses certain protections from litigation excesses and to limit the product liability of nonmanufacturer product sellers.

Mr. SESSIONS. Mr. President, I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. Under the rule, the bill will be read for a second time on the next legislative day.

#### CIVIL ASSET FORFEITURE REFORM ACT OF 2000

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of H.R. 1658, reported today by the Judiciary Committee.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1658) to provide a more just and uniform procedure for Federal civil forfeitures, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported by the Committee on the Judiciary with an amendment to strike out all after the enacting clause and insert the part printed in italic, as follows:

H.R. 1658

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Civil Asset Forfeiture Reform Act of 2000".

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

Sec. 1. Short title; table of contents.

Sec. 2. Creation of general rules relating to civil forfeiture proceedings.

Sec. 3. Compensation for damage to seized property.

Sec. 4. Attorney fees, costs, and interest.

Sec. 5. Seizure warrant requirement.

Sec. 6. Use of forfeited funds to pay restitution to crime victims.

Sec. 7. Civil forfeiture of real property.

Sec. 8. Stay of civil forfeiture case.

Sec. 9. Civil restraining orders.

Sec. 10. Cooperation among Federal prosecutors.

Sec. 11. Statute of limitations for civil forfeiture actions.

Sec. 12. Destruction or removal of property to prevent seizure.

Sec. 13. Fungible property in bank accounts.

Sec. 14. Fugitive disentitlement.

Sec. 15. Enforcement of foreign forfeiture judgment.

Sec. 16. Encouraging use of criminal forfeiture as an alternative to civil forfeiture.

Sec. 17. Access to records in bank secrecy jurisdictions.

Sec. 18. Application to alien smuggling offenses.

Sec. 19. Enhanced visibility of the asset forfeiture program.

Sec. 20. Proceeds.

Sec. 21. Effective date.

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

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

#### "§983. General rules for civil forfeiture proceedings

"(a) NOTICE; CLAIM; COMPLAINT.—

"(1)(A)(i) Except as provided in clauses (ii) through (v), in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.

"(ii) No notice is required if, before the 60-day period expires, the Government files a civil judicial forfeiture action against the property and provides notice of that action as required by law.

"(iii) If, before the 60-day period expires, the Government does not file a civil judicial forfeiture action, but does obtain a criminal indictment containing an allegation that the property is subject to forfeiture, the government shall either—

"(I) send notice within the 60 days and continue the nonjudicial civil forfeiture proceeding under this section; or

"(II) terminate the nonjudicial civil forfeiture proceeding, and take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.

"(iv) In a case in which the property is seized by a State or local law enforcement agency and turned over to a Federal law enforcement agency for the purpose of forfeiture under Federal law, notice shall be sent not more than 90 days after the date of seizure by the State or local law enforcement agency.

"(v) If the identity or interest of a party is not determined until after the seizure or turnover but is determined before a declaration of forfeiture is entered, notice shall be sent to such interested party not later than 60 days after the determination by the Government of the identity of the party or the party's interest.

"(B) A supervisory official in the headquarters office of the seizing agency may extend the period for sending notice under subparagraph (A) for a period not to exceed 30 days (which period may not be further extended except by a court), if the official determines that the conditions in subparagraph (D) are present.

"(C) Upon motion by the Government, a court may extend the period for sending notice under subparagraph (A) for a period not to exceed 60 days, which period may be further extended by the court for 60-day periods, as necessary, if the court determines, based on a written certification of a supervisory official in the headquarters office of the seizing agency, that the conditions in subparagraph (D) are present.

"(D) The period for sending notice under this paragraph may be extended only if there is reason to believe that notice may have an adverse result, including—

"(i) endangering the life or physical safety of an individual;

"(ii) flight from prosecution;

"(iii) destruction of or tampering with evidence;

"(iv) intimidation of potential witnesses; or

"(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"(E) Each of the Federal seizing agencies conducting nonjudicial forfeitures under this section shall report periodically to the Committees on the Judiciary of the House of Representatives and the Senate the number of occasions when an extension of time is granted under subparagraph (B).

"(F) If the Government does not send notice of a seizure of property in accordance with subparagraph (A) to the person from whom the property was seized, and no extension of time is granted, the Government shall return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. The Government shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.

"(2)(A) Any person claiming property seized in a nonjudicial civil forfeiture proceeding under a civil forfeiture statute may file a claim with the appropriate official after the seizure.

"(B) A claim under subparagraph (A) may be filed not later than the deadline set forth in a personal notice letter (which deadline may be not earlier than 35 days after the date the letter is mailed), except that if that letter is not received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure.

"(C) A claim shall—

"(i) identify the specific property being claimed;

“(ii) state the claimant’s interest in such property (and provide customary documentary evidence of such interest if available) and state that the claim is not frivolous; and

“(iii) be made under oath, subject to penalty of perjury.

“(D) A claim need not be made in any particular form. Each Federal agency conducting nonjudicial forfeitures under this section shall make claim forms generally available on request, which forms shall be written in easily understandable language.

“(E) Any person may make a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

“(3)(A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

“(B) If the Government does not—

“(i) file a complaint for forfeiture or return the property, in accordance with subparagraph (A); or

“(ii) before the time for filing a complaint has expired—

“(I) obtain a criminal indictment containing an allegation that the property is subject to forfeiture; and

“(II) take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute,

the Government shall promptly release the property pursuant to regulations promulgated by the Attorney General, and may not take any further action to effect the civil forfeiture of such property in connection with the underlying offense.

“(C) In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a criminal indictment. If criminal forfeiture is the only forfeiture proceeding commenced by the Government, the Government’s right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.

“(D) No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property.

“(4)(A) In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person’s interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government’s complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

“(B) A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government’s complaint for forfeiture not later than 20 days after the date of the filing of the claim.

“(b) REPRESENTATION.—

“(1)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

“(B) In determining whether to authorize counsel to represent a person under subpara-

graph (A), the court shall take into account such factors as—

“(i) the person’s standing to contest the forfeiture; and

“(ii) whether the claim appears to be made in good faith.

“(2)(A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the property subject to forfeiture is real property that is being used by the person as a primary residence, the court, at the request of the person, shall insure that the person is represented by an attorney for the Legal Services Corporation with respect to the claim.

“(B)(i) At appropriate times during a representation under subparagraph (A), the Legal Services Corporation shall submit a statement of reasonable attorney fees and costs to the court.

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

“(3) The court shall set the compensation for representation under this subsection, which shall be equivalent to that provided for court-appointed representation under section 3006A of this title.

“(c) BURDEN OF PROOF.—In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property—

“(1) the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture;

“(2) the Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture; and

“(3) if the Government’s theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.

“(d) INNOCENT OWNER DEFENSE.—

“(1) An innocent owner’s interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.

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

“(i) did not know of the conduct giving rise to forfeiture; or

“(ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

“(B)(i) For the purposes of this paragraph, ways in which a person may show that such person did all that reasonably could be expected may include demonstrating that such person, to the extent permitted by law—

“(I) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and

“(II) in a timely fashion revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

“(ii) A person is not required by this subparagraph to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

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

“(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and

“(ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture.

“(B) An otherwise valid claim under subparagraph (A) shall not be denied on the ground that the claimant gave nothing of value in exchange for the property if—

“(i) the property is the primary residence of the claimant;

“(ii) depriving the claimant of the property would deprive the claimant of the means to maintain reasonable shelter in the community for the claimant and all dependents residing with the claimant;

“(iii) the property is not, and is not traceable to, the proceeds of any criminal offense; and

“(iv) the claimant acquired his or her interest in the property through marriage, divorce, or legal separation, or the claimant was the spouse or legal dependent of a person whose death resulted in the transfer of the property to the claimant through inheritance or probate; except that the court shall limit the value of any real property interest for which innocent ownership is recognized under this subparagraph to the value necessary to maintain reasonable shelter in the community for such claimant and all dependents residing with the claimant.

“(4) Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.

“(5) If the court determines, in accordance with this section, that an innocent owner has a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court may enter an appropriate order—

“(A) severing the property;

“(B) transferring the property to the Government with a provision that the Government compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or

“(C) permitting the innocent owner to retain the property subject to a lien in favor of the Government to the extent of the forfeitable interest in the property.

“(6) In this subsection, the term ‘owner’—

“(A) means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest; and

“(B) does not include—

“(i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

“(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

“(iii) a nominee who exercises no dominion or control over the property.

“(e) MOTION TO SET ASIDE FORFEITURE.—

“(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person’s interest in the property, which motion shall be granted if—

“(A) the Government knew, or reasonably should have known, of the moving party’s interest and failed to take reasonable steps to provide such party with notice; and

“(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.

“(2)(A) Notwithstanding the expiration of any applicable statute of limitations, if the court grants a motion under paragraph (1), the court shall set aside the declaration of forfeiture as to the interest of the moving party without prejudice to the right of the Government to commence

a subsequent forfeiture proceeding as to the interest of the moving party.

"(B) Any proceeding described in subparagraph (A) shall be commenced—

"(i) if nonjudicial, within 60 days of the entry of the order granting the motion; or

"(ii) if judicial, within 6 months of the entry of the order granting the motion.

"(3) A motion under paragraph (1) may be filed not later than 5 years after the date of final publication of notice of seizure of the property.

"(4) If, at the time a motion made under paragraph (1) is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government may institute proceedings against a substitute sum of money equal to the value of the moving party's interest in the property at the time the property was disposed of.

"(5) A motion filed under this subsection shall be the exclusive remedy for seeking to set aside a declaration of forfeiture under a civil forfeiture statute.

"(f) RELEASE OF SEIZED PROPERTY.—

"(1) A claimant under subsection (a) is entitled to immediate release of seized property if—

"(A) the claimant has a possessory interest in the property;

"(B) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;

"(C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

"(D) the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

"(E) none of the conditions set forth in paragraph (8) applies.

"(2) A claimant seeking release of property under this subsection must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (1) are met.

"(3) (A) If not later than 15 days after the date of a request under paragraph (2) the property has not been released, the claimant may file a petition in the district court in which the complaint has been filed or, if no complaint has been filed, in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

"(B) The petition described in subparagraph (A) shall set forth—

"(i) the basis on which the requirements of paragraph (1) are met; and

"(ii) the steps the claimant has taken to secure release of the property from the appropriate official.

"(4) If the Government establishes that the claimant's claim is frivolous, the court shall deny the petition. In responding to a petition under this subsection on other grounds, the Government may in appropriate cases submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

"(5) The court shall render a decision on a petition filed under paragraph (3) not later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.

"(6) If—

"(A) a petition is filed under paragraph (3); and

"(B) the claimant demonstrates that the requirements of paragraph (1) have been met; the district court shall order that the property be returned to the claimant, pending completion

of proceedings by the Government to obtain forfeiture of the property.

"(7) If the court grants a petition under paragraph (3)—

"(A) the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including—

"(i) permitting the inspection, photographing, and inventory of the property;

"(ii) fixing a bond in accordance with rule E(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and

"(iii) requiring the claimant to obtain or maintain insurance on the subject property; and

"(B) the Government may place a lien against the property or file a *lis pendens* to ensure that the property is not transferred to another person.

"(8) This subsection shall not apply if the seized property—

"(A) is contraband, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;

"(B) is to be used as evidence of a violation of the law;

"(C) by reason of design or other characteristic, is particularly suited for use in illegal activities; or

"(D) is likely to be used to commit additional criminal acts if returned to the claimant.

"(g) PROPORTIONALITY.—

"(1) The claimant under subsection (a)(4) may petition the court to determine whether the forfeiture was constitutionally excessive.

"(2) In making this determination, the court shall compare the forfeiture to the gravity of the offense giving rise to the forfeiture.

"(3) The claimant shall have the burden of establishing that the forfeiture is grossly disproportionate by a preponderance of the evidence at a hearing conducted by the court without a jury.

"(4) If the court finds that the forfeiture is grossly disproportionate to the offense it shall reduce or eliminate the forfeiture as necessary to avoid a violation of the Excessive Fines Clause of the Eighth Amendment of the Constitution.

"(h) CIVIL FINE.—

"(1) In any civil forfeiture proceeding under a civil forfeiture statute in which the Government prevails, if the court finds that the claimant's assertion of an interest in the property was frivolous, the court may impose a civil fine on the claimant of an amount equal to 10 percent of the value of the forfeited property, but in no event shall the fine be less than \$250 or greater than \$5,000.

"(2) Any civil fine imposed under this subsection shall not preclude the court from imposing sanctions under rule 11 of the Federal Rules of Civil Procedure.

"(3) In addition to the limitations of section 1915 of title 28, United States Code, in no event shall a prisoner file a claim under a civil forfeiture statute or appeal a judgment in a civil action or proceeding based on a civil forfeiture statute if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous or malicious, unless the prisoner shows extraordinary and exceptional circumstances.

"(i) CIVIL FORFEITURE STATUTE DEFINED.—In this section, the term 'civil forfeiture statute'—

"(1) means any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense; and

"(2) does not include—

"(A) the Tariff Act of 1930 or any other provision of law codified in title 19;

"(B) the Internal Revenue Code of 1986;

"(C) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.);

"(D) the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.); or

"(E) section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401)."

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 46 of title 18, United States Code, is amended by inserting after the item relating to section 982 the following:

"983. General rules for civil forfeiture proceedings."

(c) STRIKING SUPERSEDED PROVISIONS.—

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

(A) in paragraph (1), by striking "Except as provided in paragraph (2), the" and inserting "The"; and

(B) by striking paragraph (2).

(2) DRUG FORFEITURES.—Paragraphs (4), (6) and (7) of section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a) (4), (6) and (7)) are each amended by striking "except that" and all that follows before the period at the end.

(3) AUTOMOBILES.—Section 518 of the Controlled Substances Act (21 U.S.C. 888) is repealed.

(4) FORFEITURES IN CONNECTION WITH SEXUAL EXPLOITATION OF CHILDREN.—Paragraphs (2) and (3) of section 2254(a) of title 18, United States Code, are each amended by striking "except that" and all that follows before the period at the end.

(d) LEGAL SERVICES CORPORATION REPRESENTATION.—Section 1007(a) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)) is amended—

(1) in paragraph (9), by striking "and" after the semicolon;

(2) in paragraph (10), by striking the period and inserting "and"; and

(3) by adding at the end the following:

"(1) ensure that an indigent individual whose primary residence is subject to civil forfeiture is represented by an attorney for the Corporation in such civil action."

SEC. 3. COMPENSATION FOR DAMAGE TO SEIZED PROPERTY.

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

(1) by striking "any goods or merchandise" and inserting "any goods, merchandise, or other property";

(2) by striking "law-enforcement" and inserting "law enforcement"; and

(3) by inserting before the period at the end the following: "except that the provisions of this chapter and section 1346(b) of this title apply to any claim based on injury or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if—

"(1) the property was seized for the purpose of forfeiture under any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense;

"(2) the interest of the claimant was not forfeited;

"(3) the interest of the claimant was not remitted or mitigated (if the property was subject to forfeiture); and

"(4) the claimant was not convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law."

(b) DEPARTMENT OF JUSTICE.—

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

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

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

(B) is presented by an officer or employee of the Federal Government and arose within the scope of employment.

#### SEC. 4. ATTORNEY FEES, COSTS, AND INTEREST.

(a) IN GENERAL.—Section 2465 of title 28, United States Code, is amended to read as follows:

##### **“§2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest**

“(a) Upon the entry of a judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of Federal law—

“(1) such property shall be returned forthwith to the claimant or his agent; and

“(2) if it appears that there was reasonable cause for the seizure or arrest, the court shall cause a proper certificate thereof to be entered and, in such case, neither the person who made the seizure or arrest nor the prosecutor shall be liable to suit or judgment on account of such suit or prosecution, nor shall the claimant be entitled to costs, except as provided in subsection (b).

“(b)(1) Except as provided in paragraph (2), in any civil proceeding to forfeit property under any provision of Federal law in which the claimant substantially prevails, the United States shall be liable for—

“(A) reasonable attorney fees and other litigation costs reasonably incurred by the claimant;

“(B) post-judgment interest, as set forth in section 1961 of this title; and

“(C) in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale—

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

“(ii) an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate applicable to the 30-day Treasury Bill, for any period during which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence), commencing 15 days after the property was seized by a Federal law enforcement agency, or was turned over to a Federal law enforcement agency by a State or local law enforcement agency.

“(2)(A) The United States shall not be required to disgorge the value of any intangible benefits nor make any other payments to the claimant not specifically authorized by this subsection.

“(B) The provisions of paragraph (1) shall not apply if the claimant is convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law.

“(C) If there are multiple claims to the same property, the United States shall not be liable for costs and attorneys fees associated with any such claim if the United States—

“(i) promptly recognizes such claim;

“(ii) promptly returns the interest of the claimant in the property to the claimant, if the property can be divided without difficulty and there are no competing claims to that portion of the property;

“(iii) does not cause the claimant to incur additional, reasonable costs or fees; and

“(iv) prevails in obtaining forfeiture with respect to one or more of the other claims.

“(D) If the court enters judgment in part for the claimant and in part for the Government, the court shall reduce the award of costs and attorney fees accordingly.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 163 of title 28,

United States Code, is amended by striking the item relating to section 2465 and inserting following:

“2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest.”.

#### SEC. 5. SEIZURE WARRANT REQUIREMENT.

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

“(b)(1) Except as provided in section 985, any property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

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

“(A) a complaint for forfeiture has been filed in the United States district court and the court issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

“(B) there is probable cause to believe that the property is subject to forfeiture and—

“(i) the seizure is made pursuant to a lawful arrest or search; or

“(ii) another exception to the Fourth Amendment warrant requirement would apply; or

“(C) the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency.

“(3) Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and may be executed in any district in which the property is found, or transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement. Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

“(4)(A) If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States under this section or under the Controlled Substances Act, the Attorney General may apply to any Federal judge or magistrate judge in the district in which the property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days, except that the time may be extended for good cause shown at a hearing conducted in the manner provided in rule 43(e) of the Federal Rules of Civil Procedure.

“(B) The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property 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) DRUG FORFEITURES.—Section 511(b) of the Controlled Substances Act (21 U.S.C. 881(b)) is amended to read as follows:

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

#### SEC. 6. USE OF FORFEITED FUNDS TO PAY RESTITUTION TO CRIME VICTIMS.

Section 981(e) of title 18, United States Code, is amended by striking paragraph (6) and inserting the following:

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

#### SEC. 7. CIVIL FORFEITURE OF REAL PROPERTY.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by inserting after section 984 the following:

##### **“§985. Civil forfeiture of real property**

“(a) Notwithstanding any other provision of law, all civil forfeitures of real property and interests in real property shall proceed as judicial forfeitures.

“(b)(1) Except as provided in this section—

“(A) real property that is the subject of a civil forfeiture action shall not be seized before entry of an order of forfeiture; and

“(B) the owners or occupants of the real property shall not be evicted from, or otherwise deprived of the use and enjoyment of, real property that is the subject of a pending forfeiture action.

“(2) The filing of a *lis pendens* and the execution of a writ of entry for the purpose of conducting an inspection and inventory of the property shall not be considered a seizure under this subsection.

“(c)(1) The Government shall initiate a civil forfeiture action against real property by—

“(A) filing a complaint for forfeiture;

“(B) posting a notice of the complaint on the property; and

“(C) serving notice on the property owner, along with a copy of the complaint.

“(2) If the property owner cannot be served with the notice under paragraph (1) because the owner—

“(A) is a fugitive;

“(B) resides outside the United States and efforts at service pursuant to rule 4 of the Federal Rules of Civil Procedure are unavailing; or

“(C) cannot be located despite the exercise of due diligence,

constructive service may be made in accordance with the laws of the State in which the property is located.

“(3) If real property has been posted in accordance with this subsection, it shall not be necessary for the court to issue an arrest warrant in rem, or to take any other action to establish in rem jurisdiction over the property.

“(d)(1) Real property may be seized prior to the entry of an order of forfeiture if—

“(A) the Government notifies the court that it intends to seize the property before trial; and

“(B) the court—

“(i) issues a notice of application for warrant, causes the notice to be served on the property owner and posted on the property, and conducts a hearing in which the property owner has a meaningful opportunity to be heard; or

“(ii) makes an ex parte determination that there is probable cause for the forfeiture and that there are exigent circumstances that permit the Government to seize the property without prior notice and an opportunity for the property owner to be heard.

“(2) For purposes of paragraph (1)(B)(ii), to establish exigent circumstances, the Government shall show that less restrictive measures such as a *lis pendens*, restraining order, or bond would not suffice to protect the Government's interests in preventing the sale, destruction, or continued unlawful use of the real property.

“(e) If the court authorizes a seizure of real property under subsection (d)(1)(B)(ii), it shall conduct a prompt post-seizure hearing during which the property owner shall have an opportunity to contest the basis for the seizure.

“(f) This section—

“(1) applies only to civil forfeitures of real property and interests in real property;

"(2) does not apply to forfeitures of the proceeds of the sale of such property or interests, or of money or other assets intended to be used to acquire such property or interests; and

"(3) shall not affect the authority of the court to enter a restraining order relating to real property."

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—The analysis for chapter 46 of title 18, United States Code, is amended by inserting after the item relating to section 984 the following:

"985. Civil forfeiture of real property."

#### SEC. 8. STAY OF CIVIL FORFEITURE CASE.

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

"(g)(1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case.

"(2) Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding with respect to that claimant if the court determines that—

"(A) the claimant is the subject of a related criminal investigation or case;

"(B) the claimant has standing to assert a claim in the civil forfeiture proceeding; and

"(C) continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.

"(3) With respect to the impact of civil discovery described in paragraphs (1) and (2), the court may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of 1 party without unfairly limiting the ability of the opposing party to pursue the civil case. In no case, however, shall the court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow 1 party to pursue discovery while the other party is substantially unable to do so.

"(4) In this subsection, the terms 'related criminal case' and 'related criminal investigation' mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is 'related' to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the 2 proceedings, without requiring an identity with respect to any 1 or more factors.

"(5) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

"(6) Whenever a civil forfeiture proceeding is stayed pursuant to this subsection, the court shall enter any order necessary to preserve the value of the property or to protect the rights of lienholders or other persons with an interest in the property while the stay is in effect.

"(7) A determination by the court that the claimant has standing to request a stay pursuant to paragraph (2) shall apply only to this subsection and shall not preclude the Government from objecting to the standing of the claimant by dispositive motion or at the time of trial."

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

"(i) The provisions of section 981(g) of title 18, United States Code, regarding the stay of a civil forfeiture proceeding shall apply to forfeitures under this section."

#### SEC. 9. CIVIL RESTRAINING ORDERS.

Section 983 of title 18, United States Code, as added by this Act, is amended by adding at the end the following:

"(j) **RESTRAINING ORDERS; PROTECTIVE ORDERS.**—

"(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, custodians, appraisers, accountants, or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to civil forfeiture—

"(A) upon the filing of a civil forfeiture complaint alleging that the property with respect to which the order is sought is subject to civil forfeiture; or

"(B) prior to the filing of such a complaint, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

"(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

"(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

"(2) An order entered pursuant to paragraph (1)(B) shall be effective for not more than 90 days, unless extended by the court for good cause shown, or unless a complaint described in paragraph (1)(A) has been filed.

"(3) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when a complaint has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought is subject to civil forfeiture and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

"(4) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence."

#### SEC. 10. COOPERATION AMONG FEDERAL PROSECUTORS.

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

(1) by striking "civil forfeiture under section 981 of title 18, United States Code, of property described in section 981(a)(1)(C) of such title" and inserting "any civil forfeiture provision of Federal law"; and

(2) by striking "concerning a banking law violation".

#### SEC. 11. STATUTE OF LIMITATIONS FOR CIVIL FORFEITURE ACTIONS.

Section 621 of the Tariff Act of 1930 (19 U.S.C. 1621) is amended by inserting ", or in the case of forfeiture, within 2 years after the time when the involvement of the property in the alleged offense was discovered, whichever was later" after "within five years after the time when the alleged offense was discovered".

#### SEC. 12. DESTRUCTION OR REMOVAL OF PROPERTY TO PREVENT SEIZURE.

Section 2232 of title 18, United States Code, is amended—

(1) by striking subsections (a) and (b);

(2) by inserting "(e) **FOREIGN INTELLIGENCE SURVEILLANCE.**—" before "Whoever, having knowledge that a Federal officer";

(3) by redesignating subsection (c) as subsection (d); and

(4) by inserting before subsection (d), as redesignated, the following:

"(a) **DESTRUCTION OR REMOVAL OF PROPERTY TO PREVENT SEIZURE.**—Whoever, before, during, or after any search for or seizure of property by any person authorized to make such search or seizure, knowingly destroys, damages, wastes, disposes of, transfers, or otherwise takes any action, or knowingly attempts to destroy, damage, waste, dispose of, transfer, or otherwise take any action, for the purpose of preventing or impairing the Government's lawful authority to take such property into its custody or control or to continue holding such property under its lawful custody and control, shall be fined under this title or imprisoned not more than 5 years, or both.

"(b) **IMPAIRMENT OF IN REM JURISDICTION.**—Whoever, knowing that property is subject to the in rem jurisdiction of a United States court for purposes of civil forfeiture under Federal law, knowingly and without authority from that court, destroys, damages, wastes, disposes of, transfers, or otherwise takes any action, or knowingly attempts to destroy, damage, waste, dispose of, transfer, or otherwise take any action, for the purpose of impairing or defeating the court's continuing in rem jurisdiction over the property, shall be fined under this title or imprisoned not more than 5 years, or both.

"(c) **NOTICE OF SEARCH OR EXECUTION OF SEIZURE WARRANT OR WARRANT OF ARREST IN REM.**—Whoever, having knowledge that any person authorized to make searches and seizures, or to execute a seizure warrant or warrant of arrest in rem, in order to prevent the authorized seizing or securing of any person or property, gives notice or attempts to give notice in advance of the search, seizure, or execution of a seizure warrant or warrant of arrest in rem, to any person shall be fined under this title or imprisoned not more than 5 years, or both."

#### SEC. 13. FUNGIBLE PROPERTY IN BANK ACCOUNTS.

(a) **IN GENERAL.**—Section 984 of title 18, United States Code, is amended—

(1) by striking subsection (a) and redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively;

(2) in subsection (a), as redesignated—

(A) by striking "or other fungible property" and inserting "or precious metals"; and

(B) in paragraph (2), by striking "subsection (c)" and inserting "subsection (b)";

(3) in subsection (c), as redesignated—

(A) by striking paragraph (1) and inserting the following: "(1) Subsection (a) does not apply to an action against funds held by a financial institution in an interbank account unless the account holder knowingly engaged in the offense that is the basis for the forfeiture."; and

(B) in paragraph (2), by striking "(2) As used in this section, the term" and inserting the following:

"(2) In this subsection—

"(A) the term 'financial institution' includes a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(b)(7))); and

"(B) the term"; and

(4) by adding at the end the following:

"(d) Nothing in this section may be construed to limit the ability of the Government to forfeit property under any provision of law if the property involved in the offense giving rise to the forfeiture or property traceable thereto is available for forfeiture."

#### SEC. 14. FUGITIVE DISENTITLEMENT.

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

##### "§2466. Fugitive disentitlement

"A judicial officer may disallow a person from using the resources of the courts of the United States in furtherance of a claim in any related

civil forfeiture action or a claim in third party proceedings in any related criminal forfeiture action upon a finding that such person—

“(1) after notice or knowledge of the fact that a warrant or process has been issued for his apprehension, in order to avoid criminal prosecution—

“(A) purposely leaves the jurisdiction of the United States;

“(B) declines to enter or reenter the United States to submit to its jurisdiction; or

“(C) otherwise evades the jurisdiction of the court in which a criminal case is pending against the person; and

“(2) is not confined or held in custody in any other jurisdiction for commission of criminal conduct in that jurisdiction.”.

(b) CONFORMING AMENDMENT.—The analysis for chapter 163 of title 28, United States Code, is amended by adding at the end the following:

“2466. Fugitive disentitlement.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any case pending on or after the date of enactment of this Act.

#### SEC. 15. ENFORCEMENT OF FOREIGN FORFEITURE JUDGMENT.

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

##### “§2467. Enforcement of foreign judgment

“(a) DEFINITIONS.—In this section—

“(1) the term ‘foreign nation’ means a country that has become a party to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (referred to in this section as the ‘United Nations Convention’) or a foreign jurisdiction with which the United States has a treaty or other formal international agreement in effect providing for mutual forfeiture assistance; and

“(2) the term ‘forfeiture or confiscation judgment’ means a final order of a foreign nation compelling a person or entity—

“(A) to pay a sum of money representing the proceeds of an offense described in Article 3, Paragraph 1, of the United Nations Convention, or any foreign offense described in section 1956(c)(7)(B) of title 18, or property the value of which corresponds to such proceeds; or

“(B) to forfeit property involved in or traceable to the commission of such offense.

“(b) REVIEW BY ATTORNEY GENERAL.—

“(1) IN GENERAL.—A foreign nation seeking to have a forfeiture or confiscation judgment registered and enforced by a district court of the United States under this section shall first submit a request to the Attorney General or the designee of the Attorney General, which request shall include—

“(A) a summary of the facts of the case and a description of the proceedings that resulted in the forfeiture or confiscation judgment;

“(B) certified copy of the forfeiture or confiscation judgment;

“(C) an affidavit or sworn declaration establishing that the defendant received notice of the proceedings in sufficient time to enable the defendant to defend against the charges and that the judgment rendered is in force and is not subject to appeal; and

“(D) such additional information and evidence as may be required by the Attorney General or the designee of the Attorney General.

“(2) CERTIFICATION OF REQUEST.—The Attorney General or the designee of the Attorney General shall determine whether, in the interest of justice, to certify the request, and such decision shall be final and not subject to either judicial review or review under subchapter II of chapter 5, or chapter 7, of title 5 (commonly known as the ‘Administrative Procedure Act’).

“(c) JURISDICTION AND VENUE.—

“(1) IN GENERAL.—If the Attorney General or the designee of the Attorney General certifies a request under subsection (b), the United States may file an application on behalf of a foreign nation in district court of the United States

seeking to enforce the foreign forfeiture or confiscation judgment as if the judgment had been entered by a court in the United States.

“(2) PROCEEDINGS.—In a proceeding filed under paragraph (1)—

“(A) the United States shall be the applicant and the defendant or another person or entity affected by the forfeiture or confiscation judgment shall be the respondent;

“(B) venue shall lie in the district court for the District of Columbia or in any other district in which the defendant or the property that may be the basis for satisfaction of a judgment under this section may be found; and

“(C) the district court shall have personal jurisdiction over a defendant residing outside of the United States if the defendant is served with process in accordance with rule 4 of the Federal Rules of Civil Procedure.

“(d) ENTRY AND ENFORCEMENT OF JUDGMENT.—

“(1) IN GENERAL.—The district court shall enter such orders as may be necessary to enforce the judgment on behalf of the foreign nation unless the court finds that—

“(A) the judgment was rendered under a system that provides tribunals or procedures incompatible with the requirements of due process of law;

“(B) the foreign court lacked personal jurisdiction over the defendant;

“(C) the foreign court lacked jurisdiction over the subject matter;

“(D) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him or her to defend; or

“(E) the judgment was obtained by fraud.

“(2) PROCESS.—Process to enforce a judgment under this section shall be in accordance with rule 69(a) of the Federal Rules of Civil Procedure.

“(e) FINALITY OF FOREIGN FINDINGS.—In entering orders to enforce the judgment, the court shall be bound by the findings of fact to the extent that they are stated in the foreign forfeiture or confiscation judgment.

“(f) CURRENCY CONVERSION.—The rate of exchange in effect at the time the suit to enforce is filed by the foreign nation shall be used in calculating the amount stated in any forfeiture or confiscation judgment requiring the payment of a sum of money submitted for registration.”.

(b) CONFORMING AMENDMENT.—The analysis for chapter 163 of title 28, United States Code, is amended by adding at the end the following:

“2467. Enforcement of foreign judgment.”.

#### SEC. 16. ENCOURAGING USE OF CRIMINAL FORFEITURE AS AN ALTERNATIVE TO CIVIL FORFEITURE.

Section 2461 of title 28, United States Code, is amended by adding at the end the following:

“(c) If a forfeiture of property is authorized in connection with a violation of an Act of Congress, and any person is charged in an indictment or information with such violation but no specific statutory provision is made for criminal forfeiture upon conviction, the Government may include the forfeiture in the indictment or information in accordance with the Federal Rules of Criminal Procedure, and upon conviction, the court shall order the forfeiture of the property in accordance with the procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section.”.

#### SEC. 17. ACCESS TO RECORDS IN BANK SECRECY JURISDICTIONS.

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

“(d) ACCESS TO RECORDS IN BANK SECRECY JURISDICTIONS.—

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

“(A) financial records located in a foreign country may be material—

“(i) to any claim or to the ability of the Government to respond to such claim; or

“(ii) in a civil forfeiture case, to the ability of the Government to establish the forfeitability of the property; and

“(B) it is within the capacity of the claimant to waive the claimant’s rights under applicable financial secrecy laws, or to obtain the records so that such records can be made available notwithstanding such secrecy laws;

the refusal of the claimant to provide the records in response to a discovery request or to take the action necessary otherwise to make the records available shall be grounds for judicial sanctions, up to and including dismissal of the claim with prejudice.

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

#### SEC. 18. APPLICATION TO ALIEN SMUGGLING OFFENSES.

(a) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Section 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)) is amended to read as follows:

“(b) SEIZURE AND FORFEITURE.—

“(1) IN GENERAL.—Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a), the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

“(2) APPLICABLE PROCEDURES.—Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Attorney General.

“(3) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS.—In determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

“(A) Records of any judicial or administrative proceeding in which that alien’s status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

“(B) Official records of the Service or of the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

“(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien’s status, that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.”.

(b) TECHNICAL CORRECTIONS TO EXISTING CRIMINAL FORFEITURE AUTHORITY.—Section 982(a)(6) of title 18, United States Code, is amended—

(1) in subparagraph (A)—

(A) by inserting “section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or” before “section 1425” the first place it appears;



(B) in clause (i), by striking "a violation of, or a conspiracy to violate, subsection (a)" and inserting "the offense of which the person is convicted"; and

(C) in subclauses (I) and (II) of clause (ii), by striking "a violation of, or a conspiracy to violate, subsection (a)" and all that follows through "of this title" each place it appears and inserting "the offense of which the person is convicted";

(2) by striking subparagraph (B); and

(3) in the second sentence—

(A) by striking "The court, in imposing sentence on such person" and inserting the following:

"(B) The court, in imposing sentence on a person described in subparagraph (A)"; and

(B) by striking "this subparagraph" and inserting "that subparagraph".

#### SEC. 19. ENHANCED VISIBILITY OF THE ASSET FORFEITURE PROGRAM.

Section 524(c)(6) of title 28, United States Code, is amended to read as follows:

"(6)(A) The Attorney General shall transmit to Congress and make available to the public, not later than 4 months after the end of each fiscal year, detailed reports for the prior fiscal year as follows:

"(i) A report on total deposits to the Fund by State of deposit.

"(ii) A report on total expenses paid from the Fund, by category of expense and recipient agency, including equitable sharing payments.

"(iii) A report describing the number, value, and types of properties placed into official use by Federal agencies, by recipient agency.

"(iv) A report describing the number, value, and types of properties transferred to State and local law enforcement agencies, by recipient agency.

"(v) A report, by type of disposition, describing the number, value, and types of forfeited property disposed of during the year.

"(vi) A report on the year-end inventory of property under seizure, but not yet forfeited, that reflects the type of property, its estimated value, and the estimated value of liens and mortgages outstanding on the property.

"(vii) A report listing each property in the year-end inventory, not yet forfeited, with an outstanding equity of not less than \$1,000,000.

"(B) The Attorney General shall transmit to Congress and make available to the public, not later than 2 months after final issuance, the audited financial statements for each fiscal year for the Fund.

"(C) Reports under subparagraph (A) shall include information with respect to all forfeitures under any law enforced or administered by the Department of Justice.

"(D) The transmittal and publication requirements in subparagraphs (A) and (B) may be satisfied by—

"(i) posting the reports on an Internet website maintained by the Department of Justice for a period of not less than 2 years; and

"(ii) notifying the Committees on the Judiciary of the House of Representatives and the Senate when the reports are available electronically."

#### SEC. 20. PROCEEDS.

(a) **FORFEITURE OF PROCEEDS.**—Section 981(a)(1)(C) of title 18, United States Code, is amended by striking "or a violation of section 1341" and all that follows and inserting "or any offense constituting 'specified unlawful activity' (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense."

(b) **DEFINITION OF PROCEEDS.**—Section 981(a) of title 18, United States Code, is amended by adding at the end the following:

"(2) For purposes of paragraph (1), the term 'proceeds' is defined as follows:

"(A) In cases involving illegal goods, illegal services, unlawful activities, and telemarketing and health care fraud schemes, the term 'proceeds' means property of any kind obtained di-

rectly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

"(B) In cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term 'proceeds' means the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. The claimant shall have the burden of proof with respect to the issue of direct costs. The direct costs shall not include any part of the overhead expenses of the entity providing the goods or services, or any part of the income taxes paid by the entity.

"(C) In cases involving fraud in the process of obtaining a loan or extension of credit, the court shall allow the claimant a deduction from the forfeiture to the extent that the loan was repaid, or the debt was satisfied, without any financial loss to the victim."

#### SEC. 21. EFFECTIVE DATE.

Except as provided in section 14(c), this Act and the amendments made by this Act shall apply to any forfeiture proceeding commenced on or after the date that is 120 days after the date of enactment of this Act.

Mr. HATCH. Mr. President, I am pleased to announce that Chairman HYDE, Senator LEAHY and I reached an agreement with the Department of Justice and Senators SESSIONS and SCHUMER yesterday on civil forfeiture reform legislation. This is an important issue, and I am proud to support this legislation. While civil forfeiture is a valuable law enforcement tool, it has become increasingly clear that some reform of civil forfeiture law is necessary given the numerous controversial seizures of property in the last decade.

Federal civil forfeiture procedures, which are based largely on 19th century admiralty law, provide inadequate protections for private property. For example, under current Federal law, once the government seizes property, the burden of proof is on the property owner to prove that the property is not subject to forfeiture. After property is seized, the property owner must post a cost bond in order to contest the forfeiture. This bond requirement does not entitle the property owner to the return of the property, but merely allows the claimant to contest the forfeiture. If the property owner files a claim to the property, the government has up to five years to file a complaint for forfeiture.

The legislation agreed to today increases protections for property owners, while respecting the interests of law enforcement. Among other provisions, the bill places the burden of proof in civil forfeiture cases on the government throughout the proceeding; places reasonable time limits on the government in civil forfeiture actions; awards attorney fees and costs to property owners who prevail against the government in civil forfeiture cases; authorizes the court to release property pending trial in appropriate circumstances; eliminates the cost bond; and provides a uniform innocent owner defense to all federal civil forfeitures affected by the bill.

All of us here are committed to depriving criminals of the proceeds of crime. To further this goal, the bill increases the ability of the Justice Department to target criminal proceeds. The bill also extends criminal forfeiture authority to any Federal statute in which civil forfeiture authority exists in order to encourage the use of criminal forfeiture. In addition, the bill contains several mechanisms to deter and punish frivolous claims to seized property. Senator SESSIONS will describe these provisions in detail.

A broad coalition of organizations support this bill, including the Chamber of Commerce, the American Bankers Association, the National Association of Homebuilders, the National Association of Relators, the Institute for Justice, Americans for Tax Reform, the National Rifle Association, the American Bar Association, and the Fraternal Order of Police. In addition, six former Attorneys General—William Barr, Richard Thornburg, Edwin Meese, Benjamin Civiletti, Griffin Bell, and Nicholas Katzenbach—have endorsed the bill.

In closing, I would like to thank Senators SESSIONS and SCHUMER for their patience and cooperation. This agreement would not be possible without their hard work and dedication. Senator SESSIONS is to be especially commended. As a former United States Attorney and state Attorney General, he has more experience in civil forfeiture actions than any member of Congress. Senator SESSIONS has been an outstanding representative of the law enforcement community, and I am proud to have his support.

Finally, I would like to thank House Judiciary Chairman HENRY HYDE. No one has done more to advance the cause of civil forfeiture reform than Chairman HYDE. His 1995 book on civil forfeiture helped draw national attention to the need for reform. Last June, the House overwhelmingly passed the Hyde-Conyers civil forfeiture reform bill. This victory for forfeiture reform was due in large measure to HENRY HYDE's stature and commitment.

Thank you for your attention to this important reform legislation.

Mr. LEAHY. Mr. President, at long last, after years of effort and several weeks of intensive, tedious and seemingly endless negotiations, we have reached agreement on civil asset forfeiture reform legislation. This is a significant improvement over the current system and should go a long way toward stemming the abuses that have so offended Americans across the country and the political spectrum. It is not often that we see the U.S. Chamber of Commerce, ACLU, NRA, National Association of Criminal Defense Lawyers, American Bankers Association, the Institute of Justice, Americans for Tax Reform, and the American Bar Association joining together on the same side of a legislative effort. Working with Chairman HATCH, Chairman HYDE, Mr. CONYERS, Senator SESSIONS and Senator SCHUMER, we have crafted a good

bill, a balanced bill and a reform package that should move forward as consensus legislation and be enacted without further delay this year. I want to thank all who have worked with us in this process. In particular, I want to thank Janet Reno, our Attorney General, for working with us, meeting with us and lending her support to this effort and joining our coalition by agreeing to the consensus civil asset forfeiture reform legislation that the Senate is passing today.

Asset forfeiture is a powerful crime-fighting tool. It has been a particularly potent weapon in the war on drugs, allowing the government to take the cars and boats and stash houses amassed by drug dealers and put them to honest use. Last year alone, the government was able to seize nearly half a billion dollars worth of assets, cutting a big chunk out of criminals' profit stream and returning it to the law-abiding community.

Unfortunately, our nation's asset forfeiture is not fail-safe; it can be and has been abused. In hearings on this issue, the Judiciary Committee has heard examples of what happens when prosecutorial zeal skirts the boundaries of due process, leading to the taking of private property regardless of whether the owner is innocent of, or even cognizant of, the property's use in an illegal act, or whether the seizure is entirely out of proportion to the criminal conduct alleged.

I am well aware from incidents in Vermont about how aggressive use by Federal and State law enforcement officials of civil asset forfeiture laws can appear unfair and excessive, and thereby fuel public distrust of the government in general and law enforcement in particular. For example, in 1989, federal prosecutors seized a Vermont homestead that a family had built and lived in for over a decade. The husband had pleaded guilty in State court to growing six marijuana plants, without his wife's knowledge, and was sentenced to 50 hours of community service, which he fulfilled by building bookshelves for the local public library.

Yet, one year after his arrest, Vermont State police brought his arrest to the attention of the federal authorities and Federal marshals seized the family's home and 49 surrounding acres. Hundreds of Vermonters rallied to the family's defense, including former prosecutors, until the case was settled with no seizure of the property.

In another civil asset forfeiture case, federal prosecutors again seized the home and 10 acres of a Vermont woman in Richmond, Vermont, after two hidden patches of marijuana plants were discovered on her property. Criminal charges against the woman were dismissed when she established she was unaware that her daughter and daughter's boyfriend were cultivating the plants. Three years after the seizure, in 1990, a federal judge ordered the government to return the property to the

woman, but by that time it had been destroyed by fire.

By contrast to the obligation under Vermont law that law enforcement agencies must "ensure that the property is properly maintained," 18 V.S.A. § 4246, the federal authorities who made the seizure of this property had no such obligation and did not take good care of the property.

In yet another civil asset forfeiture case, federal prosecutors in 1990, seized the home and 10.7 acres of a family in Craftsbury Common, Vermont, after the homeowners were convicted in State court of cultivating marijuana and given suspended sentences three years earlier in 1987.

Given the fact that in each of these cases, the underlying criminal charges were prosecuted by the State but the forfeiture action was taken federally, one might ask why these related proceedings were divided between the State and Federal authorities? The answer is simple: Vermont law does not allow the forfeiture of real property "which is occupied as the primary residence of a person involved in the violation and a member or members of that person's family." 18 V.S.A. § 4241(a)(5).

Moreover, under Vermont law, state law enforcement authorities carry a heavier burden "of proving all material facts by clear and convincing evidence." 18 V.S.A. § 4244(c). By contrast, federal forfeiture procedures provide more latitude on the property subject to seizure and more lenient requirements for federal law enforcement authorities to meet.

While federal authorities in Vermont have in recent years avoided such egregious asset forfeiture abuses, that is not the situation in other jurisdictions, prompting increasing and exceedingly sharp criticism from scholars and commentators of the federal asset forfeiture system, which in general requires far less from the government than any State forfeiture law.

Federal judges have also added their voices to the growing chorus of concern. In 1992, the Second Circuit Court of Appeals stated: "We continue to be enormously troubled by the government's increasing and virtually unchecked use of the civil forfeiture statutes and the disregard for due process that is buried in those statutes." Four years later, the Eighth Circuit rebuked the government for capitalizing on the claimants' confusion to forfeit over \$70,000 of their currency, and expressed alarm that:

[T]he war on drugs has brought us to the point where the government may seize . . . a citizen's property without any initial showing of cause, and put the onus on the citizen to perfectly navigate the bureaucratic labyrinth in order to liberate what is presumptively his or hers in the first place. . . . Should the citizen prove inept, the government may keep the property, without ever having to justify or explain its actions.

Similarly, the Seventh Circuit recently expressed its belief that "the government's conduct in forfeiture cases leaves much to be desired," and

ordered the return of over \$500,000 in currency that had been improperly seized from a Chicago pizzeria.

Under current law, the property owner—not the government—bears the burden of proof. All the government must do is make an initial showing of probable cause that the property is "guilty" and subject to forfeiture. The property owner must then prove a negative—that the property was not involved in any wrongdoing. It is time to bring this law in line with our modern principles of due process and fair play, and reform forfeiture procedures to ensure that innocent property owners are adequately protected.

The Hyde-Conyers civil asset forfeiture reform bill, H.R. 1658, passed the House by an overwhelming bipartisan majority (375-48) last June. After lengthy negotiations with the Department of Justice, Chairman HATCH and I introduced a Senate civil asset forfeiture reform bill, S.1931. Our bill addressed every major concern that the Department had raised in our hearings and in the Statement of Administration Policy regarding the Hyde-Conyers bill, and struck a fair compromise on those issues.

For example, the Hyde-Conyers bill put the burden of proof on the Government by clear and convincing evidence. We put the burden of proof on the Government by a preponderance of the evidence. The preponderance standard is used in virtually all other civil cases, and we believe it is sufficient to protect the interests of property owners.

The Hyde-Conyers bill authorized courts to appoint counsel for any indigent person who asserted an interest in seized property. Although I am sympathetic to that proposal—justice should not be only for the wealthy—the Administration strongly opposed it. We provided for appointment of counsel only in the rare case where the property subject to forfeiture was the claimant's primary residence. In other cases, a claimant could recoup attorney fees only if she substantially prevailed in challenging the forfeiture.

We are grateful for the support of so many members of the Committee and others over the last year. The Hatch-Leahy bill was endorsed by the last six Attorneys General of the United States from both parties, William Barr, Richard Thornburgh, Edwin Meese, Benjamin Civiletti, Griffin Bell, and Nicholas Katzenbach, and a wide range of organizations.

Although I knew that we had met the Department more than half way in our bill, we did not stop there. We have met with and worked with Senators SESSIONS and SCHUMER, who had introduced a different type of bill, to see whether we might find common ground. After weeks of intensive efforts, we succeeded in coming together. For our part, Chairman HATCH and I accepted more than 30 substantive changes to the provisions in the Hatch-Leahy bill, plus about a dozen new sections to the bill that give law enforcement new, but measured, authority. In



essence we combined the Hatch-Leahy Civil Asset Forfeiture Reform Act, S. 1931, with suggestions from the Sessions-Schumer bill to form a civil asset forfeiture legislative package that we can all agree to support.

Among the important reforms made by the Hatch-Leahy-Sessions-Schumer substitute amendment to H.R. 1658, which the Senate passes today, are the following:

**Burden of proof.** The substitute amendment puts the burden of proof on the government by a preponderance of the evidence.

**Cost bond.** Another core reform of the substitute amendment is the elimination of the so-called "cost bond." Under current law, a property owner who seeks to recover his property after it has been seized by the government must pay for the privilege by posting a bond with the court. No other federal statute requires a cost bond, and no State requires a cost bond in civil forfeiture cases.

The government has defended the cost bond, not as a device for ensuring that its court costs are covered, but as a way of deterring frivolous claims. Of course, we are all in favor of deterring frivolous claims, but there are ways to deter frivolous claims without offending the fundamental principle of equal and open access to the courts, a bedrock of our American system of justice.

The substitute amendment provides that a person who challenges a forfeiture must file his claim on oath, under penalty of perjury. It also provides for imposition of a civil fine, in cases where the claimant's assertion of an interest in the property was frivolous. In addition, claimants will continue to bear the substantial costs of litigating their claims in court, and they and their attorneys will remain subject to the general sanctions for bad faith in instituting or conducting litigation. Frivolous prisoner claimants will be barred from repeated filings on proper court findings. The added burden of the "cost bond" serves no legitimate purpose.

**Legal assistance and attorney fees.** The substitute amendment permits courts to authorize counsel to represent an indigent claimant only if the claimant is already represented by a court-appointed attorney in connection with a related federal criminal case. This is both fair and efficient, and eliminates any appearance that the government chose to pursue the forfeiture in a civil proceeding rather than as part of the criminal case in order to deprive the claimant of his right to counsel.

Beyond this, the substitute amendment ensures that when the government seeks to forfeit an indigent person's primary residence, that person will be afforded representation by the Legal Services Corporation. When a forfeiture action can result in a claimant's eviction and homelessness, there is more at stake than just a property interest, and it is fair and just that the

claimant be provided with an attorney if he cannot otherwise afford one. The Legal Services Corporation will be paid by the government for providing representation in these cases.

For claimants who are not provided with counsel, the substitute allows for the recovery of reasonable attorney fees and costs if they substantially prevail on their claim. The bill also makes the government liable for post-judgment interest on any money judgment, and imputed interest in certain cases involving currency or negotiable instruments.

**Filing deadlines.** Under current law, a property owner has only 20 days from the date of first publication of the notice of seizure to file a claim challenging an administrative forfeiture, and only 10 days to file a claim challenging a judicial forfeiture. It is therefore unlikely that anyone who misses the first of three published notices will be able to file a timely claim. The substitute extends the property owner's time to file a claim following the commencement of an administrative or judicial forfeiture action to 30 days. The bill also codifies current Department of Justice policy with respect to the time period for sending notice of seizure, and establishes a 90-day period for filing a complaint.

**Release of property for hardship.** The substitute will allow a property owner to hold on to his property pending the final disposition of the case, if he can show that continued possession by the government will cause the owner substantial hardship, such as preventing him from working, and that this hardship outweighs the risk that the property will be destroyed or concealed if returned to the owner during the pendency of the case. Unlike H.R. 1658, the substitute adopts the primary safeguards that the Justice Department wanted added to the provision—that property owners must have sufficient ties to the community to provide assurance that the property will not disappear, and that certain property, such as currency and property particularly outfitted for use in illegal activities, shall not be returned. Government cannot obtain a grand jury subpoena to obtain such documents.

**Criminal proceeds.** The substitute also brings clarity and fairness to the confused body of case law concerning the definition of criminal proceeds. Specifically, in cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term "proceeds" is defined to mean the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. An exception is made for cases involving certain health care fraud schemes, since it would make no sense to allow those who provide unnecessary services to deduct the cost of those unnecessary services. Having resolved this important matter, the substitute amendment broadly extends the gov-

ernment's authority to forfeit criminal proceeds under the civil asset forfeiture laws.

**Fugitive disentitlement.** The Supreme Court in 1996 disallowed the judge-made doctrine that a fugitive avoiding the jurisdiction of the U.S. courts in a criminal case may not contest a civil forfeiture; however, the Court left open the possibility that Congress could establish such doctrine by statute. The Court was responding, in part, to the government's record of seeking forfeiture of property even though the property is not subject to forfeiture (e.g., because the statute of limitations has expired), when the government believes that the fugitive owner will not be permitted to contest the forfeiture. Opponents of the fugitive disentitlement doctrine say that the prosecutors have gone so far as to indict people whom they know will never return to this country, so that they can invoke the doctrine in civil forfeiture proceedings against such persons' U.S. assets. The substitute provides a statutory basis for a judge to disallow a civil asset forfeiture claim by a fugitive, while leaving judges discretion to allow such a claim in the interests of justice.

Senator HATCH and I share a long-standing and deeply-held appreciation for law enforcement and the officers who work on the front lines to protect our families and communities, and we have worked together on a number of crime-related issues in the past. Recently, for example, we have led the Senate in passing a number of legislative initiatives of importance to State and local law enforcement, including the Bulletproof Vests Partnership Act of 1998, Crime Identification Technology Act of 1998, Care for Police Survivors Act of 1998, the Railroad Police Officers Training Act of 1999, and the Methamphetamine Anti-Proliferation Act of 1999. I want to commend him for his commitment, not just to law enforcement, but to the rights of all Americans. It has been my pleasure to work with him on this issue, to bring balance back in the relationship between our police forces and the citizens of this country.

It has been a privilege to work with Representatives HYDE and CONYERS on this important legislation. And we greatly appreciate the contributions made by Senators SESSIONS and SCHUMER, both knowledgeable and experienced legislators in this area.

I would also like to thank the Senate and House staff who worked so hard to bring this matter to closure: On my staff, Julie Katzman and Beryl Howell; in addition, George Fishman, who has been dedicated to this project for so many years, Manus Cooney, Rhett DeHart, Ed Haden, Ben Lawskey, Tom Mooney, John Dudas, Julian Epstein, Perry Apelbaum, and Cori Flam—their efforts made this day possible. Thanks are also due to Bill Jensen and the other hardworking members of the Senate's Office of Legislative Counsel.

Finally, I would like to express my gratitude to David Smith, a leading expert on civil asset forfeiture, who gave tirelessly of his time over the past few months. His expertise and good counsel were invaluable in producing the legislation that the Senate passes today.

It is time for Congress to catch up with the American people and the courts and do the right thing on this important issue of fairness. I am glad that the Senate is acting without delay to pass this long overdue reform legislation.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the committee substitute be agreed to, the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee substitute was agreed to.

The bill (H.R. 1658), as amended, was read a third time and passed.

Mr. SESSIONS. Mr. President, the bill we have just considered is a very important piece of legislation that has been the subject of considerable effort for over a year now in the Judiciary Committee in the House.

Great efforts have been expended by all parties interested in this legislation to achieve a piece of legislation that would provide enhanced protections to private property owners and at the same time would not undermine, in a real and significant and unnecessary way, the ability of law enforcement agencies to seize and forfeit to the interest of the Government assets from illegal drug dealers and other criminal assets that are forfeited.

In the early 1980s, this Congress passed one of its most historic pieces of legislation that attacked crime in America. It was the asset forfeiture law. At that time, I was a U.S. attorney in Mobile, AL. This Federal law became a daily part of the work of my office.

We instructed our assistant U.S. attorneys that whenever they were prosecuting a drug case, it was not just enough to sentence and punish the criminal, they ought to be sure the ill-gotten gains, the profits they made from selling illegal substances in this country, would be seized and forfeited to the United States.

On a regular basis that was done all over this country. It was a major, important, historic step against crime, particularly against drug crime in America. Hundreds of millions, perhaps billions of dollars, have been forfeited from illegal enterprises since that day. The forfeitures are conducted under this Federal law, although States have the ability to forfeit assets, too.

In Federal court, the Government had to prove its case, seize the asset; a cost bond would be posted by the defendant if he wished to contest the seizure, and a court would hear the case and make a ruling in that fashion.

A number of people believed strongly that requiring a person to post a cost bond was not a healthy thing under our legal system. They wanted to change that. Chairman HENRY HYDE in the House Judiciary Committee felt that way; so did Senator ORRIN HATCH, chairman of the Senate Judiciary Committee. We began to analyze and study what we could do to deal with this problem of asset forfeiture.

At the time, Senators SCHUMER, THURMOND, BIDEN, and myself introduced asset forfeiture reform legislation in the Senate. Senators HATCH and LEAHY introduced another piece of legislation that was closer to the Hyde bill.

For some months now, we have worked together to see what we could do to protect legitimate constitutional rights of American citizens, while at the same time protecting this tremendous asset to law enforcement of the seizing and forfeiting of assets.

It is wrong, in my opinion, for a person who has made his money and his livelihood for years selling dope in America to go to jail and leave a mansion out there that he can come back to and the Federal taxpayers having to pay for his time in jail, or to have bank accounts with hundreds of thousands of dollars in them and not have that seized by the Government but, in fact, serving his time in jail and getting out and living high off the ill-gotten gains he achieved as a drug trafficker.

I would say, 98 percent of forfeitures in America today in Federal court are as a result of drug cases.

In my relatively small office in Alabama, when I was a U.S. attorney, we seized probably \$8 million to \$10 million that we actually turned into the Federal Treasury, after expenses and other items were paid.

In one case, we seized a Corvette automobile that was rumored to be worth hundreds of thousands of dollars because it was a unique Corvette. In fact, the drug dealer's car eventually was sold for \$170,000, as I remember. We seized mansions in Florida on the Gulf Coast. We seized bank accounts in foreign countries—big freighters, small boats, expensive sail boats, automobiles of all kinds, and bank accounts into the millions of dollars.

These are effective tools against the drug trafficking industry. In fact, many countries now recognize that, and they are at this time attempting to pass similar laws in their countries. It certainly is important to America.

I believed very strongly that when we set about amending this law, we do not need to place any unnecessary burdens on law enforcement and the prosecutors who will have to handle these cases. In fact, a large percentage, perhaps 90 percent or more, of these cases are confessed by the defendant because he has to establish where he got this money. Not many people can explain why they have \$50,000 in cash in the trunk of their car along with maybe a few kilograms of cocaine. Normally,

there is evidence in addition that they have been a drug dealer and that they haven't had employment; that their house note is being paid in cash. Oftentimes they paid for their Mercedes automobile in cash, those kinds of things. So the proof turns out to be pretty good, as a normal rule.

I believe the negotiation over this legislation was a fine example of the Senate at work; the Senate and House, as a matter of fact. We believe the agreement that has been reached today will both satisfy the House Judiciary Committee leadership and the Senate Judiciary Committee leadership. Now it has already passed the Senate. If the identical bill passes in the House, it will become law. We will have done what we set out to do, to pass legislation that will strengthen protections and civil liberties in America without undermining the rule of law in this country.

I was proud to be a part of that. We worked very hard on it. I express particular appreciation to my staff on the Judiciary Committee: Kristi Lee, who is now U.S. Magistrate in Mobile, AL, and Ed Haden, who is with me today, who both worked with extraordinary skill to make this legislation become a reality.

In recent weeks, I am particularly proud of the work Ed Haden has done to be firm and strong for good, solid legislation that could have the support of law enforcement in America.

I also express my appreciation for the leadership of Senator HATCH who chairs the Judiciary Committee. His skill and knowledge on these issues is unsurpassed, and his dedication to American law is unsurpassed.

I also was extraordinarily impressed with the commitment and knowledge and ability of Chairman HENRY HYDE of the House Judiciary Committee. His insight and commitment to making this law better was remarkable, and I think the result has been something of which we can all be proud.

ORDER FOR STAR PRINT—S. 2285

Mr. SESSIONS. Mr. President, I ask unanimous consent that a star print of S. 2285 be made with the changes that are at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TUESDAY, MARCH 28, 2000

Mr. SESSIONS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9:30 a.m. on Tuesday, March 28. I further ask unanimous consent that on Tuesday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of S.J. Res. 14, as under the previous agreement.