

Union Calendar No. 110

106TH CONGRESS
1ST Session

H. R. 1658

[Report No. 106-192]

A BILL

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

JUNE 18, 1999

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

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To provide a more just and uniform procedure for Federal civil forfeitures,
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IN THE HOUSE OF REPRESENTATIVES

MAY 4, 1999

Mr. HYDE (for himself, Mr. CONYERS, Mr. BARR of Georgia, Mr. FRANK of Massachusetts, Mr. BACHUS, Ms. LOFGREN, Mr. SMITH of Texas, Mr. BROWN of Ohio, Mr. CLAY, Mr. CRANE, Mr. CUMMINGS, Mr. CUNNINGHAM, Mr. EWING, Mr. FARR of California, Mr. FOLEY, Mr. GILLMOR, Mr. HAYWORTH, Mr. HINCHEY, Mr. HOLDEN, Mrs. JONES of Ohio, Mr. McDERMOTT, Mr. MANZULLO, Mr. MARTINEZ, Ms. NORTON, Ms. RIVERS, Mr. SCOTT, Mr. SHOWS, Mr. TAYLOR of North Carolina, Mr. WELDON of Pennsylvania, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 18, 1999

Additional sponsors: Mr. WALDEN of Oregon, Mr. WAMP, Mr. CANADY of Florida, Mrs. CHRISTENSEN, Mr. KING, Mr. PHELPS, Mr. RAHALL, Ms. BALDWIN, Mr. CAMPBELL, Mr. ENGLISH, Mrs. KELLY, Mr. LOBIONDO, Mr. GARY MILLER of California, Mr. GEORGE MILLER of California, Mrs. MINK of Hawaii, Mr. STARK, Mr. BLUNT, Mr. PACKARD, Mr. TERRY, Mr. DEFazio, Ms. KILPATRICK, Mr. METCALF, Mr. MURTHA, Mr. NADLER, Mr. NETHERCUTT, Mr. STUMP, Mr. BRADY of Pennsylvania, Mrs. BONO, Mr. COBLE, and Mr. PAUL

JUNE 18, 1999

Reported with amendments, committed to the Committee of the Whole House
on the State of the Union, and ordered to be printed

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. CREATION OF GENERAL RULES RELATING TO CIVIL**
7 **FORFEITURE PROCEEDINGS.**

8 Section 981 of title 18, United States Code, is
9 amended—

10 (1) by inserting after subsection (i) the fol-
11 lowing:

12 “(j)(1)(A) In any nonjudicial civil forfeiture pro-
13 ceeding under a civil forfeiture statute, with respect to
14 which the agency conducting a seizure of property must
15 give written notice to interested parties, such notice shall
16 be given as soon as practicable and in no case more than
17 60 days after the later of the date of the seizure or the
18 date the identity of the interested party is first known or
19 discovered by the agency, except that the court may extend
20 the period for filing a notice for good cause shown.

1 “(B) A person entitled to written notice in such pro-
2 ceeding to whom written notice is not given may on motion
3 void the forfeiture with respect to that person’s interest
4 in the property, unless the agency shows—

5 “(i) good cause for the failure to give notice to
6 that person; or

7 “(ii) that the person otherwise had actual notice
8 of the seizure.

9 “(C) If the government does not provide notice of a
10 seizure of property in accordance with subparagraph (A),
11 it shall return the property and may not take any further
12 action to effect the forfeiture of such property.

13 “(2)(A) Any person claiming property seized in a
14 nonjudicial forfeiture proceeding may file a claim with the
15 appropriate official after the seizure.

16 “(B) A claim under subparagraph (A) may not be
17 filed later than 30 days after—

18 “(i) the date of final publication of notice of
19 seizure; or

20 “(ii) in the case of a person entitled to written
21 notice, the date that notice is received.

22 “(C) The claim shall state the claimant’s interest in
23 the property.

24 “(D) Not later than 90 days after a claim has been
25 filed, the Attorney General shall file a complaint for for-

1 forfeiture in the appropriate court or return the property,
2 except that a court in the district in which the complaint
3 will be filed may extend the period for filing a complaint
4 for good cause shown or upon agreement of the parties.

5 “(E) If the government does not file a complaint for
6 forfeiture of property in accordance with subparagraph
7 (D), it shall return the property and may not take any
8 further action to effect the forfeiture of such property.

9 “(F) Any person may bring a claim under subpara-
10 graph (A) without posting bond with respect to the prop-
11 erty which is the subject of the claim.

12 “(3)(A) In any case where the Government files in
13 the appropriate United States district court a complaint
14 for forfeiture of property, any person claiming an interest
15 in the seized property may file a claim asserting such per-
16 son’s interest in the property within 30 days of service
17 of the Government’s complaint or, where applicable, within
18 30 days of alternative publication notice.

19 “(B) A person asserting an interest in seized property
20 in accordance with subparagraph (A) shall file an answer
21 to the Government’s complaint for forfeiture within 20
22 days of the filing of the claim.

23 “(4)(A) If the person filing a claim is financially un-
24 able to obtain representation by counsel, the court may

1 appoint counsel to represent that person with respect to
2 the claim.

3 “(B) In determining whether to appoint counsel to
4 represent the person filing the claim, the court shall take
5 into account such factors as—

6 “(i) the claimant’s standing to contest the for-
7 feiture; and

8 “(ii) whether the claim appears to be made in
9 good faith or to be frivolous.

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

17 “(5) In all suits or actions brought under any civil
18 forfeiture statute for the civil forfeiture of any property,
19 the burden of proof is on the United States Government
20 to establish, by clear and convincing evidence, that the
21 property is subject to forfeiture.

22 “(6)(A) An innocent owner’s interest in property
23 shall not be forfeited under any civil forfeiture statute.

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

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

6 “(ii) upon learning of the conduct giving rise to
7 the forfeiture, did all that reasonably could be ex-
8 pected under the circumstances to terminate such
9 use of the property.

10 “(C) With respect to a property interest acquired
11 after the conduct giving rise to the forfeiture has taken
12 place, the term ‘innocent owner’ means a person who, at
13 the time that person acquired the interest in the property,
14 was—

15 “(i)(I) a bona fide purchaser or seller for value
16 (including a purchaser or seller of goods or services
17 for value); or

18 “(II) a person who ~~received~~ *acquired* an interest
19 in property through probate *or inheritance*; and

20 “(ii) at the time of the purchase or ~~receipt~~ *ac-*
21 *quisition* reasonably without cause to believe that
22 the property was subject to forfeiture.

23 “(D) Where the property subject to forfeiture is real
24 property, and the claimant uses the property as the claim-
25 ant’s primary residence and is the spouse or minor child

1 of the person who committed the offense giving rise to the
2 forfeiture, an otherwise valid innocent owner claim shall
3 not be denied on the ground that the claimant acquired
4 the interest in the property—

5 “(i) in the case of a spouse, through dissolution
6 of marriage or by operation of law, or

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

9 and not through a purchase. However, the claimant must
10 establish, in accordance with subparagraph (C), that at
11 the time of the acquisition of the property interest, the
12 claimant was reasonably without cause to believe that the
13 property was subject to forfeiture.

14 “(7) For the purposes of paragraph (6)—

15 “(A) ways in which a person may show that
16 such person did all that reasonably can be expected
17 may include demonstrating that such person, to the
18 extent permitted by law—

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

23 “(ii) in a timely fashion revoked or at-
24 tempted to revoke permission for those engag-
25 ing in such conduct to use the property or took

1 reasonable actions in consultation with a law
2 enforcement agency to discourage or prevent
3 the illegal use of the property; and

4 “(B) in order to do all that can reasonably be
5 expected, a person is not required to take steps that
6 the person reasonably believes would be likely to
7 subject any person (other than the person whose
8 conduct gave rise to the forfeiture) to physical dan-
9 ger.

10 “(8) As used in this subsection:

11 “(1) The term ‘civil forfeiture statute’ means
12 any provision of Federal law (other than the Tariff
13 Act of 1930 or the Internal Revenue Code of 1986)
14 providing for the forfeiture of property other than as
15 a sentence imposed upon conviction of a criminal of-
16 fense.

17 “(2) The term ‘owner’ means a person with an
18 ownership interest in the specific property sought to
19 be forfeited, including a leasehold, lien, mortgage,
20 recorded security device, or valid assignment of an
21 ownership interest. Such term does not include—

22 “(i) a person with only a general unse-
23 cured interest in, or claim against, the property
24 or estate of another;

1 “(ii) a bailee unless the bailor is identified
2 and the bailee shows a colorable legitimate in-
3 terest in the property seized; or

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

6 “(k)(1) A claimant under subsection (j) is entitled to
7 immediate release of seized property if—

8 “(A) the claimant has a possessory interest in
9 the property;

10 “(B) the continued possession by the United
11 States Government pending the final disposition of
12 forfeiture proceedings will cause substantial hard-
13 ship to the claimant, such as preventing the func-
14 tioning of a business, preventing an individual from
15 working, or leaving an individual homeless; and

16 “(C) the claimant’s likely hardship from the
17 continued possession by the United States Govern-
18 ment of the seized property outweighs the risk that
19 the property will be destroyed, damaged, lost, con-
20 cealed, or transferred if it is returned to the claim-
21 ant during the pendency of the proceeding.

22 “(2) A claimant seeking release of property under
23 this subsection must request possession of the property
24 from the appropriate official, and the request must set

1 forth the basis on which the requirements of paragraph
2 (1) are met.

3 “(3) If within 10 days after the date of the request
4 the property has not been released, the claimant may file
5 a motion or complaint in any district court that would
6 have jurisdiction of forfeiture proceedings relating to the
7 property setting forth—

8 “(A) the basis on which the requirements of
9 paragraph (1) are met; and

10 “(B) the steps the claimant has taken to secure
11 release of the property from the appropriate official.

12 “(4) If a motion or complaint is filed under para-
13 graph (3), the district court shall order that the property
14 be returned to the claimant, pending completion of pro-
15 ceedings by the United States Government to obtain for-
16 feiture of the property, if the claimant shows that the re-
17 quirements of paragraph (1) have been met. The court
18 may place such conditions on release of the property as
19 it finds are appropriate to preserve the availability of the
20 property or its equivalent for forfeiture.

21 “(5) The district court shall render a decision on a
22 motion or complaint filed under paragraph (3) no later
23 than 30 days after the date of the filing, unless such 30-
24 day limitation is extended by consent of the parties or by
25 the court for good cause shown.”; and

1 (2) by redesignating existing subsection (j) as
2 subsection (l).

3 **SEC. 3. CONFORMING AMENDMENTS TO TITLE 28, TO**
4 **RULES OF PROCEDURE, AND AMENDMENT TO**
5 **THE CONTROLLED SUBSTANCES ACT.**

6 ~~(a) USE OF ASSETS FORFEITURE FUND FOR ATTOR-~~
7 ~~NEY FEES.—~~Section 524(c) of title 28, United States
8 Code, is amended—

9 ~~(1) by striking out “law enforcement pur-~~
10 ~~poses—”~~ in the matter preceding subparagraph (A)
11 ~~in paragraph (1) and inserting “purposes—”;~~

12 ~~(2) by redesignating the final 3 subparagraphs~~
13 ~~in paragraph (1) as subparagraphs (J), (K), and~~
14 ~~(L), respectively;~~

15 ~~(3) by inserting after subparagraph (G) of~~
16 ~~paragraph (1) the following new subparagraph:~~

17 ~~“(H) payment of court-awarded compensation~~
18 ~~for representation of claimants pursuant to section~~
19 ~~981 of title 18;~~

20 ~~“(I) payment of compensation for damages to~~
21 ~~property under section 5(b) of the Civil Asset For-~~
22 ~~feiture Reform Act;”~~; and

23 ~~(4) by striking out “(H)”~~ in subparagraph (A)
24 ~~of paragraph (9) and inserting “(I)”.~~

1 ~~(b) CONTROLLED SUBSTANCES ACT.~~—Section 518 of
2 the Controlled Substances Act (21 U.S.C. 888) is re-
3 pealed.

4 **SEC. 4. COMPENSATION FOR DAMAGE TO SEIZED PROP-**
5 **ERTY.**

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

8 (1) by striking “law-enforcement” and inserting
9 “law enforcement”; and

10 (2) by inserting before the period the following:
11 “, except that the provisions of this chapter and sec-
12 tion 1346(b) of this title do apply to any claim based
13 on the destruction, injury, or loss of goods, merchan-
14 dise, or other property, while in the possession of
15 any officer of customs or excise or any other law en-
16 forcement officer, if the property was seized for the
17 purpose of forfeiture but the interest of the claimant
18 is not forfeited”.

19 (b) DEPARTMENT OF JUSTICE.—

20 (1) IN GENERAL.—With respect to a claim that
21 cannot be settled under chapter 171 of title 28,
22 United States Code, the Attorney General may set-
23 tle, for not more than \$50,000 in any case, a claim
24 for damage to, or loss of, privately owned property
25 caused by an investigative or law enforcement officer

1 (as defined in section 2680(h) of title 28, United
2 States Code) who is employed by the Department of
3 Justice acting within the scope of his or her employ-
4 ment.

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

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

9 (B) is presented by an officer or employee
10 of the United States Government and arose
11 within the scope of employment.

12 **SEC. 5. PREJUDGMENT AND POSTJUDGMENT INTEREST.**

13 Section 2465 of title 28, United States Code, is
14 amended—

15 (1) by inserting “(a)” before “Upon”; and

16 (2) adding at the end the following:

17 “(b) INTEREST.—

18 “(1) POST-JUDGMENT.—Upon entry of judg-
19 ment for the claimant in any proceeding to condemn
20 or forfeit property seized or arrested under any Act
21 of Congress, the United States shall be liable for
22 post-judgment interest as set forth in section 1961
23 of this title.

24 “(2) PRE-JUDGMENT.—The United States shall
25 not be liable for prejudgment interest, except that in

1 cases involving currency, other negotiable instru-
2 ments, or the proceeds of an interlocutory sale, the
3 United States shall disgorge to the claimant any
4 funds representing—

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

10 “(B) for any period during which no inter-
11 est is actually paid, an imputed amount of in-
12 terest that such currency, instruments, or pro-
13 ceeds would have earned at the rate described
14 in section 1961.

15 “(3) LIMITATION ON OTHER PAYMENTS.—The
16 United States shall not be required to disgorge the
17 value of any intangible benefits nor make any other
18 payments to the claimant not specifically authorized
19 by this subsection.”.

20 **SEC. 6. APPLICABILITY.**

21 (a) IN GENERAL.—Unless otherwise specified in this
22 Act, the amendments made by this Act apply with respect
23 to claims, suits, and actions filed on or after the date of
24 the enactment of this Act.

25 (b) EXCEPTIONS.—

1 (1) The standard for the required burden of
2 proof set forth in section 981 of title 18, United
3 States Code, as amended by section 2, shall apply in
4 cases pending on the date of the enactment of this
5 Act.

6 (2) The amendment made by section 5 shall
7 apply to any judgment entered after the date of en-
8 actment of this Act.