

116TH CONGRESS
1ST SESSION

S. 4074

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

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2020

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fifth Amendment In-
5 tegrity Restoration Act of 2019” or the “FAIR Act”.

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

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

9 (1) in subsection (b)(2)(A)—

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

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

7 (2) in subsection (c)—

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

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

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

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

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

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

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

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

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

10 (4) in subsection (f)(6), in the matter preceding
11 paragraph (7), by inserting “, and shall award to
12 the claimant an amount equal to 3 times the value
13 of the property seized and a reasonable attorney’s
14 fee” before the period at the end; and

15 (5) in subsection (i)—

16 (A) by striking subparagraphs (A) and
17 (B); and

18 (B) by redesignating subparagraphs (C)
19 through (E) as subparagraphs (A) through (C),
20 respectively.

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

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

25 (1) in paragraph (1)—

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

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

4 (C) by redesignating subparagraphs (B)
5 through (E) as subparagraphs (A) through (D),
6 respectively;

7 (2) in paragraph (2)—

8 (A) in subparagraph (A), in the matter
9 preceding clause (i), by striking “subparagraph
10 (B) of paragraph (1)” and inserting “para-
11 graph (1)(A)”; and

12 (B) in subparagraph (B), by striking “ac-
13 cordance with section 524(c) of title 28,” and
14 inserting “the General Fund of the Treasury of
15 the United States”;

16 (3) by striking paragraph (3);

17 (4) by redesignating paragraph (4) as para-
18 graph (3); and

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

20 (A) in subparagraph (A), by striking
21 “paragraph (1)(B)” and inserting “paragraph
22 (1)(A)”; and

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

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

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

5 (1) in section 981(e)—

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

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

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

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

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

24 (2) in section 983(g)—

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

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

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

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

8 (A) in paragraph (1)—

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

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

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

15 (B) in paragraph (2)—

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

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

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

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

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

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

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

5 (1) in subsection (a)(1)—

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

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

10 (2) in subsection (b)—

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

12 and

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

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

16 **FUND DEPOSITS.**

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

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

20 (2) by redesignating subparagraphs (C) and
21 (D) as subparagraphs (A) and (B), respectively.

22 **SEC. 5. STRUCTURING TRANSACTIONS TO EVADE REPORT-**
23 **ING REQUIREMENT PROHIBITED.**

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

1 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

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

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

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

18 **SEC. 6. PROPORTIONALITY.**

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

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

23 “(A) the seriousness of the offense;

24 “(B) the extent of the nexus of the prop-
25 erty to the offense;

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

3 “(D) the fair market value of the property;
4 and

5 “(E) the hardship to the property owner
6 and dependents.”.

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

8 Section 524(c)(6)(i) of title 28, United States Code,
9 is amended by inserting “from each type of forfeiture, and
10 specifically identifying which funds were obtained from in-
11 cluding criminal forfeitures and which were obtained from
12 civil forfeitures,” after “deposits”.

13 **SEC. 8. NONJUDICIAL FORFEITURE.**

14 Section 983 of title 18, United States Code, is
15 amended—

16 (1) in subsection (a)—

17 (A) in the subsection heading, by striking
18 “CLAIM;”;

19 (B) in paragraph (1)—

20 (i) in subparagraph (A)—

21 (I) in clause (i)—

22 (aa) by striking “clauses (ii)
23 through (v), in any nonjudicial”
24 and inserting “clause (ii), in
25 any”; and

1 (bb) by striking “60” and
2 inserting “7”;

3 (II) by striking clauses (ii)
4 through (iv);

5 (III) by redesignating clause (v)
6 as clause (ii); and

7 (IV) by striking clause (ii), as so
8 redesignated, and inserting the fol-
9 lowing:

10 “(ii) If the identity or interest of a
11 party is not determined until after the sei-
12 zure or turnover but is determined before
13 a declaration of forfeiture is entered, the
14 Government shall determine the identity
15 and address of the party or interest within
16 7 days after the seizure or turnover, and
17 notice shall be sent to such interested
18 party not later than 7 days after the deter-
19 mination by the Government of the identity
20 and address of the party or the party’s in-
21 terest.”;

22 (ii) by striking subparagraphs (B)
23 through (D);

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

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

6 (C) by striking paragraph (2);

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

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

11 (i) by striking “90” and inserting
12 “30”; and

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

16 (2) in subsection (b)—

17 (A) by striking paragraph (1)(A) and in-
18 serting the following:

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

22 “(i) financially unable to obtain represen-
23 tation by counsel; or

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

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

4 (B) in subparagraph (1)(B), by inserting
5 “or appoint” after “authorize”; and

6 (C) in paragraph (2)(A), by inserting
7 “under paragraph (1)” after “counsel”;

8 (3) in subsection (d)(1), by striking the second
9 sentence;

10 (4) in subsection (e)—

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

13 (i) by striking “nonjudicial”; and

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

16 (B) in paragraph (2)—

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

19 (ii) by striking subparagraph (B) and
20 inserting the following:

21 “(B) Any proceeding described in subparagraph
22 (A) shall be commenced within 6 months of the
23 entry of the order granting the motion.”; and

24 (C) by striking paragraph (5);

1 (5) in subsection (f)(1), in the matter preceding
2 subparagraph (A), by striking “(a)” and inserting
3 “(a)(3)(A)”;

4 (6) in subsection (g)(1), by striking “(a)(4)”
5 and inserting “(a)(3)”; and

6 (7) by adding at the end the following:

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

8 “(A) no Federal seizing agency may conduct
9 nonjudicial forfeitures;

10 “(B) no property may be subject to forfeiture
11 except through judicial process; and

12 “(C) no order of forfeiture may be entered ex-
13 cept by a United States district court.

14 “(2) In this subsection, the term ‘nonjudicial for-
15 feiture’ means an in rem action that permits the Federal
16 seizing agency to start a forfeiture without judicial in-
17 volvement.”.

18 **SEC. 9. APPLICABILITY.**

19 The amendments made by this Act shall apply to—

20 (1) any civil forfeiture proceeding pending on or
21 filed on or after the date of enactment of this Act;

22 and

1 (2) any amounts received from the forfeiture of
2 property on or after the date of enactment of this
3 Act.

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