

115TH CONGRESS
1ST SESSION

S. 642

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

MARCH 15, 2017

Mr. PAUL (for himself, Mr. LEE, Mr. CRAPO, Mr. KING, Mr. UDALL, and Mr. HEINRICH) 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 2017” 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 and

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

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

12 (a) REVISIONS TO CONTROLLED SUBSTANCES
13 ACT.—Section 511(e) of the Controlled Substances Act
14 (21 U.S.C. 881(e)) is amended—

15 (1) in paragraph (1)—

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

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

19 (C) by redesignating subparagraphs (B)
20 through (E) as subparagraphs (A) through (D),
21 respectively;

22 (2) in paragraph (2)—

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

1 (B) of paragraph (1)” and inserting “para-
2 graph (1)(A)”;

3 (B) in subparagraph (B), by striking “ac-
4 cordance with section 524(e) of title 28,” and
5 inserting “the General Fund of the Treasury of
6 the United States”;

7 (3) by striking paragraph (3);

8 (4) by redesignating paragraph (4) as para-
9 graph (3); and

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

11 (A) in subparagraph (A), by striking
12 “paragraph (1)(B)” and inserting “paragraph
13 (1)(A)”;

14 (B) in subparagraph (B), in the matter
15 preceding clause (i), by striking “paragraph
16 (1)(B) that is civilly or” and inserting para-
17 graph “(1)(A) that is”.

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

20 (1) in section 981(e)—

21 (A) by striking “is authorized” and all that
22 follows through “or forfeiture of the property;”
23 and inserting “shall forward to the Treasurer of
24 the United States any proceeds of property for-
25 feited pursuant to this section for deposit in the

1 General Fund of the Treasury or transfer such
2 property on such terms and conditions as such
3 officer may determine—”;

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

7 (C) in the matter following paragraph (5),
8 as so redesignated—

9 (i) by striking the first, second, third,
10 sixth, and eighth sentences; and

11 (ii) by striking “paragraphs (3), (4),
12 and (5)” and inserting “paragraphs (1),
13 (2), and (3)”; and

14 (2) in section 983(g)—

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

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

19 (c) TARIFF ACT OF 1930.—The Tariff Act of 1930
20 (19 U.S.C. 1304 et seq.) is amended—

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

22 (A) in paragraph (1)—

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

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

3 (iii) by striking subparagraph (F);
4 and

5 (B) in paragraph (2)—

6 (i) by striking “(A) Any payment”
7 and inserting “Any payment”; and

8 (ii) by striking subparagraph (B); and
9 (2) in section 616 (19 U.S.C. 1616a)—

10 (A) in the section heading, by striking
11 **“TRANSFER OF FORFEITED PROPERTY”**
12 and inserting **“DISMISSAL IN FAVOR OF**
13 **FORFEITURE UNDER STATE LAW”**;

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

16 (C) by striking subsections (b) through
17 (d).

18 (d) TITLE 31.—Section 9703 of title 31, United
19 States Code, is amended—

20 (1) in subsection (a)(1)—

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

22 (B) by redesignating subparagraphs (H)
23 through (J) as subparagraphs (G) through (I),
24 respectively; and

25 (2) in subsection (b)—

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

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

5 **SEC. 4. DEPARTMENT OF JUSTICE ASSETS FORFEITURE**
6 **FUND DEPOSITS.**

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

9 (1) by striking subparagraphs (A) and (B); and
10 (2) by redesignating subparagraphs (C) and
11 (D) as subparagraphs (A) and (B), respectively.

12 **SEC. 5. STRUCTURING TRANSACTIONS TO EVADE REPORT-**
13 **ING REQUIREMENT PROHIBITED.**

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

16 (1) in subsection (a)—

17 (A) in the matter preceding paragraph (1),
18 by inserting “knowingly” after “Public Law
19 91–508”; and

20 (B) in paragraph (3), by inserting “of
21 funds not derived from a legitimate source”
22 after “any transaction”;

23 (2) in subsection (b), in the matter preceding
24 paragraph (1), by inserting “knowingly” after “such
25 section”; and

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

4 (b) PROBABLE CAUSE HEARING IN CONNECTION
5 WITH PROPERTY SEIZURES RELATING TO CERTAIN MON-
6 ETARY INSTRUMENTS TRANSACTIONS.—

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

10 “(d) PROBABLE CAUSE HEARING IN CONNECTION
11 WITH PROPERTY SEIZURES RELATING TO CERTAIN MON-
12 ETARY INSTRUMENTS TRANSACTIONS.—

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

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

20 “(B) any property described in subpara-
21 graph (A) shall be returned unless the court
22 finds that there is probable cause to believe that
23 there is a violation of section 5324 involving the
24 property.

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

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

9 **SEC. 6. PROPORTIONALITY.**

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

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

14 “(A) the seriousness of the offense;

15 “(B) the extent of the nexus of the prop-
 16 erty to the offense;

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

19 “(D) the fair market value of the property;
 20 and

21 “(E) the hardship to the property owner
 22 and dependents.”.

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

24 Section 524(c)(6)(i) of title 28, United States Code,
 25 is amended by inserting “from each type of forfeiture, and

1 specifically identifying which funds were obtained from in-
2 cluding criminal forfeitures and which were obtained from
3 civil forfeitures,” after “deposits”.

4 **SEC. 8. APPLICABILITY.**

5 The amendments made by this Act shall apply to—

6 (1) any civil forfeiture proceeding pending on or
7 filed on or after the date of enactment of this Act;
8 and

9 (2) any amounts received from the forfeiture of
10 property on or after the date of enactment of this
11 Act.

○