H.R. 347: Mr. TAYLOR of North Carolina.
H.R. 413: Mr. UDALL of New Mexico and Mr. ABERCROMBIE.
H.R. 423: Mr. OSE.
H.R. 456: Mr. BARTLETT of Maryland.
H.R. 489: Mr. WEINER and Mr. THOMPSON of Mississippi.
H.R. 531: Mr. ADERHOLT.
H.R. 557: Mr. KUCINICH and Mr. BENTSEN.
H.R. 583: Mr. BORSKI and Mr. EHLERS.
H.R. 614: Mr. LUCAS of Kentucky.
H.R. 625: Mr. STUPAK.
H.R. 697: Mr. BURTON of Indiana, Mr. DEMINT, and Mr. JENKINS.
H.R. 721: Mr. LEWIS of Georgia.
H.R. 750: Mr. LARGENT.
H.R. 772: Mr. UDALL of New Mexico.
H.R. 784: Mr. BLILEY and Mr. MORAN of Virginia.
H.R. 798: Mr. CROWLEY, Ms. RIVERS, Mr. WU, and Mr. EVANS.
H.R. 826: Mr. LAMPSON.
H.R. 860: Mr. OBERSTAR, Mr. QUINN, and Mr. MENENDEZ.
H.R. 925: Mr. DELAHUNT and Mr. RAHALL.
H.R. 933: Mr. HALL of Ohio and Mrs. MINK of Hawaii.
H.R. 958: Mr. MATSUI.
H.R. 1020: Mr. BERMAN, Ms. PELOSI, Mr. BISHOP, Mr. MCGOVERN, Mr. OBERSTAR, Ms. SLAUGHTER, Ms. LEE, and Mr. LAMPSON.
H.R. 1039: Ms. PELOSI, Mr, DIXON, and Mr. LEACH.
H.R. 1057: Mr. WAXMAN and Ms. PELOSI.
H.R. 1083: Mr. GOODLATTE.
H.R. 1115: Ms. VALAZQUEZ, Ms. DELAURO, and Mr. ROEMER.
H.R. 1168: Ms. WOOLSEY and Mr. TAYLOR of North Carolina.
H.R. 1217: Mr. WELLER, Mr. STUMP, Mr. ACKERMAN, Mr. CLEMENT, and Mr. JENKINS.
H.R. 1221: Mrs. WILSON and Mr. TERRY.
H.R. 1224: Ms. BERKLEY, Mr. LARSON, and Mr. DAVIS of Illinois.
H.R. 1238: Mr. DAVIS of Illinois, Ms. KAPTUR, and Mr. DEFAZIO.
H.R. 1257: Ms. EDDIE BERNICE JOHNSON of Texas.
H.R. 1265: Ms. DELAURO and Mr. ENGEL.
H.R. 1300: Mr. ALLEN and Mr. DREIER.
H.R. 1303: Mr. RANGEL, Mr. LEWIS of Georgia, and Mr. GUTIERREZ.
H.R. 1317: Mr. LEWIS of Kentucky and Mr. SHERWOOD.
H.R. 1325: Mr. LAFALCE, Mrs. MEEK of Florida, Mr. BORSKI, and Mr. BLUMENAUER.
H.R. 1358: Mr. WALDEN of Oregon.
H.R. 1396: Mrs. MALONEY of New York, Ms. SCHAKOWSKY, Mr. SHERMAN, Mr. NADLER, Mr. SERRANO, Mr. WATT of North Carolina, Mr. MEEHAN, Ms. JACKSON-LEE of Texas, Mrs. MCCARTHY of New York, Mr. ENGEL, Ms. PELOSI, Mr. NEAL of Massachusetts, Mr. PALLONE, and Mr. EVANS.
H.R. 1402: Mr. DICKS, Mr. MARTINEZ, Mr. ABERCROMBIE, Mr. CUNNINGHAM, Mr. DUNCAN, Mr. KENNEDY of Rhode Island, and Mr. GIBBONS.
H.R. 1427: Mr. BLILEY.
H.R. 1435: Mr. MANZULLO.
H.R. 1509: Mr. FOSSELLA, Mr. BALDACCI, Mr. SKELTON, Ms. DELAURO, Mr. HALL of Texas, Mr. KENNEDY of Rhode Island, Mr. FOLEY, and Mr. GEPHARDT.
H.R. 1531: Mr. RAHALL and Mr. THOMPSON of Mississippi.
H.R. 1549: Mr. PHELPS.
H.R. 1567: Mr. EDWARDS.
H.R. 1590: Mr. DAVIS of Illinois.
H.R. 1671: Mr. DAVIS of Florida and Mr. LUTHER.
H.R. 1684: Mr. MARTINEZ and Ms. SLAUGHTER.
H.R. 1714: Mr. SHADEGG.
H.R. 1796: Mr. KENNEDY of Rhode Island and Ms. HOOLEY of Oregon.
H.R. 1816: Mr. INSLEE.
H.R. 1832: Ms. MCKINNEY and Mr. MARTINEZ.
H.R. 1842: Mr. DICKS and Mr. JENKINS.
H.R. 1850: Mr. ANDREWS and Mr. CRANE.
H.R. 1858: Mr. BLUNT, Mr. STEARNS, and Mr. ETHERIDGE.
H.R. 1920: Mr. KIND.
H.R. 1932: Mr. DAVIS of Illinois, Mr. LUCAS of Kentucky, and Mr. GREEN of Wisconsin.
H.R. 1962: Mr. GANSKE.
H.R. 1990: Ms. EDDIE BERNICE JOHNSON of Texas.
H.R. 1991: Mr. JEFFERSON.
H.R. 2028: Mr. HOSTETTLER, Mr. ENGLISH, and Mr. HYDE.
H.R. 2088: Mr. HALL of Texas.
H.R. 2125: Ms. ROYBAL-ALLARD.
H.R. 2172: Mr. MCNULTY, Mr. LATOURETTE, Mr. FRANKS of New Jersey, and Mr. PASCRELL.
H.R. 2241: Mr. WEXLER, Ms. ROS-LEHTINEN, Mr. LUCAS of Oklahoma, and Mr. MALONEY of Connecticut.
H.R. 2244: Mr. BAKER.
H.R. 2252: Mr. LARGENT.
H.R. 2260: Mr. POMBO, Mr. HOSTETTLER, Mr. ARMEY, and Mr. ENGLISH.
H.R. 2282: Mr. ADERHOLT.
H.R. 2283: Mr. CLAY and Mr. BISHOP.
H.R. 2300: Mrs. CHENOWETH, Mrs. EMERSON, Mr. REGULA, Mr. CUNNINGHAM, Mr. ADERHOLT, Mr. BARR of Georgia, Mr. COBURN, Mr. WELDON of Pennsylvania, Mr. FOSSELLA, Mr. ISAKSON, Mrs. ROUKEMA, Mr. SOUDER, Mr. SWEENEY, Mr. GREEN of Wisconsin, and Mrs. BONO.
H.R. 2306: Mrs. MEEK of Florida and Mr. MCNULTY.
H.J. Res. 41: Mrs. MINK of Hawaii, Mrs. LOWEY, and Ms. STABENOW.
H.J. Res. 55: Mr. BARTLETT of Maryland, Mr. DICKEY, Mr. HOSTETTLER, Mr. LARGENT, Mr. SOUDER, Mr. SHADEGG, Mr. PITTS, and Mr. HERGER.
H.J. Res. 57: Mr. HUNTER, Ms. WOOLSEY, Mr. COOK, Ms. KAPTUR, Mr. KUCINICH, Mr. TAYLOR of Mississippi, Mr. STEARNS, and Ms. MCKINNEY.
H.J. Res. 58: Mr. ROYCE.
H. Con. Res. 30: Mr. SUNUNU.
H. Con. Res. 38: Mr. ENGEL, Ms. MCKINNEY, Mr. BRADY of Pennsylvania, and Ms. SCHAKOWSKY.
H. Con. Res. 62: Mrs. MINK of Hawaii, Mr. ROHRABACHER, Mr. UDALL of New Mexico, Mr. CRANE, and Mr. MCHUGH.
H. Con. Res. 100: Mr. DAVIS of Illinois and Mrs. LOWEY.
H. Con. Res. 124: Mrs. NAPOLITANO, Ms. VELÁZQUEZ, Mr. GEJDENSON, and Mr. FROST.
H. Con. Res. 130: Mr. LATOURETTE.
H. Con. Res. 133: Ms. MILLENDER-MCDONALD, Mr. HINCHEY, and Mr. BERRY.
H. Res. 89: Mr. MCGOVERN.
H. Res. 115: Mr. INSLEE.
H. Res. 144: Mr. ENGEL.
H. Res. 146: Mr. FATTAH, Mr. GREENWOOD, Ms. DELAURO, Mr. PALLONE, Ms. SCHAKOWSKY, Mr. BLAGOJEVICH, Mr. ABERCROMBIE, Ms. KILPATRICK, Mr. HOUGHTON, Mr. HINCHEY, Mr. KLECZKA, Mr. HALL of Ohio, Mr. MCNULTY, Mr. DINGELL, Mr. LEWIS of Georgia, Mr. SHERMAN, Mr. UDALL of Colorado, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. RODRIGUEZ, Mr. BECERRA, Mrs. THURMAN, Mr. WATT of North Carolina, Mr. SERRANO, Mr. CROWLEY, Mr. FOLEY, Ms. SLAUGHTER, and Mr. YOUNG of Florida.
H. Res. 201: Mr. STARK.

PETITIONS, ETC.

Under clause 3 of rule XII,

20. The SPEAKER presented a petition of the Los Angeles County Federation of Republican Women, relative to Resolution No. 1–99 petitioning support for House Concurrent Resolution No. 30; to the Committee on the Judiciary.

AMENDMENTS

Under clause 8 of rule XVIII, proposed amendments were submitted as follows:

H.R. 1658

OFFERED BY: MR. HUTCHINSON

AMENDMENT NO. 21: Page 5, strike line 22 and all that follows through line 5 on page 9 and insert the following:

''(6)(A) An innocent owner's interest in property shall not be forfeited in any judicial action under any civil forfeiture provision of this title, the Controlled Substances Act, or the Immigration and Naturalization Act of 1952.

''(B)(i) With respect to a property interest in existence at the time the illegal act giving rise to forfeiture took place, a person is an innocent owner if the person establishes, by a preponderance of the evidence—

''(I) that the person did not know that the property was being used or was likely to be used in the commission of such illegal act, or

''(II) that upon learning that the property was being used or was likely to be used in the commission of such illegal act, the person promptly did all that reasonably could be expected to terminate or to prevent such use of the property.

''(ii) With respect to a property interest acquired after the act giving rise to the forfeiture took place, a person is an innocent owner if the person establishes, by a preponderance of the evidence, that the person acquired the property as a bona fide purchaser for value who at the time of the purchase did not know and was reasonably without cause to believe that the property was subject to forfeiture. A purchaser is 'reasonably without cause to believe that the property was subject to forfeiture' if, in light of the circumstances, the purchaser did all that reasonably could be expected to ensure that he or she was not acquiring property that was subject to forfeiture.

''(iii) Notwithstanding any other provision of this paragraph, no person may assert an ownership interest under this paragraph in contraband or other property that is illegal to possess. In addition, except as set forth in clause (ii), no person may assert an ownership interest under this paragraph in the illegal proceeds of a criminal act, irrespective of State property law.

''(C) For the purposes of this paragraph:

''(i) An 'owner' is a person with an ownership interest in the specific property sought to be forfeited, including but not limited to a lien, mortgage, recorded security device or valid assignment of an ownership interest. An owner does not include—

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

''(II) a bailee, unless the bailor is identified, and the bailor has authorized the bailee to claim in the forfeiture proceeding, pursuant to the Supplemental Rules for Admirality and Maritime Claims;

''(III) a nominee who exercises no dominion or control over the property; or

''(IV) a beneficiary of a constructive trust.

''(ii) A person shall be considered to have known that such person's property was being used or was likely to be used in the commission of an illegal act if the Government establishes the existence of facts and circumstances that should have created a reasonable suspicion that the property was being or would be used for an illegal purpose.

''(D) If the court determines, in accordance with this paragraph, 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 shall enter an appropriate order—

''(i) serving the property;

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

''(iii) 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. To effectuate the purposes of this paragraph, a joint tenancy or tenancy by the entireties shall be converted to a tenancy in common by order of the court, irrespective of State law.

H.R. 1658

OFFERED BY: MR. HUTCHINSON

AMENDMENT NO. 22: Page 9, strike line 6 and all that follows through line 25 on page 10 and insert the following:

''(k)(1) A person with standing to challenge the forfeiture of property seized under this section may file a motion for the return of the property in the manner described in Rule 41(e), Federal Rule of Criminal Procedure. If such motion is filed, the court shall conduct a hearing within 90 days and shall order the release of the property, pending trial on the forfeiture and the entry of judgment, unless—

''(A) the Government establishes probable cause to believe that the property is subject to forfeiture, based on all information available to the Government at the time of the hearing;

''(B) the Government has filed a civil forfeiture complaint against the property, and a magistrate judge has determined there is probable cause for the issuance of a warrant of arrest in rem pursuant to the Supplemental Rules for Admiralty and Maritime Claims;

''(C) a grand jury has returned an indictment that includes an allegation that the property is subject to criminal forfeiture;

''(D) the person filing the motion had notice of the Government's intent to forfeit the property administratively pursuant to 19 U.S.C. 1608, and failed to file a claim to the property within the specified time period;

''(E) the property is contraband or other property that the moving party may not legally possess; or

''(F) the property is needed as evidence in a criminal investigation or prosecution.

''(2) A party with standing to challenge a forfeiture under this section may move to dismiss the complaint for failure to comply with Rule E(2) of the Supplemental Rules, or on any other ground set forth in Rule 12(b) of the Federal Rules of Civil Procedure. Notwithstanding the provision of section 615 of the Tariff Act of 1930 (19 U.S.C. 1615), a party may not move to dismiss the complaint on the ground that the evidence in the possession of the Government at the time it filed its complaint was insufficient to establish the forfeitability of the property.''.

H.R. 1658

OFFERED BY: MR. HUTCHINSON

AMENDMENT NO. 23: Page 2, strike lines 12 through 20.

Page 3, strike lines 1 through 8 and insert the following:

''(j)(1)(A) Any motion to set aside a declaration of forfeiture entered pursuant to section 609 of the Tariff Act of 1930 (19 U.S.C. 1609), as incorporated by subsection (d), must be filed not later than 2 years after the entry of the declaration of forfeiture. Such motion shall be granted if—

''(i) the moving party had an ownership or possessory interest in the forfeited property, and the Government failed to take reasonable steps to provide such party with notice of the forfeiture; and

''(ii) the moving party did not have actual notice of the seizure within sufficient time to file a claim within the time period provided by law.

''(B) If the court grants a motion made under paragraph (1), it shall set aside the declaration of forfeiture as to the moving party's interest pending forfeiture proceedings in accordance with section 602 et seq. of the Tariff Act of 1930 (19 U.S.C. 1602 et seq.), which proceedings shall be instituted within 60 days of the entry of the order granting the motion.

''(C) If, at the time a motion made under this paragraph is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government shall institute forfeiture proceedings under subparagraph (B) against a substitute sum of money equal to the value of the forfeited property at the time it was disposed of, plus interest.

''(D) The institution of forfeiture proceedings under subparagraph (B) shall not be barred by the expiration of the statute of limitations under section 621 of the Tariff Act of 1930 (19 U.S.C. 1621) if the original publication of notice was initiated before the expiration of such limitations period.

''(E) A motion made under this paragraph shall be the exclusive means of obtaining judicial review of a declaration of forfeiture entered by a seizing agency.

''(F) This paragraph shall apply to any administrative forfeiture under this section, and to any administrative forfeiture under the Controlled Substances Act, or under any other provision of law that incorporates the provisions of the customs laws.

Page 3, line 9, strike ''C'' and insert ''G''.

H.R. 1658

OFFERED BY: MR. HUTCHINSON

AMENDMENT NO. 24: Page 14, line 21, strike ''(a) IN GENERAL.—'' and strike line 25 and all that follows through line 8 on page 15.

H.R. 1658

OFFERED BY: MR. HUTCHINSON

(Amendment in the Nature of a Substitute)

AMENDMENT NO. 25: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

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

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

Sec. 1. Short title and table of contents.
Sec. 2. Creation of general rules relating to civil forfeiture proceedings.
Sec. 3. Compensation for damage to seized property.
Sec. 4. Prejudgment and postjudgment interest.
Sec. 5. Applicability.

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 the following new section after section 982:

''§ 983. Civil forfeiture procedures

''(a) ADMINISTRATIVE FORFEITURES.—(1)(A) In any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the agency conducting a seizure of property must send written notice of the seizure under section 607(a) of the Tariff Act of 1930 (19 U.S.C. 1607(a)), such notice together with information on the applicable procedures shall be sent not later than 60 days after the seizure to each party known to the seizing agency at the time of the seizure to have an ownership or possessory interest, including a lienholder's interest, in the seized article. If a party's identity or interest is not determined until after the seizure but is determined before a declaration of forfeiture is entered, such written notice and information shall be sent to such interested party not later than 60 days after the seizing agency's determination of the identity of the party or the party's interest.

''(B) If the Government does not provide notice of a seizure of property in accordance with subparagraph (A), it shall return the property pending the giving of such notice.

''(2) The Government may apply to a Federal magistrate judge (as defined in the Federal Rules of Criminal Procedure) in any district where venue for a forfeiture action would lie under section 1355(b) of title 28 for an extension of time in which to comply with paragraph (1)(A). Such an extension shall be granted based on a showing of good cause.

''(3) A person with an ownership or possessory interest in the seized article who failed to file a claim within the time period prescribed in subsection (b) may, on motion made not later than 2 years after the date of final publication of notice of seizure of the property, move to set aside a declaration of forfeiture entered pursuant to section 609 of the Tariff Act of 1930 (19 U.S.C. 1609). Such motion shall be granted if—

''(A) the Government failed to take reasonable steps to provide the claimant with notice of the forfeiture; and

''(B) the person otherwise had no actual notice of the seizure within sufficient time to enable the person to file a timely claim under subsection (b).

''(4) If the court grants a motion made under paragraph (3), it shall set aside the declaration of forfeiture as to the moving party's interest pending forfeiture proceedings in accordance with section 602 et seq. of the Tariff Act of 1930 (19 U.S.C. 1602 et seq.), which proceedings shall be instituted within 60 days of the entry of the order granting the motion.

''(5) If, at the time a motion under this subsection is granted, the forfeited property has been disposed of by the Government in accordance with law, the Government shall institute forfeiture proceedings under paragraph (4). The property which will be the subject of the forfeiture proceedings instituted under paragraph (4) shall be a sum of money equal to the value of the forfeited property at the time it was disposed of plus interest.

''(6) The institution of forfeiture proceedings under paragraph (4) shall not be barred by the expiration of the statute of limitations under section 621 of the Tariff Act of 1930 (19 U.S.C. 1621) if the original publication of notice was completed before the expiration of such limitations period.

''(7) A motion made under this subsection shall be the exclusive means of obtaining judicial review of a declaration of forfeiture entered by a seizing agency.

''(b) FILING A CLAIM.—(1) Any person claiming such seized property may file a claim with the appropriate official after the seizure.

''(2) A claim under paragraph (1) may not be filed later than 30 days after—

''(A) the date of final publication of notice of seizure; or

''(B) in the case of a person receiving written notice, the date that such notice is received.

''(3) The claim shall set forth the nature and extent of the claimant's interest in the property.

''(4) Any person may bring a direct claim under subsection (b) without posting bond with respect to the property which is the subject of the claim.

''(c) FILING A COMPLAINT.—(1) In cases where property has been seized or restrained

by the Government and a claim has been filed, the Attorney General shall file a complaint for forfeiture in the appropriate court in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims not later than 90 days after the claim was filed, or return the property pending the filing of a complaint. By mutual agreement between the Government and the claimants, the 90-day filing requirement may be waived.

''(2) The Government may apply to a Federal magistrate judge (as defined in the Federal Rules of Criminal Procedure) in any district where venue for a forfeiture action would lie under section 1355(b) of title 28 for an extension of time in which to comply with paragraph (1). Such an extension shall be granted based on a showing of good cause.

''(3) Upon the filing of a civil complaint, the claimant shall file a claim and answer in accordance with the Supplemental Rules for Certain Admiralty and Maritime Claims.

''(d) APPOINTMENT OF COUNSEL.—(1) If the person filing a claim is financially unable to obtain representation by counsel and requests that counsel be appointed, the court may appoint counsel to represent that person with respect to the claim. In determining whether to appoint counsel to represent the person filing the claim, the court shall take into account—

''(A) the nature and value of the property subject to forfeiture, including the hardship to the claimant from the loss of the property seized, compared to the expense of appointing counsel;

''(B) the claimant's standing to contest the forfeiture; and

''(C) whether the claim appears to be made in good faith or to be frivolous.

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

''(3) The determination of whether to appoint counsel under this subsection shall be made following a hearing at which the Government shall have an opportunity to present evidence and examine the claimant. The testimony of the claimant at such hearing shall not be admitted in any other proceeding except in accordance with the rules which govern the admissibility of testimony adduced in a hearing on a motion to suppress evidence. Nothing in this paragraph shall be construed to prohibit the admission of any evidence that may be obtained in the course of civil discovery in the forfeiture proceeding or through any other lawful investigative means.

''(e) BURDEN OF PROOF.—In all suits or actions brought for the civil forfeiture of any property, the burden of proof at trial is on the United States to establish, by a preponderance of the evidence, that the property is subject to forfeiture. If the Government proves that the property is subject to forfeiture, the claimant shall have the burden of establishing any affirmative defense by a preponderance of the evidence.

''(f) INNOCENT OWNERS.—(1) An innocent owner's interest in property shall not be forfeited in any civil forfeiture action.

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

''(A) did not know of the conduct giving rise to the forfeiture; or

''(B) 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.

''(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, was a bona fide purchaser for value and was at the time of the purchase reasonably without cause to believe that the property was subject to forfeiture.

''(B) Except as provided in paragraph (4), where the property subject to forfeiture is real property, and the claimant uses the property as his or her primary residence and is the spouse or minor child of the person who committed the offense giving rise to the forfeiture, an otherwise valid innocent owner claim shall not be denied on the ground that the claimant acquired the interest in the property—

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

''(ii) in the case of a minor child, as an inheritance upon the death of a parent,

and not through a purchase. However, the claimant must establish, in accordance with subparagraph (A), that at the time of the acquisition of the property interest, the claimant was reasonably without cause to believe that the property was subject to forfeiture, and was an owner of the property, as defined in paragraph (6).

''(4) Notwithstanding any provision of this section, no person may assert an ownership interest under this section—

''(A) in contraband or other property that it is illegal to possess; or

''(B) in the illegal proceeds of a criminal act unless such person was a bona fide purchaser for value who was reasonably without cause to believe that the property was subject to forfeiture.

''(5) For the purposes of paragraph (2) of this subsection a person does all that reasonably can be expected if the person takes all steps that a reasonable person would take in the circumstances to prevent or terminate the illegal use of the person's property. There is a rebuttable presumption that a property owner took all the steps that a reasonable person would take if the property owner—

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

''(B) in a timely fashion, revoked permission for those engaging in such conduct to use the property or took reasonable steps in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

The person is not required to take extraordinary steps that the person reasonably believes would be likely to subject the person to physical danger.

''(6) As used in this subsection—

''(A) the term 'civil forfeiture statute' means any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense.

''(B) the term 'owner' means a person with an ownership interest in the specific property sought to be forfeited, including a lien, mortgage, recorded security device, or valid assignment of an ownership interest. Such term 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;

''(C) a person shall be considered to have known that the person's property was being used or was likely to be used in the commission of an illegal act if the person was willfully blind.

''(7) If the court determines, in accordance with this subsection, that an innocent owner had a partial interest in property otherwise subject to forfeiture, or a joint tenancy or tenancy by the entirety in such property, the court shall 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, that will permit the Government to realize its forfeitable interest if the property is transferred to another person.

To effectuate the purposes of this subsection, a joint tenancy or tenancy by the entireties shall be converted to a tenancy in common by order of the court, irrespective of state law.

''(8) An innocent owner defense under this subsection is an affirmative defense.

''(g) MOTION TO SUPPRESS SEIZED EVIDENCE.—At any time after a claim and answer are filed in a judicial forfeiture proceeding, a claimant with standing to contest the seizure of the property may move to suppress the fruits of the seizure in accordance with the normal rules regarding the suppression of illegally seized evidence. If the claimant prevails on such motion, the fruits of the seizure shall not be admitted into evidence as to that claimant at the forfeiture trial. However, a finding that evidence should be suppressed shall not bar the forfeiture of the property based on evidence obtained independently before or after the seizure.

''(h) USE OF HEARSAY AT PRE-TRIAL HEARINGS.—At any pre-trial hearing under this section in which the governing standard is probable cause, the court may accept and consider hearsay otherwise inadmissible under the Federal Rules of Evidence.

''(i) STIPULATIONS.—Notwithstanding the claimant's offer to stipulate to the forfeitability of the property, the Government shall be entitled to present evidence to the finder of fact on that issue before the claimant presents any evidence in support of any affirmative defense.

''(j) PRESERVATION OF PROPERTY SUBJECT TO FORFEITURE.—The court, before or after the filing of a forfeiture complaint and on the application of the Government, may—

''(1) enter any restraining order or injunction in the manner set forth in section 413(e) of the Controlled Substances Act (21 U.S.C. 853(e));

''(2) require the execution of satisfactory performance bonds;

''(3) create receiverships;

''(4) appoint conservators, custodians, appraisers, accountants or trustees; or

''(5) take any other action to seize, secure, maintain, or preserve the availability of property subject to forfeiture under this section.

''(k) EXCESSIVE FINES.—(1) At the conclusion of the trial and following the entry of a verdict of forfeiture, or upon the entry of summary judgment for the Government as to the forfeitability of the property, the claimant may petition the court to determine whether the excessive fines clause of the Eighth Amendment applies, and if so, whether forfeiture is excessive. The claimant shall

have the burden of establishing that a forfeiture is excessive by a preponderance of the evidence at a hearing conducted in the manner provided in Rule 43(e), Federal Rules of Civil Procedure, by the Court without a jury. If the court determines that the forfeiture is excessive, it shall adjust the forfeiture to the extent necessary to avoid the Constitutional violation.

''(2) The claimant may not object to the forfeiture on Eighth Amendment grounds other than as set forth in paragraph (1), except that a claimant may, at any time, file a motion for summary judgment asserting that even if the property is subject to forfeiture, the forfeiture would be excessive. The court shall rule on such motion for summary judgment only after the Government has had an opportunity—

''(A) to conduct full discovery on the Eighth Amendment issue; and

''(B) to place such evidence as may be relevant to the excessive fines determination before the court in affidavits or at an evidentiary hearing.

''(l) PRE-DISCOVERY STANDARD.—In a judicial proceeding on the forfeiture of property, the Government shall not be required to establish the forfeitability of the property before the completion of discovery pursuant to the Federal Rules of Civil Procedure, particularly Rule 56(f) as may be ordered by the court or if no discovery is ordered before trial.

''(m) APPLICABILITY.—The procedures set forth in this section apply to any civil forfeiture action brought under any provision of this title, the Controlled Substances Act, or the Immigration and Naturalization Act.''.

(b) RELEASE OF PROPERTY.—Chapter 46 of title 18, United States Code, is amended to add the following section after section 984:

''§ 985. Release of property to avoid hardship

''(a) A person who has filed a claim under section 983 is entitled to release pursuant to subsection (b) of seized property pending trial if—

''(1) the claimant has a possessory interest in the property sufficient to establish standing to contest forfeiture and has filed a nonfrivolous claim on the merits of the forfeiture action;

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

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

''(4) the claimant's hardship outweighs the risk that the property will be destroyed, damaged, lost, concealed, diminished in value or transferred if it is returned to the claimant during the pendency of the proceeding; and

''(5) none of the conditions set forth in subsection (c) applies;

''(b)(1) The claimant may make a request for the release of property under this subsection at any time after the claim is filed. If, at the time the request is made, the seizing agency has not yet referred the claim to a United States Attorney pursuant to section 608 of the Tariff Act of 1930 (19 U.S.C. 1608), the request may be filed with the seizing agency; otherwise the request must be filed with the United States Attorney to whom the claim was referred. In either case, the request must set forth the basis on which the requirements of subsection (a)(1) are met.

''(2) If the seizing agency, or the United States Attorney, as the case may be, denies the request or fails to act on the request within 20 days, the claimant may file the request as a motion for the return of seized property in the district court for the district represented by the United States Attorney to whom the claim was referred, or if the claim has not yet been referred, in the district court that issued the seizure warrant for the property, or if no warrant was issued, in any district court that would have jurisdiction to consider a motion for the return of seized property under Rule 41(e), Federal Rules of Criminal Procedure. The motion must set forth the basis on which the requirements of subsection (a) have been met and the steps the claimant has taken to secure the release of the property from the appropriate official.

''(3) The district court must act on a motion made pursuant to this subsection within 30 days or as soon thereafter as practicable, and must grant the motion if the claimant establishes that the requirements of subsection (a) have been met. If the court grants the motion, the court must enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including permitting the inspection, photographing and inventory of the property, and the court may take action in accordance with Rule E of the Supplemental Rules for Certain Admiralty and Maritime Cases. The Government is authorized to place a lien against the property or to file a lis pendens to ensure that it is not transferred to another person.

''(4) If property returned to the claimant under this section is lost, stolen, or diminished in value, any insurance proceeds shall be paid to the United States and such proceeds shall be subject to forfeiture in place of the property originally seized.

''(c) This section shall not apply if the seized property—

''(1) 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 business which has been seized,

''(2) is evidence of a violation of the law,

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

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

''(d) Once a motion for the release of property under this section is filed, the person filing the motion may request that the motion be transferred to another district where venue for the forfeiture action would lie under section 1355(b) of title 28 pursuant to the change of venue provisions in section 1404 of title 28.''.

(c) CHAPTER ANALYSIS.—The chapter analysis for chapter 46 of title 18, United States Code, is amended—

(1) by inserting after the item relating to section 982 the following:

''983. Civil forfeiture procedures''; and

(2) by inserting after the item relating to section 984 the following:

''985. Release of property to avoid hardship''.

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

(1) in subparagraph (C) by inserting before the period the following: ''or any offense constituting 'specified unlawful activity' as defined in section 1956(c)(7) of this title or a conspiracy to commit such offense''; and

(2) by striking subparagraph (E).

(d) UNIFORM DEFINITION OF PROCEEDS.—Section 981(a) of title 18, United States Code, as amended by subsection (c), is amended—

(A) in paragraph (1), by striking ''gross receipts'' and ''gross proceeds'' wherever those terms appear and inserting ''proceeds''; and

(B) by adding the following after paragraph (1):

''(2) For purposes of paragraph (1), the term 'proceeds' means property of any kind obtained, directly 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 commission of the offense. In a case involving the forfeiture of proceeds of a fraud or false claim under paragraph (1)(C) involving billing for goods or services part of which are legitimate and part of which are not legitimate, the court shall allow the claimant a deduction from the forfeiture for the amount obtained in exchange for the legitimate goods or services. In a case involving goods or services provided by a health care provider, such goods or services are not 'legitimate' if they were unnecessary.

''(3) For purposes of the provisions of subparagraphs (B) through (H) of paragraph (1) which provide for the forfeiture of proceeds of an offense or property traceable thereto, where the proceeds have been commingled with or invested in real or personal property, only the portion of such property derived from the proceeds shall be regarded as property traceable to the forfeitable proceeds. Where the proceeds of the offense have been invested in real or personal property that has appreciated in value, whether the relationship of the property to the proceeds is too attenuated to support the forfeiture of such property shall be determined in accordance with the excessive fines clause of the Eighth Amendment.''

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 ''law-enforcement'' and inserting ''law enforcement''; and

(2) by inserting before the period the following: '', except that the provisions of this chapter and section 1346(b) of this title do apply to any claim based on the destruction, 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 the property was seized for the purpose of forfeiture under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense but the interest of the claimant is not forfeited.

(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 occurs; or

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

SEC. 4. PREJUDGMENT AND POSTJUDGMENT INTEREST.

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

(1) by inserting ''(a)'' before ''Upon''; and

(2) adding at the end the following:

''(b) INTEREST.—

''(1) POST-JUDGMENT.—Upon entry of judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense, the United States shall be liable for post-judgment interest as set forth in section 1961 of this title.

''(2) PRE-JUDGMENT.—The United States shall not be liable for prejudgment interest in a proceeding under any provision of Federal law (other than the Tariff Act of 1930 or the Internal Revenue Code of 1986) providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense, except that in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, the United States shall disgorge to the claimant any funds representing—

''(A) 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

''(B) for any period during which no interest is actually paid, an imputed amount of interest that such currency, instruments, or proceeds would have earned at the rate described in section 1961.

''(3) LIMITATION ON OTHER PAYMENTS.—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.''.

SEC. 5. APPLICABILITY.

Unless otherwise specified in this Act, the amendments made by this Act apply with respect to claims, suits, and actions filed on or after the date of the enactment of this Act.

H.R. 1658

OFFERED BY: MRS. MEEK OF FLORIDA

AMENDMENT NO. 26: At the end add the following:

SEC. 5. FORFEITURE FOR ALIEN SMUGGLING.

Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

''(l)(1) Any conveyance, including any vessel, vehicle, or aircraft which has been used or is being used in commission of a violation of section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)); and

''(2) Any property, real or personal that—

''(A) constitutes, is derived from, or is traceable to the proceeds obtained, directly or indirectly, from the commission of a violation of section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)); or

''(B) is used to facilitate, or is intended to be used to facilitate, the commission of a violation of such section.

H.R. 1658

OFFERED BY: MRS. ROUKEMA

AMENDMENT NO. 27: Page 15, insert after line 8 the following:

SEC. 7. BULK CASH SMUGGLING.

Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

''(G)(i) Any monetary instrument, or combination of monetary instruments, in excess of $10,000 for which a currency report required by any provision of subchapter II of chapter 53 of title 31, United States Code, has not been filed and which has been concealed in any conveyance, article of luggage, merchandise, or other container being transported or transferred in interstate or foreign commerce or on the person of any individual who transports, transfers, or attempts to transport or transfer such currency or monetary instruments from a place within the United States to a place outside the United States or from a place outside the United States to a place within the United States.

''(ii) Upon a showing by the property owner by a preponderance of the evidence that any currency or monetary instruments involved in the offense giving rise to forfeiture under clause (i) were derived from a legitimate source and were intended for a lawful purpose, the court shall determine what portion of the property, if any, may be forfeited without being grossly disproportional to the gravity of the offense. In determining the amount of the forfeiture, the court shall consider all aggravating and mitigating facts and circumstance that have a bearing on the gravity of the offense. Such circumstances include the following: the value of the currency or other monetary instruments involved in the offense, efforts by the person committing the offense to structure currency transactions, conceal property, or otherwise obstruct justice, and whether the offense is part of a pattern of repeated violations.''.

H.R. 2084

OFFERED BY: MR. SANFORD

AMENDMENT NO. 3: Page 42, line 15, after the dollar amount, insert the following: ''(plus an additional reduction of $1,000,000)''.

Page 42, line 18, after the dollar amount, insert the following: ''(reduced by $1,000,000)''.