it in the committee, and I will vote for it on the floor.

The notion of having a Visa Waiver Program is a good and honorable notion that I think all of us support. But I think we would be less than fair with our colleagues if we did not say up front that the criteria which is currently being used for countries to get into the Visa Waiver Program are not the right criteria.

Right now we are letting countries into the Visa Waiver Program based on the visa refusal rate that countries have experienced. And, unfortunately, there are a number of instances where that refusal rate is colored by considerations that ought not go into the evaluation: the race of applicants, the economic status of applicants, various biases that people who are considering whether to grant a visa or not are being taken into account. This is not the correct criteria.

The criteria which should be being used is whether people who come to our country overstay their visa authority in our country. We are trying to move to a system that evaluates that, and we do not have that system in place.

Now, the gentleman from Texas (Chairman SMITH) said 14 years is a long time to have a pilot program. The reason we have had a pilot program for 14 years is we have been working on this system, the valid reliable system that we ought to be using to determine whether countries are included in the Visa Waiver Program, for 14 years; and we still do not have the system in place.

The problem that I have with calling this a permanent program is that we, in effect, then are sanctioning the process or impliedly sanctioning the process of considering visa denials, which then sanctions the biases that are in that whole denial and approval process. And that is troubling to me.

So while I will support this bill, it is with the express understanding that we are moving to a system of evaluating visa overstays which ought to be the criteria for determining whether a country gets into this program or not, not some arbitrary race bias or economic bias or other biased process that quite often is the basis for refusing a visa in a source country in the first place.

That having been said, this is a program that is worthwhile. We hope we get the criteria right at some point, and I do encourage my colleagues to vote for the program even though I still have reservations about the criteria that we will be using on a short-term basis.

Ms. JACKSON-LEE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I simply say that I associate myself with the comments of the distinguished gentleman from North Carolina (Mr. WATT) and acknowledge that we must continue to work through these issues that play into the discriminatory aspects of the law.

I would hope that, as we have cleared up discrimination in the United States with legislation and not cleared it up in totality but cleared it up with at least a statement of being in opposition to discrimination on race, sex, sexual orientation, disability, that we would find the ability to do so and carry through on this issue of visas.

I would hope that we will continue the discussion on this legislation and, as well, that we will see the implementation of this program as a permanent program to be of value economically to the United States as well as to increase the very positive relations that we have with many of those nations who are on this visa list.

I would see us improving relations even more with our friends in the Caribbean, with our friends in Africa, and our friends additionally in South America and other parts who have not had this privilege if we can make determinations on overstays along with the issues of refusal rates.

With that, I would ask my colleagues to support this legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just want to acknowledge the legitimate point made by our colleague, the gentleman from North Carolina (Mr. WATT), a minute ago. We do, in fact, need a better program to determine the visa overstay rates.

Mr. MCCOLLUM. Mr. Speaker, I rise today to support the travel and tourism industry and to support legislation to make permanent the Visa Waiver Pilot Program. I am fortunate to represent one of the most popular tourist destinations in the country, Orlando, Florida. Over 38 million people visit the Orlando area each year, creating a total economic impact of more than $17 billion. Nearly 3 million of these visitors are from overseas, coming to Florida from Western Europe, South America and the Far East. Those visitors are essential to the local economy and well-being of the state of Florida.

Travel and tourism is one of the nation's top three industries providing jobs spanning across our communities, from employees at theme parks, museums, airlines, car rental companies, food service and hotels. The Visa Waiver program, which encourages international travel to the United States by waiving the visitor visa requirements for 29 countries, has added to the growth in overseas tourism. Frequent reauthorization of the pilot program creates confusion for those who work in the tourism industry and for individual travelers. H.R. 3767 makes this critical program permanent and also adds security enhancements that will make the program even more secure. Passage of this bill is a win-win for Congress and makes winners of the millions of constituents who work in the travel and tourism industry.

Mr. SMITH of Texas. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PEASE). The question is on the motion offered by the gentleman from Texas (Mr. SMITH) that the House suspend the rules and pass the bill, H.R. 3767, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

CIVIL ASSET FORFEITURE REFORM ACT OF 2000

Mr. HYDE. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 1658) to provide a more just and uniform procedure for Federal civil forfeitures, and for other purposes.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

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 subparagraph (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 disproportional 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 disproportional 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:

''(11) 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 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 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.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Illinois (Mr. HYDE) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

The Chair recognizes the gentleman from Illinois (Mr. HYDE).

GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 1658.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, this bill represents the culmination of a 7-year effort to reform our Nation's civil asset forfeiture laws. We would not be here today without the momentum generated by the House's passage of H.R. 1658 last June by the overwhelming vote of 375–48. That vote was made possible by the tireless support of my colleagues, the gentleman from Michigan (Mr. CONYERS), the ranking member of the Committee on the Judiciary; the gentleman from Georgia (Mr. BARR); and the gentleman from Massachusetts (Mr. FRANK) and their staffs.

House passage was also made possible by the support of a multitude of organizations who put aside their differences to work toward a common goal: the National Association of Criminal Defense Lawyers, Americans for Tax Reform, the American Civil Liberties Union, the National Rifle Association, the American Bar Association, the National Association of Realtors, the Credit Union National Association, the American Bankers Association, the Aircraft Owners and Pilots Association, the National Association of Home Builders, the Boat Owners Association of the United States, United States Chamber of Commerce, the National Apartment Association, the American Hotel and Motel Association, and the Law Enforcement Alliance of America.

H.R. 1658 only got us through the House. Forfeiture reform would not

have become a reality had the cause not been adopted by ORRIN HATCH, the chairman of the Senate Committee on the Judiciary; and PAT LEAHY, the committee's ranking member. I owe a debt of gratitude to the Senators and their staffs for succeeding in crafting a bill that could get through the Senate and yet retain all the necessary elements of reform.

I must thank Senators SESSIONS and SCHUMER and their staffs for negotiating in the utmost good faith in helping craft a bill that both reforms our forfeiture laws and yet leaves civil forfeitures as an important crime-fighting tool for Federal, State, and local law enforcement.

Similar thanks must go to Attorney General Reno and Assistant Attorney General Robert Raben. They can all be proud of what they helped to accomplish.

I also must thank our former colleague Bob Bauman and Brenda Grantland of Forfeiture Endangers American Rights for their long and dedicated work on behalf of forfeiture reform, and Chicago Tribune columnist Stephen Chapman for first alerting me to the great abuses of forfeiture laws.

And I must thank David Smith, who has been there since the beginning. David helped me draft my first forfeiture reform bill, the Civil Asset Forfeiture Reform Act of 1993, and helped draft Senators LEAHY's and HATCH's reform bill and helped draft the Senate-passed bill we are considering today. This bill is truly his accomplishment.

And finally, George Fishman of our Committee on the Judiciary staff has been tireless in helping shepherd this legislation through the House and Senate.

Let me briefly outline the main points of H.R. 1658 as passed by the Senate. The bill makes eight fundamental reforms:

(1) The bill requires the Government to prove by a preponderance of the evidence that the property is subject to forfeiture. Currently, when a property owner goes to Federal court to challenge a seizure of property, all the Government needs to do is make an initial showing of probable cause that the property is subject to civil forfeiture. The owner then must establish that the property is innocent.

(2) The bill provides that if the Government's theory of forfeiture is that the property was used to commit or facilitate the commission of a crime or was involved in the commission of a crime, the Government must show that there was a substantial connection between the property and the crime.

(3) The bill provides that property can be released by a Federal court pending final disposition of a civil forfeiture case if continued possession by the Government would cause the property owner substantial hardship, such as preventing the functioning of a business or leaving an individual homeless, and the likely hardship outweighs the risks that the property will be destroyed, damaged, lost, concealed or transferred if returned to the owner.

(4) The bill provides that property owners who substantially prevail in court proceedings challenging the seizure of their property will receive reasonable attorney's fees. In addition, the bill allows a court to provide counsel for indigents if they are represented by appointed counsel in related criminal cases. Currently, property owners who successfully challenge the seizure of their property almost never are awarded attorney's fees. In addition, indigents have no right to appointed counsel in civil forfeiture cases.

(5) The bill eliminates the cost bond requirement, under which a property owner must now post a bond of the lesser of $5,000 or 10 percent of the value of the property seized merely for the right to contest a civil forfeiture in Federal court. The bill provides that if a court finds that a claimant's assertion of an interest in property was frivolous, the court may impose a civil fine.

(6) The bill creates a uniform innocent owner defense for all Federal civil forfeiture statutes. Importantly, the defense protects property owners who have given timely notice to the police of the illegal use of their property and have in a timely fashion revoked or made a good faith attempt to revoke permission to use the property from those engaging in the illegal conduct.

(7) The bill allows property owners to sue the Federal Government for compensation for damage to their property when they prevail in civil forfeiture actions. Currently, the Federal Government is exempt from liability for damage caused during the handling or storage of property being detained by law enforcement officers.

(8) The bill provides a uniform definition of the forfeitable proceeds of criminal acts. In cases involving illegal goods or services, unlawful activities and telemarketing and health care fraud schemes, proceeds are properties obtained directly or indirectly as a result of the commission of the offenses giving rise to forfeiture, and any properties traceable thereto, and are not limited to the net gain or profit realized from the offenses. In cases involving lawful goods or services that are sold or provided in an illegal manner, proceeds are money acquired through the illegal transactions less the direct costs incurred in providing the goods or services.

H.R. 1658 also contains a number of provisions addressing the needs of the Justice Department and State and local law enforcement.

□ 1345

These include increasing the availability of criminal forfeiture and the civil forfeiture of the proceeds of crimes, relaxing the statute of limitations governing civil forfeiture actions, allowing Federal courts discretionary use of the fugitive disentitlement doctrine, allowing Federal courts to enhance forfeiture judgments of foreign nations, allowing Federal courts to impose sanctions up to and including dismissal of an owner's claim if property owners who have filed claims in civil forfeiture cases refuse to provide the government with access to potentially material financial records in foreign countries, and allowing Federal courts to issue civil restraining orders against property where there is a substantial probability the government will prevail in civil forfeiture actions.

This bill is one we can all be proud of. It returns civil asset forfeiture to the ranks of respected law enforcement tools that can be used without risk to the civil liberties and property rights of American citizens. We are all better off that this is so.

Mr. Speaker, I insert into the RECORD at this point a Congressional Budget Office letter on this matter. I urge my colleagues to support this bill today.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 5, 2000.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1658, the Civil Asset Forfeiture Reform Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Keith (for federal costs), who can be reached at 226–2860, and Shelley Finlayson (for the state and local impact), who can be reached at 225–3220.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 1658—Civil Asset Forfeiture Reform Act of 2000

Summary: H.R. 1658 would make many changes to federal asset forfeiture laws that would affect the processing of about 60,000 civil seizures conducted each year by the Department of justice (DOJ) and the Department of the Treasury. (The Treasury Department makes an additional 50,000 seizures annually that would not be affected by this act.) Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1658 would cost $9 million over the 2001–2005 period to pay for additional costs of court-appointed counsel that would be authorized by this legislation. In addition, enacting the legislation would affect direct spending and receipts; therefore, pay-as-you-go procedures would apply.

Because CBO expects that enacting H.R. 1658 would result in fewer civil seizures by DOJ and the Treasury Department, we estimate that governmental receipts (i.e., revenues) deposited into the Assets Forfeiture Fund and the Treasury Forfeiture Fund would decrease by about $115 million each year beginning in fiscal year 2001. Under current law, both forfeiture funds are authorized to collect revenue and spend the balance without further appropriation. Thus, the corresponding direct spending from the two funds would also decline, but with some lag. CBO estimates that enacting this provision would decrease projected surpluses by a total of $46 million over the fiscal years 2001 and 2002 (the difference between lower revenues and lower direct spending over those years),

but that by fiscal year 2003 the changes in receipts and spending would be equal, resulting in no net budgetary impact thereafter.

H.R. 1658 also would require the Legal Services Corporation (LSC) to represent certain claimants in civil forfeiture cases and would require the federal government to reimburse the LSC for its costs. CBO estimates that this provision would increase direct spending by $5 million over the 2001–2005 period.

In addition, H.R. 1658 would make the federal government liable for any property damage, attorney fees, and pre-judgment and post-judgment interested payments on certain assets to prevailing parties in civil forfeiture proceedings. CBO cannot estimate either the likelihood or the magnitude of such awards because there is no basis for predicting either the outcome of possible litigation or the amount of compensation.

H.R. 1658 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO expects that enacting this legislation would lead to a reduction in payments to state and local governments from the Assets Forfeiture Fund and the Treasury Forfeiture Fund.

Description of the Act's major provisions: H.R. 1658 would make various changes to federal laws relating to the forfeiture of civil assets. In particular, the act would:

Establish a short statutory time limit for the federal government to notify interested parties of a seizure and to file a complaint;

Eliminate the cost bond requirement, whereby claimants have to post bond in an amount of the lesser of $5,000 or 10 percent of the value of the seized property (but not less than $250) to preserve the right to contest a forfeiture;

Permit federal courts to appoint counsel for certain indigent claimants;

Increase the federal government's burden of proof to a preponderance of the evidence;

Require the federal government to compensate prevailing claimants for property damage;

Establish the federal government's liability for payment of attorney fees and pre-judgment and post-judgment interest; and

Authorize the use of forfeited funds to pay restitution to crime victims.

Estimated cost to the Federal Government: As shown in the following table, CBO estimates that implementing H.R. 1658 would increase discretionary spending for court-appointed counsel by $9 million over the 2001–2005 period, assuming appropriation of the necessary funds. (For the purposes of this estimate. CBO assumes that spending for this purpose would be funded with appropriated amounts from the Defender Services account.) In addition, we estimate that over the 2001–2005 period, the reductions in direct spending of funds from forfeited assets would be smaller than the reductions in revenues estimated to occur as a result of enacting H.R. 1658, resulting in a net cost of $46 over the five-year period. Finally, CBO estimates that additional payments to the Legal Services Corporation would be about $1 million each year. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars					
	2000	2001	2002	2003	2004	2005
Spending subject to appropriation						
Spending Under Current Law Defender Services:						
Estimated Authorization Level [1]	375	387	397	408	419	429
Estimated Outlays	373	389	398	408	419	429
Proposed Changes:						
Estimated Authorization Level	0	1	2	2	2	2
Estimated Outlays	0	1	2	2	2	2
Spending Under H.R. 1658 for Defender Services:						
Estimated Authorization Level [1]	375	388	399	410	421	431
Estimated Outlays	373	390	399	410	421	431
Changes in revenues and direct spending						
Changes in Forfeiture Receipts:						
Estimated Revenues	0	−115	−115	−115	−115	−115
Spending of Forfeiture Receipts:						
Estimated Budget Authority	0	−115	−115	−115	−115	−115
Estimated Outlays	0	−76	−108	−115	−115	−115
Payments to the Legal Services Corporation:						
Estimated Budget Authority	0	1	1	1	1	1
Estimated Outlays	0	1	1	1	1	1

[1] The 2000 level is the amount appropriated for that year. The estimated authorization levels for 2001 through 2005 reflect CBO baseline estimates, assuming adjustments for anticipated inflation.

Basis of estimate: For purposes of this estimate, CBO assumes that H.R. 1658 will be enacted by the end of fiscal year 2000 and that the necessary amounts will be appropriated for each fiscal year. We also assume that outlays for defender services and the use of forfeiture receipts will continue to follow historical patterns.

Spending subject to appropriation

H.R. 1658 would allow for court-appointed counsel for certain parties contesting a forfeiture who already have been appointed counsel in a related criminal case. The act also would eliminate the requirement that claimants post bond before the case is tried in federal court. Consequently, CBO anticipates that enacting H.R. 1658 would make it easier for people whose assets have been seized to challenge the forfeiture of such assets. Based on information from DOJ, we estimate that the percentage of seizures that would result in contested civil cases would increase from 5 percent annually to at least 20 percent in fiscal year 2001. As the defense bar becomes increasingly aware of and more familiar with the provisions of H.R. 1658, CBO expects that the percentage of contested civil cases would increase to about 30 percent each year.

While the decision to appoint counsel would be at the discretion of the judge assigned to each case, CBO expects that judges would not want to encourage litigation in many cases. Moreover, CBO expects that many of the contested cases would involve larger assets, and such cases usually do not involve indigent claimants who would need court-appointed counsel. Based on information from DOJ, CBO estimates that a small number of indigent claimants in civil forfeiture cases would also have a criminal case pending. Specifically, we estimate that court-appointed counsel would be provided in about 5 percent of contested civil cases. In addition, because forfeiture cases involve property, the courts might have to appoint more than one attorney to represent multiple claimants in the same case. Historical data suggest an average of 1.5 claims per case.

While H.R. 1658 does not specify a level of compensation paid to court-appointed counsel for a civil forfeiture case, CBO expects such payment would be equivalent to amounts paid in criminal cases. Based on information from the Administrative Office of the United States Courts, CBO estimates that court-appointed counsel would be paid about $3,000 per claimant per case. In total, we estimate that additional defender services related to civil asset forfeiture proceedings would cost about $9 million over the next five years.

In addition, other discretionary spending could be affected by this act. On the one hand, the federal court system could require additional resources in the future if additional cases are brought to trial and the amount of time spent on each case increases. On the other hand, some savings in law enforcement resources could be realized if fewer seizures and conducted each year. While CBO cannot predict the amount of any such costs or savings, we expect that, on balance, implementing the act would result in no significant additional discretionary spending other than the increases for court-appointed counsel.

Revenues and direct spending

Based on information from DOJ and the Treasury Department, CBO estimates that about 23,000 seizures that would otherwise occur each year under current law would be eliminated under H.R. 1658. (Such seizures primarily involve assets whose value is less than $25,000.) The various changes to civil forfeiture laws under this act would make proving cases more difficult and more time-consuming for the federal government. In many instances, law enforcement agencies, including the state and local agencies that work on investigations jointly with the federal government and then receive a portion of the receipts generated from the forfeitures, many determine that certain cases, especially those with a value less than $25,000, may no longer be cost-effective to pursue. While the federal government and other law enforcement agencies would take a few years following enactment of the legislation to realize the full effects of its provisions on the forfeiture and claims process, CBO expects that the total number of seizures would decrease by nearly 40 percent. CBO estimates that such a reduction in seizures would reduce total forfeiture receipts by about $115 million in fiscal year 2001 and by $575 million over the 2001–2005 period.

The receipts deposited into the Assets Forfeiture Fund and the Treasury Forfeiture fund are used to pay for all costs associated with the operation of the forfeiture program, the payment of equitable shares of proceeds to foreign, state, and local law enforcement agencies, and other expenses not directly associated with a forfeiture case, such as payment of awards to informants. In recent

years about 67 percent of total asset forfeiture receipts collected in a given year are spent in the same year in which they are collected; therefore, we estimate that enacting H.R. 1658 would result in a decrease in federal spending of $76 million in fiscal year 2001, $108 million in 2001, and $115 million annually in subsequent years.

In addition, H.R. 1658 would require the Legal Service Corporation to represent claimants in financial need and whose claim involves an asset that is the claimant's primary residence. Under H.R. 1658, the court must enter a judgment in favor of the LSC for the cost of legal representation. Based on historical data, CBO estimates that such judgments would increase direct spending by about $1 million a year.

Additional potential budgetary impacts

In addition, this act would make the federal government liable for any property damage, attorney fees, and pre-judgment and post-judgment interest payments on certain assets to prevailing parties in civil forfeiture proceedings. However, CBO cannot estimate either the likelihood or the magnitude of such awards because there is no basis for predicting either the outcome of possible litigation or the amount of compensation. Compensation payments could come from appropriated funds or occur without further appropriation from the Judgment Fund, or from both sources.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The following table summarizes the estimated pay-as-you-go effects of H.R. 1658. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By Fiscal Year, in Millions of Dollars										
	200	201	202	203	204	205	206	207	208	209	2010
Changes in outlays	0	−75	−107	−114	−114	−114	−114	−114	−114	−114	−114
Changes in receipts	0	−115	−115	−115	−115	−115	−115	−115	−115	−115	−115

Estimated impact on state, local, and tribal governments: H.R. 1658 contains no intergovernmental mandates as defined in UMRA. However, because CBO expects that the seizure of assets would decline under the act, CBO estimates that payments to state and local law enforcement agencies from the Assets Forfeiture Fund and the Treasury Forfeiture Fund would decline by about $230 million over the 2001–2005 period. State and local law enforcement agencies receive, on average, about 40 percent of the receipts in these forfeiture funds either because they participate in joint investigations that result in the seizure of assets, or because they turn over assets seized in their own investigations to the federal government, which conducts the civil asset forfeiture case. In both cases the receipts from a seizure are accumulated in the funds and a portion is distributed to state and local agencies according to their involvement.

Estimated impact on the private sector: This act would impose no new private-sector mandates as defined in UMRA.

Previous CBO transmitted a cost estimate for H.R. 1658 as reported by the House Committee on the Judiciary on June 18, 1999. While the two versions of the legislation are similar, we estimate they would have different costs. CBO estimates the House version would result in a greater loss of forfeiture receipts, by $25 million annually, than the version approved by the Senate Committee on the Judiciary because the House version would place the burden of proof in assets forfeiture cases more heavily on the federal government.

In addition, the House version of H.R. 1658 would not require payments to the Legal Services Corporation for representation of certain claimants whose principal residence has been seized. Finally, CBO estimates that the Senate version of the legislation would authorize less spending than the House version for the legal representation of indigent claimants because it restricts the eligibility requirements for this service more than the House legislation. We estimate this representation would cost about $2 million annually under the Senate version and about $13 million annually under the House version.

Estimate prepared by: Federal Costs: Lanette J. Keith. Impact on State, Local, and Tribal Governments: Shelley Finlayson. Impact on the Private Sector: John Harris.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

Mr. Speaker, since no Committee Report was filed for H.R. 1658 by the Senate Judiciary Committee, the House Judiciary Committee Report remains the best legislative history as to the bill. *See* H.R. Rep. No. 106–192 (1999). However, since new provisions were added to the bill in the Senate and other provisions were modified from their original House form, it will be useful for me to make a number of clarifying points.

STANDARD OF PROOF (SECTION 2—CREATING 18 U.S.C. SEC. 983(C))

H.R. 1658, as amended by the Senate, reduced the standard of proof the government has to meet in civil asset forfeiture cases from clear and convincing evidence to a preponderance of the evidence. While this is obviously a lower standard, Congress remains extremely dubious as to the probative value of certain types of evidence in meeting this standard.

First, as noted in the Committee Report to H.R. 1658, Congress is very skeptical that a person's carrying of ''unreasonably large'' quantities of cash is indicative of involvement in the drug trade. *See* H.R. Rep. No. 106–192 at 8. Many federal courts have ruled that a person's carrying of large amounts of cash does not even meet the current government burden of probable cause. The Seventh Circuit so ruled in *U.S.* v. *$506,231 in U.S. Currency,* 125 F. 3d 442 (7th Cir. 1997). The court found that ''[a]s far as we can tell, no court in the nation has yet held that, standing alone, the mere existence of currency, even a lot of it, is illegal. We are certainly not willing to be the first to so hold.'' *Id.* at 452. The court also found it necessary to remind a U.S. Attorney that ''the government may *not* seize money, even half a million dollars, based on its bare assumption that most people do not have huge sums of money lying about, and if they do, they must be involved in narcotics trafficking or some other sinister activity.'' *Id.* at 454 (emphasis in original). The Ninth Circuit found similarly. *See U.S.* v. *$191,910 in U.S. Currency,* 16 F.3d 1051, 1072 (9th Cir. 1994) (''[A]ny amount of money, standing alone, would probably be insufficient to establish probable cause for forfeiture.''); *See also U.S.* v. *One Lot of U.S. Currency ($36,634*), 103 F.3d 1048, 1055 n.9 (1st Cir. 1997); *U.S.* v. *$121,100,* 999 F.2d 1503, 1507 (11th Cir. 1993). Congress disagrees with those courts that have suggested otherwise. *See U.S.* v. *$37,780 in U.S. Currency,* 920 F.2d 159, 162 (2nd Cir. 1990). Clearly, if large amounts of cash do not meet the probable cause standard, they do not meet the higher standard of preponderance of the evidence.

The government can rely on large amounts of cash in conjunction with other evidence in attempting to meet its standard of proof. For instance, large amounts of cash found in proximity to drugs are often relied upon. However, the probative value of this evidence is much lower when the amount of drugs found is consistent with personal use. *See U.S.* v. *Real Property Located at 110 Collier Dr.*, 793 F. Supp. 1048, 1052 (N.D. Ala. 1992) (''The simultaneous presence of $8,861 in mildewed currency and a small amount of drugs for personal use . . . does not establish probable cause that the currency was intended to be used for the exchange of drugs.'')

In any event, the relative evidentiary contribution of cash in meeting a standard of proof, especially one raised above mere probable cause, should rarely be significant. Why? As the court found in *U.S.* v. *One Lot of U.S. Currency Totalling $14,665*, 33 F. Supp.2d 47 (D. Mass. 1998), reliance on cash can involve invidious assumptions: ''[m]any immigrants and Americans with limited means—hard working and law abiding—prefer to use cash in lieu of bank accounts and credit cards. * * * Indeed, the whole notion that carrying cash is indicative of illegal conduct reflects class and cultural biases that are profoundly troubling.'' *Id.* at 53–54.

Of especially little probative value is the method by which cash is carried. As the court found in *One Lot of U.S. Currency Totalling $14,665:*

> I do not doubt that drug couriers and dealers use rubber bands to bundle their illgotten gains. However, drug dealers also presumably use belts to hold up their trousers; under the government's analysis, if [the claimant] was wearing a belt at the time of the seizure, it would suggest his involvement with illegal activity. Although many courts appear to disagree, I find that the government's 'rubber band' hypothesis doesn't stretch quite that far.

Id. at 54 (footnotes omitted). *See also $506,231 in U.S. Currency,* 125 F.3d at 452.

The second type of evidence whose probative value is questioned by Congress is the fact that airline tickets are purchased with cash. *See* H.R. Rep. No. 106–192 at 8. *See also One Lot of U.S. Currency ($36,634),* 103 F.3d at 1055 n. 9. *U.S.* v. $40,000 in U.S. Currency, 999 F. Supp. 234, 238 (D.P.R. 1998); *U.S.* v. *Funds in the Amount of $9,800,* 952 F. Supp. 1254, 1261 (N.D. III. 1996).

The third type of disfavored evidence is narcotic dog alerts on currency. As one commentator has noted:

> It has been estimated that one out of every three circulating bills has been involved in a cocaine transaction. Cocaine and other drugs attach to the oily surface of currency in a variety of ways. Each contaminated bill contaminates others as they pass through cash

registers, cash drawers, wallets, and counting machines. If, in fact, a substantial part of the currency in this country will cause a trained dog to alert, then the alert obviously has no evidentiary value.

Smith, 1 *Prosecution and Defense of Forfeiture Cases* sec. 4.03, p. 4–82.3 (footnotes omitted). The author cites experts finding that 70–97% of all currency is contaminated with cocaine. *Id.* at sec. 4.03, p. 4–82.1–4–82.2.

Many federal courts have agreed as to the low probative value of dog alerts. *See, e.g., $506,231 in U.S. Currency,* 125 F.3d at 453; *Muhammed* v. *Drug Enforcement Agency,* 92 F.3d 648, 653 (8th Cir. 1996)(''The fact of contamination, alone, is virtually meaningless and gives no hint of when or how the cash became so contaminated.''); *U.S.* v. *$5,000 in U.S. Currency,* 40 F.3d 846, 849 (6th Cir. 1994) (''[T]he evidentiary value of narcotics dog's alert [is] minimal.'') (footnote omitted); *U.S.* v. *U.S. Currency, $30,060*, 39 F.3d 1039 (9th Cir. 1994) (''[T]he continued reliance of courts and law enforcement officers on [drug dog alerts] to separate 'legitimate' currency from 'drug-connected' currency is logically indefensible.'" *Id.* at 1043, *quoting Jones* v. *U.S. Drug Enforcement Administration*, 819 F. Supp. 698, 721 (M.D. Tenn. 1993) (footnote omitted)); *U.S.* v. *$53,082 in U.S. Currency*, 985 F.2d 245 (6th Cir. 1993) (''[A] court should 'seriously question the value of a dog's alert without other persuasive evidence. . . .'" *Id.* at 250–51 n.5, *quoting U.S.* v. *$80,760 in U.S. Currency*, 781 F. Supp. 462, 476 (N.D. Tex. 1991), *aff'd*, 978 F.2d 709 (5th Cir. 1992); *One Lot of U.S. Currency Totalling $14,665*, 33 F. Supp.2d at 58. *See also U.S.* v. *$639,558 in U.S. Currency*, 955 F.2d 712, 714 n.2 (D.C. Cir. 1992). Dog alerts of little value in meeting a standard of probable cause, and are of even less value in meeting a standard of preponderance of the evidence.

Adding the above factors together, ''[t]he government must come forward with more than a 'drug-courier profile' and a positive dog sniff [to meet the standard of probable cause].'' *Funds in the Amount of $9,800,* 952 F. Supp. at 1261.'' As the court ruled in *$80,760 in U.S. Currency,* 781 F. Supp. at 475, ''[p]rofile characteristics are of little value in the forfeiture context without other persuasive evidence establishing the requisite substantial connection.'' *See also Jones,* 819 F. Supp. at 719 (''The mere fact that a traveler matches some elements of a drug courier profile does not amount to even articulable suspicion, much less probable cause.''). The same holds true, to an even greater extent, when the standard is preponderance of the evidence.

Lastly, ''[a]n owner does not have to prove where he obtained money until the government demonstrates that it has [met its burden] to believe the money is forfeitable.'' *$506,231 in U.S. Currency,* 125 F.3d at 454.

I should also note that while hearsay may be used to establish probable cause for seizure, *see U.S.* v. *One 56 Foot Motor Yacht Named Tahuna*, 702 F.2d 1276, 1282–83 (9th Cir. 1983), it is not admissible to establish the forfeitability of property by a preponderance of the evidence. And, while the government may use evidence obtained after the forfeiture complaint is filed to establish the forfeitability of the property by a preponderance of the evidence, the government must still have had enough evidence to establish probable cause at the time of filing (or seizure, if earlier). The bill is not intended to limit the right of either party to bring a motion for summary judgment after the filing of the complaint pursuant to Fed. R. Civ. P. 56(a) or 56(b).

FACILITATING PROPERTY (SECTION 2—CREATING 18 U.S.C. SEC. 983(C))

While H.R. 1658 as it was introduced and originally passed in the House contained no provision reforming the standards regarding ''facilitation'' forfeiture, this is an issue about which I have been long concerned. *See* Hyde, *Forfeiting Our Property Rights: Is Your Property Safe From Seizure*? 61 (1995) I am gratified that it is addressed in the Senate amendment to H.R. 1658.

There are many facilitation-type civil forfeiture provisions in the U.S. Code. Most importantly, the federal drug laws make subject to civil forfeiture ''[a]ll conveyances . . . which are used, or intended for use . . . in any manner to facilitate the transportation, sale, receipt, possession, or concealment of [controlled substances] . . . .'' 21 U.S.C. sec. 881(a)(4). They also make subject to forfeiture ''[a]ll moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter . . . .'', 21 U.S.C. sec. 881(a)(6), and ''[a]ll real property . . . which is used, or intended to be used, in any manner or part, to . . . facilitate the commission of a violation of this subchapter punishable by more than one year's imprisonment . . . [.]'' 21 U.S.C. sec. 881(a)(7). Also, federal law make subject to civil forfeiture ''[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of [certain money laundering laws] . . . .'' 18 U.S.C. sec. 981(a)(1)(A).

How strong need the connection be between the ''facilitating'' property and the underlying crime? As to 881(a)(6), courts have interpreted its legislative history as requiring there to be a ''substantial connection'' between the property and the crime. *See* Psychotropic Substances Act of 1978, Joint Explanatory Statements of Titles II and III, 95th Cong., 2nd Sess., *reprinted in* 1978 U.S. Code Cong. & Admin News 9518, 9522.

As to 881(a)(7), many courts require there to be a substantial connection. *See, e.g., U.S.* v. *Parcel of Land & Residence at 28 Emery St.,* 914 F.2d 1, 3–4 (1st Cir. 1990); *U.S.* v. *26.075 Acres, Located in Swift Creek Township,* 687 F. Supp. 1005 (E.D.N.C. 1988), *aff'd sub nom. U.S.* v. *Santoro,* 866 F.2d 1538, 1542 (4th Cir. 1989); *U.S.* v. *Forfeiture, Stop Six Center,* 781 F. Supp. 1200, 1205–06 (N.D. Tex. 1991). Others do not. The Seventh Circuit has ruled that the facilitating property need only have ''more than an incidental or fortuitous connection to criminal activity . . . .'' *U.S.* v. *Real Estate Known as 916 Douglas Ave.,* 903 F.2d 490, 493 (7th Cir. 1990), *cert. denied sub nom. Born* v. *U.S.* 498 U.S. 1126 (1991). *See also U.S.* v. *Property at 4492 S. Livonia Rd.,* 889 F.2d 1258, 1269 (2nd Cir. 1989) (test is ''sufficient nexus'').

How significant is the difference? The Seventh Circuit in *916 Douglas Ave.* has found that ''[t]he difference between th[e substantial connection] approach and our own appears largely to be semantic rather than practical.'' 903 F.2d at 494. This might be the case—the Fourth Circuit has ruled that under the substantial connection test, ''[a]t minimum, the property must have more than an incidental or fortuitous connection to criminal activity[!]'' *U.S.* v. *Schifferli,* 895 F.2d 987, 990 (4th Cir. 1990). Some courts don't even feel the need to choose between the tests, ruling that facilitation has been shown in particular cases under either test. *See U.S.* v. *Rd 1, Box 1, Thompsontown,* 952 F.2d 53, 57 (3rd Cir. 1991); *U.S.* v. *Real Property and Residence at 3097 S.W. 111th Ave.,* 921 F.2d 1551, 1556 (11th Cir. 1991), *cert. denied,* 111 S.Ct. 1090 (1991).

As to 881(a)(4), some courts have applied the substantial connection test. *See U.S.* v. *1966 Beechcraft Aircraft,* 777 F.2d 947, 953 (4th Cir. 1985); *U.S.* v. *One 1979 Porsche Coupe,* 709 F.2d 1424, 1426 (11th Cir. 1983). Others have not. See *U.S.* v. *1964 Beechcraft Baron Aircraft,* 691 F.2d 725, 727 (5th Cir. 1982), *cert. denied,* 461 U.S. 914 (1983).

H.R. 1658 provides that the substantial connection test should be used whenever facilitating property is subject to civil forfeiture under the U.S. Code. And the test is intended to mean something, it is intended to require that facilitating property have a connection to the underlying crime significantly greater than just ''incidental or fortuitous.''

In one area in particular, courts have been much too liberal in finding facilitation. An especially high standard should have to be met before we dispossess a person or family of their home. A primary residence should be accorded far greater protection than mere personal property. *See U.S.* v. *Certain Lots in Virginia Beach,* 657 F. Supp. 1062, 1065 (E.D. Va. 1987). But, courts have not always felt this way in applying section 881(a)(7). In *U.S.* v. *Premises and Real Property at 250 Kreag Rd.,* 739 F. Supp. 120, 124 (W.D.N.Y. 1990), the court found a home forfeitable because the owner grew 17 stalks of marijuana in his backyard of home for personal use (standard used was unclear). *See also U.S.* v. *One Parcel of Real Property*, 960 F.2d 200, 205 (1st Cir. 1992). The court in *916 Douglas Ave.* found a home forfeitable on the basis of three phone calls made to or from it regarding the sale of two ounces of cocaine. ''The loss of one's home for the sale of a small amount of cocaine is undoubtedly a harsh penalty'', but that is what Congress intended. 903 F.2d at 494 (no substantial connection needed). In *U.S.* v. *Plescia,* 48 F.3d 1452, 1462 (7th Cir. 1995), one phone call to set up a large drug deal resulted in the forfeiture of a home (no substantial connection needed). *See also U.S.* v. *Zuniga*, 835 F. Supp. 622 (M.D. Fla. 1993) (Under a ''substantial connection'' or lesser test, ten calls involving drug offenses resulted in the forfeiture of a house (under a criminal forfeiture statute with an ''identical'' burden as 881(a)(7)).). None of these cases would meet the substantial connection test provided in H.R. 1658.

Under the substantial connection test, should an entire bank account be forfeitable because some of its assets were involved in money laundering? In *U.S.* v. *All Monies ($477,048.62 in account #90–3617–3,* 754 F. Supp. 1467 (D.Haw. 1991), the court ruled that under sec. 881(a)(6) and 18 U.S.C. sec. 981(a)(1)(A), the government showed probable cause that an entire bank account worth approximately $477,000 was forfeitable for being involved in/facilitated drug and money laundering offenses, not just the approximately $242,000 in the account representing the proceeds of a drug crime. The court found that ''both the legitimate and tainted money in the

account aided [the laundering of drug proceeds]. The account provided a repository for the drug proceeds in which the legitimate money could provide a 'cover' for those proceeds, thus making it more difficult to trace the proceeds.'' *Id.* at 1475–76 (substantial connection required).

Such a doctrine can quickly lead to unfair and disproportionate results. The 10th Circuit presents the proper limitation:

[T]he mere pooling or commingling of tainted and untainted funds in an account does not, without more, render the entire contents of the account subject to forfeiture. . . . [F]orfeiture of legitimate and illegitimate funds commingled in an account is proper as long as the government demonstrates that the . . . [owner] pooled the funds to facilitate, i.e., disguise the nature and source of, his scheme. * * *

U.S. v. *Bornfield,* 145 F.3d 1123, 1135 (10th Cir. 1998) (criminal forfeiture under 18 U.S.C. sec. 982(a)(1)) (citations omitted) (standard used was unclear). *See also U.S.* v. *Contents of Account,* 847 F. Supp. 329, 335 (S.D.N.Y. 1994) (''The facilitation theory is appropriate in the present case where [the owner] established and controlled the [accounts], and commingled legitimate and illegitimate funds in these accounts, for the purpose of disguising the nature and source of the proceeds of [the] scheme.'') (forfeiture under 18 U.S.C. sec. 981(a)(1)(A)) (standard used was unclear).

Under H.R. 1658's substantial connection test, in order for an entire bank account composed of both tainted and untainted funds to be forfeitable, a primary purpose of its establishment or maintenance must be to disguise a money laundering scheme. This rule should also apply when the government seeks to forfeit an entire business because tainted funds were laundered in a firm bank account. For the business to be forfeitable, a primary purpose for the establishment or maintenance of the entire business must be to disguise a money laundering scheme. *See U.S.* v. *Any and All Assets of Shane Co.,* 816 F. Supp. 389, 401 (M.D.N.C. 1991) (Business that was a front for money laundering was forfeitable.) (forfeiture under 18 U.S.C. sec. 981(a)(1)(A) (substantial connection required).

PROPORTIONALITY (SECTION 2—CREATING 18 U.S.C. SEC. 983(G))

This provision is designed to codify *U.S.* v. *Bajakajian* 524 U.S. 321 (1998).

STATUTE OF LIMITATIONS (SECTION 11)

This provision amends 19 U.S.C. sec. 1621, enlarging the time in which the government may commence a civil forfeiture action by allowing the government to commence an action within five years after the time the alleged offense was discovered, or two years after the time when the involvement of the property in an offense is discovered, whichever is later. 19 U.S.C. sec. 1621 has been construed as requiring the government to exercise reasonable care and diligence in seeking to learn the facts disclosing the alleged wrong. Thus, the courts have held under sec. 1621 that the time begins to run as soon as the government is aware of facts that should trigger an investigation leading to discovery of the offense. *See* Smith, 1 *Prosecution and Defense of Forfeiture Cases* sec. 12.02. This construction will require the government to exercise reasonable diligence in seeking discovery of assets involved in an offense once the offense is discovered.

The provision should not be read as extending the statute of limitations in cases that are already time-barred as of the date of enactment of the bill.

UNIFORM DEFINITION OF PROCEEDS (SECTION 20)

S. 1931's uniform definition of proceeds is self-explanatory. However, it is important to note Congress' disapproval of the ''ink drop'' test for proceeds forfeiture developed by the Eleventh Circuit. In *U.S.* v. *One Single Family Residence,* 933 F.2d 976, 981 (11th Cir. 1991) (proceeds forfeiture under 21 U.S.C. sec. 881(a)(6)), the court ruled that ''[a]s to a wrongdoer, any amount of the invested proceeds traceable to drug activities forfeits the entire property. We have never held that as to a wrongdoer only the funds traceable to illegal activities may be forfeited.'' To the contrary, only that portion of a piece of property purchased with tainted funds is forfeitable.

DESTRUCTION OR REMOVAL OF PROPERTY (SECTION 12)

18 U.S.C. sec. 2232 is amended to expand the scope of conduct which constitutes an offense for damaging or removing property which is subject to a lawful search or seizure. Subsection (a), which makes it a crime to damage or remove property which has not yet been seized, should be interpreted in a commonsense fashion to apply to a person or persons who had knowledge that a law enforcement agency is attempting, has attempted, or was about to attempt to seize the property. Subsection (b), which has been added to this section, makes it an offense to remove or destroy property which is already the subject of the *in rem* jurisdiction of a United States District Court.

EFFECTIVE DATE (SECTION 21)

For purposes of the effective date provision, the date on which a forfeiture proceeding is commenced is the date on which the first administrative notice of forfeiture relating to the seized property is sent. The purpose of this provision is to give the Justice Department and the U.S. courts four months from the date of enactment of the bill to educate their employees as to the bill's changes in forfeiture law.

Mr. Speaker, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, this legislation has been long in coming. I know on behalf of the gentleman from Michigan (Mr. CONYERS), we want to thank the gentleman from Illinois (Mr. HYDE) because this is legislation that the gentleman from Illinois has worked on extensively and without rest. The gentleman from Illinois has worked in a bipartisan manner. He has those of us who have had disagreements sometimes rally around this legislation because in every single one of our districts we found someone's mother, someone's wife, someone's sister, some innocent person who has been law abiding but because we are part of a great family, have found some family member outside of the law who has brought down the heavy hand of the law on hardworking people who have retained, if you will, or worked hard for the properties that they have.

I want to pay tribute to the gentleman; and I know the gentleman from Michigan would because, as I just heard a few moments ago, this is truly a bipartisan bill. I want to distinguish the fact that this is on the suspension calendar because we have had some vigorous debates here just earlier this morning about the process of suspensions bypassing committee, and I would not want this legislation to be defined accordingly.

This bill has been worked and worked and worked and your staff, George, we thank you, we know you have been on the battle line working hard to make sure that this comes together. I want to acknowledge Perry Apelbaum and Cori Flam likewise and say that we rise in support of this legislation, a bipartisan bill that is a result of extensive negotiations and deliberations with our colleagues in the Senate, Senators HATCH, LEAHY, SESSIONS and SCHUMER as well as the Department of Justice. I might do a slight editorial note and say that out of the bipartisan effort, the bill from the House may not be the exact same and I might have wanted the bill from the House maybe because I am a House Member but we are gratified that we finally resolved it and it has come back for a vote.

Mr. Speaker, the Civil Asset Forfeiture Reform Act makes common sense changes to our civil asset forfeiture laws to make these procedures fair and more equitable. H.R. 1658 strikes the right balance between the needs of law enforcement and the right of individuals to not have their property forfeited without proper safeguards. I recall that we actually had hearings on this, and I recall some of the really horrific stories of individuals losing their only house, their only source of income because of this law.

Would you believe that under current law, the government can confiscate an individual's private property on the mere showing of probable cause? That is under current law. Then even though that person has never been arrested, much less convicted of a crime, the government requires a person to file action in a Federal court to prove that the property is not subject to forfeiture just to get the property back. Well, that is true.

We can imagine that the gentleman from Michigan enthusiastically embraced and worked with the gentleman from Illinois on this legislation. There is no question that forfeiture laws can, as Congress intended, serve legitimate law enforcement purposes. My own police department, a simple and small example, promotes and utilizes or has utilized civil forfeiture laws as relates to drug intervention and drug crimes. But they are currently susceptible to abuse. That is why the bill makes reforms to the current civil forfeiture regimen.

To highlight a few examples, the bill places the burden of proof where it belongs, with the government agency

that performed the seizure, and it protects individuals from the difficult task of proving a negative, in other words, proving that their property was not subject to forfeiture. H.R. 1658 also permits the awarding of attorney's fees if the claimant substantially prevails, creates an innocent owner defense and permits a court to provisionally return property to a claimant on a showing of substantial hardship where, for example, the forfeiture crippled the functioning of a business, prevented an individual from working or left an individual homeless. Is that not justice for Americans? These reforms simply balance the scales so that innocent people have a level playing field on which to challenge improper seizures.

H.R. 1658 also makes certain changes to help law enforcement crack down on criminal activities. For example, the bill permits courts to enter restraining orders to secure the availability of the property subject to civil forfeiture, and it clarifies that the law prohibiting the removal or destruction of property to avoid prosecution applies to seizures as well as forfeitures.

As I see the ranking member on the floor of the House, I know that he will have much to say about this bipartisan effort. But I am hoping that this bill, although it appears on the suspension calendar, will evidence the hard work that we have done collectively on the Committee on the Judiciary on this very issue. I thank both the chairman and the ranking member for their efforts. I am very proud to support this bill today personally and to ask my colleagues to join us in supporting this important legislation.

Mr. Speaker, I am in support of this bill which calls for civil asset forfeiture reform. This is a good bipartisan bill which now shifts the burden of proof to the government to prove by clear and convincing evidence when seizing property and permits the appointment of counsel for indigent claimants while protecting innocent owners.

Unlike criminal forfeiture, civil forfeiture requires no due process before a property owner is required to surrender their property.

Studies suggest that minorities are acutely affected by civil asset forfeitures. As we are well aware by now, racial profiling by the police has alarmingly increased the number of cases of minorities involved in traffic stops, airport searches and drug arrests. These cases afford the government, sometimes justifiably, with the opportunity to seize property. Since 1985, the justice department's asset forfeiture fund increased from $27 million to $338 million.

Since a deprivation of liberty is not implicated in a civil forfeiture, the government is not bound by the constitutional safeguards of criminal prosecution. The government needs only show probable cause that the property is subject to forfeiture. The burden shifts to property owner to prove that the property is not subject to forfeiture.

The property owner may exhaust his or her financial assets in attorney's fees to fight for the return of property. If the financial burden of attorney's fees is not rushing enough, the owner has to post a bond worth 10 percent of the value of the property, before contesting the forfeiture. Independent owners are not entitled to legal counsel.

Interestingly enough, persons charged in criminal cases are entitled to a hearing in court and the assistance of counsel. The government need not charge a property owner with a crime when seizing property under civil laws. The result is that an innocent person, or a person not charged with a crime, has fewer rights than the accused criminal. This anomaly must end.

Reform of civil asset forfeiture laws is long overdue. I urge you to support this bill to ensure that innocent owners are provided some measure of due process before their property is seized.

Mr. Speaker, I reserve the balance of my time.

Mr. HYDE. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Georgia (Mr. BARR).

Mr. BARR of Georgia. Mr. Speaker, I thank the distinguished chairman of the Committee on the Judiciary for yielding me this time. I would like to commend the gentleman from Illinois for his tremendous work over many years' time on reforming Federal asset forfeiture laws which, as we all know, are an important tool for Federal law enforcement and indirectly for local law enforcement which frequently because of their participation in cases resulting in seized assets participate in the disposition of those seized assets once they are forfeited.

Many of us, including myself as a former United States attorney, while having tremendous regard and respect for our civil asset forfeiture laws and what an important tool they are for law enforcement also recognize they are subject to abuse and have been abused. This legislation on which the gentleman from Illinois has been working for many years and which will be one of the most important hallmarks of his tenure as both chairman of the Committee on the Judiciary and his long and distinguished service as a Member of the House of Representatives will go a long way towards bringing back into balance a system that has become sorely out of balance. I commend the gentleman for his work, and I commend both sides of the aisle for bringing this forward in a bipartisan manner. I urge its adoption.

Mr. Speaker, I also rise today with the chairman of the Committee on the Judiciary to discuss the intent of section 983(a)(2)(C)(ii) which states, ''A claim shall 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.''

Mr. Speaker, I interpret this language to require only prima facie evidence to establish such an interest. I assume the gentleman from Illinois concurs with my representation but would like for the record to clarify what type of documentation would be necessary to establish this interest in the seized property, sufficient to make a claim under this legislation.

This documentary evidence should be fairly easy to obtain while still establishing the claimant has a legitimate, nonfrivolous interest in such property. This interest can be established by documents including but not limited to a copy of an automobile title, a loan statement for a home, or a note from a bank for a monetary account. For property such as cash in which no documentary evidence is normally available, this provision would be loosely applied and there would be an assumption of the claimant's interest in such property by simply making a claim and asserting its nonfrivolous nature.

Mr. HYDE. Mr. Speaker, if the gentleman will yield, I thank the gentleman from Georgia for bringing this issue to the attention of the House. The gentleman's explanation is accurate and reflects the intent of the legislation. There was a need for such an explanation and I appreciate the gentleman from Georgia's clarification of this issue.

Mr. BARR of Georgia. I thank the gentleman for engaging in the colloquy.

Mr. HYDE. Mr. Speaker, I yield myself 30 seconds. I want to thank the gentlewoman from Texas for her very cordial remarks. I want to particularly thank the gentleman from Michigan and his staff and make a point. This Committee on the Judiciary in this House of Representatives can work together in a bipartisan fashion to turn out good legislation. This is one example. There are many others. This bill had its genesis in a newspaper article written by Steve Chapman of the Chicago Tribune several years ago. When I read what was going on under civil asset forfeiture, I thought it was more appropriate for the Soviet Union than the United States, and it has taken 7 years but we are there today and it is a great moment.

Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. SWEENEY).

Mr. SWEENEY. Mr. Speaker, I thank the gentleman for yielding me this time. I want to say, a year ago I rose on this floor with my colleagues the gentleman from Arkansas (Mr. HUTCHINSON) and the gentleman from New York (Mr. WEINER) in opposition to this bill. I come today in support of this particular provision. I rose in opposition a year ago because I was concerned about the effects on criminal justice and specifically the effects on law enforcement, but I have to point out that the chairman and the Committee on the Judiciary, as has been noted, in a bipartisan manner has done a tremendous job to ease those concerns.

They have provided us great improvements on the bill. The compromise provides important procedural protections to law-abiding property owners without compromising law enforcement's ability to shut down criminal enterprises. Specifically the bill shifts the burden of proof in forfeiture cases from

property owners to the government with the appropriate threshold of a preponderance of the evidence.

The compromise also limits the appointment of court-appointed lawyers to indigent claimants whose primary residence is subject to forfeiture. I want to say that there is one concern that I have and I think a couple of my colleagues have as well as it relates to this legislation, and, that is, that we have a continuing reservation that the removal of the cost bond requirement could impair the asset forfeiture program in the future.

We know that the Justice Department is already overwhelmed with challenges to asset seizures, and I am fearful that the removal of the cost bond could further paralyze that effort. But let me say this, I hope to and I know my colleagues who stood with me a year ago hope to work with the chairman and the committee to oversee the implementation of cost bond provisions requiring up-front certification and posthearing penalties and ensure that my fears do not become a reality for law enforcement. But overall, Mr. Speaker, this is a victory for the American people. I want to salute the Committee on the Judiciary and its great chairman. I urge support for this bill.

The SPEAKER pro tempore (Mr. PEASE). Without objection, the gentleman from Michigan (Mr. CONYERS) will control the time previously granted to the gentlewoman from Texas (Ms. JACKSON-LEE).

There was no objection.

Mr. CONYERS. Mr. Speaker, I yield myself 2 minutes.

I would like to begin by pointing out that the chairman of this committee and I have worked together on this measure for at least a couple of Congresses. I have been working on it, also, unbeknownst to the gentleman from Illinois in the Committee on Government Reform. I think we have come quite a long way. The bill retains the core of some of the main reforms that was in Hyde-Conyers.

We have adopted the Senate version. But the shifting of the burden of proof is very important. The appointment of counsel is a critical improvement. The return of property in case of substantial hardship is very important. And the innocent owner defense is now strong in the bill. The claim for property damages while in the government's custody is a valid concern. And an award of interest. The bill allows prejudgment interest to be awarded when cash is improperly seized by the government. And we eliminate the cost of bond which would be a part of the current requirement that a claimant challenging a civil asset forfeiture file a cost of bond.

Who would have believed that under our current law, the government can confiscate an individual's private property on a mere showing of probable cause? Then even though a person has never been arrested, not to mention convicted, of a crime, the government requires the person to file an action to prove that the property is not subject to forfeiture to get the property back.

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It is important that we have asset forfeiture, but this puts it under controls that have not existed before.

Mr. Speaker, I reserve the balance of my time.

Mr. Speaker, I yield 1½ minutes to the gentleman from New York (Mr. WEINER), a distinguished member of the Committee on the Judiciary.

Mr. WEINER. Mr. Speaker, I rise in support of the Senate amendments to H.R. 1658, and I want to commend the gentleman from Illinois (Chairman HYDE), our chairman, for his year-long effort to reform our asset forfeiture laws. The gentleman quite literally wrote the book on the subject. When the history is written of his prodigious work in this House, this certainly warrants mention.

Last year, a somewhat divided House considered H.R. 1658. While it garnered the support of the majority of our colleagues, it was adamantly opposed by the administration, as well as by every major law enforcement group. Because of this opposition, I offered, along with the gentleman from Arkansas (Mr. HUTCHINSON) and the gentleman from New York (Mr. SWEENEY), a substitute version of H.R. 1658 on the floor of the House.

The substitute would have made needed reforms by placing the burden of proof on the Government to prove by a preponderance of the evidence that property seized was used in an illegal activity. It would have allowed for counsel to be appointed in those proceedings. It would have protected innocent owners, and it would have allowed property to be returned to claimants in instances of hardship.

It was, I thought, a balanced approach that had the support of all major law enforcement organizations, as well as 155 of my colleagues. That amendment failed, although it had some support, and many of us voted against the base bill for that reason.

Mr. Speaker, today's amendment, today's bill I am pleased to vote in favor of. It puts the burden of proof where it should be, on the Government; and it rightfully protects the owners and spouses and children, if they can show they were not involved in illegal activity.

Perhaps, most importantly, today's bill has the approval of the men and women of law enforcement. Like our substitute, today's bill allows civil asset forfeiture to continue to be used as a tool by police and prosecutors across the country to shut down crack houses and seize drug-running speedboats.

Mr. Speaker, I applaud the authors of this compromise and my colleagues who voted in favor of reform originally.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume, merely to point out in the colloquy between the gentleman from Georgia and the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the committee, that I stand in agreement about the interpretation given by the chairman of section 983A(2)(c)(2), which dealt with the claimant's interests in such property and provide customary documentary evidence of such evidence, if available, and state that the claim is not frivolous.

Mr. Speaker, I just wanted to join in a clarification of the intent that, for example, a person should not be barred from challenging an improper forfeiture if he or she has misplaced a receipt or if the person does not have the evidence on hand. I think that response is consistent with the gentleman from Illinois (Mr. HYDE) and the gentleman from Georgia, and I just wanted to weigh in on that.

This has taken quite awhile, but it is an important measure, and my compliments are out to the gentleman from Illinois (Mr. HYDE), the chairman of the committee, and to all of the Members who have gone through a rethinking process to bring the bill to the kind of support that I believe it is enjoying on the floor this afternoon.

Mr. Speaker, I began looking at this matter from the old Government Operations Committee, and I was very pleased to learn that the gentleman from Illinois had, indeed, studied the matter, had put together his thoughts in a book on the matter, and it led us to bringing forth a bill jointly that now has the imprimatur, I believe, of most of the Members in both bodies.

It is in that spirit that we will want to make sure that it is implemented fairly and that it adds to the good body of law that comes out of the House Committee on the Judiciary.

Mr. Speaker, with those remarks, I reserve the balance of our time.

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I wish to express my gratitude again to the gentleman from Michigan (Mr. CONYERS) and his staff and everyone who worked on this bill. We did not mention Jon Dudas and Rick Filkins. I just want to say, George Fishman who is sitting here, he was the single most indispensable element of this bill, and I am grateful to him.

Mr. BARR of Georgia. Mr. Speaker, I would like to thank Mr. HYDE for working so rigorously to come to a reasonable agreement with the Senate on civil asset forfeiture reform. The compromise is fair and will restore fairness to this process.

Civil asset forfeiture is a mechanism allowing law enforcement authorities to seize assets such as homes, property, cash, and cars that are used in furtherance of criminal activity. However, in recent years, the laws have been used overly broadly, and have been cited by civil libertarians as excessive and open to abuse.

One of the most important challenges Congress faces is balancing individual liberties against the need for effective law enforcement. Generally, our laws do this fairly well.

However, our civil asset forfeiture laws are tilted too far in one direction. Current civil asset forfeiture laws allow police to seize a person's assets, regardless of whether the person has been, or ever is, convicted of a crime, if police have nothing more than probable cause to believe the property was used for criminal purposes. You are presumed guilty until you can prove yourself innocent.

In effect, our current asset forfeiture system targets both criminals and law-abiding citizens, takes their cars, cash, homes, and property away, and then forces them to prove they are innocent in order to get their assets back. The goal of this reform legislation is to change a system that sometimes violates the rights of the law-abiding, while retaining those provisions that allow law enforcement to target criminals, and hit them where it hurts—in their pocket books.

As I know from my service as a federal prosecutor, the majority of jurisdictions in America use asset forfeiture laws sensibly and fairly. Unfortunately, in some cases, law enforcement officers intentionally target citizens and seize their assets, because they know proving innocence under the constraints of the current law is extremely difficult if not impossible. The burden of proof for the government is minimal, the person may have less than 2 weeks to file a defense, and they have to post a bond even though the government has seized their assets.

H.R. 1658 was introduced to address this matter of allowing law enforcement to use this important tool of asset forfeiture, while still requiring them to be more mindful of due process and individual rights.

This legislation enjoys wide bi-partisan support, and passed the House on June 24, 1999 by a vote of 375–48. Additionally, the 65,000 member Law Enforcement Alliance of America supports it, as do many other line officers and retired police chiefs from across America. It returns balance and fairness to an area of law that has been abused to violate the rights of innocent citizens for too long.

This reform legislation does not deny law enforcement the ability to seize and forfeit assets that truly are used for criminal endeavors. It does, however, more properly balance those powers against civil liberties.

Mr. UDALL of Colorado. Mr. Speaker, I strongly support this measure. Passage of this bill is long overdue, and I urge all Members to join me in voting to send it to the President for signing into law.

Since the House passed this bill last year, it has been the subject of intensive negotiations that have involved the administration and law enforcement organizations as well as Members of both the House and Senate. Those negotiations have resulted in the revised version of the bill now before the House. I am sure that it is not everything that some might want, but it is acceptable to all concerned, and I think it deserves approval.

Enactment of this bill will correct serious imbalances in the law regarding civil forfeitures—cases in which the government seizes property allegedly connected to a violation of law. Under current law, seized property won't be returned unless the person whose property was seized can prove either that the property was not connected to the alleged crime or that the owner did not know about or consent to the allegedly illegal use of the property.

This bill shifts the burden of proof to the government, where it belongs, so that it would be up to the government to show by preponderance of the evidence that an asset was sufficiently connected to a crime to be subject to civil forfeiture. While this is a somewhat less stringent requirement than in the bill as originally passed by the House, it is a great improvement over the current law.

The bill also makes a number of other important improvements over the current law. It will require that seizures be made pursuant to a warrant. It will eliminate the need for people to post a bond in order to contest a civil-forfeiture case. It will create a uniform ''innocent owner'' defense for all civil-forfeiture cases. It will allow property to be released from government custody before final disposition of a case where continued custody would be a hardship to the owner outweighing any risk to the government. And it will allow people to seek to recover from the government if seized property is damaged while in custody.

I congratulate all those whose hard work has made it possible for the bill to be on the floor today, and I urge its approval.

Mr. Speaker, with great pleasure, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. OSE). The question is on the motion offered by the gentleman from Illinois (Mr. HYDE) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 1658.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

The motion to reconsider is laid on the table.

SENSE OF CONGRESS THAT MIAMI, FLORIDA, SHOULD SERVE AS PERMANENT LOCATION FOR SECRETARIAT OF FTAA

Mr. CRANE. Mr. Speaker, I move to suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 71) expressing the sense of the Congress that Miami, Florida, and not a competing foreign city, should serve as the permanent location for the Secretariat of the Free Trade Area of the Americas (FTAA) beginning in 2005.

The Clerk read as follows:

S. CON. RES. 71

Whereas deliberations on establishing a ''Free Trade Area of the Americas'' (FTAA) will help facilitate greater cooperation and understanding on trade barrier reduction throughout the Americas;

Whereas the trade ministers of 34 countries of the Western Hemisphere agreed in 1998 to create a permanent Secretariat in order to support negotiations on establishing the FTAA;

Whereas the FTAA Secretariat will employ persons to provide logistical, administrative, archival, translation, publication, and distribution support for the negotiations;

Whereas the FTAA Secretariat will be funded by a combination of local resources and institutional resources from a tripartite committee consisting of the Inter-American Development Bank (IDB), the Organization of American States (OAS), and the United Nations Economic Commission on Latin America and the Caribbean (ECLAC);

Whereas the temporary site of the FTAA Secretariat will be located in Miami, Florida, from 1999 until February 28, 2001, at which point the Secretariat will rotate to Panama City, Panama, until February 28, 2003, and then rotate to Mexico City, Mexico, until February 28, 2005;

Whereas by 2005 the FTAA Secretariat will have international institution status providing jobs and tremendous economic benefits to its host city;

Whereas a permanent site for the FTAA Secretariat after 2005 will likely be selected from among the 3 temporary host cities;

Whereas the city of Miami, Miami-Dade County, and the State of Florida have long served as the gateway for trade with the Caribbean and Latin America;

Whereas trade between the city of Miami, Florida, and the countries of Latin America and the Caribbean totaled $36,793,000,000 in 1998;

Whereas the Miami-Dade area and the State of Florida possess the necessary infrastructure, local resources, and culture necessary for the FTAA Secretariat's permanent site;

Whereas the United States possesses the world's largest economy and is the leading proponent of trade liberalization throughout the world; and

Whereas the city of Miami, Florida, the State of Florida, and the United States are uniquely situated among other competing locations to host the ''Brussels of the Western Hemisphere'': Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the President should direct the United States representative to the ''Free Trade Area of the Americas'' (FTAA) negotiations to use all available means in order to secure Miami, Florida, as the permanent site of the FTAA Secretariat after February 28, 2005.

The SPEAKER pro tempore (Mr. OSE). Pursuant to the rule, the gentleman from Illinois (Mr. CRANE) and the gentleman from Michigan (Mr. LEVIN) each will control 20 minutes.

The Chair recognizes the gentleman from Illinois (Mr. CRANE).

GENERAL LEAVE

Mr. CRANE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous matter on S. Con. Res. 71.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. Con. Res. 71 is a noncontroversial resolution which would express the sense of the Congress that the USTR should use all available means to make Miami, Florida, the permanent site of the Secretariat for the Free Trade Area of the Americas, FTAA, after the year 2005. The resolution passed the Senate by unanimous consent last November.

The FTAA facilitates open cooperation and the reduction of trade barriers throughout the Americas. Right now the Secretariat is rotating among various cities until 2005. The permanent home is important because the host country gains international institution status and economic benefits. This legislation would send an important signal to the administration and to our