

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 270

To amend title 18, United States Code, to provide civil and criminal forfeitures for certain offenses.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. McCOLLUM introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to provide civil and criminal forfeitures for certain offenses.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Asset Forfeiture Act  
5 of 1993”.

6 **SEC. 2. CHAPTER 63 AMENDMENTS.**

7 (a) IN GENERAL.—Chapter 63 of title 18, United  
8 States Code, is amended by adding at the end the follow-  
9 ing:

1 **“§ 1347. Criminal forfeiture**

2       “(a) IN GENERAL.—A person convicted of a violation  
3 of section 1341 or 1343 of this title shall, notwithstanding  
4 any provision of State law, forfeit to the United States  
5 any property constituting or derived from any proceeds  
6 which the person obtained directly or indirectly from a  
7 scheme in violation of either of such sections.

8       “(b) PROCEDURES OF CONTROLLED SUBSTANCES  
9 ACT APPLICABLE.—With respect to a forfeiture under  
10 this section for a violation of this chapter, the provisions  
11 of subsections (b), (c), (e), (f), (g), (i), (k), (l), (m), (n),  
12 and (o) of section 413 of the Controlled Substances Act  
13 apply as they would to a forfeiture under that section for  
14 a violation of the Controlled Substances Act.

15       “(c) DISPOSITION OF PROPERTY.—After a seizure of  
16 property ordered forfeited under this section, the Attorney  
17 General shall dispose of the property under section 1349  
18 of this title. The Postal Service shall turn any such seized  
19 property over to the Attorney General for disposal under  
20 such section.

21       “(d) SUBSTITUTE ASSETS.—If any of the property  
22 subject to forfeiture under this section, as a result of con-  
23 duct of the defendant—

24               “(1) cannot be located upon the exercise of due  
25 diligence;

1           “(2) has been transferred or sold to, or depos-  
2           ited with, a third party;

3           “(3) has been placed beyond the jurisdiction of  
4           the court;

5           “(4) has been substantially diminished in value;  
6           or

7           “(5) has been commingled with other property  
8           which cannot be divided without difficulty;

9           the court shall order the forfeiture of any other property  
10          of the defendant up to the value of any property described  
11          in paragraphs (1) through (5) of this subsection.

12       **“§ 1348. Civil forfeiture**

13          “(a) PROPERTY SUBJECT TO CIVIL FORFEITURE.—  
14          Any property, as defined by subsection (b) of section 413  
15          of the Controlled Substances Act, constituting or derived  
16          from any proceeds of a scheme in violation of section 1341  
17          or 1343 of this title shall be subject to forfeiture to the  
18          United States.

19          “(b) SEIZURE.—(1) Except as provided in paragraph  
20          (2), any property subject to forfeiture to the United States  
21          under this section may be seized by the Attorney General  
22          or the Postal Service upon process issued pursuant to the  
23          Supplemental Rules for Certain Admiralty and Maritime  
24          Claims by any district court of the United States having  
25          jurisdiction over the property.

1       “(2) The Attorney General or the Postal Service may  
2 seize such property without such process when—

3               “(A) the seizure is incident to a lawful arrest  
4 or search; or

5               “(B) such property has been the subject of a  
6 prior judgment in favor of the United States in a  
7 criminal injunction or forfeiture proceeding under  
8 section 1347 of this title.

9       “(3) The Government may seek the issuance of a  
10 warrant authorizing the seizure of property subject to for-  
11 feiture under this section in the same manner as provided  
12 for a search warrant under the Federal Rules of Criminal  
13 Procedure.

14       “(c) PROCEDURAL MATTERS.—(1) With respect to a  
15 forfeiture of property under this section, the provisions of  
16 subsections (c), (d), (h), and (j) of section 511 of the Con-  
17 trolled Substances Act apply as they would to a forfeiture  
18 of property under that section, and the Postal Service may  
19 also perform any of the functions the Attorney General  
20 may perform under such subsections.

21       “(2) The filing of an indictment or information alleg-  
22 ing a violation of section 1341 or 1343 of this title which  
23 is also related to a civil forfeiture proceeding under either  
24 section shall, upon motion of the United States and for  
25 good cause shown, stay the civil forfeiture proceeding.

1       “(d) DISPOSITION OF PROPERTY.—After a seizure of  
2 property ordered forfeited under this section, the Attorney  
3 General or the Postal Service shall dispose of the property  
4 under section 1349 of this title.

5       “§ 1349. Disposition of forfeited property

6       “(a) IN GENERAL.—After making due provision for  
7 the rights of any innocent persons, the Attorney General,  
8 after deducting the costs incurred by the United States  
9 in conducting the seizure, forfeiture, and identification of  
10 victims, shall deposit the property forfeited or the proceeds  
11 from the sale of property forfeited under section 1347 or  
12 1348 of this title in the Department of Justice Assets For-  
13 feiture Fund established by section 524(c) of title 28. The  
14 Postal Service may exercise the authority of the Attorney  
15 General in conducting administrative forfeitures and shall  
16 deposit the property forfeited or the proceeds of the prop-  
17 erty forfeited in the Postal Service Fund under section  
18 2003(b)(7) of title 39. Any property right or interest not  
19 exercisable by, or transferable for value to, the United  
20 States shall expire and shall not revert to the defendant.  
21 Neither the defendant nor any person acting in concert  
22 with the defendant or on the defendant’s behalf is eligible  
23 to purchase forfeited property sold by the United States.  
24       “(b) RESTRAINT PENDING APPEAL.—Upon applica-  
25 tion of a person other than the defendant or a person act-

1 ing in concert with the defendant or on the defendant's  
2 behalf, the court may restrain or stay the sale or disposi-  
3 tion of the property pending the conclusion of any appeal  
4 in the case giving rise to the forfeiture, if the applicant  
5 demonstrates that proceeding with the sale or disposition  
6 will result in irreparable harm to the applicant.

7 “(c) RULES FOR DISPOSITION.—The Attorney Gen-  
8 eral and the Postal Service shall make rules providing for  
9 the disposition of such property and proceeds. Such rules  
10 shall provide that the Attorney General or the Postal Serv-  
11 ice may—

12 “(1) retain the property for official use;

13 “(2) transfer the property to Federal, State, or  
14 local law enforcement agencies so as to reflect gen-  
15 erally the contribution of such agencies to the sei-  
16 zure or forfeiture of such property;

17 “(3) sell any forfeited property which is not re-  
18 quired to be destroyed by law and which is not  
19 harmful to the public;

20 “(4) require that the General Services Adminis-  
21 tration take custody of the property and dispose of  
22 it in accordance with law;

23 “(5) restore forfeited property to victims of an  
24 offense described in subsection (a);

1           “(6) destroy the property if it is harmful to the  
2           public or the expense of sale would exceed the  
3           amount realized from the sale; or

4           “(7) dispose of such funds or property as other-  
5           wise provided by law.”.

6           (b) CLERICAL AMENDMENT.—The table of sections  
7           at the beginning of chapter 63 of title 18, United States  
8           Code, is amended by adding at the end the following new  
9           items:

“1347. Criminal forfeiture.

“1348. Civil forfeiture.

“1349. Disposition of forfeited property.”.

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