

# Union Calendar No. 702

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5283

**[Report No. 114–892, Part I]**

To amend title 18, United States Code, to reform certain forfeiture procedures, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 19, 2016

Mr. SENSENBRENNER (for himself, Mr. CONYERS, Mr. GOODLATTE, Ms. JACKSON LEE, Mr. CHABOT, Mr. ISSA, Mr. FORBES, Mr. FRANKS of Arizona, Mr. COHEN, Mr. JOHNSON of Georgia, Mr. JORDAN, Mr. CHAFFETZ, Mr. RICHMOND, Mr. ROSKAM, Mr. WALBERG, Mr. TROTT, Mrs. MIMI WALTERS of California, and Mr. COLLINS of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Financial Services and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

DECEMBER 23, 2016

Additional sponsors: Mr. LABRADOR, Mr. NADLER, Mr. HARRIS, Mr. SCOTT of Virginia, Mr. BISHOP of Michigan, Ms. NORTON, and Mr. LEWIS

DECEMBER 23, 2016

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

DECEMBER 23, 2016

The Committees on Financial Services and Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on May 19, 2016]

# **A BILL**

To amend title 18, United States Code, to reform certain forfeiture procedures, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4        *This Act may be cited as the “DUE PROCESS Act*  
5 *of 2016” or the “Deterring Undue Enforcement by Pro-*  
6 *tecting Rights of Citizens from Excessive Searches and Sei-*  
7 *zures Act of 2016”.*

8 **SEC. 2. GENERAL RULES FOR CIVIL FORFEITURE PRO-**  
9 **CEEDINGS.**

10        *Section 983(a) of title 18, United States Code, is*  
11 *amended—*

12            (1) *in the subsection heading, by striking “COM-*  
13 *PLAINT” and inserting “COMPLAINT; INITIAL HEAR-*  
14 *ING”;*

15            (2) *in paragraph (1)—*

16                    (A) *in subparagraph (A)—*

17                            (i) *in clause (i), by striking “60 days”*  
18 *and inserting “30 days”;*

19                            (ii) *by striking clause (ii);*

20                            (iii) *in clause (iii)—*

21                                    (I) *in the matter preceding sub-*  
22 *clause (I)—*

23    (aa) *by striking “60-day”*  
24 *and inserting “30-day”; and*

1                   (bb) by striking “does not  
2                   file” and all that follows through  
3                   “obtain” and inserting “obtains”;  
4                   and  
5                   (II) in subclause (I), by striking  
6                   “60 days” and inserting “30 days”;  
7                   (iv) in clause (iv), by striking “90  
8                   days” and inserting “60 days”;  
9                   (v) in clause (v), by striking “60 days”  
10                  and inserting “30 days”; and  
11                  (vi) by adding at the end the following:  
12                  “(vi) The notice under this subparagraph shall  
13                  include an address, which shall also be widely pub-  
14                  lished, at which the seizing agency can receive until  
15                  5 p.m. on any business day an interested party’s  
16                  claim contesting a seizure or forfeiture. The interested  
17                  party may send such a claim to that address by cou-  
18                  rier or overnight mail. For the purpose of deter-  
19                  mining compliance with any deadlines in filing such  
20                  a claim, an interested party completes the filing by  
21                  placing the communication making the claim in the  
22                  control of an independent third party delivery service  
23                  such as a courier company or the United States mail.  
24                  In determining whether any legal deadline for the fil-  
25                  ing of such a claim has been met a court shall allow

1       *for the equitable tolling of the deadline in appropriate*  
2       *cases.*

3           “(vii) *The seizing agency shall make publicly*  
4       *available for each nonjudicial forfeiture, with respect*  
5       *to which a request for mitigation or remission is*  
6       *made, a statement of the agency’s disposition of that*  
7       *request, redacted if necessary, including the reasons*  
8       *for the decision.”;*

9           *(B) in subparagraph (C)—*

10           *(i) by striking “60” and inserting*  
11           *“30”; and*

12           *(ii) by striking “which period may”*  
13           *and all that follows through “as necessary,”;*

14           *(C) by adding at the end the following:*

15           “(G) *Any notice described in subparagraph (A)*  
16       *that is provided to a party shall include notice of—*

17           *“(i) the right of the party to request an ini-*  
18       *tial hearing in accordance with paragraph (5);*

19           *“(ii) the right of the party to be represented*  
20       *by counsel at the initial hearing described in*  
21       *clause (i) and any civil forfeiture proceeding*  
22       *under a civil forfeiture statute; and*

23           *“(iii) the right of the party to request that*  
24       *the party be represented by counsel at the initial*  
25       *hearing described in clause (i) and any civil for-*

1           *feiture proceeding under a civil forfeiture statute*  
2           *if the party meets the requirements described in*  
3           *subsection (b).”; and*

4                     *(D) by striking “nonjudicial” each place it*  
5           *appears;*

6           *(3) in paragraph (2)(A), by striking “non-*  
7           *judicial”;*

8           *(4) in paragraph (2)(B)—*

9                     *(A) by striking “35 days” and inserting*  
10           *“65 days”; and*

11                    *(B) by striking “30 days” and inserting*  
12           *“60 days”;*

13           *(5) so that subparagraph (A) of paragraph (3)*  
14           *reads as follows:*

15                    *“(A) Not later than 90 days after a claim has*  
16           *been filed, the Government shall file a complaint for*  
17           *forfeiture in the manner set forth in the Supplemental*  
18           *Rules for Certain Admiralty and Maritime Claims or*  
19           *return the property pending the filing of a complaint,*  
20           *except that a court in the district in which the com-*  
21           *plaint has been filed may extend the period for filing*  
22           *a complaint upon agreement of the parties.”; and*

23                    *(6) by adding at the end the following:*

24                    *“(5)(A) A party claiming property seized in a*  
25           *civil forfeiture proceeding under a civil forfeiture*

1 *statute may request, not later than 30 days after the*  
2 *date on which a notice described in paragraph (1)(A)*  
3 *is received or if notice is not received, not later than*  
4 *30 days after the date of final publication of notice*  
5 *of seizure, an initial hearing to take place before a*  
6 *magistrate judge in the appropriate United States*  
7 *district court not later than the date on which a civil*  
8 *forfeiture proceeding under a civil forfeiture statute*  
9 *relating to the seized property commences.*

10 *“(B) If a party makes a request under subpara-*  
11 *graph (A), a magistrate judge shall conduct an initial*  
12 *hearing not later than 10 days after the date on*  
13 *which the request is made.*

14 *“(C) At the initial hearing—*

15 *“(i) the magistrate judge shall—*

16 *“(I) inform the party in easily under-*  
17 *stood terms of—*

18 *“(aa) the right of the party to be*  
19 *represented by counsel at the initial*  
20 *hearing and any civil forfeiture pro-*  
21 *ceeding under a civil forfeiture statute;*

22 *“(bb) the right of the party to re-*  
23 *quest that the party be represented by*  
24 *counsel at the initial hearing and any*  
25 *civil forfeiture proceeding under a civil*

1           *forfeiture statute if the magistrate*  
2           *judge finds that the party meets the re-*  
3           *quirements described in subsection (b);*

4           *“(cc) sufficiently detailed facts re-*  
5           *garding the seizure of the property if*  
6           *the property was seized pursuant to a*  
7           *warrant described in the matter pre-*  
8           *ceding subparagraph (A) of section*  
9           *981(b)(2); and*

10           *“(dd) the right of the party to*  
11           *challenge the lawfulness of the seizure*  
12           *of the property, including on the*  
13           *grounds that at the time the property*  
14           *was seized—*

15           *“(AA) if the property was*  
16           *seized pursuant to a warrant de-*  
17           *scribed in the matter preceding*  
18           *subparagraph (A) of section*  
19           *981(b)(2), the warrant was not*  
20           *supported by probable cause; or*

21           *“(BB) if the property was*  
22           *seized without a warrant de-*  
23           *scribed in subitem (AA), none of*  
24           *the exceptions described in sub-*  
25           *paragraphs (A) and (B) of section*



1                   981(b)(2) apply to the seizure of  
2                   the property; and

3                   “(II) if the party meets the require-  
4                   ments described in subsection (b), authorize  
5                   counsel to represent the party or insure that  
6                   the party is represented by an attorney for  
7                   the Legal Services Corporation, as applica-  
8                   ble, in accordance with that subsection; and

9                   “(ii) the burden of proof is on the Govern-  
10                  ment to establish that at the time the property  
11                  was seized—

12                  “(I) if the property was seized pursu-  
13                  ant to a warrant described in the matter  
14                  preceding subparagraph (A) of section  
15                  981(b)(2), the warrant was supported by  
16                  probable cause; or

17                  “(II) if the property was seized with-  
18                  out a warrant described in subclause (I)—

19                          “(aa) sufficiently detailed facts re-  
20                          garding the seizure of the property;  
21                          and

22                          “(bb) an exception described in  
23                          subparagraphs (A) and (B) of section  
24                          981(b)(2) applies to the seizure of the  
25                          property.

1           “(D) *The magistrate judge shall enter an order*  
2           *for the immediate release of the seized property with*  
3           *prejudice to the right of the Government to commence*  
4           *a civil forfeiture proceeding at a later time if the*  
5           *magistrate judge finds that—*

6                     “(i) *the requirements described in subpara-*  
7                     *graphs (A) through (E) of subsection (f)(1) are*  
8                     *met; and*

9                     “(ii) *the Government did not meet the bur-*  
10                    *den of proof described in subparagraph (C)(ii).”.*

11 **SEC. 3. REPRESENTATION.**

12           *Section 983(b) of title 18, United States Code, is*  
13 *amended—*

14                   (1) *in paragraph (1)(A), by striking “judicial”;*  
15                   *and*

16                   (2) *in paragraph (2)(A), by striking “judicial*  
17                   *civil forfeiture proceeding under a civil forfeiture*  
18                   *statute is financially unable to obtain representation*  
19                   *by counsel, and the property subject to forfeiture is*  
20                   *real property that is being used by the person as a*  
21                   *primary residence” and inserting “civil forfeiture*  
22                   *proceeding under a civil forfeiture statute is finan-*  
23                    *cially unable to obtain representation by counsel”.*

1 **SEC. 4. BURDEN OF PROOF.**

2 *Section 983(c) of title 18, United States Code, is*  
3 *amended—*

4 *(1) in paragraph (1), by striking “a preponder-*  
5 *ance of the evidence” and inserting “clear and con-*  
6 *vincing evidence”; and*

7 *(2) in paragraph (2), by striking “a preponder-*  
8 *ance of the evidence” and inserting “clear and con-*  
9 *vincing evidence”.*

10 **SEC. 5. RIGHT TO REQUEST HEARING ON PRETRIAL RE-**  
11 **STRAINT OF PROPERTY TO RETAIN COUNSEL**  
12 **OF CHOICE.**

13 *(a) TITLE 18.—Section 1963(d) of title 18, United*  
14 *States Code, is amended—*

15 *(1) by striking paragraph (1) and inserting the*  
16 *following:*

17 *“(1)(A) Upon application of the United States, the*  
18 *court may enter a restraining order or injunction, require*  
19 *the execution of a satisfactory performance bond, or take*  
20 *any other action to preserve the availability of property de-*  
21 *scribed in subsection (a) for forfeiture under this section—*

22 *“(i) upon the filing of an indictment or informa-*  
23 *tion charging a violation of section 1962 and alleging*  
24 *that the property with respect to which the order is*  
25 *sought would, in the event of conviction, be subject to*  
26 *forfeiture under this section; or*

1           “(ii) prior to the filing of such an indictment or  
2           information, if, after notice to persons appearing to  
3           have an interest in the property and opportunity for  
4           a hearing, the court determines that—

5                       “(I) there is a substantial probability that  
6                       the United States will prevail on the issue of for-  
7                       feiture and that failure to enter the order will re-  
8                       sult in the property being destroyed, removed  
9                       from the jurisdiction of the court, or otherwise  
10                      made unavailable for forfeiture; and

11                     “(II) the need to preserve the availability of  
12                     the property through the entry of the requested  
13                     order outweighs the hardship on any party  
14                     against whom the order is to be entered.

15           “(B)(i) Upon motion of a defendant charged with a  
16           violation of section 1962 for which criminal forfeiture is  
17           ordered under this section and against whom the order is  
18           entered, supported by an affidavit, the court shall hold a  
19           hearing to determine whether to modify or rescind, in whole  
20           or in part, an order entered under subparagraph (A) to  
21           allow the defendant to use the property subject to the order  
22           to retain counsel of choice.

23           “(ii) At the hearing, the court shall consider—

24                     “(I) the weight of the evidence against the de-  
25                     fendant with respect to the violation of section 1962

1       *for which criminal forfeiture is ordered under this*  
2       *section;*

3               *“(II) the weight of the evidence with respect to*  
4       *whether the property will be subject to forfeiture*  
5       *under this section;*

6               *“(III) the history and characteristics of the de-*  
7       *fendant; and*

8               *“(IV) the nature and circumstances of the case.*

9       *“(C) An order entered pursuant to subparagraph*  
10       *(A)(ii) shall be effective for not more than 90 days, unless—*

11               *“(i) extended by the court for good cause shown;*

12       *or*

13               *“(ii) an indictment or information described in*  
14       *subparagraph (A)(i) has been filed.”; and*

15               *(2) in paragraph (2), by inserting “that the de-*  
16       *fendant committed a violation of section 1962 for*  
17       *which criminal forfeiture may be ordered under this*  
18       *section and probable cause to believe” after “believe”.*

19       *(b) CONTROLLED SUBSTANCES ACT.—Section 413(e)*  
20       *of the Controlled Substances Act (21 U.S.C. 853(e)) is*  
21       *amended—*

22               *(1) by striking paragraph (1) and inserting the*  
23       *following:*

24               *“(1)(A) Upon application of the United States, the*  
25       *court may enter a restraining order or injunction, require*

1 *the execution of a satisfactory performance bond, or take*  
2 *any other action to preserve the availability of property de-*  
3 *scribed in subsection (a) for forfeiture under this section—*

4           “(i) *upon the filing of an indictment or informa-*  
5 *tion charging a violation of this title or title III for*  
6 *which criminal forfeiture may be ordered under this*  
7 *section and alleging that the property with respect to*  
8 *which the order is sought would, in the event of con-*  
9 *viction, be subject to forfeiture under this section; or*

10           “(ii) *prior to the filing of such an indictment or*  
11 *information, if, after notice to persons appearing to*  
12 *have an interest in the property and opportunity for*  
13 *a hearing, the court determines that—*

14           “(I) *there is a substantial probability that*  
15 *the United States will prevail on the issue of for-*  
16 *feiture and that failure to enter the order will re-*  
17 *sult in the property being destroyed, removed*  
18 *from the jurisdiction of the court, or otherwise*  
19 *made unavailable for forfeiture; and*

20           “(II) *the need to preserve the availability of*  
21 *the property through the entry of the requested*  
22 *order outweighs the hardship on any party*  
23 *against whom the order is to be entered.*

24           “(B)(i) *Upon motion of a defendant charged with a*  
25 *violation of section 1962 for which criminal forfeiture is*

1 *ordered under this section and against whom the order is*  
2 *entered, supported by an affidavit sufficient to demonstrate*  
3 *a genuine need for the defendant to use the property subject*  
4 *to an order entered under subparagraph (A) to retain coun-*  
5 *sel of choice, the court shall hold a hearing to determine*  
6 *whether to modify or rescind, in whole or in part, the order*  
7 *to allow the defendant to use the property to retain counsel*  
8 *of choice.*

9       “(ii) *At the hearing, the court shall consider—*

10               “(I) *the weight of the evidence against the de-*  
11 *fendant with respect to the violation of this title or*  
12 *title III for which criminal forfeiture is be ordered*  
13 *under this section;*

14               “(II) *the weight of the evidence with respect to*  
15 *whether the property will be subject to forfeiture*  
16 *under this section;*

17               “(III) *the history and characteristics of the de-*  
18 *fendant; and*

19               “(IV) *the nature and circumstances of the case.*

20       “(C) *An order entered pursuant to subparagraph*  
21 *(A)(ii) shall be effective for not more than 90 days, unless—*

22               “(i) *extended by the court for good cause shown;*

23       *or*

24               “(ii) *an indictment or information described in*  
25 *subparagraph (A)(i) has been filed.”; and*

1           (2) in paragraph (2), by inserting “that the de-  
2           fendant committed a violation of this title or title III  
3           for which criminal forfeiture may be ordered under  
4           this section and probable cause to believe” after “be-  
5           lieve”.

6 **SEC. 6. RECOVERY OF ATTORNEYS FEES.**

7           Section 2465(b) of title 28, United States Code, is  
8 amended—

9           (1) in paragraph (1), by striking “substan-  
10          tially”; and

11          (2) by adding at the end the following:

12          “(3) If the claim is resolved by a settlement in which  
13 the claimant prevails, the claimant is entitled to attorneys  
14 fees under this subsection to the same extent that the claim-  
15 ant would be if a judgment were issued in the proceeding  
16 for the property recovered under the settlement. The pay-  
17 ment of attorneys fees under this subsection may not be  
18 waived as a part of any settlement with the claimant. That  
19 payment is not subject to any offset or deduction by the  
20 United States in connection with any claim the United  
21 States may have against the claimant.

22          “(4) For the purposes of this subsection, a claimant  
23 prevails if the claimant recovers more than 50 percent, by  
24 value, of the money or other property that is claimed.”.



1 **SEC. 7. ANNUAL AUDIT OF CIVIL FORFEITURES.**

2       *The Inspector General shall annually conduct an audit*  
3 *of a representative sample of Federal civil forfeitures under*  
4 *statutes described in section 983(i) of title 18, United States*  
5 *Code, to ensure those forfeitures are constitutionally sound*  
6 *and consistent with the letter and spirit of the law. The*  
7 *Department of Justice Inspector General shall report the*  
8 *results of the audit to the Attorney General and to Congress.*  
9 *Such report shall also include the fiscal status of the Asset*  
10 *Forfeiture Fund and Treasury Forfeiture Fund, including*  
11 *any projected growth or shrinking of the Funds in future*  
12 *years, and the viability of the Funds.*

13 **SEC. 8. PUBLICLY AVAILABLE DATABASES.**

14       *(a) QUARTERLY UPDATED DATABASE ON DETAILS OF*  
15 *FORFEITURES.—The Attorney General shall establish and*  
16 *maintain, with updates on a quarterly basis, a publicly*  
17 *available database that describes with respect to seizures for*  
18 *all Federal civil forfeiture containing the following:*

19               *(1) For each such seizure:*

20                       *(A) Unit of an agency responsible for the*  
21 *seizure, and the location, including at a min-*  
22 *imum the State, city, and judicial district where*  
23 *and date when the seizure took place.*

24                       *(B) The type of initial seizure (such as dur-*  
25 *ing a stop based on probable cause, or pursuant*  
26 *to a Federal warrant).*

1           (C) *The nature and value of the seized*  
2 *property.*

3           (D) *In what manner forfeiture of seized*  
4 *property was conducted (whether by a civil or*  
5 *administrative proceeding, through settlement, or*  
6 *otherwise).*

7           (E) *Whether a forfeiture of the seized prop-*  
8 *erty was of the entire property, or only a part,*  
9 *and if partial, the proportion of the whole that*  
10 *was forfeited.*

11           (F) *The disposition of the seized property,*  
12 *the date of forfeiture, if any, and the date the*  
13 *disposition took place.*

14           (G) *What type of criminal activity any for-*  
15 *feited property relates to.*

16           (H) *Whether any forfeited money was re-*  
17 *turned to the victim of a crime in connection*  
18 *with which the forfeiture occurred, and the*  
19 *amount returned.*

20           (I) *The status of any concurrent or related*  
21 *criminal proceeding against the owner of the*  
22 *property, any pending case under title 11 in*  
23 *which the owner of record of the property is the*  
24 *debtor, and any pending civil case in which a*

1           *receiver has been ordered to take control of the*  
2           *property.*

3           *(J) Whether the forfeiture was contested.*

4           *(K) Whether the innocent owner made a*  
5           *claim on the property.*

6           *(L) The total expenses associated with the*  
7           *forfeiture.*

8           *(M) The total net proceeds of the forfeiture.*

9           *(N) Demographic information on the person*  
10          *or persons subject to the seizure.*

11          *(2) A statistical breakdown for each agency of*  
12          *the cases of remission and mitigation, including—*

13                 *(A) the numbers of requests for remission*  
14                 *and mitigation that were—*

15                         *(i) fully granted;*

16                         *(ii) partially granted; or*

17                         *(iii) returned; and*

18                 *(B) with respect to requests that were par-*  
19                 *tially granted—*

20                         *(i) the average percentage of the value*  
21                         *of seized property that was returned to the*  
22                         *owner; and*

23                         *(ii) what percentage of requests re-*  
24                         *sulted in returned property in each of the*  
25                         *following categories:*

1                   (I) *More than zero but less than*  
2                   25 percent of the property was re-  
3                   turned.

4                   (II) *25 percent or more of the*  
5                   property was returned, but less than  
6                   50 percent.

7                   (III) *50 percent or more of the*  
8                   property was returned, but less than  
9                   75 percent.

10                  (IV) *75 percent or more of the*  
11                  property was returned, but less than  
12                  100 percent.

13                  (3) *Any money given from the Asset Forfeiture*  
14                  *Fund or Treasury Forfeiture Fund to State or local*  
15                  *law enforcement for Joint Law Enforcement Oper-*  
16                  *ations (commonly referred to as “JLEO”) funding, or*  
17                  *for any other purpose, and the name of the State or*  
18                  *local entity receiving that funding.*

19                  (b) *REAL-TIME DATABASE TO ASSIST PERSONS*  
20 *WHOSE PROPERTY IS SEIZED.—*

21                  (1) *ESTABLISHMENT.—The Attorney General*  
22                  *shall establish and maintain, with updates on a real-*  
23                  *time basis, a database, organized by State and coun-*  
24                  *ty, with respect to each Federal seizure of real and*  
25                  *personal property for Federal civil forfeiture under*

1 *statutes described in section 983(i) of title 18, United*  
2 *States Code.*

3 (2) *DESIGN.*—*The Attorney General shall design*  
4 *the database to allow any interested party, including*  
5 *any owner, creditor, or lienholder, to determine*  
6 *whether that party has an interest in any such prop-*  
7 *erty and to inform that party, and the general public,*  
8 *on the specifics of how to contest each seizure before*  
9 *the forfeiture.*

10 (c) *HEADS OF AGENCIES TO SUBMIT INFORMATION*  
11 *FOR DATABASES.*—*Not less frequently than quarterly, on*  
12 *a schedule determined by the Attorney General, the head*  
13 *of each Federal agency shall submit to the Attorney General*  
14 *a report that provides, in such form as the Attorney General*  
15 *may prescribe, the information the Attorney General is re-*  
16 *quired to include in the databases established under this*  
17 *section.*

18 **SEC. 9. STANDARD OF PROOF RELATING TO POSSIBLY IN-**  
19 **NOCENT OWNERS.**

20 (a) *BURDEN OF PROOF.*—*Paragraph (3) of section*  
21 *983(c) of title 18, United States Code, is amended to read*  
22 *as follows:*

23 “(3) *if the Government’s theory of forfeiture is*  
24 *that the property was used to commit or facilitate the*  
25 *commission of a criminal offense, or was involved in*

1       *the commission of a criminal offense, the Government*  
2       *shall establish by clear and convincing evidence*  
3       *that—*

4               “(A) *there was a substantial connection be-*  
5               *tween the property and the offense; and*

6               “(B) *the owner of any interest in the seized*  
7               *property—*

8                       “(i) *intentionally used the property in*  
9                       *connection with the offense;*

10                      “(ii) *knowingly consented to the use of*  
11                      *the property by another in connection with*  
12                      *the offense; or*

13                      “(iii) *knew that the property was being*  
14                      *used in connection with the offense.”.*

15       (b) *INNOCENT OWNER DEFENSE.—*

16               (1) *SECTION 983(d)(1).—Paragraph (1) of section*  
17               *983(d) of title 18, United States Code, is amended to*  
18               *read as follows:*

19                      “(1) *An innocent owner’s interest in property*  
20                      *shall not be forfeited under any civil forfeiture stat-*  
21                      *ute. The Government shall have the burden of proving*  
22                      *that the claimant is not an innocent owner by clear*  
23                      *and convincing evidence.”.*

24               (2) *SECTION 983(d)(2)(A)(i).—Paragraph (2)(A)(i)*  
25               *of section 983(d) of title 18, United States Code, is*

1       amended by inserting “or consent to” after “did not  
2       know of”.

3       **SEC. 10. PROPORTIONALITY.**

4       Section 983(g) of title 18, United States Code, is  
5       amended—

6               (1) in paragraph (1), by inserting “or otherwise  
7       disproportional to the gravity of the offense” before  
8       the period at the end; and

9               (2) by amending paragraph (2) to read as fol-  
10       lows:

11               “(2) In making this determination, the court  
12       shall consider, in addition to the analysis as to  
13       whether the forfeiture is constitutionally excessive, the  
14       value of the property, the seriousness of the offense,  
15       the level of the claimant’s culpability in the offense  
16       giving rise to forfeiture, the claimant’s prior record,  
17       the claimant’s financial condition, and whether the  
18       forfeiture statute is intended to address the type of  
19       conduct alleged as the basis for forfeiture.”.

20       **SEC. 11. SEARCH AND FORFEITURE OF MONETARY INSTRU-**  
21               **MENTS.**

22       Section 5317(c) of title 31, United States Code, is  
23       amended by striking paragraph (2) and inserting the fol-  
24       lowing:

25               “(2) **CIVIL FORFEITURE.**—

1           “(A) *IN GENERAL.*—Any property involved  
2           in a violation of section 5313 or 5316, or any  
3           conspiracy to commit any such violation, and  
4           any property traceable to any such violation or  
5           conspiracy, may be seized and forfeited to the  
6           United States in accordance with the procedures  
7           governing civil forfeitures in money laundering  
8           cases pursuant to section 981(a)(1)(A) of title  
9           18.

10           “(B) *STRUCTURING.*—Any property in-  
11           volved in a violation of section 5324, or any con-  
12           spiracy to commit any such violation, and any  
13           property traceable to any such violation or con-  
14           spiracy, may be seized and forfeited to the  
15           United States in accordance with the procedures  
16           governing civil forfeitures in money laundering  
17           cases pursuant to section 981(a)(1)(A) of title 18  
18           only if the property to be seized and forfeited is  
19           derived from an illegal source or if the struc-  
20           turing offense was used to conceal violations of  
21           other criminal laws.”.

22 **SEC. 12. EFFECTIVE DATE AND APPLICABILITY.**

23           *This Act and the amendments made by this Act shall*  
24           *take effect on the date of the enactment of this Act and*  
25           *apply only with respect to seizures made on or after that*



1 *date. Seizures made before that date shall continue to be*  
2 *governed by the law as it existed without regard to this Act*  
3 *or the amendments made by this Act.*

**Union Calendar No. 702**

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 5283**

[Report No. 114-892, Part I]

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**A BILL**

To amend title 18, United States Code, to reform certain forfeiture procedures, and for other purposes.

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DECEMBER 23, 2016

Reported from the Committee on the Judiciary with an amendment

DECEMBER 23, 2016

The Committees on Financial Services and Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed