AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

I

114TH CONGRESS
1ST SESSION

H. R. 540

To restore the integrity of the Fifth Amendment to the Constitution of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2015

Mr. WALBERG (for himself, Mr. CÁRDENAS, Mr. ELLISON, Mr. GARRETT, and Mr. MCCLINTOCK) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Energy and Commerce, Ways and Means, and Financial Services, 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

---

A BILL

To restore the integrity of the Fifth Amendment to the Constitution of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fifth Amendment Integrity Restoration Act of 2015" or the "FAIR Act".

SEC. 2. CIVIL FORFEITURE PROCEEDINGS.

Section 983 of title 18, United States Code, is amended—

(1) in subsection (b)(2)(A)—

(A) by striking ", and the property subject to forfeiture is real property that is being used by the person as a primary residence,"; and

(B) by striking ", at the request of the person, shall insure" and insert "shall ensure";

(2) in subsection (c)—

(A) in paragraph (1), by striking "a preponderance of the evidence" and inserting "clear and convincing evidence";

(B) in paragraph (2), by striking "a preponderance of the evidence" and inserting "clear and convincing evidence"; and

(C) by striking paragraph (3) and inserting the following:

"(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, by clear and convincing evidence, that—

"(A) there was a substantial connection between the property and the offense; and

"(B) the owner of any interest in the seized property—

"(i) used the property with intent to facilitate the offense; or

"(ii) knowingly consented or was willfully blind to the use of the property by another in connection with the offense."; and

(3) in subsection (d)(2)(A), by striking "an owner who" and all that follows through "upon learning" and inserting "an owner who, upon learning".

SEC. 3. DISPOSITION OF FORFEITED PROPERTY.

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

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking "civilly or";

(B) by striking subparagraph (A); and

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

(2) in paragraph (2)—

(A) in subparagraph (A), in the matter preceding clause (i), by striking "subparagraph

(B) of paragraph (1)'' and inserting ''paragraph (1)(A)''; and

(B) in subparagraph (B), by striking ''accordance with section 524(c) of title 28,'' and inserting ''the General Fund of the Treasury of the United States'';

(3) by striking paragraph (3);

(4) by redesignating paragraph (4) as paragraph (3); and

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

(A) in subparagraph (A), by striking ''paragraph (1)(B)'' and inserting ''paragraph (1)(A)''; and

(B) in subparagraph (B), in the matter preceding clause (i), by striking ''paragraph (1)(B) that is civilly or'' and inserting paragraph ''(1)(A) that is''.

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

(1) in section 981(e)—

(A) by striking ''is authorized'' and all that follows through ''or forfeiture of the property;'' and inserting ''shall forward to the Treasurer of the United States any proceeds of property forfeited pursuant to this section for deposit in the

General Fund of the Treasury or transfer such property on such terms and conditions as such officer may determine—'';

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

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

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

(ii) by striking ''paragraphs (3), (4), and (5)'' and inserting ''paragraphs (1), (2), and (3)''; and

(2) in section 983(g)—

(A) in paragraph (3), by striking ''grossly''; and

(B) in paragraph (4), by striking ''grossly''.

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

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

(A) in paragraph (1)—

(i) in subparagraph (D), by inserting ''and'' after the semicolon;

(ii) in subparagraph (E), by striking ''; and'' and inserting a period; and

(iii) by striking subparagraph (F); and

(B) in paragraph (2)—

(i) by striking ''(A) Any payment'' and inserting ''Any payment''; and

(ii) by striking subparagraph (B); and

(2) in section 616 (19 U.S.C. 1616a)—

(A) in the section heading, by striking ''**TRANSFER OF FORFEITED PROPERTY**'' and inserting ''**DISMISSAL IN FAVOR OF FORFEITURE UNDER STATE LAW**'';

(B) in subsection (a), by striking ''(a) The Secretary'' and inserting ''The Secretary''; and

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

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

(1) in subsection (a)(1)—

(A) by striking subparagraph (G); and

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

(2) in subsection (b)—

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

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

SEC. 4. DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND DEPOSITS.

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

(1) by striking subparagraphs (A) and (B); and

(2) by redesignating subparagraphs (C) and (D) as subparagraphs (A) and (B), respectively.

SEC. 5. STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENT PROHIBITED.

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

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting ''knowingly'' after ''Public Law 91–508''; and

(B) in paragraph (3), by inserting ''of funds not derived from a legitimate source'' after ''any transaction'';

(2) in subsection (b), in the matter preceding paragraph (1), by inserting ''knowingly'' after ''such section''; and

(3) in subsection (c), in the matter preceding paragraph (1), by inserting ''knowingly'' after ''section 5316''.

(b) PROBABLE CAUSE HEARING IN CONNECTION WITH PROPERTY SEIZURES RELATING TO CERTAIN MONETARY INSTRUMENTS TRANSACTIONS.—

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

''(d) PROBABLE CAUSE HEARING IN CONNECTION WITH PROPERTY SEIZURES RELATING TO CERTAIN MONETARY INSTRUMENTS TRANSACTIONS.—

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

''(A) a court of competent jurisdiction shall conduct a hearing on any property seized or restrained under subsection (c)(2) with respect to an alleged violation of section 5324; and

''(B) any property described in subparagraph (A) shall be returned unless the court finds that there is probable cause to believe that there is a violation of section 5324 involving the property.

"(2) NOTICE.—Each person from whom property is seized or restrained under subsection (c)(2) with respect to an alleged violation of section 5324 shall be notified of the right of the person to a hearing under paragraph (1).".

(2) APPLICABILITY.—The amendment made by paragraph (1) shall apply to property seized or restrained after the date of enactment of this Act.

SEC. 6. PROPORTIONALITY.

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

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

"(A) the seriousness of the offense;

"(B) the extent of the nexus of the property to the offense;

"(C) the range of sentences available for the offense giving rise to forfeiture;

"(D) the fair market value of the property; and

"(E) the hardship to the property owner and dependents.".

SEC. 7. REPORTING REQUIREMENTS.

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

specifically identifying which funds were obtained from including criminal forfeitures and which were obtained from civil forfeitures,'' after ''deposits''.

SEC. 8. APPLICABILITY.

The amendments made by this Act shall apply to—

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

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

○