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(Original Signature of Member)

118TH CONGRESS  
1ST SESSION

# H. R.

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

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## IN THE HOUSE OF REPRESENTATIVES

Mr. WALBERG introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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# A BILL

To restore the integrity of the Fifth Amendment to the Constitution of the United States, 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 “Fifth Amendment In-  
5 tegrity Restoration Act of 2023” or the “FAIR Act”.

6 **SEC. 2. CIVIL FORFEITURE AND NONJUDICIAL FOR-**  
7 **FEITURE.**

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

1 (1) in subsection (a)—

2 (A) in the subsection heading, by striking  
3 “CLAIM;”;

4 (B) in paragraph (1)—

5 (i) in subparagraph (A)—

6 (I) in clause (i)—

7 (aa) by striking “clauses (ii)  
8 through (v), in any nonjudicial”  
9 and inserting “clause (ii), in  
10 any”; and

11 (bb) by striking “60” and  
12 inserting “7”;

13 (II) by striking clauses (ii)  
14 through (v);

15 (III) by inserting after clause (i)  
16 the following:

17 “(ii) If the identity or interest of a  
18 party is not determined until after the sei-  
19 zure or turnover but is determined before  
20 a declaration of forfeiture is entered, the  
21 Government shall determine the identity  
22 and address of the party or interest within  
23 7 days after the seizure or turnover, and  
24 notice shall be sent to such interested  
25 party not later than 7 days after the deter-

1 mination by the Government of the identity  
2 and address of the party or the party's in-  
3 terest.”;

4 (ii) by striking subparagraphs (B) and  
5 (C);

6 (iii) by redesignating subparagraphs  
7 (D) through (F) as subparagraphs (B)  
8 through (D), respectively; and

9 (iv) in subparagraph (C), as so redesi-  
10 gnated, by striking “nonjudicial”;

11 (C) by striking paragraph (2);

12 (D) by redesignating paragraphs (3) and  
13 (4) as paragraphs (2) and (3), respectively; and

14 (E) in paragraph (2)(A), as so redesi-  
15 gnated—

16 (i) by striking “90” and inserting  
17 “30”; and

18 (ii) by striking “after a claim has  
19 been filed” and inserting “after the date of  
20 the seizure”;

21 (2) in subsection (b)—

22 (A) in paragraph (1)—

23 (i) by amending subparagraph (A) to  
24 read as follows:

1           “(A) If a person with standing to contest  
2 the forfeiture of property in a civil forfeiture  
3 proceeding under a civil forfeiture statute is—

4                   “(i) financially unable to obtain rep-  
5 resentation by counsel; or

6                   “(ii) the cost of obtaining representa-  
7 tion would exceed the value of the seized  
8 property,

9 the court may authorize or appoint counsel to  
10 represent that person with respect to the  
11 claim.”;

12           (B) in subparagraph (B), by inserting “or  
13 appoint” after “authorize”; and

14           (C) in paragraph (2)(A)—

15                   (i) by striking “in a judicial civil for-  
16 feiture proceeding” and inserting “in a  
17 civil forfeiture proceeding”;

18                   (ii) by inserting “under paragraph  
19 (1)” after “counsel”;

20                   (iii) by striking “, and the property  
21 subject to forfeiture is real property that is  
22 being used by the person as a primary resi-  
23 dence,”; and

1 (iv) by striking “, at the request of  
2 the person, shall insure” and inserting  
3 “shall ensure”;

4 (3) in subsection (c)—

5 (A) in paragraph (1), by striking “a pre-  
6 ponderance of the evidence” and inserting  
7 “clear and convincing evidence”;

8 (B) in paragraph (2), by striking “a pre-  
9 ponderance of the evidence” and inserting  
10 “clear and convincing evidence”; and

11 (C) by striking paragraph (3) and insert-  
12 ing the following:

13 “(3) if the Government’s theory of forfeiture is  
14 that the property was used to commit or facilitate  
15 the commission of a criminal offense, or was in-  
16 volved in the commission of a criminal offense, the  
17 Government shall establish, by clear and convincing  
18 evidence, that—

19 “(A) there was a substantial connection  
20 between the property and the offense; and

21 “(B) the owner of any interest in the  
22 seized property—

23 “(i) used the property with intent to  
24 facilitate the offense; or

1           “(ii) knowingly consented or was will-  
2           fully blind to the use of the property by  
3           another in connection with the offense.”;

4           (4) in subsection (d)—

5           (A) in paragraph (1), by striking the sec-  
6           ond sentence and inserting the following: “The  
7           Government shall have the burden of proving  
8           that the claimant is not an innocent owner by  
9           a preponderance of the evidence.”; and

10          (B) in paragraph (2)—

11           (i) in subparagraph (A), by striking  
12           “an owner who” and all that follows  
13           through “upon learning” and inserting “an  
14           owner who, upon learning”; and

15           (ii) in subparagraph (B)(i), by insert-  
16           ing before “For purposes of this para-  
17           graph” the following: “If the Government  
18           satisfies its burden under paragraph (1),  
19           the claimant may rebut the Government’s  
20           evidence related to his innocent ownership,  
21           including by showing that he did all that  
22           could reasonably be expected under the  
23           law.”;

24          (5) in subsection (e)—

1 (A) in paragraph (1), in the matter pre-  
2 ceding subparagraph (A)—

3 (i) by striking “nonjudicial”; and

4 (ii) by striking “a declaration” and in-  
5 serting “an order”;

6 (B) in paragraph (2)—

7 (i) in subparagraph (A), by striking  
8 “declaration” and inserting “order”; and

9 (ii) by striking subparagraph (B) and  
10 inserting the following:

11 “(B) Any proceeding described in subparagraph  
12 (A) shall be commenced within 6 months of the  
13 entry of the order granting the motion.”; and

14 (C) by striking paragraph (5);

15 (6) in subsection (f)(1), in the matter preceding  
16 subparagraph (A), by striking “(a)” and inserting  
17 “(a)(3)(A)”;

18 (7) in subsection (g)—

19 (A) in paragraph (1), by striking “(a)(4)”  
20 and inserting “(a)(3)”;

21 (B) by amending paragraph (2) to read as  
22 follows:

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

25 “(A) the seriousness of the offense;

1 “(B) the extent of the nexus of the prop-  
2 erty to the offense;

3 “(C) the range of sentences available for  
4 the offense giving rise to forfeiture;

5 “(D) the fair market value of the property;  
6 and

7 “(E) the hardship to the property owner  
8 and dependents.”; and

9 (8) by adding at the end the following:

10 “(k)(1) Notwithstanding any other provision of law—

11 “(A) no Federal seizing agency may conduct  
12 nonjudicial forfeitures;

13 “(B) no property may be subject to forfeiture  
14 except through judicial process; and

15 “(C) no order of forfeiture may be entered ex-  
16 cept by a United States district court.

17 “(2) In this subsection, the term ‘nonjudicial for-  
18 feiture’ means an in rem action that permits the Federal  
19 seizing agency to start a forfeiture without judicial in-  
20 volvement.”.

21 **SEC. 3. DISPOSITION OF FORFEITED PROPERTY.**

22 (a) REVISIONS TO CONTROLLED SUBSTANCES  
23 ACT.—Section 511(e) of the Controlled Substances Act  
24 (21 U.S.C. 881(e)) is amended—

25 (1) in paragraph (1)—

1 (A) in the matter preceding subparagraph  
2 (A), by striking “civilly or”;

3 (B) by striking subparagraph (A); and

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

7 (2) in paragraph (2)—

8 (A) in subparagraph (A), in the matter  
9 preceding clause (i), by striking “subparagraph  
10 (B) of paragraph (1)” and inserting “para-  
11 graph (1)(A)”; and

12 (B) in subparagraph (B), by striking “ac-  
13 cordance with section 524(c) of title 28,” and  
14 inserting “the General Fund of the Treasury of  
15 the United States”;

16 (3) by striking paragraph (3);

17 (4) by redesignating paragraph (4) as para-  
18 graph (3); and

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

20 (A) in subparagraph (A), by striking  
21 “paragraph (1)(B)” and inserting “paragraph  
22 (1)(A)”; and

23 (B) in subparagraph (B), in the matter  
24 preceding clause (i), by striking “paragraph

1           (1)(B) that is civilly or” and inserting “para-  
2           graph (1)(A) that is”.

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

5           (1) in section 981(e)—

6                   (A) by striking “is authorized” and all that  
7 follows through “or forfeiture of the property;”  
8 and inserting “shall forward to the Treasurer of  
9 the United States any proceeds of property for-  
10 feited pursuant to this section for deposit in the  
11 General Fund of the Treasury or transfer such  
12 property on such terms and conditions as such  
13 officer may determine—”;

14                   (B) by redesignating paragraphs (3), (4),  
15 (5), (6), and (7) as paragraphs (1), (2), (3),  
16 (4), and (5), respectively; and

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

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

21                           (ii) by striking “paragraph (3), (4), or  
22 (5)” and inserting “paragraph (1), (2), or  
23 (3)”;

24           (2) in section 983(g)—

1 (A) in paragraph (3), by striking “gross-  
2 ly”; and

3 (B) in paragraph (4), by striking “gross-  
4 ly”.

5 (c) TARIFF ACT OF 1930.—The Tariff Act of 1930  
6 (19 U.S.C. 1304 et seq.) is amended—

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

8 (A) in paragraph (1)—

9 (i) in subparagraph (D), by inserting  
10 “and” after the semicolon;

11 (ii) in subparagraph (E), by striking  
12 “; and” and inserting a period; and

13 (iii) by striking subparagraph (F);  
14 and

15 (B) in paragraph (2)—

16 (i) by striking “(A) Any payment”  
17 and inserting “Any payment”; and

18 (ii) by striking subparagraph (B); and

19 (2) in section 616 (19 U.S.C. 1616a)—

20 (A) in the section heading, by striking  
21 “**TRANSFER OF FORFEITED PROPERTY**”  
22 and inserting “**DISMISSAL IN FAVOR OF**  
23 **FORFEITURE UNDER STATE LAW**”;

24 (B) in subsection (a), by striking “(a) The  
25 Secretary” and inserting “The Secretary”; and

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

3 (d) TITLE 31.—Section 9705 of title 31, United  
4 States Code, is amended—

5 (1) in subsection (a)(1)—

6 (A) by striking subparagraph (G); and

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

10 (2) in subsection (b)—

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

12 and

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

15 **SEC. 4. DEPARTMENT OF JUSTICE ASSETS FORFEITURE**

16 **FUND DEPOSITS.**

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

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

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

22 **SEC. 5. STRUCTURING TRANSACTIONS TO EVADE REPORT-**  
23 **ING REQUIREMENT PROHIBITED.**

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

1 (1) in subsection (a)—

2 (A) in the matter preceding paragraph (1),  
3 by inserting “knowingly” after “Public Law  
4 91–508”; and

5 (B) in paragraph (3), by inserting “of  
6 funds not derived from a legitimate source”  
7 after “any transaction”;

8 (2) in subsection (b), in the matter preceding  
9 paragraph (1), by inserting “knowingly” after “such  
10 section”; and

11 (3) in subsection (c), in the matter preceding  
12 paragraph (1), by inserting “knowingly” after “sec-  
13 tion 5316”.

14 (b) PROBABLE CAUSE HEARING IN CONNECTION  
15 WITH PROPERTY SEIZURES RELATING TO CERTAIN MON-  
16 ETARY INSTRUMENTS TRANSACTIONS.—

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

20 “(d) PROBABLE CAUSE HEARING IN CONNECTION  
21 WITH PROPERTY SEIZURES RELATING TO CERTAIN MON-  
22 ETARY INSTRUMENTS TRANSACTIONS.—

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

1           “(A) a court of competent jurisdiction shall  
2           conduct a hearing on any property seized or re-  
3           strained under subsection (c)(2) with respect to  
4           an alleged violation of section 5324; and

5           “(B) any property described in subpara-  
6           graph (A) shall be returned unless the court  
7           finds that there is probable cause to believe that  
8           there is a violation of section 5324 involving the  
9           property.

10          “(2) NOTICE.—Each person from whom prop-  
11          erty is seized or restrained under subsection (c)(2)  
12          with respect to an alleged violation of section 5324  
13          shall be notified of the right of the person to a hear-  
14          ing under paragraph (1).”.

15          (2) APPLICABILITY.—The amendment made by  
16          paragraph (1) shall apply to property seized or re-  
17          strained after the date of enactment of this Act.

18 **SEC. 6. REPORTING REQUIREMENTS.**

19          Section 524(c)(6)(A)(i) of title 28, United States  
20          Code, is amended by inserting “from each type of for-  
21          feiture, and specifically identifying which funds were ob-  
22          tained from including criminal forfeitures and which were  
23          obtained from civil forfeitures,” after “deposits”.

24 **SEC. 7. APPLICABILITY.**

25          The amendments made by this Act shall apply to—

- 1           (1) any civil forfeiture proceeding pending on or
- 2           filed on or after the date of enactment of this Act;
- 3           and
- 4           (2) any amounts received from the forfeiture of
- 5           property on or after the date of enactment of this
- 6           Act.