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## Civil Asset Forfeiture Reform Act of 2000: Overview of Public Law 106-185

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## **ABSTRACT**

After years of complaints regarding abusive Government conduct which permitted prosecutors to confiscate the assets of innocent people long before the criminal trials began, Public Law 106-185 is intended to provide a balance between protecting the rights of property owners while continuing to permit the Government to confiscate assets which can be proved by a preponderance of the evidence that such property may have been used in or was part of a crime.

# Civil Asset Forfeiture Reform Act of 2000: Overview of Public Law 106-185

## Summary

Forfeiture has long provided both a deterrent against crime as well as a form of punishment for the criminal.<sup>1</sup> Federal confiscation procedures, however, were sometimes seen to be unfair. Public Law No. 106-185, signed into law by President Clinton on April 25, 2000 is intended to make, federal forfeiture procedures more fair and yet more effective. The Act will raise the standards the government must meet when it seeks to take property from private citizens suspected of drug trafficking or other crimes. Some of the major changes made by the Act which were the result of a compromise between a bipartisan group of legislators and Attorney General Janet Reno include: (1) raising the Government's standard of proof to one of preponderance of the evidence; (2) supplying indigent defendants with legal representation in forfeiture cases if they already have appointed counsel in a related criminal case or had real property, such as a business or house, which was seized by the Government; (3) expanding the innocent owner defense; (4) permitting property owners, in cases of substantial hardship, to maintain temporary custody of the property subject to a forfeiture contest; (5) allowing successful forfeiture claimants to recover interest and for damages to their property suffered while in Government possession; (6) empowering the courts to dismiss the forfeiture challenges of fugitive property claimants; (7) enlarging the Government's forfeiture authority over the proceeds of a substantial number of crimes previously beyond its reach; (8) recognizing the authority of the federal courts to enforce foreign forfeiture judgments; (9) allowing federal prosecutors to share certain grand jury information for civil forfeiture purposes; and (10) affording the Government the option of proceeding under criminal forfeiture procedures in any instance in which it might invoke civil forfeiture procedures.

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<sup>1</sup> See H. Rept. 106th-192, 106<sup>th</sup> Cong. 1<sup>st</sup> Sess., at 5.

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# Civil Asset Forfeiture Reform Act of 2000: Overview of Public Law 106-185

## General Background

The Civil Asset Forfeiture Reform Act of 2000 represents the evolution of proposals offered by Congressmen Hyde and Conyers over several years. During the 105<sup>th</sup> Congress, H.R. 1965 was introduced to make federal civil forfeiture procedures more equitable for property owners in general and in addition give innocent property owners a process for recovering their property and make themselves whole.<sup>2</sup> Similar to H.R. 1965 relative to its purpose, H.R. 1658 was introduced in the 106<sup>th</sup> Congress. On June 24, 1999, the House passed it by a vote of 375-48<sup>3</sup> and referred it to the Senate Judiciary Committee on June 28, 1999. Following the incorporation of some of the provisions in S. 1701, S. 1931 amended H.R. 1658 which then passed the Senate Judiciary Committee by a voice vote on March 23, 2000. The full Senate passed the compromise version of H.R. 1658 by voice vote on March 27, 2000.<sup>4</sup> On April 11, 2000, the House agreed to the Senate amendments and passed H.R. 1658 by voice vote.<sup>5</sup> On April 25, 2000, H.R. 1658 was signed into law by President Clinton and became Public Law No. 106-185.<sup>6</sup>

## Public Law No. 106-185

After many years of complaints regarding allegedly abusive government conduct, the new law in general will make it more difficult for the federal government to confiscate a person's property before it actually brings charges in a criminal case. This in effect will impose a more severe test which prosecutors must satisfy before being able to confiscate homes, money, cars, boats and other property before any criminal trial begins.

More specifically, the law will provide a more uniform procedure for federal civil forfeiture by establishing new rules to govern the proceedings in the following manner:

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<sup>2</sup> See H. Rept. 98-358, 105<sup>th</sup> Cong. 1<sup>st</sup> Sess. 27 (1997).

<sup>3</sup> 145 Cong. Rec. H4878 (daily ed. June 24, 1999).

<sup>4</sup> 146 Cong. Rec. S1762 (daily ed. March 27, 2000).

<sup>5</sup> 146 Cong. Rec. H2054 (daily ed. April 11, 2000).

<sup>6</sup> 114 Stat. 202 (2000).

## Section 1.

Section 1 states its title: Civil Asset Forfeiture Reform Act Of 2000.

## Section 2. Notice; Claim; Compliant.

Section 2 creates new rules for civil forfeiture proceedings by setting forth notification requirements with respect to seized property and civil forfeiture proceedings, including: (1) a requirement that the notice the Government is required to send to interested parties in a nonjudicial civil forfeiture proceeding under a civil forfeiture statute be sent to achieve proper notice as soon as practicable and within 60 days after the date of the seizure; and (2) it sets out various conditions under which notice may be extended based upon its adverse results, i.e., endangering the life or physical safety of an individual; flight from prosecution; destruction of or tampering with evidence, etc.

This section sets forth procedures for filing claims for seized property by directing the Government, within 90 days after a claim has been filed, to file a complaint for forfeiture consistent with specified requirements in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except a court in the district where the complaint will be filed may extend the period for good cause shown or upon agreement of the parties. If the Government does not file a compliant for forfeiture or return the property, or, before the time for filing a complaint has expired obtain a criminal indictment containing an allegation that the property is subject to forfeiture and take the steps necessary to preserve its right to maintain custody of the property, the Government shall promptly release the property and may not take any further action to effect the civil forfeiture of such property.<sup>7</sup>

In lieu of, or in addition to filing a civil forfeiture complaint, the Government is authorized to include a forfeiture allegation in a criminal indictment. This section specifically indicates that 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.<sup>8</sup> It prevents a complaint from being 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.<sup>9</sup>

This section affords an opportunity for any person claiming an interest in seized property, in any case in which the Government files a complaint for forfeiture in the appropriate United States district court, to file a claim asserting such person's interest, except that such claim may not be filed later than 30 days after the date of

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<sup>7</sup> 114 Stat. 204.

<sup>8</sup> *Id.*

<sup>9</sup> 114 Stat. 204-205.

services of the Government's complaint or not later than 30 days after the date of final publication of notice of the filing of the complaint.<sup>10</sup>

The court may authorize, if a person with standing to contest the forfeiture of property is financially unable to obtain representation by counsel: (1) the appointment of counsel to represent a person with respect to the claim where the person is represented by counsel appointed in connection with a related criminal case; or (2) insure that the person is represented by an attorney from the Legal Services Corporation, at the person's request, where the property subject to forfeiture is real property that is being used by the person as a primary residence.<sup>11</sup>

## **Burden of Proof**

The burden of proof, in any action brought under any civil forfeiture statute for the civil forfeiture of any property, is placed on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture.<sup>12</sup> The Government may use evidence gathered after the filing of a complaint for forfeiture to establish that property is subject to forfeiture.<sup>13</sup> If its theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in such commission, the Government must establish that there was a substantial connection between the property and the offense.<sup>14</sup>

## **Innocent Owner Defense**

An innocent owner's interest in property may not be forfeited under any civil forfeiture statute.<sup>15</sup> The claimant has the burden of proving that he/she is an innocent owner by a preponderance of the evidence.<sup>16</sup>

An otherwise valid claim may not be denied on the ground that the claimant gave nothing of value in exchange for the property if: (1) the property is the claimant's primary residence; (2) depriving the claimant of the property would deprive the claimant of the means to maintain reasonable shelter in the community; (3) the property is not, and is not traceable to, the proceeds of any criminal offense; and (4) the claimant acquired his/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. The court is required to limit the value of any real property interest for which innocent ownership is recognized to the value necessary to maintain reasonable

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<sup>10</sup> 114 Stat. 205.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 114 Stat. 206.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

shelter.<sup>17</sup> It prevents the assertion of an ownership interest in contraband or other property that is illegal to possess.<sup>18</sup>

In situations regarding the partial interest in property which is subject to forfeiture by an innocent owner, the court may enter an appropriate order setting aside the forfeiture; severing the property; or compensating the owner to the extent of his/her ownership.<sup>19</sup>

### **Proportionality**

A claimant may petition the court to determine whether forfeiture was constitutionally excessive.<sup>20</sup> For the purpose of making the determination, the court is directed to compare the forfeiture to the gravity of the offense.<sup>21</sup> The claimant has the burden of establishing, by a preponderance of the evidence at a hearing conducted by the court without a jury, that the forfeiture is grossly disproportional to the claimant's offense.<sup>22</sup> The court is directed to reduce or eliminate a forfeiture found to be grossly disproportional as necessary in order to avoid a violation of the Eighth Amendment.<sup>23</sup>

The court is authorized to impose a civil fine of 10 percent of the value of the forfeited property upon a claimant in any civil forfeiture proceeding in which the Government prevails if the court finds that the claimant's assertion of an interest in the property was frivolous. This provision specifies that such fine shall not be less than \$250 nor greater than \$5,000.<sup>24</sup>

### **Section 3. Compensation for Damage to Seized Property**

The Federal Tort Claims Act is amended to authorize compensation for injury or loss of goods, merchandise, or other property while in the possession of any customs or other law officer if the claimant was not convicted of a crime for which the claimant's property interest was subject to criminal forfeiture and 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

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<sup>17</sup> 114 Stat. 206-207.

<sup>18</sup> 114 Stat. 207.

<sup>19</sup> *Id.*

<sup>20</sup> 114 Stat. 209.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 114 Stat. 209-10.

<sup>24</sup> 114 Stat. 210.

forfeiture law.”<sup>25</sup> The Attorney General is authorized to 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 who is employed by the Department of Justice acting within the scope of his/her employment except the Attorney General may not pay a claim: “(1) if it is presented to the Attorney General more than one year after it accrues; or (2) if it is presented by an officer or employee of the Federal Government and arose within the scope of employment.”<sup>26</sup>

#### **Section 4. Attorney Fees, Costs and Interest (Return of property to claimant; liability for wrongful seizure; attorney fees, cost, and interest)**

Section 2465 of title 28 of the United States Code has been amended to provide that 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 to be entered and 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 follows. The United States will be liable, in any civil proceeding to forfeit property under any provision of Federal law in which the claimant substantially prevails, except where the claimant is convicted of a crime for which the claimant’s interest in the property was subject to forfeiture under a Federal criminal forfeiture law, for (1) reasonable attorney fees and cost reasonably incurred by the claimant; (2) post-judgment interest; and (3) specified interest and imputed amounts of interest in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale. This section also provides that 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.<sup>27</sup> Provisions are made for situations involving multiple claims to the same property. The court is required to reduce the award of cost and attorney fees accordingly if the court enters judgment in part for the claimant and in part for the Government.<sup>28</sup>

#### **Section 5. Seizure Warrant Requirement**

This section amends section 981(b) of title 18, United States Code regarding seizure warrant requirements for civil forfeiture. It permits the seizure of property by the Secretary of the Treasury or the United States Postal Service in the case of property involved in a violation investigated by such entity, respectively.<sup>29</sup> It requires that the seizure be made pursuant to a warrant obtained in the same manner as

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<sup>25</sup> 114 Stat. 211.

<sup>26</sup> *Id.*

<sup>27</sup> 114 Stat. 211-12.

<sup>28</sup> 114 Stat. 213.

<sup>29</sup> *Id.*

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 has 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 the seizure is made pursuant to a lawful arrest or search, or another exception to the Fourth Amendment warrant would apply; or (3) the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency.<sup>30</sup>

A seizure warrant may be issued by a judicial officer in any district in which a forfeiture against the property may be filed under section 1355(b) of title 28 of the United States Code, 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.<sup>31</sup> It requires any motion for the return of property seized be filed in the district in which the property was seized.<sup>32</sup>

The Attorney General, 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 Act or under the Controlled Substances Act, 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.<sup>33</sup> The application for the restraining order should: (A) 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 (B) 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.<sup>34</sup>

The Controlled Substances Act is amended to provide for seizure by the Attorney General of property subject to forfeiture to the United States in section 981(b) of title 18, United States Code.<sup>35</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> 114 Stat. 213-14.

<sup>34</sup> 114 Stat. 214.

<sup>35</sup> *Id.*

## Section 6. Use of Forfeited Funds To Pay Restitution To Crime Victims

Forfeited property may be used to pay restitution 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 activity.<sup>36</sup>

## Section 7. Civil Forfeiture Of Real Property

All civil forfeiture of real property and interests in real property will be accomplished through judicial proceedings; real property that is the subject of a civil forfeiture may not be seized before entry of a forfeiture order; the owner or occupants of the real property may not be evicted from, or otherwise deprived of the use and enjoyment of, real property that is the subject of a pending forfeiture action.<sup>37</sup> The Government, however, may file a *lis pendens* or execute a writ of entry for the purpose of conducting an inspection and taking inventory of the property.<sup>38</sup>

The Government may initiate a civil forfeiture action against real property by: (1) filing a complaint for forfeiture; (2) posting a notice of the complaint on the property; and (3) serving notice on the property owner, along with a copy of the complaint. Constructive service is possible under specified circumstances.<sup>39</sup> If real property has been posted in accordance with the Act, the court need not issue an arrest warrant *in rem*, or take any other action to establish *in rem* jurisdiction over the property.<sup>40</sup>

This section sets out the requirements for and circumstances allowing the seizure of real property prior to entry of a forfeiture order.<sup>41</sup>

## Section 8. Stay Of Civil Forfeiture Case

This section amends the code provisions regarding the stay of civil forfeiture proceedings 18 U.S.C. 981(g). It authorizes the court, upon motion of the United States, to stay such a proceeding upon determining that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the

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<sup>36</sup> 114 Stat. 214.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> 114 Stat. 214-15.

<sup>40</sup> 114 Stat. 215.

<sup>41</sup> 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* order 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.”

prosecution of a related criminal case.<sup>42</sup> The court is authorized, upon motion of the claimant, to stay a proceeding 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.<sup>43</sup> Permits the court, with respect to the impact of civil discovery, to determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the opposing party to pursue the civil case.<sup>44</sup> The court is prohibited from imposing a protective order as an alternative to a stay if the effect of such order would be to allow one party to pursue discovery while the other party is substantially unable to do so.<sup>45</sup> The Government may, in requesting a stay, 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.<sup>46</sup> This section authorizes the court, whenever a civil forfeiture proceeding is stayed, to enter any order necessary to preserve the value of the property or to protect the rights of persons with an interest in the property while the stay is in effect.<sup>47</sup> It also provides that a determination by the court that the claimant has standing to request a stay pursuant to this section (paragraph 2) shall not preclude the Government from objecting to the standing of the claimant by dispositive motion or at the time of trial.<sup>48</sup>

The provisions for stays, applicable to civil forfeitures under the Controlled Substances Act, are replaced with a cross reference to the stay provisions of 18 U.S.C. 981(g).<sup>49</sup>

## Section 9. Civil Restraining Orders

The Act authorizes the court , upon application of the United States, to 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 filing of such complaint if, after notice to the person appearing to have an interest in the property and opportunity for a hearing, the court determines that there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will

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<sup>42</sup> *Id.*

<sup>43</sup> 114 Stat. 216.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture and that the need to preserve the availability of the property through the entry of the requested order outweighs the hardship of any party.<sup>50</sup>

It provides for an order entered prior to the filing of a complaint effective for no more than 90 days, with exceptions.<sup>51</sup>

This section also contains provisions pertaining to temporary restraining orders and consideration of information that would be inadmissible under the Federal Rules of Evidence.<sup>52</sup>

## **Section 10. Cooperation Among Federal Prosecutors**

This section amends section 3322(a) of title 18, United States Code regarding the disclosure of matters occurring before a grand jury in order to allow a person who is privy to grand jury information concerning a banking law violation to disclose the information to a Government attorney for use in connection with any civil forfeiture provision of Federal law.<sup>53</sup>

## **Section 11. Statute Of Limitations For Civil Forfeiture**

The Act amends section 1621 of title 19, United States Code (Tariff Act of 1930) to provide that a civil forfeiture action under the customs laws must be commenced within two years after the time when the existence of the property and the involvement of the property in the alleged offense were discovered or within five years after the time when the alleged offense was discovered, whichever was later.<sup>54</sup> The amendment extends the statute of limitations by as much as two years for cases where the government does not immediately discover the nexus between the property and the crime which subjects it to confiscation. The amendment applies to most civil forfeitures, since most adopt the statute of limitations applicable in customs cases.

## **Section 12. Destruction Or Removal Of Property To Prevent Seizure**

This section amends section 2232 of title 18, United States Code, regarding the destruction or removal of property to prevent seizure. Provisions are made for a fine, up to five years' imprisonment, or both, for: knowingly and without authority from that court, destroying property or attempting to do so, knowing that property is subject to the *in rem* jurisdiction of a United States court for purposes of civil

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<sup>50</sup> 114 Stat. 216-17.

<sup>51</sup> The exceptions are unless extended by the court for good cause shown, or unless a complaint has been filed alleging that the property with respect to which the order is sought is subject to civil forfeiture.

<sup>52</sup> 114 Stat. 217.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

forfeiture under Federal law, for the purpose of impairing or defeating the court's *in rem* jurisdiction over the property.<sup>55</sup>

### **Section 13. Fungible Property In Bank Accounts**

Section 984 of title 18, United States Code regarding civil forfeiture of fungible property is amended to make it inapplicable 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.<sup>56</sup> The amendment also absolves the government from specifically identifying and tracing forfeitable fungible property after it has been deposited in a financial institution in *any* civil forfeiture. Prior to the amendment, the section was only available in civil forfeitures which were triggered by money laundering violations. This section defines “financial institution” to include a foreign bank.<sup>57</sup>

### **Section 14. Fugitive Disentitlement**

This section amends Chapter 163 of title 28, United States Code to authorize a judicial officer to prohibit 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, purposely leaves the jurisdiction of the United States, declines to enter or reenter the United States to submit to its jurisdiction, or 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.<sup>58</sup> Unlike the rest of the Act, the fugitive disentitlement feature becomes effectively immediately, §§14(c), 21, P.L. 106-185, 114 Stat. 219, 225 (2000).

The Supreme Court had previously refused to recognize the inherent authority of the federal courts to dismiss a property owner's forfeiture claim based solely on the ground the claimant refused to return to the United States to face criminal charges, *Degen v. United States*, 517 U.S. 820 (1996).

### **Section 15. Enforcement Of Foreign Forfeiture Judgment**

The Act amends Chapter 163 of title 28, United States Code by adding at the end: “§ 2467. Enforcement of foreign judgment”. This section requires a foreign nation seeking to have a forfeiture or confiscation judgment registered and enforced by a district court of the United States to submit a request to the Attorney General that includes:(A) a summary of the facts of the case and a description of the

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<sup>55</sup> 114 Stat. 218.

<sup>56</sup> 114 Stat. 218-19.

<sup>57</sup> 114 Stat. 219.

<sup>58</sup> *Id.*

proceedings that resulted in the forfeiture or confiscation judgment; (B) a certified copy of the forfeiture or confiscation judgment; and (C) an affidavit or sworn declaration establishing that the defendant received notice of the proceedings in sufficient time and that the judgment rendered is in force and is not subject to appeal.<sup>59</sup>

It provides the provisions concerning the certification for the request, jurisdiction and venue, entry and enforcement of judgment, finality of foreign findings, and currency conversion for any forfeiture or confiscation judgment requiring payment.<sup>60</sup>

## **Section 16. Encouraging Use Of Criminal Forfeiture As An Alternative To Civil Forfeiture**

Section 2461 of title 28, United States Code is amended by adding a section which gives the Government the authority, if forfeiture of property is authorized in connection with a violation of an Act of Congress and a person is charged in an indictment or information with such violation but no specific statutory provision is made for criminal forfeiture, to include the forfeiture in the indictment or information in accordance with the Federal Rules of Criminal Procedure.<sup>61</sup> The section authorizes the court, upon conviction, to order the forfeiture of the property in accordance with specified Controlled Substances Act (21 U.S.C. § 853) procedures.<sup>62</sup>

## **Section 17. Access To Records In Bank Secrecy Jurisdiction**

This section amends section 986 of title 18, United States Code, to provide for judicial sanctions up to and including dismissal with prejudice of the claim of any claimant in a civil forfeiture case, or any related criminal forfeiture case under the Controlled Substances Act, when the claimant refuses to provide financial records which are material and located in a foreign country when it is within the claimant's capacity to waive the claimant's rights under applicable financial secrecy laws or to obtain the records.<sup>63</sup>

## **Section 18. Application To Alien Smuggling Offenses**

This section amends the Immigration and Nationality Act (8 U.S.C. § 1324[b]) by adding a provision regarding the bringing in and harboring of aliens and the corresponding authority and powers of seizure and forfeiture of the gross proceeds as well as any property traceable to such conveyance or which resulted from a violation of the immigration Act. The section sets out the standards under the code which will apply to civil forfeiture under the Immigration Nationality Act, with the

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<sup>59</sup> 114 Stat. 220.

<sup>60</sup> 114 Stat. 220-21.

<sup>61</sup> 114 Stat. 221.

<sup>62</sup> *Id.*

<sup>63</sup> 114 Stat. 221-22.

exception for duties imposed upon the Secretary of the Treasury under the customs laws.<sup>64</sup>

The section sets forth what constitutes *prima facie* evidence for the purpose of making a determination 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 remained in violation of the law.<sup>65</sup>

## **Section 19. Enhanced Visibility Of The Asset Forfeiture Program**

Section 524(c)(6) of title 28, United States Code amends congressional reporting requirements regarding the Department of Justice Assets Forfeiture Fund by the Attorney General to require submission of specified detailed reports for the prior fiscal year on: (1) report on total deposit to the Fund by State of deposit; (2) report on total expenses paid from the fund; (3) report describing the number, value, and types of properties placed into official use by Federal agencies; (4) report describing the number, value, and types of properties transferred to State and local law enforcement agencies; (5) report by type of disposition, describing the number, value, and types of forfeited property disposed of during the year; (6) 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; (7) report listing each property in the year-end inventory, not yet forfeited, with an outstanding equity of not less than \$1,000,000.<sup>66</sup>

The section provides that the reports should include information with respect to all forfeitures under any law enforced or administered by the Department of Justice. It allows meeting the transmittal and publication requirements by posting the reports on an Internet website maintained by the Department of Justice for a period not less than 2 years, and by notifying the House and Senate Judiciary Committee when the reports are available electronically.<sup>67</sup>

## **Section 20. Proceeds**

This provision has the effect of enlarging the money laundering civil forfeiture provisions to include the property traceable to any crime, which is listed as a money laundering predicate offense (i.e., “specified unlawful activity”), regardless of whether a money laundering violation has occurred. Although facially this might be thought to include a wide range of state crimes which have no connection to any federal interest,<sup>68</sup> Congressional intent and constitutional requirements seem to preclude such

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<sup>64</sup> 114 Stat. 222.

<sup>65</sup> *Id.*

<sup>66</sup> 114 Stat. 223-24.

<sup>67</sup> *Id.*

<sup>68</sup> After amendment, section 981(a)(1)(C) reads in pertinent part, “. . . the following property is subject to forfeiture to the United States . . . (C) Any property, real or personal, which  
(continued...)

a construction. At minimum, however, the amendment seems to bring civil forfeiture to a wide variety of federal crimes with respect to which civil forfeiture would have been possible heretofore in the absence of a related money laundering violation.<sup>69</sup>

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<sup>68</sup> (...continued)

constitutes or is derived from proceeds traceable to . . . any offense constituting ‘specified unlawfully activity’ (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.” Section 1956(c)(7) defines “specified unlawful activity” to mean, among other things, “any act or activity constituting an offense listed in section 1961(1) of this title.” Section 1961(1) offenses include “any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year,” 18 U.S.C. 1961(1)(A).

<sup>69</sup> The list includes: 18 U.S.C. section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), section 224 (relating to sports bribery), section 351 (relating to congressional or Cabinet officer assassination), any of section 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 549 (relating to removing goods from Customs custody), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), section 831 (relating to prohibited transactions involving nuclear materials), section 875 (relating to interstate communications), sections 891-894 (relating to extortionate credit transactions), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1084 (relating to the transmission of gambling information), section 1111 (relating to murder within the special maritime and territorial jurisdiction of the United States), section 1114 (relating to murder of federal officers and employees), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnapping), section 1203 (relating to hostage taking), section 1341 (relating to mail fraud not involving a financial institution), section 1343 (relating to wire fraud not involving a financial institution), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter although criminal forfeiture is possible under existing law, 18 U.S.C. 1467), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1588 (relating to peonage and slavery), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1956 (relating to the laundering of monetary instruments),

(continued...)

The changes make it clear that forfeitable proceeds are not limited to the profits of the crime.

## **Section 21. Effective Date**

Except for the immediately effective fugitive disentitlement provisions of 28 U.S.C. 2466, the Act applies to any forfeiture proceeding commenced on or after the date that is 120 days after the enactment.<sup>70</sup>

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<sup>69</sup> (...continued)

section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), or section 2339A (relating to providing material support to terrorists); 29 U.S.C. section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) relating to embezzlement from union funds).

<sup>70</sup> 114 Stat 225.

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