

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1525**

OFFERED BY M ____.

Strike all that follows after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

This Act may be cited as the “Fifth Amendment Integrity Restoration Act of 2023”, or the “FAIR Act of 2023”.

5 SEC. 2. CIVIL FORFEITURE AND NONJUDICIAL FOR-
6 FEITURE.

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

9 (1) in subsection (a)—

10 (A) in the subsection heading, by striking
11 “Claim;”;

12 (B) in paragraph (1)—

13 (i) in subparagraph (A)—

14 (I) in clause (i)—

15 (aa) by striking “clauses (ii)
16 through (v), in any nonjudicial”
17 and inserting “clause (ii), in
18 any”; and

1 (bb) by striking “60” and
2 inserting “7”;

3 (II) by striking clauses (ii)
4 through (v); and

5 (III) by inserting after clause (i)
6 the following:

7 “(ii) If the identity or interest of a
8 party is not determined until after the sei-
9 zure or turnover but is determined before
10 a declaration of forfeiture is entered, the
11 Government shall determine the identity
12 and address of the party or interest within
13 7 days after the seizure or turnover, and
14 notice shall be sent to such interested
15 party not later than 7 days after the deter-
16 mination by the Government of the identity
17 and address of the party or the party’s in-
18 terest.”;

19 (ii) by striking subparagraphs (B) and
20 (C);

21 (iii) by redesignating subparagraphs
22 (D) through (F) as subparagraphs (B)
23 through (D), respectively; and

24 (iv) in subparagraph (C), as so redes-
25 ignated, by striking “nonjudicial”;

1 (C) by striking paragraph (2);

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

4 (E) in paragraph (2)(A), as so redesign-
5 nated—

6 (i) by striking “90” and inserting
7 “30”; and

8 (ii) by striking “after a claim has
9 been filed” and inserting “after the date of
10 the seizure”;

11 (2) in subsection (b)—

12 (A) in paragraph (1)—

13 (i) by amending subparagraph (A) to
14 read as follows:

15 “(A) If a person with standing to contest
16 the forfeiture of property in a civil forfeiture
17 proceeding under a civil forfeiture statute is—

18 “(i) financially unable to obtain rep-
19 resentation by counsel; or

20 “(ii) the cost of obtaining representa-
21 tion would exceed the value of the seized
22 property,

23 the court may authorize or appoint counsel to
24 represent that person with respect to the
25 claim.”; and

1 (ii) in subparagraph (B), by inserting
2 “or appoint” after “authorize”; and
3 (B) in paragraph (2)(A)—

4 (i) by striking “in a judicial civil for-
5 feiture proceeding” and inserting “in a
6 civil forfeiture proceeding”;

7 (ii) by inserting “under paragraph
8 (1)” after “counsel”;

9 (iii) by striking “, and the property
10 subject to forfeiture is real property that is
11 being used by the person as a primary resi-
12 dence,”; and

13 (iv) by striking “, at the request of
14 the person, shall insure” and inserting
15 “shall ensure”;

16 (3) in subsection (c)—

17 (A) in paragraph (1), by striking “a pre-
18 ponderance of the evidence” and inserting
19 “clear and convincing evidence”;

20 (B) in paragraph (2), by striking “a pre-
21 ponderance of the evidence” and inserting
22 “clear and convincing evidence”; and

23 (C) by striking paragraph (3) and insert-
24 ing the following:

1 “(3) if the Government’s theory of forfeiture is
2 that the property was used to commit or facilitate
3 the commission of a criminal offense, or was in-
4 volved in the commission of a criminal offense, the
5 Government shall establish, by clear and convincing
6 evidence, that—

7 “(A) there was a substantial connection
8 between the property and the offense; and

9 “(B) the owner of any interest in the
10 seized property—

11 “(i) used the property with intent to
12 facilitate the offense; or

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

16 (4) in subsection (d)—

17 (A) in paragraph (1), by striking the sec-
18 ond sentence and inserting the following: “The
19 Government shall have the burden of proving
20 that the claimant is not an innocent owner by
21 a preponderance of the evidence.”; and

22 (B) in paragraph (2)—

23 (i) in subparagraph (A), by striking
24 “an owner who” and all that follows

1 through “upon learning” and inserting “an
2 owner who, upon learning”; and

3 (ii) in subparagraph (B)(i), by insert-
4 ing before “For the purposes of this para-
5 graph” the following: “If the Government
6 satisfies its burden under paragraph (1),
7 the claimant may rebut the Government’s
8 evidence related to his innocent ownership,
9 including by showing that he did all that
10 could reasonably be expected under the
11 law.”;

12 (5) in subsection (e)—

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

15 (i) by striking “nonjudicial”; and

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

18 (B) in paragraph (2)—

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

21 (ii) by striking subparagraph (B) and
22 inserting the following:

23 “(B) Any proceeding described in subpara-
24 graph (A) shall be commenced within 6 months

1 of the entry of the order granting the motion.”;

2 and

3 (C) by striking paragraph (5);

4 (6) in subsection (f)(1), in the matter preceding

5 subparagraph (A), by striking “(a)” and inserting

6 “(a)(3)(A)”;

7 (7) in subsection (g)—

8 (A) in paragraph (1), by striking “(a)(4)”

9 and inserting “(a)(3)”;

10 (B) by amending paragraph (2) to read as

11 follows:

12 “(2) In making this determination, the court

13 shall consider such factors as—

14 “(A) the seriousness of the offense;

15 “(B) the extent of the nexus of the prop-

16 erty to the offense;

17 “(C) the range of sentences available for

18 the offense giving rise to forfeiture;

19 “(D) the fair market value of the property;

20 and

21 “(E) the hardship to the property owner

22 and dependents.”;

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

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

1 “(A) no Federal seizing agency may con-
2 duct nonjudicial forfeitures;

3 “(B) no property may be subject to for-
4 feiture except through judicial process; and

5 “(C) no order of forfeiture may be entered
6 except by a United States district court.

7 “(2) In this subsection, the term ‘nonjudicial
8 forfeiture’ means an in rem action that permits the
9 Federal seizing agency to start a forfeiture without
10 judicial involvement.”.

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

12 (a) REVISIONS TO CONTROLLED SUBSTANCES
13 ACT.—Section 511(e) of the Controlled Substances Act
14 (21 U.S.C. 881(e)) is amended—

15 (1) in paragraph (1)—

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

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

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

22 (2) in paragraph (2)—

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

1 (B) of paragraph (1)” and inserting “para-
2 graph (1)(A)”;

3 (B) in subparagraph (B), by striking “ac-
4 cordance with section 524(c) of title 28,” and
5 inserting “the General Fund of the Treasury of
6 the United States”;

7 (3) by striking paragraph (3);

8 (4) by redesignating paragraph (4) as para-
9 graph (3); and

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

11 (A) in subparagraph (A), by striking
12 “paragraph (1)(B)” and inserting “paragraph
13 (1)(A)”;

14 (B) in subparagraph (B), in the matter
15 preceding clause (i), by striking “paragraph
16 (1)(B) that is civilly or” and inserting “para-
17 graph (1)(A) that is”.

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

20 (1) in section 981(e)—

21 (A) by striking “is authorized” and all that
22 follows through “or forfeiture of the property;”
23 and inserting “shall forward to the Treasurer of
24 the United States any proceeds of property for-
25 feited pursuant to this section for deposit in the

1 General Fund of the Treasury or transfer such
2 property on such terms and conditions as such
3 officer may determine—”;

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

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

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

11 (ii) by striking “paragraph (3), (4), or
12 (5)” and inserting “paragraph (1), (2), or
13 (3)”;

14 (2) in section 983(g)—

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

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

19 (c) TARIFF ACT OF 1930.—The Tariff Act of 1930
20 (19 U.S.C. 1304 et seq.) is amended—

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

22 (A) in paragraph (1)—

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

1 (ii) in subparagraph (E), by striking

2 “; and” and inserting a period; and

3 (iii) by striking subparagraph (F);

4 and

5 (B) in paragraph (2)—

6 (i) by striking “(A) Any payment”

7 and inserting “Any payment”; and

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

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

10 (A) in the section heading, by striking

11 “TRANSFER OF FORFEITED PROP-

12 ERTY” and inserting “DISMISSAL IN

13 FAVOR OF FORFEITURE UNDER STATE

14 LAW”;

15 (B) in subsection (a), by striking “(a) The

16 Secretary” and inserting “The Secretary”; and

17 (C) by striking subsections (b) through

18 (d).

19 (d) TITLE 31.—Section 9705 of title 31, United

20 States Code, is amended—

21 (1) in subsection (a)(1)—

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

23 (B) by redesignating subparagraphs (H)

24 through (J) as subparagraphs (G) through (I),

25 respectively; and

1 (2) in subsection (b)—

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

3 and

4 (B) by redesignating paragraphs (3) and

5 (5) as paragraphs (2) and (3), respectively.

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

7 **FUND DEPOSITS.**

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

9 amended—

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

11 (2) by redesignating subparagraphs (C) and

12 (D) as subparagraphs (A) and (B), respectively.

13 **SEC. 5. STRUCTURING TRANSACTIONS TO EVADE REPORT-**

14 **ING REQUIREMENT PROHIBITED.**

15 (a) AMENDMENTS TO TITLE 31.—Section 5324 of

16 title 31, United States Code, is amended—

17 (1) in subsection (a)—

18 (A) in the matter preceding paragraph (1),

19 by inserting “knowingly” after “Public Law

20 91–508”; and

21 (B) in paragraph (3), by inserting “of

22 funds not derived from a legitimate source”

23 after “any transaction”;

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

4 (3) in subsection (c), in the matter preceding
5 paragraph (1), by inserting “knowingly” after “sec-
6 tion 5316”.

7 (b) PROBABLE CAUSE HEARING IN CONNECTION
8 WITH PROPERTY SEIZURES RELATING TO CERTAIN MON-
9 ETARY INSTRUMENTS TRANSACTIONS.—

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

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

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

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

23 “(B) any property described in subpara-
24 graph (A) shall be returned unless the court
25 finds that there is probable cause to believe that

1 there is a violation of section 5324 involving the
2 property.

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

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

11 **SEC. 6. REPORTING REQUIREMENTS.**

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

17 **SEC. 7. APPLICABILITY.**

18 The amendments made by this Act shall apply to—

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

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

