

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

ALEC's Corporate Board —in recent past or present

- AT&T Services, Inc.
 - centerpoint360
 - UPS
 - Bayer Corporation
 - GlaxoSmithKline
 - Energy Future Holdings
 - Johnson & Johnson
 - Coca-Cola Company
 - PhRMA
 - Kraft Foods, Inc.
 - Coca-Cola Co.
 - Pfizer Inc.
 - Reed Elsevier, Inc.
 - DIAGEO
 - Peabody Energy
 - Intuit, Inc.
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 - ExxonMobil
 - Verizon
 - Reynolds American Inc.
 - Wal-Mart Stores, Inc.
 - Salt River Project
 - Altria Client Services, Inc.
 - American Bail Coalition
 - State Farm Insurance
- For more on these corporations, search at www.SourceWatch.org.

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

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Comprehensive Asset Forfeiture Act

Did you know the NRA--the National Rifle Association--was the corporate co-chair in 2011?

Summary

Over the past two decades, federal, state, and local law enforcement agents have relied increasingly on asset forfeiture law "to take the profits out of crime." Forfeiture has been an effective tool in the war on crime, but it has also led to corruption and abuse and to many innocent owners losing their property in the name of fighting crime. Those abuses have resulted in substantial media attention and have led many to take a closer look at this body of law, especially since its principles and practices are so foreign to the rule of law and the American system of justice.

Reforming ALEC's existing model bill on asset forfeiture to include common sense protections that are vital to provide American citizens the protection that is guaranteed under our Constitution will help prevent future abuses of a system that law enforcement needs in its efforts to fight this country's war on drugs.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Title.} This Act may be cited as the Comprehensive Asset Forfeiture Act.

Section 2. {Creation of General Rules Relating to Civil Forfeiture Proceedings.}

(a)(1) In any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the agency conducting a seizure of property must give written notice to interested parties, such notice shall be given as soon as practicable and in no case more than 60 days after the later of the date of the seizure or the date the identity of the interested party is first known or discovered by the agency, except that the court may extend the period for filing a notice for good cause shown.

(2) A person entitled to written notice in such proceeding to whom written notice is not given may on motion void the forfeiture with respect to that person's interest in the property, unless the agency shows—

(i) good cause for the failure to give notice to that person; or

(ii) that the person otherwise had actual notice of the seizure.

(3) If the Government does not provide notice of a seizure of property in accordance with subparagraph (a)(1), it shall return the property and may not take any further action to effect the forfeiture of such property.

(b)(1) Any person claiming property seized in a nonjudicial forfeiture proceeding may file a claim with the appropriate official after the seizure.

(2) A claim under subparagraph (a)(1) may not be filed later than 30 days after—

(i) the date of final publication of notice of seizure; or

(ii) in the case of a person entitled to written notice, the date that notice is received.

(3) The claim shall state the claimant's interest in the property.

(4) Not later than 90 days after a claim has been filed, the Attorney General shall file a complaint for forfeiture in the appropriate court or return the property, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

(5) If the Government does not file a complaint for forfeiture of property in accordance with subparagraph (b)(4), it shall return the property and may not take any further action to effect the forfeiture of such property.

(6) Any person may bring a claim under subparagraph (a)(1) without posting bond with respect to the property that is the subject of the claim.

(c)(1) In any case where the Government files in the appropriate State district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property within 30 days of service of the Government's complaint or, where applicable, within 30 days of alternative publication notice.

(2) A person asserting an interest in seized property in accordance with subparagraph (a)(1) shall file an answer to the Government's complaint for forfeiture within 20 days of the filing of the claim.

(d)(1) If the person filing a claim is financially unable to obtain representation by counsel, the court may appoint counsel to represent that person with respect to the claim.

(2) In determining whether to appoint counsel to represent the person filing the claim, the court shall take into account such factors as—

(i) the claimant's standing to contest the forfeiture; and

(ii) whether the claim appears to be made in good faith or to be frivolous.

(3) The court shall set the compensation for that representation, which shall be equivalent to that provided for other court-appointed representation under state law.

(e) In all suits or actions brought under any civil forfeiture statute for the civil forfeiture of any property, the burden of proof is on the State Government to establish, by clear and convincing evidence, that the property is subject to forfeiture.

(f)(1) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute.

(2) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term 'innocent owner' means an owner who—

- (i) did not know of the conduct giving rise to forfeiture; or
 - (ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.
- (3) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term `innocent owner' means a person who, at the time that person acquired the interest in the property, was—
- (i)(I) a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); or
 - (II) a person who acquired an interest in property through probate or inheritance; and
- (ii) at the time of the purchase or acquisition reasonably without cause to believe that the property was subject to forfeiture.
- (4) Where the property subject to forfeiture is real property, and the claimant uses the property as the claimant's primary residence and is the spouse or minor child of the person who committed the offense giving rise to the forfeiture, an otherwise valid innocent owner claim shall not be denied on the ground that the claimant acquired the interest in the property--
- (i) in the case of a spouse, through dissolution of marriage or by operation of law; or
 - (ii) in the case of a minor child, as an inheritance upon the death of a parent, and not through a purchase. However, the claimant must establish, in accordance with subparagraph (e)(3), that at the time of the acquisition of the property interest, the claimant was reasonably without cause to believe that the property was subject to forfeiture.
- (g) For the purposes of paragraph (f)—
- (1) ways in which a person may show that such person did all that reasonably can be expected may include demonstrating that such person, to the extent permitted by law--
- (i) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and
 - (ii) in a timely fashion revoked or attempted to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property; and
- (2) in order to do all that can reasonably be expected, a person is not required to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.
- (h) As used in this subsection:
- (1) The term `civil forfeiture statute' means any provision of State law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense.
- (2) The term `owner' means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security device, or valid assignment of an ownership interest. Such term does not include—
- (i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

(ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

(iii) a nominee who exercises no dominion or control over the property.

(i)(1) A claimant under subsection (h) is entitled to immediate release of seized property if--

(i) the claimant has a possessory interest in the property;

(ii) the continued possession by the State Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless; and

(iii) the claimant's likely hardship from the continued possession by the State Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding.

(2) A claimant seeking release of property under this subsection must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (i)(1) are met.

(3) If within 10 days after the date of the request the property has not been released, the claimant may file a motion or complaint in any district court that would have jurisdiction of forfeiture proceedings relating to the property setting forth--

(i) the basis on which the requirements of paragraph (i)(1) are met; and

(ii) the steps the claimant has taken to secure release of the property from the appropriate official.

(4) If a motion or complaint is filed under paragraph (i)(3), the district court shall order that the property be returned to the claimant, pending completion of proceedings by the State Government to obtain forfeiture of the property, if the claimant shows that the requirements of paragraph (i)(1) have been met. The court may place such conditions on release of the property as it finds are appropriate to preserve the availability of the property or its equivalent for forfeiture.

(5) The district court shall render a decision on a motion or complaint filed under paragraph (i)(3) no later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.

Section 3. {Compensation for Damage to Seized Property.}

(a) The State shall be liable for real costs of any claim based on the destruction, injury, or loss of goods, merchandise, or other property, while in the possession of any officer of [customs or] excise or any other law enforcement officer, if the property was seized for the purpose of forfeiture under any provision of State law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense but the interest of the claimant is not forfeited'.

(b) The Attorney General may 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 State and acting within the scope of his or her employment.

(2) LIMITATIONS- The Attorney General may not pay a claim under paragraph (1) that-

(A) is presented to the Attorney General more than 1 year after it occurs; or

(B) is presented by an officer or employee of the United States Government and arose within the scope of employment.

Section 4. {Pre-Judgment and Post-Judgment Interest.}

(a) INTEREST-

(1) POST-JUDGMENT- Upon entry of judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of State law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense, the State shall be liable for post-judgment interest as would have been earned in accordance with current interest rates.

(2) PRE-JUDGMENT- The State shall not be liable for pre-judgment interest in a proceeding under any provision of State law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense, except that in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, the State shall disgorge to the claimant any funds representing--

(i) interest actually paid to the State from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument; and

(ii) for any period during which no interest is actually paid, an imputed amount of interest that such currency, instruments, or proceeds would have earned in accordance with the current interest rate.

(3) LIMITATION ON OTHER PAYMENTS- The State shall not be required to disgorge the value of any intangible benefits in a proceeding under any provision of State law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense nor make any other payments to the claimant not specifically authorized by this subsection.'

Section 5. {Forfeiture of Property for Commission of Criminal Offense- Procedure Disposition.}

(a) Money, real property, vehicles and other conveyances, or tangible and intangible personal property of any kind that is used in connection with the commission of a criminal offense provided for in the {name of state} statutes is not subject or forfeiture unless it is owned by a person convicted of a criminal offense, it is ordered forfeited as part of the sentence imposed upon conviction, and a section of {name of state} law specifically provides for forfeiture as part of the sentence imposed upon conviction. A civil forfeiture proceeding may not be used to proceed against property suspected of being used in connection with the commission of a criminal offense.

(b) Unless another section of {name of state} statute specifically provides a procedure for disposition of property forfeited as part of the sentence imposed upon conviction of a criminal offense specified in that section, the forfeited property must be disposed of as provided in this section.

(c) The sheriff shall seize the forfeited property within ten (10) days after the conviction.

(d) Forfeiture of property encumbered by a security interest is subject to the secured person's interest if the secured person did not know and could not have reasonably know of the unlawful possession, use, or other act in connection with the commission of the crime.

(e) If proper proof of a security interest is presented to the sheriff, the sheriff shall release the property to the secured person if the amount due to the person is equal to or greater than the value of the property.

(f) Property not released to a secured person under subsection (e) must, except as provided in subsection (q), be sold by the sheriff at a public auction in the same manner

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as provided by law for the sale of property under execution. The property may not be sold to an officer or employee of a law enforcement agency. The proceeds of the sale must be distributed first to a secured person who has presented proper proof of the security interest to the sheriff, and any remaining proceeds must be used to [insert appropriate action].

(g) Property that is unlawful to produce or possess must be destroyed by the sheriff if it cannot be sold to a person or entity that can lawfully possess it.

Section 6. {Applicability.}

(a) IN GENERAL- Unless otherwise specified in this Act, this Act will apply with respect to claims, suits, and actions filed on or after the date of the enactment of this Act.

(b) EXCEPTIONS-

(1) The standard for the required burden of proof set forth in section 2, shall apply in cases pending on the date of the enactment of this Act.

(2) The amendment made by section 4 shall apply to any judgment entered after the date of the enactment of this Act.

Section 7. {Severability Clause}

Section 8. {Repealer Clause}

Adopted by ALEC's Criminal Justice Task Force at the States and Nation Policy Summit December 9, 1999. Approved by full ALEC Board of Directors January, 2000.

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