

Calendar No. 124111TH CONGRESS
1ST SESSION**S. 151**

To protect Indian arts and crafts through the improvement of applicable criminal proceedings, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 2009

Mr. McCAIN (for himself, Mr. KYL, and Mr. DORGAN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

JULY 22, 2009

Reported by Mr. DORGAN, without amendment

A BILL

To protect Indian arts and crafts through the improvement of applicable criminal proceedings, 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 “Indian Arts and Crafts
5 Amendments Act of 2009”.

1 **SEC. 2. INDIAN ARTS AND CRAFTS.**

2 (a) CRIMINAL PROCEEDINGS; CIVIL ACTIONS; MIS-
 3 REPRESENTATIONS.—Section 5 of the Act entitled “An
 4 Act to promote the development of Indian arts and crafts
 5 and to create a board to assist therein, and for other pur-
 6 poses” (25 U.S.C. 305d) is amended to read as follows:

7 **“SEC. 5. CRIMINAL PROCEEDINGS; CIVIL ACTIONS.**

8 “(a) DEFINITION OF FEDERAL LAW ENFORCEMENT
 9 OFFICER.—In this section, the term ‘Federal law enforce-
 10 ment officer’ includes a Federal law enforcement officer
 11 (as defined in section 115(c) of title 18, United States
 12 Code).

13 “(b) AUTHORITY TO CONDUCT INVESTIGATIONS.—
 14 Any Federal law enforcement officer shall have the author-
 15 ity to conduct an investigation relating to an alleged viola-
 16 tion of this Act occurring within the jurisdiction of the
 17 United States.

18 “(c) CRIMINAL PROCEEDINGS.—

19 “(1) INVESTIGATION.—

20 “(A) IN GENERAL.—The Board may refer
 21 an alleged violation of section 1159 of title 18,
 22 United States Code, to any Federal law enforce-
 23 ment officer for appropriate investigation.

24 “(B) REFERRAL NOT REQUIRED.—A Fed-
 25 eral law enforcement officer may investigate an
 26 alleged violation of section 1159 of that title re-

1 regardless of whether the Federal law enforce-
2 ment officer receives a referral under subpara-
3 graph (A).

4 “(2) FINDINGS.—The findings of an investiga-
5 tion of an alleged violation of section 1159 of title
6 18, United States Code, by any Federal department
7 or agency under paragraph (1)(A) shall be sub-
8 mitted, as appropriate, to—

9 “(A) a Federal or State prosecuting au-
10 thority; or

11 “(B) the Board.

12 “(3) RECOMMENDATIONS.—On receiving the
13 findings of an investigation under paragraph (2), the
14 Board may—

15 “(A) recommend to the Attorney General
16 that criminal proceedings be initiated under
17 section 1159 of title 18, United States Code;
18 and

19 “(B) provide such support to the Attorney
20 General relating to the criminal proceedings as
21 the Attorney General determines to be appro-
22 priate.

23 “(d) CIVIL ACTIONS.—In lieu of, or in addition to,
24 any criminal proceeding under subsection (c), the Board

1 may recommend that the Attorney General initiate a civil
2 action under section 6.”.

3 (b) CAUSE OF ACTION FOR MISREPRESENTATION.—
4 Section 6 of the Act entitled “An Act to promote the devel-
5 opment of Indian arts and crafts and to create a board
6 to assist therein, and for other purposes” (25 U.S.C.
7 305e) is amended—

8 (1) by striking subsection (d);

9 (2) by redesignating subsections (a) through (c)
10 as subsections (b) through (d), respectively;

11 (3) by inserting before subsection (b) (as redес-
12 igned by paragraph (2)) the following:

13 “(a) DEFINITIONS.—In this section:

14 “(1) INDIAN.—The term ‘Indian’ means an in-
15 dividual that—

16 “(A) is a member of an Indian tribe; or

17 “(B) is certified as an Indian artisan by an
18 Indian tribe.

19 “(2) INDIAN PRODUCT.—The term ‘Indian
20 product’ has the meaning given the term in any reg-
21 ulation promulgated by the Secretary.

22 “(3) INDIAN TRIBE.—

23 “(A) IN GENERAL.—The term ‘Indian
24 tribe’ has the meaning given the term in section

1 4 of the Indian Self-Determination and Edu-
2 cation Assistance Act (25 U.S.C. 450b).

3 “(B) INCLUSION.—The term ‘Indian tribe’
4 includes, for purposes of this section only, an
5 Indian group that has been formally recognized
6 as an Indian tribe by—

7 “(i) a State legislature;

8 “(ii) a State commission; or

9 “(iii) another similar organization
10 vested with State legislative tribal recogni-
11 tion authority.

12 “(4) SECRETARY.—The term ‘Secretary’ means
13 the Secretary of the Interior.”;

14 (4) in subsection (b) (as redesignated by para-
15 graph (2)), by striking “subsection (c)” and insert-
16 ing “subsection (d)”;

17 (5) in subsection (c) (as redesignated by para-
18 graph (2))—

19 (A) by striking “subsection (a)” and in-
20 serting “subsection (b)”;

21 (B) by striking “suit” and inserting “the
22 civil action”;

23 (6) by striking subsection (d) (as redesignated
24 by paragraph (2)) and inserting the following:

1 “(d) PERSONS THAT MAY INITIATE CIVIL AC-
2 TIONS.—

3 “(1) IN GENERAL.—A civil action under sub-
4 section (b) may be initiated by—

5 “(A) the Attorney General, at the request
6 of the Secretary acting on behalf of—

7 “(i) an Indian tribe;

8 “(ii) an Indian; or

9 “(iii) an Indian arts and crafts orga-
10 nization;

11 “(B) an Indian tribe, acting on behalf of—

12 “(i) the Indian tribe;

13 “(ii) a member of that Indian tribe; or

14 “(iii) an Indian arts and crafts orga-
15 nization;

16 “(C) an Indian; or

17 “(D) an Indian arts and crafts organiza-
18 tion.

19 “(2) DISPOSITION OF AMOUNTS RECOVERED.—

20 “(A) IN GENERAL.—Except as provided in
21 subparagraph (B), an amount recovered in a
22 civil action under this section shall be paid to
23 the Indian tribe, the Indian, or the Indian arts
24 and crafts organization on the behalf of which
25 the civil action was initiated.

1 “(B) EXCEPTIONS.—

2 “(i) ATTORNEY GENERAL.—In the
3 case of a civil action initiated under para-
4 graph (1)(A), the Attorney General may
5 deduct from the amount—

6 “(I) the amount of the cost of
7 the civil action and reasonable attor-
8 ney’s fees awarded under subsection
9 (c), to be deposited in the Treasury
10 and credited to appropriations avail-
11 able to the Attorney General on the
12 date on which the amount is recov-
13 ered; and

14 “(II) the amount of the costs of
15 investigation awarded under sub-
16 section (c), to reimburse the Board
17 for the activities of the Board relating
18 to the civil action.

19 “(ii) INDIAN TRIBE.—In the case of a
20 civil action initiated under paragraph
21 (1)(B), the Indian tribe may deduct from
22 the amount—

23 “(I) the amount of the cost of
24 the civil action; and

1 “(II) reasonable attorney’s fees.”;

2 and

3 (7) in subsection (e), by striking “(e) In the
4 event that” and inserting the following:

5 “(e) SAVINGS PROVISION.—If”.

6 **SEC. 3. MISREPRESENTATION OF INDIAN PRODUCED**
7 **GOODS AND PRODUCTS.**

8 Section 1159 of title 18, United States Code, is
9 amended—

10 (1) by striking subsection (b) and inserting the
11 following:

12 “(b) PENALTY.—Any person that knowingly violates
13 subsection (a) shall—

14 “(1) in the case of a first violation by that per-
15 son—

16 “(A) if the applicable goods are offered or
17 displayed for sale at a total price of \$1,000 or
18 more, or if the applicable goods are sold for a
19 total price of \$1,000 or more—

20 “(i) in the case of an individual, be
21 fined not more than \$250,000, imprisoned
22 for not more than 5 years, or both; and

23 “(ii) in the case of a person other
24 than an individual, be fined not more than
25 \$1,000,000; and

1 “(B) if the applicable goods are offered or
2 displayed for sale at a total price of less than
3 \$1,000, or if the applicable goods are sold for
4 a total price of less than \$1,000—

5 “(i) in the case of an individual, be
6 fined not more than \$25,000, imprisoned
7 for not more than 1 year, or both; and

8 “(ii) in the case of a person other
9 than an individual, be fined not more than
10 \$100,000; and

11 “(2) in the case of a subsequent violation by
12 that person, regardless of the amount for which any
13 good is offered or displayed for sale or sold—

14 “(A) in the case of an individual, be fined
15 under this title, imprisoned for not more than
16 15 years, or both; and

17 “(B) in the case of a person other than an
18 individual, be fined not more than
19 \$5,000,000.”; and

20 (2) in subsection (c), by striking paragraph (3)
21 and inserting the following:

22 “(3) the term ‘Indian tribe’—

23 “(A) has the meaning given the term in
24 section 4 of the Indian Self-Determination and

1 Education Assistance Act (25 U.S.C. 450b);
2 and

3 “(B) includes, for purposes of this section
4 only, an Indian group that has been formally
5 recognized as an Indian tribe by—

6 “(i) a State legislature;

7 “(ii) a State commission; or

8 “(iii) another similar organization
9 vested with State legislative tribal recogni-
10 tion authority; and”.

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