

Calendar No. 961

110TH CONGRESS
2D SESSION

S. 1255

[Report No. 110-460]

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

IN THE SENATE OF THE UNITED STATES

MAY 1, 2007

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

SEPTEMBER 15, 2008

Reported by Mr. DORGAN, with amendments

[Omit the part struck through and insert the part printed in *italie*]

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. 7.**

4 This Act may be cited as the “Indian Arts and Crafts
5 Amendments Act of 2007~~8~~”.

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) CONDUCT OF INVESTIGATIONS.—Any Federal~~
 14 ~~law enforcement officer may conduct an investigation re-~~
 15 ~~lating to a violation of this Act that occurs on land under~~
 16 ~~the jurisdiction of the Federal Government.~~

17 *“(b) AUTHORITY TO CONDUCT INVESTIGATIONS.—Any*
 18 *Federal law enforcement officer shall have the authority to*
 19 *conduct an investigation relating to an alleged violation of*
 20 *this Act occurring within the jurisdiction of the United*
 21 *States.*

22 **“(c) CRIMINAL PROCEEDINGS.—**

23 **“(1) INVESTIGATION.—**

24 **“(A) IN GENERAL.—**The Board may refer
 25 an alleged violation of section 1159 of title 18,

1 United States Code, to any Federal law enforce-
 2 ment officer for appropriate investigation.

3 “(B) REFERRAL NOT REQUIRED.—A Fed-
 4 eral law enforcement officer may investigate an
 5 alleged violation of section 1159 of that title re-
 6 gardless of whether the Federal law enforce-
 7 ment officer receives a referral under subpara-
 8 graph (A).

9 “(2) FINDINGS.—The findings of an investiga-
 10 tion of an alleged violation of section 1159 of title
 11 18, United States Code, by any Federal department
 12 or agency under paragraph (1)(A) shall be
 13 *submitted, as appropriate, to—mitted to—*

14 “~~(A) the Attorney General; or~~

15 “(A) *a Federal or State prosecuting author-*
 16 *ity; or*

17 “(B) the Board.

18 “(3) RECOMMENDATIONS.—On receiving the
 19 findings of an investigation under paragraph (2), the
 20 Board may—

21 “(A) recommend to the Attorney General
 22 that criminal proceedings be initiated under
 23 section 1159 of title 18, United States Code;
 24 and

1 “(B) provide such support to the Attorney
2 General relating to the criminal proceedings as
3 the Attorney General determines to be appro-
4 priate.

5 “(d) CIVIL ACTIONS.—In lieu of, or in addition to,
6 any criminal proceeding under subsection (c), the Board
7 may recommend that the Attorney General initiate a civil
8 action under section 6.”.

9 (b) CAUSE OF ACTION FOR MISREPRESENTATION.—
10 Section 6 of the Act entitled “An Act to promote the devel-
11 opment of Indian arts and crafts and to create a board
12 to assist therein, and for other purposes” (25 U.S.C.
13 305e) is amended—

14 (1) by striking subsection (d);

15 (2) by redesignating subsections (a) through (c)
16 as subsections (b) through (d), respectively;

17 (3) by inserting before subsection (b) (as reded-
18 igned by paragraph (2)) the following:

19 “(a) DEFINITIONS.—In this section:

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

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

23 “(B) is certified as an Indian artisan by an
24 Indian tribe.

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

4 “(3) INDIAN TRIBE.—

5 “(A) IN GENERAL.—The term ‘Indian
6 tribe’ has the meaning given the term in section
7 4 of the Indian Self-Determination and Edu-
8 cation Assistance Act (25 U.S.C. 450b).

9 “(B) INCLUSION.—The term ‘Indian tribe’
10 includes, for purposes of this section only, an
11 Indian group that has been formally recognized
12 as an Indian tribe by—

13 “(i) a State legislature;

14 “(ii) a State commission; or

15 “(iii) another similar organization
16 vested with State legislative tribal recogni-
17 tion authority.

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

20 (4) in subsection (b) (as redesignated by para-
21 graph (2)), by striking “subsection (c)” and insert-
22 ing “subsection (d)”;

23 (5) in subsection (c) (as redesignated by para-
24 graph (2))—

1 (A) by striking “subsection (a)” and in-
 2 serting “subsection (b)”; and

3 (B) by striking “suit” and inserting “the
 4 civil action”;

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

7 “(d) PERSONS THAT MAY INITIATE CIVIL AC-
 8 TIONS.—

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

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

13 “(i) an Indian tribe;

14 “(ii) an Indian; or

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

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

18 “(i) the Indian tribe;

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

20 “(iii) an Indian arts and crafts orga-
 21 nization;

22 “(C) an Indian; or

23 “(D) an Indian arts and crafts organiza-
 24 tion.

25 “(2) DISPOSITION OF AMOUNTS RECOVERED.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), an amount recovered in a
3 civil action under this section shall be paid to
4 the Indian tribe, the Indian, or the Indian arts
5 and crafts organization on the behalf of which
6 the civil action was initiated.

7 “(B) EXCEPTIONS.—

8 “(i) ATTORNEY GENERAL.—In the
9 case of a civil action initiated under para-
10 graph (1)(A), the Attorney General may
11 deduct from the amount—

12 “(I) the amount of the cost of
13 the civil action and reasonable attor-
14 ney’s fees awarded under subsection
15 (c), to be deposited in the Treasury
16 and credited to appropriations avail-
17 able to the Attorney General on the
18 date on which the amount is recov-
19 ered; and

20 “(II) the amount of the costs of
21 investigation awarded under sub-
22 section (c), to reimburse the Board
23 for the activities of the Board relating
24 to the civil action.

1 “(ii) INDIAN TRIBE.—In the case of a
2 civil action initiated under paragraph
3 (1)(B), the Indian tribe may deduct from
4 the amount—

5 “(I) the amount of the cost of
6 the civil action; and

7 “(II) reasonable attorney’s fees.”;

8 and

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

11 “(e) SAVINGS PROVISION.—If”.

12 **SEC. 3. MISREPRESENTATION OF INDIAN PRODUCED**
13 **GOODS AND PRODUCTS.**

14 Section 1159 of title 18, United States Code, is
15 amended—

16 (1) by striking subsection (b) and inserting the
17 following:

18 “(b) PENALTY.—Any person that knowingly violates
19 subsection (a) shall—

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

22 “(A) if the applicable goods are offered or
23 displayed for sale at a total price of \$1,000 or
24 more, or if the applicable goods are sold for a
25 total price of \$1,000 or more—

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

4 “(ii) in the case of a person other
5 than an individual, be fined not more than
6 \$1,000,000; and

7 “(B) if the applicable goods are offered or
8 displayed for sale at a total price of less than
9 \$1,000, or if the applicable goods are sold for
10 a total price of less than \$1,000—

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

14 “(ii) in the case of a person other
15 than an individual, be fined not more than
16 \$100,000; and

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

20 “(A) in the case of an individual, be fined
21 under this title, imprisoned for not more than
22 15 years, or both; and

23 “(B) in the case of a person other than an
24 individual, be fined not more than
25 \$5,000,000.”; and

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

3 “(3) the term ‘Indian tribe’—

4 “(A) has the meaning given the term in
5 section 4 of the Indian Self-Determination and
6 Education Assistance Act (25 U.S.C. 450b);
7 and

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

11 “(i) a State legislature;

12 “(ii) a State commission; or

13 “(iii) another similar organization
14 vested with State legislative tribal recogni-
15 tion authority; and”.

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