

111TH CONGRESS  
1ST SESSION

# S. 151

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IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2009

Referred to the Committee on Natural Resources and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Indian Arts and Crafts  
3 Amendments Act of 2009”.

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

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

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

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

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

21 “(c) CRIMINAL PROCEEDINGS.—

22 “(1) INVESTIGATION.—

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

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

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

12                   “(A) a Federal or State prosecuting au-  
13                   thority; or

14                   “(B) the Board.

15          “(3) RECOMMENDATIONS.—On receiving the  
16          findings of an investigation under paragraph (2), the  
17          Board may—

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

22                   “(B) provide such support to the Attorney  
23                   General relating to the criminal proceedings as  
24                   the Attorney General determines to be appro-  
25                   priate.

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

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

10           (1) by striking subsection (d);

11           (2) by redesignating subsections (a) through (c)  
12 as subsections (b) through (d), respectively;

13           (3) by inserting before subsection (b) (as redesi-  
14 gnated by paragraph (2)) the following:

15       “(a) DEFINITIONS.—In this section:

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

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

19                   “(B) is certified as an Indian artisan by an  
20 Indian tribe.

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

24           “(3) INDIAN TRIBE.—

1           “(A) IN GENERAL.—The term ‘Indian  
2           tribe’ has the meaning given the term in section  
3           4 of the Indian Self-Determination and Edu-  
4           cation Assistance Act (25 U.S.C. 450b).

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

9                   “(i) a State legislature;

10                   “(ii) a State commission; or

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

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

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

19           (5) in subsection (c) (as redesignated by para-  
20           graph (2))—

21                   (A) by striking “subsection (a)” and in-  
22                   serting “subsection (b)”;

23                   (B) by striking “suit” and inserting “the  
24                   civil action”;

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

3           “(d) PERSONS THAT MAY INITIATE CIVIL AC-  
4           TIONS.—

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

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

9                       “(i) an Indian tribe;

10                      “(ii) an Indian; or

11                      “(iii) an Indian arts and crafts orga-  
12                      nization;

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

14                      “(i) the Indian tribe;

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

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

18           “(C) an Indian; or

19           “(D) an Indian arts and crafts organiza-  
20           tion.

21           “(2) DISPOSITION OF AMOUNTS RECOVERED.—

22           “(A) IN GENERAL.—Except as provided in  
23           subparagraph (B), an amount recovered in a  
24           civil action under this section shall be paid to  
25           the Indian tribe, the Indian, or the Indian arts

1 and crafts organization on the behalf of which  
2 the civil action was initiated.

3 “(B) EXCEPTIONS.—

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

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

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

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

1                   “(I) the amount of the cost of  
2                   the civil action; and

3                   “(II) reasonable attorney’s fees.”;

4                   and

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

7                   “(e) SAVINGS PROVISION.—If”.

8 **SEC. 3. MISREPRESENTATION OF INDIAN PRODUCED**  
9                   **GOODS AND PRODUCTS.**

10                  Section 1159 of title 18, United States Code, is  
11 amended—

12                  (1) by striking subsection (b) and inserting the  
13                  following:

14                  “(b) PENALTY.—Any person that knowingly violates  
15                  subsection (a) shall—

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

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

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

1           “(ii) in the case of a person other  
2           than an individual, be fined not more than  
3           \$1,000,000; and

4           “(B) if the applicable goods are offered or  
5           displayed for sale at a total price of less than  
6           \$1,000, or if the applicable goods are sold for  
7           a total price of less than \$1,000—

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

11          “(ii) in the case of a person other  
12          than an individual, be fined not more than  
13          \$100,000; and

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

17          “(A) in the case of an individual, be fined  
18          under this title, imprisoned for not more than  
19          15 years, or both; and

20          “(B) in the case of a person other than an  
21          individual, be fined not more than  
22          \$5,000,000.”; and

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

25          “(3) the term ‘Indian tribe’—

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

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

8                   “(i) a State legislature;

9                   “(ii) a State commission; or

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

Passed the Senate July 24, 2009.

Attest:

NANCY ERICKSON,

*Secretary.*