

112TH CONGRESS
2D SESSION

S. 3296

To provide for the protection of the flag of the United States, and for
other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 14, 2012

Mr. TESTER introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

To provide for the protection of the flag of the United
States, 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 “Flag Protection Act
5 of 2012”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) the flag of the United States is a unique
9 symbol of national unity and represents the values
10 of liberty, justice, and equality that make this Na-

1 tion an example of freedom unmatched throughout
2 the world;

3 (2) the Bill of Rights is a guarantee of those
4 freedoms and should not be amended in a manner
5 that could be interpreted to restrict freedom, a
6 course that is regularly resorted to by authoritarian
7 governments which fear freedom and not by free and
8 democratic nations;

9 (3) abuse of the flag of the United States
10 causes more than pain and distress to the over-
11 whelming majority of the American people and may
12 amount to fighting words or a direct threat to the
13 physical and emotional well-being of individuals at
14 whom the threat is targeted; and

15 (4) destruction of the flag of the United States
16 can be intended to incite a violent response rather
17 than make a political statement and such conduct is
18 outside the protections afforded by the first amend-
19 ment to the Constitution.

20 (b) PURPOSE.—The purpose of this Act is to provide
21 the maximum protection against the use of the flag of the
22 United States to promote violence while respecting the lib-
23 erties that it symbolizes.

1 **SEC. 3. PROTECTION OF THE FLAG OF THE UNITED STATES**
2 **AGAINST USE FOR PROMOTING VIOLENCE.**

3 (a) IN GENERAL.—Section 700 of title 18, United
4 States Code, is amended to read as follows:

5 **“§ 700. Incitement; damage or destruction of property**
6 **involving the flag of the United States**

7 “(a) DEFINITION OF FLAG OF THE UNITED
8 STATES.—In this section, the term ‘flag of the United
9 States’ means any flag of the United States, or any part
10 thereof, made of any substance, in any size, in a form that
11 is commonly displayed as a flag and that would be taken
12 to be a flag by the reasonable observer.

13 “(b) ACTIONS PROMOTING VIOLENCE.—Any person
14 who destroys or damages a flag of the United States with
15 the primary purpose and intent to incite or produce immi-
16 nent violence or a breach of the peace, and under cir-
17 cumstances in which the person knows that it is reason-
18 ably likely to produce imminent violence or a breach of
19 the peace, shall be fined not more than \$100,000, impris-
20 oned not more than 1 year, or both.

21 “(c) FLAG BURNING.—Any person who shall inten-
22 tionally threaten or intimidate any person or group of per-
23 sons by burning, or causing to be burned, a flag of the
24 United States shall be fined not more than \$100,000, im-
25 prisoned for not more than 1 year, or both.

1 “(d) DAMAGING A FLAG BELONGING TO THE
2 UNITED STATES.—Any person who steals or knowingly
3 converts to his or her use, or to the use of another, a flag
4 of the United States belonging to the United States, and
5 who intentionally destroys or damages that flag, shall be
6 fined not more than \$250,000, imprisoned not more than
7 2 years, or both.

8 “(e) DAMAGING A FLAG OF ANOTHER ON FEDERAL
9 LAND.—Any person who, within any lands reserved for
10 the use of the United States, or under the exclusive or
11 concurrent jurisdiction of the United States, steals or
12 knowingly converts to his or her use, or to the use of an-
13 other, a flag of the United States belonging to another
14 person, and who intentionally destroys or damages that
15 flag, shall be fined not more than \$250,000, imprisoned
16 not more than 2 years, or both.

17 “(f) CONSTRUCTION.—Nothing in this section shall
18 be construed to indicate an intent on the part of Congress
19 to deprive any State, territory, or possession of the United
20 States, or the Commonwealth of Puerto Rico of jurisdic-
21 tion over any offense over which it would have jurisdiction
22 in the absence of this section.”.

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—
24 The chapter analysis for chapter 33 of title 18, United

1 States Code, is amended by striking the item relating to
2 section 700 and inserting the following:

“700. Incitement; damage or destruction of property involving the flag of the
United States.”.

3 **SEC. 4. SEVERABILITY.**

4 If any provision of this Act, or the application of such
5 a provision to any person or circumstance, is held to be
6 unconstitutional, the remainder of the Act, and the appli-
7 cation of this Act to any other person or circumstance,
8 shall not be affected by such holding.

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