

Mr. FRIST. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2575) was read the third time and passed, as follows:

S. 2575

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Sudden Oak Death Syndrome Control Act of 2004”.

SEC. 2. FINDINGS.

Congress finds that—

(1) tan oak, coast live oak, Shreve’s oak, and black oak trees are among the most beloved features of the topography of California and the Pacific Northwest and efforts should be made to protect those trees from disease;

(2) the die-off of those trees, as a result of the exotic fungal pathogen *Phytophthora ramorum*, is approaching epidemic proportions;

(3) native plants and forests must be protected from *Phytophthora ramorum*;

(4) more information is needed on—

(A) *Phytophthora ramorum*, including the existence of *Phytophthora ramorum* throughout the United States; and

(B) sudden oak death syndrome, including—

- (i) the causes;
- (ii) the methods of transmittal; and
- (iii) the best methods of treatment;

(5) the host list for *Phytophthora ramorum* includes 60 plant species in 32 genera, including—

(A) some of the most popular and economically important landscape and garden plants in the United States; and

(B) wild huckleberry plants, potentially endangering the commercial blueberry and cranberry industries;

(6) sudden oak death syndrome threatens to create major economic and environmental problems in California, the Pacific Northwest, and other regions, including—

(A) the increased threat of fire and fallen trees;

(B) the cost of tree removal and a reduction in property values; and

(C) loss of revenue due to—

(i) restrictions on the movement of forest products and nursery stock; and

(ii) the impact on the commercial nursery and small fruit industries;

(7) in 2002, the Secretary of Agriculture imposed a quarantine on the exportation from 10 counties in northern California and Curry County, Oregon, of oak trees and nursery plants that serve as hosts for *Phytophthora ramorum*;

(8) on April 9, 2004, after the discovery of *Phytophthora ramorum* in 2 nurseries in southern California—

(A) restrictions were placed on the interstate movement of species that could potentially serve as hosts to *Phytophthora ramorum*; and

(B) new restrictions were implemented on the interstate movement of host plants and potential host plants from all commercial nurseries in the State of California that are outside the 10 quarantined counties;

(9) on April 22, 2004, the restrictions referred to in paragraph (8)(B) were expanded to include—

(A) all plants in the same genus as host and potential host plants; and

(B) plants growing within 10 meters of a host or potential host plant; and

(10) several States and Canada have placed restrictions on the importation of nursery plants from California.

SEC. 3. RESEARCH, MONITORING, AND REGULATION OF SUDDEN OAK DEATH SYNDROME.

(a) IN GENERAL.—The Secretary of Agriculture (referred to in this Act as the “Secretary”) shall carry out a sudden oak death syndrome research, monitoring, and regulation program to develop methods to control, manage, or eradicate sudden oak death syndrome from—

(1) trees and shrubs on both public and private land; and

(2) host plants and potential host plants from commercial nurseries.

(b) RESEARCH, MONITORING, AND REGULATION ACTIVITIES.—In carrying out the program under subsection (a), the Secretary may—

(1) conduct open space, roadside, and aerial surveys;

(2) provide monitoring technique workshops with respect to—

(A) *Phytophthora ramorum* in wildland and urban areas; and

(B) *Phytophthora ramorum* infestations in nurseries;

(3) conduct a comprehensive and biologically sound national survey of forests, plant nurseries, and landscapes that may have been exposed to *Phytophthora ramorum*, with priority given to surveying and inspecting plants at commercial nurseries and adjacent wildlands throughout the United States;

(4) develop a comprehensive risk assessment of the threat posed by *Phytophthora ramorum* to natural and managed plant resources in the United States, including modes of transmission and the risk of infestation;

(5) conduct a study of a representative sample of nursery plants imported into the United States from Europe, where *Phytophthora ramorum* is known to be found;

(6) develop baseline information on the distribution, condition, and mortality rates of oaks with *Phytophthora ramorum* infestation;

(7) maintain a geographic information system database of *Phytophthora ramorum* occurrences;

(8) conduct research on *Phytophthora ramorum* ecology, pathology, and management in wildland, urban, and nursery settings;

(9) evaluate the susceptibility of oak and other vulnerable species in the United States, with priority given to evaluating the susceptibility of commercially important nursery species;

(10) conduct assessments of trees that could pose a hazard due to infestation of *Phytophthora ramorum*; and

(11) provide diagnostic services.

SEC. 4. MANAGEMENT, TREATMENT, AND FIRE PREVENTION.

(a) IN GENERAL.—The Secretary shall conduct sudden oak death syndrome management, treatment, and fire prevention activities.

(b) MANAGEMENT, TREATMENT, AND FIRE PREVENTION ACTIVITIES.—In carrying out subsection (a), the Secretary shall—

(1) carry out activities to reduce the threat of fire and fallen trees killed by sudden oak death syndrome;

(2) increase and improve firefighting and emergency response capabilities in areas where fire hazard has increased due to tree die-off;

(3) treat vegetation to prevent fire in areas heavily infected with sudden oak death syndrome; and

(4) provide grants to local units of government for hazard tree removal, disposal and recycling, assessment and management of restoration and mitigation projects, green waste treatment facilities, reforestation, and resistant tree breeding.

SEC. 5. EDUCATION AND OUTREACH.

(a) IN GENERAL.—The Secretary shall conduct education and outreach activities to make information available to the public on sudden oak death syndrome.

(b) EDUCATION AND OUTREACH ACTIVITIES.—In carrying out subsection (a), the Secretary may—

(1) develop and distribute educational materials for homeowners, arborists, urban foresters, park managers, public works personnel, recreationists, nursery workers, landscapers, naturalists, firefighting personnel, and other individuals, as the Secretary determines appropriate;

(2) design and maintain a website to provide information on sudden oak death syndrome; and

(3) provide financial and technical support to States, local governments, and nonprofit organizations providing information on sudden oak death syndrome.

SEC. 6. INTERGOVERNMENTAL COMMUNICATION.

(a) SENSE OF CONGRESS.—It is the sense of Congress that close communication between the affected agencies at all levels of government is required for the programs authorized under this Act to be effective.

(b) REGULAR MEETINGS OR CONSULTATIONS.—

(1) IN GENERAL.—In accordance with section 204(a) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1534(a)), the Secretary shall convene regular meetings of, or conduct regular consultations with, Federal, State, tribal, and local government officials for the purpose of providing a means of exchanging information and recommendations on how to carry out this Act effectively.

(2) REQUIREMENTS.—Meetings or consultations conducted under paragraph (1) shall—

(A) be conducted in a manner that ensures that the various regions of the United States are represented; and

(B) include—

(i) representatives from the Animal and Plant Health Inspection Service;

(ii) representatives from the Agriculture Research Service;

(iii) representatives from the Cooperative State Research, Education, and Extension Service;

(iv) representatives from the Forest Service;

(v) representatives from State forester offices; and

(vi) State representatives from the National Plant Board.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of fiscal years 2005 through 2009—

(1) to carry out section 3, \$25,000,000;

(2) to carry out section 4, \$18,500,000; and

(3) to carry out section 5, \$700,000.

DISTRICT OF COLUMBIA RETIREMENT PROTECTION IMPROVEMENT ACT OF 2004

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4657, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4657) to amend the Balanced Budget Act of 1997 to improve the administration of Federal pension benefit payments for District of Columbia teachers, police officers, and fire fighters, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4657) was read the third time and passed.

ANTICOUNTERFEITING ACT OF 2004

ANTICOUNTERFEITING AMENDMENTS ACT OF 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged and the Senate proceed to the immediate consideration of S. 2227 and H.R. 3632, en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bills by title.

The legislative clerk read as follows:

A bill (S. 2227) to prevent and punish counterfeiting and copyright piracy, and for other purposes.

A bill (H.R. 3632) to prevent and punish counterfeiting of copyrighted copies and phonorecords, and for other purposes.

There being no objection, the Senate proceeded to consider the bills, en bloc.

Mr. FRIST. I ask unanimous consent that the bills be read a third time and passed and the motions to reconsider be laid upon the table, en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2227) was read the third time and passed, as follows:

S. 2227

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anticounterfeiting Act of 2004".

SEC. 2. FINDINGS.

Congress finds that—

(1) American innovation, and the protection of that innovation by the government, has been a critical component of the economic growth of this Nation throughout the history of the Nation;

(2) copyright-based industries represent one of the most valuable economic assets of this country, contributing over 5 percent of the gross domestic product of the United States and creating significant job growth and tax revenues;

(3) the American intellectual property sector employs approximately 4,300,000 people, representing over 3 percent of total United States employment;

(4) the proliferation of organized criminal counterfeiting enterprises threatens the economic growth of United States copyright industries;

(5) the American intellectual property sector has invested millions of dollars to develop highly sophisticated authentication

features that assist consumers and law enforcement in distinguishing genuine intellectual property products and packaging from counterfeits;

(6) in order to thwart these industry efforts, counterfeiters traffic in, and tamper with, genuine authentication features, for example, by obtaining genuine authentication features through illicit means and then commingling these features with counterfeit software or packaging;

(7) Federal law does not provide adequate civil and criminal remedies to combat tampering activities that directly facilitate counterfeiting crimes; and

(8) in order to strengthen Federal enforcement against counterfeiting of copyrighted works, Congress must enact legislation that—

(A) prohibits trafficking in, and tampering with, authentication features of copyrighted works; and

(B) permits aggrieved parties an appropriate civil cause of action.

SEC. 3. PROHIBITION AGAINST TRAFFICKING IN ILLICIT AUTHENTICATION FEATURES.

(a) IN GENERAL.—Section 2318 of title 18, United States Code, is amended—

(1) by striking the heading and inserting "**Trafficking in counterfeit labels, illicit authentication features, or counterfeit documentation or packaging**";

(2) by striking subsection (a) and inserting the following:

"(a) Whoever, in any of the circumstances described in subsection (c), knowingly traffics in—

"(1) a counterfeit label affixed to, or designed to be affixed to—

"(A) a phonorecord;

"(B) a copy of a computer program;

"(C) a copy of a motion picture or other audiovisual work; or

"(D) documentation or packaging;

"(2) an illicit authentication feature affixed to or embedded in, or designed to be affixed to or embedded in—

"(A) a phonorecord;

"(B) a copy of a computer program;

"(C) a copy of a motion picture or other audiovisual work; or

"(D) documentation or packaging; or

"(3) counterfeit documentation or packaging, shall be fined under this title or imprisoned for not more than 5 years, or both."

(b) IN subsection (b)—

(A) in paragraph (2), by striking "and" at the end;

(B) in paragraph (3)—

(i) by striking "and 'audiovisual work' have" and inserting the following: "'audiovisual work', and 'copyright owner' have"; and

(ii) by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(4) the term 'authentication feature' means any hologram, watermark, certification, symbol, code, image, sequence of numbers or letters, or other physical feature that either individually or in combination with another feature is used by the respective copyright owner to verify that a phonorecord, a copy of a computer program, a copy of a motion picture or other audiovisual work, or documentation or packaging is not counterfeit or otherwise infringing of any copyright;

"(5) the term 'documentation or packaging' means documentation or packaging for a phonorecord, copy of a computer program, or copy of a motion picture or other audiovisual work; and

"(6) the term 'illicit authentication feature' means an authentication feature, that—

"(A) without the authorization of the respective copyright owner has been tampered with or altered so as to facilitate the reproduction or distribution of—

"(i) a phonorecord;

"(ii) a copy of a computer program;

"(iii) a copy of a motion picture or other audiovisual work; or

"(iv) documentation or packaging;

in violation of the rights of the copyright owner under title 17;

"(B) is genuine, but has been distributed, or is intended for distribution, without the authorization of the respective copyright owner; or

"(C) appears to be genuine, but is not.";

(4) in subsection (c)—

(A) by striking paragraph (3) and inserting the following:

"(3) the counterfeit label or illicit authentication feature is affixed to, is embedded in, or encloses, or is designed to be affixed to, to be embedded in, or to enclose—

"(A) a phonorecord of a copyrighted sound recording;

"(B) a copy of a copyrighted computer program;

"(C) a copy of a copyrighted motion picture or other audiovisual work; or

"(D) documentation or packaging; or"; and

(B) in paragraph (4), by striking "for a computer program";

(5) in subsection (d)—

(A) by inserting "or illicit authentication features" after "counterfeit labels" each place it appears;

(B) by inserting "or illicit authentication features" after "such labels"; and

(C) by inserting before the period at the end the following: ", and of any equipment, device, or materials used to manufacture, reproduce, or assemble the counterfeit labels or illicit authentication features"; and

(6) by adding at the end the following:

"(f) CIVIL REMEDIES FOR VIOLATION.—

"(1) IN GENERAL.—Any copyright owner who is injured by a violation of this section or is threatened with injury, may bring a civil action in an appropriate United States district court.

"(2) DISCRETION OF COURT.—In any action brought under paragraph (1), the court—

"(A) may grant 1 or more temporary or permanent injunctions on such terms as the court determines to be reasonable to prevent or restrain violations of this section;

"(B) at any time while the action is pending, may order the impounding, on such terms as the court determines to be reasonable, of any article that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation of this section; and

"(C) may award to the injured party—

"(i) reasonable attorney fees and costs; and

"(ii) (I) actual damages and any additional profits of the violator, as provided by paragraph (3); or

"(II) statutory damages, as provided by paragraph (4).

"(3) ACTUAL DAMAGES AND PROFITS.—

"(A) IN GENERAL.—The injured party is entitled to recover—

"(i) the actual damages suffered by the injured party as a result of a violation of this section, as provided by subparagraph (B); and

"(ii) any profits of the violator that are attributable to a violation of this section and are not taken into account in computing the actual damages.

"(B) CALCULATION OF DAMAGES.—The court shall calculate actual damages by multiplying—

"(i) the value of the phonorecords or copies to which counterfeit labels, illicit authentication features, or counterfeit documentation or packaging were affixed or embedded, or designed to be affixed or embedded; by