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105TH CONGRESS
2^D SESSION

S. 263

[Report No. 105-281]

To prohibit the import, export, sale, purchase, possession, transportation, acquisition, and receipt of bear viscera or products that contain or claim to contain bear viscera, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 5, 1997

Mr. MCCONNELL (for himself, Mr. SMITH of New Hampshire, Mr. COCHRAN, Mr. INHOFE, Mr. WARNER, Mr. D'AMATO, Mr. ALLARD, Mr. KYL, Mr. JEFFORDS, Mr. DEWINE, Mr. LUGAR, Mr. LEAHY, Mr. MOYNIHAN, Mr. CRAIG, Mr. REID, Mr. BUMPERS, Mr. WYDEN, Mr. KENNEDY, Mrs. BOXER, Mrs. FEINSTEIN, Mr. KERRY, Mr. INOUE, Mr. DASCHLE, Mr. CAMPBELL, Mr. FAIRCLOTH, Mr. BINGAMAN, Mr. LIEBERMAN, Ms. MOSELEY-BRAUN, Mr. DURBIN, Mr. TORRICELLI, Mr. THOMAS, Mr. SANTORUM, Mr. GRAHAM, Mr. MACK, Mr. CLELAND, Mr. SPECTER, Mr. AKAKA, Mr. HATCH, Mr. LAUTENBERG, Mr. REED, Mr. GREGG, Ms. LANDRIEU, Mr. LEVIN, Mr. BOND, Ms. MIKULSKI, Mr. WELLSTONE, Mr. JOHNSON, and Mr. FRIST) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

JULY 31, 1998

Reported by Mr. CHAFEE, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To prohibit the import, export, sale, purchase, possession, transportation, acquisition, and receipt of bear viscera

or products that contain or claim to contain bear viscera,
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 “Bear Protection Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds that—

7 (1) there are eight extant species of bear: Asian
8 black bear, brown bear, polar bear, American black
9 bear, spectacled bear, giant panda, sun bear, and
10 sloth bear;

11 (2) the Asian black bear populations have been
12 decimated in recent years by illegal trade to supply
13 the growing demand for medicines and cosmetics
14 containing valuable bear viscera;

15 (3) without immediate action to end United
16 States involvement in the lucrative black market
17 trade in bear viscera, American bear populations
18 may suffer the same devastating losses as Asian
19 bear populations;

20 (4) increasingly, undercover operations have
21 discovered that poachers are establishing extensive
22 smuggling networks to illegally commercialize Amer-
23 ican bears;

1 (5) because it is practically impossible to distin-
2 guish the viscera of CITES appendix I bears from
3 the viscera of other bear species; there is an urgent
4 need to eliminate the trade in the viscera of all bear
5 species;

6 (6) as a party to CITES, a world leader in
7 wildlife conservation, and a large market for and
8 supplier of bear viscera and products, the United
9 States shares responsibility for supporting and im-
10 plementing measures to stop the illegal trade in
11 CITES appendix I Asian black bears and CITES
12 appendix II American black bears;

13 (7) inconsistency in State prohibition of commer-
14 cialization of bear gall and inadequate Federal regu-
15 lation of such commercialization make law enforce-
16 ment difficult; and

17 (8) individual States, which have the right to set,
18 maintain, and enforce quotas for the legal hunting
19 of black bears, will be assisted in their management
20 efforts by the enactment of a Federal law banning
21 the import of, export of, and interstate commerce in
22 bear viscera.

1 **SEC. 3. PURPOSE.**

2 The purpose of this Act is to ensure the long-term via-
3 bility of the world's eight bear species and specifically to
4 perpetuate healthy populations of American bears.

5 **SEC. 4. STATEMENT OF POLICY.**

6 It is the policy of the United States that effective
7 long-term conservation of the world's bear species, includ-
8 ing North American bears, depends in part on the prohibi-
9 tion of the lucrative trade in bear viscera.

10 **SEC. 5. DEFINITIONS.**

11 In this Act:

12 (1) **BEAR VISCERA.**—The term “bear viscera”
13 means the body fluids or internal organs (including
14 the gallbladder) of a species of bear.

15 (2) **CITES.**—The term “CITES” means the
16 Convention on International Trade in Endangered
17 Species of Wild Fauna and Flora, done at Washing-
18 ton on March 3, 1973 (27 UST 1087; TIAS 8249).

19 (3) **OTHER TERMS.**—The terms “import”, “per-
20 son”, “State”, and “transport” have the meanings
21 provided in section 2 of the Lacey Act Amendments
22 of 1981 (16 U.S.C. 3371).

23 **SEC. 6. PROHIBITED ACTS.**

24 A person who—

1 (1) imports into the United States, or exports
2 from the United States, bear viscera or products
3 that contain or claim to contain bear viscera; or

4 (2) sells, barter, offers to sell or barter, pur-
5 chases, possesses with intent to sell or barter, trans-
6 ports, acquires, or receives in interstate or foreign
7 commerce, bear viscera or products that contain or
8 claim to contain bear viscera;

9 shall be subject to section 7(a).

10 **SEC. 7. PENALTIES AND ENFORCEMENT.**

11 (a) IN GENERAL.—A person who engages in conduct
12 described in section 6 shall be subject to the penalties and
13 sanctions provided in sections 4 and 5 of the Lacey Act
14 Amendments of 1981 (16 U.S.C. 3373 and 3374).

15 (b) ENFORCEMENT.—

16 (1) IN GENERAL.—This Act shall be enforced in
17 the manner provided in subsections (a), (b), and (c)
18 of section 6 of the Lacey Act Amendments of 1981
19 (16 U.S.C. 3375).

20 (2) USE OF PENALTY AMOUNTS FOR REWARDS
21 AND INCIDENTAL EXPENSES.—Amounts received as
22 penalties, fines, or forfeiture of property under sub-
23 section (a) shall be used in accordance with section
24 6(d) of the Lacey Act Amendments of 1981 (16
25 U.S.C. 3375(d)).

1 **SEC. 8. DISCUSSIONS CONCERNING TRADE PRACTICES.**

2 (a) **IN GENERAL.**—The Secretary of the Interior and
3 the United States Trade Representative shall—

4 (1) discuss issues involving trade in bear viscera
5 with the appropriate representatives of such coun-
6 tries trading with the United States as are deter-
7 mined jointly by the Secretary of the Interior and
8 the Secretary of Commerce to be the leading import-
9 ers, exporters, or consumers of bear viscera; and

10 (2) attempt to establish coordinated efforts with
11 the countries to protect bears.

12 (b) **REPORT.**—Not later than 5 years after the date
13 of enactment of this Act, the Secretary of the Interior
14 shall submit to Congress a report describing the progress
15 of efforts to end illegal trade in bear viscera.

16 **SECTION 1. SHORT TITLE.**

17 *This Act may be cited as the “Bear Protection Act of*
18 *1998”.*

19 **SEC. 2. FINDINGS.**

20 *Congress finds that—*

21 (1) *all 8 extant species of bear—Asian black*
22 *bear, brown bear, polar bear, American black bear,*
23 *spectacled bear, giant panda, sun bear, and sloth*
24 *bear—are listed on Appendix I or II of the Conven-*
25 *tion on International Trade in Endangered Species of*

1 *Wild Fauna and Flora* (27 UST 1087; TIAS 8249)
2 (referred to in this section as “CITES”);

3 (2) *Article XIV of CITES provides that Parties*
4 *to CITES may adopt stricter domestic measures re-*
5 *garding the conditions for trade, taking, possession, or*
6 *transport of species on Appendix I or II, and the*
7 *Parties to CITES adopted a resolution (Conf. 10.8)*
8 *urging Parties to take immediate action to demon-*
9 *strably reduce the illegal trade in bear parts and de-*
10 *rivatives;*

11 (3) *the Asian bear populations have declined sig-*
12 *nificantly in recent years, as a result of habitat loss*
13 *and poaching due to a strong demand for bear viscera*
14 *used in traditional medicines and cosmetics;*

15 (4) *while most American black bear populations*
16 *are generally stable or increasing, commercial trade*
17 *could stimulate poaching and threaten certain popu-*
18 *lations if the demand for bear viscera increases; and*

19 (5) *prohibitions against the importation into the*
20 *United States and exportation from the United States*
21 *of bear viscera and products containing bear viscera*
22 *will assist in ensuring that the United States does not*
23 *contribute to the commercial trade in bear viscera.*

1 **SEC. 3. PURPOSES.**

2 *The purpose of this Act is to ensure the long-term via-*
3 *bility of the world's 8 bear species by—*

4 *(1) prohibiting international trade in bear*
5 *viscera and products containing bear viscera;*

6 *(2) encouraging bilateral and multilateral efforts*
7 *to eliminate such trade; and*

8 *(3) ensuring that adequate Federal legislation*
9 *exists with respect to domestic trade in bear viscera*
10 *and products containing bear viscera.*

11 **SEC. 4. DEFINITIONS.**

12 *In this Act:*

13 *(1) BEAR VISCERA.—The term “bear viscera”*
14 *means the body fluids or internal organs, including*
15 *the gallbladder and its contents but not including*
16 *blood, of a species of bear.*

17 *(2) IMPORT.—The term “import” means to land*
18 *on, bring into, or introduce into any place subject to*
19 *the jurisdiction of the United States, whether or not*
20 *the landing, bringing, or introduction constitutes an*
21 *importation within the meaning of the customs laws*
22 *of the United States.*

23 *(3) PERSON.—The term “person” means—*

24 *(A) an individual, corporation, partnership,*
25 *trust, association, or other private entity;*

1 (B) an officer, employee, agent, department,
2 or instrumentality of—

3 (i) the Federal Government;

4 (ii) any State, municipality, or politi-
5 cal subdivision of a State; or

6 (iii) any foreign government;

7 (C) a State, municipality, or political sub-
8 division of a State; and

9 (D) any other entity subject to the jurisdic-
10 tion of the United States.

11 (4) *SECRETARY*.—The term “Secretary” means
12 the Secretary of the Interior.

13 (5) *STATE*.—The term “State” means a State,
14 the District of Columbia, the Commonwealth of Puer-
15 to Rico, the Virgin Islands, Guam, Commonwealth of
16 the Northern Mariana Islands, American Samoa, and
17 any other territory, commonwealth, or possession of
18 the United States.

19 (6) *TRANSPORT*.—The term “transport” means
20 to move, convey, carry, or ship by any means, or to
21 deliver or receive for the purpose of movement, con-
22 veyance, carriage, or shipment.

23 **SEC. 5. PROHIBITED ACTS.**

24 A person shall not—

1 (1) *import into, or export from, the United*
2 *States bear viscera or any product, item, or substance*
3 *derived from bear viscera; or*

4 (2) *sell or barter, offer to sell or barter, purchase,*
5 *possess, transport, deliver, or receive in foreign com-*
6 *merce bear viscera or any product, item, or substance*
7 *derived from bear viscera.*

8 **SEC. 6. PENALTIES AND ENFORCEMENT.**

9 (a) *CRIMINAL PENALTIES.*—*A person that knowingly*
10 *violates section 5 shall be fined under title 18, United States*
11 *Code, imprisoned not more than 1 year, or both.*

12 (b) *CIVIL PENALTIES.*—

13 (1) *AMOUNT.*—*A person that knowingly violates*
14 *section 5 may be assessed a civil penalty by the Sec-*
15 *retary of not more than \$25,000 for each violation.*

16 (2) *MANNER OF ASSESSMENT AND COLLEC-*
17 *TION.*—*A civil penalty under this subsection shall be*
18 *assessed, and may be collected, in the manner in*
19 *which a civil penalty under the Endangered Species*
20 *Act of 1973 may be assessed and collected under sec-*
21 *tion 11(a) of that Act (16 U.S.C. 1540(a)).*

22 (c) *PRODUCTS, ITEMS, AND SUBSTANCES.*—*Any bear*
23 *viscera, or any product, item, or substance sold, imported,*
24 *or exported, or attempted to be sold, imported, or exported,*
25 *in violation of this section (including any regulation issued*

1 *under this section) shall be seized and forfeited to the United*
2 *States.*

3 *(d) REGULATIONS.—After consultation with the Sec-*
4 *retary of the Treasury, the Secretary of Health and Human*
5 *Services, and the United States Trade Representative, the*
6 *Secretary shall issue such regulations as are necessary to*
7 *carry out this section.*

8 *(e) ENFORCEMENT.—The Secretary, the Secretary of*
9 *the Treasury, and the Secretary of the department in which*
10 *the Coast Guard is operating shall enforce this section in*
11 *the manner in which the Secretaries carry out enforcement*
12 *activities under section 11(e) of the Endangered Species Act*
13 *of 1973 (16 U.S.C. 1540(e)).*

14 *(f) USE OF PENALTY AMOUNTS.—Amounts received as*
15 *penalties, fines, or forfeiture of property under this section*
16 *shall be used in accordance with section 6(d) of the Lacey*
17 *Act Amendments of 1981 (16 U.S.C. 3375(d)).*

18 **SEC. 7. DISCUSSIONS CONCERNING TRADE PRACTICES.**

19 *The Secretary and the Secretary of State shall discuss*
20 *issues involving trade in bear viscera with the appropriate*
21 *representatives of countries trading with the United States*
22 *that are determined by the Secretary and the United States*
23 *Trade Representative to be the leading importers, exporters,*
24 *or consumers of bear viscera, and attempt to establish co-*
25 *ordinated efforts with the countries to protect bears.*

1 **SEC. 8. REPORT.**

2 (a) *IN GENERAL.*—Not later than 1 year after the date
3 of enactment of this Act, the Secretary, in cooperation with
4 appropriate State agencies, shall submit to the Committee
5 on Environment and Public Works of the Senate and the
6 Committee on Resources of the House of Representatives a
7 report providing—

8 (1) *information relating to illegal trade in bear*
9 *viscera and products containing bear viscera within*
10 *the United States, and between the United States and*
11 *foreign countries;*

12 (2) *an assessment of whether any such trade is*
13 *affecting, or may affect, any bear populations in the*
14 *United States or in foreign countries;*

15 (3) *an assessment of State and Federal law en-*
16 *forcement efforts regarding any such trade;*

17 (4) *recommendations on additional legislation to*
18 *address interstate trade in illegally taken bear*
19 *viscera; and*

20 (5) *recommendations on additional actions to*
21 *protect native bears in foreign countries.*

22 (b) *AUTHORIZATION OF APPROPRIATIONS.*—*There is*
23 *authorized to be appropriated to carry out this section*
24 *\$400,000 for fiscal year 1999.*

Amend the title so as to read: “A bill to prohibit the importation or exportation of, and foreign commerce in,

bear viscera and items, products, or substances containing bear viscera, and for other purposes.”.

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A BILL

To prohibit the import, export, sale, purchase, possession, transportation, acquisition, and receipt of bear viscera or products that contain or claim to contain bear viscera, and for other purposes.

JULY 31, 1998

Reported with an amendment and an amendment to the title