

107TH CONGRESS
1ST SESSION

S. 118

To strengthen the penalties for violations of plant quarantine laws.

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2001

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To strengthen the penalties for violations of plant quarantine laws.

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 “Fruit, Vegetable, and
5 Plant Smuggling Prevention Act of 2001”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) PLANT QUARANTINE LAW.—The term
9 “plant quarantine law” means any of the following
10 provisions of law:

1 (A) Subsections (a) through (e) of section
2 102 of the Department of Agriculture Organic
3 Act of 1944 (7 U.S.C. 147a).

4 (B) Section 1773 of the Food Security Act
5 of 1985 (7 U.S.C. 148f).

6 (C) The Golden Nematode Act (7 U.S.C.
7 150 et seq.).

8 (D) The Federal Plant Pest Act (7 U.S.C.
9 150aa et seq.).

10 (E) The Joint Resolution of April 6, 1937
11 (56 Stat. 57, chapter 69; 7 U.S.C. 148 et seq.).

12 (F) The Act of January 31, 1942 (56
13 Stat. 40, chapter 31; 7 U.S.C. 149).

14 (G) The Act of August 20, 1912 (com-
15 monly known as the “Plant Quarantine Act”)
16 (37 Stat. 315, chapter 308; 7 U.S.C. 151 et
17 seq.).

18 (H) The Halogeton Glomeratus Control
19 Act (7 U.S.C. 1651 et seq.).

20 (I) The Act of August 28, 1950 (64 Stat.
21 561, chapter 815; 7 U.S.C. 2260).

22 (J) The Federal Noxious Weed Act of
23 1974 (7 U.S.C. 2801 et seq.), other than the
24 first section and section 15 of that Act (7
25 U.S.C. 2801 note, 2814).

1 (2) SECRETARY.—The term “Secretary” means
2 the Secretary of Agriculture.

3 **SEC. 3. PENALTIES FOR VIOLATION.**

4 (a) CRIMINAL PENALTIES.—

5 (1) IN GENERAL.—A person that knowingly vio-
6 lates a plant quarantine law shall be subject to
7 criminal penalties in accordance with this subsection.

8 (2) FELONIES.—

9 (A) IN GENERAL.—Subject to subpara-
10 graphs (B) and (C), a person shall be impris-
11 oned not more than 5 years, fined not more
12 than \$25,000, or both, in the case of a violation
13 of a plant quarantine law involving—

14 (i) plant pests;

15 (ii) more than 50 pounds of plants;

16 (iii) more than 5 pounds of plant
17 products;

18 (iv) more than 50 pounds of noxious
19 weeds;

20 (v) possession with intent to distribute
21 or sell items described in clause (i), (ii),
22 (iii), or (iv), knowing the items have been
23 involved in a violation of a plant quar-
24 antine law; or

1 (vi) forging, counterfeiting, or without
2 authority from the Secretary, using, alter-
3 ing, defacing, or destroying a certificate,
4 permit, or other document provided under
5 a plant quarantine law.

6 (B) MULTIPLE VIOLATIONS.—On the sec-
7 ond and any subsequent conviction of a person
8 of a violation of a plant quarantine law de-
9 scribed in subparagraph (A), the person shall
10 be imprisoned not more than 10 years or fined
11 not more than \$50,000, or both.

12 (C) INTENT TO HARM AGRICULTURE OF
13 UNITED STATES.—In the case of a knowing
14 movement in violation of a plant quarantine law
15 by a person of a plant, plant product, biological
16 control organism, plant pest, noxious weed, arti-
17 cle, or means of conveyance into, out of, or
18 within the United States, with the intent to
19 harm the agriculture of the United States by
20 introduction into the United States or dissemi-
21 nation of a plant pest or noxious weed within
22 the United States, the person shall be impris-
23 oned not less than 10 nor more than 20 years,
24 fined not more than \$500,000, or both.

25 (3) MISDEMEANORS.—

1 (A) IN GENERAL.—Subject to subpara-
2 graph (B), a person shall be imprisoned not
3 more than 1 year, fined not more than \$1,000,
4 or both, in the case of a violation of a plant
5 quarantine law involving—

6 (i) 50 pounds or less of plants;

7 (ii) 5 pounds or less of plant products;

8 or

9 (iii) 50 pounds or less of noxious
10 weeds.

11 (B) MULTIPLE VIOLATIONS.—On the sec-
12 ond and any subsequent conviction of a person
13 of a violation of a plant quarantine law de-
14 scribed in subparagraph (A), the person shall
15 be imprisoned not more than 3 years, fined not
16 more than \$10,000, or both.

17 (b) CRIMINAL FORFEITURE.—

18 (1) IN GENERAL.—In imposing a sentence on a
19 person convicted of a violation of a plant quarantine
20 law, in addition to any other penalty imposed under
21 this section and irrespective of any provision of
22 State law, a court shall order that the person forfeit
23 to the United States—

1 (A) any of the property of the person used
2 to commit or to facilitate the commission of the
3 violation (other than a misdemeanor); and

4 (B) any property, real or personal, consti-
5 tuting, derived from, or traceable to any pro-
6 ceeds that the person obtained directly or indi-
7 rectly as a result of the violation.

8 (2) PROCEDURES.—All property subject to for-
9 feiture under this subsection, any seizure and dis-
10 position of the property, and any proceeding relating
11 to the forfeiture shall be subject to the procedures
12 of section 413 of the Comprehensive Drug Abuse
13 Prevention and Control Act of 1970 (21 U.S.C.
14 853), other than subsections (d) and (q).

15 (3) PROCEEDS.—The proceeds from the sale of
16 any forfeited property, and any funds forfeited,
17 under this subsection shall be used—

18 (A) first, to reimburse the Department of
19 Justice, the United States Postal Service, and
20 the Department of the Treasury for any costs
21 incurred by the Departments and the Service to
22 initiate and complete the forfeiture proceeding;

23 (B) second, to reimburse the Office of In-
24 spector General of the Department of Agri-
25 culture for any costs incurred by the Office in

1 the law enforcement effort resulting in the for-
2 feiture;

3 (C) third, to reimburse any Federal or
4 State law enforcement agency for any costs in-
5 curred in the law enforcement effort resulting
6 in the forfeiture; and

7 (D) fourth, by the Secretary to carry out
8 the functions of the Secretary under a plant
9 quarantine law.

10 (c) CIVIL PENALTIES.—

11 (1) IN GENERAL.—A person that violates a
12 plant quarantine law, or that forges, counterfeits, or,
13 without authority from the Secretary, uses, alters,
14 defaces, or destroys a certificate, permit, or other
15 document provided under a plant quarantine law
16 may, after notice and opportunity for a hearing on
17 the record, be assessed a civil penalty by the Sec-
18 retary that does not exceed the greater of—

19 (A) \$50,000 in the case of an individual
20 (except that the civil penalty may not exceed
21 \$1,000 in the case of an initial violation of the
22 plant quarantine law by an individual moving
23 regulated articles not for monetary gain), or
24 \$250,000 in the case of any other person for
25 each violation, except the amount of penalties

1 assessed under this subparagraph in a single
2 proceeding shall not exceed \$500,000; or

3 (B) twice the gross gain or gross loss for
4 a violation or forgery, counterfeiting, or unau-
5 thorized use, defacing or destruction of a cer-
6 tificate, permit, or other document provided for
7 in the plant quarantine law that results in the
8 person's deriving pecuniary gain or causing pe-
9 cuniary loss to another person.

10 (2) FACTORS IN DETERMINING CIVIL PEN-
11 ALTY.—In determining the amount of a civil penalty,
12 the Secretary—

13 (A) shall take into account the nature, cir-
14 cumstance, extent, and gravity of the violation;
15 and

16 (B) may take into account the ability to
17 pay, the effect on ability to continue to do busi-
18 ness, any history of prior violations, the degree
19 of culpability of the violator, and any other fac-
20 tors the Secretary considers appropriate.

21 (3) SETTLEMENT OF CIVIL PENALTIES.—The
22 Secretary may compromise, modify, or remit, with or
23 without conditions, a civil penalty that may be as-
24 sessed under this subsection.

25 (4) FINALITY OF ORDERS.—

1 (A) IN GENERAL.—An order of the Sec-
2 retary assessing a civil penalty shall be treated
3 as a final order reviewable under chapter 158
4 of title 28, United States Code.

5 (B) COLLECTION ACTION.—The validity of
6 an order of the Secretary may not be reviewed
7 in an action to collect the civil penalty.

8 (C) INTEREST.—A civil penalty not paid in
9 full when due under an order assessing the civil
10 penalty shall (after the due date) accrue inter-
11 est until paid at the rate of interest applicable
12 to a civil judgment of the courts of the United
13 States.

14 (5) GUIDELINES FOR CIVIL PENALTIES.—The
15 Secretary shall coordinate with the Attorney General
16 to establish guidelines to determine under what cir-
17 cumstances the Secretary may issue a civil penalty
18 or suitable notice of warning in lieu of prosecution
19 by the Attorney General of a violation of a plant
20 quarantine law.

21 (d) CIVIL FORFEITURE.—

22 (1) IN GENERAL.—There shall be subject to
23 forfeiture to the United States any property, real or
24 personal—

1 (A) used to commit or to facilitate the
2 commission of a violation (other than a mis-
3 demeanor) described in subsection (a); or

4 (B) constituting, derived from, or traceable
5 to proceeds of a violation described in sub-
6 section (a).

7 (2) PROCEDURES.—

8 (A) IN GENERAL.—Subject to subpara-
9 graph (B), the procedures of chapter 46 of title
10 18, United States Code, relating to civil forfeit-
11 ures shall apply to a seizure or forfeiture under
12 this subsection, to the extent that the proce-
13 dures are applicable and consistent with this
14 subsection.

15 (B) PERFORMANCE OF DUTIES.—Duties
16 imposed on the Secretary of the Treasury under
17 chapter 46 of title 18, United States Code, shall
18 be performed with respect to seizures and for-
19 feitures under this subsection by officers, em-
20 ployees, agents, and other persons designated
21 by the Secretary of Agriculture.

22 (e) LIABILITY FOR ACTS OF AN AGENT.—For the
23 purposes of a plant quarantine law, the act, omission, or
24 failure of an officer, agent, or person acting for or em-
25 ployed by any other person within the scope of employ-

1 ment or office of the officer, agent, or person, shall be
2 considered to be the act, omission, or failure of the other
3 person.

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