

## Calendar No. 160

109TH CONGRESS  
1ST SESSION**S. 1375**

To amend the Indian Arts and Crafts Act of 1990 to modify provisions relating to criminal proceedings and civil actions, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 11, 2005

Mr. MCCAIN (for himself, Mr. DORGAN, and Mr. KYL) introduced the following bill; which was read the first time

JULY 12, 2005

Read the second time and placed on the calendar

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**A BILL**

To amend the Indian Arts and Crafts Act of 1990 to modify provisions relating to criminal proceedings and civil actions, 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 “Indian Arts and Crafts  
5       Amendments Act of 2005”.

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

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

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

8 “(a) DEFINITION OF FEDERAL LAW ENFORCEMENT  
 9 OFFICER.—In this section, the term ‘Federal law enforce-  
 10 ment officer’ includes—

11 “(1) a Federal law enforcement officer (as de-  
 12 fined in section 115(c) of title 18, United States  
 13 Code); and

14 “(2) with respect to a violation of this Act that  
 15 occurs outside Indian country (as defined in section  
 16 1151 of title 18, United States Code), an officer  
 17 that has authority under section 3 of the Indian  
 18 Law Enforcement Reform Act (25 U.S.C. 2802),  
 19 acting in coordination with a Federal law enforce-  
 20 ment agency that has jurisdiction over the violation.

21 “(b) CRIMINAL PROCEEDINGS.—

22 “(1) REFERRAL.—On receiving a complaint of  
 23 a violation of section 1159 of title 18, United States  
 24 Code, the Board may refer the complaint to any  
 25 Federal law enforcement officer for appropriate in-  
 26 vestigation.

1           “(2) FINDINGS.—The findings of an investiga-  
2           tion under paragraph (1) shall be submitted to—

3                   “(A) the Attorney General; and

4                   “(B) the Board.

5           “(3) RECOMMENDATIONS.—On receiving the  
6           findings of an investigation in accordance with para-  
7           graph (2), the Board may—

8                   “(A) recommend to the Attorney General  
9                   that criminal proceedings be initiated under  
10                  section 1159 of that title; and

11                  “(B) provide such support to the Attorney  
12                  General relating to the criminal proceedings as  
13                  the Attorney General determines appropriate.

14           “(c) CIVIL ACTIONS.—In lieu of, or in addition to,  
15           any criminal proceeding under subsection (a), the Board  
16           may recommend that the Attorney General initiate a civil  
17           action pursuant to section 6.”.

18           (b) CAUSE OF ACTION FOR MISREPRESENTATION.—  
19           Section 6 of the Act entitled “An Act to promote the devel-  
20           opment of Indian arts and crafts and to create a board  
21           to assist therein, and for other purposes” (25 U.S.C.  
22           305e) is amended—

23                   (1) by striking subsection (d);

24                   (2) by redesignating subsections (a) through (c)  
25           as subsections (b) through (d), respectively;

(3) by inserting before subsection (b) (as redesignated by paragraph (2)) the following:

“(a) DEFINITIONS.—In this section:

“(1) INDIAN.—The term ‘Indian’ means an individual that—

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

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

“(2) INDIAN PRODUCT.—The term ‘Indian product’ has the meaning given the term in any regulation promulgated by the Secretary.

“(3) INDIAN TRIBE.—

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

“(B) INCLUSION.—The term ‘Indian tribe’ includes an Indian group that has been formally recognized as an Indian tribe by—

“(i) a State legislature;

“(ii) a State commission; or

“(iii) another similar organization vested with State legislative tribal recognition authority.

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

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

6 (5) in subsection (c) (as redesignated by para-  
7 graph (2))—

8 (A) by striking “subsection (a)” and in-  
9 serting “subsection (b)”;

10 (B) by striking “suit” and inserting “the  
11 civil action”;

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

14 “(d) PERSONS THAT MAY INITIATE CIVIL AC-  
15 TIONS.—

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

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

20 “(i) an Indian tribe;

21 “(ii) an Indian; or

22 “(iii) an Indian arts and crafts orga-  
23 nization;

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

25 “(i) the tribe;

1 “(ii) a member of that tribe; or

2 “(iii) an Indian arts and crafts orga-  
3 nization;

4 “(C) an Indian; or

5 “(D) an Indian arts and crafts organiza-  
6 tion.

7 “(2) DISPOSITION OF AMOUNTS RECOVERED.—

8 “(A) IN GENERAL.—Except as provided in  
9 subparagraph (B), an amount recovered in a  
10 civil action under this section shall be paid to  
11 the Indian tribe, the Indian, or the Indian arts  
12 and crafts organization on the behalf of which  
13 the civil action was initiated.

14 “(B) EXCEPTIONS.—

15 “(i) ATTORNEY GENERAL.—In the  
16 case of a civil action initiated under para-  
17 graph (1)(A), the Attorney General may  
18 deduct from the amount—

19 “(I) the amount of the cost of  
20 the civil action and reasonable attor-  
21 ney’s fees awarded under subsection  
22 (c), to be deposited in the Treasury  
23 and credited to appropriations avail-  
24 able to the Attorney General on the

1 date on which the amount is recov-  
 2 ered; and

3 “(II) the amount of the costs of  
 4 investigation awarded under sub-  
 5 section (c), to reimburse the Board  
 6 for the activities of the Board relating  
 7 to the civil action.

8 “(ii) INDIAN TRIBE.—In the case of a  
 9 civil action initiated under paragraph  
 10 (1)(B), the Indian tribe may deduct from  
 11 the amount—

12 “(I) the amount of the cost of  
 13 the civil action; and

14 “(II) reasonable attorney’s fees.”;  
 15 and

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

18 “(e) SAVINGS PROVISION.—If”.

19 (c) CONFORMING AMENDMENT.—Section 1159(c) of  
 20 title 18, United States Code, is amended by striking para-  
 21 graph (3) and inserting the following:

22 “(3) the term ‘Indian tribe’—

23 “(A) has the meaning given the term in  
 24 section 4 of the Indian Self-Determination and

1 Education Assistance Act (25 U.S.C. 450b);  
2 and

3 “(B) includes an Indian group that has  
4 been formally recognized as an Indian tribe  
5 by—

6 “(i) a State legislature;

7 “(ii) a State commission; or

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





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