

111TH CONGRESS
1ST SESSION

H. R. 725

To protect Indian arts and crafts through the improvement of applicable criminal proceedings, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2009

Mr. PASTOR of Arizona introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To protect Indian arts and crafts through the improvement of applicable criminal proceedings, 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 2009”.

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

7 (a) CRIMINAL PROCEEDINGS; CIVIL ACTIONS; MIS-
8 REPRESENTATIONS.—Section 5 of the Act entitled “An
9 Act to promote the development of Indian arts and crafts

1 and to create a board to assist therein, and for other pur-
2 poses” (25 U.S.C. 305d) is amended to read as follows:

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

4 “(a) DEFINITION OF FEDERAL LAW ENFORCEMENT
5 OFFICER.—In this section, the term ‘Federal law enforce-
6 ment officer’ includes a Federal law enforcement officer
7 (as defined in section 115(c) of title 18, United States
8 Code).

9 “(b) AUTHORITY TO CONDUCT INVESTIGATIONS.—
10 Any Federal law enforcement officer shall have the author-
11 ity to conduct an investigation relating to an alleged viola-
12 tion of this Act occurring within the jurisdiction of the
13 United States.

14 “(c) CRIMINAL PROCEEDINGS.—

15 “(1) INVESTIGATION.—

16 “(A) IN GENERAL.—The Board may refer
17 an alleged violation of section 1159 of title 18,
18 United States Code, to any Federal law enforce-
19 ment officer for appropriate investigation.

20 “(B) REFERRAL NOT REQUIRED.—A Fed-
21 eral law enforcement officer may investigate an
22 alleged violation of section 1159 of that title re-
23 gardless of whether the Federal law enforce-
24 ment officer receives a referral under subpara-
25 graph (A).

1 “(2) FINDINGS.—The findings of an investiga-
2 tion of an alleged violation of section 1159 of title
3 18, United States Code, by any Federal department
4 or agency under paragraph (1)(A) shall be sub-
5 mitted, as appropriate, to—

6 “(A) a Federal or State prosecuting au-
7 thority; or

8 “(B) the Board.

9 “(3) RECOMMENDATIONS.—On receiving the
10 findings of an investigation under paragraph (2), the
11 Board may—

12 “(A) recommend to the Attorney General
13 that criminal proceedings be initiated under
14 section 1159 of title 18, United States Code;
15 and

16 “(B) provide such support to the Attorney
17 General relating to the criminal proceedings as
18 the Attorney General determines to be appro-
19 priate.

20 “(d) CIVIL ACTIONS.—In lieu of, or in addition to,
21 any criminal proceeding under subsection (c), the Board
22 may recommend that the Attorney General initiate a civil
23 action under section 6.”.

24 (b) CAUSE OF ACTION FOR MISREPRESENTATION.—
25 Section 6 of the Act entitled “An Act to promote the devel-

1 opment of Indian arts and crafts and to create a board
 2 to assist therein, and for other purposes” (25 U.S.C.
 3 305e) is amended—

4 (1) by striking subsection (d);

5 (2) by redesignating subsections (a) through (c)
 6 as subsections (b) through (d), respectively;

7 (3) by inserting before subsection (b) (as redesi-
 8 gnated by paragraph (2)) the following:

9 “(a) DEFINITIONS.—In this section:

10 “(1) INDIAN.—The term ‘Indian’ means an in-
 11 dividual that—

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

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

15 “(2) INDIAN PRODUCT.—The term ‘Indian
 16 product’ has the meaning given the term in any reg-
 17 ulation promulgated by the Secretary.

18 “(3) INDIAN TRIBE.—

19 “(A) IN GENERAL.—The term ‘Indian
 20 tribe’ has the meaning given the term in section
 21 4 of the Indian Self-Determination and Edu-
 22 cation Assistance Act (25 U.S.C. 450b).

23 “(B) INCLUSION.—The term ‘Indian tribe’
 24 includes, for purposes of this section only, an

1 Indian group that has been formally recognized
2 as an Indian tribe by—

3 “(i) a State legislature;

4 “(ii) a State commission; or

5 “(iii) another similar organization
6 vested with State legislative tribal recogni-
7 tion authority.

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

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

13 (5) in subsection (c) (as redesignated by para-
14 graph (2))—

15 (A) by striking “subsection (a)” and in-
16 serting “subsection (b)”;

17 (B) by striking “suit” and inserting “the
18 civil action”;

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

21 “(d) PERSONS THAT MAY INITIATE CIVIL AC-
22 TIONS.—

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

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

3 “(i) an Indian tribe;

4 “(ii) an Indian; or

5 “(iii) an Indian arts and crafts orga-
6 nization;

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

8 “(i) the Indian tribe;

9 “(ii) a member of that Indian tribe; or

10 “(iii) an Indian arts and crafts orga-
11 nization;

12 “(C) an Indian; or

13 “(D) an Indian arts and crafts organiza-
14 tion.

15 “(2) DISPOSITION OF AMOUNTS RECOVERED.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), an amount recovered in a
18 civil action under this section shall be paid to
19 the Indian tribe, the Indian, or the Indian arts
20 and crafts organization on the behalf of which
21 the civil action was initiated.

22 “(B) EXCEPTIONS.—

23 “(i) ATTORNEY GENERAL.—In the
24 case of a civil action initiated under para-

1 graph (1)(A), the Attorney General may
2 deduct from the amount—

3 “(I) the amount of the cost of
4 the civil action and reasonable attor-
5 ney’s fees awarded under subsection
6 (c), to be deposited in the Treasury
7 and credited to appropriations avail-
8 able to the Attorney General on the
9 date on which the amount is recov-
10 ered; and

11 “(II) the amount of the costs of
12 investigation awarded under sub-
13 section (c), to reimburse the Board
14 for the activities of the Board relating
15 to the civil action.

16 “(ii) INDIAN TRIBE.—In the case of a
17 civil action initiated under paragraph
18 (1)(B), the Indian tribe may deduct from
19 the amount—

20 “(I) the amount of the cost of
21 the civil action; and

22 “(II) reasonable attorney’s fees.”;

23 and

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

1 “(e) SAVINGS PROVISION.—If”.

2 **SEC. 3. MISREPRESENTATION OF INDIAN PRODUCED**
3 **GOODS AND PRODUCTS.**

4 Section 1159 of title 18, United States Code, is
5 amended—

6 (1) by striking subsection (b) and inserting the
7 following:

8 “(b) PENALTY.—Any person that knowingly violates
9 subsection (a) shall—

10 “(1) in the case of a first violation by that per-
11 son—

12 “(A) if the applicable goods are offered or
13 displayed for sale at a total price of \$1,000 or
14 more, or if the applicable goods are sold for a
15 total price of \$1,000 or more—

16 “(i) in the case of an individual, be
17 fined not more than \$250,000, imprisoned
18 for not more than 5 years, or both; and

19 “(ii) in the case of a person other
20 than an individual, be fined not more than
21 \$1,000,000; and

22 “(B) if the applicable goods are offered or
23 displayed for sale at a total price of less than
24 \$1,000, or if the applicable goods are sold for
25 a total price of less than \$1,000—

1 “(i) in the case of an individual, be
2 fined not more than \$25,000, imprisoned
3 for not more than 1 year, or both; and

4 “(ii) in the case of a person other
5 than an individual, be fined not more than
6 \$100,000; and

7 “(2) in the case of a subsequent violation by
8 that person, regardless of the amount for which any
9 good is offered or displayed for sale or sold—

10 “(A) in the case of an individual, be fined
11 under this title, imprisoned for not more than
12 15 years, or both; and

13 “(B) in the case of a person other than an
14 individual, be fined not more than
15 \$5,000,000.”; and

16 (2) in subsection (c), by striking paragraph (3)
17 and inserting the following:

18 “(3) the term ‘Indian tribe’—

19 “(A) has the meaning given the term in
20 section 4 of the Indian Self-Determination and
21 Education Assistance Act (25 U.S.C. 450b);
22 and

23 “(B) includes, for purposes of this section
24 only, an Indian group that has been formally
25 recognized as an Indian tribe by—

1 “(i) a State legislature;
2 “(ii) a State commission; or
3 “(iii) another similar organization
4 vested with State legislative tribal recogni-
5 tion authority; and”.

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