

112TH CONGRESS
2D SESSION

S. 2062

To amend the Lacey Act Amendments of 1981 to repeal certain provisions relating to criminal penalties and violations of foreign laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2012

Mr. PAUL (for himself, Mr. DEMINT, Mr. LEE, Mr. RISCH, and Mr. COBURN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Lacey Act Amendments of 1981 to repeal certain provisions relating to criminal penalties and violations of foreign laws, 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 “Freedom from Over-
5 Criminalization and Unjust Seizures Act of 2012”.

6 **SEC. 2. CRIMINAL PENALTIES.**

7 (a) PROHIBITED ACTS.—Section 3(a) of the Lacey
8 Act Amendments of 1981 (16 U.S.C. 3372(a)) is amend-
9 ed—

1 (1) in paragraph (2)—

2 (A) in subparagraph (A), by striking “or
3 in violation of any foreign law”; and

4 (B) in subparagraph (B)—

5 (i) in clause (i), by striking “, or any
6 foreign law,”;

7 (ii) in clause (ii), by striking “or any
8 foreign law”; and

9 (iii) in clause (iii), by striking “, or
10 under any foreign law,”; and

11 (2) in paragraph (3)—

12 (A) in subparagraph (A), by striking “for-
13 eign law or”; and

14 (B) in subparagraph (B)—

15 (i) in clause (i), by striking “, or any
16 foreign law,”;

17 (ii) in clause (ii), by striking “or any
18 foreign law”; and

19 (iii) in clause (iii), by striking “, or
20 under any foreign law,”.

21 (b) PENALTIES.—Section 4 of the Lacey Act Amend-
22 ments of 1981 (16 U.S.C. 3373) is amended—

23 (1) in subsection (a), by striking paragraph (1)
24 and inserting the following:

25 “(1) ASSESSMENT.—

1 “(A) IN GENERAL.—Any person who en-
2 gages in conduct prohibited by any provision of
3 this Act (other than subsections (b), (d), and
4 (f) of section 3) and in the exercise of due care
5 should know that the fish, wildlife, or plants
6 were taken, possessed, transported, or sold in
7 violation of, or in a manner unlawful under, any
8 underlying law, treaty, or regulation, and any
9 person who knowingly violates subsection (d) or
10 (f) of section 3, may be assessed a civil penalty
11 by the Secretary for each violation in accord-
12 ance with subparagraph (B) or (C), as applica-
13 ble.

14 “(B) MARKET VALUE OF LESS THAN
15 \$350.—If a violation under subparagraph (A)
16 involves fish or wildlife or plants with a market
17 value of less than \$350 and involves only the
18 transportation, acquisition, or receipt of fish,
19 wildlife, or plants taken or possessed in viola-
20 tion of any law, treaty, or regulation of the
21 United States, tribal law, or any law or regula-
22 tion of a State, the penalty assessed under sub-
23 paragraph (A) for the violation shall not exceed
24 the lesser of—

1 “(i) the maximum amount of the pen-
 2 alty provided for violation of the law or
 3 regulation; or

4 “(ii) \$10,000.

5 “(C) OTHER VIOLATIONS.—For any viola-
 6 tion under subparagraph (A) that is not de-
 7 scribed in subparagraph (B), the penalty as-
 8 sessed under that subparagraph shall not ex-
 9 ceed \$200,000.”; and

10 (2) by striking subsections (d) and (e).

11 (c) FORFEITURE.—Section 5 of the Lacey Act
 12 Amendments of 1981 (16 U.S.C. 3374) is amended—

13 (1) by striking subsections (a) and (b) and in-
 14 serting the following:

15 “(a) IN GENERAL.—All fish, wildlife, or plants im-
 16 ported, exported, transported, sold, received, acquired, or
 17 purchased in violation of section 3 (other than subsection
 18 (b) of that section), or any regulation issued under that
 19 section, shall be subject to forfeiture to the United States
 20 notwithstanding any culpability requirements for civil pen-
 21 alty assessment under section 4.”;

22 (2) by redesignating subsections (c) and (d) as
 23 subsections (b) and (c), respectively; and

1 (3) in subsection (b) (as redesignated), by strik-
 2 ing “convicted of an offense, or assessed a civil pen-
 3 alty,” and inserting “assessed a civil penalty”.

4 (d) ENFORCEMENT.—

5 (1) IN GENERAL.—Section 6 of the Lacey Act
 6 Amendments of 1981 (16 U.S.C. 3375) is amend-
 7 ed—

8 (A) by striking subsection (b);

9 (B) by redesignating subsections (c) and
 10 (d) as subsections (b) and (c), respectively;

11 (C) in subsection (b) (as redesignated), by
 12 striking the third sentence; and

13 (D) in the first sentence of subsection (c)
 14 (as redesignated)—

15 (i) by striking “an arrest, a criminal
 16 conviction, civil penalty assessment, or for-
 17 feiture of property” and inserting “a civil
 18 penalty assessment or forfeiture of prop-
 19 erty”; and

20 (ii) by striking “or criminal”.

21 (2) CONFORMING AMENDMENTS.—

22 (A) Section 3(c)(3) of the Fish and Wild-
 23 life Improvement Act of 1978 (16 U.S.C.
 24 742l(c)(3)) is amended by striking “section
 25 6(d) of the Lacey Act Amendments of 1981 (16

1 U.S.C. 3375(d))” and inserting “section 6(c) of
 2 the Lacey Act Amendments of 1981 (16 U.S.C.
 3 3375(c))”.

4 (B) Section 503(b) of the Marine Mammal
 5 Protection Act of 1972 (16 U.S.C. 1423b(b)) is
 6 amended—

7 (i) by striking the subsection designa-
 8 tion and heading and all that follows
 9 through “The Secretary may utilize” in
 10 paragraph (1) and inserting the following:

11 “(b) UTILIZATION OF OTHER GOVERNMENT RE-
 12 SOURCES AND AUTHORITIES.—The Secretary may uti-
 13 lize”; and

14 (ii) by striking paragraph (2).

15 (C) Section 11(d) of the Endangered Spe-
 16 cies Act of 1973 (16 U.S.C. 1540(d)) is amend-
 17 ed in the fourth sentence by striking “section
 18 6(d) of the Lacey Act Amendments of 1981 (16
 19 U.S.C. 3375(d))” and inserting “section 6(c) of
 20 the Lacey Act Amendments of 1981 (16 U.S.C.
 21 3375(c))”.

22 (D) Section 7(f) of the Rhinoceros and
 23 Tiger Conservation Act (16 U.S.C. 5305a(f)) is
 24 amended by striking “section 6(d) of the Lacey
 25 Act Amendments of 1981 (16 U.S.C. 3375(d))”

1 and inserting “section 6(c) of the Lacey Act
2 Amendments of 1981 (16 U.S.C. 3375(c))”.

3 (E) Section 524(c)(4)(A) of title 28,
4 United States Code, is amended by striking
5 “section 6(d) of the Lacey Act Amendments of
6 1981 (16 U.S.C. 3375(d))” and inserting “sec-
7 tion 6(c) of the Lacey Act Amendments of 1981
8 (16 U.S.C. 3375(c))”.

9 (F) Section 1402(b)(1)(A)(ii) of the Vic-
10 tims of Crime Act of 1984 (42 U.S.C.
11 10601(b)(1)(A)(ii)) is amended by striking
12 “section 6(d) of the Lacey Act Amendments of
13 1981 (16 U.S.C. 3375(d))” and inserting “sec-
14 tion 6(c) of the Lacey Act Amendments of 1981
15 (16 U.S.C. 3375(c))”.

16 (e) EXCEPTIONS.—Section 8 of the Lacey Act
17 Amendments of 1981 (16 U.S.C. 3377) is amended by
18 striking subsection (b) and inserting the following:

19 “(b) ACTIVITIES REGULATED BY TUNA CONVENTION
20 ACTS.—Paragraphs (1), (2)(A), and (3)(A) of subsection
21 3(a) shall not apply to any activity regulated by the Tuna
22 Conventions Act of 1950 (16 U.S.C. 951 et seq.) or the
23 Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971
24 et seq.).”.

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