

112TH CONGRESS
1ST SESSION

H. R. 3210

To amend the Lacey Act Amendments of 1981 to limit the application of that Act with respect to plants and plant products that were imported before the effective date of amendments to that Act enacted in 2008, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 14, 2011

Mr. COOPER (for himself, Mrs. BONO MACK, and Mrs. BLACKBURN) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Lacey Act Amendments of 1981 to limit the application of that Act with respect to plants and plant products that were imported before the effective date of amendments to that Act enacted in 2008, 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 “Retailers and Enter-
5 tainers Lacey Implementation and Enforcement Fairness
6 Act” or the “RELIEF Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Amendments to the Lacey Act Amendments
4 of 1981 were enacted as part of the Food, Conserva-
5 tion, and Energy Act of 2008 (Public Law 110-
6 246).

7 (2) The 2008 amendments were intended to
8 level the playing field for American businesses en-
9 gaged in the responsible harvest, shipment, manu-
10 facture, and trade of plants and plant products
11 whose prices had been undercut by a black market
12 fueled by irresponsible and illegal taking of protected
13 plants around the globe.

14 (3) The 2008 amendments were overly broad
15 and their enforcement as enacted could criminalize
16 actions of a good-faith owner, purchaser, or retailer
17 of a plant or plant product, subjecting them to pen-
18 alties that include forfeiture, fines, and imprison-
19 ment.

20 (4) Sanctions for violating the 2008 amend-
21 ments should be proportional to the act in violation.
22 An individual who is not in the commercial shipping
23 business should not be held to the same standard of
24 compliance under that Act.

25 (5) Individuals fear that they risk incurring
26 those penalties by merely owning or traveling with a

1 vintage musical instrument, antique furniture, or an-
2 other wood product.

3 (6) The Department of the Interior and De-
4 partment of Justice have stated “people who un-
5 knowingly possess a musical instrument or other ob-
6 ject containing wood that was illegally taken, pos-
7 sessed, transported or sold in violation of law and
8 who, in the exercise of due care would not have
9 known that it was illegal, do not have criminal expo-
10 sure.”.

11 (7) It is necessary to clarify the 2008 amend-
12 ments so that legally harvested new plant products
13 can enter the market place.

14 (8) Declaration requirements for plant products
15 imported or manufactured prior to May 22, 2008,
16 are unreasonable since the sourcing of plant prod-
17 ucts was not previously required by law.

18 (9) Federal law enforcement officials should not
19 engage in overzealous enforcement action under the
20 2008 amendments.

21 (10) It is important to ensure that the appro-
22 priate agencies have the necessary funding to imple-
23 ment the current phases of the declaration require-
24 ment before considering any future phases.

1 (11) The appropriate agencies have the respon-
 2 sibility of providing a publicly accessible database so
 3 that everyone can be notified of the foreign laws of
 4 countries as they apply to the importation of plants.

5 **SEC. 3. TREATMENT OF PLANTS AND PLANT PRODUCTS**
 6 **UNDER LACEY ACT AMENDMENTS OF 1981.**

7 (a) **LIMITATION ON APPLICATION OF ACT TO CER-**
 8 **TAIN PLANTS AND PLANT PRODUCTS.**—The Lacey Act
 9 Amendments of 1981 (16 U.S.C. 3371 et seq.) is amended
 10 by redesignating section 9 as section 10, and by inserting
 11 after section 8 the following:

12 **“SEC. 9. LIMITATION ON APPLICATION TO CERTAIN**
 13 **PLANTS AND PLANT PRODUCTS.**

14 “This Act does not apply with respect to—

15 “(1) any plant that was imported into the
 16 United States before May 22, 2008; or

17 “(2) any finished plant or plant product the as-
 18 sembly and processing of which was completed be-
 19 fore May 22, 2008.”.

20 (b) **LIMITATIONS ON APPLICATION OF PLANT DEC-**
 21 **LARATION REQUIREMENT.**—Section 3(f) of such Act (16
 22 U.S.C. 3372(f)) is amended—

23 (1) in paragraph (1), by inserting “that is en-
 24 tered for consumption (as that term is defined in
 25 part 141.0a of title 19, Code of Federal Regulations,

1 as in effect on the date of enactment of the Retailers
2 and Entertainers Lacey Implementation and En-
3 forcement Fairness Act)” after “plant”; and

4 (2) in paragraph (3)—

5 (A) by inserting “(A)” before “Paragraphs
6 (1)”; and

7 (B) by adding at the end the following:

8 “(B)(i) In the case of a plant product that is derived
9 from a tree, a declaration under paragraph (1) or (2) is
10 not required to include information referred to in subpara-
11 graph (A), (B), or (C) of that paragraph unless the plant
12 product is solid wood.

13 “(ii) The Administrator of the Animal and Plant
14 Health Inspection Service shall issue regulations that de-
15 fine the term ‘solid wood’ for purposes of this subpara-
16 graph”.

17 (c) CIVIL FORFEITURES.—Section 5(d) of such Act
18 (16 U.S.C. 3374(d)) is amended to read as follows:

19 “(d) CIVIL FORFEITURES.—

20 “(1) IN GENERAL.—Except as provided in sub-
21 section (d), civil forfeitures under this section shall
22 be governed by chapter 46 of title 18, United States
23 Code.

24 “(2) LIMITATION ON INNOCENT OWNER DE-
25 FENSE NOT APPLICABLE.—The limitation set forth

1 in paragraph (4) of section 983(d) of title 18,
2 United States Code, does not apply with respect
3 to—

4 “(A) any imported plant acquired by a per-
5 son who satisfies the requirements for treat-
6 ment as an innocent owner set forth in para-
7 graph (1) and paragraph (2) or (3), as applica-
8 ble, of such section; and

9 “(B) any plant or plant product acquired
10 by a person who satisfies such requirements.”.

11 **SEC. 4. REDUCED PENALTIES FOR CERTAIN FIRST OF-**
12 **FENSES.**

13 Section 4 of such Act (16 U.S.C. 3373) is amended
14 by redesignating subsection (e) as subsection (f), and by
15 inserting after subsection (d) the following:

16 “(e) CIVIL PENALTY FOR FIRST OFFENSES INVOLV-
17 ING PLANT.—

18 “(1) IN GENERAL.—Notwithstanding sub-
19 sections (a) and (d), any person who violates sub-
20 section (a), (d), or (f) of section 3 with respect to
21 any plant and who in the exercise of due care should
22 know that the plant was taken, possessed, trans-
23 ported, or sold in violation of, or in a manner unlaw-
24 ful under, any underlying law, treaty, or regulation

1 may, for the first such violation, be assessed a civil
2 penalty by the Secretary of not more than \$250.

3 “(2) OTHER CIVIL PENALTY PROVISIONS
4 APPLY.—Except as provided in paragraph (3), para-
5 graphs (2), (3), (4), (5), and (6) of subsection (a)
6 shall apply with respect to an offense for which a
7 penalty may be assessed under this subsection.

8 “(3) TREATMENT AS SINGLE OFFENSE.—Not-
9 withstanding the second sentence of subsection
10 (a)(4), all violations by a person for which a penalty
11 may be assessed under this subsection that arise
12 from a single act or omission shall be treated as a
13 single offense.”.

14 **SEC. 5. REVIEW AND REPORT.**

15 Section 3(f) of such Act (16 U.S.C. 3372(f)) is
16 amended—

17 (1) in paragraph (4), by striking “Not later
18 than 2 years after the date of enactment of this sub-
19 section,” and inserting “Not later than 180 days
20 after the date of enactment of the Retailers and En-
21 tertainers Lacey Implementation and Enforcement
22 Fairness Act”; and

23 (2) in paragraph (5)—

24 (A) by striking “Not later than 180 days
25 after the date on which the Secretary completes

1 the review under paragraph (4), the Secretary”
2 and inserting “Not later than 180 days after
3 the date the Secretary completes the review
4 under paragraph (4), the Director of the United
5 States Fish and Wildlife Service”;

6 (B) by striking “and” after the semicolon
7 at the end of subparagraph (B);

8 (C) by striking the period at the end of
9 subparagraph (C) and inserting “; and”; and

10 (D) by adding at the end the following:

11 “(D) an evaluation of the feasibility of cre-
12 ating and maintaining a publicly available data-
13 base of laws of foreign countries from which
14 plants are exported.”.

15 **SEC. 6. FUNDING FOR IMPLEMENTATION OF PLANT DEC-**
16 **LARATION REQUIREMENT.**

17 The head of each Federal agency responsible for im-
18 plementing the Lacey Act Amendments of 1981 (16
19 U.S.C. 3371 et seq.) shall, from amounts otherwise avail-
20 able, allocate sufficient amounts to implement section 3(f)
21 of the Lacey Act Amendments of 1981 (16 U.S.C.
22 3372(f)), including for processing of all declarations filed
23 under that section.

1 **SEC. 7. STANDARD CERTIFICATION PROCESS FOR PLANTS**
2 **AND PLANT PRODUCTS.**

3 The Director of the United States Fish and Wildlife
4 Service, the Administrator of the Animal and Plant
5 Health Inspection Service, and the head of each other
6 Federal agency responsible for implementing the Lacey
7 Act Amendments of 1981 (16 U.S.C. 3371 et seq.) shall
8 issue regulations to establish a standard certification pro-
9 cess under that Act for plant and plant products (as those
10 terms are used in that Act) legally harvested, imported,
11 or manufactured after May 22, 2008, that considers indi-
12 vidual item certification and individual manufacturer, im-
13 porter, and retailer certification for purposes of sale and
14 resale.

15 **SEC. 8. FEDERAL TRADE COMMISSION REVIEW.**

16 Not later than 180 days after the date of the enact-
17 ment of this Act, the Federal Trade Commission shall—

18 (1) conduct a review of competitiveness in the
19 domestic market for raw materials for the manufac-
20 ture of musical instruments and the impact of the
21 amendments made by this Act to the Lacey Act
22 Amendments of 1981 (16 U.S.C. 3371 et seq.) on
23 such competitiveness; and

24 (2) submit to Congress a report containing the
25 results of the review.

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