

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 118

H.P. 100

House of Representatives, January 29, 2013

**An Act To Ensure the Authenticity of Items Reported To Have Been
Crafted by Native Americans**

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative SOCTOMAH of the Passamaquoddy Tribe.
Cosponsored by Senator BURNS of Washington and
Representatives: AYOTTE of Caswell, BEAR of the Houlton Band of Maliseet Indians,
BEAUDOIN of Biddeford, BERRY of Bowdoinham, EVANGELOS of Friendship,
JOHNSON of Greenville, MAKER of Calais, MITCHELL of the Penobscot Nation,
NUTTING of Oakland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 10 MRSA c. 228** is enacted to read:

3 **CHAPTER 228**

4 **SALE OF INDIAN ARTS AND CRAFTS PRODUCTS**

5 **§1500-G. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Authentic Indian arts and crafts product.** "Authentic Indian arts and crafts
9 product" means a product that is Indian handcrafted and is not made by machine or from
10 unnatural materials.

11 **2. Inauthentic Indian arts and crafts product.** "Inauthentic Indian arts and crafts
12 product" means a product that is not an authentic Indian arts and crafts product but is
13 made to imitate or resemble an authentic Indian arts and crafts product.

14 **3. Indian.** "Indian" means a member of or a direct descendant of a member of a
15 federally recognized Indian tribe.

16 **4. Indian handcrafted.** "Indian handcrafted" means crafted solely by an Indian
17 within the United States by the use of the hands, which may include the use of hand tools
18 and equipment for buffing, polishing, grinding, drilling or sewing.

19 **5. Made by machine.** "Made by machine" means produced or reproduced in mass
20 production by mechanical stamping, casting, blanking or weaving.

21 **§1500-H. Sale of Indian arts and crafts products; inquiry; labels**

22 **1. Sign.** A person who sells or offers to sell inauthentic Indian arts and crafts
23 products shall post a sign bearing the words, in letters not less than 3 inches in height,
24 "inauthentic Indian arts and crafts" above or adjacent to the products.

25 **2. Inquiry.** A person may not sell or offer to sell a product as an authentic Indian
26 arts and crafts product unless that person makes due inquiry of that person's supplier
27 concerning the true nature of the materials, product design and process of manufacture
28 and determines that the product may be lawfully represented as an authentic Indian arts
29 and crafts product.

30 **3. Label.** A person who sells or offers to sell an authentic Indian arts and crafts
31 product shall conspicuously disclose the name, trademark, if any, and tribe of the maker
32 of the product either on the product or on a nearby sign.

33 **§1500-I. Unlawful acts**

34 A person may not:

1 1. False representation of authentic Indian arts and crafts products. Sell or
2 offer for sale a product represented to be an authentic Indian arts and crafts product
3 unless the product is in fact an authentic Indian arts and crafts product;

4 2. Silver Indian arts and crafts products. Sell or offer for sale an authentic Indian
5 arts and crafts product represented to be of silver or an inauthentic Indian arts and crafts
6 product represented to be of silver unless the product is made of coin silver or sterling
7 silver;

8 3. Labeling inauthentic Indian arts and crafts products. Sell or offer for sale an
9 inauthentic Indian arts and crafts product unless the inauthentic Indian arts and crafts
10 product is clearly labeled as to any characteristic that makes it inauthentic; or

11 4. False, misleading or deceptive advertising; unconscionable trade practice.
12 Engage in any false, misleading or deceptive advertising or any unconscionable trade
13 practice regarding authentic or inauthentic Indian arts and crafts products. As used in this
14 subsection, "unconscionable trade practice" means any act or practice in connection with
15 the sale or offering for sale of authentic or inauthentic Indian arts and crafts products to a
16 person that to the person's detriment takes advantage of the person's lack of knowledge of
17 or experience regarding authentic or inauthentic Indian arts and crafts products to a
18 grossly unfair degree or results in a gross disparity between the value received by the
19 person and the price paid.

20 §1500-J. Civil violation; injunctive relief; restitution; private right of action;
21 damages

22 1. Civil violation. A person who violates this chapter commits a civil violation for
23 which a fine of not more than \$5,000 for each violation may be adjudged. A fine
24 collected pursuant to this subsection must be paid to an Indian, Indian tribe or Indian
25 organization harmed by the violation as determined by the court. The court may order
26 temporary or permanent injunctive relief. The court may order restitution to an injured
27 party and such other relief as the court determines appropriate.

28 2. Financial injury; damages. Unless restitution is ordered under subsection 1, a
29 person who suffers financial injury or damage by reason of any conduct that is in
30 violation of this chapter may bring an action in Superior Court and recover actual
31 damages sustained and the cost of the action, including reasonable attorney's fees.

32 **SUMMARY**

33 This bill is based on federal law pertaining to certification of products made by
34 Indians. The bill requires any person that sells authentic Indian arts and crafts to display
35 the name, trademark, if any, and tribe of the person who made the product. An
36 inauthentic product must be clearly labeled as inauthentic Indian arts and crafts. A
37 violation of the requirements is a civil violation for which a fine of not more than \$5,000
38 for each violation may be adjudged.