



# The America COMPETES Act Amendments to the Lacey Act

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Section 71102 of the America COMPETES Act, H.R. 4521 (passed the House), would amend the injurious species provisions of the Lacey Act (18 U.S.C. §42).

## The Injurious Species Provisions of the Lacey Act

The Lacey Act’s injurious species provisions prohibit importing certain species into the United States and shipping such species “between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States.” In 2017, the U.S. Court of Appeals for the D.C. Circuit held in *U.S. Association of Reptile Keepers v. Zinke* that the statute did not prohibit interstate shipment of injurious species—that is, shipment between states within the 49 continental United States.

The statute identifies certain species as **injurious** and authorizes the Secretary of the Interior to identify other species as injurious to human beings; the interests of agriculture, horticulture, forestry; or wildlife or the wildlife resources of the United States. The Secretary may list as injurious any “species of wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, brown tree snakes, or the offspring or eggs of any of the foregoing.” The list of injurious species appears in [50 C.F.R. part 16](#). The statute provides criminal penalties for violating the prohibitions. The Secretary exercises this authority through the U.S. Fish and Wildlife Service (FWS).

## Proposed Amendments to the Lacey Act in H.R. 4521

Section 71102 of [H.R. 4521](#), as passed by the House, would amend the injurious species section of the Lacey Act. First, it would prohibit “any interstate transport within the United States.” This provision could be interpreted to prohibit transport across state lines or transport in interstate commerce activity that does not necessarily cross state lines.

Second, it would allow the Secretary to issue an emergency designation of any species of wild mammal, wild bird, fish, amphibian, or reptile as injurious and prohibit its import for up to three years. To issue an emergency designation, the Secretary would have to determine that it was necessary to address an imminent threat to human beings; agricultural, horticultural, or forestry interests; or wildlife or U.S.

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wildlife resources. The emergency designation would generally be effective immediately. While the emergency designation was in effect, the Secretary would have to evaluate whether the species should be listed as injurious.

Third, H.R. 4521 would amend the penalty provision to impose fines or imprisonment only for *knowing* violations. This amendment would modify the mens rea required to establish criminal liability under this section of the Lacey Act. The section does not currently include any mens rea requirement in the penalty provision or in the provision prohibiting importing or shipping injurious species. A court would have to determine what level of intentionality would be required for the government to obtain a conviction.

Finally, the bill would prohibit importing *any* species of wild mammals, wild birds, fish, amphibians, or reptiles that are not native to the United States. This prohibition would not apply to species that were imported into or transported within the United States in “more than minimal quantities” in the year before the law was enacted. The prohibition would also not apply if the Secretary of the Interior determined, after opportunity for public comment, that the species did not “pose a significant risk of invasiveness to the United States.” The bill would require FWS to define “minimal quantities.”

## Stakeholder Perspectives on the Proposed Amendments

### Transport Between States

Some stakeholders have [expressed](#) support for banning the transport of injurious species across state lines. They argue that this ban would reduce the proliferation and expansion of injurious species across the United States. Some other stakeholders have [contended](#) that this provision would hamper the pet industry by preventing certain species from being transported across state lines if they are designated as injurious.

### Emergency Authority to Prohibit Importation

Stakeholders that support an emergency designation authority for injurious species generally [argue](#) that this authority is needed to allow the Secretary to act quickly to stop the import of non-native species before they are introduced and become established. They note that designating a species as injurious can take time, which could allow a species to become established before it is listed. Scientists [report](#) that listings can take between 14 months and 7 years. Some stakeholders [oppose](#) granting an emergency designation authority because the designation could be made without a full scientific review of the species and might be done arbitrarily or based on hypothetical or uncertain circumstances. Further, they assert that allowing the designation to last for up to three years is excessive.

### Prohibiting Species Not Native to the United States

This provision would effectively create a *white list* of non-native species that could be imported into the United States. A white list law bans importing all species except those approved on the list, in contrast to the current *black list* approach that identifies specific species as prohibited from being imported. Some proponents of this provision might argue that the white list approach to importing non-native species would immediately reduce the entry of invasive non-native species into the United States, thus lowering their ability to establish and spread.

Several stakeholders are [critical](#) of this proposed provision as overbroad, contending that the provision may ban the import of non-native species used in the pet industry, medical research, aquaculture, and other industries and may reduce the number of species available for trade. Other stakeholders might raise questions about how *invasiveness* will be defined when assessing species and note that exemptions from the list are for species that do not “pose a significant risk of invasiveness,” which is different than injurious. This point leads to questions regarding how species are evaluated. Stakeholders also [question](#)

how long a determination for an exemption might take and whether adequate resources and scientific information to make such determinations and enforce the provision exist. In contrast to these concerns, some stakeholders [assert](#) that the provision would exempt non-native species currently being imported, transported, sold, and traded in the United States.

## Author Information

Erin H. Ward  
Legislative Attorney

Pervaze A. Sheikh  
Specialist in Natural Resources Policy

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