

**Calendar No. 26**112TH CONGRESS  
1ST SESSION**S. 394**

To amend the Sherman Act to make oil-producing and exporting cartels illegal.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 2011

Mr. KOHL (for himself, Mr. GRASSLEY, Mr. LEAHY, Ms. SNOWE, Mr. DURBIN, Mr. SCHUMER, Mr. LAUTENBERG, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

APRIL 7 (legislative day, APRIL 5), 2011

Reported by Mr. LEAHY, without amendment

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**A BILL**

To amend the Sherman Act to make oil-producing and exporting cartels illegal.

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 “No Oil Producing and  
5 Exporting Cartels Act of 2011” or “NOPEC”.

1 **SEC. 2. SHERMAN ACT.**

2 The Sherman Act (15 U.S.C. 1 et seq.) is amended  
3 by adding after section 7 the following:

4 **“SEC. 7A. OIL PRODUCING CARTELS.**

5 “(a) IN GENERAL.—It shall be illegal and a violation  
6 of this Act for any foreign state, or any instrumentality  
7 or agent of any foreign state, to act collectively or in com-  
8 bination with any other foreign state, any instrumentality  
9 or agent of any other foreign state, or any other person,  
10 whether by cartel or any other association or form of co-  
11 operation or joint action—

12 “(1) to limit the production or distribution of  
13 oil, natural gas, or any other petroleum product;

14 “(2) to set or maintain the price of oil, natural  
15 gas, or any petroleum product; or

16 “(3) to otherwise take any action in restraint of  
17 trade for oil, natural gas, or any petroleum product;  
18 when such action, combination, or collective action has a  
19 direct, substantial, and reasonably foreseeable effect on  
20 the market, supply, price, or distribution of oil, natural  
21 gas, or other petroleum product in the United States.

22 “(b) SOVEREIGN IMMUNITY.—A foreign state en-  
23 gaged in conduct in violation of subsection (a) shall not  
24 be immune under the doctrine of sovereign immunity from  
25 the jurisdiction or judgments of the courts of the United  
26 States in any action brought to enforce this section.

1       “(c) INAPPLICABILITY OF ACT OF STATE DOC-  
 2 TRINE.—No court of the United States shall decline,  
 3 based on the act of state doctrine, to make a determina-  
 4 tion on the merits in an action brought under this section.

5       “(d) ENFORCEMENT.—

6           “(1) IN GENERAL.—The Attorney General of  
 7 the United States may bring an action to enforce  
 8 this section in any district court of the United  
 9 States as provided under the antitrust laws.

10          “(2) NO PRIVATE RIGHT OF ACTION.—No pri-  
 11 vate right of action is authorized under this sec-  
 12 tion.”.

13 **SEC. 3. SOVEREIGN IMMUNITY.**

14       Section 1605(a) of title 28, United States Code, is  
 15 amended—

16           (1) in paragraph (6), by striking “or” after the  
 17 semicolon;

18           (2) in paragraph (7), by striking the period and  
 19 inserting “; or”; and

20           (3) by adding at the end the following:

21           “(8) in which the action is brought under sec-  
 22 tion 7A of the Sherman Act.”.

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