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SENATE

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AMENDING CERTAIN LAWS RELATING TO NATIVE AMERICANS TO MAKE TECHNICAL CORRECTIONS, AND FOR OTHER PURPOSES

APRIL 16, 2008.—Ordered to be printed

Mr. DORGAN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 2087]

The Committee on Indian Affairs, to which was referred the bill (S. 2087) to amend certain laws relating to Native Americans to make technical corrections, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 2087 is to amend several statutes to revise miscellaneous provisions related to Indian tribes and certain programs related to Native Americans.

BACKGROUND

The Native American Omnibus Technical Corrections Act of 2007 would amend the Native American Graves Protection and Repatriation Act, the Indian Tribal Justice Technical and Legal Assistance Act of 2000, the Indian Tribal Justice Act, the Omnibus Crime Control and Safe Streets Act of 1968, the USA PATRIOT Improvement and Reauthorization Act of 2005, the Indian Land Consolidation Act, and “An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes.” An explanation of each provision is included below.

LEGISLATIVE HISTORY

The Native American Omnibus Technical Corrections Act of 2007 (S. 2087) was introduced on September 25, 2007, by Senators Dorgan and McCain, and was referred to the Committee on Indian Affairs. Senator Baucus was added as a cosponsor on October 19, 2007, and Senator Kyl on October 23, 2007.

On September 27, 2007, the Committee held an open business meeting at which it voted to favorably report S. 2087 without amendment to the full Senate, with a recommendation that the bill do pass.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On September 27, 2007, the Committee on Indian Affairs convened a business meeting to consider S. 2087 and other measures, and voted to have the bill favorably reported to the full Senate, without amendment, with a recommendation that the bill do pass.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides the short title of the Act as the Native American Omnibus Technical Corrections Act of 2007.

Section 2. Definition of Native American

Section 2 amends the definition of “Native American” in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001(9)). The purpose of this amendment is to clarify that in the context of repatriations, the term “Native American” refers to a member of a tribe, a people, or a culture that is or was indigenous to the United States.

Section 3. Indian tribal justice

Section 3 reauthorizes Indian tribal justice programs as authorized under the Indian Tribal Justice Technical and Legal Assistance Act of 2000 (25 U.S.C. 3666 and 3681(d)) and the Indian Tribal Justice Act (25 U.S.C. 3621). The amendment reauthorizes funding through the Department of Justice to both Indian Legal Services programs for criminal and civil legal assistance, and to tribal courts for development, implementation, enhancement and continuing operation of tribal justice systems, and through the Department of the Interior for funding for tribal justice systems.

Section 4. Native American participation in methamphetamine grants

Section 4 authorizes tribal inclusion in methamphetamine programs authorized under the Omnibus Crime Control and Safe Streets Act of 1968 and the USA PATRIOT Improvement and Reauthorization Act of 2005. The provision would add territories and Indian tribes to a grant program authorized under the Omnibus Crime Control and Safe Streets Act for training and investigation in Methamphetamine Hot Spot areas. This section would also add territories and Indian tribes to two grant provisions authorized under the PATRIOT Act (Public Law 109–177): grants to assist in the treatment of children endangered by living in a residence

where methamphetamine has been manufactured or distributed, and grants to address methamphetamine use by pregnant and parenting women offenders.

Section 5. Indian Land Consolidation Act

Section 5 amends the Indian Land Consolidation Act. This provision is a revised version of S. 3526 as passed in the 109th Congress, based on feedback received from Indian Country. This section would:

- amend the definitions section of the Indian Land Consolidation Act (25 U.S.C. 2201) by making technical and clarifying changes to the definition of “trust or restricted lands” and to the definition of “land” (insofar as it pertains to permanent improvements).
- amend the Indian Probate Code of the Indian Land Consolidation Act (25 U.S.C. 2206), including—
 - providing a tribal “opt-out” of the current rule in the Code against devising Indian Reorganization Act (IRA) reservation lands to non-Indians by allowing the tribe to pass a resolution, requesting the Secretary of the Interior to follow the rule otherwise applicable to non-IRA reservations (which allows such devises);
 - postponing the current law’s presumption that a devise to multiple persons creates a joint tenancy with rights of survivorship until September 1, 2008;
 - clarifying, simplifying and streamlining the process for consolidating and purchasing fractional interests during probate; and
 - limiting the eligible purchasers in nonconsensual probate purchases of very small interests to the Secretary and, where the interest would be passing by intestate succession to a non-member, the Indian tribe.

Section 6. Indian goods and products

Section 6 amends the Act entitled “An Act to provide the development of Indian arts and crafts and to create a board to assist therein, and for other purposes,” also known as the Indian Arts and Crafts Act of 1990. This section would amend the Act to provide the following:

- authorize any federal law enforcement officer to conduct an investigation of an offense involving the sale of any good that is misrepresented as an Indian produced good or product that occurs on land under the jurisdiction of the federal government.
- authorize the Indian Arts and Crafts Board to refer such an alleged offense to any federal law enforcement officer (including BIA law enforcement officers, not just an FBI officer, as under current law), for appropriate investigation.
- provide penalties for the misrepresentation of Indian produced goods and products.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 2087, as calculated by the Congressional Budget Office, follows:

S. 2087—Native American Omnibus Technical Corrections Act of 2007

Summary: S. 2087 would extend the authorization of appropriations through 2012 for Indian tribal courts and other judicial systems. The bill also would make a number of changes and technical corrections to current laws concerning Native Americans. Many of those changes include amendments to the Indian probate code. Assuming appropriations of the necessary amounts, CBO estimates that implementing S. 2087 would cost \$54 million in 2008 and \$312 million over the 2008–2012 period.

S. 2087 also would modify penalties imposed on persons who sell goods fraudulently marketed as Indian arts or products. Criminal fines are recorded as revenues, deposited into the Crime Victims Fund, and later spent. CBO estimates that enacting S. 2087 could change the amount of revenues deposited into the fund, and direct spending from the fund, but any such effects would be insignificant.

S. 2087 contains no intergovernmental mandates, as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

S. 2087 would impose a private-sector mandate, as defined in UMRA, on certain individuals by limiting the right they now have to bid without the consent of the heirs on small fractional property interests at probate. CBO expects that the cost of complying with this mandate would not be significant and would fall well below the annual threshold established in UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2087 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
BIA Tribal Justice Systems:					
Authorization Level ¹	58	58	58	58	58
Estimated Outlays	52	58	58	58	58
DOJ Technical and Legal Assistance for Tribal Justice:					
Estimated Authorization Level ²	8	8	9	9	9
Estimated Outlays	2	4	6	7	9
Total Changes:					
Estimated Authorization Level	66	66	67	67	67
Estimated Outlays	54	62	64	65	67

¹ A full-year appropriation for this program has not yet been enacted for 2008. The 2007 appropriation for BIA Tribal Justice Systems was about \$14 million.

² A full-year appropriation for this program has not yet been enacted for 2008. The 2007 appropriation for DOJ Technical and Legal Assistance was about \$8 million.

Note: BIA = Bureau of Indian Affairs; DOJ = Department of Justice.

Basis of estimate: For this estimate, CBO assumes that S. 2087 will be enacted near the start of fiscal year 2008, that the necessary amounts will be appropriated each year, and that outlays will follow historical spending patterns.

Spending subject to appropriation

S. 2087 would authorize the appropriation of \$58 million in 2008 and \$290 million over the 2008–2012 period for Bureau of Indian

Affairs (BIA) tribal justice systems. In addition to these amounts, CBO estimates that an additional \$43 million would be needed under the bill through 2012 for Department of Justice (DOJ) technical and legal assistance programs for tribal justice. We estimate that other provisions of the bill, including technical amendments to the Indian probate code, would result in no significant federal spending. Assuming appropriation of the authorized and estimated amounts, we estimate that implementing S. 2087 would result in discretionary outlays of \$54 million in 2008 and \$312 million over the 2008–2012 period.

BIA Tribal Justice Systems. S. 2087 would authorize the appropriation of \$58 million a year through 2012 for the Bureau of Indian Affairs to provide grants to Indian tribes for tribal justice systems and for administrative expenses of the Office of Tribal Justice Support. The fiscal year 2007 appropriation for those activities was about \$14 million. Those grants could be used to hire judicial personnel, provide technical assistance and training, offer victim assistance, acquire law library materials, or for other purposes. Assuming appropriation of the authorized amounts, CBO estimates that implementing this provision would cost \$52 million in 2008 and \$284 million over the 2008–2012 period.

DOJ Technical and Legal Assistance for Tribal Justice. S. 2087 would authorize the appropriation of such sums as necessary for fiscal years 2008–2012 to DOJ for grants to support tribal courts and legal assistance programs. In 2007, about \$8 million was appropriated for those programs. CBO estimates that continuing this program at the current level and adjusting for anticipated inflation over the 2008–2012 period would cost \$28 million.

Indian Land Consolidation Act Amendments. S. 2087 would make technical and clarifying amendments primarily to the Indian probate code specified under the Indian Land Consolidation Act. The Indian probate code was substantively amended in 2004 under the American Indian Probate Reform Act (Public Law 108–374), and S. 2087 would further modify the code. Specifically, S. 2087 would allow tribal members to transmit in a will certain reservation lands to non-Indians upon the Secretary of the Interior’s approval of a tribal resolution. CBO estimates that implementing this provision could result in cost savings to BIA because there could be fewer individual owners of interests in trust lands. However, we estimate that any potential savings would not be significant over the 2008–2012 period.

The bill also would simplify the process for consolidating and purchasing fractional interests in land during probate proceedings. When the Secretary receives multiple requests to purchase land during probate, the applicable heir or spouse would choose the eligible buyer. Also, during certain probate proceedings when the consent of an heir is not required, S. 2087 would limit who can purchase very small interests in land. Last, the bill would delay the implementation of certain inheritance provisions of the probate code until September 1, 2008. Based on information from BIA, CBO expects that those changes would affect a small number of cases; therefore, we estimate that BIA’s cost to implement those provisions would be insignificant.

Other Provisions. The bill would authorize the inclusion of Indian tribes in DOJ’s methamphetamine programs. The legislation

also would expand who can conduct an investigation relating to the sale of counterfeit Indian art products. The bill would allow any federal law enforcement officer to investigate such a violation, rather than only employees of the Federal Bureau of Investigation as under current law. CBO estimates that the costs of those provisions would be insignificant. Any additional spending would be subject to appropriation.

Direct spending and revenues

S. 2087 would modify the penalties imposed on persons who sell goods fraudulently marketed as Indian arts or products. Criminal fines are recorded as revenues, deposited into the Crime Victims Fund, and later spent. CBO estimates that enacting S. 2087 could change the amount of revenues deposited into the fund and direct spending from the fund, but any such effects would be insignificant.

Estimated impact on state, local, and tribal governments: S. 2087 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Several provisions would benefit tribes by extending the authorization of current assistance programs and making tribes eligible to participate in other programs. Any costs to those tribes would be incurred voluntarily as a condition of receiving federal assistance.

Estimated impact on the private sector: S. 2087 would impose a private-sector mandate by limiting the right of individuals to bid on small fractional interests at certain probate proceedings. Currently a specified set of eligible purchasers may bid on small fractional property interests without the consent of the heirs at such proceedings. The bill would allow only the Secretary of the Interior and the Indian tribe with jurisdiction over the interests to bid on those interests without consent in such cases. All other eligible purchasers could still bid, but only with consent of the heirs or surviving spouse. The restriction on bidding would only apply to sales in which the interests represent less than 5 percent of the entire undivided ownership of the parcel of land in cases where there is no will. The changes in probate code would apply to very small interests in few cases. Thus, CBO expects that the cost of complying with this mandate would fall well below the annual threshold established in UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Leigh Angres and Mark Grabowicz; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: MarDestinee Perez.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that the regulatory and paperwork impacts of S. 2087 should be de minimus.

EXECUTIVE COMMUNICATION

The Committee has received no official communication from the Administration on the provisions of S. 2087.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the enactment of S. 2087 will result in the following changes in existing law, (existing law proposed to be omitted is enclosed in black brackets and the new language to be added in italic, existing law in which no change is proposed is shown in roman):

DEFINITION OF NATIVE AMERICAN

25 U.S.C. 3001(9)

25 U.S.C. 3001(9) is amended as follows:

(9) "Native American" means of, or relating to, a tribe, people, or culture that is *or was* indigenous to *any geographic area that is now located within the boundaries of* the United States.

INDIAN TRIBAL JUSTICE

(PUB. L. 106-559)

25 U.S.C. 3666

Section 106 of the Indian Tribal Justice Technical and Legal Assistance Act is amended as follows:

For purposes of carrying out the activities under this subchapter, there are authorized to be appropriated such sums as are necessary **[for fiscal years 2000 through 2004]** *for fiscal years 2008 through 2012.*

25 U.S.C. 3681(d)

Section 201(d) of the Indian Tribal Justice Technical and Legal Assistance Act is amended as follows:

For purposes of carrying out the activities under this section, there are authorized to be appropriated such sums as are necessary **[for fiscal years 2000 through 2004]** *for fiscal years 2008 through 2012.*

(PUB. L. 106-559)

25 U.S.C. 3621

Section 201 of the Indian Tribal Justice Act is amended as follows:

(a) OFFICE.—There is authorized to be appropriated to carry out the provisions of sections 3611 and 3612 of this title, \$7,000,000 for each of the fiscal years 2000 through **[2007]** *2012.* None of the funds provided under this subsection may be used for the administrative expenses of the office.

(b) BASE SUPPORT FUNDING FOR TRIBAL JUSTICE SYSTEMS.—There is authorized to be appropriated to carry out the provisions of section 3613 of this title \$50,000,000 for each of the fiscal years 2000 through **[2007]** *2012.*

(c) ADMINISTRATIVE EXPENSES FOR OFFICE.—There is authorized to be appropriated, for the administrative expenses of the Office, \$500,000 for each of the fiscal years 2000 through ~~2007~~ 2012.

(d) ADMINISTRATIVE EXPENSES FOR TRIBAL JUDICIAL CONFERENCES.—There is authorized to be appropriated, for the administrative expenses of tribal judicial conferences, \$500,000 for each of the fiscal years 2000 through ~~2007~~ 2010.

NATIVE AMERICAN PARTICIPATION IN METHAMPHETAMINE GRANTS

42 U.S.C. 3797cc(a)

SEC. 754. GRANTS TO HOT SPOT AREAS TO REDUCE AVAILABILITY OF METHAMPHETAMINE.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

PART II—CONFRONTING USE OF METHAMPHETAMINE

SEC. 2996. AUTHORITY TO MAKE GRANTS TO ADDRESS PUBLIC SAFETY AND METHAMPHETAMINE MANUFACTURING, SALE, AND USE IN HOT SPOTS.

(a) PURPOSE AND PROGRAM AUTHORITY.—

(1) PURPOSE.—It is the purpose of this part to assist States, *territories, and Indian tribes (as defined in section 2704)*—

(A) to carry out programs to address the manufacture, sale, and use of methamphetamine drugs; and

(B) to improve the ability of State ~~and local~~ *territorial, Tribal, and local* government institutions to carry out such programs.

(2) GRANT AUTHORIZATION.—The Attorney General, through the Bureau of Justice Assistance in the Office of Justice Programs may make grants to States, *territories, and Indian tribes* to address the manufacture, sale, and use of methamphetamine to enhance public safety.

(3) GRANT PROJECTS TO ADDRESS METHAMPHETAMINE MANUFACTURE SALE AND USE.—Grants made under subsection (a) may be used for programs, projects, and other activities to—

(A) investigate, arrest and prosecute individuals violating laws related to the use, manufacture, or sale of methamphetamine;

(B) reimburse the Drug Enforcement Administration for expenses related to the clean up of methamphetamine clandestine labs;

(C) support State, *Tribal,* and local health department and environmental agency services deployed to address methamphetamine; and

(D) procure equipment, technology, or support systems, or pay for resources, if the applicant for such a grant demonstrates to the satisfaction of the Attorney General that expenditures for such purposes would result in the reduction in the use, sale, and manufacture of methamphetamine.

(4) EFFECT OF SUBSECTION.—*Nothing in this subsection, or in the award or denial of any grant pursuant to this subsection—*

(A) allows grants authorized under paragraph (3)(A) to be made to, or used by, an entity for law enforcement activities that the entity lacks jurisdiction to perform; or

(B) has any effect other than to authorize, award, or deny a grant of funds to a State, territory, or Indian tribe for the purposes described in this subsection.

42 U.S.C. 3797cc-2(a)

SEC. 755. GRANTS FOR PROGRAMS FOR DRUG-ENDANGERED CHILDREN.

(a) IN GENERAL.—The Attorney General shall make grants to States, *territories*, and *Indian tribes* (as defined in section 2704 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797d)) for the purpose of carrying out programs to provide comprehensive services to aid children who are living in a home in which methamphetamine or other controlled substances are unlawfully manufactured, distributed, dispensed, or used.

* * * * *

42 U.S.C. 3797cc-3

SEC. 756. AUTHORITY TO AWARD COMPETITIVE GRANTS TO ADDRESS METHAMPHETAMINE USE BY PREGNANT AND PARENTING WOMEN OFFENDERS.

(a) PURPOSE AND PROGRAM AUTHORITY.—

(1) GRANT AUTHORIZATION.—The Attorney General may award competitive grants to address the use of methamphetamine among pregnant and parenting women offenders to promote public safety, public health, family permanence and well being.

(2) PURPOSES AND PROGRAM AUTHORITY.—Grants awarded under this section shall be used to facilitate or enhance and collaboration between the criminal justice, child welfare, and State, *territorial*, or *Tribal* substance abuse systems in order to carry out programs to address the use of methamphetamine drugs by pregnant and parenting women offenders.

(b) DEFINITIONS.—In this section, the following definitions shall apply:

(1) CHILD WELFARE AGENCY.—The term “child welfare agency” means the State, *territorial*, or *Tribal* agency responsible for child [and/or] or family services and welfare.

(2) CRIMINAL JUSTICE AGENCY.—The term “criminal justice agency” means an agency of the State, *territory*, or *Indian tribe* or local government or its contracted agency that is responsible for detection, arrest, enforcement, prosecution, defense, adjudication, incarceration, probation, or parole relating to the violation of the criminal laws of that State, *territory*, or *Indian tribe* or local government.

(3) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 2704 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797d).

(c) APPLICATIONS.—

(1) IN GENERAL.—No grant may be awarded under this section unless an application has been submitted to, and approved by, the Attorney General.

(2) APPLICATION.—An application for a grant under this section shall be submitted in such form, and contain such information, as the Attorney General may prescribe by regulation or guidelines.

(3) ELIGIBLE ENTITIES.—The Attorney General shall make grants to States, territories, and [Indian Tribes] *Indian tribes*. Applicants must demonstrate extensive collaboration with the State criminal justice agency and child welfare agency in the planning and implementation of the program.

(4) CONTENTS.—In accordance with the regulations or guidelines established by the Attorney General in consultation with the Secretary of Health and Human Services, each application for a grant under this section shall contain a plan to expand the [State’s services] *services of the State, territory, or Indian tribe* for pregnant and parenting women offenders who are pregnant women [and/or] *or* women with dependent children for the use of methamphetamine or methamphetamine and other drugs and include the following in the plan:

(A) A description of how the applicant will work jointly with the [State] criminal justice and child welfare agencies needs associated with the use of methamphetamine or methamphetamine and other drugs by pregnant and parenting women offenders to promote family stability and permanence.

(B) A description of the nature and the extent of the problem of methamphetamine use by pregnant and parenting women offenders.

(C) A certification that the State has involved counties, *Indian tribes*, and other units of local government, when appropriate, in the development, expansion, modification, operation or improvement of proposed programs to address the use, manufacture, or sale of methamphetamine.

(D) A certification that funds received under this section will be used to supplement, not supplant, other Federal, State, *tribal* and local funds.

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INDIAN LAND CONSOLIDATION ACT

25 U.S.C. 2201

Section 202 of the Indian Land Consolidation Act is amended as follows:

SEC. 2201. DEFINITIONS.

* * * * *

(4)(i) “trust or restricted lands” means lands, title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation; and

["trust or restricted interest in land" or] (ii) “*trust or restricted interest in land*” or “trust or restricted interest in a parcel of land” means [an interest in land, title to which] *an interest in land, the title to which interest* is held in trust by

the United States for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation.

* * * * *
[(7) “land” means any real property, and includes within its meaning for purposes of this chapter improvements permanently affixed to real property;]

(7) the term “land” —

(A) means any real property; and

(B) only for purposes of intestate succession under section 207(a), includes the interest, if any, owned by the decedent in improvements permanently affixed to a parcel of trust or restricted lands (subject to any valid mortgage or other interest in such an improvement) if the parcel was owned, in whole or in part, by the decedent immediately prior to the death of the decedent.

25 U.S.C. 2206

Section 207 of the Indian Land Consolidation Act is amended as follows:

(a)(2)(D) INTESTATE DESCENT OF SMALL FRACTIONAL INTERESTS IN LAND.—

(i) GENERAL RULE.—Notwithstanding subparagraphs (A) and (B), and subject to any applicable Federal law, any trust or restricted interest in land in the decedent’s estate that is not disposed of by a valid will and represents less than 5 percent of the entire undivided ownership of the parcel of land of which such interest is a part, as evidenced by the decedent’s estate inventory at the time of the heirship determination, shall descend in accordance with **[(i) through (iv)] clauses (ii) through (v).**

* * * * *

[(v) RULE OF CONSTRUCTION.—This subparagraph shall not be construed to limit a person’s right to devise any trust or restricted interest by way of a valid will in accordance with subsection (b) of this section.**]**

(v) EFFECT OF SUBPARAGRAPH.—Nothing in this subparagraph limits the right of any person to devise any trust or restricted interest pursuant to a valid will in accordance with subsection (b).

* * * * *

(b)(2)(B) INDIAN REORGANIZATION ACT LANDS.—

[(i) IN GENERAL.—Subject to clauses (ii) and (iii), any interest in trust or restricted land that is subject to section 464 of this title, may be devised only in accordance with—

- [(i)](I)** that section;
- [(ii)](II)** subparagraph (A)(i); or
- [(iii)](III)** paragraph (1)(A)**[(i)];**

(ii) EXCEPTION—

(I) IN GENERAL.—Notwithstanding clause (i), in any case in which a resolution, law, or other enact-

ment of the Indian tribe with jurisdiction over the land of which an interest described in clause (i) is a part requests the Secretary to apply subparagraph (A)(ii) to devises of trust or restricted land under the jurisdiction of the Indian tribe, the interest may be devised in fee in accordance with subparagraph (A)(ii).

(II) EFFECT.—Subclause (I) shall apply with respect to a devise of a trust or restricted interest in land by any decedent who dies on or after the date on which the applicable Indian tribe adopts the resolution, law, or other enactment described in subclause (I), regardless of the date on which the devise is made.

[provided that nothing] *(iii) EFFECT.—Except as provided in clause (ii), nothing in this section or in section 464 of this title, shall be construed to authorize the devise of any interest in trust or restricted land that is subject to section 464 of this title to any person as a fee interest under subparagraph (A)(ii).*

* * * * *

(c) JOINT TENANCY; RIGHT OF SURVIVORSHIP.—

* * * * *

(2) EXCEPTION.—Paragraph (1) shall not apply to any devise of an interest in trust or restricted land where the will in which such devise is made was executed prior to **[the date that is 1 year after the date on which the Secretary publishes the certification required by section 8(a)(4) of the American Indian Probate Reform Act of 2004.]** *September 1, 2008.*

* * * * *

(o) PURCHASE OPTION AT PROBATE.—

* * * * *

[(3) REQUEST TO PURCHASE; AUCTION; CONSENT REQUIREMENTS.—No sale] (3) *REQUEST TO PURCHASE; CONSENT REQUIREMENTS; MULTIPLE REQUESTS TO PURCHASE.—*

(A) IN GENERAL.—No sale of an interest in probate shall occur under this subsection unless—

[(A)] *(i) an eligible purchaser described in paragraph (2) submits a written request to purchase prior to the distribution of the interest to heirs or devisees of the decedent and in accordance with any regulations of the Secretary; and*

[(B)] *(ii) except as provided in paragraph (5), the heirs or devisees of such interest, and the decedent's surviving spouse, if any, receiving a life estate under subparagraph (A) or (D) of subsection (a)(2) of this section consent to the sale.*

[If the Secretary receives more than 1 request to purchase the same interest, the Secretary shall sell the interest by public auction or sealed bid (as determined by the Secretary) at not less than the appraised fair market value to the eligible purchaser submitting the highest bid.]

(B) MULTIPLE REQUESTS TO PURCHASE.—Except for interests purchased pursuant to paragraph (5), if the Secretary receives a request with respect to an interest from more than 1 eligible purchaser under paragraph (2), the Secretary shall sell the interest to the eligible purchaser that is selected by the applicable heir, devisee, or surviving spouse.

(4) APPRAISAL AND NOTICE.—Prior to the sale of an interest pursuant to this subsection, the Secretary shall—

(A) appraise the interest at its fair market value in accordance with this chapter; *and*

(B) provide eligible heirs, other devisees, and the Indian tribe with jurisdiction over the interest with written notice, sent by first class mail, that the interest is available for purchase in accordance with this subsection; **and**.

[(C) if the Secretary receives more than 1 request to purchase the interest by a person described in subparagraph (B), provide notice of the manner (auction or sealed bid), time and place of the sale, a description, and the appraised fair market value, of the interest to be sold—

(i) to the heirs or other devisees and the Indian tribe with jurisdiction over the interest, by first class mail; *and*

(ii) to all other eligible purchasers, by posting written notice in at least 5 conspicuous places in the vicinity of the place of hearing.]

(5) SMALL UNDIVIDED INTERESTS IN INDIAN LANDS.—

(A) IN GENERAL.—Subject to **[subparagraph (B), the consent of a person who is an heir]** *subparagraph (C), the consent of a person who is an heir or surviving spouse* otherwise required under paragraph (3)(B) shall not be required for the **[auction and]** sale of an interest at probate under this subsection if—

(i) the interest is passing by intestate succession; **[and]**

(ii) prior to the **[auction]** sale the Secretary determines in the probate proceeding that **[the interest passing to such heir represents]**, *at the time of death of the applicable decedent, the interest of the decedent in the land represented less than 5 percent of the entire undivided ownership of the parcel of land as evidenced by the Secretary's records as of the time the determination is made* **[.];**

(iii) the decedent died on or after September 1, 2008; and

(iv)(I) the Secretary is purchasing the interest under the program authorized under section 213(a)(1); or

(II) after receiving a notice under paragraph (4)(B), the Indian tribe with jurisdiction over the interest is proposing to purchase the interest from an heir or surviving spouse who is not residing on the property in accordance with clause (i), and who is not a member, and is not eligible to become a member, of that Indian tribe.

(B) *AUTHORITY TO EXTEND DATE.*—The Secretary may extend the date referred to in subparagraph (A)(iii) by not more than 1 year if, by not later than August 1, 2008, the Secretary publishes in the Federal Register a notice of the extension.

[(B)] (C) *EXCEPTION.*—Notwithstanding subparagraph (A), the consent of such heir or surviving spouse shall be required for the sale at probate of the [heir’s interest] interest of the heir or surviving spouse if, at the time of the decedent’s death, the heir or surviving spouse was residing on the parcel of land of which the interest to be sold was a part.

* * * * *

25 U.S.C. 2212(a)(1)

* * * * *

(a) *ACQUISITION BY SECRETARY.*—

(1) *IN GENERAL.*—The Secretary may acquire, at the discretion of the Secretary and with the consent of the owner, or from an heir during probate in accordance with [section 207(p)] section 207(o) of this title and at fair market value, any fractional interest in trust or restricted lands.

INDIAN ARTS AND CRAFTS ACT AMENDMENTS

25 U.S.C. 305(d)

Section 5 of the Act entitled “An Act to provide the development of Indian arts and crafts and to create a board to assist therein, and for other purposes” is amended as follows:

【Referral for criminal and civil violations; complaints; recommendations

(a) The Board may receive complaints of violations of section 1159 of title 18 and refer complaints of such violations to the Federal Bureau of Investigation for appropriate investigation. After reviewing the investigation report, the Board may recommend to the Attorney General of the United States that criminal proceedings be instituted under that section.

(b) The Board may recommend that the Secretary of the Interior refer the matter to the Attorney General for civil action under section 305e of this title.】

SEC. 5. CRIMINAL PROCEEDINGS; CIVIL ACTIONS.

(a) *DEFINITION OF FEDERAL LAW ENFORCEMENT OFFICER.*—In this section, the term “Federal law enforcement officer” includes a Federal law enforcement officer (as defined in section 115(c) of title 18, United States Code).

(b) *CONDUCT OF INVESTIGATIONS.*—Any Federal law enforcement officer may conduct an investigation relating to a violation of this Act that occurs on land under the jurisdiction of the Federal Government.

(c) *CRIMINAL PROCEEDINGS.*—

(1) *INVESTIGATION.*—

(A) *IN GENERAL.*—The Board may refer an alleged violation of section 1159 of title 18, United States Code, to any

Federal law enforcement officer for appropriate investigation.

(B) *REFERRAL NOT REQUIRED.*—A Federal law enforcement officer may investigate an alleged violation of section 1159 of that title regardless of whether the Federal law enforcement officer receives a referral under subparagraph (A).

(2) *FINDINGS.*—The findings of an investigation of an alleged violation of section 1159 of title 18, United States Code, by any Federal department or agency under paragraph (1)(A) shall be submitted to—

(A) *the Attorney General; or*

(B) *the Board.*

(3) *RECOMMENDATIONS.*—On receiving the findings of an investigation under paragraph (2), the Board may—

(A) *recommend to the Attorney General that criminal proceedings be initiated under section 1159 of title 18, United States Code; and*

(B) *provide such support to the Attorney General relating to the criminal proceedings as the Attorney General determines to be appropriate.*

(d) *CIVIL ACTIONS.*—In lieu of, or in addition to, any criminal proceeding under subsection (c), the Board may recommend that the Attorney General initiate a civil action under section 6.

25 U.S.C. 305e

Section 6 of the Act entitled “An Act to provide the development of Indian arts and crafts and to create a board to assist therein, and for other purposes” is amended as follows:

SEC. 305e. CAUSE OF ACTION FOR MISREPRESENTATION OF INDIAN PRODUCED GOODS

(a) *DEFINITIONS.*—In this section:

(1) *INDIAN.*—The term “Indian” means an individual that—

(A) *is a member of an Indian tribe; or*

(B) *is certified as an Indian artisan by an Indian tribe.*

(2) *INDIAN PRODUCT.*—The term “Indian product” has the meaning given the term in any regulation promulgated by the Secretary.

(3) *INDIAN TRIBE.*—

(A) *IN GENERAL.*—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(B) *INCLUSION.*—The term “Indian tribe” includes, for purposes of this section only, an Indian group that has been formally recognized as an Indian tribe by—

(i) *a State legislature;*

(ii) *a State commission; or*

(iii) *another similar organization vested with State legislative tribal recognition authority.*

(4) *SECRETARY.*—The term “Secretary” means the Secretary of the Interior.

[(a)] (b) *INJUNCTIVE OR EQUITABLE RELIEF; DAMAGES.*—A person specified in [subsection (c)] subsection (d) of this section may, in a civil action in a court of competent jurisdiction, bring an action

against a person who, directly or indirectly, offers or displays for sale or sells a good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States, to—

- (1) obtain injunctive or other equitable relief; and
- (2) recover the greater of—
 - (A) treble damages; or
 - (B) in the case of each aggrieved individual Indian, Indian tribe, or Indian arts and crafts organization, not less than \$1,000 for each day on which the offer or display for sale or sale continues.

For purposes of paragraph (2)(A), damages shall include any and all gross profits accrued by the defendant as a result of the activities found to violate this subsection.

[(b)] (c) PUNITIVE DAMAGES; ATTORNEY'S FEE.—In addition to the relief specified in **[subsection (a)] subsection (b)** of this section, the court may award punitive damages and the costs of **[suit]** the *civil action* and a reasonable attorney's fee.

[(c) PERSONS WHO MAY INITIATE CIVIL ACTIONS.—

(1) A civil action under subsection (a) of this section may be commenced—

(A) by the Attorney General of the United States upon request of the Secretary of the Interior on behalf of an Indian who is a member of an Indian tribe or on behalf of an Indian tribe or Indian arts and crafts organization;

(B) by an Indian tribe on behalf of itself, an Indian who is a member of the tribe, or on behalf of an Indian arts and crafts organization; or

(C) by an Indian arts and crafts organization on behalf of itself, or by an Indian on behalf of himself or herself.

(2) Any amount recovered pursuant to this section shall be paid to the individual Indian, Indian tribe, or Indian arts and crafts organization, except that—

(A) in the case of paragraph (1)(A), the Attorney General may deduct from the amount recovered—

(i) the amount for the costs of suit and reasonable attorney's fees awarded pursuant to subsection (b) of this section and deposit the amount of such costs and fees as a reimbursement credited to appropriations currently available to the Attorney General at the time of receipt of the amount recovered; and

(ii) the amount for the costs of investigation awarded pursuant to subsection (b) of this section and reimburse the Board the amount of such costs incurred as a direct result of Board activities in the suit; and

(B) in the case of paragraph (1)(B), the amount recovered for the costs of suit and reasonable attorney's fees pursuant to subsection (b) of this section may be deducted from the total amount awarded under subsection (a)(2) of this section.]

(d) PERSONS THAT MAY INITIATE CIVIL ACTIONS.—

(1) *IN GENERAL.*—A *civil action* under subsection (b) may be initiated by—

(A) *the Attorney General, at the request of the Secretary acting on behalf of—*

- (i) *an Indian tribe;*
- (ii) *an Indian; or*
- (iii) *an Indian arts and crafts organization;*

(B) *an Indian tribe, acting on behalf of—*

- (i) *the Indian tribe;*
- (ii) *a member of that Indian tribe; or*
- (iii) *an Indian arts and crafts organization;*

(C) *an Indian; or*

(D) *an Indian arts and crafts organization.*

(2) *DISPOSITION OF AMOUNTS RECOVERED.—*

(A) *IN GENERAL.—Except as provided in subparagraph (B), an amount recovered in a civil action under this section shall be paid to the Indian tribe, the Indian, or the Indian arts and crafts organization on the behalf of which the civil action was initiated.*

(B) *EXCEPTIONS.—*

(i) *ATTORNEY GENERAL.—In the case of a civil action initiated under paragraph (1)(A), the Attorney General may deduct from the amount—*

(I) *the amount of the cost of the civil action and reasonable attorney's fees awarded under subsection (c), to be deposited in the Treasury and credited to appropriations available to the Attorney General on the date on which the amount is recovered; and*

(II) *the amount of the costs of investigation awarded under subsection (c), to reimburse the Board for the activities of the Board relating to the civil action.*

(ii) *INDIAN TRIBE.—In the case of a civil action initiated under paragraph (1)(B), the Indian tribe may deduct from the amount—*

(I) *the amount of the cost of the civil action; and*

(II) *reasonable attorney's fees.*

[(d) *DEFINITIONS.—As used in this section—*

(1) *the term “Indian” means any individual who is a member of an Indian tribe; or for the purposes of this section is certified as an Indian artisan by an Indian tribe;*

(2) *subject to subsection (f) of this section, the terms “Indian product” and “product of a particular Indian tribe or Indian arts and crafts organization” has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;*

(3) *the term “Indian tribe” means—*

(A) *any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or*

(B) *any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and*

(4) the term “Indian arts and crafts organization” means any legally established arts and crafts marketing organization composed of members of Indian tribes.】

(e) *SAVINGS PROVISION.*—【In the event that】 *If* any provision of this section is held invalid, it is the intent of Congress that the remaining provisions of this section shall continue in full force and effect.

18 U.S.C. Section 1159

SEC. 1159. MISREPRESENTATION OF INDIAN PRODUCED GOODS AND PRODUCTS.

(a) It is unlawful to offer or display for sale or sell any good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States.

【(b) Whoever knowingly violates subsection (a) shall—

(1) in the case of a first violation, if an individual, be fined not more than \$250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than \$1,000,000; and

(2) in the case of subsequent violations, if an individual, be fined not more than \$1,000,000 or imprisoned not more than fifteen years, or both, and, if a person other than an individual, be fined not more than \$5,000,000.】

(b) *PENALTY.*—*Any person that knowingly violates subsection (a) shall—*

(1) *in the case of a first violation by that person—*

(A) *if the applicable goods are offered or displayed for sale at a total price of \$1,000 or more, or if the applicable goods are sold for a total price of \$1,000 or more—*

(i) *in the case of an individual, be fined not more than \$250,000, imprisoned for not more than 5 years, or both; and*

(ii) *in the case of a person other than an individual, be fined not more than \$1,000,000; and*

(B) *if the applicable goods are offered or displayed for sale at a total price of less than \$1,000, or if the applicable goods are sold for a total price of less than \$1,000—*

(i) *in the case of an individual, be fined not more than \$25,000, imprisoned for not more than 1 year, or both; and*

(ii) *in the case of a person other than an individual, be fined not more than \$100,000; and*

(2) *in the case of a subsequent violation by that person, regardless of the amount for which any good is offered or displayed for sale or sold—*

(A) *in the case of an individual, be fined under this title, imprisoned for not more than 15 years, or both; and*

(B) *in the case of a person other than an individual, be fined not more than \$5,000,000.*

(c) As used in this section—

(1) the term “Indian” means any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe;

(2) the terms “Indian product” and “product of a particular Indian tribe or Indian arts and crafts organization” has the meaning given such term in regulations which may be promulgated by the Secretary of the Interior;

【(3) the term “Indian tribe” means—

(A) any Indian tribe, band, nation, Alaska Native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority; and】

(3) the term “Indian tribe”—

(A) has the meaning given the term in section 4 of the *Indian Self-Determination and Education Assistance Act* (25 U.S.C. 450b); and

(B) includes, for purposes of this section only, an Indian group that has been formally recognized as an Indian tribe by—

- (i) a State legislature;
- (ii) a State commission; or
- (iii) another similar organization vested with State legislative tribal recognition authority; and

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