

Calendar No. 766

107TH CONGRESS
2D SESSION**S. 1340**

To amend the Indian Land Consolidation Act to provide for probate reform with respect to trust or restricted lands.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2001

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

NOVEMBER 19, 2002

Reported by Mr. INOUE, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To amend the Indian Land Consolidation Act to provide for probate reform with respect to trust or restricted lands.

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 “Indian Probate Reform
5 Act of 2001”.

1 **SEC. 2. AMENDMENTS TO THE INDIAN LAND CONSOLIDA-**
2 **TION ACT.**

3 (a) **IN GENERAL.**—The Indian Land Consolidation
4 Act (25 U.S.C. 2201 et seq.) is amended by adding at
5 the end the following:

6 **“Subtitle B—Indian Probate**
7 **Reform**

8 **“SEC. 231. FINDINGS.**

9 “Congress makes the following findings:

10 “(1) The General Allotment Act of 1887
11 (commonly known as the “Dawes Act”), which au-
12 thorized the allotment of Indian reservations, did not
13 allow Indian allotment owners to provide for the tes-
14 tamentary disposition of the land that was allotted
15 to such owners:

16 “(2) The Dawes Act provided that allotments
17 would descend according to State law of intestate
18 succession based on the location of the allotment:

19 “(3) The Federal Government’s reliance on the
20 State law of intestate succession with respect to the
21 descendency of allotments has resulted in numerous
22 problems to Indian tribes, their members, and the
23 Federal Government. These problems include—

24 “(A) the increasing fractionated ownership
25 of trust and restricted land as these lands are

1 inherited by successive generations of owners as
2 tenants in common;

3 “(B) the application of different rules of
4 intestate succession to each of a decedent’s in-
5 terests in trust and restricted land if such land
6 is located within the boundaries of different
7 States which makes probate planning unneces-
8 sarily difficult and impedes efforts to provide
9 probate planning assistance or advice;

10 “(C) the absence of a uniform general pro-
11 bate code for trust and restricted land which
12 makes it difficult for Indian tribes to work co-
13 operatively to develop tribal probate codes; and

14 “(D) the failure of Federal law to address
15 or provide for many of the essential elements of
16 general probate law, either directly or by ref-
17 erence, which is unfair to the owners of trust
18 and restricted land and their heirs and devisees
19 and which makes probate planning more dif-
20 ficult.

21 “(4) Based on the problems identified in para-
22 graph (3), a uniform Federal probate code would
23 likely—

24 “(A) reduce the number of unnecessary
25 fractionated interests in trust or restricted land;

1 “(B) facilitate efforts to provide probate
2 planning assistance and advice;

3 “(C) facilitate inter-tribal efforts to
4 produce tribal probate codes pursuant to section
5 206; and

6 “(D) provide essential elements of general
7 probate law that are not applicable on the date
8 of enactment of this subtitle to interests in
9 trust or restricted land.

10 **“SEC. 232. RULES RELATING TO INTESTATE INTERESTS**
11 **AND PROBATE.**

12 “(a) **IN GENERAL.**—Any interest in trust or re-
13 stricted land that is not disposed of by a valid will shall—

14 “(1) descend according to a tribal probate code
15 that is approved pursuant to section 206; or

16 “(2) in the case of an interest in trust or re-
17 stricted land to which such a code does not apply,
18 be considered an ‘intestate interest’ and descend
19 pursuant to subsection (b), this Act, and other appli-
20 cable Federal law.

21 “(b) **INTESTATE SUCCESSION.**—An interest in trust
22 or restricted land described in subsection (a)(2) (intestate
23 interest) shall descend as provided for in this subsection
24 in the following order:

25 “(1) **SURVIVING INDIAN SPOUSE.**—

1 “(A) SOLE HEIR.—A surviving Indian
2 spouse of the decedent shall receive all of the
3 decedent’s intestate interests if no Indian child
4 or grandchild of the decedent survives the decedent.
5

6 “(B) OTHER HEIRS.—A surviving Indian
7 spouse of the decedent shall receive a one-half
8 interest in each of the decedent’s intestate interests
9 if the decedent is also survived by Indian
10 children or grandchildren.

11 “(C) HEIRS OF THE FIRST OR SECOND DEGREE
12 OTHER THAN SURVIVING INDIAN SPOUSE.—The one-half interest in each of the
13 decedent’s intestate interests that do not descend to the surviving Indian spouse under sub-
14 paragraph (B) shall descend in the following
15 order:
16
17

18 “(i) To the Indian children of the decedent in equal shares, or to the Indian
19 grandchildren of the decedent, if any, in
20 equal shares by right of representation if 1
21 or more of the Indian children of the decedent
22 do not survive the decedent.

23 “(ii) If the decedent is not survived by
24 Indian children or grandchildren, to the
25

1 surviving Indian parent of the decedent, or
2 to both of the surviving Indian parents of
3 the decedent as joint tenants with the right
4 of survivorship.

5 “(iii) If the decedent is not survived
6 by any person who is eligible to inherit
7 under clause (i) or (ii), to the surviving In-
8 dian brothers and sisters of the decedent.

9 “(iv) If the decedent is not survived
10 by any person who is eligible to inherit
11 under clause (i), (ii), or (iii), the intestate
12 interests shall descend, or may be ac-
13 quired, as provided for in section
14 207(a)(3)(B), 207(a)(4), or 207(a)(5).

15 “(2) NO SURVIVING INDIAN SPOUSE.—If the
16 decedent is not survived by an Indian spouse, the in-
17 testate interests of the decedent shall descend to the
18 individuals described in subparagraphs (A) through
19 (D) who survive the decedent in the following order:

20 “(A) To the Indian children of the dece-
21 dent in equal shares, or to the Indian grand-
22 children of the decedent, if any, in equal shares
23 by right of representation if 1 or more of the
24 Indian children of the decedent do not survive
25 the decedent.

1 “(B) If the decedent is not survived by In-
 2 dian children or grandchildren, to the surviving
 3 Indian parent of the decedent, or to both of the
 4 surviving Indian parents of the decedent as
 5 joint tenants with the right of survivorship.

6 “(C) If the decedent is not survived by any
 7 person who is eligible to inherit under subpara-
 8 graph (A) or (B), to the surviving Indian broth-
 9 ers and sisters of the decedent.

10 “(D) If the decedent is not survived by any
 11 person who is eligible to inherit under subpara-
 12 graph (A), (B), or (C), the intestate interests
 13 shall descend, or may be acquired, as provided
 14 for in section 207(a)(3)(B), 207(a)(4), or
 15 207(a)(5).

16 “(3) SURVIVING NON-INDIAN SPOUSE.—

17 “(A) NO DESCENDANTS.—A surviving non-
 18 Indian spouse of the decedent shall receive a
 19 life estate in each of the intestate interests of
 20 the decedent pursuant to section 207(b)(2) if
 21 the decedent is not survived by any children or
 22 grandchildren.

23 “(B) DESCENDANTS.—A surviving non-In-
 24 dian spouse of the decedent shall receive a life
 25 estate in one-half of the intestate interests of

1 the decedent pursuant to section 207(b)(2) if
2 the decedent is survived by at least one of the
3 children or grandchildren of the decedent.

4 “(C) DESCENDANTS OTHER THAN SUR-
5 VIVING NON-INDIAN SPOUSE.—The one-half life
6 estate interest in each of the decedent’s intes-
7 tate interests that do not descend to the sur-
8 viving non-Indian spouse under subparagraph
9 (B) shall descend to the children of the dece-
10 dent in equal shares, or to the grandchildren of
11 the decedent, if any, in equal shares by right of
12 representation if 1 or more of the children of
13 the decedent do not survive the decedent.

14 “(4) NO SURVIVING SPOUSE OR INDIAN
15 HEIRS.—If the decedent is not survived by a spouse,
16 a life estate in the intestate interests of the decedent
17 shall descend in the following order:

18 “(A) To the children of the decedent in
19 equal shares, or to the grandchildren of the de-
20 cedent, if any, in equal shares by right of rep-
21 resentation if 1 or more of the children of the
22 decedent do not survive the decedent.

23 “(B) If the decedent has no surviving chil-
24 dren or grandchildren, to the surviving parents
25 of the decedent.

1 “(5) REMAINDER INTEREST FROM LIFE ES-
2 TATES.—The remainder interest from a life estate
3 established under paragraphs (3) and (4) shall de-
4 scend in the following order:

5 “(A) To the Indian children of the decee-
6 dent in equal shares, or to the Indian grand-
7 children of the decedent, if any, in equal shares
8 by right of representation if 1 or more of the
9 children of the decedent do not survive the de-
10 cedent.

11 “(B) If there are no surviving Indian chil-
12 dren or grandchildren of the decedent, to the
13 surviving Indian parent of the decedent or to
14 both of the surviving Indian parents of the de-
15 cedent as joint tenant with the right of survi-
16 vorship.

17 “(C) If there is no surviving Indian child,
18 grandchild, or parent, to the surviving Indian
19 brothers or sisters of the decedent in equal
20 shares.

21 “(D) If there is no surviving Indian de-
22 scendant or parent, brother or sister, the intes-
23 tate interests of the decedent shall descend, or
24 may be acquired, as provided for in section
25 207(a)(3)(B), 207(a)(4), or 207(a)(5).

1 “(c) SPECIAL RULE RELATING TO SURVIVAL.—For
 2 purposes of this section, an individual who fails to survive
 3 a decedent by at least 120 hours is deemed to have pre-
 4 deceased the decedent for purposes of intestate succession,
 5 and the heirs of the decedent shall be determined accord-
 6 ingly. If it is not established by clear and convincing evi-
 7 dence that an individual who would otherwise be an heir
 8 survived the decedent by at least 120 hours, such indi-
 9 vidual shall be deemed to have failed to survive for the
 10 required time-period for purposes of the preceding sen-
 11 tence.

12 “(d) PRETERMITTED SPOUSES AND CHILDREN.—

13 “(1) SPOUSES.—For purposes of this section, if
 14 the surviving spouse of a testator married the tes-
 15 tator after the testator executed his or her will, the
 16 surviving spouse shall receive the intestate share in
 17 trust or restricted land that such spouse would have
 18 otherwise received if the testator had died intestate.
 19 The preceding sentence shall not apply to an interest
 20 in trust or restricted lands where—

21 “(A) the will is executed before the date
 22 specified in section 234(a);

23 “(B) the testator’s spouse is a non-Indian
 24 and the testator has devised his or her interests

1 in trust or restricted land to an Indian or Indi-
2 ans;

3 “(C) it appears from the will or other evi-
4 dence that the will was made in contemplation
5 of the testator’s marriage to the surviving
6 spouse;

7 “(D) the will expresses the intention that
8 it is to be effective notwithstanding any subse-
9 quent marriage; or

10 “(E) the testator provided for the spouse
11 by a transfer of funds or property outside of
12 the will and an intent that the transfer be in
13 lieu of a testamentary provision is demonstrated
14 by the testator’s statements or is reasonably in-
15 ferred from the amount of the transfer or other
16 evidence.

17 “(2) CHILDREN.—For purposes of this section,
18 if a testator executed his or her will prior to the
19 birth of 1 or more children of the testator and the
20 omission is the product of inadvertence rather than
21 an intentional omission, such children shall share in
22 the decedent’s intestate interests in trust or re-
23 stricted lands as if the decedent had died intestate.
24 Any person recognized as an heir by virtue of adop-
25 tion under the Act of July 8, 1940 (54 Stat 746)

1 shall be treated as a decedent's child under this sec-
2 tion.

3 ~~“(e) DIVORCE.—~~

4 ~~“(1) SURVIVING SPOUSE.—~~

5 ~~“(A) IN GENERAL.—For purposes of this~~
6 ~~section, an individual who is divorced from the~~
7 ~~decedent, or whose marriage to the decedent~~
8 ~~has been annulled, shall not be considered to be~~
9 ~~a surviving spouse unless, by virtue of a subse-~~
10 ~~quent marriage, such individual is married to~~
11 ~~the decedent at the time of death. A decree of~~
12 ~~separation that does not terminate the status of~~
13 ~~husband and wife shall not be considered a di-~~
14 ~~vorce for purposes of this subsection.~~

15 ~~“(B) RULE OF CONSTRUCTION.—Nothing~~
16 ~~in subparagraph (A) shall be construed to pre-~~
17 ~~vent an entity responsible for adjudicating in-~~
18 ~~terests in trust or restricted land from giving~~
19 ~~force and effect to a property right settlement~~
20 ~~if one of the parties to the settlement dies be-~~
21 ~~fore the issuance of a final decree dissolving the~~
22 ~~marriage of the parties to the property settle-~~
23 ~~ment.~~

24 ~~“(2) EFFECT OF SUBSEQUENT DIVORCE ON A~~
25 ~~WILL OR DEVISE.—If after executing a will the tes-~~

1 tator is divorced or the marriage of the testator is
2 annulled, upon the effective date of the divorce or
3 annulment any disposition of interests in trust or re-
4 stricted land made by the will to the former spouse
5 shall be deemed to be revoked unless the will ex-
6 pressly provides otherwise. Property that is pre-
7 vented from passing to a former spouse based on the
8 preceding sentence shall pass as if the former spouse
9 failed to survive the decedent. Any provision of a will
10 that is revoked solely by operation of this paragraph
11 shall be revived by the testator's remarriage to the
12 former spouse.

13 “(f) NOTICE.—To the extent practicable, the Sec-
14 retary shall notify the owners of trust and restricted land
15 of the provisions of this title. Such notice may, at the dis-
16 cretion of the Secretary, be provided together with the no-
17 tice required under section 207(g).

18 **“SEC. 233. COLLECTION OF PAST-DUE AND OVER-DUE**
19 **CHILD SUPPORT**

20 “The Secretary shall establish procedures to provide
21 for the collection of past-due or over-due support obliga-
22 tions entered by a tribal court or any other court of com-
23 petent jurisdiction from the revenue derived from an inter-
24 ests in trust or restricted land.

1 **“SEC. 234. EFFECTIVE DATE.**

2 “(a) IN GENERAL.—The provisions of this title shall
3 not apply to the estate of an individual who dies prior to
4 the later of—

5 “(1) the date that is 1 year after the date of
6 enactment of this subtitle; or

7 “(2) the date specified in section 207(g)(5).”.

8 (b) OTHER AMENDMENTS.—The Indian Land Con-
9 solidation Act (25 U.S.C. 2201 et seq.) is amended—

10 (1) by inserting after section 202, the following:

11 **“Subtitle A—General Land**
12 **Consolidation”;**

13 (2) in section 206 (25 U.S.C. 2205)—

14 (A) in subsection (a)(3)—

15 (i) by striking “The Secretary” and
16 inserting the following:

17 “(A) IN GENERAL.—The Secretary”; and

18 (ii) by adding at the end the fol-
19 lowing:

20 “(B) TRIBAL PROBATE CODES.—A tribal
21 probate code shall not prevent the devise of an
22 interest in trust or restricted land to non-mem-
23 bers of the tribe unless the code—

24 “(i) provides for the renouncing of in-
25 terests; reservation of life estates; and pay-

1 ment of fair market value in the manner
2 prescribed under subsection (e)(2); and

3 “(ii) does not prohibit the devise of an
4 interest in an allotment to an Indian per-
5 son if such allotment was originally allot-
6 ted to the lineal ancestor of the devisee.”;

7 and

8 (B) in subsection (e)(2)—

9 (i) in subparagraph (A)—

10 (I) by striking “IN GENERAL.—

11 Paragraph” and inserting the fol-
12 lowing:

13 “(A) NONAPPLICABILITY TO CERTAIN IN-
14 TERESTS.—

15 “(i) IN GENERAL.—Paragraph”;

16 (II) by striking “if, while” and
17 inserting the following: “if—

18 “(I) while”;

19 (III) by striking the period and
20 inserting “; or”;

21 (IV) by adding at the end thereof
22 the following:

23 “(II) the interest is part of a
24 family farm that is devised to a mem-
25 ber of the decedent’s family if the dev-

1 isee agrees that the Indian tribe that
 2 exercises jurisdiction over the land
 3 will have the opportunity to acquire
 4 the interest for fair market value if
 5 the interest is offered for sale to an
 6 entity that is not a member of the
 7 family of the owner of the land.

8 “(ii) RULE OF CONSTRUCTION.—

9 Nothing in clause (i)(II) shall be construed
 10 to prevent or limit the ability of an owner
 11 of land to which such clause applies to
 12 mortgage such land or to limit the right of
 13 the entity holding such a mortgage to fore-
 14 close or otherwise enforce such a mortgage
 15 agreement pursuant to applicable law.”;
 16 and

17 (ii) in subparagraph (B), by striking

18 “207(a)(6)(B)” and inserting “207(a)(6)”;

19 (3) in section 207 (25 U.S.C. 2206)—

20 (A) in subsection (a)(6), by striking sub-

21 paragraph (A) and inserting the following:

22 “(A) DEVISE TO OTHERS.—

23 “(i) IN GENERAL.—Notwithstanding

24 paragraph (2), an owner of trust or re-

25 stricted land—

1 “(I) who does not have an Indian
2 spouse or an Indian lineal descendant
3 may devise his or her interests in such
4 land to his or her spouse, lineal de-
5 scendant, heirs of the first or second
6 degree, or collateral heirs of the first
7 or second degree;

8 “(II) who does not have a spouse
9 or an Indian lineal descendant may
10 devise his or her interests in such land
11 to his or her lineal descendant, heirs
12 of the first or second degree, or collat-
13 eral heirs of the first or second de-
14 gree; or

15 “(III) who does not have a
16 spouse or lineal descendant may de-
17 vise his or her interests in such land
18 to his or her heirs of the first or sec-
19 ond degree, or collateral heirs of the
20 first or second degree.

21 “(ii) **RULE OF CONSTRUCTION.**—Any
22 devise of an interest in trust or restricted
23 land under clause (i) to a non-Indian will
24 be construed to devise a life estate unless
25 the devise explicitly states that the testator

1 intends for the devisee to take the interest
2 in fee.

3 “(B) UNEXERCISED RIGHTS OF REDEMP-
4 TION.—

5 “(i) IN GENERAL.—This subpara-
6 graph (B) shall only apply to interests in
7 trust or restricted land that are held in
8 trust or restricted status as of the date of
9 enactment of the Indian Probate Reform
10 Act of 2001, and interests in any parcel of
11 land, at least a portion of which is in trust
12 or restricted status as of such date of en-
13 actment, that is subject to a tax sale, tax
14 foreclosure proceeding, or similar pro-
15 ceeding.

16 “(ii) EXERCISE OF RIGHT.—If the
17 owner of such an interest referred to in
18 clause (i) fails or refuses to exercise any
19 right of redemption that is available to
20 that owner under applicable law, the In-
21 dian tribe that exercises jurisdiction over
22 the trust or restricted land referred to in
23 such clause may exercise such right of re-
24 demption.

1 “(iii) PENALTIES AND ASSESS-
 2 MENTS.—To the extent permitted under
 3 the Constitution of the United States, an
 4 Indian tribe acquiring an interest under
 5 clause (i) may acquire such an interest
 6 without being required to pay—

7 “(I) penalties; or

8 “(II) past due assessments that
 9 exceed the fair market value of the in-
 10 terest.”; and

11 (B) in subsection (g)(5), by striking “this
 12 section” and inserting “subsections (a) and
 13 (b)”;

14 (4) in section 217 (25 U.S.C. 2216)—

15 (A) in subsection (c)(3), by striking
 16 “prospective applicants for the leasing, use, or
 17 consolidation of” and insert “any person that is
 18 leasing, using or consolidating, or is applying
 19 to, lease, use, or consolidate,”; and

20 (B) in subsection (f)—

21 (i) by striking “After the expiration of
 22 the limitation period provided for in sub-
 23 section (b)(2) and prior” and inserting
 24 “Prior”; and

1 (ii) by striking “sold, exchanged, or
2 otherwise conveyed under this section”.

3 (c) ISSUANCE OF PATENTS.—Section 5 of the Act of
4 February 8, 1887 (24 Stat. 348) is amended by striking
5 the second proviso and inserting the following: “*Provided,*
6 *That the rules of intestate succession under the Indian*
7 *Land Consolidation Act, or a tribal probate code approved*
8 *under such Act and regulations, shall apply thereto after*
9 *such patents have been executed and delivered.*”.

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Indian Probate Reform*
12 *Act of 2002”.*

13 **SEC. 2. FINDINGS.**

14 *Congress makes the following findings:*

15 (1) *The General Allotment Act of 1887*
16 *(commonly known as the “Dawes Act”), which au-*
17 *thorized the allotment of Indian reservations, did not*
18 *allow Indian allotment owners to provide for the tes-*
19 *tamentary disposition of the land that was allotted to*
20 *those owners.*

21 (2) *The Dawes Act provided that allotments*
22 *would descend according to State law of intestate suc-*
23 *cession based on the location of the allotment.*

24 (3) *The Federal Government’s reliance on the*
25 *State law of intestate succession with respect to the*

1 *descendency of allotments has resulted in numerous*
2 *problems affecting Indian tribes, their members, and*
3 *the Federal Government. Those problems include—*

4 *(A) the increasing fractionated ownership of*
5 *trust and restricted land as that land is inher-*
6 *ited by successive generations of owners as ten-*
7 *ants in common;*

8 *(B) the application of different rules of in-*
9 *testate succession to each of a decedent's interests*
10 *in trust and restricted land if that land is lo-*
11 *located within the boundaries of more than 1*
12 *State, which application makes probate planning*
13 *unnecessarily difficult and impedes efforts to*
14 *provide probate planning assistance or advice;*

15 *(C) the absence of a uniform general pro-*
16 *bate code for trust and restricted land which*
17 *makes it difficult for Indian tribes to work coop-*
18 *eratively to develop tribal probate codes; and*

19 *(D) the failure of Federal law to address or*
20 *provide for many of the essential elements of gen-*
21 *eral probate law, either directly or by reference,*
22 *which is unfair to the owners of trust and re-*
23 *stricted land and their heirs and devisees and*
24 *which makes probate planning more difficult.*

1 (4) *Based on the problems identified in para-*
 2 *graph (3), a uniform Federal probate code would*
 3 *likely—*

4 (A) *reduce the number of unnecessary*
 5 *fractionated interests in trust or restricted land;*

6 (B) *facilitate efforts to provide probate*
 7 *planning assistance and advice;*

8 (C) *facilitate inter-tribal efforts to produce*
 9 *tribal probate codes pursuant to section 206 of*
 10 *the Indian Land Consolidation Act (25 U.S.C.*
 11 *2205); and*

12 (D) *provide essential elements of general*
 13 *probate law that are not applicable on the date*
 14 *of enactment of this subtitle to interests in trust*
 15 *or restricted land.*

16 **SEC. 3. INDIAN PROBATE REFORM.**

17 (a) *TESTAMENTARY DISPOSITION.—Subsection (a) of*
 18 *section 207 of the Indian Land Consolidation Act (25*
 19 *U.S.C. 2206(a)) is amended to read as follows:*

20 “(a) *TESTAMENTARY DISPOSITION.—*

21 “(1) *GENERAL DEVISE OF AN INTEREST IN*
 22 *TRUST OR RESTRICTED LAND.—*

23 “(A) *IN GENERAL.—Subject to any applica-*
 24 *ble Federal law relating to the devise or descent*
 25 *of trust or restricted property, or a tribal pro-*

1 *bate code enacted pursuant to section 206, the*
 2 *owner of an interest in trust or restricted land*
 3 *may devise such an interest to the Indian tribe*
 4 *with jurisdiction over the land so devised, or to*
 5 *any Indian in trust or restricted status or as a*
 6 *passive trust interest (as provided for in section*
 7 *207A).*

8 “(B) *STATUS.*—*The devise of an interest in*
 9 *trust or restricted land to an Indian under sub-*
 10 *paragraph (A) shall not alter the status of such*
 11 *an interest as a trust or restricted interest unless*
 12 *the testator provides that the interest is to be*
 13 *held as a passive trust interest.*

14 “(2) *DEVISE OF TRUST OR RESTRICTED LAND IN*
 15 *PASSIVE TRUST OR FEE STATUS.*—

16 “(A) *IN GENERAL.*—*Any interest in trust or*
 17 *restricted land that is not devised pursuant to*
 18 *paragraph (1) may only be devised—*

19 “(i) *as a life estate to any non-Indian*
 20 *person (the remainder interest may only be*
 21 *devised pursuant to clause (ii), subpara-*
 22 *graph (C), or paragraph (1)(A));*

23 “(ii) *(I) to the testator’s lineal descend-*
 24 *ant or heir of the 1st or 2nd degree as a*

1 *passive trust interest (to be known as an*
2 *‘eligible passive trust devisee’); or*

3 “(II) *if the testator does not have an*
4 *heir of the 1st or 2nd degree or a lineal de-*
5 *scendant, to any lineal descendant of a tes-*
6 *tator’s grandparent as a passive trust inter-*
7 *est (to be known as an ‘eligible passive trust*
8 *devisee’); or*

9 “(iii) *in fee status as provided for in*
10 *subparagraph (C).*

11 “(B) *PRESUMED DEVISE OF PASSIVE TRUST*
12 *INTEREST.—Any devise to an eligible passive*
13 *trust devisee, including the devise of a remainder*
14 *interest from the devise of a life estate under sub-*
15 *paragraph (A)(ii), that does not indicate whether*
16 *the interest is devised as a passive trust interest*
17 *or a fee interest shall be construed to devise a*
18 *passive trust interest.*

19 “(C) *DEVISE OF A FEE INTEREST.—Subject*
20 *to subparagraph (D), any interest in trust or re-*
21 *stricted land that is not devised pursuant to*
22 *paragraph (1), or devised to an eligible passive*
23 *trust devisee pursuant to subparagraph (A), may*
24 *be devised to a non-Indian in fee status.*

1 “(D) *LIMITATION.*—Any interest in trust or
 2 restricted land that is subject to section 4 of the
 3 Act of June 18, 1934 (25 U.S.C. 464) may only
 4 be devised pursuant to such section 4, subpara-
 5 graph (A) of this paragraph, or paragraph (1)
 6 of this subsection.

7 “(3) *DEVISE OF A PASSIVE TRUST INTEREST.*—

8 “(A) *IN GENERAL.*—The holder of an inter-
 9 est in trust or restricted land that is held as a
 10 passive trust interest may devise the interest as
 11 a passive trust interest only to—

12 “(i) any Indian or the Indian tribe
 13 that exercises jurisdiction over the interest;

14 “(ii) the holder’s lineal descendants or
 15 heirs of the first or second degree;

16 “(iii) any living descendant of the de-
 17 cedent from whom the holder acquired the
 18 interest by devise or descent; and

19 “(iv) any person who owns a pre-exist-
 20 ing interest or a passive trust interest in
 21 the same parcel of land if the pre-existing
 22 interest is held in trust or restricted status
 23 or in passive trust status.

24 “(B) *INELIGIBLE DEVISEES AND INTESTATE*
 25 *SUCCESSION.*—A passive trust interest that is de-

1 *vised to a person who is not eligible under sub-*
 2 *paragraph (A) or that is not disposed of by a*
 3 *valid will shall pass pursuant to the applicable*
 4 *law of intestate succession as provided for in*
 5 *subsection (b).”.*

6 **(b) INTESTATE SUCCESSION.**—*Subsection (b) of sec-*
 7 *tion 207 of the Indian Land Consolidation Act (25 U.S.C.*
 8 *2206(b)) is amended to read as follows:*

9 **“(b) INTESTATE SUCCESSION.**—

10 **“(1) RULES OF DESCENT.**—

11 **“(A) IN GENERAL.**—*Subject to any applica-*
 12 *ble Federal law relating to the devise or descent*
 13 *of trust or restricted property, any interest in*
 14 *trust or restricted land that is not disposed of by*
 15 *a valid will shall—*

16 **“(i) descend according to a tribal pro-**
 17 **bate code that is approved pursuant to sec-**
 18 **tion 206; or**

19 **“(ii) in the case of an interest in trust**
 20 **or restricted land to which such a code does**
 21 **not apply, be considered an ‘intestate inter-**
 22 **est’ and descend pursuant to paragraph (2),**
 23 **this Act, and other applicable Federal law.**

24 **“(B) CLASSIFICATIONS.**—*For purposes of*
 25 *applying this subsection, intestate interests re-*

1 *ferred to in subparagraph (A)(ii) shall be classi-*
2 *fied as either—*

3 *“(i) a devise or inheritance interest*
4 *(an interest acquired by a decedent through*
5 *devise or inheritance); or*

6 *“(ii) an acquired interest (an interest*
7 *acquired by a decedent by any means other*
8 *than devise or inheritance and an interest*
9 *acquired by a decedent through devise or in-*
10 *heritance)—*

11 *“(I) if the decedent—*

12 *“(aa) acquired additional*
13 *undivided interests in the same*
14 *parcel as the interest, by a means*
15 *other than devise or inheritance;*
16 *or*

17 *“(bb) acquired land adjoin-*
18 *ing the parcel of land that in-*
19 *cludes the interest; or*

20 *“(II) if the parcel of land that in-*
21 *cludes the interest includes the dece-*
22 *dent’s spouse’s residence.*

23 *“(2) INTESATE SUCCESSION.—An interest in*
24 *trust or restricted land described in paragraph*

1 (1)(A)(ii) *(an intestate interest) shall descend as pro-*
2 *vided for in this paragraph:*

3 “(A) *SURVIVING INDIAN SPOUSE.—If a dece-*
4 *dent is survived by an Indian spouse and the de-*
5 *cedent’s estate includes—*

6 “(i) *one or more acquired interests, the*
7 *decedent’s spouse shall receive all such ac-*
8 *quired interests;*

9 “(ii) *one or more devise or inheritance*
10 *Interests, and—*

11 “(I) *the decedent is not survived*
12 *by an Indian heir of the first or second*
13 *degree, the decedent’s spouse shall re-*
14 *ceive all such devise or inheritance in-*
15 *terests; or*

16 “(II) *the decedent is survived by*
17 *an Indian heir of the first or second*
18 *degree, the decedent’s devise or inherit-*
19 *ance interest shall descend pursuant to*
20 *paragraph (3)(A).*

21 “(B) *SURVIVING NON-INDIAN SPOUSE.—If a*
22 *decedent is survived by a non-Indian spouse and*
23 *the decedent’s estate includes—*

24 “(i) *one or more acquired interests, the*
25 *decedent’s spouse shall receive a life estate*

1 *in such acquired interest, and if the dece-*
2 *dent is—*

3 “(I) *survived by an Indian heir of*
4 *the 1st or 2nd degree, the remainder*
5 *interests shall descend pursuant to*
6 *paragraph (3)(A); or*

7 “(II) *not survived by an Indian*
8 *heir of the 1st or 2nd degree, the re-*
9 *mainder interest shall descend pursu-*
10 *ant to paragraph (3)(C); or*

11 “(ii) *one or more devise or inheritance*
12 *interests, and the decedent is—*

13 “(I) *survived by an Indian heir of*
14 *the 1st or 2nd degree, such devise or*
15 *inheritance interests shall descend pur-*
16 *suant to paragraph (3)(A); or*

17 “(II) *not survived by an Indian*
18 *heir of the 1st or 2nd degree, such de-*
19 *visе or inheritance interest shall de-*
20 *scend pursuant to paragraph (3)(C).*

21 “(C) *NO SURVIVING SPOUSE.—If the dece-*
22 *dent is not survived by a spouse, and the dece-*
23 *dent’s estate includes one or more acquired inter-*
24 *ests or one or more devise or inheritance interests*
25 *and the decedent is—*

1 “(i) survived by an Indian heir of the
2 1st or 2nd degree, the acquired interests or
3 devise or inheritance interests shall descend
4 pursuant to paragraph (3)(A); or

5 “(ii) not survived by an Indian heir of
6 the 1st or 2nd degree, the acquired interests
7 or devise or inheritance interests shall de-
8 scend pursuant to paragraph (3)(C).

9 “(3) RULES APPLICABLE TO INTESTATE SUCCES-
10 SION.—

11 “(A) INDIAN HEIRS.—For purposes of this
12 subsection, Indian heirs of the 1st or 2nd degree
13 shall inherit in the following order:

14 “(i) The Indian children of the dece-
15 dent, in equal shares, or if one or more of
16 those Indian children do not survive the de-
17 cedent, such Indian children of the dece-
18 dent’s deceased child shall inherit by right
19 of representation;

20 “(ii) If the decedent has no Indian
21 children or grandchildren (that take by rep-
22 resentation under clause (i)), to the dece-
23 dent’s Indian brothers and sisters in equal
24 shares.

1 “(iii) *If the decedent has no Indian*
 2 *brothers or sisters, to the decedent’s Indian*
 3 *parent or parents.*

4 “(B) *RIGHT OF REPRESENTATION.—For*
 5 *purposes of this subsection, in any case involving*
 6 *the determination of a right of representation—*

7 “(i) *each interest in trust land shall be*
 8 *equally divided into a number of shares*
 9 *that equals the sum of—*

10 “(I) *the number of surviving heirs*
 11 *in the nearest degree of kinship; and*

12 “(II) *the number of deceased per-*
 13 *sons in that same degree, if any, who*
 14 *left issue who survive the decedent;*

15 “(ii) *each surviving heir described in*
 16 *clause (i)(I) shall receive 1 share; and*

17 “(iii)(I) *each deceased person described*
 18 *in clause (i)(II) shall receive 1 share; and*

19 “(II) *that share shall be divided equal-*
 20 *ly among the surviving issue of the deceased*
 21 *person.*

22 “(C) *NO INDIAN HEIRS.—*

23 “(i) *IN GENERAL.—For purposes of*
 24 *this subsection, if a decedent does not have*
 25 *an Indian heir of the 1st or 2nd degree, an*

1 *interest shall descend to an Indian collat-*
2 *eral heir who is a co-owner of an interest*
3 *owned by the decedent if any.*

4 “(i) *MULTIPLE COLLATERAL HEIRS.—*
5 *If—*

6 “(I) *more than one Indian collat-*
7 *eral heir owns an interest in an inter-*
8 *est referred to in clause (i), the interest*
9 *shall descend to the collateral heir that*
10 *owns the largest undivided interest in*
11 *the parcel; or*

12 “(II) *two or more collateral heirs*
13 *own equal shares in an interest re-*
14 *ferred to in clause (i), the interest*
15 *passing pursuant to this subsection*
16 *shall be divided equally between those*
17 *collateral heirs that own equal shares.*

18 “(iii) *NO OWNERSHIP.—If none of the*
19 *decedent’s collateral heirs own an interest*
20 *in the interest referred to in clause (i), the*
21 *interest shall descend to the Indian tribe*
22 *that exercises jurisdiction over the parcel of*
23 *trust or restricted lands involved, subject to*
24 *clause (iv).*

1 “(iv) *ACQUISITION OF INTEREST.*—
2 *Notwithstanding clause (iii), an Indian co-*
3 *owner of a parcel of trust or restricted land*
4 *may acquire an interest subject to such*
5 *clause by paying into the decedent’s estate,*
6 *before the close of the probate of the dece-*
7 *dent’s estate, the fair market value of the in-*
8 *terest in such land. If more than 1 Indian*
9 *co-owner (including the Indian tribe re-*
10 *ferred to in clause (iii)) offers to pay for*
11 *such an interest, the highest bidder shall ac-*
12 *quire the interest.*

13 “(v) *DEFINITION.*—*In this subpara-*
14 *graph, the term ‘collateral heir’ means the*
15 *decedent’s aunt, uncle, niece, nephew, and*
16 *first cousin.*

17 “(4) *SPECIAL RULE RELATING TO SURVIVAL.*—
18 *For purposes of this section, an individual who fails*
19 *to survive a decedent by at least 120 hours is deemed*
20 *to have predeceased the decedent for the purposes of*
21 *intestate succession, and the heirs of the decedent shall*
22 *be determined accordingly. If it is not established by*
23 *clear and convincing evidence that an individual who*
24 *would otherwise be an heir survived the decedent by*
25 *at least 120 hours, the individual shall be deemed to*

1 *have failed to survive for the required time-period for*
2 *the purposes of the preceding sentence.*

3 “(5) *PRETERMITTED SPOUSES AND CHILDREN.—*

4 “(A) *SPOUSES.—For the purposes of this*
5 *section, if the surviving spouse of a testator mar-*
6 *ried the testator after the testator executed his or*
7 *her will, the surviving spouse shall receive the*
8 *intestate share in trust or restricted land that*
9 *the spouse would have otherwise received if the*
10 *testator had died intestate. The preceding sen-*
11 *tence shall not apply to an interest in trust or*
12 *restricted land where—*

13 “(i) *the will is executed before the date*
14 *of enactment of this subsection;*

15 “(ii) *the testator’s spouse is a non-In-*
16 *dian and the testator has devised his or her*
17 *interests in trust or restricted land to an*
18 *Indian or Indians;*

19 “(iii) *it appears from the will or other*
20 *evidence that the will was made in con-*
21 *templation of the testator’s marriage to the*
22 *surviving spouse;*

23 “(iv) *the will expresses the intention*
24 *that it is to be effective notwithstanding*
25 *any subsequent marriage; or*

1 “(v) the testator provided for the
2 spouse by a transfer of funds or property
3 outside of the will and an intent that the
4 transfer be in lieu of a testamentary provi-
5 sion is demonstrated by the testator’s state-
6 ments or is reasonably inferred from the
7 amount of the transfer or other evidence.

8 “(B) CHILDREN.—For the purposes of this
9 section, if a testator executed his or her will
10 prior to the birth or adoption of 1 or more chil-
11 dren of the testator and the omission is the prod-
12 uct of inadvertence rather than an intentional
13 omission, those children shall share in the dece-
14 dent’s intestate interests in trust or restricted
15 land as if the decedent had died intestate. Any
16 person recognized as an heir by virtue of adop-
17 tion under the Act of July 8, 1940 (54 Stat 746),
18 shall be treated as a decedent’s child under this
19 section.

20 “(6) DIVORCE.—

21 “(A) SURVIVING SPOUSE.—

22 “(i) IN GENERAL.—For the purposes of
23 this section, an individual who is divorced
24 from the decedent, or whose marriage to the
25 decedent has been annulled, shall not be

1 *considered to be a surviving spouse unless,*
2 *by virtue of a subsequent marriage, the in-*
3 *dividual is married to the decedent at the*
4 *time of death. A decree of separation that*
5 *does not terminate the status of husband*
6 *and wife shall not be considered a divorce*
7 *for the purposes of this subsection.*

8 “(ii) *RULE OF CONSTRUCTION.*—*Noth-*
9 *ing in clause (i) shall be construed to pre-*
10 *vent an entity responsible for adjudicating*
11 *interests in trust or restricted land from*
12 *giving force and effect to a property right*
13 *settlement if one of the parties to the settle-*
14 *ment dies before the issuance of a final de-*
15 *creed dissolving the marriage of the parties*
16 *to the property settlement.*

17 “(B) *EFFECT OF SUBSEQUENT DIVORCE ON*
18 *A WILL OR DEVISE.*—*If after executing a will the*
19 *testator is divorced or the marriage of the tes-*
20 *tator is annulled, upon the effective date of the*
21 *divorce or annulment any disposition of interests*
22 *in trust or restricted land made by the will to*
23 *the former spouse shall be deemed to be revoked*
24 *unless the will expressly provides otherwise.*
25 *Property that is prevented from passing to a*

1 *former spouse based on the preceding sentence*
2 *shall pass as if the former spouse failed to sur-*
3 *vive the decedent. Any provision of a will that*
4 *is revoked solely by operation of this paragraph*
5 *shall be revived by the testator's remarriage to*
6 *the former spouse.*

7 “(7) NOTICE.—*To the extent practicable, the Sec-*
8 *retary shall notify the owners of trust and restricted*
9 *land of the provisions of this Act. The notice may, at*
10 *the discretion of the Secretary, be provided together*
11 *with the notice required under section 207(g).”.*

12 “(c) RULE OF CONSTRUCTION.—*Section 207 of the In-*
13 *dian Land Consolidation Act (25 U.S.C. 2206) is amended*
14 *by adding at the end the following:*

15 “(h) RULE OF CONSTRUCTION.—*For purposes of sub-*
16 *sections (a) and (b), any reference to ‘applicable Federal*
17 *law’ shall be construed to include Public Law 91–627 (84*
18 *Stat. 1874, amending section 7 of the Act of August 9,*
19 *1946), Public Law 92–377 (86 Stat. 530), and Public Law*
20 *92–443 (86 Stat. 744). Nothing in this section shall be con-*
21 *strued to amend or alter such Public Laws or any other*
22 *Federal law that provides for the devise and descent of any*
23 *trust or restricted lands located on a specific Indian res-*
24 *ervation.”.*

1 (d) *PASSIVE TRUST STATUS FOR TRUST OR RE-*
 2 *STRICTED LAND.*—*The Indian Land Consolidation Act is*
 3 *amended by inserting after section 207 (25 U.S.C. 2206)*
 4 *the following:*

5 **“SEC. 207A. PASSIVE TRUST STATUS FOR TRUST OR RE-**
 6 **STRICTED LAND.**

7 “(a) *PASSIVE TRUST.*—*The owner of an interest in*
 8 *trust or restricted land may submit an application to the*
 9 *Secretary requesting that such interest be held in passive*
 10 *trust interest status. Such application may authorize the*
 11 *Secretary to amend or alter any existing lease or agreement*
 12 *with respect to the interest that is the subject of the applica-*
 13 *tion.*

14 “(b) *APPROVAL.*—*Upon the approval of an application*
 15 *by the Secretary under subsection (a), an interest in trust*
 16 *or restricted land shall be held as a passive trust interest*
 17 *in accordance with this section.*

18 “(c) *REQUIREMENTS.*—*Except as provided in this sec-*
 19 *tion, an interest in trust or restricted land that is held as*
 20 *a passive trust interest under this section—*

21 “(1) *shall continue to be covered under any ap-*
 22 *plicable tax-exempt status and continue to be subject*
 23 *to any restrictions on alienation until such interest is*
 24 *patented in fee status;*

1 “(2) may, without the approval of the Secretary,
2 be—

3 “(A) leased;

4 “(B) mortgaged pursuant to the Act of
5 March 29, 1956 (25 U.S.C. 483a); or

6 “(C) sold or conveyed to an Indian, the In-
7 dian tribe that exercises jurisdiction over the in-
8 terest, or a co-owner of an interest in the same
9 parcel of land if the co-owner owns a pre-exist-
10 ing trust, restricted interest, or a passive trust
11 interest in the parcel; and

12 “(3) may be subject to an ordinance or resolu-
13 tion enacted under subsection (d).

14 “(d) *ORDINANCE OR RESOLUTION FOR REMOVAL OF*
15 *STATUS.—*

16 “(1) *IN GENERAL.—*The governing body of the
17 Indian tribe that exercises jurisdiction over an inter-
18 est in trust or restricted land that is held as a passive
19 trust interest in accordance with this section may
20 enact an ordinance or resolution to allow the owner
21 of such an interest to apply to the Secretary for the
22 removal of the trust or restricted status of such por-
23 tion of such lands that are subject to the tribe’s juris-
24 diction.

1 “(2) *REVIEW BY SECRETARY.*—*The Secretary*
2 *shall review and may approve an ordinance or resolu-*
3 *tion enacted by an Indian tribe pursuant to para-*
4 *graph (1) if the Secretary determines that the ordi-*
5 *nance or resolution is consistent with this Act and*
6 *will not increase fractionated ownership of Indian*
7 *land.*

8 “(e) *REVENUES OR ROYALTIES.*—

9 “(1) *IN GENERAL.*—*Except as provided in para-*
10 *graph (2), the Secretary shall not be responsible for*
11 *the collection of or accounting for any lease revenues*
12 *or royalties accruing to an interest held as a passive*
13 *trust interest by any person under this section.*

14 “(2) *EXCEPTION.*—*Paragraph (1) shall not*
15 *apply to an interest described in such paragraph if*
16 *the Secretary approves an application to have such*
17 *interest be taken into active trust status on behalf of*
18 *an Indian or an Indian tribe pursuant to regulations*
19 *enacted by the Secretary.*

20 “(3) *RULE OF CONSTRUCTION.*—*Nothing in this*
21 *subsection shall be construed to alter the authority or*
22 *responsibility of the Secretary, if any, with respect to*
23 *an interest in trust or restricted land held in active*
24 *trust status, including an undivided interest within*

1 *the same parcel of land as an undivided passive trust*
2 *interest.*

3 “(f) *JURISDICTION OVER PASSIVE TRUST INTEREST.*—
4 *An Indian tribe that exercises jurisdiction over an interest*
5 *in trust or restricted land that is devised or held as a pas-*
6 *sive trust interest under this section shall continue to exer-*
7 *cise jurisdiction over the land that is held as a passive trust*
8 *interest and any person holding, leasing, or otherwise using*
9 *such land shall be deemed to have consented to the jurisdic-*
10 *tion of such a tribe with respect to the use of such land,*
11 *including any impacts associated with any use of such*
12 *lands.*

13 “(g) *PROBATE OF PASSIVE TRUST INTERESTS.*—*An*
14 *interest in trust or restricted land that is held as a passive*
15 *trust interest under this section shall be subject to probate*
16 *by the Secretary pursuant to this Act and other laws appli-*
17 *cable to the probate of trust or restricted land. Any inter-*
18 *ested party may file an application to commence the pro-*
19 *bate of an interest in trust or restricted land held as a pas-*
20 *sive trust interest.*

21 “(h) *REGULATIONS.*—*The Secretary shall promulgate*
22 *regulations to implement this section.”.*

23 (e) *PARTITION.*—*Section 205 of the Indian Land Con-*
24 *solidation Act (25 U.S.C. 2204) is amended by adding at*
25 *the end the following:*

1 “(c) *PARTITION.*—

2 “(1) *IN GENERAL.*—*Notwithstanding any other*
3 *provision of law, in accordance with this subsection*
4 *and subject to paragraphs (2), (3), and (4)—*

5 “(A) *an Indian tribe may apply to the Sec-*
6 *retary for the partition of a parcel of land that*
7 *is—*

8 “(i) *located within the reservation of*
9 *the Indian tribe; or*

10 “(ii) *otherwise under the jurisdiction*
11 *of the Indian tribe; and*

12 “(B) *the Secretary may commence a process*
13 *for partitioning a parcel of land as provided for*
14 *in paragraphs (2)(B) and (6)(B), if—*

15 “(i) *an Indian tribe owns an undi-*
16 *vided interest in the parcel of land and such*
17 *tribe consents to the partition;*

18 “(ii)(I) *the tribe referred to in clause*
19 *(i) meets the ownership requirement of*
20 *clauses (i) or (ii) of paragraph (2)(B); or*

21 “(II) *the Secretary determines that it*
22 *is reasonable to believe that the partition*
23 *would be in accordance with paragraph*
24 *(2)(B)(iii); and*

1 “(iii) the tribe referred to in para-
2 graph (3), if any, consents to the partition.

3 For purposes of this subsection, the term ‘eligible In-
4 dian tribe’ means an Indian tribe described in sub-
5 paragraph (A) and (B)(i).

6 “(2) TRIBAL OWNERSHIP.—A parcel of land may
7 be partitioned under this subsection if, with respect to
8 the eligible Indian tribe involved—

9 “(A) the tribe owns an undivided interest in
10 the parcel of land; and

11 “(B)(i) the tribe owns 50 percent or more of
12 the undivided interest in the parcel;

13 “(ii) the tribe is the owner of the largest
14 quantity of undivided interest in the parcel; or

15 “(iii) the owners of undivided interests
16 equal to at least 50 percent of the undivided in-
17 terests in the parcel (including any undivided
18 interest owned by the tribe) consent or do not ob-
19 ject to the partition.

20 “(3) TRIBAL CONSENT.—A parcel of land that is
21 located within the reservation of an Indian tribe or
22 otherwise under the jurisdiction of an Indian tribe
23 shall be partitioned under this subsection only if the
24 Indian tribe does not object to the partition.

1 “(4) *APPLICABILITY.*—*This subsection shall not*
2 *apply to any parcel of land that is the bona fide resi-*
3 *dence of any person unless the person consents to the*
4 *partition in writing.*

5 “(5) *PARTITION IN KIND.*—

6 “(A) *IN GENERAL.*—*The Secretary shall*
7 *commence the partition process described in sub-*
8 *paragraph (B) if—*

9 “(i) *an eligible Indian tribe applies to*
10 *partition a parcel of land under this para-*
11 *graph; and*

12 “(ii)(I) *the Secretary determines that*
13 *the Indian tribe meets the applicable owner-*
14 *ship requirements of clause (i) or (ii) of*
15 *paragraph (2)(B); or*

16 “(II) *the Secretary determines that it*
17 *is reasonable to believe that the partition*
18 *would be in accordance with paragraph*
19 *(2)(B)(iii).*

20 “(B) *PARTITION PROCESS.*—*In carrying out*
21 *any partition, the Secretary shall—*

22 “(i) *provide, to each owner of any un-*
23 *divided interest in the parcel to be parti-*
24 *tioned, through publication or other appro-*

1 *priate means, notice of the proposed parti-*
2 *tion;*

3 *“(ii) make available to any interested*
4 *party a copy of any proposed partition*
5 *plan submitted by an Indian tribe or pro-*
6 *posed by the Secretary; and*

7 *“(iii) review—*

8 *“(I) any proposed partition plan*
9 *submitted by any owner of an undi-*
10 *vided interest in the parcel; and*

11 *“(II) any comments or objections*
12 *concerning a partition, or any pro-*
13 *posed plan of partition, submitted by*
14 *any owner or any other interested*
15 *party.*

16 *“(C) DETERMINATION NOT TO PARTITION.—*

17 *If the Secretary determines that a parcel of land*
18 *cannot be partitioned in a manner that is fair*
19 *and equitable to the owners of the parcel, the*
20 *Secretary shall inform each owner of the parcel*
21 *of—*

22 *“(i) the determination of the Secretary;*

23 *and*

24 *“(ii) the right of the owner to appeal*
25 *the determination.*

1 “(D) *PARTITION WITH CONSENT OF QUALI-*
2 *FIED INDIAN TRIBE.—If the Secretary determines*
3 *that a parcel of land may be partitioned in a*
4 *manner that is fair and equitable to the owners*
5 *of the parcel, and the Indian tribe meets the ap-*
6 *plicable ownership requirements under clause (i)*
7 *or (ii) of paragraph (2)(B), the Secretary*
8 *shall—*

9 “(i) *approve a plan of partition;*

10 “(ii) *provide notice to the owners of the*
11 *parcel of the determination of the Secretary;*

12 “(iii) *make a copy of the plan of parti-*
13 *tion available to each owner of the parcel;*
14 *and*

15 “(iv) *inform each owner of the right to*
16 *appeal the determination of the Secretary to*
17 *partition the parcel in accordance with the*
18 *plan.*

19 “(E) *PARTITION WITH CONSENT; IMPLIED*
20 *CONSENT.—If the Secretary determines that a*
21 *parcel may be partitioned in a manner that is*
22 *fair and equitable to the owners of the parcel,*
23 *but the Indian tribe involved does not meet the*
24 *applicable ownership requirements under clause*

1 *(i) or (ii) of paragraph (2)(B), the Secretary*
2 *shall—*

3 *“(i)(I) make a plan of partition avail-*
4 *able to the owners of the parcel; and*

5 *“(II) inform the owners that the parcel*
6 *will be partitioned in accordance with the*
7 *plan if the owners of 50 percent or more of*
8 *undivided ownership interest in the parcel*
9 *either—*

10 *“(aa) consent to the partition; or*

11 *“(bb) do not object to the partition*
12 *by such deadline as may be established*
13 *by the Secretary;*

14 *“(ii) if the owners of 50 percent or*
15 *more of undivided ownership interest in the*
16 *parcel consent to the partition or do not ob-*
17 *ject by a deadline established by the Sec-*
18 *retary under clause (i)(II)(bb), inform the*
19 *owners of the parcel that—*

20 *“(I) the plan for partition is*
21 *final; and*

22 *“(II) the owners have the right to*
23 *appeal the determination of the Sec-*
24 *retary to partition the parcel; and*

1 “(iii) if the owners of 50 percent or
2 more of the undivided ownership interest in
3 the parcel object to the partition, inform the
4 Indian tribe of the objection.

5 “(F) *SUCCESSIVE PARTITION PLANS.*—In
6 carrying out subparagraph (E) in accordance
7 with paragraph (2)(B)(iii), the Secretary may,
8 in accordance with subparagraph (E)—

9 “(i) approve 1 or more successive plans
10 of partition; and

11 “(ii) make those plans available to the
12 owners of the parcel.

13 “(G) *PLAN OF PARTITION*—A plan of parti-
14 tion approved by the Secretary in accordance
15 with subparagraph (D) or (E)—

16 “(i) may determine that 1 or more of
17 the undivided interests in a parcel are not
18 susceptible to a partition in kind;

19 “(ii) may provide for the sale or ex-
20 change of those undivided interests to—

21 “(I) 1 or more of the owners of
22 undivided interests in the parcel; or

23 “(II) the Secretary in accordance
24 with section 213; and

1 “(iii) shall provide that the sale of any
2 undivided interest referred to in clause (ii)
3 shall be for not less than the fair market
4 value of the interest.

5 “(6) PARTITION BY SALE.—

6 “(A) IN GENERAL.—The Secretary shall
7 commence the partition process described in sub-
8 paragraph (B) if—

9 “(i) an eligible Indian tribe applies to
10 partition a parcel of land under this sub-
11 section; and

12 “(ii)(I) the Secretary determines that
13 the Indian tribe meets the applicable owner-
14 ship requirements of clause (i) or (ii) of
15 paragraph (2)(B); or

16 “(II) the Secretary determines that it
17 is reasonable to believe that the partition
18 would be in accordance with paragraph
19 (2)(B)(iii).

20 “(B) PARTITION PROCESS.—In carrying out
21 any partition of a parcel, the Secretary—

22 “(i) shall conduct a preliminary ap-
23 praisal of the parcel;

1 “(ii) shall provide, to the owners of the
2 parcel, through publication or other appro-
3 priate means—

4 “(I) notice of the application of
5 the Indian tribe to partition the par-
6 cel; and

7 “(II) access to the preliminary
8 appraisal conducted in accordance
9 with clause (i);

10 “(iii) shall inform each owner of the
11 parcel of the right to submit to the Sec-
12 retary comments relating to the prelimi-
13 nary appraisal;

14 “(iv) may, based on comments received
15 under clause (iii), modify the preliminary
16 appraisal or provide for the conduct of a
17 new appraisal; and

18 “(v) shall—

19 “(I) issue a final appraisal for the
20 parcel;

21 “(II) provide to the owners of the
22 parcel and the appropriate Indian
23 tribes access to the final appraisal; and

24 “(III) inform the Indian tribes of
25 the right to appeal the final appraisal.

1 “(C) *PURCHASE BY QUALIFIED INDIAN*
2 *TRIBE.—If an eligible Indian tribe agrees to pay*
3 *fair market value for a partitioned parcel, as de-*
4 *termined by the final appraisal of the parcel*
5 *issued under subparagraph (B)(v)(I) (including*
6 *any appraisal issued by the Secretary after an*
7 *appeal by the Indian tribe under subparagraph*
8 *(B)(v)(III)), and the Indian tribe meets the ap-*
9 *licable ownership requirements of clause (i) or*
10 *(ii) of paragraph (2)(B), the Secretary shall—*

11 “(i) *provide to each owner of the parcel*
12 *notice of the decision of the Indian tribe;*
13 *and*

14 “(ii) *inform the owners of the right to*
15 *appeal the decision (including the right to*
16 *appeal any final appraisal of the parcel re-*
17 *ferred to in subparagraph (B)(v)(III)).*

18 “(D) *PARTITION WITH CONSENT; IMPLIED*
19 *CONSENT.—*

20 “(i) *IN GENERAL.—If an eligible In-*
21 *Indian tribe agrees to pay fair market value*
22 *for a partitioned parcel, as determined by*
23 *the final appraisal of the parcel issued*
24 *under subparagraph (B)(v)(I) (including*
25 *any appraisal issued by the Secretary after*

1 *an appeal by the Indian tribe under sub-*
2 *paragraph (B)(v)(III)), but does not meet*
3 *the applicable ownership requirements of*
4 *clause (i) or (ii) of paragraph (2)(B), the*
5 *Secretary shall—*

6 *“(I) provide notice to the owners*
7 *of the undivided interest in the parcel;*
8 *and*

9 *“(II) inform the owners that the*
10 *parcel will be partitioned by sale un-*
11 *less the partition is opposed by the*
12 *owners of 50 percent or more of the un-*
13 *divided ownership interest in the par-*
14 *cel.*

15 *“(ii) FAILURE TO OBJECT TO PARTI-*
16 *TION.—If the owners of 50 percent or more*
17 *of undivided ownership interest in or to a*
18 *parcel consent to the partition or the parcel,*
19 *or do not object to the partition by such*
20 *deadline as may be established by the Sec-*
21 *retary, the Secretary shall inform the own-*
22 *ers of the parcel of the right to appeal the*
23 *determination of the Secretary (including*
24 *the results of the final appraisal issued*
25 *under subparagraph (B)(v)(I)).*

1 “(iii) *OBJECTION TO PARTITION.—If*
2 *the owners of 50 percent or more of the un-*
3 *divided ownership interest in a parcel object*
4 *to the partition of the parcel—*

5 “(I) *the Secretary shall notify the*
6 *Indian tribe of the objection; and*

7 “(II) *the Indian tribe and the*
8 *Secretary may agree to increase the*
9 *amount offered to purchase the undi-*
10 *vided ownership interests in the parcel.*

11 “(7) *ENFORCEMENT.—*

12 “(A) *IN GENERAL.—If, with respect to a*
13 *parcel, a partition in kind is approved under*
14 *subparagraph (D) or (E) of paragraph (5), or a*
15 *partition by sale is approved under paragraph*
16 *(6)(C), and the owner of an interest in or to the*
17 *parcel fails or refuses to convey the interest to*
18 *the Indian tribe, the Indian tribe or the United*
19 *States may—*

20 “(i) *bring a civil action in the United*
21 *States district court for the district in*
22 *which the parcel is located; and*

23 “(ii) *request the court to issue an ap-*
24 *propriate order for the partition in kind, or*

1 *partition by sale to the Indian tribe, of the*
 2 *parcel.*

3 “(B) *FEDERAL ROLE.*—*With respect to any*
 4 *civil action brought under subparagraph (A)—*

5 “(i) *the United States—*

6 “(I) *shall receive notice of the*
 7 *civil action; and*

8 “(II) *may be a party to the civil*
 9 *action; and*

10 “(ii) *no civil action brought under this*
 11 *section shall be dismissed, and no relief re-*
 12 *quested shall be denied, on the ground that*
 13 *the civil action is against the United States*
 14 *or that the United States is an indispen-*
 15 *sable party.”.*

16 **SEC. 4. OTHER AMENDMENTS.**

17 (a) *OTHER AMENDMENTS.*—*The Indian Land Consoli-*
 18 *dation Act (25 U.S.C. 2201 et seq.) is amended—*

19 (1) *in section 205(a) (25 U.S.C. 2204(a)), by*
 20 *striking “over 50 per centum of the undivided inter-*
 21 *ests” and inserting “undivided interests equal to at*
 22 *least 50 percent of the undivided interest”;*

23 (2) *in section 206 (25 U.S.C. 2205)—*

24 (A) *in subsection (a), by striking paragraph*

25 (3) *and inserting the following:*

1 “(3) *TRIBAL PROBATE CODES.*—*The Secretary*
2 *shall not approve a tribal probate code, or an amend-*
3 *ment to such a code, that prevents the devise of an in-*
4 *terest in trust or restricted land to—*

5 “(A) *an Indian lineal descendant of the*
6 *original allottee; or*

7 “(B) *to an Indian who is not a member of*
8 *the tribe that exercises jurisdiction over such an*
9 *interest;*

10 *unless the code provides for the renouncing of interests*
11 *(to eligible devisees pursuant to such a code), the op-*
12 *portunity for a devisee who is the testator’s spouse or*
13 *lineal descendant to reserve a life estate, and payment*
14 *of fair market value in the manner prescribed under*
15 *subsection (c)(2).”;*

16 (B) *in subsection (c)(1)—*

17 (i) *by striking “section 207(a)(6)(A)”*
18 *and inserting “sections 207(a)(2)(A)(ii),*
19 *207(a)(2)(C), and 207(a)(3)”;* and

20 (ii) *by striking the last sentence and*
21 *inserting “The Secretary shall transfer such*
22 *payments to any person or persons who*
23 *would have received an interest in land if*
24 *the interest had not been acquired by the*
25 *tribe pursuant to this paragraph.”;* and

1 (C) in subsection (c)(2)—

2 (i) in subparagraph (A)—

3 (I) by striking “(A) IN GEN-
4 ERAL.—Paragraph” and inserting the
5 following:

6 “(A) NONAPPLICABILITY TO CERTAIN INTER-
7 ESTS.—

8 “(i) IN GENERAL.—Paragraph”;

9 (II) by striking “if, while” and
10 inserting the following: “if—

11 “(I) while”;

12 (III) by striking the period and
13 inserting “; or”; and

14 (IV) by adding at the end the fol-
15 lowing:

16 “(II) the interest is part of a fam-
17 ily farm that is devised to a member of
18 the decedent’s family if the devisee
19 agrees that the Indian tribe that exer-
20 cises jurisdiction over the land will
21 have the opportunity to acquire the in-
22 terest for fair market value if the inter-
23 est is offered for sale to an entity that
24 is not a member of the family of the
25 owner of the land.

1 “(i) *RECORDING OF INTEREST.*—Upon
2 *the request of an Indian tribe described in*
3 *clause (i)(II), a restriction relating to the*
4 *acquisition by such tribe of an interest in*
5 *the family farm involved shall be recorded*
6 *as part of the deed relating to the interest*
7 *involved.*

8 “(iii) *RULE OF CONSTRUCTION.*—*Noth-*
9 *ing in clause (i)(II) shall be construed to*
10 *prevent or limit the ability of an owner of*
11 *land to which that clause applies to mort-*
12 *gage the land or to limit the right of the en-*
13 *tity holding such a mortgage to foreclose or*
14 *otherwise enforce such a mortgage agree-*
15 *ment pursuant to applicable law.*

16 “(iv) *DEFINITION.*—*In this paragraph,*
17 *the term ‘member of the decedent’s family’*
18 *means the decedent’s lineal descendant, a*
19 *lineal descendant of the grandparent of the*
20 *decedent, the spouse of any such descendant,*
21 *or the decedent’s spouse.’; and*

22 *(ii) in subparagraph (B), by striking*
23 *“subparagraph (A)” and all that follows*
24 *through “207(a)(6)(B)” and inserting*
25 *“paragraph (1)”;* and

1 (3) *in section 207 (25 U.S.C. 2206)—*

2 (A) *in subsection (c)—*

3 (i) *by redesignating paragraph (3) as*
4 *paragraph (4); and*

5 (ii) *by inserting after paragraph (2)*
6 *the following:*

7 “(3) *ALIENATION OF JOINT TENANCY INTER-*
8 *ESTS.—*

9 “(A) *IN GENERAL.—With respect to any in-*
10 *terest held as a joint tenancy pursuant to this*
11 *subsection—*

12 “(i) *nothing in this subsection shall be*
13 *construed to alter the ability of the owner of*
14 *such an interest to convey a life estate in*
15 *the owner’s undivided joint tenancy inter-*
16 *est; and*

17 “(ii) *only the last remaining owner of*
18 *such an interest may devise or convey more*
19 *than a life estate in such an interest.*

20 “(B) *APPLICATION OF PROVISION.—This*
21 *paragraph shall not apply to any conveyance,*
22 *sale, or transfer that is part of an agreement re-*
23 *ferred to in subsection (e) or to a co-owner of a*
24 *joint tenancy interest.”; and*

1 (B) in subsection (g)(5), by striking “this
2 section” and inserting “subsections (a) and (b)”;
3 (4) in section 213 (25 U.S.C. 2212)—

4 (A) in subsection (a)(2), by striking “(A) IN
5 GENERAL.—” and all that follows through
6 “subparagraph (A), the Secretary” and inserting
7 “The Secretary”;

8 (B) in subsection (b)(4), by inserting before
9 the period the following: “through the use of poli-
10 cies and procedures designed to accommodate the
11 voluntary sale of interests under the pilot pro-
12 gram (established by this Act) though the elimi-
13 nation of duplicate conveyance documents, ad-
14 ministrative proceedings, and transactions, not-
15 withstanding the existence of any otherwise ap-
16 plicable policy, procedure, or regulation”; and

17 (C) in subsection (c)—

18 (i) in paragraph (1)(A), by striking
19 “landowner upon payment” and all that
20 follows through the period and inserting the
21 following: “landowner—

22 “(i) upon payment by the Indian land-
23 owner of the amount paid for the interest by
24 the Secretary; or

1 “(ii) if the Indian referred to in this
2 subparagraph provides assurance that the
3 purchase price will be paid by pledging rev-
4 enue from any source, including trust re-
5 sources, and the Secretary determines that
6 the purchase price will be paid in a timely
7 and efficient manner.”;

8 (ii) in paragraph (1)(B), by inserting
9 “unless the interest is subject to a fore-
10 closure of a mortgage pursuant to the Act of
11 March 29, 1956 (25 U.S.C. 483a)” before
12 the period; and

13 (iii) in paragraph (3), by striking “10
14 percent of more of the undivided interests”
15 and inserting “an undivided interest”;

16 (5) in section 214 (25 U.S.C. 2213), by striking
17 subsection (b) and inserting the following:

18 “(b) *APPLICATION OF REVENUE FROM ACQUIRED IN-*
19 *TERESTS TO LAND CONSOLIDATION PILOT PROGRAM.—*

20 “(1) *IN GENERAL.—The Secretary shall have a*
21 *lien on any revenue accruing to an interest described*
22 *under subsection (a) until the Secretary provides for*
23 *the removal of the lien under paragraph (3) or (4).*

1 “(2) *REQUIREMENTS.*—Until Secretary removes
2 the lien from an interest of land as provided for in
3 paragraph (1)—

4 “(A) any lease, resource sale contract, right-
5 of-way, or other document evidencing a trans-
6 action affecting the interest shall contain a
7 clause providing that all revenue derived from
8 the interest shall be paid to the Secretary;

9 “(B) any revenue derived from any interest
10 acquired by the Secretary pursuant to section
11 213 shall be paid into the fund created under
12 section 216; and

13 “(C) the Secretary may approve a trans-
14 action covered under this section on behalf of a
15 tribe notwithstanding any other provision of
16 law, including section 16 of the Act of June 18,
17 1934 (commonly referred to as the Indian Reor-
18 ganization Act, (25 U.S.C. 476)).

19 “(3) *FINDINGS BY SECRETARY.*—The Secretary
20 may remove a lien referred to in (1) if the Secretary
21 makes a finding that—

22 “(A) the costs of administering the interest
23 will equal or exceed the projected revenues for the
24 parcel of land involved;

1 “(B) in the discretion of the Secretary, it
2 will take an unreasonable period of time for the
3 parcel of land to generate revenue that equals the
4 purchase price paid for the interest; or

5 “(C) a subsequent decrease in the value of
6 land or commodities associated with the parcel of
7 land make it likely that the interest will be un-
8 able to generate revenue that equals the purchase
9 price paid for the interest in a reasonable time.

10 “(4) REMOVAL OF LIEN.—Pursuant to the con-
11 sultations referred to in section 213(b)(3), the Sec-
12 retary shall periodically remove the lien referred to in
13 paragraph (1) from interests in land acquired by the
14 Secretary.”;

15 (6) in section 216 (25 U.S.C. 2215)—

16 (A) in subsection (a), strike paragraph (2)
17 and insert the following:

18 “(2) collect all revenues received from the lease,
19 permit, or sale of resources from interests acquired
20 under section 213 or paid by Indian landowners
21 under section 213.”; and

22 (B) in subsection (b)—

23 (i) in paragraph (1)—

24 (I) in the matter preceding sub-
25 paragraph (A), by striking “Subject to

1 paragraph (2), all” and inserting
2 “All”;

3 (II) in subparagraph (A), by
4 striking “and” at the end;

5 (III) in subparagraph (B), by
6 striking the period and inserting “;
7 and”; and

8 (IV) by adding at the end the fol-
9 lowing:

10 “(C) be used to acquire undivided interests
11 on the reservation where the income was de-
12 rived.”; and

13 (ii) by striking paragraph (2) and in-
14 serting the following:

15 “(2) USE OF FUNDS.—The Secretary may utilize
16 the revenue deposited in the Acquisition Fund under
17 paragraph (1) to acquire some or all of the undivided
18 interests in any parcels of land pursuant to section
19 205.”;

20 (7) in section 217 (25 U.S.C. 2216)—

21 (A) in subsection (e)(3), by striking
22 “prospective applicants for the leasing, use, or
23 consolidation of” and insert “any person that is
24 leasing, using or consolidating, or is applying to,
25 lease, use, or consolidate,”; and

1 (B) by striking subsection (f) and inserting
2 the following:

3 “(f) *PURCHASE OF LAND BY TRIBE.*—

4 “(1) *IN GENERAL.*—Before the Secretary ap-
5 proves an application to terminate the trust status or
6 remove the restrictions on alienation from a parcel of
7 trust or restricted land, the Indian tribe that exercises
8 jurisdiction over such a parcel shall have the oppor-
9 tunity to match any offer contained in such applica-
10 tion, or where there is no purchase price offered, to
11 acquire the interest in such land by paying the fair
12 market value of such interest.

13 “(2) *EXCEPTION FOR FAMILY FARMS.*—Para-
14 graph (1) shall not apply to a parcel of trust or re-
15 stricted land that is part of a family farm that is
16 conveyed to a member of the landowner’s family (as
17 defined in section 206(c)(2)(A)(iv)) if the tribe that
18 exercises jurisdiction over the land is afforded the op-
19 portunity to purchase the interest if the interest is of-
20 fered for sale to an entity that is not a member of the
21 family of the owner of the land. Section 206(c)(2)(A)
22 shall apply with respect to the recording and mort-
23 gaging of the trust or restricted land referred to in the
24 preceding sentence.”; and

1 (8) *in section 219(b)(1)(A) (25 U.S.C.*
2 *2219(b)(1)(A)), by striking “100” and inserting “90”.*

3 *(b) DEFINITION.—*

4 (1) *IN GENERAL.—Section 202(2) of the Indian*
5 *Land Consolidation Act (25 U.S.C. 2201(2)) is*
6 *amended—*

7 (A) *by striking “means any” and inserting*
8 *the following: “means—*

9 *“(A) any”;*

10 (B) *by striking “or any person who has*
11 *been found to meet” and inserting the following:*

12 *“or*

13 *“(B) any person who meets”;* and

14 (C) *by striking “if the Secretary” and all*
15 *that follows through the semicolon and inserting*

16 *“, except that the Secretary may promulgate reg-*
17 *ulations to exclude any definition if the Sec-*

18 *retary determines that the definition is not con-*
19 *sistent with the purposes of this Act, or*

20 *“(C) with respect to the ownership, devise,*
21 *or descent of trust or restricted land in the State*

22 *of California, any person who meets the defini-*
23 *tion of Indians of California as contained in sec-*

24 *tion 1 of the Act of May 18, 1928 (25 U.S.C.*
25 *651), until otherwise provided by Congress pur-*

1 *suant to section 809(b) of Public Law 94-437 (25*
2 *U.S.C. 1679(b));”.*

3 (2) *EFFECTIVE DATE.*—*Any exclusion referred to*
4 *in the amendment made by paragraph (1)(C) shall*
5 *apply only to those decedents who die after the Sec-*
6 *retary of the Interior promulgates the regulation pro-*
7 *viding for such exclusion.*

8 (c) *MORTGAGES AND DEEDS OF TRUST.*—*The Act of*
9 *March 29, 1956 (25 U.S.C. 483a) is amended in the first*
10 *sentence of subsection (a) by inserting “(including land*
11 *owned by any person in passive trust status pursuant to*
12 *section 207A of the Indian Land Consolidation Act)” after*
13 *“land” the first place that such appears.*

14 (d) *ISSUANCE OF PATENTS.*—*Section 5 of the Act of*
15 *February 8, 1887 (25 U.S.C. 348) is amended by striking*
16 *the second proviso and inserting the following: “Provided,*
17 *That the rules of intestate succession under the Indian Land*
18 *Consolidation Act (25 U.S.C. 2201 et seq.) (including a*
19 *tribal probate code approved under that Act or regulations*
20 *promulgated under that Act) shall apply thereto after those*
21 *patents have been executed and delivered:”.*

22 (e) *TRANSFERS OF RESTRICTED INDIAN LAND.*—*Sec-*
23 *tion 4 of the Act of June 18, 1934 (25 U.S.C. 464), is*
24 *amended in the first proviso by striking “, in accordance*
25 *with” and all that follows through the colon and inserting*

1 “in accordance with the Indian Land Consolidation Act (25
2 U.S.C. 2201 et seq.) (including a tribal probate code ap-
3 proved under that Act or regulations promulgated under
4 that Act):”.

5 **SEC. 5. EFFECTIVE DATE.**

6 This amendment made by this Act shall not apply to
7 the estate of an individual who dies prior to the later of—

8 (1) the date that is 1 year after the date of enact-
9 ment of this Act; or

10 (2) the date specified in section 207(g)(5) of the
11 Indian Land Consolidation Act (25 U.S.C.
12 2206(g)(5)).

Calendar No. 766

107TH CONGRESS
2D SESSION

S. 1340

A BILL

To amend the Indian Land Consolidation Act to provide for probate reform with respect to trust or restricted lands.

NOVEMBER 19, 2002

Reported with an amendment