

107TH CONGRESS
1ST 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

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”.

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

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

“Subtitle B—Indian Probate Reform

“SEC. 231. FINDINGS.

“Congress makes the following findings:

“(1) The General Allotment Act of 1887 (commonly known as the “Dawes Act”), which authorized the allotment of Indian reservations, did not allow Indian allotment owners to provide for the testamentary disposition of the land that was allotted to such owners.

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

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

“(A) the increasing fractionated ownership of trust and restricted land as these lands are inherited by successive generations of owners as tenants in common;

“(B) the application of different rules of intestate succession to each of a decedent’s interests in trust and restricted land if such land

1 is located within the boundaries of different
 2 States which makes probate planning unneces-
 3 sarily difficult and impedes efforts to provide
 4 probate planning assistance or advice;

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

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

16 “(4) Based on the problems identified in para-
 17 graph (3), a uniform Federal probate code would
 18 likely—

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

21 “(B) facilitate efforts to provide probate
 22 planning assistance and advice;

23 “(C) facilitate inter-tribal efforts to
 24 produce tribal probate codes pursuant to section
 25 206; and

1 “(D) provide essential elements of general
 2 probate law that are not applicable on the date
 3 of enactment of this subtitle to interests in
 4 trust or restricted land.

5 **“SEC. 232. RULES RELATING TO INTESTATE INTERESTS**
 6 **AND PROBATE.**

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

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

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

16 “(b) INTESTATE SUCCESSION.—An interest in trust
 17 or restricted land described in subsection (a)(2) (intestate
 18 interest) shall descend as provided for in this subsection
 19 in the following order:

20 “(1) SURVIVING INDIAN SPOUSE.—

21 “(A) SOLE HEIR.—A surviving Indian
 22 spouse of the decedent shall receive all of the
 23 decedent’s intestate interests if no Indian child
 24 or grandchild of the decedent survives the dece-
 25 dent.

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

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

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

“(ii) If the decedent is not survived by Indian children or grandchildren, to the surviving Indian parent of the decedent, or to both of the surviving Indian parents of the decedent as joint tenants with the right of survivorship.

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

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

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

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

22 “(B) If the decedent is not survived by In-
 23 dian children or grandchildren, to the surviving
 24 Indian parent of the decedent, or to both of the

1 surviving Indian parents of the decedent as
 2 joint tenants with the right of survivorship.

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

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

13 “(3) SURVIVING NON-INDIAN SPOUSE.—

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

20 “(B) DESCENDANTS.—A surviving non-In-
 21 dian spouse of the decedent shall receive a life
 22 estate in one-half of the intestate interests of
 23 the decedent pursuant to section 207(b)(2) if
 24 the decedent is survived by at least one of the
 25 children or grandchildren of the decedent.

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

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

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

20 “(B) If the decedent has no surviving chil-
 21 dren or grandchildren, to the surviving parents
 22 of the decedent.

23 “(5) REMAINDER INTEREST FROM LIFE ES-
 24 TATES.—The remainder interest from a life estate

1 established under paragraphs (3) and (4) shall de-
 2 scend in the following order:

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

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

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

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

24 “(e) SPECIAL RULE RELATING TO SURVIVAL.—For
 25 purposes of this section, an individual who fails to survive

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

10 “(d) PRETERMITTED SPOUSES AND CHILDREN.—

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

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

21 “(B) the testator’s spouse is a non-Indian
 22 and the testator has devised his or her interests
 23 in trust or restricted land to an Indian or Indi-
 24 ans;

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

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

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

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

1 “(e) DIVORCE.—

2 “(1) SURVIVING SPOUSE.—

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

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

22 “(2) EFFECT OF SUBSEQUENT DIVORCE ON A
 23 WILL OR DEVISE.—If after executing a will the tes-
 24 tator is divorced or the marriage of the testator is
 25 annulled, upon the effective date of the divorce or

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

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

16 **“SEC. 233. COLLECTION OF PAST-DUE AND OVER-DUE**
 17 **CHILD SUPPORT**

18 “The Secretary shall establish procedures to provide
 19 for the collection of past-due or over-due support obliga-
 20 tions entered by a tribal court or any other court of com-
 21 petent jurisdiction from the revenue derived from an inter-
 22 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-

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

“(ii) does not prohibit the devise of an interest in an allotment to an Indian person if such allotment was originally allotted to the lineal ancestor of the devisee.”; and

(B) in subsection (c)(2)—

(i) in subparagraph (A)—

(I) by striking “IN GENERAL.—

Paragraph” and inserting the following:

“(A) NONAPPLICABILITY TO CERTAIN INTERESTS.—

“(i) IN GENERAL.—Paragraph”;

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

“(I) while”;

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

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

“(II) the interest is part of a family farm that is devised to a member 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 descendent 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 (e)(3), by striking “pro-
 16 spective applicants for the leasing, use, or con-
 17 solidation 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:”.

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