115TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
115–703

# TO REPEAL SECTION 2141 OF THE REVISED STATUTES TO REMOVE THE PROHIBITION ON CERTAIN ALCOHOL MANUFACTURING ON INDIAN LANDS

MAY 24, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

# R E P O R T

[To accompany H.R. 5317]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5317) to repeal section 2141 of the Revised Statutes to remove the prohibition on certain alcohol manufacturing on Indian lands, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

## PURPOSE OF THE BILL

The purpose of H.R. 5317 is to repeal section 2141 of the Revised Statutes to remove the prohibition on certain alcohol manufacturing on Indian lands.

## BACKGROUND AND NEED FOR LEGISLATION

H.R. 5317 repeals an 1834 federal law prohibiting the establishment and operation of alcohol distilleries in Indian Country.[1] The 1834 law was one of the Indian Trade and Intercourse Acts enacted in the 18th and 19th centuries. The purpose of these laws was to regulate non-Indian interaction with individual Indians and Indian tribes on Indian lands. While the operation of the Trade and Intercourse Acts have been repealed or superseded by subsequent laws, several of them—including the one prohibiting distilleries on Indian lands—remain in effect today.

The Indian Trade and Intercourse Acts[2] reserved to the United States the exclusive right to acquire Indian lands and to regulate and restrict trade with tribes. The early-19th century acts were in-

[1] 25 U.S.C. § 251 (R.S. 2141 derived from act of June 30, 1834, ch. 161, § 21, 4 Stat. 732).
[2] 25 U.S.C. Ch. 5, 6.

79–006

tended to implement and enforce the terms of Indian treaties against "obstreperous whites, [and] gradually came to embody the basic features of federal Indian policy." [3]

A Trade and Intercourse Act passed in 1834 (entitled An Act to regulate trade and intercourse with Indian tribes and to preserve peace on the frontier) [4] imposed restrictions on the sale, exchange, or barter of spirituous liquors to Indians in Indian country. Section 21 of that Act (codified at 25 U.S.C. 251) provides that if any person sets up or continues a distillery for the manufacturing of ardent spirits in Indian country, the penalty shall be $1,000 and the superintendent of Indian affairs shall destroy and break up the distillery.[5]

Most of the 1834 law remained in effect until 1953 when Congress passed An Act to eliminate certain discriminatory legislation against Indians in the United States.[6] Under the 1953 law, the production and distribution of liquor is permitted in Indian Country subject to the laws of the State in which such acts or transactions occur, and subject also to tribal ordinances approved by the Secretary of the Interior.

Nonetheless, because the 1834 law imposing restrictions on distilleries in Indian Country remains in effect, there is a question whether a tribe may lawfully construct and operate a distillery on its reservation even though it may be permitted to build and run a brewery or winery.

The 1834 law prevents any tribe from hosting a distillery project on its lands. While the law may have advanced a valid public policy goal in the mid-19th century, it is not compatible with the modern policy of promoting tribal self-determination and economic diversification on Indian lands where existing laws provide reasonable regulation of liquor transactions.

The bill is especially supported by the Confederated Tribes of the Chehalis Reservation, which plans to construct and operate a distillery on its lands. According to the Tribe, the project—part of a larger brewery, distillery, and educational project—will be wholly tribally-owned and operated, with net profits going to the Tribe.

## Committee Action

H.R. 5317 was introduced on March 15, 2018, by Congresswoman Jaime Herrera Beutler (R–WA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian, Insular and Alaska Native Affairs. On April 26, 2018, the Subcommittee held a hearing on the bill. On May 8, 2018, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

## Committee Oversight Findings and Recommendations

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on

[3] Francis Paul Prucha, *The Great Father* (Abridged Edition), (Lincoln and London, University of Nebraska Press, 1986), p. 31.
[4] 25 U.S.C. § 241 et seq.
[5] 25 U.S.C. § 251.
[6] 18 U.S.C. § 1161.

Natural Resources' oversight findings and recommendations are reflected in the body of this report.

## COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, May 22, 2018.*

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5317, a bill to repeal section 2141 of the Revised Statutes to remove the prohibition on certain alcohol manufacturing on Indian lands.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

MARK P. HADLEY
(For Keith Hall, Director).

*H.R. 5317—A bill to repeal section 2141 of the Revised Statutes to remove the prohibition on certain alcohol manufacturing on Indian lands*

H.R. 5317 would repeal a law enacted in 1834 that prohibits the establishment of a distillery on Indian lands. Using information from the Bureau of Indian Affairs, CBO expects there would be minimal administrative costs associated with implementing the bill.

Enacting H.R. 5317 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 5317 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5317 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Robert Reese. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to repeal section 2141 of the Revised Statutes to remove the prohibition on certain alcohol manufacturing on Indian lands.

## Earmark Statement

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the rules of the House of Representatives.

## Compliance With Public Law 104–4

This bill contains no unfunded mandates.

## Compliance With H. Res. 5

Directed rule making. This bill does not contain any directed rule makings.

Duplication of existing programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

## Preemption of State, Local or Tribal Law

This bill is not intended to preempt any State, local or tribal law.

## Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

### SECTION 2141 OF THE REVISED STATUTES OF THE UNITED STATES

⟦SEC. 2141. Every person who shall, within the Indian country, set up or continue any distillery for manufacturing ardent spirits, shall be liable to a penalty of one thousand dollars; and the superintendent of Indian affairs, Indian agent, or sub-agent, within the limits of whose agency any distillery of ardent spirits is set up or continued, shall forthwith destroy and break up the same.⟧

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