Calendar No. 650

115TH CONGRESS } SENATE { REPORT
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AN ACT TO REPEAL SECTION 2141 OF THE REVISED STATUTES TO REMOVE THE PROHIBITION ON CERTAIN ALCOHOL MANUFACTURING ON INDIAN LANDS

NOVEMBER 14, 2018.—Ordered to be printed

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

REPORT

[To accompany H.R. 5317]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which 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, reports favorably thereon without amendment and recommends the bill do pass.

PURPOSE

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 were to regulate non-Indian interaction with individual Indians and Indian tribes on tribal lands. While the operation of the *Indian Trade and Intercourse Acts* have been repealed or superseded by subsequent laws, several of them—including 25 U.S.C. § 251—remain in effect today.

[1] 25 U.S.C. § 251.

89–010

The *Indian Trade and Intercourse Act,* passed in 1834, requires the federal government to impose restrictions on the sale, exchange, or barter of spirituous liquors to Indians in Indian country.[2] The Act provides that if any person constructs, 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 the distillery.[3]

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.*[4] Under the 1953 law, the production and distribution of liquor is permitted in Indian Country, subject to the laws of the applicable State and Tribal ordinances.

Because the 1834 law remains in effect, it is uncertain whether the Federal Government will take enforcement action in Indian Country. This uncertainty has stymied investment in Tribal businesses. Preventing a Tribe from lawfully constructing and operating a distillery on its reservation does not comport with modern-day policies of promoting self-determination and economic development in Indian Country.

The bill is supported by the Confederated Tribes of the Chehalis Reservation (Tribe) which plans to construct and operate a distillery on Tribal land. 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 Tribal governmental operations.

SUMMARY

The bill, H.R. 5317, repeals Section 2141 of 25 U.S.C. 251.

LEGISLATIVE HISTORY

The bill, H.R. 5317, was introduced by Representative Jamie Herrera Beutler on March 15, 2018. The House Natural Resources Committee held a hearing on H.R. 5317 on April 26, 2018. Then-Acting Deputy Bureau of Indian Affairs Director Darryl LaCounte from the Department of the Interior, and Chairman Harry Pickernell Sr. of the Confederated Tribes of the Chehalis Reservation provided testimony in support of the bill.

H.R. 5317 was reported favorably by the House Committee on Natural Resources on May 24, 2018. Prior to reaching the House floor, Section 2 was incorporated into the text to clarify that the repeal has no effect on State or Federal taxation, and does not enlarge, diminish, or otherwise affect a State's ability to regulate the importation and sale of alcoholic beverages, including State authority over the manufacture, distribution, transportation, or sale of intoxicating liquors.

On September 12, 2018, H.R. 5317, passed the House of Representatives favorably, with an amendment, and the bill was referred to the Senate Committee on Indian Affairs. On October 3,

[2] *See An Act to Regulate Trade and Intercourse with Indian Tribes and to Preserve Peace on the Frontier,* ch. 161, § 21, 4 Stat. 732 (1834).
[3] *Id.*
[4] *See An Act to Eliminate Certain Discriminatory Legislation against Indians in the United States,* Pub. L. No. 83–277, 67 Stat. 586 (1953).

2018, The Committee on Indian Affairs reported H.R. 5317 favorably without amendment.

Senator Cantwell, along with Senators Murray and Moran, introduced an identical bill, S. 3060, on June 13, 2018. On July 18, 2018, the Committee held a legislative hearing on the bill. No further action was taken on S. 3060.

SECTION-BY-SECTION ANALYSIS (AS AMENDED)

Section 1. Repeal of prohibition on certain alcohol manufacturing on Indian lands

Section 1 provides for a full repeal of the prohibition on certain alcohol manufacturing on Indian lands. As such, Section 1 repeals Section 2141 of the Revised Statutes (i.e. 25 U.S.C. 251).

Section 2. No effect on taxation or state authority to regulate alcohol within State borders

Section 2 (a) makes clear that the bill does not have any impact on State and Federal taxation authority.

Section 2 (b) makes clear that the bill does not impact the State's authority to regulate alcohol sales within the State's borders.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, October 12, 2018, was prepared for H.R. 5317:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 2018.

Hon. JOHN HOEVEN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5317, an act 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 act.

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.

On May 22, 2018, CBO transmitted an estimate of H.R. 5317, a bill to repeal section 2141 of the Revised Statutes to remove the prohibition on certain alcohol manufacturing on Indian lands, as ordered reported by the House Committee on Natural Resources on May 8, 2018. The two versions of H.R. 5317 are similar and CBO's estimates of their budgetary effects are the same.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 5317 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding H.R. 5317.

CHANGES IN EXISTING LAW

In accordance with Committee Rules, subsection 12 of rule XXVI of the Standing Rules of the Senate is waived.

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