

105TH CONGRESS  
2D SESSION

# S. 1691

To provide for Indian legal reform, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 1998

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

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## A BILL

To provide for Indian legal reform, and for other purposes.

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; FINDINGS; PURPOSE.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “American Indian Equal Justice Act”.

6       (b) FINDINGS.—Congress finds that—

7               (1) a universal principle of simple justice and  
8       accountable government requires that all persons be  
9       afforded legal remedies for violations of their legal  
10      rights;

11             (2) the fifth amendment of the Constitution  
12      builds upon that principle by guaranteeing that

1 “ . . . no person shall be deprived of life, liberty, or  
2 property without due process of law”;

3 (3) sovereign immunity, a legal doctrine that  
4 has its origins in feudal England when it was policy  
5 that the “King could do no wrong”, affronts that  
6 principle and is incompatible with the rule of law in  
7 democratic society;

8 (4) for more than a century, the Government of  
9 the United States and the States have dramatically  
10 scaled back the doctrine of sovereign immunity with-  
11 out impairing their dignity, sovereignty, or ability to  
12 conduct valid government policies;

13 (5) the only remaining governments in the  
14 United States that maintain and assert the full  
15 scope of immunity from lawsuits are Indian tribal  
16 governments;

17 (6) according to the 1990 decennial census con-  
18 ducted by the Bureau of the Census, nearly half of  
19 the individuals residing on Indian reservations are  
20 non-Indian;

21 (7) for the non-Indian individuals referred to in  
22 paragraph (6) and the thousands of people of the  
23 United States, Indian and non-Indian, who interact  
24 with tribal governments everyday, the rights to due

1 process and legal remedy are constantly at risk be-  
2 cause of tribal immunity;

3 (8) by providing a complete shield from legal  
4 claims, the doctrine of sovereign immunity frustrates  
5 justice and provokes social tensions and turmoil in-  
6 imical to social peace;

7 (9) the Supreme Court has affirmed that Con-  
8 gress has clear and undoubted constitutional author-  
9 ity to define, limit, or waive the immunity of Indian  
10 tribes; and

11 (10) it is necessary to address the issue re-  
12 ferred to in paragraph (9) in order to—

13 (A) secure the rights provided under the  
14 Constitution for all persons; and

15 (B) uphold the principle that no govern-  
16 ment should be above the law.

17 (c) PURPOSE.—The purpose of this Act is to assist  
18 in ensuring due process and legal rights throughout the  
19 United States and to strengthen the rule of law by making  
20 Indian tribal governments subject to judicial review with  
21 respect to certain civil matters.

22 **SEC. 2. DEFINITIONS.**

23 In this Act:

24 (1) INDIAN TRIBE.—The term “Indian tribe”  
25 means any Indian tribe or band with a governing

1 body duly recognized by the Secretary of the Inte-  
 2 rior.

3 (2) TRIBAL IMMUNITY.—The term “tribal im-  
 4 munity” means the immunity of an Indian tribe  
 5 from jurisdiction of the courts, judicial review of an  
 6 action of that Indian tribe, and other remedies.

7 **SEC. 3. COLLECTION OF STATE TAXES.**

8 Section 1362 of title 28, United States Code, is  
 9 amended—

10 (1) by inserting “(a)” before “The district  
 11 courts”;

12 (2) by inserting “(referred to in this section as  
 13 an ‘Indian tribe’)” after “Interior”; and

14 (3) by adding at the end the following:

15 “(b)(1) An Indian tribe, tribal corporation, or mem-  
 16 ber of an Indian tribe, shall collect, and remit to a State,  
 17 any excise, use, or sales tax imposed by the State on non-  
 18 members of the Indian tribe as a consequence of the pur-  
 19 chase of goods or services by the nonmember from the In-  
 20 dian tribe, tribal corporation, or member.

21 “(2) A State may bring an action in a district court  
 22 of the United States to enforce the requirements under  
 23 paragraph (1).

24 “(3) To the extent necessary to enforce this sub-  
 25 section with respect to an Indian tribe, tribal corporation,

1 or member of an Indian tribe, the tribal immunity of that  
 2 Indian tribe, tribal corporation, or member is waived.”.

3 **SEC. 4. INDIAN TRIBES AS DEFENDANTS.**

4 (a) PROVISIONS TO PARALLEL THE PROVISIONS  
 5 THAT ARE POPULARLY KNOWN AS THE TUCKER ACT.—  
 6 Section 1362 of title 28, United States Code, as amended  
 7 by section 3, is further amended by adding at the end the  
 8 following:

9 “(c)(1) The district courts of the United States shall  
 10 have original jurisdiction in any civil action or claim  
 11 against an Indian tribe, with respect to which the matter  
 12 in controversy arises under the Constitution, laws, or trea-  
 13 ties of the United States.

14 “(2) The district courts shall have jurisdiction of any  
 15 civil action or claim against an Indian tribe for liquidated  
 16 or unliquidated damages for cases not sounding in tort  
 17 that involve any contract made by the governing body of  
 18 the Indian tribe or on behalf of an Indian tribe.

19 “(d) Subject to the provisions of chapter 171A, the  
 20 district courts shall have jurisdiction of civil actions in  
 21 claims against an Indian tribe for money damages, accru-  
 22 ing on or after the date of enactment of the American  
 23 Indian Equal Justice Act for injury or loss of property,  
 24 personal injury, or death caused by the negligent or  
 25 wrongful act or omission of an Indian tribe under cir-

1 cumstances in which the Indian tribe, if a private individ-  
 2 ual or corporation would be liable to the claimant in ac-  
 3 cordance with the law of the State where the act or omis-  
 4 sion occurred.

5 “(e) To the extent necessary to enforce this section,  
 6 the tribal immunity (as that term is defined in section 2  
 7 of the American Indian Equal Justice Act) of the Indian  
 8 tribe (as that term is defined in such section 2) involved  
 9 is waived.”.

#### 10 **SEC. 5. TORT CLAIMS PROCEDURE.**

11 (a) IN GENERAL.—Part 6 of title 28, United States  
 12 Code, is amended by inserting after chapter 171 the fol-  
 13 lowing:

### 14 **“CHAPTER 171A—INDIAN TORT CLAIMS** 15 **PROCEDURE**

“Sec.

“2691. Definitions.

“2692. Liability of Indian tribes.

“2693. Compromise.

“2694. Exceptions; waiver.

#### 16 **“§ 2691. Definitions**

17 “In this chapter:

18 “(1)(A) Subject to subparagraph (B), the term  
 19 ‘employee of an Indian tribe’ includes—

20 “(i) an officer or employee of an Indian  
 21 tribe; and

22 “(ii) any person acting on behalf of an In-  
 23 dian tribe in an official capacity, temporarily or

1 permanently, whether with or without com-  
2 pensation (other than an employee of the Fed-  
3 eral Government or the government of a State  
4 or political subdivision thereof who is acting  
5 within the scope of the employment of that indi-  
6 vidual).

7 “(B) The term includes an individual who is  
8 employed by an Indian tribe to carry out a self-de-  
9 termination contract (as that term is defined in sec-  
10 tion 4(j) of the Indian Self-Determination and Edu-  
11 cation Assistance Act (25 U.S.C. 450b(j))).

12 “(2) The term ‘Indian tribe’ means any Indian  
13 tribe or band with a governing body duly recognized  
14 by the Secretary of the Interior.

15 **“§ 2692. Liability of Indian tribes**

16 “(a) An Indian tribe shall be liable, relating to tort  
17 claims, in the same manner and to the same extent, as  
18 a private individual or corporation under like cir-  
19 cumstances, but shall not be liable for interest before judg-  
20 ment or for punitive damages.

21 “(b) In any case described in subsection (a) in which  
22 a death was caused and the law of the State where the  
23 act or omission complained of occurred provides for puni-  
24 tive damages, the Indian tribe shall, in lieu of being liable  
25 for punitive damages, be liable for actual or compensatory

1 damages resulting from that death to each person on be-  
 2 half of whom action was brought.

3 **“§ 2693. Compromise**

4 “The governing body of an Indian tribe or a designee  
 5 of that governing body may arbitrate, compromise, or set-  
 6 tle any claim cognizable under section 1362(d).

7 **“§ 2694. Exceptions; waiver**

8 “(a) The provisions of this chapter and section  
 9 1362(d) shall not apply to any case relating to a con-  
 10 troversy relating to membership in an Indian tribe.

11 “(b) With respect to an Indian tribe, to the extent  
 12 necessary to carry out this chapter, the tribal immunity  
 13 (as that term is defined in section 2 of the American In-  
 14 dian Equal Justice Act) of that Indian tribe is waived.”.

15 (b) CLERICAL AMENDMENT.—The table of chapters  
 16 for title 28, United States Code, is amended by inserting  
 17 after the item relating to chapter 171 the following:

**“171A. Indian Tort Claims Procedure ..... 2691”.**

18 **SEC. 6. INDIAN TRIBES AS DEFENDANTS IN STATE COURTS.**

19 (a) CONSENT TO SUIT IN STATE COURT.—Consent  
 20 is hereby given to institute a civil cause of action against  
 21 an Indian tribe in a court of general jurisdiction of the  
 22 State, on a claim arising within the State, including a  
 23 claim arising on an Indian reservation or Indian country,  
 24 in any case in which the cause of action—



1           (1) arises under Federal law or the law of a  
2       State; and

3           (2) relates to—

4               (A) tort claims; or

5               (B) claims for cases not sounding in tort  
6       that involve any contract made by the governing  
7       body of an Indian tribe or on behalf of an In-  
8       dian tribe.

9       (b) TORT CLAIMS.—In any action brought in a State  
10   court for a tort claim against an Indian tribe, that Indian  
11   tribe shall be liable to the same extent as a private individ-  
12   ual or corporation under like circumstances, but shall not  
13   be liable for interest prior to judgment or for punitive  
14   damages.

15       (c) FEDERAL CONSENT.—Notwithstanding the provi-  
16   sions of the Act of August 15, 1953 (67 Stat. 588 et seq.,  
17   chapter 505), section 1360 of title 28, United States Code,  
18   and sections 401 through 404 of the Civil Rights Act of  
19   1968 (25 U.S.C. 1321 through 1324) and section 406 of  
20   such Act (25 U.S.C. 1326) that require the consent of  
21   an Indian tribe for a State to assume jurisdiction over  
22   matters of civil law, this section constitutes full and com-  
23   plete consent by the United States for a State court to  
24   exercise jurisdiction over any claim referred to in sub-  
25   section (a).

1 (d) REMOVAL.—An action brought under this sec-  
 2 tion—

3 (1) shall not be removable under section 1441  
 4 of title 28, United States Code; and

5 (2) shall be considered to meet the require-  
 6 ments for an exception under section 1441(a) of title  
 7 28, United States Code.

8 **SEC. 7. INDIAN CIVIL RIGHTS.**

9 Title II of the Civil Rights Act of 1968 (commonly  
 10 known as the “Indian Civil Rights Act”) (25 U.S.C. 1301  
 11 et seq.) is amended by adding at the end the following:

12 **“SEC. 204. ENFORCEMENT.**

13 “The district courts of the United States shall have  
 14 jurisdiction in any civil rights action alleging a failure to  
 15 comply with rights secured by the requirements under this  
 16 title. With respect to an Indian tribe, to the extent nec-  
 17 essary to enforce this title, the tribal immunity of that  
 18 Indian tribe (as that term is defined in section 2 of the  
 19 American Indian Equal Justice Act) is waived.”.

20 **SEC. 8. APPLICABILITY.**

21 This Act and the amendments made under this Act  
 22 shall apply to cases commenced against an Indian tribe  
 23 on or after the date of enactment of this Act.

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