

105TH CONGRESS  
2D SESSION

# S. 1797

To reduce tobacco use by Native Americans and to make the proposed tobacco settlement applicable to tobacco-related activities on Indian lands.

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IN THE SENATE OF THE UNITED STATES

MARCH 19, 1998

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

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## A BILL

To reduce tobacco use by Native Americans and to make the proposed tobacco settlement applicable to tobacco-related activities on Indian 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 “Reduction in Tobacco  
5       Use and Regulation of Tobacco Products in Indian Coun-  
6       try Act of 1998”.

7       **SEC. 2. FINDINGS AND PURPOSES.**

8       (a) FINDINGS.—Congress finds that—

1           (1) Native Americans have used tobacco prod-  
2           ucts for recreational, ceremonial, and traditional  
3           purposes for centuries;

4           (2) the sale, distribution, marketing, advertis-  
5           ing, and use of tobacco products are activities sub-  
6           stantially affecting commerce among the States and  
7           the Indian tribes and, as such, have a substantial ef-  
8           fect on the economy of the United States;

9           (3) the sale, distribution, marketing, advertis-  
10          ing, and use of tobacco products are activities sub-  
11          stantially affecting commerce by virtue of the health  
12          care-related and other costs that Federal, State, and  
13          tribal governmental authorities have incurred be-  
14          cause of the usage of tobacco products;

15          (4) the sale, distribution, marketing, advertis-  
16          ing, and use of tobacco products on Indian lands are  
17          activities which materially and substantially affect  
18          the health and welfare of members of Indian tribes  
19          and tribal organizations;

20          (5) the use of tobacco products is a serious and  
21          growing public health problem, with impacts on the  
22          health and well-being of Native Americans;

23          (6) the use of tobacco products in Native com-  
24          munities is particularly serious with staggering rates  
25          of smoking in Native American communities;

1           (7) enhancing existing legal mechanisms for the  
2           protection of public health are inadequate to deal ef-  
3           fectively with the use of tobacco products; and

4           (8) enhancing prevention, research, and treat-  
5           ment resources with respect to tobacco will allow In-  
6           dian tribes to address more effectively the problems  
7           associated with the use of tobacco products.

8           (b) PURPOSES.—It is the purpose of this Act to—

9           (1) provide for the implementation of any na-  
10          tional tobacco legislation with respect to the regula-  
11          tion of tobacco products and other tobacco-related  
12          activities on Indian lands;

13          (2) recognize the historic Native American tra-  
14          ditional and ceremonial use of tobacco products, and  
15          to preserve and protect the cultural, religious, and  
16          ceremonial uses of tobacco by members of Indian  
17          tribes;

18          (3) recognize and respect Indian tribal sov-  
19          ereignty and tribal authority to make and enforce  
20          laws regarding the regulation of tobacco distributors  
21          and tobacco products on Indian lands;

22          (4) ensure that the necessary funding is made  
23          available to tribal governments for licensing and en-  
24          forcement of tobacco distributors and tobacco prod-  
25          ucts on Indian lands;

1           (5) ensure that the necessary funding is made  
2           available to tribal governments to treat tobacco-re-  
3           lated illnesses and alleviate the epidemic of tobacco  
4           abuse by Native Americans;

5           (6) reduce the marketing of tobacco products  
6           to, and reduce the rate of smoking by, young Native  
7           Americans; and

8           (7) decrease tobacco use by Native Americans  
9           by encouraging public education and smoking ces-  
10          sation programs.

11 **SEC. 3. DEFINITIONS.**

12       In this Act:

13           (1)   COMMERCE.—The    term    “commerce”  
14       means—

15                (A) commerce between any State, Indian  
16                tribe, or tribal organization, the District of Co-  
17                lumbia, the Commonwealth of Puerto Rico, the  
18                Virgin Islands, American Samoa, the Mariana  
19                Islands, or any territory or possession of the  
20                United States;

21                (B) commerce between points in any State,  
22                Indian tribe, or tribal organization, the District  
23                of Columbia, the Commonwealth of Puerto  
24                Rico, the Virgin Islands, America Samoa, the

1 Mariana Islands, or any territory or possession  
2 of the United States; and

3 (C) commerce wholly within the District of  
4 Columbia, the Commonwealth of Puerto Rico,  
5 the Virgin Islands, American Samoa, the Mari-  
6 ana Islands, or any territory or possession of  
7 the United States.

8 (2) CONSENT DECREE.—The term “consent de-  
9 cree” means a consent decree executed by 1 or more  
10 participating manufacturers and a State or an In-  
11 dian tribe or tribal organization pursuant to the pro-  
12 visions of any Act enacted in order to give effect to  
13 the national tobacco settlement agreement of June  
14 20, 1997.

15 (3) COURT.—The term “court” means any judi-  
16 cial or agency court, forum, or tribunal within the  
17 United States, including any Federal, State, or trib-  
18 al court.

19 (4) DISTRIBUTOR.—The term “distributor”  
20 means any person who furthers the distribution of  
21 tobacco or tobacco products, whether domestic or  
22 imported, at any point from the original place of  
23 manufacture to the person who sells or distributes  
24 the product to individuals for second consumption.  
25 Such term shall not include common carriers.

1           (5) INDIAN LANDS.—The term “Indian lands”  
2       has the meaning given the term “Indian country” by  
3       section 1151 of title 18, United States Code, and in-  
4       cludes lands under the jurisdiction of an Indian tribe  
5       or tribal organization.

6           (6) INDIAN TRIBE.—The term “Indian tribe”  
7       has the meaning given such term in section 4(e) of  
8       the Indian Self Determination and Education Assist-  
9       ance Act (25 U.S.C. 450b(e)).

10          (7) MANUFACTURER.—

11               (A) IN GENERAL.—The term “manufac-  
12       turer” means—

13                   (i) a person who directly (not through  
14                   a subsidiary or affiliate) manufactures to-  
15                   bacco products for sale in the United  
16                   States;

17                   (ii) a successor or assign of a person  
18                   described in subparagraph (A);

19                   (iii) an entity established by a person  
20                   described in subparagraph (A);

21                   (iv) an entity to which a person de-  
22                   scribed in subparagraph (A) directly or in-  
23                   directly makes a fraudulent conveyance  
24                   after the date of enactment of this Act, or  
25                   any Act to amend the Federal Food, Drug,

1 and Cosmetic Act (21 U.S.C. 321 et seq.)  
2 in order to give effect to the national to-  
3 bacco settlement agreement of June 20,  
4 1997, or a transfer that would otherwise  
5 be voidable under chapter 7 of title 11,  
6 United States Code, but only to the extent  
7 of the interest or obligation transferred.

8 (B) LIMITATION.—The term “manufac-  
9 turer” shall not include a parent or affiliate of  
10 a person who manufactures tobacco products  
11 unless such parent or affiliate itself is a person  
12 described in subparagraphs (A).

13 (8) PERSON.—The term “person” means an in-  
14 dividual, partnership, corporation, or any other busi-  
15 ness or legal entity.

16 (9) POINT OF SALE.—The term “point of sale”  
17 means any location at which an individual can pur-  
18 chase or otherwise obtain tobacco products for per-  
19 sonal, non-traditional consumption.

20 (10) RETAILER.—The term “retailer” means  
21 any person who sells tobacco products to individuals  
22 for personal consumption, or who operates a facility  
23 where vending machines or self-service displays are  
24 permitted.

1           (11) SALE.—The term “sale” includes the sell-  
2           ing, providing samples of, or otherwise making to-  
3           bacco products available for personal consumption in  
4           any place or location as permitted under law.

5           (12) SECRETARY.—Unless otherwise provided,  
6           the term “Secretary” means the Secretary of Health  
7           and Human Services.

8           (13) STATE.—The term “State” includes the  
9           several States, the District of Columbia, the Com-  
10          monwealth of Puerto Rico, the Virgin Islands, Amer-  
11          ica Samoa, the Mariana Islands, or any territory or  
12          possession of the United States. Such term also in-  
13          cludes any political subdivision of any State.

14          (14) TOBACCO.—The term “tobacco” means to-  
15          bacco in its unmanufactured form.

16          (15) TOBACCO PRODUCT.—The term “tobacco  
17          product” means cigarettes, cigarette tobacco, and  
18          smokeless tobacco.

19          (16) TOBACCO TRUST FUND.—The term “to-  
20          bacco trust fund” means any national tobacco settle-  
21          ment trust fund established under any Act enacted  
22          in order to give effect to the national tobacco settle-  
23          ment agreement of June 20, 1997.

24          (17) TRIBAL ORGANIZATION.—The term “tribal  
25          organization” has the meaning given such term in



1 section 4(e) of the Indian Self Determination and  
 2 Education Assistance Act (25 U.S.C. 45Ob(e)).

3 (18) VOLUNTARY COOPERATIVE AGREEMENT.—

4 The term “voluntary cooperative agreement” means  
 5 any agreement, contract, compact, memorandum of  
 6 understanding, or similar agreement.

7 **SEC. 4. APPLICATION OF TOBACCO-RELATED PROVISIONS**  
 8 **TO NATIVE AMERICANS.**

9 (a) IN GENERAL.—The provisions of any Act enacted  
 10 in order to give effect to the national tobacco settlement  
 11 agreement of June 20, 1997 shall apply to the manufac-  
 12 ture, distribution, or sale of tobacco or tobacco products  
 13 within the exterior boundaries of Indian reservations or  
 14 on lands within the jurisdiction of an Indian tribe or tribal  
 15 organization.

16 (b) TRADITIONAL USE EXCEPTION.—

17 (1) IN GENERAL.—In recognition of the reli-  
 18 gious, ceremonial, and traditional uses of tobacco  
 19 and tobacco products by Indian tribes and the mem-  
 20 bers of such tribes, nothing in this Act (or any Act  
 21 enacted to give effect to the national tobacco settle-  
 22 ment agreement of June 20, 1997) shall be con-  
 23 strued to infringe upon the right of such tribes or  
 24 members of such tribes to acquire, possess, use, or

1 transfer any tobacco or tobacco products for such  
2 purposes.

3 (2) APPLICATION OF PROVISIONS.—Paragraph  
4 (1) shall apply only to those quantities of tobacco or  
5 tobacco products necessary to fulfill the religious,  
6 ceremonial, or traditional purposes of an Indian  
7 tribe or the members of such tribe, and shall not be  
8 construed to permit the general marketing of to-  
9 bacco or tobacco products in a manner that is not  
10 in compliance with chapter IX of the Federal Food,  
11 Drug, and Cosmetic Act.

12 (3) LIMITATION.—Nothing in this Act (or any  
13 Act enacted to give effect to the national tobacco  
14 settlement agreement of June 20, 1997) shall be  
15 construed to permit an Indian tribe or member of  
16 such a tribe to acquire, possess, use, or transfer any  
17 tobacco or tobacco product in violation of section  
18 2341 of title 18, United States Code, with respect  
19 to the transportation of contraband cigarettes.

20 (c) PAYMENTS TO TOBACCO TRUST FUND.—Any In-  
21 dian tribe or tribal organization that engages in the manu-  
22 facture of tobacco products shall be subject to liability for  
23 any fee payments that are levied on other manufacturers  
24 for purposes of any tobacco trust fund. Any Indian tribe  
25 or tribal organization that does not pay such fees shall

1 be considered a nonparticipating manufacturer and shall  
2 be subject to surcharges made applicable to such non-  
3 participating manufacturers under any Act enacted to give  
4 effect to the national tobacco settlement agreement of  
5 June 20, 1997.

6 (d) APPLICATION OF FEDERAL FOOD, DRUG, AND  
7 COSMETIC ACT REQUIREMENTS.—

8 (1) IN GENERAL.—The Secretary, in consulta-  
9 tion with the Secretary of Interior, shall promulgate  
10 regulations to provide for the waiver of any require-  
11 ment of the Food, Drug, and Cosmetic Act (21  
12 U.S.C. 321 et seq.) with respect to tobacco products  
13 manufactured, distributed, or sold within the exte-  
14 rior boundaries of Indian reservations or on lands  
15 within the jurisdiction of an Indian tribe as appro-  
16 priate to comply with this section.

17 (2) JURISDICTION.—With respect to tobacco-re-  
18 lated activities that take place within the exterior  
19 boundaries of Indian reservations or on lands within  
20 the jurisdiction of an Indian tribe, the responsibility  
21 for enforcing the regulations promulgated pursuant  
22 to paragraph (1) shall be vested in—

23 (A) the Indian tribe or the tribal organiza-  
24 tion involved;

1 (B) the State within which the lands of the  
2 Indian tribe or tribal organization are located,  
3 pursuant to a voluntary cooperative agreement  
4 entered into by the State and the Indian tribe  
5 or tribal organization; or

6 (C) the Secretary.

7 (3) ELIGIBILITY FOR ASSISTANCE.—Under the  
8 regulations promulgated under paragraph (1), the  
9 Secretary, in consultation with the Secretary of the  
10 Interior, shall provide assistance to an Indian tribe  
11 or tribal organization in meeting and enforcing the  
12 requirements under such regulations if—

13 (A) the tribe or tribal organization has a  
14 governing body that has powers and carries out  
15 duties that are similar to the powers and duties  
16 of State or local governments;

17 (B) the functions to be exercised through  
18 the use of such assistance relate to activities  
19 conducted within the exterior boundaries of In-  
20 dian reservations or on lands within the juris-  
21 diction of the tribe or tribal organization in-  
22 volved; and

23 (C) the tribe or tribal organization is rea-  
24 sonably expected to be capable of carrying out  
25 the functions required by the Secretary.

1           (4) DETERMINATIONS.—Not later than 60 days  
2       after the date on which an Indian tribe or tribal or-  
3       ganization submits an application for assistance  
4       under paragraph (3), the Secretary shall make a de-  
5       termination concerning the eligibility of such tribe or  
6       organization for such assistance.

7           (5) IMPLEMENTATION BY THE SECRETARY.—If  
8       the Secretary determines that the Indian tribe or  
9       tribal organization is not willing or not qualified to  
10      administer the requirements of the regulations pro-  
11      mulgated under this subsection, the Secretary, in  
12      consultation with the Secretary of the Interior, shall  
13      implement and enforce such regulations on behalf of  
14      the tribe or tribal organization.

15          (6) DEFICIENT APPLICATIONS; OPPORTUNITY  
16      TO CURE.—If the Secretary determines under para-  
17      graph (4) that a tribe is not eligible for assistance  
18      under this subsection, the Secretary shall—

19                (A) submit to such tribe or organization,  
20           in writing, a statement of the reasons for such  
21           determination; and

22                (B) shall assist such tribe in overcoming  
23           any deficiencies that resulted in the determina-  
24           tion of ineligibility.

1 After an opportunity to review and cure such defi-  
2 ciencies, the tribe or organization may re-apply to  
3 the Secretary for assistance under this subsection.

4 (e) RETAIL LICENSING REQUIREMENTS.—

5 (1) IN GENERAL.—The requirements of the  
6 Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
7 321 et seq.), or any Act enacted in order to give ef-  
8 fect to the national tobacco settlement agreement of  
9 June 20, 1997, with respect to the licensing of to-  
10 bacco retailers shall apply to retailers that sell to-  
11 bacco or tobacco products within the exterior bound-  
12 aries of Indian reservations or on lands within the  
13 jurisdiction of an Indian tribe or tribal organization.

14 (2) MINIMUM FEDERAL STANDARDS.—

15 (A) IN GENERAL.—Not later than 180  
16 days after the date of enactment of this Act,  
17 the Secretary shall promulgate regulations to  
18 authorize an Indian tribe or tribal organization  
19 to implement a tribal tobacco product licensing  
20 program within Indian reservations or on lands  
21 within the jurisdiction of an Indian tribe or  
22 tribal organization.

23 (B) MODEL STATE LAW.—The terms, con-  
24 ditions, and standards contained in the model  
25 State law contained in any Act enacted to give

1 effect to the national tobacco settlement agree-  
2 ment of June 20, 1997 shall constitute the min-  
3 imum Federal regulations that an Indian tribe  
4 or tribal organization must enact in order to as-  
5 sume responsibility for the licensing and regula-  
6 tion or tobacco-related activities conducted  
7 within the exterior boundaries of Indian res-  
8 ervations or on lands within the jurisdiction of  
9 an Indian tribe or tribal organization.

10 (C) WAIVER.—An Indian tribe or tribal or-  
11 ganization shall have the same right to apply  
12 for waiver and modification of the law described  
13 in subparagraph (B) as a State pursuant to the  
14 Act involved.

15 (3) IMPLEMENTATION BY THE SECRETARY.—If  
16 the Secretary, in consultation with the Secretary of  
17 the Interior, determines that the Indian tribe or  
18 tribal organization is not qualified to administer the  
19 relevant requirements of the Federal Food, Drug,  
20 and Cosmetic Act (21 U.S.C. 321 et seq.) or any  
21 Act enacted in order to give effect to the national to-  
22 bacco settlement agreement of June 20, 1997, the  
23 Secretary, in consultation with the Secretary of the  
24 Interior, shall implement such requirements on be-  
25 half of the Indian tribe or tribal organization.

1 (f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—

2 (1) GRANT.—

3 (A) IN GENERAL.—For each fiscal year the  
4 Secretary shall award a grant to each Indian  
5 tribe or tribal organization that has an ap-  
6 proved anti-smoking plan for the fiscal year in-  
7 volved under paragraph (2) in an amount equal  
8 to the amount determined under paragraph (3).

9 (B) REDUCTION IN STATE AMOUNTS.—

10 With respect to any State in which the service  
11 area or areas of an Indian tribe or tribal orga-  
12 nization that receives a grant under subpara-  
13 graph (A) are located, the Secretary shall re-  
14 duce the amount otherwise payable to such  
15 State, under any Act enacted in order to give  
16 effect to the national tobacco settlement agree-  
17 ment of June 20, 1997, by the amount of such  
18 grant.

19 (2) TRIBAL PLANS.—To be eligible to receive a  
20 grant under paragraph (1), an Indian tribe or tribal  
21 organization shall prepare and submit to the Sec-  
22 retary an anti-smoking plan and shall otherwise  
23 meet the requirements of subsection (e). The Sec-  
24 retary shall promulgate regulations providing for the



1 form and content of anti-smoking plans to be sub-  
2 mitted under this paragraph.

3 (3) AMOUNT DETERMINED.—Except as pro-  
4 vided in this subsection, the amount of any grant for  
5 which an Indian tribe or tribal organization is eligi-  
6 ble under paragraph (1) shall be determined by the  
7 Secretary based on the product of—

8 (A) the ratio of the total number of indi-  
9 vidual residing on or in such tribe's or tribal or-  
10 ganization's reservation, jurisdictional lands, or  
11 the active user population, relative to the total  
12 population of the State involved; and

13 (B) the amount allocated to the State for  
14 such public health purposes.

15 (4) USE.—Amounts provided to a tribe or tribal  
16 organization under this subsection shall be used to  
17 reimburse the tribe for smoking-related health ex-  
18 penditures, to further the purposes of this Act or  
19 any Act enacted in order to give effect to the na-  
20 tional tobacco settlement agreement of June 20,  
21 1997, and in accordance with a tribal anti-smoking  
22 plan approved by the Secretary. Indian tribes and  
23 tribal organizations shall have the flexibility to uti-  
24 lize such amounts to meet the unique health care  
25 needs of persons within their service populations

1       within the context of tribal health programs if such  
2       programs meet the fundamental Federal goals and  
3       purposes of Federal Indian health care law and pol-  
4       icy.

5           (5) REALLOTMENT.—Amounts set aside and  
6       not expended under this subsection shall be reallocot-  
7       ted among other eligible Indian tribes and tribal or-  
8       ganizations.

9           (g) OBLIGATIONS OF MANUFACTURERS.—Manufac-  
10      turers participating in, or covered under this Act or any  
11      Act enacted in order to give effect to the national tobacco  
12      settlement agreement of June 20, 1997 shall not engage  
13      in any activity on lands within the jurisdiction of an In-  
14      dian tribe or tribal organization that is prohibited by this  
15      Act or such other Act.

16          (h) USE OF TRUST FUND PAYMENTS.—Amounts  
17      made available from the tobacco trust fund pursuant to  
18      any Indian health provisions of any Act enacted in order  
19      to give effect to the national tobacco settlement agreement  
20      of June 20, 1997 shall be provided to the Indian Health  
21      Service and, through the provisions of the Indian Self De-  
22      termination and Education Assistance Act (25 U.S.C.  
23      450b et seq.) to Indian tribes or tribal organizations to  
24      be used to reduce tobacco consumption, promote smoking  
25      cessation, and to fund related activities including—

1           (1) clinic and facility design, construction, re-  
2       pair, renovation, maintenance, and improvement;

3           (2) health care provider services and equipment;

4           (3) domestic and community sanitation associ-  
5       ated with clinic and facility construction and im-  
6       provement;

7           (4) inpatient and outpatient services; and

8           (5) other programs and services which have as  
9       their goal raising the health status of Indians.

10       (i) PREEMPTION.—

11           (1) IN GENERAL.—Except as otherwise pro-  
12       vided in this section, nothing in this Act of any Act  
13       enacted in order to give effect to the national to-  
14       bacco settlement agreement of June 20, 1997, shall  
15       be construed to prohibit an Indian tribe or tribal or-  
16       ganization from imposing requirements, prohibitions,  
17       penalties, or other measures to further the purposes  
18       of this Act that are in addition to the requirements,  
19       prohibitions, or penalties required by this Act or  
20       such other Act.

21           (2) PUBLIC EXPOSURE TO SMOKE.—Nothing in  
22       this Act shall be construed to preempt or otherwise  
23       affect any Indian tribe or tribal organization rule or  
24       practice that provides greater protections from the  
25       health hazards of environmental tobacco smoke.

1           (3) NATIVE AMERICANS.—A State may not im-  
2       pose obligations or requirements relating to the ap-  
3       plication of this Act or any other Act enacted in  
4       order to give effect to the national tobacco settle-  
5       ment agreement of June 20, 1997, to Indian tribes  
6       and tribal organizations.

○