

105TH CONGRESS  
2D SESSION

# S. 2298

To provide for enforcement of title II of the Civil Rights Act of 1968,  
commonly known as the “Indian Civil Rights Act”.

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## IN THE SENATE OF THE UNITED STATES

JULY 14, 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 enforcement of title II of the Civil Rights  
Act of 1968, commonly known as the “Indian Civil  
Rights Act”.

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 Civil Rights  
5       Enforcement Act”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) title II of the Civil Rights Act of 1968 (25  
9       U.S.C. 1301 et seq.) (commonly known as the “In-  
10       dian Civil Rights Act”) was enacted to protect the

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1 civil rights of individuals who interact with tribal  
2 governments and other tribal organizations;

3 (2) individuals who interact with tribal govern-  
4 ments and other tribal organizations continue to suf-  
5 fer civil rights abuses, including unfair dismissals  
6 from employment with a tribal government or other  
7 tribal organization, election irregularities, and im-  
8 proper use of law enforcement authority;

9 (3) a 1991 report of the United States Commis-  
10 sion on Civil Rights found that the enforcement of  
11 rights guaranteed by the Act commonly known as  
12 the “Indian Civil Rights Act” continued to be im-  
13 peded by reluctance among Indian tribes to waive  
14 tribal immunity;

15 (4) Congress has considered the impediments to  
16 enforcing the Act commonly known as the “Indian  
17 Civil Rights Act” for a period preceding the date of  
18 enactment of this Act of more than 10 years;

19 (5) under article III of the Constitution of the  
20 United States, individuals have the opportunity to  
21 seek action in a district court of the United States  
22 after exhausting remedies in tribal courts for en-  
23 forcement of the Act commonly known as the “In-  
24 dian Civil Rights Act”; and

1           (6) to provide for the opportunity referred to in  
2       paragraph (5), tribal immunity should be waived.

3 **SEC. 3. DEFINITIONS.**

4       In this Act:

5           (1) INDIAN TRIBE.—The term “Indian tribe”  
6       means any Indian tribe or band with a governing  
7       body duly recognized by the Secretary of the Inte-  
8       rior.

9           (2) TRIBAL GOVERNMENT.—The term “tribal  
10      government” means a governing body of an Indian  
11      tribe referred to in paragraph (1).

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

16          (4) TRIBAL ORGANIZATION.—The term “tribal  
17      organization” has the meaning given that term in  
18      section 4(l) of the Indian Self-Determination and  
19      Education Assistance Act (25 U.S.C. 450b(l)).

20 **SEC. 4. INDIAN CIVIL RIGHTS ACT ENFORCEMENT.**

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

1 **“SEC. 204. ENFORCEMENT.**

2 “(a) IN GENERAL.—The district courts of the United  
3 States shall have jurisdiction in any civil rights action al-  
4 leging a failure to comply with rights secured by the re-  
5 quirements of this title.

6 “(b) COMPLIANCE.—Upon exhaustion of remedies in  
7 a tribal court of appropriate jurisdiction (if any) to seek  
8 compliance with rights secured under this title as are time-  
9 ly and reasonable, an aggrieved individual may bring an  
10 action against an Indian tribe (including a tribal organiza-  
11 tion (as that term is defined in section 4(l) of that Act  
12 (25 U.S.C. 450b(l)) or official of that Indian tribe)) in  
13 a district court of the United States, or the Attorney Gen-  
14 eral of the United States may bring such an action against  
15 an Indian tribe for—

16 “(1) a declaratory judgment; or

17 “(2) equitable relief (including injunctive relief)  
18 against an Indian tribe, to the extent necessary to  
19 enforce the rights secured under this title.

20 “(c) TREATMENT OF FINDINGS OF TRIBAL  
21 COURT.—

22 “(1) IN GENERAL.—In a civil action brought  
23 under subsection (b), the district court shall adopt  
24 any findings of fact made by the tribal court in-  
25 volved (if any) with respect to the action, unless the  
26 district court determines that—

1           “(A) the tribal court did not operate inde-  
2           pendently from the legislative or executive au-  
3           thority of the Indian tribe involved;

4           “(B) the tribal court was not authorized to  
5           determine matters of law and fact, or the tribal  
6           court did not fully determine those matters;

7           “(C) the tribal court permitted a person or  
8           entity subject to this title to assert a defense of  
9           immunity in a declaratory action or an action  
10          to seek equitable relief;

11          “(D) the tribal court failed to resolve the  
12          merits of the factual dispute involved;

13          “(E) the tribal court employed a factfind-  
14          ing procedure that was not adequate to afford  
15          a full and fair hearing;

16          “(F) the tribal court did not adequately  
17          develop facts that are material to the case;

18          “(G) the tribal court failed to provide a  
19          full, fair, and adequate hearing; or

20          “(H) the factual determinations of the  
21          tribal court are not fairly supported by the  
22          record.

23          “(2) DE NOVO REVIEW.—In any action de-  
24          scribed in paragraph (1), if the court finds that a  
25          condition described in subparagraph (A), (B), (C),

1 (D), (E), (F), (G), or (H) of that paragraph applies,  
2 the district court shall conduct a de novo review of  
3 the allegations contained in the complaint.

4 “(d) WAIVER OF TRIBAL IMMUNITY.—To the extent  
5 necessary to enforce this title, the tribal immunity (as that  
6 term is defined in section 3 of the Indian Civil Rights En-  
7 forcement Act) of an Indian tribe subject to an action  
8 under subsection (b) is waived.”.

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