

105TH CONGRESS  
2D SESSION

# S. 2299

To provide for the enforcement of certain contracts made by Indian tribes.

---

## 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

---

## A BILL

To provide for the enforcement of certain contracts made  
by Indian tribes.

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 “American Indian Con-  
5       tract Enforcement Act”.

6       **SEC. 2. FINDINGS; PURPOSE.**

7       (a) FINDINGS.—Congress finds that—

8               (1) the only remaining governmental entities  
9       that maintain and assert the full scope of immunity  
10       from lawsuits in the United States are Indian tribal  
11       governments;

1           (2) in a recent decision, *Kiowa Tribe of Okla-*  
2           *homa v. Manufacturing Technologies, Inc.*, 523 U.S.  
3           \_\_\_\_ (1998), the Supreme Court recognized several  
4           reasons why tribal immunity should not be perpet-  
5           uated, and stated that—

6                   (A) in the independent and mobile society  
7                   of the United States, tribal immunity extends  
8                   beyond what protection is needed to safeguard  
9                   self governance;

10                   (B) when Indian tribes take part in the  
11                   commerce of the United States, the problem de-  
12                   scribed in subparagraph (A) is evident; and

13                   (C) tribal immunity can harm persons—

14                           (i) who are unaware that they are  
15                           dealing with an Indian tribe;

16                           (ii) do not know of tribal immunity; or

17                           (iii) have no choice with respect to  
18                   tribal immunity, as in the case of a tort  
19                   victim;

20           (3) Indian tribes continue to pursue and expand  
21           economic development through ventures with busi-  
22           nesses that are not tribal businesses and other enti-  
23           ties and individuals that are not part of an Indian  
24           tribe on and off lands subject to the jurisdiction of

1 Indian tribes (including property held in trust for  
2 Indian tribes);

3 (4) Indian tribes depend on the businesses, en-  
4 tities, and individuals referred to in paragraph (3) to  
5 provide members of Indian tribes with goods and  
6 services and the contracts for the procurement of  
7 those goods and services should be enforceable;

8 (5) tribal immunity impedes the enforcement of  
9 a contract in any case in which an Indian tribe or  
10 tribal organization fails to uphold contractual obliga-  
11 tions and asserts tribal immunity; and

12 (6) the assertion of tribal immunity serves as a  
13 deterrent to economic development on lands subject  
14 to the jurisdiction of an Indian tribe.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) INDIAN TRIBE.—The term “Indian tribe”  
18 has the meaning given that term in section 4(e) of  
19 the Indian Self-Determination and Education Assist-  
20 ance Act (25 U.S.C. 450b(e)).

21 (2) TRIBAL IMMUNITY.—The term “tribal im-  
22 munity” means the immunity of an Indian tribe  
23 from—

24 (A) jurisdiction of the courts; and

1 (B) judicial review of an action of that In-  
 2 dian tribe and other remedies.

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

7 **SEC. 4. CLAIMS FOR CONTRACTS.**

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) The district courts shall have jurisdiction of  
 16 any civil action or claim against an Indian tribe (including  
 17 a tribal organization, as that term is defined in section  
 18 4(l) of the Indian Self-Determination and Education As-  
 19 sistance Act (25 U.S.C. 450b(l))) for liquidated or unliqui-  
 20 dated damages for cases not sounding in tort that involve  
 21 any contract made by the governing body of the Indian  
 22 tribe or on behalf of an Indian tribe.

23 “(2) To the extent necessary to enforce this sub-  
 24 section, the tribal immunity (as that term is defined in

1 section 3 of the American Indian Contract Enforcement  
2 Act) of the Indian tribe involved is waived.”.

3 **SEC. 5. APPLICABILITY.**

4       The amendments made by section 4 apply to a case  
5 commenced to enforce a contract referred to in section  
6 1362(b) of title 28, United States Code, as added by sec-  
7 tion 4, on or after the date of enactment of this Act.

○