

105TH CONGRESS
2D SESSION

S. 2302

To provide for tort liability insurance for Indian tribes, and for other purposes.

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 tort liability insurance for Indian tribes, 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.**

4 This Act may be cited as the “American Indian Tort
5 Liability Insurance Act”.

6 **SEC. 2. AMERICAN INDIAN TORT LIABILITY INSURANCE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) Kiowa Tribe of Oklahoma v. Manufacturing
9 Technologies, Inc., 523 U.S. ____ (1998), recog-
10 nized the increasing interaction between tribal gov-

ernments, tribal corporations, or individual members of Indian tribes with individuals who are not members of an Indian tribe, on and off Indian reservations (including property held in trust for Indian tribes) in the areas of economic development and commerce;

(2) the interaction referred to in paragraph (1) may lead to disputes that could include claims by individuals against tribal governments or tribal organizations as a result of injury in tort;

(3) as Justice Kennedy stated in his opinion in *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, the doctrine of tribal immunity asserted by the governing bodies of Indian tribes to shield the Indian tribes from court actions that are necessary to recover for the liability of the governing bodies or tribal organizations of Indian tribes, can “harm those who are unaware that they are dealing with a tribe, who do not know of tribal immunity, or who have no choice in the matter, as in the case of tort victims”; and

(4) in order to provide protection for individuals interacting with tribal governments or organizations—

1 (A) Indian tribes should maintain tort li-
 2 ability insurance; and

3 (B) tribal immunity should not be used as
 4 a basis for the denial of a claim under that tort
 5 liability insurance.

6 (b) DEFINITION.—In this section:

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

11 (2) SECRETARY.—The term “Secretary” means
 12 the Secretary of the Interior.

13 (3) TRIBAL IMMUNITY.—The term “tribal im-
 14 munity” means the immunity of an Indian tribe
 15 from—

16 (A) jurisdiction of the courts; and

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

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

23 (5) TRIBAL PRIORITY ALLOCATION.—The term
 24 “tribal priority allocation” means an allocation to a
 25 tribal priority account of an Indian tribe by the Bu-

1 reau of Indian Affairs to allow that Indian tribe to
2 establish program priorities and funding levels.

3 (c) INDIAN TRIBES AS DEFENDANTS IN TORT DIS-
4 PUTES.—Section 1362 of title 28, United States Code, is
5 amended by—

6 (1) inserting “(a)” before “The district courts”;

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

9 (3) adding at the end the following:

10 “(b) Subject to the provisions of chapter 171A, the
11 district courts shall have jurisdiction of civil actions in
12 claims against an Indian tribe for money damages, accru-
13 ing on or after the date of enactment of this subsection
14 for injury or loss of property, personal injury, or death
15 caused by the negligent or wrongful act or omission of an
16 Indian tribe (including a tribal organization) under
17 circumstances in which the Indian tribe, if a private indi-
18 vidual or corporation would be liable to the claimant in
19 accordance with the law of the State where the act or
20 omission occurred.

21 “(c) Subject to the provisions of chapter 171A, to the
22 extent necessary to enforce this section, the tribal immu-
23 nity of the Indian tribe involved is waived.”.

24 (d) TORT LIABILITY INSURANCE.—

25 (1) IN GENERAL.—

1 (A) INSURANCE.—Except as provided in
2 paragraph (2), not later than 180 days after
3 the enactment of this Act, the Secretary shall
4 obtain or provide tort liability insurance or
5 equivalent coverage, on the most cost-effective
6 basis, for each Indian tribe that receives a trib-
7 al priority allocation.

8 (B) COVERAGE.—The insurance obtained
9 under subparagraph (A) for an Indian tribe
10 shall cover the governing body of the Indian
11 tribe, each tribal organization, of that Indian
12 tribe and each contractor or employer of that
13 Indian tribe, within the scope of that contractor
14 or employer. The coverage shall become effec-
15 tive on the date on which that coverage is ob-
16 tained.

17 (2) EXCEPTION.—If the Secretary determines
18 that an Indian tribe described in paragraph (1) has
19 obtained liability insurance in an amount and of the
20 type that the Secretary determines to be appropriate
21 (including meeting the requirement of paragraph
22 (4)) by the date specified in paragraph (1), the Sec-
23 retary shall not be required to provide additional
24 coverage for that Indian tribe.

1 (3) TRIBAL IMMUNITY MAY NOT BE ASSERTED
 2 TO DENY CLAIMS.—Under the liability insurance ob-
 3 tained under paragraph (1) or that the Secretary de-
 4 termines to be appropriate under paragraph (2),
 5 tribal immunity may not be asserted by the insurer
 6 as a reason for denying a claim for damages result-
 7 ing from the tort liability of an Indian tribe.

8 (4) AMOUNT OF COVERAGE.—In carrying out
 9 this subsection, the Secretary shall ensure that each
 10 Indian tribe obtains, or is provided, in accordance
 11 with this subsection, a sufficient amount of insur-
 12 ance coverage to cover tort liability of the Indian
 13 tribe, under chapter 171A of title 28, United States
 14 Code.

15 (e) FUNDING OF TORT LIABILITY INSURANCE.—

16 (1) INITIAL PAYMENT OF INSURANCE PRE-
 17 MIUMS.—For the initial payment of insurance pre-
 18 miums for insurance obtained or provided by the
 19 Secretary under subsection (d), the Secretary shall
 20 take such action as may be necessary to ensure the
 21 payment of premiums by the Indian tribe, including
 22 adjusting the amount of the tribal priority allocation
 23 made to the Indian tribe to cover the cost of the ini-
 24 tial payments.

25 (2) SUBSEQUENT PAYMENTS.—

1 (A) IN GENERAL.—After an initial pay-
2 ment under paragraph (1), and before the Sec-
3 retary makes a tribal priority allocation for an
4 Indian tribe, the Secretary shall verify that the
5 Indian tribe—

6 (i) has insurance coverage that meets
7 the requirements of subsection (d); and

8 (ii) has made such payments for pre-
9 miums of that insurance as are necessary
10 to provide insurance coverage for the fiscal
11 year for which the tribal priority allocation
12 is to be made.

13 (B) PAYMENT REQUIRED AS A CONDITION
14 TO RECEIVING TRIBAL PRIORITY ALLOCA-
15 TION.—Notwithstanding any other provision of
16 law, if the Secretary determines under subpara-
17 graph (A) that an Indian tribe has not made
18 the payments described in subparagraph (A)(ii),
19 the Secretary shall withhold the tribal priority
20 allocation of that Indian tribe until such time
21 as those payments are made.

22 (f) JURISDICTION OF DISTRICT COURTS.—Notwith-
23 standing any other provision of law, the district courts
24 shall have jurisdiction over any action concerning the tort
25 liability of an Indian tribe that is covered under insurance

1 that meets the requirements of subsection (d), and a case
 2 to recover damages through an insurer that provides cov-
 3 erage under subsection (d) may be brought without regard
 4 to whether remedies under otherwise applicable tribal law
 5 have been exhausted.

6 (g) REGULATIONS.—To carry out this section, as
 7 soon as practicable after the date of enactment of this sec-
 8 tion, the Secretary shall issue regulations that—

9 (1) provide for the amount of insurance cov-
 10 erage or equivalent coverage needed to protect an
 11 Indian tribe for the liabilities that may be subject to
 12 a claim under chapter 171A if title 28, United
 13 States Code;

14 (2) establish a schedule of premiums to be as-
 15 sessed against an Indian tribe that is provided liabil-
 16 ity insurance under subsection (d); and

17 (3) establish a means to verify the amount,
 18 maintenance, and funding of insurance of Indian
 19 tribes that obtain and maintain insurance under
 20 subsection (d)(3).

21 (h) INDIAN TORT CLAIMS PROCEDURE.—

22 (1) IN GENERAL.—Part 6 of title 28, United
 23 States Code, is amended by inserting after chapter
 24 171 the following:

1 **“CHAPTER 171A—INDIAN TORT CLAIMS**
2 **PROCEDURE**

“Sec.

“2691. Definitions.

“2692. Liability of Indian tribes.

“2693. Exceptions; waiver.

3 **“§ 2691. Definitions**

4 “In this chapter:

5 “(1) The term ‘employee of an Indian tribe’ in-
6 cludes—

7 “(A) an officer or employee of an Indian
8 tribe (including an officer or employee of a trib-
9 al organization); and

10 “(B) any person acting on behalf of an In-
11 dian tribe in an official capacity, temporarily or
12 permanently, whether with or without com-
13 pensation (other than an employee of the Fed-
14 eral Government or the government of a State
15 or political subdivision thereof who is acting
16 within the scope of the employment of that indi-
17 vidual).

18 “(2) The term ‘Indian tribe’ has the meaning
19 given that term in section 4(e) of the Indian Self-
20 Determination and Education Assistance Act (25
21 U.S.C. 450b(e).

22 “(3) The term ‘tribal immunity’ means the im-
23 munity of an Indian tribe from—

1 “(A) jurisdiction of the courts; and

2 “(B) judicial review of an action of that
3 Indian tribe and other remedies.

4 **“§ 2692. Liability of Indian tribes**

5 “(a) Subject to the limitations under subsection (c),
6 an Indian tribe (including a tribal organization) shall be
7 liable for the actions of the employees of that Indian tribe
8 (or tribal organization), relating to tort claims, in the
9 same manner and to the same extent, as a private individ-
10 ual or corporation under like circumstances, but shall not
11 be liable for interest before judgment or for punitive dam-
12 ages.

13 “(b) Subject to the limitations under subsection (c),
14 in any case described in subsection (a) in which a death
15 was caused and the law of the State where the act or omis-
16 sion complained of occurred provides for punitive dam-
17 ages, the Indian tribe shall, in lieu of being liable for puni-
18 tive damages, be liable for actual or compensatory dam-
19 ages resulting from that death to each person on behalf
20 of whom action was brought.

21 “(c)(1) The liability of an Indian tribe or tribal orga-
22 nization may not exceed—

23 “(A) \$500,000 for each claim made under this
24 chapter; or

1 “(B) in any case in which more than 1 claim
 2 arises from the same occurrence for damages for a
 3 tortuous act or omission, an aggregate amount equal
 4 to \$1,000,000 for those claims.

5 “(2) If the Secretary of the Interior determines that
 6 a limitation on the amount of liability of an Indian tribe
 7 under subparagraph (A) or (B) is appropriate, the Sec-
 8 retary of the Interior shall submit to Congress proposed
 9 legislation to provide for that increase.

10 **“§ 2693. Exceptions; waiver**

11 “(a) The provisions of this chapter and section
 12 1362(b) shall not apply to any case relating to a con-
 13 troversy relating to membership in an Indian tribe.

14 “(b) With respect to an Indian tribe, to the extent
 15 necessary to carry out this chapter, the tribal immunity
 16 of that Indian tribe is waived.”.

17 (2) CLERICAL AMENDMENT.—The table of
 18 chapters for title 28, United States Code, is amend-
 19 ed by inserting after the item relating to chapter
 20 171 the following:

“171A. Indian Tort Claims Procedure 2691”.

