

Committee on Natural Resources

Rob Bishop Chairman
Markup Memorandum

May 3, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Mark-Up: **H.R. 5317 (Rep. Jaime Herrera Beutler)**, To repeal section 2141 of the Revised Statutes to remove the prohibition on certain alcohol manufacturing on Indian lands.
May 8, 2018 at 10:15 a.m.; 1324 Longworth House Office Building

H.R. 5317, To repeal section 2141 of the Revised Statutes to remove the prohibition on certain alcohol manufacturing on Indian lands

Summary of the Bill

H.R. 5317 was introduced by Rep. Jaime Herrera Beutler (R-WA) on March 15, 2018. The bill repeals an 1834 federal law prohibiting the establishment and operation of alcohol distilleries in Indian Country.¹ The 1834 law was one of the Indian Trade and Intercourse Acts enacted in the 18th and 19th centuries. The purpose of these laws was to regulate non-Indian interaction with individual Indians and Indian tribes on Indian lands. While the operation of the Trade and Intercourse Acts have been repealed or superseded by subsequent laws, several of them – including the one prohibiting distilleries on Indian lands—remain in effect today.

Cosponsors

Rep. Don Young (R-AK), Rep. Tom Cole (R-OK), Rep. Denny Heck (D-WA), Rep. Derek Kilmer (D-WA), Rep. Betty McCollum (D-MN).

Background

The Indian Trade and Intercourse Acts

The Indian Trade and Intercourse Acts² reserved to the United States the exclusive right to acquire Indian lands and to regulate and restrict trade with tribes. The early-19th century acts

¹ 25 U.S.C. §251 (R.S. §2141 derived from act of June 30, 1834, ch. 161, §21, 4 Stat. 732).

² 25 U.S.C. Ch. 5, 6.

were intended to implement and enforce the terms of Indian treaties against “obstreperous whites, [and] gradually came to embody the basic features of federal Indian policy.”³

A Trade and Intercourse Act passed in 1834 entitled An Act to regulate trade and intercourse with Indian tribes, and to preserve peace on the frontier⁴ imposed restrictions on the sale, exchange, or barter of spirituous liquors to Indians in Indian country. Section 21 of that Act (codified at 25 U.S.C. §251) provides that if any person sets up or continues a distillery for the manufacturing of ardent spirits in Indian country, the penalty shall be \$1,000 and the superintendent of Indian affairs shall destroy and break up the distillery.⁵

Most of the 1834 law remained in effect until 1953 when Congress passed An Act to eliminate certain discriminatory legislation against Indians in the United States.⁶ Under the 1953 law, the production and distribution of liquor is permitted in Indian Country subject to conformity with the laws of the State in which such acts or transactions occur, and subject also to tribal ordinances approved by the Secretary of the Interior.

Nonetheless, because the 1834 law imposing restrictions on distilleries in Indian Country remains in effect, there is a question whether a tribe may lawfully construct and operate a distillery on its reservation even though it may be permitted to build and run a brewery or winery.

Need for legislation

The 1834 law prevents any tribe from hosting a distillery project on its lands. While the law may have advanced a valid public policy goal in the mid-19th century, it is not compatible with the modern policy of promoting tribal self-determination and economic diversification on Indian lands where existing laws provide reasonable regulation of liquor transactions.

The bill is especially supported by the Confederated Tribes of the Chehalis Reservation, which plans to construct and operate a distillery on its lands. According to the Tribe, the project – part of a larger brewery, distillery, and educational project — will be wholly tribally-owned and operated, with net profits going to the Tribe.

Major Provisions of H.R. 5317

Sec. 1. Repeal of Prohibition on Certain Alcohol Manufacturing on Indian Lands. The 1834 law prohibiting distilleries in Indian Country, as codified at 25 U.S.C. §251, is repealed.

³ Francis Paul Prucha, *The Great Father* (Abridged Edition), (Lincoln and London, University of Nebraska Press, 1986), p. 31.

⁴ 25 U.S.C. §241 et seq.

⁵ 25 U.S.C. §251.

⁶ 18 U.S.C. §1161.

Cost

Unknown.

Administration Position

At an April 26, 2018, hearing on the bill, the Department of the Interior testified in support.

Anticipated Amendment

None.

Ramseyer (effect on current law)

Showing Current Law as Amended by H.R. 5317

[text to be deleted bracketed and highlighted in blue]

25 U.S.C. 251

[§251. Setting up distillery]

Every person who shall, within the Indian country, set up or continue any distillery for manufacturing ardent spirits, shall be liable to a penalty of \$1,000; and the superintendent of Indian affairs, Indian agent, or subagent, within the limits of whose agency any distillery of ardent spirits is set up or continued, shall forthwith destroy and break up the same.]