

S 1721

American Indian Probate Reform Act of 2004

**Congress:** 108 (2003–2005, Ended)

**Chamber:** Senate

**Policy Area:** Native Americans

**Introduced:** Oct 14, 2003

**Current Status:** Became Public Law No: 108-374.

**Latest Action:** Became Public Law No: 108-374. (Oct 27, 2004)

**Law:** 108-374 (Enacted Oct 27, 2004)

**Official Text:** <https://www.congress.gov/bill/108th-congress/senate-bill/1721>

Sponsor

**Name:** Sen. Campbell, Ben Nighthorse [R-CO]

**Party:** Democratic • **State:** CO • **Chamber:** Senate

Cosponsors (2 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Thomas, Craig [R-WY]	R · WY		Nov 14, 2003
Sen. Daschle, Thomas A. [D-SD]	D · SD		May 20, 2004

Committee Activity

Committee	Chamber	Activity	Date
Indian Affairs Committee	Senate	Reported By	May 13, 2004
Natural Resources Committee	House	Reported By	Sep 7, 2004

Subjects & Policy Tags

Policy Area:

Native Americans

Related Bills

Bill	Relationship	Last Action
108 S 550	Related bill	Oct 15, 2003: Committee on Indian Affairs. Hearings held. Hearings printed: S.Hrg. 108-379.

**(This measure has not been amended since it was reported to the Senate on May 13, 2004. The summary of that version is repeated here.)**

American Indian Probate Reform Act of 2004 - (Sec. 3) Amends the Indian Land Consolidation Act to require that any trust or restricted interest in land or interest in trust personalty, subject to applicable Federal law, that is not disposed of by a valid will shall descend: (1) according to an applicable tribal probate code approved in the Act; or (2) if such tribal code does not apply, in accordance with this Act.

Repeals the limitation of any devise of an interest in trust or restricted land to a decedent's Indian spouse. Provides that such surviving spouse shall receive: (1) one-third of the decedent's trust personalty and a life estate in the interests of trust or restricted lands if there are one or more eligible heirs (children, grandchildren, great-grandchildren, parents, or siblings); or (2) all of such trust personalty and life estate if there are none. Requires the Secretary of the Interior to maintain trust personalty passing to a surviving spouse in an account as trust personalty, but only if the spouse is Indian.

Provides that if property does not pass under such requirements, it shall pass to the Indian tribe with jurisdiction over the interests in trust or restricted lands. Allows an Indian co-owner of a parcel of trust or restricted land, however, to acquire an interest that would otherwise descend to the tribe by paying the fair market value into the estate before the close of probate.

Requires the interests in trust or restricted lands, if there is no Indian tribe with jurisdiction, to be: (1) divided equally among co-owners of trust or restricted interests in the parcel; or (2) passed to the United States if there are no co-owners. Requires the Secretary to sell such interests and deposit the proceeds into the Acquisition Fund to acquire additional fractional interests in trust or restricted lands. Provides for the purchase of such an interest by the owner of a contiguous parcel of land.

Specifies the intestate descent of small fractional trust or restricted interests (less than five percent of the entire undivided ownership) in a parcel of land in the decedent's estate. Entitles to a life estate in such interest a surviving spouse residing on the land at the time of the decedent's death. (Currently, such interest shall be held by the heirs with the right of survivorship.) Applies the single heir rule (oldest surviving child, or oldest surviving grandchild, or oldest surviving great grandchild, or the Indian tribe with jurisdiction over the interest) where no life estate is created or if there is a remainder interest. Allows equal division among co-owners of the interest, if it does not pass and there is no Indian tribe. Provides for renunciation of an interest by an heir in favor of specified others, but in no case in favor of more than one heir or person. Permits the governing body of the Indian tribe with jurisdiction over an interest to adopt a different rule of intestate descent, subject to certain requirements, including limitation of the interest to one heir.

Declares that, in the case of intestate succession, if an individual fails to survive the decedent by at least 120 hours, the individual shall be deemed to have predeceased the decedent for such purpose, and the decedent's heirs shall be determined in accordance with this Act.

Revises requirements for testamentary disposition of a trust or restricted interest in land. Permits devise of such an interest, in trust or restricted status, to: (1) any lineal descendant of the testator; or (2) any person who owns a preexisting undivided trust or restricted interest in the same parcel of land. Retains authority to devise such an interest to the Indian tribe with jurisdiction over the land, or to any Indian. Repeals the limitation of any devise of an interest in trust or restricted land to a decedent's Indian spouse.

Deems a devise of a trust or restricted interest in land to an Indian or the Indian tribe with jurisdiction over the interest to be a devise of the interest in trust or restricted status. Provides similarly that any devise of a trust or restricted interest in land to any lineal descendant or any owner of a preexisting undivided trust or restricted interest in the same parcel of land shall be presumed to be a devise of the interest in trust or restricted status, unless language in such devise clearly evidences the testator's intent that the interest is to pass as a life estate or fee interest without Federal restrictions.

Sets limits on the devise of an interest in trust or restricted land as a life estate or in fee.

Permits the owner of an interest in trust personalty (all funds and securities held in trust in an individual Indian money account, or otherwise supervised by the Secretary) to devise it to any person or entity.

Declares that the presumptive creation of a joint tenancy, where trust or restricted interests in a parcel of land are devised to more than one person, shall not apply to any such devise in a will executed before a specified date.

Provides that nothing in this Act amends or otherwise affects the application of any other Federal law that pertains to: (1) trust or restricted land located on one or more specific Indian reservations that are expressly identified in such law; or (2) the allotted lands of one or more specific Indian tribes that are expressly identified in such law.

Declares that no heirs by killing (who knowingly participate as a principal or an accessory before the fact in the willful and unlawful killing of a decedent) shall in any way acquire any trust or restricted interests in land or interests in personalty as the result of the decedent's death. Deems an heir by killing to have predeceased the decedent.

Prescribes general rules for inheritance by pretermitted spouses and children, and other specified matters.

(Sec. 4) Provides for the partition and sale by competitive bid for not less than the final appraised fair market value of highly fractionated Indian land (having at least 50-99 owners, none of whom owns an undivided interest greater than ten percent of the whole, or having 100 or more co-owners). Limits eligible purchasers to: (1) the Indian tribe with jurisdiction over the subject land that owns an undivided interest in the parcel of land; (2) any member of the tribe, or person eligible to be a member; (3) any member of another tribe, or person eligible to be a member, who is already a co-owner; or (4) a lineal Indian descendent of the original allottee. Makes special eligibility qualifications with respect to parcels located in California.

Authorizes the Secretary to provide grants and low interest loans to successful bidders at such authorized sales provided that: (1) the total amount of such assistance in any such sale shall not exceed 20 percent of the appraised value of the parcel of land sold; and (2) the grant or loan funds provided shall only be applied toward the purchase price of such parcel.

(Sec. 5) Prescribes means, under specified conditions, by which co-owners of trust or restricted interests in a parcel of land may enter into surface leases of such parcel for a maximum ten-year term for agricultural purposes, without the Secretary's approval.

Provides for revocation of the owner-managed status of such an interest, and resumption of management by the Secretary, upon written request of all the owners.

(Sec. 6) Allows the Secretary to sell trust or restricted interests in a parcel of land in the decedent's estate at probate

(including the interest that a surviving spouse who is receiving a life estate would otherwise receive) at no less than fair market value to: (1) any other eligible heir taking an interest in the same parcel by intestate succession or the decedent's other devisees of interest in the same parcel who are eligible to receive a devise; (2) all persons who own undivided trust or restricted interests in the same parcel of land involved in the probate proceeding; and (3) the Indian tribe with jurisdiction over the interest, or the Secretary on behalf of such Indian tribe.

Prohibits sale of an interest in probate (consisting of five percent or more of the entire undivided ownership of a parcel) without the consent of the heirs or devisees of such interest, and the decedent's surviving spouse, if any, receiving a life estate.

Permits the auction and sale of an interest at probate without the consent of an heir receiving an interest passing by intestate succession that is less than five percent of the entire undivided ownership of the parcel. Requires such an heir's consent, however, before the sale at probate of the heir's interest if, at the time of the decedent's death, the heir was residing on the parcel of land of which the interest to be sold was a part.

Prohibits the Secretary from approving a tribal probate code that prevents the devise of an interest in trust or restricted land to an Indian lineal descendant of the original allottee, or an Indian who is not a member of the tribe with jurisdiction over the interest, unless it provides for the renouncing of interests, the reservation of life estates, and payment of fair market value.

Provides that the authority available to an Indian tribe to acquire an interest in trust or restricted land devised by the owner to a non-Indian shall not apply if the interest is part of a family farm that is devised to a member of the decedent's family, and the devisee agrees that the Indian tribe will have the opportunity to acquire the interest for fair market value if it is offered for sale to an entity that is not a member of the family of the owner of the land.

Makes the fractional interest acquisition program permanent. Allows the Secretary to acquire a fractional interest in trust or restricted land from an heir during probate, with the heir's consent, and at fair market value. Revises requirements for certain procedures for minimizing administrative costs with respect to the sale of interests to Indian landowners. Authorizes appropriations for the program for FY 2005 through 2010.

Repeals current conditions on the authority of an Indian tribe receiving a fractional interest, as a tenant in common with the other owners of the trust or restricted lands, to lease the interest, sell the resources, consent to the granting of rights-of-way, or engage in any other transaction affecting the trust or restricted land authorized by law. Requires the Secretary to place a lien on any revenue accruing to such an acquired fractional interest until the Secretary provides for its removal under specified conditions, and upon payment into the Acquisition Fund of an amount equal to the purchase price of that interest.

Extends to transfer for no or nominal consideration to an Indian co-owner or to the tribe with jurisdiction over the subject parcel of land, where the grantor owns a fractional interest that represents five percent or less of the parcel, permission for waiver of the requirement for an estimate of value before such transfer.

Grants to the Indian tribe with jurisdiction over the parcel of, or interest in, trust or restricted land, before the Secretary approves an application to terminate its trust status or remove restrictions on its alienation (except with respect to certain family farms), the opportunity: (1) to match any offer contained in the application; or (2) if no purchase price is offered, to acquire the parcel or interest by paying its fair market value.

Expands the meaning of Indian, for Indian land consolidation purposes, to include an owner of a trust or restricted interest in land (with special requirements for parcels of land in California).

Provides that the rules of intestate succession under the Indian Land Consolidation Act or a tribal probate code approved under such Act or regulations promulgated under it shall apply to that land for which patents have been executed and delivered.

Authorizes the Secretary to award grants to: (1) Indian tribes for tribal probate code development and estate planning services to tribal members; (2) certain qualified nonprofit organizations that provide legal assistance services for Indian tribes, Indian organizations, and individual owners of interests in trust or restricted lands to provide civil legal assistance in developing tribal probate codes, for estate planning services, or for other related purposes; and (3) other providers of such assistance in specific areas and reservations where such qualified nonprofit organizations do not provide it. Authorizes appropriations.

Requires the Secretary to notify each Indian landowner of specified information concerning each tract of trust or restricted land in which the Indian landowner has an interest.

Directs the Secretary to develop: (1) a pilot project for the creation of legal entities such as private or family trusts, partnerships, corporations, or other organizations to improve, facilitate, and assist in the efficient management of interests in trust or restricted lands or funds owned by Indian family members and relatives; and (2) proposed rules, regulations, and guidelines to implement such project. Limits to 30 the number of entities established under the project.

Requires the Secretary to seek to give written notifications to all heirs before holding a hearing to determine the heirs to trust or restricted property, or making a decision determining such heirs.

Presumes an heir to be missing if: (1) such heir's whereabouts remain unknown 60 days after completion of the required notice; and (2) in the proceeding to determine heirs, the Secretary finds that the heir has had no contact with other heirs of the decedent, if any, or with the Department relating to trust or restricted land or other trust assets at any time during the six-year period preceding the hearing.

Deems such an heir to have predeceased the decedent for purposes of descent and devise of trust or restricted land and trust personalty within the decedent's estate.

(Sec. 7) Requires the Secretary at least annually to include, along with other regular reports to owners of trust or restricted interests in land and individual Indian money account owners, a change of name and address form for the owner to confirm or update his or her name or address.

## Actions Timeline

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- **Oct 27, 2004:** Signed by President.
- **Oct 27, 2004:** Signed by President.
- **Oct 27, 2004:** Became Public Law No: 108-374.
- **Oct 27, 2004:** Became Public Law No: 108-374.
- **Oct 15, 2004:** Presented to President.
- **Oct 15, 2004:** Presented to President.
- **Oct 7, 2004:** Mr. Pombo moved to suspend the rules and pass the bill.
- **Oct 7, 2004:** Considered under suspension of the rules. (consideration: CR H8365-8376)
- **Oct 7, 2004:** DEBATE - The House proceeded with forty minutes of debate on S. 1721.
- **Oct 7, 2004:** Passed/agreed to in House: On motion to suspend the rules and pass the bill Agreed to by voice vote.(text: CR H8365-8375)
- **Oct 7, 2004:** On motion to suspend the rules and pass the bill Agreed to by voice vote. (text: CR H8365-8375)
- **Oct 7, 2004:** Motion to reconsider laid on the table Agreed to without objection.
- **Sep 7, 2004:** Reported by the Committee on Resources. H. Rept. 108-656.
- **Sep 7, 2004:** Reported by the Committee on Resources. H. Rept. 108-656.
- **Sep 7, 2004:** Placed on the Union Calendar, Calendar No. 400.
- **Jul 14, 2004:** Committee Consideration and Mark-up Session Held.
- **Jul 14, 2004:** Ordered to be Reported by Unanimous Consent.
- **Jun 23, 2004:** Committee Hearings Held.
- **Jun 8, 2004:** Executive Comment Requested from Interior.
- **Jun 3, 2004:** Received in the House.
- **Jun 3, 2004:** Message on Senate action sent to the House.
- **Jun 3, 2004:** Referred to the House Committee on Resources.
- **Jun 2, 2004:** Passed/agreed to in Senate: Passed Senate with an amendment by Unanimous Consent.(consideration: CR S6367-6384; text as passed Senate: CR S6367-6384)
- **Jun 2, 2004:** Passed Senate with an amendment by Unanimous Consent. (consideration: CR S6367-6384; text as passed Senate: CR S6367-6384)
- **May 13, 2004:** Committee on Indian Affairs. Reported by Senator Campbell with an amendment in the nature of a substitute. With written report No. 108-264.
- **May 13, 2004:** Committee on Indian Affairs. Reported by Senator Campbell with an amendment in the nature of a substitute. With written report No. 108-264.
- **May 13, 2004:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 515.
- **Apr 21, 2004:** Committee on Indian Affairs. Ordered to be reported with an amendment in the nature of a substitute favorably.
- **Jan 28, 2004:** Committee on Indian Affairs. Ordered to be reported with an amendment in the nature of a substitute favorably.
- **Oct 14, 2003:** Introduced in Senate
- **Oct 14, 2003:** Sponsor introductory remarks on measure. (CR S12535)
- **Oct 14, 2003:** Read twice and referred to the Committee on Indian Affairs.