

106TH CONGRESS
2D SESSION

S. 2909

To permit landowners to assert otherwise-available state law defenses against property claims by Indian tribes.

IN THE SENATE OF THE UNITED STATES

JULY 24 (legislative day, JULY 21), 2000

Mr. FITZGERALD introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To permit landowners to assert otherwise-available state law defenses against property claims 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 Subchapter 1 of chapter 6 of title 25 is amended by
4 inserting as § 210 the following:

5 **“SECTION 1. DEFENSES TO INDIAN CLAIMS.**

6 “Except as provided in section 2, in any action or
7 claim by or on behalf of an Indian tribe to enforce a real-
8 property right, or otherwise asserting a claim of Indian
9 title or right, the defendant may assert any affirmative
10 defense that would be available under State law to a de-

1 fendant opposing an analogous action or claim that does
2 not involve an Indian tribe.

3 **“SEC. 2. EXCEPTION FOR GOVERNMENTAL DEFENDANTS.**

4 “Section 1 shall not apply to any action or claim
5 against a governmental entity with respect to land that
6 is located within sovereign Indian country.

7 **“SEC. 3. RULE OF CONSTRUCTION.**

8 “(a) Except as provided in subsection (b), this Act
9 shall be construed and applied without regard to the inter-
10 pretive judicial canon that remaining ambiguities should
11 be resolved in favor of the Indians when standard tools
12 of statutory construction leave no indication as to the
13 meaning of an Indian treaty or statute.

14 “(b) EXCEPTION.—Subsection (a) shall not apply to
15 judicial interpretation of an Indian treaty with respect to
16 a determination of whether land was reserved or set aside
17 by the Federal Government for the use of an Indian tribe
18 as Indian land.

19 **“SEC. 4. DEFINITIONS.**

20 “(a) The term ‘Indian tribe’, as used in this Act,
21 means any tribe, band, nation, pueblo, village, or commu-
22 nity that is recognized by the Secretary of the Interior
23 pursuant to section 102 of the Federally Recognized In-
24 dian Tribe List Act of 1994 (25 U.S.C. § 479a).

1 “(b) The term ‘sovereign Indian country’ means
2 land—

3 “(1) that is rightfully owned by, or is held in
4 trust by the Federal Government for, an Indian
5 tribe;

6 “(2) that was reserved or set aside for the use
7 of the Indian tribe as Indian land by the Federal
8 Government, and is either—

9 “(A) outside the exterior geographical lim-
10 its of any State; or

11 “(B) within the exterior geographical lim-
12 its of a State that subsequently either—

13 “(i) acknowledged Indian title to the
14 land involved when the land was made a
15 part of the State, if that State be one of
16 the original 13 States to form the United
17 States; or

18 “(ii) provided, either in the Act pro-
19 viding for the State’s admission to the
20 United States or in the State’s first con-
21 stitution, that all lands held by Indians
22 within the State shall remain under the ju-
23 risdiction and control of the United States,
24 in accordance with article I, section 8,
25 clause 17 of the Constitution of the United

1 States, if that State were admitted to the
2 United States after 1790; and

3 “(3) for which the Indian title has not been ex-
4 tinguished or the jurisdictional reservation revoked.

5 **“SEC. 5. ATTORNEYS FEES.**

6 “(a) Except as provided in subsection (b), in any ac-
7 tion or proceeding that is subject to this Act, the court
8 shall allow the prevailing party a reasonable attorney’s fee
9 with respect to a claim presented by the opposing party
10 that was frivolous, unreasonable, or without foundation,
11 or that the opposing party continued to litigate after it
12 clearly became so.

13 “(1) A claim shall be deemed legally frivolous,
14 unreasonable, or without foundation only if it rests
15 upon a legal theory that was clearly unavailable
16 under existing case law.

17 “(2) A claim shall be deemed factually frivo-
18 lous, unreasonable, or without foundation only if its
19 proponent knew or should have known of those facts
20 that would require judgment for the opposing party
21 as a matter of law.

22 “(b) EXCEPTION.—No attorney’s fee shall be as-
23 sessed under subsection (a) against an Indian tribe seek-
24 ing to enforce a right to an interest in land if the court

1 determines that the land involved is located within sov-
2 ereign Indian country.

3 **“SEC. 6. TIMING OF APPLICATION.**

4 “**This Act shall apply to any action, claim, or right**
5 **described in section 1 that is pending, filed, or continuing**
6 **on or after the date of enactment of this Act, other than**
7 **a final money-damages judgment to which no one has a**
8 **right to raise a challenge by any available procedure.**

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