

REPEAL OF PROHIBITION ON FEDERAL EMPLOYEES  
CONTRACTING OR TRADING WITH INDIANS

—————  
JULY 17, 1996.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
—————

Mr. HYDE, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.R. 3215]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3215) to amend title 18, United States Code, to repeal the provision relating to Federal employees contracting or trading with Indians, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 3215 repeals 18 U.S.C. 437. Section 437 prohibits employees of the Bureau of Indian Affairs and the Indian Health Service from entering into contracts with Indians for the purchase, transportation, or delivery of goods or supplies for any Indian. It further prohibits these employees from engaging in any purchase or sale

of services or property from or to any Indian. Because these provisions prohibit any of these transactions in any case in which the employee appears to benefit, they effectively bar any such transaction with the family of the employee. A violation of this section is punishable by a fine or imprisonment of up to six months.

#### BACKGROUND AND NEED FOR THE LEGISLATION

Section 437, first passed in the 1800s, was meant to prevent federal employees who are involved in administering programs to help Indians from taking advantage of the Indians they were supposed to be helping. While it was well-intentioned when passed, today it is outdated and no longer necessary. In addition, the section has the perverse effect of making it harder for the Indian Health Service to recruit and retain good medical employees for remote reservations because those employees' spouses are prohibited from trading with the local Indians.

Similar legislation passed the Senate on October 31, 1995 as part of a broader package of technical amendments to laws relating to Indians (S. 325). The package passed by unanimous consent. The Department of Interior, of which the Bureau of Indian Affairs is a part, testified in favor of the repeal of section 437 at hearings on S. 325. The Committee is informed that the Department of Health and Human Services, which includes the Indian Health Service, is also in favor of repeal of section 437. The Committee is also informed that the Navajo Nation and the Hopi Tribe are in favor of this legislation. The Committee does not have any reason to believe that any other Indian groups oppose this bill.

#### HEARINGS

The Committee held no hearings on H.R. 3215, because it was viewed as noncontroversial and received broad bipartisan support.

#### COMMITTEE CONSIDERATION

On July, 16, 1996, the full Committee met in open session and ordered reported favorably the bill H.R. 3215 without amendment, by a vote of 25 to 0, a quorum being present.

#### VOTE OF THE COMMITTEE

The motion to report favorably H.R. 3215 without amendment. The motion was agreed to by a rollcall vote of 25 to 0.

AYES

NAYS

Mr. Hyde  
 Mr. Moorhead  
 Mr. McCollum  
 Mr. Gekas  
 Mr. Coble  
 Mr. Smith of Texas  
 Mr. Schiff  
 Mr. Canady  
 Mr. Goodlatte  
 Mr. Buyer  
 Mr. Hoke  
 Mr. Bono  
 Mr. Heineman  
 Mr. Conyers  
 Mrs. Schroeder  
 Mr. Frank  
 Mr. Boucher  
 Mr. Reed  
 Mr. Nadler  
 Mr. Scott  
 Mr. Watt  
 Mr. Becerra  
 Ms. Lofgren  
 Ms. Jackson Lee  
 Ms. Waters

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3215, the following estimate and comparison prepared

by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 17, 1996.*

Hon. HENRY J. HYDE,  
*Chairman, Committee on the Judiciary, House of Representatives,*  
*Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3215, a bill to amend Title 18, United States Code, to repeal the provision relating to federal employees contracting or trading with Indians, as ordered reported by the House Committee on the Judiciary on July 16, 1996. CBO estimates that enacting this bill would have no significant impact on the federal budget. The bill also would not impose any private-sector or intergovernmental mandates as defined in Public Law 104-4 and would not impose costs on state, local, or tribal governments. Enacting H.R. 3215 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 3215 would repeal Section 437 of Title 18 of the United States Code. Section 437 prohibits any employee of the Bureau of Indian Affairs or the Indian Health Service from purchasing any service or any real or personal property from any person of Native American descent.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachel Robertson.

Sincerely,

JAMES L. BLUM  
(For June E. O'Neill, Director).

#### INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 3215 will have no significant inflationary impact on prices and costs in the national economy.

#### SECTION-BY-SECTION ANALYSIS

Section 1. Section 1 provides the operative language repealing 18 U.S.C. 437 and the corresponding table of sections in the United States Code.

Section 2. Section 2 provides that the repeal will take effect on the date of enactment and that it will apply to any contract or purchase occurring on or after the date of enactment.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

## CHAPTER 23 OF TITLE 18, UNITED STATES CODE

## CHAPTER 23—CONTRACTS

Sec.

431. Contracts by Member of Congress.

\* \* \* \* \*

【437. Federal employees contracting or trading with Indians.】

\* \* \* \* \*

**【§ 437. Federal employees contracting or trading with Indians**

【(a) Except as provided in subsection (b), whoever, being an officer, employee, or agent of the Bureau of Indian Affairs or the Indian Health Service has (other than as a lawful representative of the United States) any interest, in such officer, employee, or agent's name, or in the name of another person where such officer, employee, or agent benefits or appears to benefit from such interest—

【(1) in any contract made or under negotiation with any Indian, for the purchase or transportation or delivery of goods or supplies for any Indian, or

【(2) in any purchase or sale of any service or real or personal property (or any interest therein) from or to any Indian, or colludes with any person attempting to obtain any such contract, purchase, or sale, shall be fined not more than \$5,000 or imprisoned not more than six months or both, and shall be removed from office, notwithstanding any other provision of law concerning termination from Federal employment.

【(b)(1) Notwithstanding the provisions of subsection (a) and in accordance with paragraph (2) of this subsection, the President or his designee may prescribe rules and regulations under which any officer, employee, or agent of the Bureau of Indian Affairs or of the Indian Health Service may purchase from or sell to any Indian any service or any real or personal property or any interest therein.

【(2) No rule or regulation prescribed pursuant to paragraph (1) of this subsection shall permit any officer, employee, or agent referred to in that paragraph—

【(A) to make any purchase from or sale to an Indian of any real or personal property (or any interest therein) for the purpose of commercially selling, reselling, trading, or bartering such property; or

【(B) to have any interest in any purchase or sale involving property or funds which are either held in trust by the United States for Indians or which are purchased, sold, utilized, or received in connection with a contract or grant to an Indian from the Bureau of Indian Affairs or the Indian Health Service, if such officer, employee, or agent is employed in the office or installation of such Bureau or Service which recommends, approves, executes, or administers such transaction, grant, or contract on behalf of the United States: *Provided*, That such officer, employee, or agent may have such an interest if such purchase or sale is approved by the Secretary of the Interior in the case of a Bureau of Indian Affairs officer, employee, or agent, or by the Secretary of Health, Education, and Welfare

in the case of an Indian Health Service officer, employee, or agent, or a designee of such Secretary who is not employed at such office or installation: *Provided further*, That (1) any such designee may not be a relative by blood or marriage of the officer, employee, or agent engaging in such purchase or sale; (2) with respect to purchases or sales by any officer, employee, or agent employed at the reservation, agency, or service unit level, such designee must be employed at not less than one grade level higher than such officer, employee, or agent at the Washington, District of Columbia, central office or at an area office installation other than that with authority over such reservation, agency, or service unit; (3) with respect to purchases or sales by any officer, employee, or agent employed at the area office level, such designee must be employed at not less than one grade level higher than such officer, employee, or agent at the Washington, District of Columbia, central office; and (4) the Secretary must approve purchases or sales by any officer, employee, or agent employed at the Washington, District of Columbia, central office; or

[(C) to acquire any interest in property held in trust, or subject to restriction against alienation imposed, by the United States unless the conveyance or granting of such interest in such property is otherwise authorized by law.

[(c) Except as provided in subsection (b)(2), nothing contained in this section shall be construed as preventing any officer, employee, or agent of the Bureau of Indian Affairs or the Indian Health Service who is an Indian, of whatever degree of Indian blood, from obtaining or receiving any benefit or benefits made available to Indians generally or to any member of his or her particular tribe, under any Act of Congress, nor to prevent any such officer, employee, or agent who is an Indian from being a member of or receiving benefits by reason of his or her membership in any Indian tribe, corporation, or cooperative association organized by Indians, when authorized under such rules and regulations as the Secretary of the Interior or the Secretary of Health, Education, and Welfare, or their designee shall prescribe.

[(d) For purposes of this section, the term "Indian" means any member of an Indian tribe recognized as eligible for the services provided by the Bureau of Indian Affairs who is residing on a Federal Indian Reservation, on land held in trust by the United States for Indians, or on land subject to a restriction against alienation imposed by the United States. The term shall also include any such tribe and any Indian owned or controlled organization located on such a reservation or land.

[(e) For purposes of this section, the term "Bureau of Indian Affairs" means the Bureau of Indian Affairs and the Office of the Assistant Secretary for Indian Affairs, both in the Department of the Interior.]

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