

Public Law 98-513
98th Congress

An Act

Pertaining to the inheritance of trust or restricted land on the Lake Traverse Indian Reservation, North Dakota and South Dakota, and for other purposes.

Oct. 19, 1984
[S. 2663]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to the extent that the laws of devise, descent and distribution of the State of North Dakota or the State of South Dakota are inconsistent with this Act or to the extent that the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.), is inconsistent with this Act, the provisions of this Act shall govern the right to inherit trust or restricted land located within such States and within the original exterior boundaries of the Lake Traverse Indian Reservation (hereinafter the "reservation") as described in article III of the Treaty of February 19, 1867 (15 Stat. 505).

SEC. 2. (a) Except as provided in section 4 of this Act, only the Sisseton-Wahpeton Sioux Tribe of North Dakota and South Dakota (hereinafter the "tribe") or persons who are enrolled members of the tribe shall be entitled to receive by devise or descent any interest in trust or restricted land within the reservation.

(b) The provisions of this Act shall apply only to estates of decedents whose deaths occur on or after the date of enactment of this Act.

SEC. 3. (a) Whenever any person dies possessed of any interest in trust or restricted land within the reservation and the trust or restricted land has not been devised by a will approved by the Secretary of the Interior pursuant to section 2 of the Act of June 25, 1910 (36 Stat. 856), as amended (25 U.S.C. 373), or the bequest of devise is not consistent with the provisions of section 2 of this Act, such interest shall descend to the following persons: *Provided*, That such persons are eligible heirs under sections 2 and 5 of this Act:

(1) one-half of the interest shall descend to the surviving spouse and the other one-half shall descend in equal shares to the children of the decedent and to the issue of any deceased child of the decedent by right of representation;

Children and youth.

(2) if there is no surviving spouse, the interest shall descend in equal shares to the children of the decedent and to the issue of any deceased child of the decedent by right of representation;

Children and youth.

(3) if there are no surviving children or issue of any child, the interest shall descend to the surviving spouse;

(4) if there is no surviving spouse and no surviving children or issue of any child, the interest shall descend to the surviving parents or parent of the decedent;

(5) if there is no surviving spouse, and no surviving children or issue of any child, and no surviving parent, the interest shall descend equally to the brothers and sisters of the decedent; and

(6) if there is no surviving spouse, and no surviving children or issue of any child, no surviving parent, and no surviving brothers or sisters, the interest shall escheat to the tribe and

title to such escheated interest shall be taken in the name of the United States in trust for the tribe.

(b) As used in this section, the words "children" and "issue" include children adopted under the laws of a State or foreign country, or in accordance with the laws of an Indian tribe, children of unwed parents where the Secretary of the Interior determines that paternity has been acknowledged or established under the laws of a State or foreign country or in accordance with the laws of an Indian tribe, and children of parents whose parental rights have been terminated pursuant to lawful authority.

(c) As used in this section, the word "parent" shall not include the parent of any child with respect to whom such parent's parental rights have been voluntarily terminated pursuant to lawful authority.

Children and
youth.

SEC. 4. (a) Notwithstanding the provisions of section 2 and subject to the provisions of section 5 of this Act, the nonmember of the tribe surviving spouse, nonmember surviving children and the nonmember surviving issue of any children of any person who dies possessed of any interest in trust or restricted land within the reservation, shall be entitled to take only a life estate in any interest in such trust or restricted land devised by a will approved by the Secretary of the Interior pursuant to section 2 of the Act of June 25, 1910 (36 Stat. 856), as amended (25 U.S.C. 373).

(b) Notwithstanding the provisions of sections 2 and 3 and subject to the provisions of section 5 of this Act, wherever any person dies possessed of any interest in trust or restricted land within the reservation and the trust or restricted land has not been devised by a will approved by the Secretary of the Interior pursuant to section 2 of the Act of June 25, 1910 (36 Stat. 856), as amended (25 U.S.C. 373), the nonmember of the tribe surviving spouse, nonmember children, and the nonmember issue of any children of the decedent shall be entitled to take only a life estate in any interest provided in section 3 of this Act.

(c) At the time that the Secretary of the Interior approves any life estate for a surviving spouse, children, or the issue of any children of a decedent, the trust or restricted land subject to such life estate thereafter shall be held in trust for the appropriate heir under section 3 of this Act or the provisions of any will approved by the Secretary pursuant to section 2 of the Act of June 25, 1910 (36 Stat. 856), as amended (25 U.S.C. 373).

(d) The provisions of subsections (a) and (b) of this section notwithstanding, unless a devise of trust or restricted land otherwise provides, any life estate provided for in this Act shall be subject to applicable regulations pertaining to the use of trust or restricted land and to the following conditions, restrictions and limitations:

(1) whenever the life tenant is a sole heir, such life tenant shall be entitled to determine the use and to receive any income from the lease or other use of the life tenant's interest in the land;

(2) whenever an enrolled member of the tribe dies survived by a nonmember spouse and nonmember children, such spouse shall be entitled to one-half of the income from the lease or other use of the life tenant's interest in the land and such children shall be entitled to the other one-half, and the same division shall apply to any land use determination;

(3) whenever an enrolled member of the tribe dies survived by a nonmember spouse, nonmember children, and nonmember

issue of any deceased child, such spouse shall be entitled to one-half of the income from the lease or other use of the life tenant's interest in the land and such children and issue of children shall be entitled to equal shares of the other one-half, and the same division shall apply to any land use determination;

(4) whenever an enrolled member of the tribe dies without a surviving nonmember spouse but survived by nonmember children, such children shall be entitled equally to determine the use and to receive any income from the lease or other use of the life tenant's interest in the land;

(5) whenever an enrolled member of the tribe dies without a surviving nonmember spouse but survived by nonmember children and nonmember issue of any deceased child, such children and issue of children shall be entitled equally to determine the use and to receive any income from the lease or other use of the life tenant's interest in the land; and

(6) whenever an enrolled member of the tribe dies without a surviving nonmember spouse and nonmember children but survived by nonmember issue of the children of such member, such issue shall be entitled equally to determine the use and to receive any income from the lease or other use of the life tenant's interest in the land.

For the purposes of this subsection, any children or the issue of any children of an enrolled member of the tribe born after the death of such member shall have the same rights as any children or the issue of any children who survive such member.

SEC. 5. Notwithstanding any other provision of this Act, no person shall be entitled by devise or descent to take any interest, including any interest in a life estate under section 4 of this Act, less than two and one-half acres, or the equivalent thereof, in trust or restricted land within the reservation. Any interest less than two and one-half acres of a devisee or intestate distributee of a decedent under section 3 of this Act, shall escheat to the tribe and title to such escheated interest shall be taken in the name of the United States in trust for the tribe: *Provided*, That the provisions of this section shall not be applicable to the devise or descent of any interest in trust or restricted land located within a municipality.

Prohibition.

SEC. 6. If a decedent has devised an interest in trust or restricted land within the reservation to a person prohibited under section 2 of this Act from acquiring an interest in such trust or restricted land, the interest in such land shall escheat to the tribe and title to such escheated interest shall be taken in the name of the United States in trust for the tribe: *Provided*, That any interest escheated to the tribe shall be subject to a life estate in the devisee as provided for under section 4(a) of this Act.

SEC. 7. (a) Whenever the tribe or an enrolled member, or members, of the tribe holds at least a 50 per centum undivided interest in trust or restricted land within the reservation, the Secretary of the Interior, upon the request of the tribe or the enrolled member, or members, of the tribe shall partition the allotment or part thereof: *Provided*, That whenever the tribe requests partition, the Secretary shall partition the allotment to the advantage of the heirs, except that any partition shall assure that the tribe retains one contiguous divided interest in the land unless the tribe agrees to a different division: *Provided further*, That whenever an enrolled member or members of the tribe requests partition, the fair market value of the lands remaining after partition shall not be less than the fair

market value of the interest, prior to partition, of the owners of such lands. The person or persons requesting partition, in order to meet the fair market value requirement of this subsection, may relinquish to the other heirs a portion of their undivided interest in the trust or restricted lands to be partitioned.

(b) The provisions of any law to the contrary notwithstanding, the Secretary of the Interior, upon the request of the tribe or an enrolled heir member of the tribe, shall approve partition of trust or restricted land within the reservation whenever the partitioned interest in the land of the tribe or the enrolled heir member of the tribe is at least two and one-half acres and the owners of more than a 50 per centum undivided interest in the trust or restricted land to be partitioned consent to the partition.

Patents and
trademarks.
Termination
date.

(c) Within one hundred and eighty days after the Secretary, pursuant to subsection (a) or (b) of this section, receives a request to partition trust or restricted land, he shall issue a new trust patent, in accordance with applicable law, for the lands set apart for the tribe or the enrolled heir member of the tribe, as the case may be, the trust period to terminate in accordance with the terms of the original patent or order of extension of the trust period set out in said patent or in accordance with the provisions of law governing the sale of allotted lands: *Provided*, That the provisions of any law to the contrary notwithstanding, no patent in fee shall be issued for lands partitioned under this section until the expiration of at least ten years from the date of issuance of such new trust patent.

Prohibition.

SEC. 8. (a) The tribe shall have authority to exercise powers of eminent domain, over trust or restricted lands within the reservation, to eliminate fractional heirship interests in trust or restricted land, to consolidate tribal interests in land, to develop agriculture, and to condemn for other public purposes any interest in trust or restricted land. Upon the request of the tribe, the interest acquired thereafter shall be held by the United States in trust for the tribe: *Provided*, That the tribe has made just compensation under tribal judicial process and in accordance with a code of tribal eminent domain laws approved by the Secretary of the Interior.

Claims.

(b) Subject to the right of judicial review provided in subsection (c) of this section, a final judgment of the tribal court in favor of the tribe in a condemnation action is conclusive as to the title of the tribe, in and to the interest in the trust or restricted land described in said judgment, against any and all parties in said action, including unknown defendants, and against any and all persons claiming from, through or under such a party by title accruing after the filing of the judgment by the clerk of the tribal court or after the filing of a notice of the pendency of the action with an official designated for that purpose under the eminent domain laws of the tribe.

(c) Any party aggrieved by the condemnation findings and determination of the tribal court may seek judicial review thereof in the United States district court for the district within which the affected interest in land is located. Judicial review shall be taken by filing a notice of appeal with the clerk of the tribal court and district court within thirty days of the date of the entry of the judgment or order of condemnation appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days of the date on which the first notice of appeal was filed. Any appeal taken under this Act shall be limited to a review of whether the tribal court order or judgment of condemnation is in accordance with the provisions of this Act, any tribal eminent

domain laws and the provisions of title II of the Act of April 11, 1968 (82 Stat. 77).

25 USC 1301.

(d) In any tribal court or United States district court proceeding pursuant to subsection (a) or (d) of this section, notice of the proceeding shall be served upon the United States. The United States shall not be an indispensable party in such proceeding.

SEC. 9. The Secretary of the Interior is authorized, with any available funds provided by the United States or the tribe, to acquire by purchase, exchange, or condemnation any land or interest in trust or restricted land within the reservation for the purpose of eliminating fractional heirship interests in land, consolidating tribal interests in land, and developing tribal agriculture or commercial enterprises. After such acquisition, said lands or interests in lands shall be held by the United States in trust for the tribe.

Funds.

SEC. 10. Whenever the tribe imposes a tax against the estate of any person who dies possessed of any interest in trust or restricted land within the reservation, the Secretary of the Interior shall collect the tax out of the estate as part of the probate proceeding. The amount of the tax collected shall be payable to the tribe.

Taxes.

SEC. 11. Within one hundred and twenty days after the date of enactment of this Act, the Secretary of the Interior shall send an explanation of the provisions of this Act to all persons who have any interest in trust or restricted land within the reservation.

SEC. 12. Wills executed prior to or within one hundred and twenty days after the date of enactment of this Act shall be effective, in the absence of compliance with the provisions of this Act, for a period not to exceed one hundred and eighty days after the date of enactment of this Act: *Provided*, That this section shall not apply to invalidate the will of any person who because of unsound mind is unable to amend a will in order to comply with the provisions of this Act.

Wills.

SEC. 13. If any provision of this Act or its application to any person or circumstance is found to be invalid, the remainder of this Act, or the application of the provisions of this Act to other persons or circumstances, shall not be affected.

Provisions held invalid.

Approved October 19, 1984.

LEGISLATIVE HISTORY—S. 2663:

SENATE REPORT No. 98-607 (Select Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 130 (1984):

Oct. 3, considered and passed Senate.

Oct. 4, considered and passed House.