



Native American Nations & State Alcohol Policies: An Analysis

NABCA attempts to provide accurate and up-to-date information on alcohol policy topics. As such, white papers should be considered working documents; snapshots of the current status of an issue or subject. Papers are reviewed regularly and updated. We welcome clarification or additional information on the topic of this paper. Please contact NABCA at communications@nabca.org to provide knowledgeable and credible comments or suggestions. Thank you.

For additional information on the three-tier system, please read [Safe and Sound](#), a publication from Public Action Management.

The tenuous political history between Native Americans and the United States pre-dates even the signing of the Constitution. In 1778, the Treaty of Fort Pitt created an alliance between the newly formed country and the Lenape tribe. President James Monroe signed the Civilization Fund Act in 1819 providing funds for schools on Native American reservations with the stated purpose of “guarding against the further decline and final extinction” of tribes. Five years later, the Bureau of Indian Affairs was formed to manage these funds. This agency still exists as of 2017 in the United States Department of the Interior, along with the Bureau of Indian Education.

Following the American Revolution, Congress passed laws specifically impacting the sale and consumption of alcohol on Native American reservations. President Thomas Jefferson requested legislation prohibiting alcohol on tribal lands in 1802. Congress passed a law giving the President authorization “to prevent or restrain the vending or distributing of spirituous liquors among all or any of the said Indian tribes.” Part of this authorization included the first attempt to define the borders of “Indian country”, a process that would continue through legislation and court cases for decades.

The need for additional regulation led to the 1832 creation of the position of Commissioner of Indian Affairs. The legislation creating this office included the following language: “No ardent spirits shall be hereafter introduced, under any pretense, into the Indian country.” This law was expanded by additional legislation in 1834 creating penalties for the sale, barter or introduction of alcohol onto Native American lands – with an exception to meet the needs of members of the United States military that may be serving on tribal lands. The reservation ban on alcohol, coupled with a prohibition of Native Americans being sold or consuming alcohol even off reservations, would continue for over a century, even after the 21st Amendment ended national prohibition.



After World War II, Native American veterans and their allies pushed for the rights of Native Americans to drink alcohol outside of reservations and for reservations to allow alcohol, both of which were still prohibited into the 1950's. The House of Representatives discussed the end of Native American alcohol prohibition, noting:

"The Indians for many years have complained that the liquor laws are most discriminatory in nature. The Indians feel that, irrespective of the merits or demerits of prohibition, it is unfair to legislate specifically against them in this matter. Inasmuch as Indians are expected to assume the responsibilities of citizenship and serve in the Armed Forces on an equal basis with other Americans, the committee sees no reason for continuing legislation that is applicable only to Indians."

The end of alcohol prohibition for Native Americans came in 1953. Native Americans were allowed to be served and drink alcohol across the country and reservations would be allowed the presence of alcohol—barring tribal regulations. Despite the passage of this legislation, certain tribal nations, such as the Oglala Sioux Tribe, maintained prohibition on their reservations for public health and safety reasons.

Federal law mandates that Native American tribes must follow state alcohol laws on reservations. This can lead to tension between state and tribal governments on sales restrictions, advertising, enforcement, and other subjects. However, the tension also created the opportunity to work together on important issues, such as alcohol education and safety.

North Carolina

The Eastern Band of Cherokee Indians and the state of North Carolina developed alcohol statutes applicable to the tribe in 2011 with additional updates in 2015. The Cherokees agreed to be bound to certain parts of the state's alcohol beverage control laws and worked with state officials on enacting this legislation.

As part of this statute, the Eastern Band was given the authority to create a tribal alcoholic beverage control commission. The commission oversees alcoholic beverage regulation, enforcement of alcohol laws, and the issuing of permits for the sale of alcohol.

As an example, the North Carolina Alcoholic Beverage Control Commission, which follows the control model of alcohol distribution, is the exclusive wholesaler of spirits in the state and local alcohol control boards operate as the exclusive retailer for spirits in their county or locality. The tribal commission serves as the equivalent of a local alcohol control board in that it must purchase all of its spirits from the state, but has the added right to issue permits, something local boards cannot do.

Florida

The state of Florida and the Seminole Tribe have a unique situation as the tribe follows state alcohol laws, but they are given additional authority under the federal Seminole Tribe of Florida Alcohol Beverage Control Act of 2009. This act gives the Seminole Tribal Council authority to regulate alcohol, specifically in casinos, found on reservation land across the state and also gives them the ability to approve special event permits.

Under this law, the Seminoles gained the ability to issue tribal alcoholic beverage licenses and pass rules to enforce the conditions of licensure. One requirement is that an applicant for a tribal license must already maintain an alcoholic beverage license with the state of Florida.

Pine Ridge and Whiteclay

Even after the end of Native American tribal prohibition, the Oglala Sioux Tribe kept the Pine Ridge Indian Reservation in South Dakota dry. Alcohol sales, possession, and consumption remained forbidden. The Tribe permitted alcohol sales on the reservation briefly in the 1970's, and in 2013, the Tribe voted to allow alcohol at Pine Ridge. Controversy surrounding this vote



led to a scheduled revote in 2016, but protestors convinced the Oglala tribal council to cancel the revote so the reservation remains dry as of 2017.

Whiteclay, a community in Sheridan County, Nebraska borders Pine Ridge and includes four alcohol outlets while only maintaining a population of 14, according to US Census records. According to state government records for 2010, four stores sold a total of nearly five million cans of beer for gross revenues of approximately \$3 million. These sales come almost exclusively from Pine Ridge as alcoholic products are continually smuggled onto the dry reservation.

The Oglala Sioux filed a federal lawsuit against the four stores and the beer manufacturers and distributors that supply to those stores in 2012 asserting that these companies were specifically targeting Pine Ridge. The tribe also referred to the public health and safety issues plaguing the reservation as a direct result of alcohol sales and consumption linked to Whiteclay. Over ninety percent of crime on the reservation is alcohol-related and one-quarter of children born on the reservation suffer from fetal alcohol spectrum disorder, a series of conditions caused by drinking during pregnancy including fetal alcohol syndrome. The tribe's suit was dismissed due to lack of federal jurisdiction, but the decision specifically noted that this challenge could be taken up in state court.

Rather than file a new lawsuit in state court, the tribe worked with state legislators in Nebraska to find potential solutions. In 2017, the Nebraska Liquor Control Commission voted unanimously not to renew the liquor license of the four Whiteclay outlets due to a lack of adequate law enforcement. The stores have appealed this ruling to state court.

The history of Pine Ridge and Whiteclay has been the source of considerable media attention, activism from Native American groups and public health and safety experts, and documentary films.

Conclusion

Native American sovereignty and the authority of states to regulate alcohol under the 21st Amendment may create friction even when federal law mandates that reservations follow state alcohol laws. However, the ability for state alcohol agencies and tribal councils to work together allows for the continuation of licensing and enforcement. Even in the case of a bordering state (such as Nebraska's effort to help South Dakota's Pine Ridge reservation), there remains considerable communication and openness to work together on the alcohol policy topics that require attention.



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