

FEB 14 2002
HUMAN RESOURCES

HOUSE FILE 2358
BY WARNSTADT, HOVERSTEN, and
FOEGE

(COMPANION TO LSB 5818SS
BY HANSEN)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act implementing the federal Indian Child Welfare Act and
2 providing for civil liability and criminal penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2358

1 Section 1. NEW SECTION. 232.7 IOWA INDIAN CHILD WELFARE
2 ACT. If a proceeding held under this chapter involves an
3 Indian child as defined in section 232B.3 and the proceeding
4 is subject to the Iowa Indian child welfare Act under chapter
5 232B, the proceeding and other actions taken in connection
6 with the proceeding or this chapter shall comply with chapter
7 232B.

8 Sec. 2. NEW SECTION. 232B.1 SHORT TITLE.

9 This chapter shall be known and may be cited as the "Iowa
10 Indian Child Welfare Act".

11 Sec. 3. NEW SECTION. 232B.2 PURPOSE -- POLICY OF STATE.

12 The purpose of the Iowa Indian child welfare Act is to
13 clarify state policies and procedures regarding implementation
14 of the federal Indian Child Welfare Act, Pub. L. No. 95-608,
15 as codified in 25 U.S.C. chapter 21. It is the policy of the
16 state to cooperate fully with Indian tribes and tribal
17 citizens in Iowa in order to ensure that the intent and
18 provisions of the federal Indian Child Welfare Act are
19 enforced. This cooperation includes recognition by the state
20 that Indian tribes have a compelling governmental interest in
21 an Indian child whether or not the child is in the physical or
22 legal custody of an Indian parent, Indian custodian, or an
23 Indian extended family member at the commencement of a child
24 custody proceeding or the child has resided or domiciled on an
25 Indian reservation. The state is committed to protecting the
26 essential tribal relations and best interests of an Indian
27 child by promoting practices, in accordance with the federal
28 Indian Child Welfare Act and other applicable law, designed to
29 prevent the child's voluntary or involuntary out-of-home
30 placement and, whenever such placement is necessary or
31 ordered, by placing the child, whenever possible, in a foster
32 home, adoptive home, or other type of custodial placement that
33 reflects the unique values of the child's tribal culture and
34 is best able to assist the child in establishing, developing,
35 and maintaining a political and social relationship with the

1 child's tribe and tribal community.

2 Sec. 4. NEW SECTION. 232B.3 DEFINITIONS.

3 For the purposes of this chapter unless the context
4 otherwise requires:

5 1. "Adoptive placement" means the permanent placement of
6 an Indian child for adoption including, but not limited to,
7 any action under chapter 232, 600, or 600A resulting in a
8 final decree of adoption.

9 2. "Child custody proceeding" means a voluntary or
10 involuntary proceeding that may result in an Indian child's
11 adoptive placement, foster care placement, preadoptive
12 placement, or termination of parental rights.

13 3. "Foster care placement" means the temporary placement
14 of an Indian child in an individual or agency foster care
15 placement or in the personal custody of a guardian or
16 conservator prior to the termination of parental rights, from
17 which the child cannot be returned upon demand to the custody
18 of the parent or Indian custodian. "Foster care placement"
19 does not include a placement based upon an act by an Indian
20 child which, if committed by an adult, would be deemed a
21 crime, or upon an award, in a divorce proceeding, of custody
22 to one of the child's parents.

23 4. "Indian" means a person who is a member of an Indian
24 tribe, or is eligible for membership in an Indian tribe, or
25 who is an Alaska native and a member of a regional corporation
26 as defined in 43 U.S.C. § 1606.

27 5. "Indian child" or "child" means an unmarried Indian
28 person who is under eighteen years of age.

29 6. "Indian child's tribe" means a tribe in which an Indian
30 child is a member or is eligible for membership.

31 7. "Indian child's family" or "extended family member"
32 means a person who is an Indian child's family member or
33 extended family member under the law or custom of the Indian
34 child's tribe or, in absence of such law or custom, a person
35 who has any of the following relationships with the Indian

- 1 child:
- 2 a. Parent.
 - 3 b. Sibling.
 - 4 c. Grandparent.
 - 5 d. Aunt or uncle.
 - 6 e. Cousin.
 - 7 f. Clan member.
 - 8 g. Band member.
 - 9 h. Brother-in-law.
 - 10 i. Sister-in-law.
 - 11 j. Niece.
 - 12 k. Nephew.
 - 13 l. Stepparent.
- 14 8. "Indian custodian" means an Indian child's custodian as
15 defined in section 232.2 or a person who has legal custody of
16 an Indian child under tribal law, tribal custom, or state law.
- 17 9. "Indian organization" means any of the following
18 entities that is owned or controlled by Indians, or a majority
19 of the members are Indians:
- 20 a. A group.
 - 21 b. An association.
 - 22 c. A partnership.
 - 23 d. A corporation.
 - 24 e. Other legal entity.
- 25 10. "Indian tribe" or "tribe" means an Indian tribe, band,
26 nation, or other organized Indian group, or a community of
27 Indians, including any Alaska native village as defined in 43
28 U.S.C. § 1602(c) recognized as eligible for services provided
29 to Indians by the United States secretary of the interior
30 because of the community members' status as Indians.
- 31 11. "Parent" means a biological parent of an Indian child
32 or a person who has lawfully adopted an Indian child,
33 including adoptions made under tribal law or custom. "Parent"
34 does not include an unwed father whose paternity has not been
35 acknowledged or established. Except for purposes of the

1 federal Indian Child Welfare Act as codified in 25 U.S.C. §
2 1913(c) and (d), 1916, 1917, and 1951, "parent" does not
3 include a person whose parental rights to that child have been
4 terminated.

5 12. "Preadoptive placement" means the temporary placement
6 of an Indian child in an individual or agency foster care
7 placement after the termination of parental rights, but prior
8 to or in lieu of an adoptive placement.

9 13. "Secretary of the interior" means the secretary of the
10 United States department of the interior.

11 14. "Termination of parental rights" means any action
12 resulting in the permanent termination of the parent-child
13 relationship.

14 15. "Tribal court" means a court or administrative body
15 vested by an Indian tribe with jurisdiction over child custody
16 proceedings or a federal court of Indian offenses.

17 Sec. 5. NEW SECTION. 232B.4 APPLICATION OF CHAPTER --
18 EXEMPTIONS -- DETERMINATION OF INDIAN STATUS.

19 1. This chapter applies to child custody proceedings
20 involving an Indian child whether the child is in the physical
21 or legal custody of an Indian parent, Indian custodian, or an
22 Indian extended family member or another person at the
23 commencement of the proceedings or whether the child has
24 resided or domiciled on or off an Indian reservation.

25 2. The party seeking the foster care placement of,
26 termination of parental rights over, or the adoption of, an
27 Indian child shall seek to determine whether the child is an
28 Indian child through contact with any Indian tribe in which
29 the child may be a member or eligible for membership, any
30 extended family members of the child, and any other person
31 that reasonably can be expected to have information regarding
32 the child's possible membership or eligibility for membership
33 in an Indian tribe.

34 3. A written determination by an Indian tribe that a child
35 is a member of or eligible for membership in that tribe, or

1 testimony attesting to such status by a person authorized by
2 the tribe to provide that determination, shall be conclusive.
3 A written determination by an Indian tribe, or testimony by a
4 person authorized by the tribe to provide that determination
5 or testimony, that a child is not a member of or eligible for
6 membership in that tribe shall be conclusive as to that tribe.
7 If an Indian tribe does not provide evidence of the child's
8 status as an Indian child, the court shall determine the
9 child's status.

10 4. The determination of the Indian status of a child shall
11 be made as soon as practicable in order to serve the best
12 interest of the child and to ensure compliance with the notice
13 requirements of this chapter.

14 Sec. 6. NEW SECTION. 232B.5 INDIAN CHILD CUSTODY
15 PROCEEDINGS -- NOTICE, JURISDICTION, TRANSFER OF PROCEEDINGS.

16 1. An Indian tribe has jurisdiction exclusive as to this
17 state over any child custody proceeding held in this state
18 involving an Indian child who resides or is domiciled within
19 the reservation of that tribe, except when the jurisdiction is
20 otherwise vested in this state by existing federal law. If an
21 Indian child is a ward of a tribal court, the Indian tribe
22 shall retain exclusive jurisdiction, notwithstanding the
23 residence or domicile of the child.

24 2. In a child custody proceeding, the court or any party
25 to the proceeding shall be deemed to know or have reason to
26 know that an Indian child is involved whenever any of the
27 following circumstances exist:

28 a. A party to the proceeding or the court has been
29 informed by any interested person, an officer of the court, a
30 tribe, an Indian organization, a public or private agency, or
31 a member of the child's extended family that the child is or
32 may be an Indian child.

33 b. The child who is the subject of the proceeding gives
34 the court reason to believe the child is an Indian child.

35 c. The court has reason to believe the residence or

1 domicile of the child is in a predominately Indian community.

2 3. In any involuntary child custody proceeding, including
3 review hearings following an adjudication, the court shall
4 establish in the record that the party seeking the foster care
5 placement of, or termination of parental rights over, or the
6 adoption of an Indian child has sent notice by registered
7 mail, return receipt requested, to all of the following:

8 a. The child's parents.

9 b. The child's Indian custodians.

10 c. Any tribe in which the child may be a member or
11 eligible for membership.

12 4. If the identity or location of the child's parent,
13 Indian custodian, or tribe cannot be determined, the notice
14 under subsection 3 shall be provided to the secretary of the
15 interior, who shall have fifteen days after receipt of the
16 notice to provide the notice to the child's parent, Indian
17 custodian, and tribe. A foster care placement or termination
18 of parental rights proceeding involving the child shall not be
19 held until at least ten days after receipt of notice by the
20 child's parent, Indian custodian, and tribe, or the secretary
21 of the interior. Upon request, the child's parent or Indian
22 custodian or tribe shall be granted up to twenty additional
23 days to prepare for the proceeding.

24 5. The court shall also establish in the record that a
25 notice of any involuntary custody proceeding has been sent to
26 the Indian child's tribe. If an adjudication is made ordering
27 the placement of the child in a foster home, preadoptive
28 placement, or adoptive home, the court shall establish in the
29 record that notice has been provided to any member of the
30 Indian child's extended family who is entitled to a placement
31 preference under this chapter.

32 6. The notice in any involuntary child custody proceeding
33 involving an Indian child shall be written in clear and
34 understandable language and shall include all of the following
35 information:

- 1 a. The name and tribal affiliation of the Indian child.
- 2 b. A copy of the petition by which the proceeding was
3 initiated.
- 4 c. A statement listing the rights of the child's parents,
5 Indian custodians, and tribes and, if applicable, the rights
6 of the Indian child's family. The rights shall include all of
7 the following:
 - 8 (1) The right to intervene in the proceeding.
 - 9 (2) The right to petition the court to transfer the
10 proceeding to the tribal court of the Indian child's tribe.
 - 11 (3) The right to request an additional twenty days from
12 the receipt of the notice to prepare for the proceeding.
 - 13 (4) The right to request that the court grant further
14 extensions of time.
 - 15 (5) In the case of an extended family member, the right to
16 intervene and be considered as a preferred placement for the
17 child.
- 18 d. A statement of the potential legal consequences of an
19 adjudication on the future custodial rights of the child's
20 parents or Indian custodians.
- 21 e. A statement that if the parents or Indian custodians
22 are unable to afford counsel in an involuntary proceeding,
23 counsel will be appointed to represent the parents or
24 custodians.
- 25 f. A statement that an official of an Indian tribe
26 receiving the notice shall keep confidential the information
27 contained in the notice.
- 28 7. In a voluntary child custody proceeding involving an
29 Indian child, the court shall establish in the record that the
30 party seeking the foster care placement of, termination of
31 parental rights to, or the adoption of, an Indian child has
32 sent notice at least ten days prior to the hearing by
33 registered mail, return receipt requested, to all of the
34 following:
 - 35 a. The child's parents, except for a parent whose parental

1 rights have been terminated.

2 b. The child's Indian custodians, except for a custodian
3 whose parental or Indian custodian rights have been
4 terminated.

5 c. Any tribe in which the child may be a member or
6 eligible for membership.

7 d. Any member of the child's extended family who is
8 entitled to a placement preference under this chapter.

9 8. The notice in a voluntary child custody proceeding
10 involving an Indian child shall be written in clear and
11 understandable language and shall include all of the following
12 information:

13 a. The name and tribal affiliation of the child.

14 b. A copy of the petition by which the proceeding was
15 initiated.

16 c. A statement listing the rights of the child's parents,
17 Indian custodians, Indian tribe or tribes, and, if applicable,
18 extended family members. The rights shall include all of the
19 following:

20 (1) The right to intervene in the proceeding.

21 (2) The right to petition the court to transfer a foster
22 care placement or termination of parental rights proceeding to
23 the tribal court of the Indian child's tribe.

24 (3) In the case of extended family members, the right to
25 intervene and be considered as a preferred placement for the
26 child.

27 d. A statement that an official of an Indian tribe
28 receiving the notice shall keep confidential the information
29 contained in the notice.

30 9. Unless either of an Indian child's parents objects, in
31 any child custody proceeding involving an Indian child who is
32 not domiciled or residing within the jurisdiction of the
33 Indian child's tribe, the court shall transfer the proceeding
34 to the jurisdiction of the Indian child's tribe, upon the
35 petition of any of the following persons:

- 1 a. Either of the child's parents.
- 2 b. The child's Indian custodian.
- 3 c. The child's tribe.
- 4 10. Notwithstanding entry of an objection to a transfer of
5 proceedings as described in subsection 9, the court shall
6 reject any objection that is inconsistent with the purposes of
7 this chapter.
- 8 11. A transfer of proceedings under subsection 9 may be
9 declined by the Indian child's tribe. If the tribe declines
10 to assume jurisdiction, the court shall reassume jurisdiction
11 and shall apply all of the following in any proceeding:
 - 12 a. The requirements of the federal Indian Child Welfare
13 Act.
 - 14 b. This chapter.
 - 15 c. The applicable provisions of any agreement between the
16 Indian child's tribe and the state concerning the welfare,
17 care, and custody of Indian children.
- 18 12. The Indian child's tribe or tribes and Indian
19 custodian have the right to intervene at any point in any
20 foster care placement or termination of parental rights
21 proceeding involving the child. The Indian child's tribe
22 shall also have the right to intervene at any point in any
23 adoption proceeding involving the child. Any member of the
24 Indian child's family may intervene in an adoption proceeding
25 involving the child for the purpose of petitioning the court
26 for the adoptive placement of the child in accordance with the
27 order of preference provided for in this chapter.
- 28 13. The state shall give full faith and credit to the
29 public acts, records, judicial proceedings, and judgments of
30 any Indian tribe applicable to the Indian child custody
31 proceedings to the same extent that the tribe gives full faith
32 and credit to the public acts, records, judicial proceedings,
33 and judgments of the state.
- 34 14. Any person or court involved in the foster care,
35 preadoptive placement, or adoptive placement of an Indian

1 of the child's parent or Indian custodian unless any of the
2 following circumstances exist:

3 a. The child is transferred to the jurisdiction of the
4 child's tribe.

5 b. In an involuntary foster care placement proceeding
6 pursuant to the federal Indian Child Welfare Act, the court
7 orders that the child shall be placed in foster care upon a
8 determination, supported by clear and convincing evidence,
9 including testimony by at least one qualified expert witness,
10 that custody of the child by the child's parent or Indian
11 custodian is likely to result in serious emotional or physical
12 damage to the child.

13 c. The child's parent or Indian custodian voluntarily
14 consents to the foster care placement of the child pursuant to
15 the provisions of the federal Indian Child Welfare Act.

16 Sec. 8. NEW SECTION. 232B.7 PLACEMENT PREFERENCES.

17 1. In any adoptive or other permanent placement of an
18 Indian child, preference shall be given to a placement with
19 one of the following, in descending priority order:

20 a. A member of the Indian child's family.

21 b. Other members of the Indian child's tribe.

22 c. Another Indian family.

23 d. A non-Indian family approved by the Indian child's
24 tribe.

25 e. A non-Indian family that is committed to enabling the
26 child to have extended family visitation and participation in
27 the cultural and ceremonial events of the child's tribe,
28 provided such contacts would not expose the child to danger of
29 serious physical injury or harm.

30 2. An emergency removal, foster care, or preadoptive
31 placement of an Indian child shall be in the least restrictive
32 setting which most approximates a family situation and in
33 which the child's special needs, if any, may be met. The
34 child shall also be placed within reasonable proximity to the
35 child's home, taking into account any special needs of the

1 child. In any foster care or preadoptive placement, a
2 preference shall be given to the child's placement with one of
3 the following in descending priority order:

- 4 a. A member of the child's family.
- 5 b. A foster home licensed, approved, or specified by the
6 child's tribe.
- 7 c. An Indian foster home licensed or approved by an
8 authorized non-Indian licensing authority.
- 9 d. A child foster care agency approved by an Indian tribe
10 or operated by an Indian organization which has a program
11 suitable to meet the Indian child's needs.
- 12 e. A non-Indian child foster care agency approved by the
13 child's tribe.
- 14 f. A non-Indian family committed to enabling the child to
15 have extended family visitation and participation in the
16 cultural and ceremonial events of the child's tribe, provided
17 the contacts would not expose the child to danger of serious
18 physical injury or harm.

19 3. Notwithstanding the placement preferences listed in
20 subsections 1 and 2, if a different order of placement
21 preference is established by the child's tribe or in a binding
22 agreement between the child's tribe and the state entered into
23 pursuant to section 232B.9, the court or agency effecting the
24 placement shall follow the order of preference established by
25 the tribe or in the agreement.

26 4. As appropriate, the placement preference of the Indian
27 child or parent shall be considered. In applying the
28 preferences, a consenting parent's request for anonymity shall
29 also be given weight by the court or agency effecting the
30 placement. Unless there is clear and convincing evidence that
31 placement within the order of preference applicable under
32 subsection 1, 2, or 3 would be harmful to the Indian child,
33 consideration of the preference of the Indian child or parent
34 or a parent's request for anonymity shall not be a basis for
35 placing an Indian child outside of the applicable order of

1 preference.

2 5. The prevailing social and cultural standards of the
3 Indian community in which the parent or extended family
4 members of an Indian child reside, or with which such parent
5 or extended family members maintain social and cultural ties,
6 or the prevailing social and cultural standards of the Indian
7 child's tribe shall be applied in qualifying any placement
8 having a preference under this section.

9 6. A record of each foster care, preadoptive placement, or
10 adoptive placement of an Indian child, under the laws of this
11 state, shall be maintained in perpetuity by the department of
12 human services in accordance with section 232B.11. The record
13 shall document the efforts to comply with the applicable order
14 of preference specified in this section.

15 7. The state of Iowa recognizes the authority of Indian
16 tribes to license foster homes and to license agencies to
17 receive children for control, care, and maintenance outside of
18 the children's own homes, or to place, receive, arrange the
19 placement of, or assist in the placement of children for
20 foster care or adoption. The department of human services and
21 child-placing agencies licensed under chapter 238 may place
22 children in foster homes and facilities licensed by an Indian
23 tribe.

24 Sec. 9. NEW SECTION. 232B.8 TRIBALLY RECOGNIZED EXPERT
25 WITNESSES -- STANDARD OF PROOF.

26 1. For the purposes of this section, unless the context
27 otherwise requires, a "qualified expert witness" may include,
28 but is not limited to, a social worker, sociologist,
29 physician, psychologist, traditional tribal therapist and
30 healer, spiritual leader, historian, or elder.

31 2. In considering whether to involuntarily place an Indian
32 child in foster care or to terminate the parental rights of
33 the parent of an Indian child, the court shall require that
34 qualified expert witnesses with specific knowledge of the
35 child's Indian tribe testify regarding that tribe's family

1 organization and child-rearing practices, and regarding
2 whether the tribe's culture, customs, and laws would support
3 the placement of the child in foster care or the termination
4 of parental rights on the grounds that continued custody of
5 the child by the parent or Indian custodian is likely to
6 result in serious emotional or physical damage to the child.

7 3. In the following descending order of preference, a
8 qualified expert witness is a person who is one of the
9 following:

10 a. A member of the child's Indian tribe who is recognized
11 by the child's tribal community as knowledgeable regarding
12 tribal customs as the customs pertain to family organization
13 or child-rearing practices.

14 b. A member of another tribe who is formally recognized by
15 the Indian child's tribe as having the knowledge to be a
16 qualified expert witness.

17 c. A layperson having substantial experience in the
18 delivery of child and family services to Indians, and
19 substantial knowledge of the prevailing social and cultural
20 standards and child-rearing practices within the Indian
21 child's tribe.

22 d. A professional person having substantial education and
23 experience in the person's professional specialty and having
24 substantial knowledge of the prevailing social and cultural
25 standards and child-rearing practices within the Indian
26 child's tribe.

27 4. a. Termination of parental rights over an Indian child
28 shall not be ordered in the absence of a determination,
29 supported by evidence beyond a reasonable doubt, including the
30 testimony of qualified expert witnesses, that the continued
31 custody of the child by the child's parent or Indian custodian
32 is likely to result in serious emotional or physical damage to
33 the child.

34 b. Foster care placement of an Indian child shall not be
35 ordered in the absence of a determination, supported by clear

1 and convincing evidence, including the testimony of qualified
2 expert witnesses, that the continued custody of the child by
3 the child's parent or Indian custodian is likely to result in
4 serious emotional or physical damage to the child.

5 Sec. 10. NEW SECTION. 232B.9 AGREEMENTS WITH TRIBES FOR
6 CARE AND CUSTODY OF INDIAN CHILDREN.

7 1. The director of human services or the director's
8 designee shall make a good faith effort to enter into
9 agreements with Indian tribes regarding the care and custody
10 of Indian children whose tribes have land within Iowa,
11 including but not limited to the Sac and Fox tribe, the Omaha
12 tribe, the Ponca tribe, and the Winnebago tribe, and whose
13 tribes have an Indian child who resides in the state of Iowa.
14 An agreement shall seek to promote the continued existence and
15 integrity of the Indian tribe as a political entity and the
16 vital interest of Indian children in securing and maintaining
17 a political and social relationship with their tribes. An
18 agreement shall assure that tribal services and Indian
19 organizations or agencies, where available, are used to the
20 greatest extent practicable in planning and implementing any
21 action pursuant to the agreement concerning the care and
22 custody of Indian children. If tribal services are not
23 available, an agreement shall assure that community services
24 and resources developed specifically for Indian families will
25 be used whenever possible.

26 2. In the event that an agreement entered into between the
27 tribe and the department of human services pertaining to the
28 funding of foster care placements for Indian children
29 conflicts with any federal or state law, the state in a
30 timely, good faith manner shall agree to amend the agreement,
31 if possible, in a way that prevents any interruption of
32 services to eligible Indian children.

33 Sec. 11. NEW SECTION. 232B.10 PAYMENT OF FOSTER CARE
34 EXPENSES.

35 1. If the department of human services has legal custody

1 of an Indian child and that child is placed in foster care
2 according to the placement preferences under section 232B.7
3 the state shall pay, subject to any applicable federal funding
4 limitations and requirements, the cost of the foster care in
5 the manner and to the same extent the state pays for foster
6 care of non-Indian children, including the administrative and
7 training costs associated with the placement. In addition,
8 the state shall pay the other costs related to the foster care
9 placement of an Indian child as may be provided for in an
10 agreement entered into between a tribe and the state.

11 2. The department of human services may, subject to any
12 applicable federal funding limitations and requirements and
13 within funds appropriated for foster care services, purchase
14 care for Indian children who are in the custody of a federally
15 recognized Indian tribe or tribally licensed child-placing
16 agency pursuant to parental consent, tribal court order, or
17 state court order; and the purchase of the care is subject to
18 the same eligibility standards and rates of support applicable
19 to other children for whom the department purchases care.

20 Sec. 12. NEW SECTION. 232B.11 RECORDS.

21 1. The department of human services shall establish a
22 database in a single location where a record shall be
23 maintained of every involuntary or voluntary foster care,
24 preadoptive placement, or adoptive placement of an Indian
25 child that is ordered by a court of this state. The record
26 shall document the efforts made to comply with the order of
27 placement preference specified in section 232B.7.

28 2. An Indian child's placement record shall be maintained
29 in perpetuity by the department of human services and shall
30 include, but not be limited to, all of the following
31 information:

- 32 a. The name and tribal affiliation of the child.
- 33 b. The location of the child's Indian tribe or tribes.
- 34 c. The names and addressees of the child's biological
35 parents.

- 1 d. The child's certificate of degree of Indian blood.
2 e. The child's tribal enrollment or other membership
3 documentation, if any.
4 f. The child's medical records.
5 g. The social and medical history of the child's
6 biological family.
7 h. The names, ages, and gender of the child's siblings.
8 i. The names, ages, and gender of the child's kinship or
9 extended family members.
10 j. The names and addresses of the child's adoptive
11 parents.
12 k. The identity of any agency having files or information
13 relating to the placement.
14 1. All reports concerning the child or the child's family,
15 including detailed information regarding case plans and other
16 efforts to rehabilitate the parents of the child.
17 m. A record of efforts made to place the child within and
18 outside of the placement preferences under section 232B.7.
19 n. A statement of the reason for the final placement
20 decision.
21 3. If a court orders the foster care, preadoptive
22 placement, or adoptive placement of an Indian child, the court
23 and any state-licensed child-placing agency involved in the
24 placement shall provide the department of human services with
25 the records described in subsections 1 and 2.
26 4. A record maintained by the department of human services
27 pursuant to this section shall be made available within seven
28 days of a request for the record by the Indian child's tribe
29 or the secretary of the interior.
30 5. Upon the request of an Indian person, who is eighteen
31 years of age or older, or upon the request of an Indian
32 child's parent, Indian custodian, attorney, guardian ad litem,
33 guardian, legal custodian, or caseworker of the Indian child,
34 the department of human services shall provide access to the
35 records pertaining to the Indian person or child maintained by

1 the department pursuant to this section. The records shall
2 also be made available upon the request of the descendants of
3 the Indian person or child.

4 6. If a parent of an Indian child wishes to remain
5 anonymous, records concerning any such parent shall not be
6 released unless necessary to secure, maintain, or enforce the
7 Indian child's right to enrollment or membership in the
8 child's Indian tribe, for determining a right or benefit
9 associated with the enrollment or membership, or for
10 determining a right to an inheritance.

11 Sec. 13. NEW SECTION. 232B.12 COMPLIANCE.

12 1. The department of human services shall establish
13 standards for the department's review of cases subject to this
14 chapter. The review shall occur on an annual basis.

15 2. The court shall vacate a state court order and remand
16 the case for appropriate disposition for any of the following
17 violations of this chapter:

18 a. Failure to notify an Indian parent, Indian custodian,
19 or tribe.

20 b. Failure to recognize the legitimate jurisdiction of an
21 Indian tribe.

22 c. Failure, without cause as specified under this chapter,
23 to transfer jurisdiction to an Indian tribe appropriately
24 seeking transfer.

25 d. Failure to give full faith and credit to the public
26 acts, records, or judicial proceedings of an Indian tribe.

27 e. Failure to allow intervention by an Indian custodian or
28 Indian tribe.

29 f. Failure to return the child to the child's parent or
30 Indian custodian when removal or placement is no longer
31 necessary to prevent imminent physical damage or harm.

32 g. Failure to provide the testimony of an expert witness
33 as required by this chapter.

34 3. With respect to any proceeding subject to this chapter,
35 a person is civilly liable for the damages proximately caused

1 by any of the following:

2 a. Knowingly and willfully participating in any activity
3 listed in subsection 4.

4 b. A knowing and willful violation described in subsection
5 2.

6 c. Any other knowing and willful violation of this
7 chapter.

8 4. With respect to any proceeding subject to this chapter,
9 a person shall, upon conviction, be subject to a criminal
10 sanction under subsection 5 if the person knowingly and
11 willfully does any of the following pertaining to the
12 requirements of this chapter:

13 a. Falsifies, conceals, or covers up by any trick, scheme,
14 or device, a material fact concerning whether, for purposes of
15 this chapter, a child is an Indian child or the child's parent
16 is an Indian.

17 b. Makes any false, fictitious, or fraudulent statement,
18 omission, or representation.

19 c. Falsifies or verifies a written document knowing that
20 the document contains a false, fictitious, or fraudulent
21 statement or entry relating to a material fact described in
22 paragraph "a".

23 d. Assists any person in physically removing a child from
24 the United States in order to obstruct the application of this
25 chapter.

26 e. Violates section 232B.4, 232B.5, 232B.6, 232B.7,
27 232B.8, or 232B.11.

28 5. An initial violation described in subsection 4 is a
29 serious misdemeanor. A second or subsequent violation
30 described in subsection 4 is a class "D" felony.

31 Sec. 14. Section 600.1, Code 2001, is amended by adding
32 the following new unnumbered paragraph:

33 NEW UNNUMBERED PARAGRAPH. If a proceeding held under this
34 chapter involves an Indian child as defined in section 232B.3
35 and the proceeding is subject to the Iowa Indian child welfare

1 Act under chapter 232B, the proceeding and other actions taken
2 in connection with the proceeding or this chapter shall comply
3 with chapter 232B.

4 Sec. 15. Section 600A.3, Code 2001, is amended by adding
5 the following new unnumbered paragraph:

6 NEW UNNUMBERED PARAGRAPH. If a proceeding held under this
7 chapter involves an Indian child as defined in section 232B.3
8 and the proceeding is subject to the Iowa Indian child welfare
9 Act under chapter 232B, the proceeding and other actions taken
10 in connection with the proceeding or this chapter shall comply
11 with chapter 232B.

12 EXPLANATION

13 This bill implements the federal Indian Child Welfare Act
14 of 1978. The bill establishes requirements for the courts,
15 department of human services, and others for use in any
16 voluntary or involuntary proceeding that may result in an
17 Indian child's adoptive placement, preadoptive placement,
18 foster care placement, or termination of parental rights.

19 The bill addresses definitions, determination of a child's
20 Indian status, notice of proceedings, transfers of
21 jurisdiction, emergency removals, preferences for permanent
22 out-of-home placements, usage of tribally recognized expert
23 witnesses, agreements with tribes for care and custody of
24 Indian children, payment of foster care expenses, maintenance
25 of records in perpetuity, and compliance requirements
26 including civil liability and criminal penalties.

27 A person who knowingly and willfully fails to act as
28 required by the chapter or otherwise violates the chapter is
29 civilly liable for the damages proximately caused by the
30 failure or violation. A person who knowingly and willfully
31 violates the chapter by an action or failure to take action in
32 compliance with the chapter commits a serious misdemeanor for
33 a first offense and a class "D" felony for a second or
34 subsequent offense.

35 The bill amends Code chapter 232, the juvenile justice

1 code, Code chapter 600, relating to adoptions, and Code
2 chapter 600A, relating to termination of parental rights, to
3 provide that if a proceeding held under any of those Code
4 chapters involves an Indian child and the proceeding is
5 subject to the Iowa Indian child welfare Act, the proceeding
6 and other actions taken in connection with the proceeding or
7 the applicable Code chapter must comply with Code chapter
8 232B.

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