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SENATE FILE 2236

BY HANSEN and REDWINE

(COMPANION TO HF 2358
BY WARNSTADT)

Passed Senate, Date _____ Passed House, 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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SF 2236 STATE GOVERNMENT

1 Section 1. NEW SECTION. 232.7 IOWA INDIAN CHILD WELFARE
2 ACT.

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

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

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

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

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

1 and maintaining a political and social relationship with the
2 child's tribe and tribal community.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 3. A written determination by an Indian tribe that a child

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

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

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

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

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

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

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

1 c. The court has reason to believe the residence or
2 domicile of the child is in a predominately Indian community.

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

9 a. The child's parents.

10 b. The child's Indian custodians.

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

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

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

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

1 information:

2 a. The name and tribal affiliation of the Indian child.

3 b. A copy of the petition by which the proceeding was
4 initiated.

5 c. A statement listing the rights of the child's parents,
6 Indian custodians, and tribes and, if applicable, the rights
7 of the Indian child's family. The rights shall include all of
8 the following:

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

10 (2) The right to petition the court to transfer the
11 proceeding to the tribal court of the Indian child's tribe.

12 (3) The right to request an additional twenty days from
13 the receipt of the notice to prepare for the proceeding.

14 (4) The right to request that the court grant further
15 extensions of time.

16 (5) In the case of an extended family member, the right to
17 intervene and be considered as a preferred placement for the
18 child.

19 d. A statement of the potential legal consequences of an
20 adjudication on the future custodial rights of the child's
21 parents or Indian custodians.

22 e. A statement that if the parents or Indian custodians
23 are unable to afford counsel in an involuntary proceeding,
24 counsel will be appointed to represent the parents or
25 custodians.

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

29 7. In a voluntary child custody proceeding involving an
30 Indian child, the court shall establish in the record that the
31 party seeking the foster care placement of, termination of
32 parental rights to, or the adoption of, an Indian child has
33 sent notice at least ten days prior to the hearing by
34 registered mail, return receipt requested, to all of the
35 following:

1 a. The child's parents, except for a parent whose parental
2 rights have been terminated.

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

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

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

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

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

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

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

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

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

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

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

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

1 petition of any of the following persons:

2 a. Either of the child's parents.

3 b. The child's Indian custodian.

4 c. The child's tribe.

5 10. Notwithstanding entry of an objection to a transfer of
6 proceedings as described in subsection 9, the court shall
7 reject any objection that is inconsistent with the purposes of
8 this chapter.

9 11. A transfer of proceedings under subsection 9 may be
10 declined by the Indian child's tribe. If the tribe declines
11 to assume jurisdiction, the court shall reassume jurisdiction
12 and shall apply all of the following in any proceeding:

13 a. The requirements of the federal Indian Child Welfare
14 Act.

15 b. This chapter.

16 c. The applicable provisions of any agreement between the
17 Indian child's tribe and the state concerning the welfare,
18 care, and custody of Indian children.

19 12. The Indian child's tribe or tribes and Indian
20 custodian have the right to intervene at any point in any
21 foster care placement or termination of parental rights
22 proceeding involving the child. The Indian child's tribe
23 shall also have the right to intervene at any point in any
24 adoption proceeding involving the child. Any member of the
25 Indian child's family may intervene in an adoption proceeding
26 involving the child for the purpose of petitioning the court
27 for the adoptive placement of the child in accordance with the
28 order of preference provided for in this chapter.

29 13. The state shall give full faith and credit to the
30 public acts, records, judicial proceedings, and judgments of
31 any Indian tribe applicable to the Indian child custody
32 proceedings to the same extent that the tribe gives full faith
33 and credit to the public acts, records, judicial proceedings,
34 and judgments of the state.

35 14. Any person or court involved in the foster care,

1 preadoptive placement, or adoptive placement of an Indian
2 child shall use the services of the Indian child's tribe or
3 tribes, whenever possible, in seeking to secure placement
4 within the order of placement preference established in
5 section 232B.7 and in the supervision of the placement.

6 15. The state of Iowa recognizes that an Indian tribe may
7 contract with another Indian tribe for supervision regarding
8 placement, case management, and the provision of services to
9 an Indian child.

10 Sec. 7. NEW SECTION. 232B.6 EMERGENCY REMOVAL OF INDIAN
11 CHILD.

12 1. This chapter shall not be construed to prevent the
13 emergency removal of an Indian child who is a resident of or
14 is domiciled on an Indian reservation, but is temporarily
15 located off the reservation, or is away from the child's
16 parent or Indian custodian, or the emergency placement of such
17 child in a foster home or institution, under applicable state
18 law, in order to prevent imminent physical damage or harm to
19 the child. In a case of emergency removal of an Indian child,
20 regardless of residence or domicile of the child, the state
21 shall ensure that the emergency removal or placement
22 terminates immediately when the removal or placement is no
23 longer necessary to prevent imminent physical damage or harm
24 to the child and shall expeditiously initiate a child custody
25 proceeding subject to the provisions of this chapter, transfer
26 the child to the jurisdiction of the appropriate Indian tribe,
27 or restore the child to the child's parent or Indian
28 custodian, as may be appropriate.

29 2. A petition commencing an emergency removal or foster
30 care placement proceeding under chapter 232 involving an
31 Indian child shall be accompanied by all of the following:

32 a. An affidavit containing the names, tribal affiliations,
33 and addresses of the Indian child, and of the child's parents
34 and Indian custodians.

35 b. A specific and detailed account of the circumstances

1 supporting the removal of the child.

2 c. Official reports from each public or private agency
3 involved with the emergency removal. The reports shall
4 include all of the following information:

5 (1) The name of each agency.

6 (2) The names of agency administrators and professionals
7 involved in the removal.

8 (3) A description of the emergency justifying the removal
9 of the child.

10 (4) All observations made and actions taken by the agency.

11 (5) The date, time, and place of each such action.

12 (6) The signatures of all agency personnel involved.

13 (7) A statement of the specific actions taken and to be
14 taken by each involved agency to effectuate the safe return of
15 the child to the custody of the child's parent or Indian
16 custodian.

17 3. Within one business day following the issuance of an
18 order of emergency removal or placement of an Indian child,
19 the court issuing the order shall notify the Indian child's
20 tribe of the emergency removal or placement by registered
21 mail, return receipt requested. The notice shall include the
22 court order, any information required by this chapter, and a
23 statement informing the child's tribe of the tribe's right to
24 intervene in the proceeding.

25 4. An emergency removal or placement of an Indian child
26 shall immediately terminate, and any court order approving the
27 removal or placement shall be vacated, when the removal or
28 placement is no longer necessary to prevent imminent physical
29 damage or harm to the child. In no case shall an emergency
30 removal or placement order remain in effect for more than
31 fifteen days unless, upon a showing that continuation of the
32 order is necessary to prevent imminent physical damage or harm
33 to the child, the court extends the order for a period not to
34 exceed an additional thirty days.

35 5. Upon termination of the emergency removal or placement

1 order, the child shall immediately be returned to the custody
2 of the child's parent or Indian custodian unless any of the
3 following circumstances exist:

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

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

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

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

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

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

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

23 c. Another Indian family.

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

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

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

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

5 a. A member of the child's family.

6 b. A foster home licensed, approved, or specified by the
7 child's tribe.

8 c. An Indian foster home licensed or approved by an
9 authorized non-Indian licensing authority.

10 d. A child foster care agency approved by an Indian tribe
11 or operated by an Indian organization which has a program
12 suitable to meet the Indian child's needs.

13 e. A non-Indian child foster care agency approved by the
14 child's tribe.

15 f. A non-Indian family committed to enabling the child to
16 have extended family visitation and participation in the
17 cultural and ceremonial events of the child's tribe, provided
18 the contacts would not expose the child to danger of serious
19 physical injury or harm.

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

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

1 placing an Indian child outside of the applicable order of
2 preference.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 b. Foster care placement of an Indian child shall not be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 3. With respect to any proceeding subject to this chapter,

1 a person is civilly liable for the damages proximately caused
2 by any of the following:

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

5 b. A knowing and willful violation described in subsection
6 2.

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

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

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

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

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

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

27 e. Violates section 232B.4, 232B.5, 232B.6, 232B.7,
28 232B.8, or 232B.11.

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

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

34 NEW UNNUMBERED PARAGRAPH. If a proceeding held under this
35 chapter involves an Indian child as defined in section 232B.3

1 and the proceeding is subject to the Iowa Indian child welfare
2 Act under chapter 232B, the proceeding and other actions taken
3 in connection with the proceeding or this chapter shall comply
4 with chapter 232B.

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

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

13 EXPLANATION

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

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

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

1 The bill amends Code chapter 232, the juvenile justice
2 code, Code chapter 600, relating to adoptions, and Code
3 chapter 600A, relating to termination of parental rights, to
4 provide that if a proceeding held under any of those Code
5 chapters involves an Indian child and the proceeding is
6 subject to the Iowa Indian child welfare Act, the proceeding
7 and other actions taken in connection with the proceeding or
8 the applicable Code chapter must comply with Code chapter
9 232B.

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