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SENATE FILE

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 an effective date.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 312 HUMAN RESOURCES

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

3 1. If a proceeding held under this chapter involves an  
4 Indian child as defined in section 232B.2 and the proceeding  
5 is 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 2. The federal Adoption and Safe Families Act of 1997  
10 (ASFA), Pub. L. No. 105-89, does not supercede the federal  
11 Indian Child Welfare Act (ICWA). The general assembly finds  
12 that ICWA has not been modified, limited, or diminished by the  
13 ASFA and Iowa shall comply with the mandates of both federal  
14 laws.

15 Sec. 2. NEW SECTION. 232B.1 SHORT TITLE -- PURPOSE --  
16 POLICY OF STATE.

17 1. This chapter shall be known and may be cited as the  
18 "Iowa Indian Child Welfare Act".

19 2. The purpose of the Iowa Indian child welfare Act is to  
20 clarify state policies and procedures regarding implementation  
21 of the federal Indian Child Welfare Act, Pub. L. No. 95-608,  
22 as codified in 25 U.S.C. ch. 21 § 1901, et seq. It is the  
23 policy of the state to cooperate fully with Indian tribes and  
24 tribal citizens in Iowa in order to ensure that the intent and  
25 provisions of the federal Indian Child Welfare Act are  
26 enforced. This cooperation includes recognition by the state  
27 that Indian tribes have a continuing and compelling  
28 governmental interest in an Indian child whether the child is  
29 in the physical or legal custody of an Indian parent, Indian  
30 custodian, or an Indian extended family member at the time of  
31 the child's removal or commencement of a child custody  
32 proceeding or whether the child has resided or domiciled on an  
33 Indian reservation prior to, during, or following a state  
34 child custody proceeding. The state is committed to  
35 protecting the essential tribal relations and best interests

1 of an Indian child by promoting practices, in accordance with  
2 the federal Indian Child Welfare Act and other applicable law,  
3 designed to prevent the child's voluntary or involuntary out-  
4 of-home placement and, whenever such placement is necessary or  
5 ordered, by acting to the greatest possible extent to place  
6 the child in a foster home, adoptive home, or other type of  
7 custodial placement that reflects the unique values of the  
8 child's tribal culture and is best able to assist the child in  
9 establishing, developing, and maintaining a political,  
10 cultural, and social relationship with the child's tribe and  
11 tribal community. Compliance with this chapter requires  
12 minimum levels of cultural competency of all persons involved  
13 with social service efforts in the state and requires those  
14 services and the courts of the state to identify and apply the  
15 social and cultural standards of each child's tribe before  
16 removal or placement determinations are made.

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

18 For the purposes of this chapter unless the context  
19 otherwise requires:

20 1. "Active efforts" means a vigorous and concerted level  
21 of effort beyond the level that typically constitutes  
22 reasonable efforts as defined in sections 232.57 and 232.102.  
23 Reasonable efforts shall not be construed to be active  
24 efforts. Active efforts take into account the prevailing  
25 social and cultural values, conditions, and way of life of the  
26 Indian child's tribe. Active efforts utilize the available  
27 resources of the Indian child's extended family, tribe, tribal  
28 and other Indian social service agencies, and individual  
29 Indian caregivers. Active efforts include but are not limited  
30 to all of the following:

31 a. A request to the Indian child's tribe to convene  
32 traditional and customary support and resolution actions or  
33 services.

34 b. Identification and participation of tribally designated  
35 representatives at the earliest point.

1 c. Consultation with extended family members to identify  
2 family structure and family support services that may be  
3 provided by extended family members.

4 d. Frequent visitation in the Indian child's home and the  
5 homes of the child's extended family members.

6 e. Exhaustion of all tribally appropriate family  
7 preservation alternatives.

8 f. Identification and provision of housing, financial, and  
9 transportation assistance.

10 2. "Best interest" or "best interest of the child" means  
11 compliance with the spirit and intent of the federal Indian  
12 Child Welfare Act of protecting the unique relationship that  
13 exists between each Indian child and the child's own tribe,  
14 and providing the Indian child with unbroken access to and  
15 involvement in the child's tribe's way of life and the child's  
16 lifelong relationship with the child's extended family, tribal  
17 community, and tribe.

18 3. "Child custody proceeding" means a voluntary or  
19 involuntary proceeding in which an Indian child is removed or  
20 may be removed from the care, custody, or control of the  
21 child's parent or Indian custodian, including but not limited  
22 to a proceeding that may result in an Indian child's adoptive  
23 placement, foster care placement, preadoptive placement, or  
24 termination of parental rights, or other permanency placement  
25 proceeding involving an Indian child.

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

30 5. "Indian child" or "child" means an unmarried Indian  
31 person who is under eighteen years of age or is a child that  
32 an Indian tribe identifies as a child of the tribe's  
33 community.

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

1 7. "Indian child's family" or "extended family member"  
2 means an adult person who is an Indian child's family member  
3 or extended family member under the law or custom of the  
4 Indian child's tribe or, in absence of such law or custom, an  
5 adult person who has any of the following relationships with  
6 the Indian child:

- 7 a. Parent.
- 8 b. Sibling.
- 9 c. Grandparent.
- 10 d. Aunt or uncle.
- 11 e. First or second cousin.
- 12 f. Clan member.
- 13 g. Tribal member.
- 14 h. Brother-in-law.
- 15 i. Sister-in-law.
- 16 j. Niece.
- 17 k. Nephew.
- 18 l. Stepparent.

19 8. "Indian custodian" means an Indian person who has legal  
20 custody of an Indian child under tribal law, tribal custom, or  
21 state law or to whom temporary physical care, custody, and  
22 control has been transferred by the child's parent.

23 9. "Indian organization" means any of the following  
24 entities that is owned or controlled by Indians, or of which a  
25 majority of the members are Indians:

- 26 a. A group.
- 27 b. An association.
- 28 c. A partnership.
- 29 d. A corporation.
- 30 e. Other legal entity.

31 10. "Indian tribe" or "tribe" means an Indian tribe, band,  
32 nation, or other organized Indian group, or a community of  
33 Indians, including any Alaska native village as defined in 43  
34 U.S.C. § 1602(c) recognized as eligible for services provided  
35 to Indians by the United States secretary of the interior

1 because of the community members' status as Indians.

2 11. "Parent" means a biological parent of an Indian child  
3 or a person who has lawfully adopted an Indian child,  
4 including adoptions made under tribal law or custom. "Parent"  
5 does not include an unwed father whose paternity has not been  
6 acknowledged or established. Except for purposes of the  
7 federal Indian Child Welfare Act as codified in 25 U.S.C. §  
8 1913, "parent" does not include a person whose parental rights  
9 to that child have been terminated.

10 12. "Reservation" means Indian country as defined in 18  
11 U.S.C. § 1151 or land that is not covered under that  
12 definition but the title to which is either held by the United  
13 States in trust for the benefit of an Indian tribe or Indian  
14 person or held by an Indian tribe or Indian person subject to  
15 a restriction by the United States against alienation.

16 13. "Secretary of the interior" means the secretary of the  
17 United States department of the interior.

18 14. "Tribal court" means a court or body vested by an  
19 Indian tribe with jurisdiction over child custody proceedings  
20 and which is a federal court of Indian offenses, a court  
21 established and operated under the code or custom of an Indian  
22 tribe, or other tribal body, including an administrative body  
23 of an Indian tribe vested with authority over child custody  
24 proceedings.

25 Sec. 4. NEW SECTION. 232B.3 APPLICATION OF CHAPTER --  
26 DETERMINATION OF INDIAN STATUS -- RIGHT TO COUNSEL.

27 1. This chapter applies to child custody proceedings  
28 involving an Indian child whether the child is in the physical  
29 or legal custody of an Indian parent, Indian custodian, or an  
30 Indian extended family member or another person at the  
31 commencement of the proceedings or whether the child has  
32 resided or domiciled on or off an Indian reservation.

33 2. In a child custody proceeding, the court or any party  
34 to the proceeding shall be deemed to know or have reason to  
35 know that an Indian child is involved whenever any of the

1 following circumstances exist:

2 a. A party to the proceeding or the court has been  
3 informed by an interested person, an officer of the court, a  
4 tribe, an Indian organization, a public or private agency, or  
5 a member of the Indian child's family that the child is or may  
6 be an Indian child.

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

9 c. The court or a party to the proceeding has reason to  
10 believe the residence or domicile of the child is in a  
11 predominantly Indian community.

12 3. The court shall require a party seeking the foster care  
13 placement of, termination of parental rights over, or the  
14 adoption or permanent placement of, an Indian child to seek  
15 information regarding whether the child is an Indian child  
16 through contact with any Indian tribe in which the child may  
17 be a member or eligible for membership, any extended family  
18 members of the child, and any other person that reasonably can  
19 be expected to have information regarding the child's possible  
20 membership or eligibility for membership in an Indian tribe,  
21 including but not limited to the United States department of  
22 the interior.

23 4. The determination of the Indian status of a child shall  
24 be made as soon as practicable in order to serve the best  
25 interest of the child and to ensure compliance with the notice  
26 requirements of this chapter. If a party or the court  
27 suspects that a child involved in a child custody proceeding  
28 is an Indian child, the child shall be considered to be an  
29 Indian child, pending determination of the child's Indian  
30 status by the child's tribe.

31 5. A written determination by an Indian tribe that a child  
32 is a member of or eligible for membership in that tribe, or  
33 testimony attesting to such status by a person authorized by  
34 the tribe to provide that determination, shall be conclusive.  
35 A written determination by an Indian tribe, or testimony by a

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

7 6. In any proceeding in which the court determines  
8 indigency of the Indian child's parent or Indian custodian,  
9 the parent or Indian custodian shall have the right to court-  
10 appointed counsel in any removal, placement, or termination of  
11 parental rights. The child shall also have the right to  
12 court-appointed counsel in any removal, placement, termination  
13 of parental rights, or other permanency proceedings.

14 7. The Indian child's parent or Indian custodian has the  
15 right to participate in any preadoptive, adoptive, or other  
16 permanency proceeding involving the Indian child,  
17 notwithstanding the termination of the parent or Indian  
18 custodian's rights in regard to the Indian child.

19 Sec. 5. NEW SECTION. 232B.4 TRANSFER OF PROCEEDINGS.

20 1. An Indian tribe's tribal court has jurisdiction  
21 exclusive as to this state over any child custody proceeding  
22 held in this state involving an Indian child who resides or is  
23 domiciled within the reservation of that tribe and  
24 jurisdiction shall be transferred to the tribal court unless  
25 the Indian child's parent or Indian custodian objects or the  
26 tribal court declines to accept the transfer. In addition, a  
27 state court may determine there is good cause not to transfer  
28 jurisdiction.

29 2. In any determination for good cause not to transfer  
30 jurisdiction to a tribal court none of the following shall be  
31 considered in a determination that good cause exists:

32 a. The proceeding was at an advanced stage when the  
33 petition to transfer was received and the petitioner did not  
34 file the petition promptly after receiving notice.

35 b. The Indian child is more than twelve years of age and



1 objects to the transfer.

2 c. The evidence necessary to decide the case could not be  
3 adequately presented in the tribal court without undue  
4 hardship to the parties or the witnesses.

5 d. The parents of an Indian child are not available.

6 e. The parent or the Indian child has had little or no  
7 contact with the child's tribe.

8 f. The socioeconomic conditions of the Indian child or the  
9 child's family.

10 g. The perceived adequacy of tribal or federal bureau of  
11 Indian affairs social services or judicial systems.

12 3. Notwithstanding entry of an objection to a transfer of  
13 proceedings as described in this chapter, the court shall  
14 reject any objection that is inconsistent with the purposes of  
15 this chapter, including but not limited to an objection that  
16 would prevent maintaining the vital relationship between an  
17 Indian child and the child's tribe or would cause removal of  
18 the child from a placement that reflects the unique values and  
19 customs of the child's tribe.

20 4. If the tribal court declines to accept jurisdiction or  
21 the court denies a request to transfer proceedings to a tribal  
22 court, the court shall apply all of the following in any  
23 proceeding:

24 a. The requirements of the federal Indian Child Welfare  
25 Act.

26 b. This chapter.

27 c. The applicable provisions of any agreement between the  
28 Indian child's tribe and the state concerning the welfare,  
29 care, and custody of Indian children.

30 5. The Indian child's tribe or tribes, parent, or Indian  
31 custodian has the right to intervene at any point in any  
32 foster care placement, preadoption, or termination of parental  
33 rights proceeding involving the child. The Indian child's  
34 tribe has the right to intervene at any point in any adoption  
35 or other permanency proceeding. Any member of the Indian

1 child's extended family has the right to intervene in an  
2 adoption or other permanency proceeding for the purpose of  
3 petitioning the court for the adoptive placement of the child  
4 in accordance with the order of preference provided in this  
5 chapter and the child's tribe has the right to object to the  
6 petition.

7 6. The state shall give full faith and credit to an Indian  
8 tribe's public acts, records, judicial proceedings, and  
9 judgments that are applicable to an Indian child custody  
10 proceeding.

11 Sec. 6. NEW SECTION. 232B.5 NOTICE.

12 1. In any voluntary or involuntary Indian child custody  
13 proceeding, including review hearings following an  
14 adjudication, the court shall establish in the record that the  
15 party initiating the child custody proceeding has sent notice  
16 by registered mail, return receipt requested, to all of the  
17 following:

18 a. The child's parents, including but not limited to a  
19 biological Indian parent whose parental right have been  
20 terminated, unless the biological parent requests otherwise in  
21 writing.

22 b. The child's Indian custodians.

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

25 d. If authorized by this chapter, the child's extended  
26 family members.

27 2. If the identity or location of the child's parent,  
28 Indian custodian, or tribe cannot be determined, the notice  
29 shall be provided to the secretary of the interior, who shall  
30 have fifteen days after receipt of the notice to provide the  
31 notice to the child's parent or Indian custodian and tribe. A  
32 foster care placement or termination of parental rights  
33 proceeding involving the child shall not be held until at  
34 least ten days after receipt of notice by the child's parent,  
35 Indian custodian, and tribe, or the secretary of the interior.

1 Upon request, the child's parent or Indian custodian or tribe  
2 shall be granted up to twenty additional days after receipt of  
3 the notice to prepare for the proceeding.

4 3. The notice in any voluntary or involuntary Indian child  
5 custody proceeding, including review hearings, shall be  
6 written in clear and understandable language and shall be  
7 served by the party initiating the child custody proceeding,  
8 upon the persons identified in subsection 1, not less than  
9 twenty-eight days prior to the hearing date. However, notice  
10 and service for an emergency removal or emergency hearing  
11 shall be as provided in section 232B.10.

12 4. The notice in any involuntary child custody proceeding  
13 involving an Indian child shall include all of the following  
14 information:

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

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

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

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

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

25 (3) The right to be granted up to an additional twenty  
26 days from the receipt of the notice to prepare for the  
27 proceeding.

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

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

33 d. A statement of the potential legal consequences of an  
34 adjudication on the future custodial rights of the child's  
35 parents or Indian custodians.

1 e. A statement that if the parents or Indian custodians  
2 are unable to afford counsel in an involuntary proceeding,  
3 counsel will be appointed to represent the parents or  
4 custodians.

5 f. A statement that the court may appoint counsel for the  
6 child.

7 g. A statement that the information contained in the  
8 notice, petition, pleading, and other court documents is  
9 confidential.

10 h. A statement that the tribe may provide notice to the  
11 Indian child's extended family along with copies of related  
12 documents.

13 5. The notice in a voluntary child custody proceeding  
14 involving an Indian child shall include all of the following  
15 information:

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

17 b. A copy of the petition by which the proceeding was  
18 initiated.

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

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

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

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

30 d. A statement of the potential legal consequences of an  
31 adjudication on the future custodial rights of the Indian  
32 child's parents or Indian custodians.

33 e. A statement that if the Indian child's parents or  
34 Indian custodians are unable to afford counsel, counsel shall  
35 be appointed to represent the parents or custodians.

1 f. A statement that the court may appoint counsel for the  
2 child.

3 g. A statement that the information contained in the  
4 notice, petition, pleading, and other court documents is  
5 confidential.

6 h. A statement that the tribe may provide notice to the  
7 Indian child's extended family along with copies of related  
8 documents.

9 6. Whenever a determination is made by the court for  
10 placement of an Indian child in foster care, or a preadoptive  
11 or adoptive home, or any change in a child's placement home,  
12 the court shall establish in the record that notice of the  
13 hearing has been sent to all members of the Indian child's  
14 family entitled to a placement preference under this chapter.

15 Sec. 7. NEW SECTION. 232B.6 ACTIVE EFFORTS.

16 The court shall require any party seeking to effect foster  
17 care placement of, termination of parental rights to, adoption  
18 of, or other permanency proceeding for an Indian child to  
19 demonstrate to the court the active efforts made to provide  
20 remedial and rehabilitative services in regard to the child  
21 and the child's family. The purpose of the services is to  
22 prevent the breakup of the Indian child's family and to  
23 maintain the Indian child's family during adoption or other  
24 permanency proceeding. Active efforts shall be directed at  
25 prevention, reunification, and rehabilitation services, and  
26 promotion of tribal identity in the context of tribal law,  
27 custom, and cultural standards.

28 Sec. 8. NEW SECTION. 232B.7 TRIBALLY RECOGNIZED  
29 QUALIFIED EXPERT WITNESSES.

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

35 2. 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 3. Termination of parental rights over an Indian child  
7 shall not be ordered in the absence of a determination,  
8 supported by evidence beyond a reasonable doubt, including the  
9 testimony of qualified expert witnesses, that the continued  
10 custody of the child by the child's parent or Indian custodian  
11 is likely to result in serious emotional or physical damage to  
12 the child.

13 4. Adoption of an Indian child shall not be ordered in the  
14 absence of a determination, supported by clear and convincing  
15 evidence, including the testimony of qualified expert  
16 witnesses, that the adoption is in the best interest of the  
17 child.

18 5. In considering whether to involuntarily place an Indian  
19 child in foster or preadoptive care or to terminate the  
20 parental rights of the parent of an Indian child, the court  
21 shall require that qualified expert witnesses with specific  
22 knowledge of the child's Indian tribe testify regarding that  
23 tribe's family organization and child-rearing practices, and  
24 regarding whether the tribe's culture, customs, and laws would  
25 support the placement of the child in foster or preadoptive  
26 care or the termination of parental rights on the grounds that  
27 continued custody of the child by the parent or Indian  
28 custodian is likely to result in serious emotional or physical  
29 damage to the child.

30 6. The court shall require proof of the efforts made by  
31 the petitioning party to identify and secure testimony by  
32 qualified expert witnesses in the order of preference  
33 specified in this subsection. In the following descending  
34 order of preference, a qualified expert witness is a person  
35 who is one of the following:

1 a. A member of the child's Indian tribe who is recognized  
2 by the child's tribal community as knowledgeable regarding  
3 vital components of the cultural and structural integrity of  
4 Indian extended kin systems and tribal customs, traditions,  
5 and values as the customs, traditions, and values pertain to  
6 family organization and child-rearing practices.

7 b. A member of another tribe who is formally recognized by  
8 the Indian child's tribe as having the knowledge regarding  
9 vital components of the cultural and structural integrity of  
10 Indian extended kin systems and tribal customs, traditions,  
11 and values as the customs, traditions, and values pertain to  
12 family organization and child-rearing practices.

13 c. A layperson having substantial experience in the  
14 delivery of child and family services to Indian people, and  
15 extensive knowledge of the Indian child's tribal customs,  
16 traditions, and values as the customs, traditions, and values  
17 pertain to family organization and child-rearing practices.

18 d. A professional person having substantial education and  
19 experience in the person's professional specialty and having  
20 extensive knowledge of the Indian child's tribal customs,  
21 traditions, and values as the customs, traditions, and values  
22 pertain to family organization and child-rearing practices.  
23 Prior to accepting the testimony of a qualified expert witness  
24 described in this lettered paragraph, the court shall document  
25 the efforts made to secure a qualified expert witness  
26 described in paragraphs "a", "b", and "c". The efforts shall  
27 include but are not limited to contacting the Indian child's  
28 tribe's governing body, that tribe's Indian Child Welfare Act  
29 office, and the tribe's social service office.

30 Sec. 9. NEW SECTION. 232B.8 STANDARD OF PROOF -- CHANGE  
31 OF PLACEMENT -- PLACEMENT ORDER VACATED.

32 1. A placement action resulting from a child custody  
33 proceeding may be invalidated upon a showing that the action  
34 violated any provision of 25 U.S.C. § 1911, 1912, or 1913 or  
35 this chapter.

1       2. Notwithstanding any other law to the contrary, if a  
2 final decree of adoption of an Indian child has been vacated  
3 or set aside or the adoptive parents voluntarily consent to  
4 the termination of parental rights to the Indian child, a  
5 biological parent of the child or prior Indian custodian may  
6 petition for return of custody and the court shall grant such  
7 petition unless there is a showing, in a proceeding subject to  
8 the provisions of this chapter, that the return of custody is  
9 not in the best interest of the child.

10       3. If an Indian child is removed from a foster care  
11 placement for the purpose of further foster care or  
12 preadoptive or adoptive placement, the placement shall be in  
13 accordance with this chapter, unless the Indian child is being  
14 returned to the parent or Indian custodian from whose custody  
15 the child was originally removed.

16       4. If a petitioner in an Indian child custody proceeding  
17 before a state court has improperly removed the child from  
18 custody of the parent or Indian custodian or has improperly  
19 retained custody after a visit or other temporary  
20 relinquishment of custody, the court shall decline  
21 jurisdiction over the petition and shall immediately order the  
22 child to be returned to the child's parent or Indian custodian  
23 unless returning the child to the parent or custodian would  
24 subject the child to a substantial and immediate danger or  
25 threat of such danger.

26       5. A voluntary placement of an Indian child shall be in  
27 compliance with the federal Indian Child Welfare Act, as set  
28 forth in 25 U.S.C. § 1913, subject to the additional  
29 provisions contained in this chapter.

30       6. An appellate court shall vacate a state court order and  
31 remand the case for appropriate disposition for any of the  
32 following violations in a child custody proceeding:

33       a. Failure to notify an Indian parent, Indian custodian,  
34 extended family member, or tribe as required by the federal  
35 Indian Child Welfare Act or this chapter.



1 b. Failure to recognize the legitimate jurisdiction of an  
2 Indian tribe.

3 c. Failure, without cause as specified under this chapter,  
4 to transfer jurisdiction to an Indian tribe appropriately  
5 seeking transfer.

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

8 e. Failure to allow intervention by an Indian custodian or  
9 Indian tribe, or if applicable, an extended family member as  
10 authorized by the federal Indian Child Welfare Act or this  
11 chapter.

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

15 g. Failure to provide the testimony of qualified expert  
16 witnesses as required by this chapter.

17 Sec. 10. NEW SECTION. 232B.9 PLACEMENT PREFERENCES.

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

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

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

24 c. Another Indian family.

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

27 e. A non-Indian family that is equipped and committed to  
28 enabling the child to have extended family visitation and  
29 participation in cultural and ceremonial events of the child's  
30 tribe.

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. Preference shall be given, in the absence of a showing  
3 of good cause to the contrary, to the child's placement with  
4 one of the following, in descending priority order:

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

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

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

10 d. A non-Indian foster care home licensed under chapter  
11 237 approved by the Indian child's tribe.

12 3. The standards to be applied in meeting the placement  
13 preferences required by this section shall be the prevailing  
14 social and cultural standards of the Indian community in which  
15 the parent or extended family members of an Indian child  
16 reside, or with which such parent or extended family members  
17 maintain social and cultural ties. In the absence of a  
18 determination regarding the most appropriate placement, the  
19 court may consider the prevailing social and cultural  
20 standards of the Indian child's tribe, which shall be applied  
21 in qualifying any placement having a preference under this  
22 section. In either case, the social and cultural standards  
23 shall be confirmed by the testimony or other documented  
24 support of qualified expert tribal witnesses.

25 4. As appropriate, the placement preference of the Indian  
26 child or parent shall be considered. In applying the  
27 preferences, a consenting parent's request for anonymity shall  
28 also be given weight by the court or agency effecting the  
29 placement.

30 5. Unless there is clear and convincing evidence that  
31 placement within the applicable order of preference would be  
32 harmful to the Indian child, consideration of the preference  
33 of the Indian child or parent or a parent's request for  
34 anonymity shall not be a basis for placing an Indian child  
35 outside of the applicable order of preference.

1 6. There are no exceptions to the application of the  
2 federal Indian Child Welfare Act or this chapter in a child  
3 custody proceeding regarding an Indian child. The courts of  
4 this state do not have discretion to determine whether an  
5 Indian child is part of an existing Indian family.

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

8 1. A petition commencing an emergency removal or foster  
9 care placement proceeding under chapter 232 involving an  
10 Indian child shall be accompanied by all of the following:

11 a. An affidavit containing the names, tribal affiliations,  
12 and addresses of the Indian child, and of the child's parents  
13 and Indian custodians.

14 b. A specific and detailed account of the circumstances  
15 supporting the removal of the child.

16 c. Official reports from each public or private agency  
17 involved with the emergency removal. The reports shall  
18 include all of the following information:

19 (1) The name of each agency.

20 (2) The names of agency administrators and professionals  
21 involved in the removal.

22 (3) A description of the emergency justifying the removal  
23 of the child.

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

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

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

27 d. A statement of the specific actions taken and to be  
28 taken by each involved agency to effectuate the safe return of  
29 the child to the custody of the child's parent or Indian  
30 custodian.

31 2. In any emergency hearing or emergency removal hearing  
32 involving an Indian child, the court issuing the order shall  
33 immediately notify the Indian child's tribe of the emergency  
34 removal or placement by registered mail, return receipt  
35 requested. If the child is removed or placed on an emergency

1 basis by the department of human services without a hearing,  
2 the department shall immediately notify the Indian child's  
3 tribe of the emergency removal or placement by registered  
4 mail, return receipt requested. The court's or department's  
5 immediate notice shall be mailed not more than three days from  
6 the date the order was issued or removal was made. The notice  
7 shall include the petition, court order, any information  
8 required by this chapter, and a statement informing the  
9 child's tribe of the tribe's right to intervene in the  
10 proceeding. A hearing following the emergency removal or  
11 placement of an Indian child shall be held not more than  
12 fifteen days following the date of the emergency removal or  
13 emergency removal hearing, whichever occurred first.

14 3. An emergency removal or placement of an Indian child  
15 shall immediately terminate, and any court order approving the  
16 removal or placement shall be vacated, when the removal or  
17 placement is no longer necessary to prevent imminent physical  
18 damage or harm to the child. In no case shall an emergency  
19 removal or placement order remain in effect for more than  
20 fifteen days unless, upon a showing that continuation of the  
21 order is necessary to prevent imminent physical damage or harm  
22 to the child, the court extends the order for a period not to  
23 exceed an additional thirty days. If the Indian child's tribe  
24 has been identified, the court shall notify the tribe of the  
25 date and time of any hearing scheduled to determine whether to  
26 extend an emergency removal or placement order.

27 4. Upon termination of the emergency removal or placement  
28 order, the child shall immediately be returned to the custody  
29 of the child's parent or Indian custodian unless any of the  
30 following circumstances exist:

31 a. The child is transferred to the jurisdiction of the  
32 child's tribe.

33 b. In an involuntary foster care placement proceeding  
34 pursuant to the federal Indian Child Welfare Act, the court  
35 orders that the child shall be placed in foster care upon a

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

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

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

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

29 1. A party to a child custody proceeding under state law  
30 involving an Indian child has the right to examine all reports  
31 or other documents filed with the court upon which any  
32 decision with respect to the proceeding may be based.

33 2. An Indian child's placement record shall be maintained  
34 in perpetuity by the department of human services and shall  
35 include, but not be limited to, all of the following

1 information:

- 2 a. The name and tribal affiliation of the child.
- 3 b. The location of the child's Indian tribe or tribes.
- 4 c. The names and addresses of the child's biological  
5 parents.
- 6 d. The child's certificate of degree of Indian blood or  
7 tribal equivalent.
- 8 e. The child's tribal enrollment or other membership  
9 documentation, if any.
- 10 f. The child's medical records.
- 11 g. The social and medical history of the child's  
12 biological family.
- 13 h. The names, ages, and gender of the child's siblings.
- 14 i. The names, ages, and gender of the child's kinship or  
15 extended family members.
- 16 j. The names and addresses of the child's adoptive  
17 parents.
- 18 k. The identity of any agency having files or information  
19 relating to the placement.
- 20 l. All reports concerning the child or the child's family,  
21 including detailed information regarding case plans and other  
22 efforts to rehabilitate the parents of the child.
- 23 m. A record of efforts made to place the child within and  
24 outside of the placement preferences required by this chapter.
- 25 n. A statement of the reason for the final placement  
26 decision.
- 27 3. 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 4. The department of human services, or the department's  
32 designee, shall make all records relating to a proceeding  
33 under this chapter available within a reasonable period after  
34 request by any of the following persons: an Indian child who  
35 is eighteen years of age and was subject to the proceeding,

1 the Indian child's parent, the Indian child's Indian  
2 custodian, an attorney representing a party to the proceeding,  
3 the Indian child's guardian ad litem, the Indian child's  
4 guardian, the Indian child's legal custodian, a descendant of  
5 the Indian child subject to the proceeding, or the Indian  
6 child's tribe.

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

14 6. Upon application by an Indian individual who has  
15 reached the age of eighteen and who was the subject of an  
16 adoptive placement under this chapter, the court which entered  
17 the final decree shall inform the individual of the tribal  
18 affiliation, if any, of the individual's biological parents,  
19 and provide such other information as may be necessary to  
20 protect any rights flowing from the individual's tribal  
21 relationship. In addition, the court shall provide the  
22 individual, through an appropriate order, if necessary, with  
23 any of the information listed in subsection 2 as may be  
24 secured from the records maintained by the department of human  
25 services.

26 Sec. 13. NEW SECTION. 232B.12 AGREEMENTS WITH TRIBES FOR  
27 CARE AND CUSTODY OF INDIAN CHILDREN.

28 1. The director of human services or the director's  
29 designee shall make a good faith effort to enter into  
30 agreements with Indian tribes regarding jurisdiction over  
31 child custody proceedings and the care and custody of Indian  
32 children whose tribes have land within Iowa, including but not  
33 limited to the Sac and Fox tribe, the Omaha tribe, the Ponca  
34 tribe, and the Winnebago tribe, and whose tribes have an  
35 Indian child who resides in the state of Iowa. An agreement

1 shall seek to promote the continued existence and integrity of  
2 the Indian tribe as a political entity and the vital interest  
3 of Indian children in securing and maintaining a political,  
4 cultural, and social relationship with their tribes. An  
5 agreement shall assure that tribal services and Indian  
6 organizations or agencies are used to the greatest extent  
7 practicable in planning and implementing any action pursuant  
8 to the agreement concerning the care and custody of Indian  
9 children. If tribal services are not available, an agreement  
10 shall assure that community services and resources developed  
11 specifically for Indian families will be used. An agreement  
12 shall also assure that a plan is adopted to increase the  
13 number of homes available to meet the placement preferences  
14 set forth in this chapter, or as identified by the child's  
15 tribe if different preferences are identified.

16 2. In the event that an agreement entered into between the  
17 tribe and the department of human services pertaining to the  
18 funding of foster care placements for Indian children  
19 conflicts with any federal or state law, the state in a  
20 timely, good-faith manner shall agree to amend the agreement  
21 in a way that prevents any interruption of services to  
22 eligible Indian children.

23 3. The state of Iowa recognizes the authority of Indian  
24 tribes to license foster homes and to license agencies to  
25 receive children for control, care, and maintenance outside of  
26 their own homes, or to place, receive, arrange the placement  
27 of, or assist in the placement of children for foster care or  
28 adoption, and to contract with each other for such services.  
29 The department and child-placing agencies licensed under  
30 chapter 238 may place children in tribally licensed foster  
31 homes and facilities.

32 Sec. 14. NEW SECTION. 232B.13 COMPLIANCE.

33 1. The department of human services in consultation with  
34 the tribes listed in subsection 2 shall establish standards  
35 for the department's review of cases subject to this chapter.



1 In counties in which compliance with this chapter has been  
2 achieved, review shall continue to occur on a periodic basis,  
3 but no less frequently than every three years. In counties in  
4 which compliance with this chapter has not been achieved,  
5 procedures to address noncompliance shall be implemented to  
6 achieve compliance in all cases and prevent future  
7 noncompliance. In counties in which compliance has not been  
8 achieved, review shall continue to occur on an annual basis  
9 until compliance is achieved.

10 2. The director of human services shall execute an  
11 agreement with those tribes that have land within Iowa,  
12 including the Sac and Fox, the Omaha, the Ponca, and the  
13 Winnebago. This agreement shall identify an Indian Child  
14 Welfare Act compliance review team which shall monitor  
15 compliance with the federal and state Indian Child Welfare  
16 Acts and shall be composed of one representative from each of  
17 the identified tribes, one representative from the department  
18 of human services, one representative from a private child-  
19 placing agency, and two representatives designated by the  
20 supreme court.

21 3. The compliance review team shall establish and maintain  
22 a monitoring program that will reduce noncompliance with the  
23 federal and Iowa Indian child welfare Acts by county agencies  
24 which might result in federal fiscal sanctions. The  
25 department of human services shall issue corrective orders  
26 defining the violation of the law and requiring a written  
27 corrective action plan to respond to the documented  
28 violations, as determined by the compliance review team.  
29 Sanctions may be proposed prior to issuing a corrective order  
30 or applying fiscal sanctions.

31 4. The federal Indian Child Welfare Act requires the state  
32 to outline the measures that will be taken to assure  
33 compliance with the federal Indian Child Welfare Act. In  
34 complying with the federal Indian Child Welfare Act, the  
35 department of human services shall adhere to the provisions of

1 the state plan for services under Title IV-E of the federal  
2 Social Security Act, entitled, "Maintain and Strengthen  
3 Compliance with the Indian Child Welfare Act", emphasizing  
4 Objective E, numbers 3 and 6.

5 Sec. 15. NEW SECTION. 232B.14 PAYMENT OF FOSTER CARE  
6 EXPENSES.

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

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

27 Sec. 16. Section 600.1, Code 2003, is amended by adding  
28 the following new unnumbered paragraph:

29 NEW UNNUMBERED PARAGRAPH. If a proceeding held under this  
30 chapter involves an Indian child as defined in section 232B.2  
31 and the proceeding is subject to the Iowa Indian child welfare  
32 Act under chapter 232B, the proceeding and other actions taken  
33 in connection with the proceeding or this chapter shall comply  
34 with chapter 232B.

35 Sec. 17. Section 600A.3, Code 2003, is amended by adding

1 the following new unnumbered paragraph:

2 NEW UNNUMBERED PARAGRAPH. If a proceeding held under this  
3 chapter involves an Indian child as defined in section 232B.2  
4 and the proceeding is subject to the Iowa Indian child welfare  
5 Act under chapter 232B, the proceeding and other actions taken  
6 in connection with the proceeding or this chapter shall comply  
7 with chapter 232B.

8 Sec. 18. COMPLIANCE ACTIVITIES -- EFFECTIVE DATE.

9 1. The initial review of compliance with the requirements  
10 of chapter 232B made pursuant to section 232B.13, as enacted  
11 by this Act, shall be completed by June 30, 2004.

12 2. The director of human services shall execute the  
13 agreement required by section 232B.13, subsection 2, as  
14 enacted by this Act, within one hundred twenty calendar days  
15 of the date of the governor's approval of this Act.

16 3. This section, being deemed of immediate importance,  
17 takes effect upon enactment.

18 EXPLANATION

19 This bill implements the federal Indian Child Welfare Act  
20 of 1978. The bill establishes requirements for the courts,  
21 department of human services, and others for use in any  
22 voluntary or involuntary child custody proceeding that may  
23 result in an Indian child's adoptive placement, preadoptive  
24 placement, foster care placement, termination of parental  
25 rights, or other permanent placement.

26 The bill addresses definitions, determination of a child's  
27 Indian status, notice of proceedings, transfers of  
28 jurisdiction, emergency removals, preferences for permanent  
29 out-of-home placements, usage of tribally recognized expert  
30 witnesses, agreements with tribes for care and custody of  
31 Indian children, payment of foster care expenses, compliance,  
32 and maintenance of records in perpetuity.

33 The bill amends Code chapter 232, the juvenile justice  
34 code, Code chapter 600, relating to adoptions, and Code  
35 chapter 600A, relating to termination of parental rights, to

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

7 The bill provides that the department of human services  
8 must complete the initial review of compliance by June 30,  
9 2004. In addition, the director of human services must  
10 execute an agreement with the tribes that have land within  
11 Iowa for creation of an Indian Child Welfare Act compliance  
12 team. The agreement must be executed within 120 days of the  
13 date of the governor's approval of the bill. The compliance  
14 activities provisions take effect upon enactment.

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