

House File 2259 - Introduced

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BY DAWSON

A BILL FOR

1 An Act relating to the Iowa Indian child welfare Act.

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

1 Section 1. Section 232B.3, subsections 5 and 6, Code 2014,
2 are amended to read as follows:

3 5. "*Indian*" means a person who is a member of an Indian
4 tribe, ~~or is eligible for membership in an Indian tribe,~~ or who
5 is an Alaska native and a member of a regional corporation as
6 defined in 43 U.S.C. §1606.

7 6. "*Indian child*" or "*child*" means an unmarried Indian
8 person who is under eighteen years of age ~~or a child who is~~
9 ~~under eighteen years of age that~~ and is either a member of an
10 Indian tribe identifies as a child of the tribe's community,
11 or is eligible for membership in an Indian tribe and is the
12 biological child of a member of an Indian tribe.

13 Sec. 2. Section 232B.5, subsection 10, unnumbered paragraph
14 1, Code 2014, is amended to read as follows:

15 Unless either of an Indian child's parents objects, in any
16 child custody proceeding involving an Indian child who is not
17 domiciled or residing within the jurisdiction of the Indian
18 child's tribe, the court, in the absence of good cause to the
19 contrary, shall transfer the proceeding to the jurisdiction
20 of the Indian child's tribe, upon the petition of any of the
21 following persons:

22 Sec. 3. Section 232B.5, subsection 13, Code 2014, is amended
23 by adding the following new paragraphs:

24 NEW PARAGRAPH. *e.* The proceeding was at an advanced stage
25 when the petition to transfer was received and the petitioner
26 did not file the petition promptly after receiving notice of
27 the hearing.

28 NEW PARAGRAPH. *f.* The Indian child is over twelve years of
29 age and objects to the transfer.

30 NEW PARAGRAPH. *g.* The transfer is not in the best interest
31 of the child.

32 Sec. 4. Section 232B.9, subsection 1, unnumbered paragraph
33 1, Code 2014, is amended to read as follows:

34 In any adoptive or other permanent placement of an Indian
35 child, preference shall be given, in the absence of a showing

1 of good cause to the contrary, to a placement with one of the
2 following, in descending priority order:

3 Sec. 5. Section 232B.9, subsection 2, unnumbered paragraph
4 1, Code 2014, is amended to read as follows:

5 An emergency removal, foster care, or preadoptive placement
6 of an Indian child shall be in the least restrictive setting
7 which most approximates a family situation and in which the
8 child's special needs, if any, may be met. The child shall
9 also be placed within reasonable proximity to the child's
10 home, taking into account any special needs of the child. In
11 any foster care or preadoptive placement, a preference shall
12 be given, in the absence of a showing of good cause to the
13 contrary, to the child's placement with one of the following,
14 in descending priority order:

15 Sec. 6. Section 232B.9, subsections 4, 5, and 6, Code 2014,
16 are amended to read as follows:

17 4. An adoptive placement of an Indian child shall not be
18 ordered in the absence of a determination, supported by clear
19 and convincing evidence ~~including the testimony of qualified~~
20 ~~expert witnesses~~, that the placement of the child is in the
21 best interest of the child.

22 5. Notwithstanding the placement preferences listed
23 in subsections 1 and 2, if a different order of placement
24 preference is established by the child's tribe or in a binding
25 agreement between the child's tribe and the state entered into
26 pursuant to section 232B.11, in the absence of a showing of
27 good cause to the contrary, the court or agency effecting the
28 placement shall follow the order of preference established by
29 the tribe or in the agreement.

30 6. As appropriate, the placement preference of the
31 Indian child or parent shall be considered. In applying the
32 preferences, a consenting parent's request for anonymity shall
33 also be given weight by the court or agency effecting the
34 placement. ~~Unless there is clear and convincing evidence that~~
35 ~~placement within the order of preference applicable under~~

1 ~~subsection 1, 2, or 5 would be harmful to the Indian child,~~
2 ~~consideration of the preference of the Indian child or parent~~
3 ~~or a parent's request for anonymity shall not be a basis for~~
4 ~~placing an Indian child outside of the applicable order of~~
5 ~~preference.~~

6 EXPLANATION

7 The inclusion of this explanation does not constitute agreement with
8 the explanation's substance by the members of the general assembly.

9 This bill relates to the Iowa Indian child welfare Act (Iowa
10 ICWA) by amending provisions found to be unconstitutional by
11 Iowa courts and making other changes.

12 Under Code section 232B.2, the purpose of the Iowa ICWA is to
13 clarify state policies and procedures regarding implementation
14 of the federal Indian Child Welfare Act (federal ICWA), enacted
15 in 1978.

16 The bill changes the definition of "Indian" and "Indian
17 child". The bill eliminates language defining "Indian child"
18 as a child who is under 18 years of age that an Indian tribe
19 identifies as a child of the tribe's community. The bill
20 provides that an "Indian child" is a person under 18 years of
21 age that is either a member of an Indian tribe, or is eligible
22 for membership and is the biological child of a member of an
23 Indian tribe. In the Iowa supreme court case, In re A.W. and
24 S.W., 741 N.W.2d 793 (Iowa 2007), the court found that the
25 language eliminated by the bill expanded the scope of the Iowa
26 ICWA beyond the group of children addressed by the federal
27 ICWA, violating the equal protection clause of the United
28 States Constitution and the equality provision of article I,
29 section 6, of the Iowa Constitution. The bill eliminates
30 language defining "Indian" as a person who is eligible for
31 membership in an Indian tribe. The definitions of "Indian"
32 and "Indian child" provided in the bill reflect the federal
33 language.

34 The bill adds circumstances that qualify as good cause
35 for a district court to deny a petition to transfer Indian

1 child custody proceedings to a tribe. The bill also adds
2 language that a district court can deny a petition to transfer
3 Indian child custody proceedings to a tribe for good cause.
4 Circumstances qualifying as good cause pursuant to the bill
5 include that the proceeding was at an advanced stage and
6 the petitioner did not file a timely petition to transfer
7 jurisdiction, the objection of an Indian child over the age
8 of 12 to the transfer, and that the transfer is not in the
9 best interest of the Indian child. The Iowa court of appeals
10 ruled in *In re J.L.*, 779 N.W.2d 481 (Iowa Ct. App. 2009),
11 that the exclusion of the child's right to object to the
12 transfer and the exclusion of the child's right to object to
13 the transfer based on the child's best interests from the list
14 of circumstances constituting good cause to deny transfer
15 of custody proceedings violated the child's substantive due
16 process rights. In *In re J.W.*, 528 N.W.2d 657 (Iowa Ct. App.
17 1995), the court of appeals also affirmed the denial of a
18 petition to transfer jurisdiction when the proceeding was at an
19 advanced stage and the petitioner did not file the petition in
20 a timely manner after receiving notice of the hearing.

21 The bill also amends provisions in Code section 232B.9
22 relating to preferences for adoption and other permanent
23 placement, emergency removal, foster care, or preadoptive
24 placement of an Indian child to allow a good cause exception
25 to the specified placement preferences. The bill eliminates
26 language that provides that consideration of the preference
27 of the Indian child or the parent or parent's request for
28 anonymity cannot be used as the basis for deviating from
29 the order of placement otherwise specified in the Iowa ICWA
30 unless there is clear and convincing evidence that using the
31 order of placement would be harmful to the Indian child. The
32 Iowa supreme court ruled in *In re N.N.E.*, 752 N.W.2d 1 (Iowa
33 2008), that the federal ICWA allows the court to deviate
34 for good cause from placement preferences and that the high
35 burden in the Iowa ICWA to deviate from placement preferences

1 for good cause violates a parent's substantive due process
2 rights. Although the facts addressed in the ruling applied to
3 a voluntary termination of parental rights, the court noted
4 that the placement preferences in the Iowa ICWA also apply to
5 emergency removal, foster care, and preadoptive placements.

6 The bill eliminates the requirement for expert testimony at
7 an adoption hearing for an Indian child.