

107TH CONGRESS
1ST SESSION

H. R. 2644

To make technical amendments to the Indian Child Welfare Act of 1978.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2001

Mr. YOUNG of Alaska (for himself, Mr. HAYWORTH, Mr. CAMP, and Mr. CANNON) introduced the following bill; which was referred to the Committee on Resources

A BILL

To make technical amendments to the Indian Child Welfare Act of 1978.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Child Welfare
5 Act Amendments of 2001”.

6 **SEC. 2. JURISDICTION OVER CHILD CUSTODY AND CHILD**

7 **ADOPTION PROCEEDINGS.**

8 Section 101(a) of the Indian Child Welfare Act of
9 1978 (25 U.S.C. 1911(a)) is amended—

10 (1) by inserting “(1)” after “(a)”; and

1 (2) by striking the last sentence and inserting
2 the following:

3 “(2) An Indian tribe shall retain exclusive jurisdiction
4 over any involuntary child custody proceeding that in-
5 volves an Indian child, notwithstanding the residence or
6 domicile of the Indian child, in any case in which the In-
7 dian child—

8 “(A) is a ward of a tribal court of that Indian
9 tribe; or

10 “(B) after a transfer of jurisdiction is carried
11 out under subsection (b), becomes a ward of a tribal
12 court of that Indian tribe.

13 “(3) An Indian tribe shall retain exclusive jurisdiction
14 over any voluntary child custody proceeding that involves
15 an Indian child, notwithstanding any subsequent change
16 in the residence or domicile of the Indian child, in any
17 case in which the Indian child—

18 “(A) resides or is domiciled within the reserva-
19 tion of that Indian tribe and is a ward of a tribal
20 court of that Indian tribe; or

21 “(B) after a transfer of jurisdiction is carried
22 out under subsection (b), becomes a ward of a tribal
23 court of that Indian tribe.

24 “(4) The provisions of this subsection and subsection
25 (b) shall apply to any child custody proceeding which be-

1 came subject to concurrent State jurisdiction pursuant to
2 the Act of August 15, 1953, or any other Federal law.

3 “(5) Subject to section 108, subsection (b) of this sec-
4 tion, and paragraphs (2) and (3) of this subsection, but
5 notwithstanding the existence or absence of a reservation
6 in Alaska, Indian tribes in Alaska shall have concurrent
7 jurisdiction with the State of Alaska over child custody
8 proceedings involving Indian children who reside or are
9 domiciled within the State of Alaska.

10 “(6) Notwithstanding paragraph (5) and subject to
11 section 109, any person seeking to adopt an Indian child
12 in an Alaska State court may, at any time, petition the
13 tribal court of the Indian child’s tribe to approve the adop-
14 tion and, upon said tribal court agreeing to hear and de-
15 termine the petition, the adoptive placement proceedings
16 shall be within the exclusive jurisdiction of the Indian
17 child’s tribe.

18 “(7) Nothing in paragraph (5) shall affect—

19 “(A) the right of any Indian tribe in Alaska to
20 exercise jurisdiction pursuant to subsection (b) over
21 any Indian child who resides or is domiciled outside
22 the State of Alaska; and

23 “(B) the jurisdiction under paragraph (1) of
24 any Indian tribe with a reservation within the exte-
25 rior boundaries of the State of Alaska.”.

1 **SEC. 3. FOSTER OR ADOPTIVE HOME PLACEMENT TO RE-**
2 **FLECT VALUES OF INDIAN CULTURE.**

3 Section 101(b) of the Indian Child Welfare Act of
4 1978 (25 U.S.C. 1911(b)) is amended by inserting after
5 “either parent,” the following: “not inconsistent with the
6 finding in section 2(3) that there is no resource that is
7 more vital to the continued existence and integrity of In-
8 dian tribes than their children and the policy declared in
9 section 3 that children requiring foster or adoptive home
10 placement be placed in homes that reflect the unique val-
11 ues of Indian culture”.

12 **SEC. 4. INTERVENTION IN STATE COURT PROCEEDINGS.**

13 Section 101(e) of the Indian Child Welfare Act of
14 1978 (25 U.S.C. 1911(e)) is amended by striking “In any
15 State court proceeding” and inserting “Except as provided
16 in section 103(e), in any State court proceeding”.

17 **SEC. 5. FULL FAITH AND CREDIT.**

18 Section 101(d) of the Indian Child Welfare Act of
19 1978 (25 U.S.C. 1911(d)) is amended—

20 (1) by striking “and judicial proceedings” the
21 first place it appears and inserting “judicial pro-
22 ceedings, and tribal court judgments”;

23 (2) by inserting “and to such other proceedings,
24 including divorce proceedings, as may involve the de-
25 termination of an Indian child’s custody” after “cus-
26 tody proceedings”; and

1 (3) by striking “and judicial proceedings” the
2 second place it appears and inserting “judicial pro-
3 ceedings, and judgments”.

4 **SEC. 6. VOLUNTARY TERMINATION OF PARENTAL RIGHTS.**

5 Section 103(a) of the Indian Child Welfare Act of
6 1978 (25 U.S.C. 1913(a)) is amended—

7 (1) by striking the first sentence and inserting
8 the following:

9 “(a)(1) Where any parent or Indian custodian volun-
10 tarily consents to foster care or preadoptive or adoptive
11 placement or to termination of parental rights, such con-
12 sent shall not be valid unless—

13 “(A) executed in writing;

14 “(B) recorded before a judge of a court of com-
15 petent jurisdiction; and

16 “(C) accompanied by the presiding judge’s cer-
17 tificate that—

18 “(i) the terms and consequences of the
19 consent were fully explained in detail and were
20 fully understood by the parent or Indian custo-
21 dian; and

22 “(ii) any attorney or public or private
23 agency that facilitates the voluntary termi-
24 nation of parental rights or preadoptive or
25 adoptive placement has—

1 “(I) informed the natural parents of
2 the placement options with respect to the
3 child involved;

4 “(II) informed those parents of the
5 applicable provisions of this Act; and

6 “(III) certified that the natural par-
7 ents will be notified within 10 days after
8 any termination or change in the adoptive
9 placement.”;

10 (2) by striking “The court shall also certify”
11 and inserting the following:

12 “(2) The court shall also certify”;

13 (3) by striking “Any consent given prior to,”
14 and inserting the following:

15 “(3) Any consent given prior to,”; and

16 (4) by adding at the end the following:

17 “(4) An Indian custodian who has the legal authority
18 to consent to an adoptive placement shall be treated as
19 a parent for the purposes of the notice and consent to
20 adoption provisions of this Act.”.

21 **SEC. 7. WITHDRAWAL OF CONSENT.**

22 Section 103(b) of the Indian Child Welfare Act of
23 1978 (25 U.S.C. 1913(b)) is amended—

24 (1) by inserting “(1)” before “Any”; and

25 (2) by adding at the end the following:

1 “(2) Except as provided in paragraph (4), a consent
2 to adoption of an Indian child or voluntary termination
3 of parental rights to an Indian child may be revoked, only
4 if—

5 “(A) no final decree of adoption has been en-
6 tered; and

7 “(B)(i) the adoptive placement changes or ter-
8 minates; or

9 “(ii) the revocation occurs before the later of
10 the end of—

11 “(I) the 180-day period beginning on the
12 date on which the tribe of the Indian child re-
13 ceives written notice of the adoptive placement
14 provided in accordance with the requirements of
15 subsections (c) and (d), which includes an ex-
16 planation of the revocation period specified in
17 this subclause; or

18 “(II) the 30-day period beginning on the
19 date on which the parent who revokes consent
20 receives notice of the commencement of the
21 adoption proceeding that includes an expla-
22 nation of the revocation period specified in this
23 subclause.

24 “(C) Revocation of consent under this para-
25 graph shall be effective from the date on which the

1 parent who revokes consent provides a written rev-
2 ocation of consent to a party that seeks the vol-
3 untary adoptive placement of an Indian child or a
4 written or oral revocation of consent to the State
5 court, if any, in which any proceeding for a termi-
6 nation of parental rights to such Indian child, or an
7 adoption proceeding concerning such Indian child, is
8 pending. Any revocation sent by mail under this
9 paragraph shall be effective from the postmarked
10 date of the notice.

11 “(3) Immediately upon a revocation under paragraph
12 (2)—

13 “(A) the Indian child who is the subject of that
14 revocation shall be returned to the parent who re-
15 vokes consent, but such return shall not be con-
16 strued to affect the rights of the parent to whom the
17 child is not returned; and

18 “(B) the court shall send notification of the
19 revocation to the last known address of the other
20 parent not later than 5 days after the court received
21 the revocation.

22 “(4) Subject to paragraph (6), if, by the end of the
23 applicable period determined under subclause (I) or (II)
24 of paragraph (2)(B)(ii), a consent to adoption or voluntary

1 termination of parental rights has not been revoked, a par-
2 ent may revoke such consent after that date only—

3 “(A) pursuant to applicable State law;

4 “(B) if the parent of the Indian child involved
5 petitions a court of competent jurisdiction, and the
6 court finds that the consent to adoption or voluntary
7 termination of parental rights was obtained through
8 fraud or duress; or

9 “(C) if the parent of the Indian child involved
10 did not receive written notice provided in accordance
11 with the requirements of subclause (I) or (II) of
12 paragraph (2)(B)(ii) of this subsection or para-
13 graphs (3)(A)(i), (3)(B)(ii)–(iv), and (3)(C)(ii)–(iv)
14 of subsection (h).

15 “(5) Subject to paragraph (6), if a consent to adop-
16 tion or voluntary termination of parental rights is revoked
17 under paragraph (4)(B)—

18 “(A) the child shall be returned immediately to
19 the parent who revokes consent; and

20 “(B) if a final decree of adoption has been en-
21 tered, that final decree shall be vacated.

22 “(6) Except as otherwise provided under applicable
23 State law, no adoption that has been in effect for a period
24 longer than or equal to 2 years may be invalidated under
25 this subsection.”.

1 **SEC. 8. NOTICE TO INDIAN TRIBES.**

2 Section 103(c) of the Indian Child Welfare Act of
3 1978 (25 U.S.C. 1913(c)) is amended to read as follows:

4 “(c)(1) A party that seeks the voluntary placement
5 of an Indian child, including any termination or change
6 of such voluntary placement, or the voluntary termination
7 of the parental rights of a parent of an Indian child shall
8 provide written notice of the placement or proceeding to
9 the tribe of that Indian child. A notice under this sub-
10 section shall be sent by registered mail (return receipt re-
11 quested) to the tribe of the Indian child, not later than
12 the applicable date specified in paragraph (2) or (3).

13 “(2)(A) Except as provided in paragraph (3), in each
14 of the following cases, notice shall be provided under para-
15 graph (1) by the applicable date specified:

16 “(i) Not later than 100 days after any foster
17 care placement of an Indian child occurs.

18 “(ii) Not later than 5 days after any initial or
19 subsequent preadoptive or adoptive placement or ter-
20 mination of an adoptive placement of an Indian
21 child.

22 “(iii) Not later than 10 days after the com-
23 mencement of any proceeding for a termination of
24 parental rights to an Indian child.

1 “(iv) Not later than 10 days after the com-
2 mencement of any adoptive proceeding concerning
3 an Indian child.

4 “(B) A notice described in subparagraph (A)(ii) may
5 be provided before the birth of an Indian child if a party
6 referred to in paragraph (1) contemplates a specific adop-
7 tive or preadoptive placement.

8 “(3) If, after the expiration of the applicable period
9 specified in paragraph (2), a party referred to in para-
10 graph (1) discovers that the child involved may be an In-
11 dian child—

12 “(A) the party shall provide notice under para-
13 graph (1) not later than 10 days after the discovery;
14 and

15 “(B) any applicable time limit specified in sub-
16 section (e) shall apply to the notice provided under
17 subparagraph (A) only if the party referred to in
18 paragraph (1) has, on or before commencement of
19 the placement, made a good faith investigation con-
20 cerning whether the child involved may be an Indian
21 child.”.

22 **SEC. 9. CONTENT OF NOTICE.**

23 Section 103(d) of the Indian Child Welfare Act of
24 1978 (25 U.S.C. 1913(d)) is amended to read as follows:

1 “(d) Each written notice provided under subsection
2 (c) shall be based on a good faith investigation and contain
3 the following:

4 “(1) The name of the Indian child involved, and
5 the actual or anticipated date and place of birth of
6 the Indian child.

7 “(2) A list containing the name, address, date
8 of birth, and (if applicable) the maiden name, of
9 each Indian parent and grandparent of the Indian
10 child, if—

11 “(A) known after inquiry of—

12 “(i) the birth parent placing the child
13 or relinquishing parental rights; and

14 “(ii) the other birth parent (if avail-
15 able); or

16 “(B) otherwise ascertainable through other
17 reasonable inquiry.

18 “(3) A list containing the name and address of
19 each known extended family member (if any) that
20 has priority in placement under section 105.

21 “(4) A statement of the reasons why the child
22 involved may be an Indian child.

23 “(5) The names and addresses of the parties in-
24 volved in any applicable proceeding in a State court.

1 “(6)(A) The name and address of the State
2 court in which a proceeding referred to in paragraph
3 (5) is pending, or will be filed; and

4 “(B) the date and time of any related court
5 proceeding that is scheduled as of the date on which
6 the notice is provided under this subsection.

7 “(7) The tribal affiliation, if any, of the pro-
8 spective adoptive parents.

9 “(8) The name and address of any public or
10 private social service agency or adoption agency in-
11 volved.

12 “(9) An identification of any Indian tribe in
13 which the Indian child may be a member, is eligible
14 for membership, or satisfies the requirements of
15 paragraph (4)(C) of section 4.

16 “(10) An identification of any Indian tribes in
17 which the Indian child’s parents or grandparents
18 may be a member.

19 “(11) A statement that each Indian tribe iden-
20 tified under paragraph (9) may have the right to in-
21 tervene in the proceeding referred to in paragraph
22 (5).

23 “(12) An inquiry concerning whether the Indian
24 tribe that receives notice under subsection (c) in-

1 tends to intervene under subsection (e) or waive any
2 such right to intervention.

3 “(13) A statement that, if the Indian tribe that
4 receives notice under subsection (c) fails to respond
5 in accordance with subsection (e) by the applicable
6 date specified in that subsection, the right of that
7 Indian tribe to intervene in the proceeding involved
8 shall be considered to have been waived by that In-
9 dian tribe unless that Indian tribe did not receive
10 written notice in accord with the requirements of
11 subsections (c) and (d).

12 “(14) If applicable, a statement of the reasons
13 why the adoptive placement of the Indian child in-
14 volved was terminated or changed and the date of
15 such termination or change.”.

16 **SEC. 10. INTERVENTION BY INDIAN TRIBE.**

17 Section 103 of the Indian Child Welfare Act of 1978
18 (25 U.S.C. 1913) is amended by adding at the end the
19 following:

20 “(e)(1) The tribe of the Indian child involved shall
21 have the right to intervene at any time in a voluntary child
22 custody proceeding in a State court only if—

23 “(A) in the case of a voluntary proceeding to
24 terminate parental rights, the Indian tribe sent a no-
25 tice of intent to intervene or a written objection to

1 the adoptive placement to the court or to the party
2 that is seeking the voluntary placement of the In-
3 dian child, not later than 30 days after receiving no-
4 tice that was provided in accordance with the re-
5 quirements of subsections (c) and (d); or

6 “(B) in the case of a voluntary adoption pro-
7 ceeding, the Indian tribe sent a notice of intent to
8 intervene or a written objection to the adoptive
9 placement to the court or to the party that is seek-
10 ing the voluntary placement of the Indian child, not
11 later than the later of—

12 “(i) 90 days after receiving notice of the
13 adoptive placement that was provided in accord-
14 ance with the requirements of subsections (c)
15 and (d); or

16 “(ii) 30 days after receiving a notice of the
17 voluntary adoption proceeding that was pro-
18 vided in accordance with the requirements of
19 subsections (c) and (d).

20 “(2) A State court may extend the time period in
21 paragraph (1) by not more than 15 days if that court de-
22 termines that extenuating circumstances require such an
23 extension to promote justice.

24 “(3)(A) Except as provided in subparagraph (B), the
25 tribe of the Indian child involved shall have the right to

1 intervene at any time in a voluntary foster care placement
2 proceeding in a State court, and also in any other vol-
3 untary child custody proceeding in a State court in any
4 case in which the Indian tribe did not receive written no-
5 tice provided in accordance with the requirements of sub-
6 sections (c) and (d).

7 “(B) An Indian tribe may not intervene in any vol-
8 untary child custody proceeding in a State court if the
9 Indian tribe gives written notice to the State court or any
10 party involved of—

11 “(i) the intent of the Indian tribe not to inter-
12 vene in the proceeding; or

13 “(ii) the determination by the Indian tribe that
14 the child involved—

15 “(I) is not a member of, or is not eligible
16 for membership in, the Indian tribe, or

17 “(II) does not meet the requirements of
18 paragraph (4)(C) of section 4.

19 “(4) Except in the case of a voluntary foster care
20 placement proceeding, if an Indian tribe files a motion for
21 intervention in a State court under this subsection, the
22 Indian tribe shall submit to the court, at the same time
23 as the Indian tribe files that motion, a tribal certification
24 that includes a statement that documents, with respect to
25 the Indian child involved, the membership or eligibility for

1 membership of that Indian child in the Indian tribe under
2 applicable tribal law or the basis for any assertion by the
3 tribe that the child meets the requirements of paragraph
4 (4)(C) of section 4.

5 “(f) Any act or failure to act of an Indian tribe under
6 subsection (e) shall not—

7 “(1) affect any placement preference or other
8 right of any individual under this Act;

9 “(2) preclude the Indian tribe of the Indian
10 child that is the subject of an action taken by the
11 Indian tribe under subsection (e) from intervening in
12 a proceeding concerning that Indian child if a pro-
13 posed adoptive placement of that Indian child is
14 changed after that action is taken; or

15 “(3) except as specifically provided in sub-
16 section (e), affect the applicability of this Act.

17 “(g) Notwithstanding any other provision of law, no
18 proceeding for a voluntary termination of parental rights
19 or adoption of an Indian child may be conducted under
20 applicable State law before the date that is 30 days after
21 the tribe of the Indian child receives notice of that pro-
22 ceeding that was provided in accordance with the require-
23 ments of subsections (c) and (d).”.

1 **SEC. 11. NOTICE TO PARENTS.**

2 Section 103 of the Indian Child Welfare Act of 1978
3 (25 U.S.C. 1913) is amended by adding at the end the
4 following:

5 “(h)(1) A party that terminates or changes the vol-
6 untary adoptive placement of an Indian child or com-
7 mences a proceeding for the adoption of an Indian child
8 shall provide written notice of such termination, changed
9 adoptive placement, or proceeding to the parent or parents
10 of that Indian child. Such a party shall also provide the
11 parent or parents of that Indian child with a written notice
12 specifying the date on which the Indian child’s tribe re-
13 ceived a written notice of the adoptive placement that was
14 in accordance with the requirements of subsections (c) and
15 (d). Any notice under this subsection shall be sent by reg-
16 istered mail (return receipt requested) to the parent or
17 parents of the Indian child, not later than the applicable
18 date specified in paragraph (2).

19 “(2) Each of the notices required under paragraph
20 (1) shall be provided by the applicable date specified in
21 the following cases:

22 “(A) Not later than 10 days after any termi-
23 nation of or change in the adoptive placement of an
24 Indian child, including any termination or change
25 that occurs whenever a final decree of adoption has
26 been vacated or set aside or the adoptive parent or

1 parents voluntarily consent to the termination of pa-
2 rental rights.

3 “(B) Not later than 10 days after the com-
4 mencement of any adoption proceeding concerning
5 an Indian child.

6 “(C) Not later than 5 days after receiving from
7 an Indian child’s tribe the return receipt with re-
8 spect to the notice of the adoptive placement of an
9 Indian child sent to such tribe.

10 “(3)(A) Each written notice of a termination or
11 change in an adoptive placement shall contain the fol-
12 lowing:

13 “(i) The name of the Indian child involved.

14 “(ii) A description of the rights of the parent
15 or parents of an Indian child under paragraphs (2)
16 and (3) of subsection (b) of this section and sub-
17 section (a) of section 106.

18 “(iii) A statement of the reasons why the adop-
19 tive placement of the child involved was terminated
20 or changed.

21 “(iv) The date on which the adoptive placement
22 of the child involved was terminated or changed.

23 “(v) The names and addresses of the parties in-
24 volved in any applicable proceeding or contemplated
25 proceeding in a State court.

1 “(vi)(I) The name and address of the State
2 court in which a proceeding referred to in clause (v)
3 is pending or will be filed.

4 “(II) The date and time of any related court
5 proceeding that is scheduled as of the date on which
6 the notice is provided under this subsection.

7 “(vii) The tribal affiliation of the prospective
8 adoptive parents, if any.

9 “(viii) The name and address of any public or
10 private social service agency or adoption agency in-
11 volved.

12 “(B) Each written notice of the commencement of an
13 adoption proceeding concerning an Indian child shall con-
14 tain the following:

15 “(i) The name of the Indian child involved.

16 “(ii) A description of the rights of the parent
17 or parents of an Indian child under paragraphs (2)
18 and (3) of subsection (b).

19 “(iii) The date on which the adoption pro-
20 ceeding was commenced.

21 “(iv) If known, the date that is the end of the
22 180-day period beginning on the date on which the
23 tribe of the Indian child received written notice of
24 the adoptive placement.

1 “(v) The names and addresses of the parties in-
2 volved in any applicable adoption proceedings in a
3 State court.

4 “(vi)(I) The name and address of the State
5 court in which a proceeding referred to in clause (iii)
6 is pending.

7 “(II) The date and time of any related court
8 proceeding that is scheduled as of the date on which
9 the notice is provided under this subsection.

10 “(vii) The name and address of any public or
11 private social service agency or adoption agency in-
12 volved.

13 “(C) Each written notice of the date on which the
14 Indian child’s tribe received a written notice of the adop-
15 tive placement that was in accordance with the require-
16 ments of subsections (c) and (d) shall contain the fol-
17 lowing:

18 “(i) The name of the Indian child involved.

19 “(ii) A description of the rights of the parent
20 or parents of an Indian child under paragraphs (2)
21 and (3) of subsection (b).

22 “(iii) The date that is the end of the 180-day
23 period beginning on the date on which the tribe of
24 the Indian child received such written notice of the
25 adoptive placement.

1 “(iv) If known, the exact date that is the end
2 of the 30-day period beginning on the date on which
3 the parent revoking consent received notice of the
4 commencement of the adoption proceeding.

5 “(v) The names and addresses of the parties in-
6 volved in any applicable adoption proceeding in a
7 State court.

8 “(vi) The name and address of the State court
9 in which a proceeding referred to in clause (v) is
10 pending.

11 “(vii) The date and time of any related court
12 proceeding that is scheduled as of the date on which
13 the notice is provided under this subsection.”.

14 **SEC. 12. TRIBAL AFFILIATION INFORMATION.**

15 Section 107 of the Indian Child Welfare Act of 1978
16 (25 U.S.C. 1917) is amended to read as follows:

17 **“SEC. 107. DISCLOSURE OF INFORMATION REGARDING BIO-**
18 **LOGICAL PARENTS.**

19 “If an adopted Indian who is 18 years of age or older,
20 the tribe of an adopted Indian child, the tribe of an adopt-
21 ed Indian who is 18 years of age or older, an adoptive
22 parent or guardian of an Indian child or of an adopted
23 Indian who is under the age of 18, or, in the case of a
24 medical emergency or incompetence of an adopted Indian,
25 an adoptive parent or guardian of an Indian 18 years of

1 age or older, petitions the court which entered the final
2 decree of adoption for the release of information regarding
3 the tribal affiliation, if any, of the adopted child's biologi-
4 cal parents, the court shall disclose such information to
5 the petitioner and shall provide the petitioner with any
6 other identifying information as may be necessary to pro-
7 tect any rights flowing from an adopted Indian's tribal
8 relationship.”.

9 **SEC. 13. RESUMPTION OF JURISDICTION OVER CHILD CUS-**
10 **TODY PROCEEDINGS.**

11 Section 108 of the Indian Child Welfare Act of 1978
12 (25 U.S.C. 1918) is amended to read as follows:

13 **“SEC. 108. RESUMPTION OF JURISDICTION OVER CHILD**
14 **CUSTODY PROCEEDINGS.**

15 “(a) CHILDREN RESIDING OR DOMICILED WITHIN A
16 RESERVATION.—Where, pursuant to the provisions of the
17 Act of August 15, 1953 (67 Stat. 588), or pursuant to
18 any other Federal law, a State became vested with juris-
19 diction over child custody proceedings involving Indian
20 children who reside or are domiciled within the reservation
21 of an Indian tribe, such tribe may assume jurisdiction ex-
22 clusive as to any State over such child custody pro-
23 ceedings.

24 “(b) WHEN AN INDIAN TRIBE DOES NOT HAVE A
25 RESERVATION.—Any Indian tribe that does not have a

1 reservation and as a result does not exercise exclusive ju-
2 risdiction under section 101(a) over child custody pro-
3 ceedings involving Indian children may assume jurisdic-
4 tion exclusive as to any State over child custody pro-
5 ceedings involving Indian children who reside or are domi-
6 ciled within the geographic area with regard to which the
7 tribe is authorized to enter into contracts under section
8 102 of the Indian Self-Determination and Education As-
9 sistance Act without regard for the reservation status of
10 the area affected.

11 “(c) RESOLUTION OF GOVERNING BODY.—Before
12 any Indian tribe may assume jurisdiction over Indian child
13 custody proceedings, such tribe shall present to the Sec-
14 retary a resolution of its governing body authorizing the
15 assumption of such jurisdiction. The governing body of an
16 Indian tribe referred to in subsection (b) shall include in
17 its jurisdiction assumption resolution a clear and definite
18 description of the territory over which jurisdiction is to
19 be assumed.

20 “(d) PUBLICATION OF NOTICE.—Not later than 60
21 days after receipt of a jurisdiction assumption resolution
22 from the governing body of an Indian tribe, the Secretary
23 shall publish in the Federal Register a notice that includes
24 the resolution and informs the public of the tribe’s action.
25 The Secretary shall also notify the affected State or States

1 of such resolution. The Indian tribe concerned shall as-
2 sume jurisdiction 30 days after publication in the Federal
3 Register of the notice of the tribe’s resolution unless such
4 resolution specifies a later date.

5 “(e) RETROCESSION OF JURISDICTION.—Any Indian
6 tribe that, pursuant to this section, has assumed jurisdic-
7 tion exclusive as to any State over child custody pro-
8 ceedings may retrocede such jurisdiction as it assumed to
9 any such State by presenting to the Secretary a resolution
10 of its governing body authorizing the retrocession of such
11 jurisdiction. Not later than 60 days after receipt of a juris-
12 diction retrocession resolution from the governing body of
13 an Indian tribe, the Secretary shall publish in the Federal
14 Register a notice that includes the resolution and informs
15 the public of the tribe’s action. The Secretary shall also
16 notify the affected State or States of such resolution. The
17 retrocession of jurisdiction shall take effect 30 days after
18 publication in the Federal Register of the notice of the
19 tribe’s resolution unless such resolution specifies a later
20 date. Nothing in this subsection shall affect the right of
21 any Indian tribe to assume jurisdiction, pursuant to this
22 section, subsequent to a retrocession of such jurisdiction.

23 “(f) EFFECT ON CERTAIN ACTIONS.—Assumption or
24 retrocession of jurisdiction under this section shall not af-
25 fect any action or proceeding over which a court has al-

1 ready assumed jurisdiction, except as may be provided in
2 an order of such court or pursuant to any agreement
3 under section 109.”.

4 **SEC. 14. FRAUDULENT REPRESENTATION; VISITATION.**

5 Title I of the Indian Child Welfare Act of 1978 (25
6 U.S.C. 1911 et seq.) is amended by adding at the end
7 the following new sections:

8 **“SEC. 114. FRAUDULENT REPRESENTATION.**

9 “(a) IN GENERAL.—With respect to any proceeding
10 subject to this Act involving an Indian child or a child
11 who may be considered to be an Indian child for purposes
12 of this Act, a person, other than a birth parent of the
13 child, shall, upon conviction, be subject to a criminal sanc-
14 tion under subsection (b) if that person knowingly and
15 willfully—

16 “(1) falsifies, conceals, or covers up by any
17 trick, scheme, or device, a material fact concerning
18 whether, for purposes of this Act—

19 “(A) a child is an Indian child; or

20 “(B) a parent is an Indian;

21 “(2)(A) makes any false, fictitious, or fraudu-
22 lent statement, omission, or representation; or

23 “(B) falsifies a written document knowing that
24 the document contains a false, fictitious, or fraudu-

1 lent statement or entry relating to a material fact
2 described in paragraph (1); or

3 “(3) assists any person in physically removing
4 a child from the United States in order to obstruct
5 the application of this Act.

6 “(b) CRIMINAL SANCTIONS.—The criminal sanctions
7 for a violation referred to in subsection (a) are as follows:

8 “(1) For an initial violation, a person shall be
9 fined in accordance with section 3571 of title 18,
10 United States Code, or imprisoned not more than 1
11 year, or both.

12 “(2) For any subsequent violation, a person
13 shall be fined in accordance with section 3571 of
14 title 18, United States Code, or imprisoned not more
15 than 5 years, or both.

16 **“SEC. 115. VISITATION.**

17 “Notwithstanding any other provision of law (includ-
18 ing any State law)—

19 “(1) a court may approve, if in the best inter-
20 ests of an Indian child, as part of an adoption de-
21 cree of that Indian child, an agreement that states
22 that a birth parent, an extended family member, or
23 the tribe of the Indian child shall have an enforce-
24 able right of visitation or continued contact with the

1 Indian child after the entry of a final decree of
2 adoption; and

3 “(2) the failure to comply with any provision of
4 a court order concerning the continued visitation or
5 contact referred to in paragraph (1) shall not be
6 considered to be grounds for setting aside a final de-
7 cree of adoption.”.

8 **SEC. 15. DEFINITIONS.**

9 Section 4 of the Indian Child Welfare Act of 1978
10 (25 U.S.C. 1903) is amended—

11 (1) in paragraph (3), by inserting before the
12 semicolon at the end the following: “, or for pur-
13 poses of section 107, any person who is seeking to
14 determine eligibility for tribal membership”;

15 (2) by amending paragraphs (4) and (5) to
16 read as follows:

17 “(4) ‘Indian child’ means any unmarried person
18 who is less than 18 years of age and—

19 “(A) is a member of an Indian tribe;

20 “(B) is eligible for membership in an In-
21 dian tribe; or

22 “(C) if the child is not a member of or eli-
23 gible for membership in an Indian tribe, the
24 child is a child or grandchild of a member of an

1 Indian tribe and is considered by an Indian
2 tribe to be a part of its community;

3 “(5) ‘Indian child’s tribe’ means—

4 “(A) the Indian tribe in which an Indian
5 child is a member or eligible for membership;

6 “(B) for an Indian child described in sub-
7 paragraph (C) of paragraph (4), an Indian
8 tribe that considers a child to be part of its
9 community; or

10 “(C) in the case of an Indian child who is
11 a member of, eligible for membership in, or con-
12 sidered to be part of the community of, more
13 than 1 tribe, the Indian tribe with which the In-
14 dian child has the most significant contacts, un-
15 less the tribe with which the child has the most
16 significant contacts designates, with the consent
17 of the tribe to be designated as the child’s tribe,
18 another tribe in which the child is a member,
19 eligible for membership, or of which the child is
20 considered to be part of the community.”.

21 **SEC. 16. LICENSING OR APPROVAL QUALIFICATIONS FOR**
22 **ASSISTANCE.**

23 The last sentence of section 201(b) of the Indian
24 Child Welfare Act of 1978 (25 U.S.C. 1931(b)) is amend-
25 ed by striking “For purposes” and inserting “Notwith-

1 standing any law or regulation to the contrary, for pur-
2 poses”.

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