

108TH CONGRESS  
1ST SESSION

# H. R. 2750

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 15, 2003

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

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## 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 2003”.

6 **SEC. 2. DECLARATION OF POLICY; APPLICABILITY.**

7 Section 3 of the Indian Child Welfare Act of 1978  
8 (25 U.S.C. 1902) is amended—

9 (1) by inserting “(a)” before “The Congress”;

1           (2) by inserting “by preserving the sovereign  
2 authority of Indian tribes to regulate domestic rela-  
3 tions involving tribal members,” after “families” the  
4 first place it appears;

5           (3) by inserting “by assuring that Indian chil-  
6 dren have the opportunity to develop or enhance  
7 their relationship with their families and Indian  
8 tribes” after “culture,”; and

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

10          “(b) This Act shall apply to any Indian child involved  
11 in a child custody proceeding regardless of whether such  
12 child has ever been part of an Indian family or maintained  
13 a social or cultural relationship with an Indian tribe.”.

14 **SEC. 3. JURISDICTION OVER CHILD CUSTODY AND CHILD**  
15 **ADOPTION PROCEEDINGS.**

16          Section 101(a) of the Indian Child Welfare Act of  
17 1978 (25 U.S.C. 1911(a)) is amended—

18           (1) by inserting “(1)” after “(a)”;

19           (2) by striking “except where such jurisdiction  
20 is otherwise vested in the State by existing Federal  
21 law”, and inserting “except where jurisdiction over  
22 any such proceeding has been or is exercised by a  
23 State under existing Federal law”;

1           (3) by inserting after “tribal court” the fol-  
2           lowing: “or has become subject to a tribal court’s ju-  
3           risdiction under subsection (b)” ; and

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

5           “(2) Subject to sections 108(b) and 109, subsection  
6 (b) of this section, and paragraph (1) of this subsection,  
7 but notwithstanding the existence or absence of a reserva-  
8 tion in Alaska, Indian tribes in Alaska shall have concur-  
9 rent jurisdiction with the State of Alaska over child cus-  
10 tody proceedings involving Indian children who reside or  
11 are domiciled within the State of Alaska.

12          “(3) Subject to sections 108 and 109, and subsection  
13 (b) of this section, but notwithstanding paragraph (2) of  
14 this subsection, any person seeking to adopt an Indian  
15 child in an Alaska State court may petition the tribal court  
16 of the Indian child’s tribe, at any time, to approve the  
17 adoption and, upon said tribal court agreeing to hear and  
18 determine the petition, the adoptive placement proceedings  
19 shall be within the exclusive jurisdiction of the Indian  
20 child’s tribe.

21          “(4) Nothing in paragraph (2) shall affect—

22               “(A) the right of any Indian tribe in Alaska to  
23               exercise jurisdiction, over any Indian child who re-  
24               sides or is domiciled outside the State of Alaska—

1                   “(i) to make such child a ward of a  
2                   tribal court in accordance with subsection  
3                   (a)(1); or

4                   “(ii) pursuant to subsection (b); and

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

8 **SEC. 4. TRANSFER OF JURISDICTION TO TRIBAL COURT.**

9                   Section 101(b) of the Indian Child Welfare Act of  
10                  1978 (25 U.S.C. 1911(b)) is amended to read as follows:

11                  “(b) **TRANSFER OF PROCEEDINGS; DECLINATION BY**  
12 **COURT.**—In any State court child custody proceeding in-  
13 volving—

14                  “(1) an Indian child not domiciled or residing  
15                  within the reservation of the Indian child’s tribe or  
16                  on any other lands described in a resolution of an  
17                  Indian tribe adopted pursuant to section 108(c); or

18                  “(2) an Indian child domiciled or residing with-  
19                  in any of the areas described in subparagraph (A)  
20                  in a State that, under existing Federal law, has ex-  
21                  ercised or is exercising jurisdiction over child cus-  
22                  tody proceedings arising within any such area, the  
23                  State court shall transfer such proceeding to the ju-  
24                  risdiction of the Indian tribe, upon the petition of ei-

1 ther parent, the Indian custodian, or the Indian  
2 child's tribe, unless—

3 “(A) the tribal court of the Indian tribe  
4 declines the transfer of jurisdiction;

5 “(B) such tribe or the tribal court of such  
6 tribe notifies such State court that the tribal  
7 court does not have subject matter jurisdiction;

8 “(C) in circumstances where the evidence  
9 necessary to decide the case cannot be ade-  
10 quately presented in the tribal court without  
11 undue hardship to the parties or the witnesses,  
12 the tribal court is unable to mitigate such hard-  
13 ship by making arrangements to receive and  
14 consider such evidence by remote communica-  
15 tion, hearing the evidence at a location conven-  
16 ient to the parties or the witnesses, or any  
17 other means permitted in the Indian tribe's  
18 rules of evidence or discovery; or

19 “(D) either parent objects to the transfer  
20 of jurisdiction and the objection is consistent  
21 with the findings and declaration of policy in  
22 sections 2 and 3.”.

23 **SEC. 5. INTERVENTION IN STATE COURT PROCEEDINGS.**

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

1 (1) by inserting “(1)” after “(c)”;

2 (2) by striking “In any State court proceeding  
3 for the foster care placement of, or termination of  
4 parental rights to,” and inserting “Except as pro-  
5 vided in section 103(e), in any State court child cus-  
6 tody proceeding involving”;

7 (3) by inserting before the period at the end the  
8 following: “and any member of the Indian child’s ex-  
9 tended family shall have a right to intervene in order  
10 to seek the placement of the child in accordance with  
11 section 105; and

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

13 “(2) Any motion, application or other form of  
14 request to intervene in a child custody proceeding  
15 pursuant to paragraph (1) may be filed pro se or  
16 through legal counsel and representation of the in-  
17 tervenor subsequent to intervention may proceed in  
18 the same manner.”.

19 **SEC. 6. FULL FAITH AND CREDIT.**

20 Section 101(d) of the Indian Child Welfare Act of  
21 1978 (25 U.S.C. 1911(d)) is amended—

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

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

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

8 **SEC. 7. PENDING INVOLUNTARY CHILD CUSTODY PRO-**  
9 **CEEDINGS.**

10       Section 102 of the Indian Child Welfare Act of 1978  
11 (25 U.S.C. 1912) is amended—

12           (1) in subsection (a)—

13               (A) by inserting “(1)” after “(a)”;

14               (B) by striking, in the first sentence, “or”  
15 the second place it appears;

16               (C) by inserting, in the first sentence, “or  
17 adoptive” after “foster care”;

18               (D) by striking, in the first sentence, “reg-  
19 istered” and inserting “certified”;

20               (E) by striking, in the third sentence, “or”  
21 after “No foster care placement” and inserting  
22 a comma;

23               (F) by inserting, in the third sentence, “,  
24 or adoptive” after “foster care”; and

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

1       “(2) Any involuntary child custody proceeding in a  
2 State court commenced prior to the birth of the Indian  
3 child shall not be valid. Nothing in this paragraph shall  
4 limit the authority of a State court to require that the  
5 prospective parent of an unborn Indian child receive reme-  
6 dial and rehabilitative services designed to protect the  
7 health of such parent and unborn child and prevent the  
8 foster care or adoptive placement of such child after birth.

9       “(3) Any notice provided under paragraph (1) shall  
10 contain the information required under section 114.”;

11           (2) in subsection (d) by adding at the end the  
12 following: “The active efforts required under this  
13 subsection shall not be abridged by any other Fed-  
14 eral or State law and, in addition to the efforts to  
15 prevent family breakup required under any other  
16 Federal law, shall include the involvement and use  
17 of any available resources of the extended family, the  
18 Indian child’s tribe, Indian social service agencies,  
19 and Indian caregivers who have the expertise, as rec-  
20 ognized by the Indian child’s tribe, to assist the In-  
21 dian child’s family to function as a home for such  
22 child.” and

23           (3) by adding at the end the following:

24       “(g)(1) Whenever, following the involuntary termi-  
25 nation of the parental rights of a parent of an Indian

1 child, an Indian child is placed in a preadoptive or adop-  
2 tive placement, including any termination or change of  
3 such placement, or is the subject of an adoption pro-  
4 ceeding, the party seeking the placement of the child or  
5 filing the proceeding shall provide written notice of the  
6 placement or proceeding to the Indian child's tribe in ac-  
7 cordance with subsection (c)(2)(A)(ii) and (iv) and (3)(A)  
8 of section 103. A notice under this subsection shall be sent  
9 by certified mail (return receipt requested).

10       “(2) Any notice under paragraph (1) shall contain  
11 the information required under section 114.

12       “(h)(1) Whenever, in connection with a proceeding or  
13 other action under this section, a party seeks the place-  
14 ment of an Indian child, including any termination or  
15 change of such placement, such party shall provide written  
16 notice of the placement to the Indian child's extended fam-  
17 ily members whose names and addresses are included in  
18 any notice sent pursuant to subsection (a). The notice  
19 shall be provided in accordance with subsection (c)(2)(A)  
20 and (3)(A) of section 103. A notice under this subsection  
21 shall be sent by certified mail (return receipt requested).

22       “(2) Any notice under paragraph (1) shall contain  
23 the information required under section 114.”.

1 **SEC. 8. VOLUNTARY TERMINATION OF PARENTAL RIGHTS.**

2 Section 103(a) of the Indian Child Welfare Act of  
3 1978 (25 U.S.C. 1913(a)) is amended—

4 (1) by striking the first sentence and inserting  
5 the following:

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

10 “(A) executed in writing;

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

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

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

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

23 “(I) informed the parents orally and  
24 in writing of all the available placement op-  
25 tions with respect to the child involved;

1 “(II) informed those parents orally  
2 and in writing of the applicable provisions  
3 of this Act; and

4 “(III) certified that the biological par-  
5 ents will be notified within 10 days after  
6 any termination of or change in the adop-  
7 tive placement.”;

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

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

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

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

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

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

19 **SEC. 9. WITHDRAWAL OF CONSENT.**

20 Section 103(b) of the Indian Child Welfare Act of  
21 1978 (25 U.S.C. 1913(b)) is amended—

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

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

24 “(2) Except as provided in paragraph (5), a consent  
25 to adoption of an Indian child or voluntary termination

1 of parental rights to an Indian child may be revoked, only  
2 if—

3 “(A) no final decree of adoption has been en-  
4 tered;

5 “(B)(i) the adoptive placement changes or ter-  
6 minates; or

7 “(ii) the revocation occurs before the later of  
8 the end of—

9 “(I) the 180-day period beginning on the  
10 date on which the Indian child’s tribe receives  
11 written notice of the adoptive placement pro-  
12 vided in accordance with the requirements of  
13 subsection (c) and section 114, which includes  
14 an explanation of the revocation period specified  
15 in this subclause; or

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

22 “(C) the child is not in an adoptive placement.

23 “(3) Revocation of consent under this subsection  
24 shall be effective from the date on which the parent who  
25 revokes consent provides a written revocation of consent

1 to a party that seeks the voluntary adoptive placement of  
2 an Indian child or a written or oral revocation of consent  
3 to the State court, if any, in which any proceeding for  
4 a termination of parental rights to such Indian child, or  
5 an adoption proceeding concerning such Indian child, is  
6 pending. Any revocation sent by mail under this para-  
7 graph shall be effective from the postmarked date of the  
8 notice.

9 “(4) Immediately upon a revocation under paragraph  
10 (2)—

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

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

20 “(5) Except as otherwise provided in paragraphs  
21 (2)(A), (2)(B)(i), and (7), if a consent to adoption or vol-  
22 untary termination of parental rights has not been revoked  
23 by the end of the applicable period determined under para-  
24 graph (2)(B)(ii), a parent may revoke such consent after  
25 that date only—

1           “(A) pursuant to applicable State law;

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

7           “(C) if the parent of the Indian child involved  
8 did not receive each applicable written notice re-  
9 quired by subsection (h).

10          “(6) Subject to paragraph (7), if a consent to adop-  
11 tion or voluntary termination of parental rights is revoked  
12 under paragraph (5)(B)—

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

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

17          “(7) Except as otherwise provided under applicable  
18 State law, no adoption that has been in effect for a period  
19 longer than or equal to 2 years may be invalidated under  
20 this subsection.”.

21 **SEC. 10. NOTICE TO INDIAN TRIBES.**

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

1       “(c)(1) A party that seeks the voluntary termination  
2 of the parental rights of a parent of an Indian child or  
3 the voluntary placement of an Indian child, including—

4               “(A) any preadoptive or adoptive placement  
5       subsequent to an involuntary termination of the pa-  
6       rental rights of a parent of an Indian child; and

7               “(B) any termination or change of such vol-  
8       untary placement,

9 shall provide written notice of the proposed placement or  
10 proceeding to the Indian child’s tribe. A notice under this  
11 subsection shall be sent by certified mail (return receipt  
12 requested) to the Indian child’s tribe, not later than the  
13 applicable date specified in paragraph (2) or (3). Any such  
14 notice shall contain the information required under section  
15 114.

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

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

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

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

4           “(iv) Not later than 10 days after the com-  
5           mencement of any adoptive proceeding concerning  
6           an Indian child.

7           “(B) A notice of any proposed preadoptive or adop-  
8           tive placement described in subparagraph (A)(ii) may be  
9           provided before the birth of an Indian child if a party re-  
10          ferred to in paragraph (1) contemplates a specific adoptive  
11          or preadoptive placement.

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

16                 “(A) the party shall provide notice under para-  
17                 graph (1) not later than 10 days after the discovery;  
18                 and

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

1 **SEC. 11. INTERVENTION BY INDIAN TRIBE.**

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

4 “(e)(1) The Indian child’s tribe involved shall have  
5 the right to intervene at any time in a voluntary child cus-  
6 tody proceeding in a State court only if—

7 “(A) in the case of a voluntary proceeding to  
8 terminate parental rights, the Indian tribe sent a no-  
9 tice of intent to intervene or a written objection to  
10 the adoptive placement to the court or to the party  
11 that is seeking the voluntary placement of the In-  
12 dian child, not later than 45 days after receiving no-  
13 tice that was provided in accordance with the re-  
14 quirements of subsection (c) and section 114; or

15 “(B) in the case of a voluntary adoption pro-  
16 ceeding, the Indian tribe sent a notice of intent to  
17 intervene or a written objection to the adoptive  
18 placement to the court or to the party that is seek-  
19 ing the voluntary placement of the Indian child, not  
20 later than the later of—

21 “(i) 100 days after receiving notice of the  
22 adoptive placement that was provided in accord-  
23 ance with the requirements of subsection (c)  
24 and section 114; or

25 “(ii) 45 days after receiving a notice of the  
26 voluntary adoption proceeding that was pro-

1           vided in accordance with the requirements of  
2           subsection (c) and section 114.

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

7           “(3)(A) Except as provided in subparagraph (B), the  
8 Indian child’s tribe involved shall have the right to inter-  
9 vene at any time in a voluntary foster care placement pro-  
10 ceeding in a State court and also in any other voluntary  
11 child custody proceeding in a State court in any case in  
12 which the Indian tribe did not receive written notice pro-  
13 vided in accordance with the requirements of subsection  
14 (c) and section 114.

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

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

21                   “(ii) the determination by the Indian tribe that  
22 the child involved—

23                           “(I) is not a member of, or is not eligible  
24 for membership in, the Indian tribe, and

1                   “(II) does not meet the requirements of  
2                   paragraph (4)(C) of section 4.

3           “(4) Except in the case of a voluntary foster care  
4 placement proceeding, if an Indian tribe files a motion for  
5 intervention in a State court under this subsection, the  
6 Indian tribe shall submit to the court, at the same time  
7 as the Indian tribe files that motion, a tribal certification  
8 that includes a statement that documents, with respect to  
9 the Indian child involved, the membership or eligibility for  
10 membership of that Indian child in the Indian tribe under  
11 applicable tribal law or the basis for any assertion by the  
12 tribe that the child meets the requirements of paragraph  
13 (4)(C) of section 4.

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

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

18                   “(2) preclude the Indian child that is the sub-  
19                   ject of an action taken by the Indian tribe under  
20                   subsection (e) from intervening in a proceeding con-  
21                   cerning that Indian child if a proposed adoptive  
22                   placement of that Indian child is changed after that  
23                   action is taken; or

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

1       “(g) Notwithstanding any other provision of law, no  
2 proceeding for a voluntary termination of parental rights  
3 or adoption of an Indian child may be conducted under  
4 applicable State law before the date that is 45 days after  
5 the Indian child’s tribe receives notice of that proceeding  
6 that was provided in accordance with the requirements of  
7 subsection (c) and section 114, unless such tribe consents  
8 to an earlier date or has given written notice to the State  
9 court or any party involved of its intent not to intervene.”.

10 **SEC. 12. NOTICE TO PARENTS.**

11       Section 103 of the Indian Child Welfare Act of 1978  
12 (25 U.S.C. 1913) is amended by adding at the end the  
13 following:

14       “(h)(1) A party that terminates or changes the vol-  
15 untary adoptive placement of an Indian child or com-  
16 mences a proceeding for the adoption of an Indian child  
17 shall provide written notice of such termination, changed  
18 adoptive placement, or proceeding to the parents of that  
19 Indian child. Such a party shall also provide the parents  
20 of that Indian child with a written notice specifying the  
21 date on which the Indian child’s tribe received a written  
22 notice of the adoptive placement that was in accordance  
23 with the requirements of subsection (c) and section 114.  
24 Any notice under this subsection shall be sent by certified  
25 mail (return receipt requested) to the parents of the In-

1 dian child, not later than the applicable date specified in  
2 paragraph (2) and shall include a copy of any complaint,  
3 petition, or court order affecting the rights of any such  
4 parents. Any such notice shall contain the information re-  
5 quired under section 114.

6 “(2) Each notice required under paragraph (1) shall  
7 be sent by the applicable date specified in the following  
8 cases:

9 “(A) Not later than 10 days after any termi-  
10 nation of or change in the adoptive placement of an  
11 Indian child, including any termination or change  
12 that occurs whenever a final decree of adoption has  
13 been vacated or set aside or the adoptive parent or  
14 parents voluntarily consent to the termination of pa-  
15 rental rights.

16 “(B) Not later than 10 days after the com-  
17 mencement of any adoption proceeding concerning  
18 an Indian child.

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

1 **SEC. 13. NOTICE TO EXTENDED FAMILY MEMBERS.**

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 “(i) Whenever, in connection with a proceeding or  
6 other action under this section, a party seeks the place-  
7 ment of an Indian child, including any termination or  
8 change of such placement, such party shall provide written  
9 notice of such proposed placement to the Indian child’s  
10 extended family members whose names and addresses are  
11 included in any notice sent pursuant to subsection (c). The  
12 notice shall be provided in accordance with subsection  
13 (c)(2)(A) and (3)(A). A notice under this subsection shall  
14 be sent by certified mail (return receipt requested) and  
15 shall contain the information required under section  
16 114.”.

17 **SEC. 14. INVALIDATION OF CHILD CUSTODY PROCEEDINGS.**

18 Section 104 of the Indian Child Welfare Act of 1978  
19 (25 U.S.C. 1914) is amended to read as follows:

20 **“SEC. 104. INVALIDATION OF CHILD CUSTODY PRO-**  
21 **CEEDINGS.**

22 “(a) Any Indian child who is the subject of any action  
23 for foster care or adoptive placement or termination of pa-  
24 rental rights under State law, any parent or Indian custo-  
25 dian of any such child, the Indian child’s tribe, and a  
26 member of the Indian child’s extended family who has

1 been rejected as a placement for the child may petition  
2 any Federal court having venue to invalidate such action  
3 upon a showing that such action violated any provision  
4 of sections 101, 102, 103, and 105. The district courts  
5 shall have jurisdiction under section 1331 of title 28 over  
6 any petition filed under this subsection.

7 “(b) Notwithstanding any Federal law, a petition  
8 under subsection (a) shall be adjudicated during a pending  
9 proceeding when a State court has—

10 “(1) ruled that the proceeding is not within the  
11 exclusive jurisdiction of an Indian child’s tribe or  
12 that the proceeding should not be transferred to  
13 such Indian tribe’s jurisdiction;

14 “(2) ruled that the proceeding is not a child  
15 custody proceeding or that this Act, for other rea-  
16 sons, does not apply to the proceeding;

17 “(3) held that this Act, on its face or as ap-  
18 plied, violates the Constitution;

19 “(4) denied a motion to intervene filed by an  
20 Indian tribe or a member of the Indian child’s ex-  
21 tended family; or

22 “(5) in a case where the father of an Indian  
23 child objects to the adoption of such child and the  
24 parental rights of such father have not been termi-  
25 nated pursuant to section 102, ruled that such fa-

1       ther’s consent to the adoption of such child is unneces-  
2       sary.

3       “(c) A petition under subsection (a) may be filed  
4 within 90 days after entry of a final judgment under State  
5 law and shall be adjudicated notwithstanding any Federal  
6 law to the contrary. For purposes of this subsection, the  
7 term “final judgment” means a judgment of a trial court  
8 where no appeal has been filed under State law, a judg-  
9 ment of an appellate court of a State affirming the judg-  
10 ment of a trial court, or an order of the United States  
11 Supreme Court denying a writ of certiorari to a State ap-  
12 pellate court. In the case of a petition alleging a violation  
13 of section 105, “final judgment” shall also mean an ap-  
14 pealable order or judgment under State law that denies  
15 a placement of an Indian child with a member of the In-  
16 dian child’s extended family where the time to appeal  
17 under State law has not expired.”.

18 **SEC. 15. TRIBAL AFFILIATION INFORMATION.**

19       Section 107 of the Indian Child Welfare Act of 1978  
20 (25 U.S.C. 1917) is amended to read as follows:

21 **“SEC. 107. DISCLOSURE OF INFORMATION REGARDING BIO-**  
22 **LOGICAL PARENTS.**

23       “If an adopted Indian who is 18 years of age or older,  
24 the Indian tribe of an adopted Indian child, the Indian  
25 tribe of an adopted Indian who is 18 years of age or older,

1 an adoptive parent or guardian of an Indian child or of  
2 an adopted Indian who is under the age of 18, or, in the  
3 case of a medical emergency or incompetence of an adopt-  
4 ed Indian, an adoptive parent or guardian of an Indian  
5 18 years of age or older, petitions the court which entered  
6 the final decree of adoption or any other court of com-  
7 petent jurisdiction for the release of information regarding  
8 the tribal affiliation, if any, of the adopted child's biologi-  
9 cal parents, the court shall disclose, from any records sub-  
10 ject to its jurisdiction, such information to the petitioner  
11 and shall provide the petitioner with any other identifying  
12 information as may be necessary to protect any rights  
13 flowing from an adopted Indian's tribal relationship.”.

14 **SEC. 16. ASSUMPTION OF JURISDICTION OVER CHILD CUS-**  
15 **TODY PROCEEDINGS.**

16 Section 108 of the Indian Child Welfare Act of 1978  
17 (25 U.S.C. 1918) is amended to read as follows:

18 **“SEC. 108. ASSUMPTION OF JURISDICTION OVER CHILD**  
19 **CUSTODY PROCEEDINGS.**

20 “(a) CHILDREN RESIDING OR DOMICILED WITHIN A  
21 RESERVATION.—Where, pursuant to the provisions of the  
22 Act of August 15, 1953 (67 Stat. 588), or any other Fed-  
23 eral law, a State is exercising or has exercised jurisdiction  
24 over voluntary child custody proceedings involving Indian  
25 children who reside or are domiciled within the reservation

1 of an Indian tribe, such Indian tribe may assume jurisdic-  
2 tion exclusive as to any State over such child custody pro-  
3 ceedings.

4 “(b) CHILDREN NOT RESIDING OR DOMICILED  
5 WITHIN A RESERVATION.—(1) Any Indian tribe that does  
6 not exercise exclusive jurisdiction over child custody pro-  
7 ceedings involving Indian children who reside or are domi-  
8 ciled within any of the following geographic areas may as-  
9 sume jurisdiction exclusive as to any State over such pro-  
10 ceedings:

11 “(A) In the case of a tribe presently located in  
12 Oklahoma, the lands that are within the jurisdic-  
13 tional area of any such Indian tribe and are within  
14 the boundaries of such Indian tribe’s last reservation  
15 established by final treaty, Federal agreement, Exec-  
16 utive or secretarial order, Executive or secretarial  
17 proclamation, United States patent, Federal statute,  
18 or final judicial or administrative determination.

19 “(B) Lands located in a State other than Okla-  
20 homa, including Alaska, that are within the Indian  
21 tribe’s last recognized reservation within the State  
22 or States within which such Indian tribe is presently  
23 located, including the disestablished area or portion,  
24 if any, of such reservation.

1           “(C) In the case of an Indian tribe located in  
2 Alaska—

3           “(i) lands selected by a village corporation  
4 pursuant to sections 12(a) and (b) and 16(b)  
5 and (d) of the Alaska Native Claims Settlement  
6 Act (85 Stat. 688, 701, 706; 42 U.S.C. 1611(a)  
7 and (b) and 1615(b) and (d));

8           “(ii) any other lands located within the ex-  
9 terior boundaries of or contiguous to the areas  
10 described in clause (i) of this subparagraph, in-  
11 cluding the lands described in section 22(l) of  
12 the Alaska Native Claims Settlement Act (85  
13 Stat. 688, 715; 42 U.S.C. 1921(l)); or

14           “(iii) lands withdrawn pursuant to section  
15 14(h) of the Alaska Native Claims Settlement  
16 Act (85 Stat. 688, 704, 705; 42 U.S.C.  
17 1613(h)), that are located within a 25-mile ra-  
18 dius of the seat of government of any such In-  
19 dian tribe.

20           “(D) Lands owned in fee simple by an Indian  
21 tribe.

22           “(2) Whenever, under existing Federal law, a State  
23 has exercised or is exercising exclusive jurisdiction over  
24 child custody proceedings arising in any of the areas de-  
25 scribed in paragraph (1), a tribe may assume jurisdiction,

1 for the purposes of said paragraph, that is exclusive as  
2 to any State or concurrent with the jurisdiction exercised  
3 by any State. Such an Indian tribe may limit its assump-  
4 tion of jurisdiction to types of child custody proceedings,  
5 transfer jurisdiction under section 101(b), or otherwise as-  
6 sume less than exclusive jurisdiction over child custody  
7 proceedings.

8       “(c) RESOLUTION OF GOVERNING BODY.—Before  
9 any Indian tribe may assume jurisdiction over Indian child  
10 custody proceedings pursuant to this section, the Indian  
11 tribe shall present to the Secretary a resolution of its gov-  
12 erning body authorizing the assumption of such jurisdic-  
13 tion. The governing body of an Indian tribe referred to  
14 in subsection (b) shall include in its jurisdiction assump-  
15 tion resolution a clear and definite description of the terri-  
16 tory over which jurisdiction is to be assumed and, in ac-  
17 cordance with subsection (b)(2), the nature of the jurisdic-  
18 tion assumed.

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

1 shall assume jurisdiction 30 days after publication in the  
2 Federal Register of the notice of the Indian tribe’s resolu-  
3 tion unless such resolution specifies a later date.

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

5 (a) JURISDICTIONAL ISSUES.—Section 109 of the In-  
6 dian Child Welfare Act of 1978 (25 U.S.C. 1919) is  
7 amended—

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

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

10 “(2) An agreement entered into under paragraph (1)  
11 may recognize the concurrent or exclusive jurisdiction of  
12 an Indian tribe over child custody proceedings involving  
13 the Indian children of such tribe that arise within any  
14 lands in the State described in such agreement, including  
15 all or any portion of the lands included within a service  
16 area designated for such tribe by or pursuant to law or  
17 regulation. Nothing in this paragraph shall affect the right  
18 of any such Indian tribe to assume exclusive or other juris-  
19 diction within the areas described in section 108(a) and  
20 (b).”.

21 (b) SUPERSEDING AUTHORITY OF TRIBAL-STATE  
22 AGREEMENTS.—Section 109 of the Indian Child Welfare  
23 Act of 1978 (25 U.S.C. 1919) is amended by adding at  
24 the end the following:

1       “(c) An agreement respecting the care and custody  
 2 of, or jurisdiction over, Indian children, entered into under  
 3 subsection (a), shall govern such care, custody, and juris-  
 4 diction, any law to the contrary notwithstanding. For pur-  
 5 poses of carrying out any agreement entered into pursuant  
 6 to this section, the terms ‘Indian child’ and ‘Indian tribe,’  
 7 as defined in any such agreement, shall govern. Nothing  
 8 in this subsection shall be construed to authorize Federal  
 9 funds appropriated for Indian tribes, or for the members  
 10 of Indian tribes, to be expended for any other person or  
 11 entity.”.

12 **SEC. 18. CONTENT OF NOTICES; FRAUDULENT REPRESENTATION;  
 13 VISITATION; ALASKA NATIVE INHERITANCE RIGHTS; COMPLIANCE  
 14 REVIEWS; CHILDREN OF STATE RECOGNIZED TRIBES.**

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

19 **“SEC. 114. CONTENT OF NOTICES.**

20       “(a) PROCEEDINGS IN GENERAL.—Each written no-  
 21 tice provided under subsection 102(a)(1), 102(g)(1),  
 22 102(h)(1), 103(c)(1), 103(h)(1), and 103(i)(1) shall be  
 23 based on a good faith investigation and contain the fol-  
 24 lowing:

1           “(1) The name of the Indian child involved and  
2 the actual or anticipated date of birth of the Indian  
3 child.

4           “(2) The Indian child’s residence address and  
5 domicile, if known, except that in a voluntary child  
6 custody proceeding, the notice may be limited to de-  
7 scribing in detail facts that substantiate whether the  
8 Indian child resides or is domiciled on a reservation  
9 or within any of the areas described in a resolution  
10 adopted pursuant to section 108(c).

11           “(3) A list containing the name, address, date  
12 of birth, and (if applicable) the maiden name, of  
13 each Indian parent and grandparent of the Indian  
14 child and the name and address of each known ex-  
15 tended family member (if any) that has priority in  
16 placement under section 105, if—

17                   “(A) known after inquiry of—

18                           “(i) the birth parent last having cus-  
19 tody of the child; and

20                           “(ii) the other birth parent (if avail-  
21 able); or

22                   “(B) otherwise ascertainable through other  
23 reasonable inquiry.

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

1           “(5) The tribal affiliation, if any, of the Indian  
2 child’s prospective or actual foster care, preadoptive  
3 or adoptive parents, as the case may be.

4           “(6) The names and addresses of the parties in-  
5 volved in any applicable child custody proceeding or  
6 contemplated proceeding in a State court.

7           “(7)(A) The name and address of the State  
8 court in which a child custody proceeding referred to  
9 in paragraph (6) is pending or will be filed;

10           “(B) the date and time of any related court  
11 proceeding that is scheduled as of the date on which  
12 the notice is provided; and

13           “(C) a statement describing the nature of the  
14 court proceeding, the allegations made in support of  
15 the complaint or petition, and the relief sought.

16           “(8) The name and address of any public or  
17 private social service agency or adoption agency in-  
18 volved.

19           “(9) An identification of any Indian tribe in  
20 which the Indian child may be a member, is eligible  
21 for membership, or satisfies the requirements of  
22 paragraph (4)(C) of section 4.

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

1           “(11) A statement describing the right of each  
2 Indian tribe identified under paragraph (9) to inter-  
3 vene in the proceeding referred to in paragraph (6).

4           “(12) A statement describing the right of each  
5 extended family member identified under paragraph  
6 (3) to intervene in the proceeding referred to in  
7 paragraph (6) in order to seek the placement of the  
8 Indian child, including the following:

9           “(A) A description of any information that  
10 must be provided by the extended family mem-  
11 ber in order for such member to be considered  
12 as a placement for the Indian child; and

13           “(B) A description of the procedure that  
14 an extended family member must follow in  
15 order to be considered as a placement for the  
16 child, including the dates by which an extended  
17 family member must take any action required  
18 in order to be so considered.

19           “(13) A statement that each extended family  
20 member identified under paragraph (3) has the right  
21 to seek the placement of the Indian child without  
22 having to intervene in the proceeding referred to in  
23 paragraph (6), including the information required  
24 under paragraph 12.

1           “(14) A statement describing the right of the  
2           parent or Indian custodian and of each Indian tribe  
3           identified under paragraph (9) to request that the  
4           proceeding be transferred to the tribal court of the  
5           Indian child’s tribe.

6           “(15) A statement of the potential legal con-  
7           sequences of an adjudication of the complaint or pe-  
8           tition on the rights of any parent, Indian custodian,  
9           extended family member, or Indian tribe and the po-  
10          tential legal consequences for failing to respond to  
11          the complaint or petition.

12          “(16) A statement as to whether a written re-  
13          sponse to the complaint, petition, or notice must be  
14          filed and, if so, the date that the response must be  
15          received by the court. The statement shall include an  
16          explanation of the legal consequences of failure to  
17          file such written response.

18          “(17) A copy of any complaint or petition and  
19          court orders.

20          “(b) PROCEEDINGS UNDER SECTION 102.—In addi-  
21          tion to the information required under subsection (a), any  
22          notice provided under section 102(a)(1) shall contain the  
23          following:

24                  “(1) A statement that a parent or Indian custo-  
25                  dian unable to afford counsel may request that the

1 court appoint counsel to represent such parent or  
2 Indian custodian.

3 “(2) If applicable, a statement of the right of  
4 the parent or Indian custodian and the Indian  
5 child’s tribe to request at least 20 additional days,  
6 from the date of receipt of notice of the proceeding,  
7 to prepare for the proceeding.

8 “(3) As may be applicable, a statement of the  
9 circumstances supporting, or that supported, a fos-  
10 ter care placement, termination of the parental  
11 rights of the parent of the Indian child, or the adop-  
12 tive placement of the Indian child.

13 “(4) A statement of the right of each party to  
14 examine all reports or other documents filed with  
15 the court upon which any decision with respect to  
16 the complaint or petition may be based.

17 “(5) If applicable, a statement of the reasons  
18 why the foster care, preadoptive, or adoptive place-  
19 ment of the Indian child involved was terminated or  
20 changed and the date of such termination or change.

21 “(c) NOTICE UNDER SECTION 103(c).—In addition  
22 to the information required under subsection (a), any no-  
23 tice provided under section 103(c)(1) shall contain the fol-  
24 lowing:

1           “(1) An inquiry concerning whether the Indian  
2           tribe that receives notice under section 103(e) in-  
3           tends to intervene under section 103(e) or waive any  
4           such right to intervention.

5           “(2) A statement that, if the Indian tribe that  
6           receives notice under section 103(c) fails to respond  
7           in accordance with section 103(e) by the applicable  
8           date specified in that subsection, the right of that  
9           Indian tribe to intervene in the proceeding involved  
10          shall be considered to have been waived by that In-  
11          dian tribe unless that Indian tribe did not receive  
12          notice in accordance with the requirements of section  
13          103(c) and this section.

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

18          “(d) NOTICE UNDER SECTION 103(h).—In addition  
19          to the information required under subsection (a), any no-  
20          tice provided under section 103(h)(1) shall contain the fol-  
21          lowing:

22                 “(1) In the case of a notice of a termination or  
23                 change in an adoptive placement—

24                         “(A) a description of the rights of the par-  
25                         ent or parents of an Indian child under para-

1 graphs (2) and (3) of section 103(b) and, if ap-  
2 plicable, section 106(a); and

3 “(B) if applicable, a statement of the rea-  
4 sons why the adoptive placement of the Indian  
5 child involved was terminated or changed and  
6 the date of such termination or change.

7 “(2) In the case of a notice of the commence-  
8 ment of an adoption proceeding—

9 “(A) the date on which the adoption pro-  
10 ceeding, was commenced; and

11 “(B) if known, the date that is the end of  
12 the 180-day period beginning on the date on  
13 which the Indian child’s tribe received written  
14 notice of the adoptive placement.

15 “(3) In the case of a notice of the date on  
16 which the Indian child’s tribe received written notice  
17 of the adoptive placement—

18 “(A) the date that is the end of the 180-  
19 day period beginning on the date on which the  
20 tribe of the Indian child received such written  
21 notice of the adoptive placement; and

22 “(B) if known, the date that is the end of  
23 the 30-day period beginning on the date on  
24 which the parent revoking consent received no-

1           tice of the commencement of the adoption pro-  
2           ceeding.

3 **“SEC. 115. FRAUDULENT REPRESENTATION.**

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

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

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

15           “(B) a parent is an Indian;

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

18           “(B) falsifies a written document knowing that  
19 the document contains a false, fictitious, or fraudu-  
20 lent statement or entry relating to a material fact  
21 described in paragraph (1); or

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

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

3           “(1) For the first violation, a person shall be  
4 fined in accordance with section 3571 of title 18,  
5 United States Code, or imprisoned not more than 1  
6 year, or both.

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

11 **“SEC. 116. VISITATION.**

12       “Notwithstanding any other provision of law (includ-  
13 ing any State law)—

14           “(1) a court may approve, as part of an adop-  
15 tion decree of that Indian child, an agreement that  
16 states that a birth parent, an extended family mem-  
17 ber, or the Indian child’s tribe shall have an enforce-  
18 able right of visitation or continued contact with the  
19 Indian child after the entry of a final decree of  
20 adoption; and

21           “(2) the failure to comply with any provision of  
22 a court order concerning the continued visitation or  
23 contact under paragraph (1) shall not be considered  
24 to be grounds for setting aside a final decree of  
25 adoption.

1 **“SEC. 117. ALASKA NATIVE POSTADOPTION INHERITANCE**  
2 **RIGHTS.**

3 “(a) LAWS GOVERNING INTESTATE SUCCESSION.—

4 (1) Subject to any Federal law governing the intestate suc-  
5 cession of the estate of any Indian, including any law en-  
6 acted pursuant to any such Federal law, but notwith-  
7 standing the law of any State otherwise to the contrary,  
8 upon the entry of an order terminating the parental rights  
9 of a parent of an Alaska Native child or a decree of adop-  
10 tion, whether interlocutory or final, of an Alaska Native  
11 child in any State court or whenever an Alaska Native  
12 child is otherwise deemed to have been adopted under the  
13 law of any State, the right of the Alaska Native child and  
14 the issue of the Alaska Native child to inherit from and  
15 through the Alaska Native child’s natural parents and  
16 their kindred under the laws governing intestate succes-  
17 sion of any such State shall not be affected by reason of  
18 such adoption or termination. The property of such nat-  
19 ural parents and their kindred shall pass to the Alaska  
20 Native child and the issue of the Alaska Native child if,  
21 under the laws governing intestate succession, the Alaska  
22 Native child or issue would have taken had the decedent’s  
23 parental rights not been terminated or had the Alaska Na-  
24 tive child not been adopted.

25 “(2) If an Alaska Native child who has been adopted,  
26 or whose relationship with a parent has been terminated,

1 shall die intestate, without surviving issue, any real or per-  
2 sonal property of the Alaska Native child derived by deed,  
3 gift, will, or inheritance from the Alaska Native child's  
4 natural parents, or from either of them or their kindred,  
5 and capable of identification as such, shall pass, according  
6 to the statutes governing intestate succession, to those  
7 persons who would have taken had the decedent not been  
8 adopted or had such decedent's relationship with a parent  
9 not been terminated.

10       “(3) An adopted Alaska Native child who is related  
11 to the decedent both by natural relationship and by adop-  
12 tion shall be entitled to inherit only under the natural rela-  
13 tionship unless the decedent is also the adoptive parent,  
14 in which case the adoptive child shall then be entitled to  
15 inherit pursuant to the adoptive relationship only.

16       “(b) TESTAMENTARY SUCCESSION.—(1) Subject to  
17 any Federal law governing the testamentary disposition of  
18 the estate of any Indian and notwithstanding the law of  
19 any State otherwise to the contrary, upon the entry of an  
20 order terminating the parental rights of a parent of an  
21 Alaska Native child or the entry of a decree of adoption,  
22 whether interlocutory or final, of an Alaska Native child  
23 in any State court or whenever an Alaska Native child  
24 is otherwise deemed to have been adopted under the laws  
25 of any State, the right of the Alaska Native child and the

1 issue of the Alaska Native child to take under the provi-  
2 sions of any instrument of testamentary gift, bequest, de-  
3 vise, or legacy, whether executed before or after the decree  
4 of adoption or termination, shall not be affected by reason  
5 of such adoption or termination if the Alaska Native child  
6 or issue is expressly included therein by name, whether  
7 so known prior to or after adoption, or by some classifica-  
8 tion based on a parent-child or family relationship, not-  
9 withstanding that such relationship, as a matter of law,  
10 may have been altered or severed by the decree of adop-  
11 tion, termination or otherwise, unless such instrument ex-  
12 presses a contrary intention in defining or describing any  
13 such class.

14       “(2) For purposes of this subsection, unless the tes-  
15 tator, testatrix, or creator expresses a contrary intention,  
16 a disposition of property to persons described in any in-  
17 strument as the issue, children, descendants, heirs, heirs-  
18 at-law, next of kin, distributees (or by any term of like  
19 import) of such testator, testatrix, or creator includes any  
20 Alaska Native child who is the biological child of such tes-  
21 tator, testatrix, or creator, and who has been adopted or  
22 whose relationship with a parent has been terminated, and  
23 the issue of such child.

24       “(3) A person who, by reason of this subsection,  
25 would be a member of the designated class, or a member

1 of two or more designated classes pursuant to a single in-  
2 strument, both by natural relationship and by adoption  
3 shall be entitled to benefit only under the natural relation-  
4 ship, unless the testator, testatrix, or creator is the adop-  
5 tive parent, in which case the person shall then be entitled  
6 to benefit only under the adoptive relationship.

7       “(c) TRUSTS BENEFITING ALASKA NATIVE CHIL-  
8 DREN.—Subject to any Federal law governing the right  
9 to benefit from a trust created by any Indian and notwith-  
10 standing the law of any State otherwise to the contrary,  
11 upon the entry of an order terminating the parental rights  
12 of a parent of an Alaska Native child or the entry of a  
13 decree of adoption, whether interlocutory or final, of an  
14 Alaska Native child in any State court or whenever an  
15 Alaska Native child is otherwise deemed to have been  
16 adopted under the laws of any State, any interest of the  
17 Alaska Native child and the issue of the Alaska Native  
18 child in a trust or trust equivalent, whether created before  
19 or after the decree of adoption or termination, shall not  
20 be affected by reason of such adoption or termination if  
21 the Alaska Native child or issue is expressly included  
22 therein by name, whether so known prior to or after adop-  
23 tion, or by some classification based on a parent-child or  
24 family relationship, notwithstanding that such relation-  
25 ship, as a matter of law, may have been altered or severed

1 by the decree of adoption, termination, or otherwise, un-  
2 less such trust or trust equivalent expresses a contrary  
3 intention in defining or describing any such class.

4       “(d) EFFECT OF CONFLICTING TRIBAL LAW.—  
5 Whenever any provision of this section is contrary to the  
6 law or custom of the tribe of an Alaska Native child, in-  
7 cluding a determination by a tribal court defining such  
8 law or custom or applying such law or custom in a manner  
9 affecting the rights under this section of an identified  
10 Alaska Native child, such provision shall have no force or  
11 effect.

12       “(e) SPECIAL RULE FOR EQUITABLE ADOPTIONS.—  
13 Any provision of this section to the contrary notwith-  
14 standing, whenever an Alaska Native child is deemed to  
15 have been equitably adopted under the laws of any State  
16 or whenever such a child has been adopted pursuant to  
17 the customs of an Indian tribe located in the State of Alas-  
18 ka, such child shall not have the right pursuant to this  
19 section to inherit or take property from or through a nat-  
20 ural parent or, as the case may be, from or through an  
21 adoptive parent when—

22               “(1) such parent is a member of an Indian  
23               tribe located in the State of Alaska; and

24               “(2) such a right is contrary to the laws or cus-  
25               toms of such tribe.

1       “(f) EFFECTIVE DATE.—This section shall apply to  
2       intestate estates on the date of enactment of this Act and  
3       to any testamentary instrument of a person who dies on  
4       or after the date that is 180 days after the date of enact-  
5       ment of this Act, including lifetime instruments executed  
6       on or after such date and lifetime instruments theretofore  
7       executed which on the date of enactment of this Act are  
8       subject to the grantor’s power to revoke or amend.

9       “(g) VESTED RIGHTS.—(1) The provisions of this  
10       section shall not impair or defeat any rights which have  
11       vested before the date that is 180 days after the date of  
12       enactment of this Act, or which have vested prior to any  
13       adoption regardless of when the adoption occurred.

14       “(2) Nothing in this section shall impair or defeat  
15       the right of any Alaska Native child who has been adopted  
16       to inherit from and through the Alaska Native child’s  
17       adoptive parents and their kindred under the law of devise,  
18       descent, and distribution of any State.

19       “(h) DEFINITIONS.—For purposes of this section—

20               “(1) the term ‘Alaska Native child’ shall mean  
21       any adopted person who is a ‘Native’ as defined in  
22       section 3(b) of the Alaska Native Claims Settlement  
23       Act (43 U.S.C. 1602(b)) or any adopted person who  
24       is a member of or eligible for membership in an In-  
25       dian tribe located in the State of Alaska; and

1           “(2) the term ‘natural parent’ or ‘parent’ shall  
2           mean any biological parent of an Alaska Native  
3           child, including the unwed father where paternity  
4           has been acknowledged or established.

5   **“SEC. 118. COMPLIANCE REVIEWS.**

6           “(a) IN GENERAL.—The Secretary of Health and  
7   Human Services, in consultation with the Secretary of the  
8   Interior and Indian tribes, shall promulgate regulations  
9   for the review and determination of whether States and  
10   State agencies, including agencies licensed by the State,  
11   are acting in substantial conformity with the requirements  
12   of this Act in matters involving Indian children subject  
13   to this Act. Regulations promulgated pursuant to this sec-  
14   tion shall place special emphasis on reviewing substantial  
15   conformity with the placement preference requirements of  
16   section 105 and prioritize enforcement of conformity with  
17   such requirements.

18          “(b) MINIMUM STANDARDS.—For purposes of con-  
19   formity determinations with respect to section 105, the  
20   regulations promulgated pursuant to this section shall fix  
21   minimum standards for such conformity, which may in-  
22   clude standards for each State or such other standards  
23   as the Secretary may determine to be most practical and  
24   effective in achieving compliance with the placement pref-  
25   erence requirements of section 105. Whenever a State is

1 not in substantial conformity with such standards, the  
2 Secretary shall require an action plan under subsection  
3 (d)(6)(A).

4 “(c) REPORT.—For the purpose of establishing or ad-  
5 justing the minimum standards applicable to determining  
6 conformity with the requirements of section 105, the Sec-  
7 retary shall prepare, in consultation with the Secretary of  
8 the Interior and Indian tribes, a report identifying on a  
9 State-by-State basis for each year from 1995 through the  
10 date of the enactment of this Act—

11 “(1) the number of Indian children placed in  
12 foster, preadoptive, or adoptive homes;

13 “(2) the number of Indian children placed in  
14 each of the preferred placement preference cat-  
15 egories designated in section 105; and

16 “(3) the number of Indian children not placed  
17 in a preferred placement category.

18 For those children not placed in a preferred placement  
19 category, the report shall identify the good cause basis for  
20 the placement. The report shall include placements made  
21 by public agencies, agencies licensed by a State, and indi-  
22 viduals. The report shall be completed not later than one  
23 year following the effective date of this section.

24 “(d) ELEMENTS OF REVIEW SYSTEM.—The regula-  
25 tions referred to in subsection (a) of this section shall—

1           “(1) limit conformity reviews to States in which  
2 either an Indian tribe is located or there is an In-  
3 dian population of more than 10,000;

4           “(2) require consultation with the Secretary  
5 and affected Indian tribes in planning and carrying  
6 out any conformity review;

7           “(3) specify the timetable for conformity re-  
8 views, including—

9                 “(A) an initial review of each covered State  
10 not later than 3 years after the promulgation of  
11 the regulations referred to in subsection (a);

12                 “(B) a timely review of a covered State’s  
13 conformity following a review in which such  
14 program was found not to be in substantial con-  
15 formity; and

16                 “(C) less frequent reviews of States which  
17 have been found to be in substantial conformity,  
18 but such regulations shall require reviews at  
19 least every 3 years and shall permit the Sec-  
20 retary to reinstate more frequent reviews based  
21 on information that indicates that a State may  
22 not be in conformity;

23           “(4) specify the requirements subject to review  
24 and the criteria to be used to measure conformity

1 with such requirements and to determine whether  
2 there is a substantial failure to so conform;

3 “(5) require the Secretary, not later than 10  
4 days after a final determination that a State or any  
5 of its agencies, including agencies licensed by the  
6 State, is not in conformity, to notify the State of the  
7 basis for the determination;

8 “(6) require the Secretary, with respect to any  
9 State found to have failed substantially to so con-  
10 form—

11 “(A) to afford the State an opportunity to  
12 adopt and submit to the Secretary for approval,  
13 not later than 120 days after such final deter-  
14 mination, a corrective action plan to end the  
15 failure to so conform, designed with specific im-  
16 plementation timetables, and developed in con-  
17 sultation with affected Indian tribes, Indian or-  
18 ganizations within such State with expertise  
19 concerning the requirements of this Act or, in  
20 the absence of such Indian tribes or Indian or-  
21 ganizations, national Indian organizations with  
22 such expertise; and

23 “(B) to make technical assistance available  
24 to the State to the extent feasible to enable the

1 State to develop and implement such a correc-  
2 tive action plan; and

3 “(7) require the Secretary, not later than 60  
4 days after the date on which a State submits a cor-  
5 rective action plan, to—

6 “(A) approve the plan; or

7 “(B)(i) if the corrective action plan does  
8 not meet the requirements for approval, consult  
9 with the State, the Secretary of the Interior  
10 and affected Indian tribes and seek agreement  
11 from the State to modifications that meet such  
12 requirements; and

13 “(ii) in the absence of an agreement with  
14 the State, amend the plan to include such modi-  
15 fications as the Secretary may deem necessary  
16 in order to approve such plan.

17 “(e) PROMULGATION OF REGULATIONS.—The regu-  
18 lations referred to in subsection (a) shall be promulgated  
19 not later than 180 days after the date of the enactment  
20 of this Act.

21 “(f) ENFORCEMENT OF NONCONFORMITY DETER-  
22 MINATION.—

23 “(1) IN GENERAL.—Whenever a State or any  
24 agency of the State, including agencies licensed by  
25 the State, has failed to adopt a corrective action

1 plan within 180 days after a final determination by  
2 the Secretary that the State or agency is not in con-  
3 formity with the requirements of this Act or has  
4 failed to implement a corrective action plan within  
5 the timeframes specified in such corrective action  
6 plan, the Attorney General may bring an action  
7 against the State or agency in any appropriate  
8 United States district court seeking to compel the  
9 adoption of a corrective action plan or, as the case  
10 may be, to enforce such corrective action plan  
11 through declaratory, injunctive, or other appropriate  
12 equitable relief.

13 “(2) ACTION BY AFFECTED INDIAN TRIBES.—  
14 An action described in paragraph (1) may be  
15 brought by any affected Indian tribe against any ap-  
16 propriate official of a State or, for failure to imple-  
17 ment a corrective action plan, against any such offi-  
18 cial or agency licensed by a State.

19 “(3) INTERVENTION.—Upon timely application,  
20 an affected Indian tribe shall have the right to inter-  
21 vene in a civil action commenced by the Attorney  
22 General pursuant to paragraph (1) and the Attorney  
23 General shall have the right to intervene in a civil  
24 action commenced by any affected Indian tribe pur-  
25 suant to paragraph (2).

1           “(4) LIMITATION OF ACTIONS.—An action  
2           under paragraph (1) may not be brought more than  
3           3 years after the date of the Secretary’s determina-  
4           tion. The computation of the 3-year period shall not  
5           include any time during which an administrative  
6           proceeding was pending with respect to the Sec-  
7           retary’s determination.

8           “(5) ATTORNEY’S FEES.—In an action or pro-  
9           ceeding brought pursuant to paragraph (1) or (2),  
10          the court, in its discretion, may allow a prevailing  
11          Indian tribe reasonable attorney’s fees, including ex-  
12          pert fees, as part of the costs. For purposes of this  
13          subsection, an Indian tribe shall be deemed to have  
14          prevailed where a judgment, consent decree, or order  
15          results in requiring a State to adopt a corrective ac-  
16          tion plan, or in the enforcement of all or part of a  
17          corrective action plan or when a State or an agency  
18          of the State, including an agency licensed by the  
19          State, voluntarily implements all or part of correc-  
20          tive action plan as a result of the action.

21   **“SEC. 119. CHILDREN OF STATE-RECOGNIZED AND CANA-**  
22                                   **DIAN TRIBES.**

23          “(a) For the purposes of sections 101(c), 102, 103,  
24    104, 105, 106, 107, 110, 111, 112, 114, 115, and 116,  
25    the term ‘Indian child’ shall include any unmarried person

1 who is under age 18 who is a member of or eligible for  
2 membership in a tribe recognized by a State, or by the  
3 Government of Canada or any province or territory there-  
4 of, and the term ‘Indian tribe’ shall include such tribal  
5 entities, when such a tribe has adopted and provided to  
6 the Secretary a resolution—

7           “(1) consenting to the application of such provi-  
8           sions to such children;

9           “(2) describing the requirements for tribal  
10           membership and annexing any constitution, laws, or  
11           regulations stating such requirements;

12           “(3) providing the tribe’s address and telephone  
13           number;

14           “(4) identifying one or more individuals who  
15           can be contacted with respect to matters arising  
16           under this Act together with information on how to  
17           contact any such individuals;

18           “(5) identifying the name, address, and tele-  
19           phone number of the tribe’s agent for service of  
20           process; and

21           “(6) including, as an attachment, a law or  
22           other documentation from a State or from said Gov-  
23           ernment of Canada or any province or territory  
24           thereof establishing that such State or said Govern-  
25           ment of Canada or any province or territory thereof

1 recognizes such tribe and, in the case of a tribe rec-  
2 ognized by a State, that such State consents to the  
3 application of such provisions to such tribe's chil-  
4 dren.

5 “(b) Not later than 60 days after receipt of a resolu-  
6 tion described in subsection (a)(1) or the documentation  
7 described in subsection (a)(2), the Secretary shall publish  
8 in the Federal Register a notice that includes such resolu-  
9 tion or documentation and informs the public that the pro-  
10 visions of this Act identified in subsection (a) apply to the  
11 tribe or tribes identified in such notice and to children who  
12 are members of or eligible for membership in such tribe  
13 or tribes. The Secretary shall also notify the affected State  
14 or States of such publication. The provisions of this Act  
15 identified in subsection (a) shall apply to such tribe or  
16 tribes and children 30 days after publication in the Fed-  
17 eral Register of the notice of such resolution or docu-  
18 mentation.

19 “(c) The tribe of a child covered under subsection (a)  
20 may by resolution designate a federally recognized Indian  
21 tribe or an Indian organization as its agent for the pur-  
22 poses of this Act. Any such resolution shall not be effective  
23 unless delivered to the Secretary together with a resolution  
24 of the designated Indian tribe or Indian organization con-  
25 senting to such designation. Not later than 60 days after

1 receipt of the resolution of an Indian tribe of a child cov-  
2 ered under subsection (a), the Secretary shall publish in  
3 the Federal Register a notice that includes such resolu-  
4 tion. The designation shall be effective upon such publica-  
5 tion unless the resolution specifies a later effective date.”.

6 **SEC. 19. DEFINITIONS.**

7 Section 4 of the Indian Child Welfare Act of 1978  
8 (25 U.S.C. 1903) is amended—

9 (1) by amending paragraph (1)(i), (1)(iii), and  
10 (1)(iv) to read as follows:

11 “(i) ‘foster care placement’ which shall  
12 mean any action which may result in the place-  
13 ment of an Indian child in a foster home or in-  
14 stitution or in the home of a guardian or con-  
15 servator, where parental rights have not been  
16 terminated;

17 “(ii) ‘preadoptive placement’ which shall  
18 mean the placement of an Indian child in a fos-  
19 ter home or institution or in the home of a  
20 guardian or conservator after the termination of  
21 parental rights, but prior to or in lieu of adop-  
22 tive placement, or any action which results in  
23 the prospective adoptive placement of an Indian  
24 child prior to any termination of parental  
25 rights; and

1           “(iii) ‘adoptive placement’ which shall  
2           mean the permanent placement of an Indian  
3           child in the home of a guardian or conservator  
4           or for adoption, including any action resulting  
5           in a final decree of adoption.”;

6           (2) in paragraph (3), by inserting before the  
7           semicolon at the end the following: “, or for pur-  
8           poses of section 107, any person who is seeking to  
9           determine eligibility for tribal membership”;

10          (3) by amending paragraphs (4) and (5) to  
11          read as follows:

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

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

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

17           “(C) if the child is not a member of or eli-  
18          gible for membership in an Indian tribe, the  
19          child is certified by an Indian tribe to be a part  
20          of its community and is a child of a member of  
21          an Indian tribe or of a person who is eligible for  
22          membership in an Indian tribe and—

23           “(i) resides or is domiciled within the  
24          reservation of such child’s parent or grand-  
25          parent;

1           “(ii) is an Alaska Native who resides  
2           or is domiciled within an Alaska Native vil-  
3           lage; or

4           “(iii) resides or is domiciled within  
5           any lands described in a resolution of an  
6           Indian tribe adopted pursuant to section  
7           108(c).

8           “(5) ‘Indian child’s tribe’ means—

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

11          “(B) for an Indian child described in para-  
12          graph (4)(C), an Indian tribe that certifies such  
13          a child to be part of its community; or

14          “(C) in the case of an Indian child who is  
15          certified to be part of the community of more  
16          than 1 Indian tribe, the Indian tribe with which  
17          the Indian child has the most significant con-  
18          tacts, unless the Indian tribe with which the In-  
19          dian child has the most significant contacts des-  
20          ignates, with the consent of the Indian tribe to  
21          be designated as the Indian child’s tribe, an-  
22          other Indian tribe in which the Indian child is  
23          a member, eligible for membership, or of which  
24          the Indian child is certified to be part of the  
25          community.”; and

1           (4) in paragraph (9), by striking “Indian” the  
2           second place it appears and inserting after the first  
3           sentence the following: “Except for the purposes of  
4           sections 103(b) and (h), 104, 105(d), 106(a) and  
5           (b), 107, and 301, the term shall not include any  
6           person whose parental rights have been termi-  
7           nated.”.

8   **SEC. 20. LICENSING OR APPROVAL QUALIFICATIONS FOR**  
9                                   **ASSISTANCE.**

10          The last sentence of section 201(b) of the Indian  
11   Child Welfare Act of 1978 (25 U.S.C. 1931(b)) is amend-  
12   ed by striking “For purposes” and inserting “Notwith-  
13   standing any law or regulation to the contrary, for pur-  
14   poses.”.

15   **SEC. 21. FOSTER AND ADOPTIVE HOME BACKGROUND**  
16                                   **CHECKS, LICENSING, AND APPROVAL.**

17          Section 408 of the Indian Child Protection and Fam-  
18   ily Violence Prevention Act (25 U.S.C. 3207) is amended  
19   by adding at the end the following:

20          “(d)(1) Investigations conducted under this section  
21   shall be deemed to satisfy any requirement under any  
22   other Federal law for background checks in connection  
23   with the placement of an Indian child in a foster home,  
24   an institution, or an adoptive home.

1       “(2) Any foster or adoptive home licensed or ap-  
2 proved by an Indian tribe under standards equal to or  
3 more stringent than those established under subsection  
4 (c)(2) shall be deemed to satisfy the requirements of any  
5 other Federal law pertaining to the licensing or approval  
6 of foster or adoptive homes.”.

7 **SEC. 22. SEVERABILITY.**

8       Section 403 of the Indian Child Welfare Act of 1978  
9 (25 U.S.C. 1963) is amended to read as follows:

10 **“SEC. 404. SEVERABILITY.**

11       “If any provision of this Act or the application there-  
12 of to any person or circumstance is held invalid, the re-  
13 mainder of this Act and the application of such provision  
14 to other persons or circumstances shall not be affected  
15 thereby.”.

○