

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4733

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

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## IN THE HOUSE OF REPRESENTATIVES

MAY 14, 2002

Mr. YOUNG of Alaska (for himself and Mr. HAYWORTH) 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 2002”.

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) has become subject to the jurisdiction of  
11           the tribal court of that Indian tribe after a transfer  
12           of jurisdiction is carried out under subsection (b).

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) resided or was domiciled within the res-  
19           ervation of that Indian tribe at the time the child  
20           custody proceeding commenced; or

21           “(B) has become subject to the jurisdiction of  
22           the tribal court of that Indian tribe after a transfer  
23           of jurisdiction is carried out under subsection (b).

24           “(4) The provisions of paragraph (2) of this sub-  
25 section and subsection (b) shall apply to any child custody

1 proceeding which became subject to concurrent State ju-  
2 risdiction pursuant to the Act of August 15, 1953, or any  
3 other Federal law.

4 “(5) Subject to sections 108(b)(1) and 109, sub-  
5 section (b) of this section, and paragraphs (2) and (3) of  
6 this subsection, but notwithstanding the existence or ab-  
7 sence of a reservation in Alaska, Indian tribes in Alaska  
8 shall have concurrent jurisdiction with the State of Alaska  
9 over child custody proceedings involving Indian children  
10 who reside or are domiciled within the State of Alaska.

11 “(6) Subject to sections 108 and 109, this subsection,  
12 and subsection (b) of this section, but notwithstanding  
13 paragraph (5) of this subsection, any person seeking to  
14 adopt an Indian child in an Alaska State court may, at  
15 any time, petition the tribal court of the Indian child’s  
16 tribe to approve the adoption and, upon said tribal court  
17 agreeing to hear and determine the petition, the adoptive  
18 placement proceedings shall be within the exclusive juris-  
19 diction of the Indian child’s tribe.

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

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

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

4 **SEC. 3. TRANSFER OF JURISDICTION TO TRIBAL COURT.**

5           Section 101(b) of the Indian Child Welfare Act of  
6 1978 (25 U.S.C. 1911(b)) is amended to read as follows:

7           “(b) TRANSFER OF PROCEEDINGS; DECLINATION BY  
8 COURT.—In any State court child custody proceeding in-  
9 volving an Indian child not domiciled or residing within  
10 the reservation of the Indian child’s tribe or on any other  
11 lands described in a resolution of an Indian tribe adopted  
12 pursuant to section 108(c), the court shall transfer such  
13 proceeding to the jurisdiction of the tribe, upon the peti-  
14 tion of either parent, the Indian custodian, or the Indian  
15 child’s tribe, unless—

16           “(1) the tribal court of such tribe declines the  
17 transfer of jurisdiction;

18           “(2) the tribal court does not have subject mat-  
19 ter jurisdiction under the laws of the tribe or Fed-  
20 eral law;

21           “(3) in circumstances where the evidence nec-  
22 essary to decide the case cannot be adequately pre-  
23 sented in the tribal court without undue hardship to  
24 the parties or the witnesses, the tribal court is un-  
25 able to mitigate such hardship by making arrange-

1       ments to receive and consider such evidence by re-  
2       mote communication, hearing the evidence at a loca-  
3       tion convenient to the parties or the witnesses, or  
4       any other means permitted in the tribe’s rules of evi-  
5       dence or discovery; or

6               “(4) either parent objects to the transfer of ju-  
7       risdiction and the objection is consistent with section  
8       2(3) recognizing the vital relationship between In-  
9       dian tribes and their children and the policy set  
10      forth in section 3 that it is in the best interests of  
11      Indian children requiring foster or adoptive home  
12      placement to be placed in homes that reflect the  
13      unique values of Indian culture.”.

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

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

17               (1) by striking “In any State court proceeding  
18       for the foster care placement of, or termination of  
19       parental rights to,” and inserting “Except as pro-  
20       vided in section 103(e), in any State court child cus-  
21       tody proceeding involving”; and

22               (2) by inserting before the period at the end the  
23       following: “and any member of the Indian child’s ex-  
24       tended family shall have a right to intervene in order

1 to seek the placement of the child in accordance with  
2 section 105”.

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

4 Section 101(d) of the Indian Child Welfare Act of  
5 1978 (25 U.S.C. 1911(d)) is amended—

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

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

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

16 **SEC. 6. PENDING COURT PROCEEDINGS.**

17 Section 102 of the Indian Child Welfare Act of 1978  
18 (25 U.S.C. 1912) is amended—

19 (1) in subsection (a)—

20 (A) by inserting “(1)” after “(a)”; and

21 (B) by adding at the end the following:

22 “(2) Any involuntary child custody proceeding in a  
23 State court commenced prior to the birth of the Indian  
24 child shall not be valid.

1       “(3) Any notice provided under paragraph (1) shall  
2 contain the information required under paragraphs (1),  
3 (2) through (5), and (7) through (10) of section 103(d).  
4 In addition, such notice shall include any complaint or pe-  
5 tition and court orders and contain the following:

6           “(A) The child’s residence address and domi-  
7 cile, if known.

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

11               “(i) known after inquiry of a birth parent;

12               or

13               “(ii) otherwise ascertainable through other  
14 reasonable inquiry.

15           “(C) A statement of the nature of the pro-  
16 ceeding, the allegations made in support of the com-  
17 plaint or petition, and the relief sought.

18           “(D) A statement of the right of the parent or  
19 Indian custodian and the Indian child’s tribe to re-  
20 quest that the proceeding be transferred to the tribal  
21 court of the such tribe.

22           “(E) A statement that a parent or Indian cus-  
23 todian unable to afford counsel may request that the  
24 court appoint counsel to represent such parent or  
25 Indian custodian.

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

6           “(G) 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 or Indian custo-  
9           dian and the potential legal consequences for failing  
10          to respond to the complaint or petition.

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

17          “(I) A statement of the right of each party to  
18          examine all reports or other documents filed with  
19          the court upon which any decision with respect to  
20          the complaint or petition may be based.”; and

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

22          “(g)(1) Whenever, following the involuntary termi-  
23          nation of the parental rights of a parent of an Indian  
24          child, an Indian child is placed in a preadoptive or adop-  
25          tive placement, including any termination or change of

1 such placement, or is the subject of an adoption pro-  
2 ceeding, the party seeking the placement of the child or  
3 filing the proceeding shall provide written notice of the  
4 placement or proceeding to the tribe of such Indian child  
5 in accordance with subsection (c)(2)(A)(ii) and (iv) and  
6 (3)(A) of section 103. A notice under this subsection shall  
7 be sent by registered mail (return receipt requested).

8 “(2) Any notice under paragraph (1) shall contain  
9 the information required under paragraphs (1), (2)  
10 through (10), and (13) of section 103(d) and paragraph  
11 (2)(A) of subsection (a). In addition, such notice shall in-  
12 clude any complaint or petition and court orders and con-  
13 tain the following:

14 “(A) A list containing the name, address, date  
15 of birth, and (if applicable) the maiden name of each  
16 parent and grandparent of the Indian child, if—

17 “(i) known after inquiry of a birth parent;

18 or

19 “(ii) otherwise ascertainable through other  
20 reasonable inquiry.

21 “(B) A statement of the circumstances that  
22 supported a termination of the parental rights of the  
23 parent of the Indian child.

24 “(h)(1) Whenever, in connection with a proceeding or  
25 other action under this section, a party seeks the place-

1 ment of an Indian child, including any termination or  
2 change of such placement, such party shall provide written  
3 notice of the placement to the Indian child's extended fam-  
4 ily members listed in any notice sent pursuant to sub-  
5 section (a). The notice shall be provided in accordance  
6 with subsection (c)(2)(A) and (3)(A) of section 103. A no-  
7 tice under this subsection shall be sent by registered mail  
8 (return receipt requested).

9       “(2) Any notice under paragraph (1) shall contain  
10 the information required under paragraphs (1) through  
11 (9) of section 103(d). In addition, such notice shall con-  
12 tain the following:

13           “(A) A statement that each extended family  
14 member identified in the notice has the right to in-  
15 tervene in any proceeding described in the notice in  
16 order to seek the placement of the child.

17           “(B) A statement that each extended family  
18 member identified in the notice has the right to seek  
19 the placement of the child without having to inter-  
20 vene in any proceeding described in the notice.

21           “(C) A statement as to whether a written re-  
22 sponse to the notice must be filed and, if so, the  
23 date that the response must be received and the  
24 name and address to which the response must be  
25 sent. The statement shall include an explanation of

1 the legal consequences, if any, of failure to file such  
2 written response.

3 “(D) A description of any information that  
4 must be provided by the extended family member in  
5 order for such member to be considered as a place-  
6 ment for the child.

7 “(E) A description of the procedure that an ex-  
8 tended family member must follow in order to be  
9 considered as a placement for the child, including  
10 the dates by which an extended family member must  
11 take any action required in order to be so consid-  
12 ered.”.

13 **SEC. 7. VOLUNTARY TERMINATION OF PARENTAL RIGHTS.**

14 Section 103(a) of the Indian Child Welfare Act of  
15 1978 (25 U.S.C. 1913(a)) is amended—

16 (1) by striking the first sentence and inserting  
17 the following:

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

22 “(A) executed in writing;

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

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

3           “(i) the terms and consequences of the  
4       consent were fully explained in detail and were  
5       fully understood by the parent or Indian custo-  
6       dian; and

7           “(ii) any attorney or public or private  
8       agency that facilitates the voluntary termi-  
9       nation of parental rights or preadoptive or  
10      adoptive placement has—

11           “(I) informed the natural parents of  
12      the placement options with respect to the  
13      child involved;

14           “(II) informed those parents of the  
15      applicable provisions of this Act; and

16           “(III) certified that the natural par-  
17      ents will be notified within 10 days after  
18      any termination of or change in the adop-  
19      tive placement.”;

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

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

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

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

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

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

6 **SEC. 8. WITHDRAWAL OF CONSENT.**

7 Section 103(b) of the Indian Child Welfare Act of  
8 1978 (25 U.S.C. 1913(b)) is amended—

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

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

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

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

17 “(B)(i) the adoptive placement changes or ter-  
18 minates; or

19 “(ii) the revocation occurs before the later of  
20 the end of—

21 “(I) the 180-day period beginning on the  
22 date on which the tribe of the Indian child re-  
23 ceives written notice of the adoptive placement  
24 provided in accordance with the requirements of  
25 subsections (c) and (d), which includes an ex-

1 planation of the revocation period specified in  
2 this subclause; or

3 “(II) the 30-day period beginning on the  
4 date on which the parent who revokes consent  
5 receives notice of the commencement of the  
6 adoption proceeding that includes an expla-  
7 nation of the revocation period specified in this  
8 subclause.

9 “(C) Revocation of consent under this para-  
10 graph shall be effective from the date on which the  
11 parent who revokes consent provides a written rev-  
12 ocation of consent to a party that seeks the vol-  
13 untary adoptive placement of an Indian child or a  
14 written or oral revocation of consent to the State  
15 court, if any, in which any proceeding for a termi-  
16 nation of parental rights to such Indian child, or an  
17 adoption proceeding concerning such Indian child, is  
18 pending. Any revocation sent by mail under this  
19 paragraph shall be effective from the postmarked  
20 date of the notice.

21 “(3) Immediately upon a revocation under paragraph  
22 (2)—

23 “(A) the Indian child who is the subject of that  
24 revocation shall be returned to the parent who re-  
25 vokes consent, but such return shall not be con-

1       strued to affect the rights of the parent to whom the  
2       child is not returned; and

3               “(B) the court shall send notification of the  
4       revocation to the last known address of the other  
5       parent not later than 5 days after the court received  
6       the revocation.

7               “(4) Subject to paragraphs (2)(A), (2)(B)(i), and (6),  
8       if, by the end of the applicable period determined under  
9       subclause (I) or (II) of paragraph (2)(B)(ii), a consent  
10      to adoption or voluntary termination of parental rights has  
11      not been revoked, a parent may revoke such consent after  
12      that date only—

13              “(A) pursuant to applicable State law;

14              “(B) if the parent of the Indian child involved  
15      petitions a court of competent jurisdiction, and the  
16      court finds that the consent to adoption or voluntary  
17      termination of parental rights was obtained through  
18      fraud or duress; or

19              “(C) if the parent of the Indian child involved  
20      did not receive each applicable written notice re-  
21      quired by paragraphs (3)(A), (3)(B), and (3)(C) of  
22      subsection (h).

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

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

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

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

9           **SEC. 9. NOTICE TO INDIAN TRIBES.**

10          Section 103(c) of the Indian Child Welfare Act of  
11          1978 (25 U.S.C. 1913(c)) is amended to read as follows:

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

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

18                 “(B) any termination or change of such vol-  
19                 untary placement,

20          shall provide written notice of the proposed placement or  
21          proceeding to the tribe of that Indian child. A notice under  
22          this subsection shall be sent by registered mail (return re-  
23          ceipt requested) to the tribe of the Indian child, not later  
24          than the applicable date specified in paragraph (2) or (3)

1 and shall include a copy of any complaint or petition and  
2 any court orders.

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

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

8 “(ii) Not later than 5 days after any initial or  
9 subsequent preadoptive or adoptive placement or ter-  
10 mination of an adoptive placement of an Indian  
11 child.

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

15 “(iv) Not later than 10 days after the com-  
16 mencement of any adoptive proceeding concerning  
17 an Indian child.

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

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

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

4           “(B) any applicable time limit specified in sub-  
5           section (e) shall apply to the notice provided under  
6           subparagraph (A) only if the party referred to in  
7           paragraph (1) has, on or before commencement of  
8           the placement, made a good faith investigation con-  
9           cerning whether the child involved may be an Indian  
10          child.”.

11 **SEC. 10. CONTENT OF NOTICE.**

12          Section 103(d) of the Indian Child Welfare Act of  
13 1978 (25 U.S.C. 1913(d)) is amended to read as follows:

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

17               “(1) The name of the Indian child involved, and  
18               the actual or anticipated date and place of birth of  
19               the Indian child.

20               “(2) A list containing the name, address, date  
21               of birth, and (if applicable) the maiden name, of  
22               each Indian parent and grandparent of the Indian  
23               child and the name and address of each known ex-  
24               tended family member (if any) that has priority in  
25               placement under section 105, if—

- 1           “(A) known after inquiry of—
- 2                 “(i) the birth parent placing the child
- 3                 or relinquishing parental rights; and
- 4                 “(ii) the other birth parent (if avail-
- 5                 able); or
- 6                 “(B) otherwise ascertainable through other
- 7                 reasonable inquiry.
- 8           “(3) A statement of the reasons why the child
- 9                 involved may be an Indian child.
- 10           “(4) The names and addresses of the parties in-
- 11                 volved in any applicable proceeding in a State court.
- 12           “(5)(A) The name and address of the State
- 13                 court in which a proceeding referred to in paragraph
- 14                 (4) is pending, or will be filed; and
- 15                 “(B) the date and time of any related court
- 16                 proceeding that is scheduled as of the date on which
- 17                 the notice is provided under this subsection.
- 18           “(6) The tribal affiliation, if any, of the pro-
- 19                 spective adoptive parents.
- 20           “(7) The name and address of any public or
- 21                 private social service agency or adoption agency in-
- 22                 volved.
- 23           “(8) An identification of any Indian tribe in
- 24                 which the Indian child may be a member, is eligible

1 for membership, or satisfies the requirements of  
2 paragraph (4)(C) of section 4.

3 “(9) An identification of any Indian tribes in  
4 which the Indian child’s parents or grandparents  
5 may be a member.

6 “(10) A statement that each Indian tribe iden-  
7 tified under paragraph (8) may have the right to in-  
8 tervene in the proceeding referred to in paragraph  
9 (4).

10 “(11) An inquiry concerning whether the Indian  
11 tribe that receives notice under subsection (e) in-  
12 tends to intervene under subsection (e) or waive any  
13 such right to intervention.

14 “(12) A statement that, if the Indian tribe that  
15 receives notice under subsection (c) fails to respond  
16 in accordance with subsection (e) by the applicable  
17 date specified in that subsection, the right of that  
18 Indian tribe to intervene in the proceeding involved  
19 shall be considered to have been waived by that In-  
20 dian tribe unless that Indian tribe did not receive  
21 written notice in accordance with the requirements  
22 of subsections (c) and (d).

23 “(13) If applicable, a statement of the reasons  
24 why the adoptive placement of the Indian child in-

1       involved was terminated or changed and the date of  
2       such termination or change.”.

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

4       Section 103 of the Indian Child Welfare Act of 1978  
5       (25 U.S.C. 1913) is amended by adding at the end the  
6       following:

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

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

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

24                   “(i) 100 days after receiving notice of the  
25                   adoptive placement that was provided in accord-

1           ance with the requirements of subsections (c)  
2           and (d); or

3                   “(ii) 45 days after receiving a notice of the  
4           voluntary adoption proceeding that was pro-  
5           vided in accordance with the requirements of  
6           subsections (c) and (d).

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

11          “(3)(A) Except as provided in subparagraph (B), the  
12          tribe of the Indian child involved shall have the right to  
13          intervene at any time in a voluntary foster care placement  
14          proceeding in a State court, and also in any other vol-  
15          untary child custody proceeding in a State court in any  
16          case in which the Indian tribe did not receive written no-  
17          tice provided in accordance with the requirements of sub-  
18          sections (c) and (d).

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

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

1           “(ii) the determination by the Indian tribe that  
2           the child involved—

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

5                   “(II) does not meet the requirements of  
6                   paragraph (4)(C) of section 4.

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

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

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

22                   “(2) preclude the Indian tribe of the Indian  
23                   child that is the subject of an action taken by the  
24                   Indian tribe under subsection (e) from intervening in  
25                   a proceeding concerning that Indian child if a pro-

1 posed adoptive placement of that Indian child is  
2 changed after that action is taken; or

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

5 “(g) Notwithstanding any other provision of law, no  
6 proceeding for a voluntary termination of parental rights  
7 or adoption of an Indian child may be conducted under  
8 applicable State law before the date that is 45 days after  
9 the tribe of the Indian child receives notice of that pro-  
10 ceeding that was provided in accordance with the require-  
11 ments of subsections (e) and (d), unless such tribe con-  
12 sents to an earlier date.”.

13 **SEC. 12. NOTICE TO PARENTS.**

14 Section 103 of the Indian Child Welfare Act of 1978  
15 (25 U.S.C. 1913) is amended by adding at the end the  
16 following:

17 “(h)(1) A party that terminates or changes the vol-  
18 untary adoptive placement of an Indian child or com-  
19 mences a proceeding for the adoption of an Indian child  
20 shall provide written notice of such termination, changed  
21 adoptive placement, or proceeding to the parent or parents  
22 of that Indian child. Such a party shall also provide the  
23 parent or parents of that Indian child with a written notice  
24 specifying the date on which the Indian child’s tribe re-  
25 ceived a written notice of the adoptive placement that was

1 in accordance with the requirements of subsections (c) and  
2 (d). Any notice under this subsection shall be sent by reg-  
3 istered mail (return receipt requested) to the parent or  
4 parents of the Indian child, not later than the applicable  
5 date specified in paragraph (2) and shall include a copy  
6 of any complaint or petition or court order affecting the  
7 rights of any such parent.

8 “(2) Each of the notices required under paragraph  
9 (1) shall be provided by the applicable date specified in  
10 the following cases:

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

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

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

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

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

5               “(ii) A description of the rights of the parent  
6 or parents of an Indian child under paragraphs (2)  
7 and (3) of subsection (b) of this section and sub-  
8 section (a) of section 106.

9               “(iii) A statement of the reasons why the adop-  
10 tive placement of the child involved was terminated  
11 or changed.

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

14               “(v) The names and addresses of the parties in-  
15 volved in any applicable proceeding or contemplated  
16 proceeding in a State court.

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

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

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

1           “(viii) The name and address of any public or  
2 private social service agency or adoption agency in-  
3 volved.

4           “(B) Each written notice of the commencement of an  
5 adoption proceeding concerning an Indian child shall con-  
6 tain the following:

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

8           “(ii) A description of the rights of the parent  
9 or parents of an Indian child under paragraphs (2)  
10 and (3) of subsection (b).

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

13           “(iv) If known, the date that is the end of the  
14 180-day period beginning on the date on which the  
15 tribe of the Indian child received written notice of  
16 the adoptive placement.

17           “(v) The names and addresses of the parties in-  
18 volved in any applicable adoption proceedings in a  
19 State court.

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

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

1           “(vii) The name and address of any public or  
2 private social service agency or adoption agency in-  
3 volved.

4           “(C) Each written notice, of the date on which the  
5 Indian child’s tribe received a written notice of the adop-  
6 tive placement that was in accordance with the require-  
7 ments of subsections (c) and (d), shall contain the fol-  
8 lowing:

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

10           “(ii) A description of the rights of the parent  
11 or parents of an Indian child under paragraphs (2)  
12 and (3) of subsection (b).

13           “(iii) The date that is the end of the 180-day  
14 period beginning on the date on which the tribe of  
15 the Indian child received such written notice of the  
16 adoptive placement.

17           “(iv) If known, the exact date that is the end  
18 of the 30-day period beginning on the date on which  
19 the parent revoking consent received notice of the  
20 commencement of the adoption proceeding.

21           “(v) The names and addresses of the parties in-  
22 volved in any applicable adoption proceeding in a  
23 State court.

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

4           “(vii) 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 **SEC. 13. INVALIDATION OF CHILD CUSTODY PROCEEDINGS**

8           Section 104 of the Indian Child Welfare Act of 1978  
9           (25 U.S.C. 1914) is amended to read as follows:

10 **“SEC. 104. INVALIDATION OF CHILD CUSTODY PRO-**  
11 **CEEDINGS.**

12           “(a) Any Indian child who is the subject of any action  
13           for foster care or adoptive placement or termination of pa-  
14           rental rights under State law, any parent or Indian custo-  
15           dian of any such child, the Indian child’s tribe, and a  
16           member of the Indian child’s extended family who has  
17           been rejected as a placement for the child may petition  
18           any Federal court having venue to invalidate such action  
19           upon a showing that such action violated any provision  
20           of sections 101, 102, 103, and 105 of this Act.

21           “(b) Notwithstanding any Federal law or rule to the  
22           contrary, a petition under subsection (a) shall be adju-  
23           dicated during a pending proceeding when a State court  
24           has—

1           “(1) ruled that the proceeding is not within the  
2 exclusive jurisdiction of an Indian child’s tribe or  
3 that the proceeding should not be transferred to  
4 such tribe’s jurisdiction;

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

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

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

13           “(5) denied the placement of an Indian child in  
14 a foster care or adoptive placement with a member  
15 of the Indian child’s extended family who has spe-  
16 cifically requested such placement, where the jus-  
17 tification of good cause to not make such placement  
18 was arbitrary or capricious; or

19           “(6) in a case where the father of an Indian  
20 child objects to the adoption of such child and the  
21 parental rights of such father have not been termi-  
22 nated pursuant to section 102, ruled that such fa-  
23 ther’s consent to the adoption of such child is unnee-  
24 cessary.

1 “(c) Whenever a petition under subsection (a) is filed  
2 after a final judgment under State law, the petition shall  
3 be adjudicated notwithstanding any Federal law or rule  
4 to the contrary. For purposes of this subsection, the term  
5 “final judgment” means a judgment of a trial court where  
6 no appeal has been filed under State law, or a judgment  
7 of an appellate court affirming the judgment of a trial  
8 court, or an order of the United States Supreme Court  
9 denying a writ of certiorari to a State appellate court.”.

10 **SEC. 14. NOTICE TO EXTENDED FAMILY MEMBERS.**

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 “(i)(1) Whenever, in connection with a proceeding or  
15 other action under this section, a party seeks the place-  
16 ment of an Indian child, including any termination or  
17 change of such placement, such party shall provide written  
18 notice of the placement to the Indian child’s extended fam-  
19 ily members listed in any notice sent pursuant to sub-  
20 section (c). The notice shall be provided in accordance  
21 with subsection (c)(2)(A) and (3)(A) of this section. A no-  
22 tice under this subsection shall be sent by registered mail  
23 (return receipt requested).

24 “(2) Any notice under paragraph (1) shall contain  
25 the information required under paragraphs (1) through

1 (9) of subsection (d). In addition, such notice shall contain  
2 the following:

3           “(A) A statement that each extended family  
4 member identified in the notice has the right to in-  
5 tervene in any proceeding described in the notice in  
6 order to seek the placement of the child.

7           “(B) A statement that each extended family  
8 member identified in the notice has the right to seek  
9 the placement of the child without having to inter-  
10 vene in any proceeding described in the notice.

11           “(C) A statement as to whether a written re-  
12 sponse to the notice must be filed and, if so, the  
13 date that the response must be received and the  
14 name and address to which the response must be  
15 sent. The statement shall include an explanation of  
16 the legal consequences, if any, of failure to file such  
17 written response.

18           “(D) A description of any information that  
19 must be provided by the extended family member in  
20 order for such member to be considered as a place-  
21 ment for the child.

22           “(E) A description of the procedure that an ex-  
23 tended family member must follow in order to be  
24 considered as a placement for the child, including  
25 the dates by which an extended family member must

1 take any action required in order to be so consid-  
2 ered.”.

3 **SEC. 15. TRIBAL AFFILIATION INFORMATION.**

4 Section 107 of the Indian Child Welfare Act of 1978  
5 (25 U.S.C. 1917) is amended to read as follows:

6 **“SEC. 107. DISCLOSURE OF INFORMATION REGARDING BIO-  
7 LOGICAL PARENTS.**

8 “If an adopted Indian who is 18 years of age or older,  
9 the tribe of an adopted Indian child, the tribe of an adopt-  
10 ed Indian who is 18 years of age or older, an adoptive  
11 parent or guardian of an Indian child or of an adopted  
12 Indian who is under the age of 18, or, in the case of a  
13 medical emergency or incompetence of an adopted Indian,  
14 an adoptive parent or guardian of an Indian 18 years of  
15 age or older, petitions the court which entered the final  
16 decree of adoption for the release of information regarding  
17 the tribal affiliation, if any, of the adopted child’s biologi-  
18 cal parents, the court shall disclose, from any records sub-  
19 ject to its jurisdiction, such information to the petitioner  
20 and shall provide the petitioner with any other identifying  
21 information as may be necessary to protect any rights  
22 flowing from an adopted Indian’s tribal relationship.”.

1 **SEC. 16. RESUMPTION OF JURISDICTION OVER CHILD CUS-**  
2 **TODY PROCEEDINGS.**

3 Section 108 of the Indian Child Welfare Act of 1978  
4 (25 U.S.C. 1918) is amended to read as follows:

5 **“SEC. 108. RESUMPTION OF JURISDICTION OVER CHILD**  
6 **CUSTODY PROCEEDINGS.**

7 “(a) CHILDREN RESIDING OR DOMICILED WITHIN A  
8 RESERVATION.—Where, pursuant to the provisions of the  
9 Act of August 15, 1953 (67 Stat. 588), or pursuant to  
10 any other Federal law, a State became vested with juris-  
11 diction over child custody proceedings involving Indian  
12 children who reside or are domiciled within the reservation  
13 of an Indian tribe, including the disestablished portion, if  
14 any, of such reservation, such tribe may assume jurisdic-  
15 tion exclusive as to any State over such child custody pro-  
16 ceedings.

17 “(b)(1) WHEN AN INDIAN TRIBE DOES NOT HAVE  
18 A RESERVATION.—Any Indian tribe that does not have a  
19 reservation and as a result does not exercise exclusive ju-  
20 risdiction under section 101(a) over child custody pro-  
21 ceedings involving Indian children may assume jurisdic-  
22 tion exclusive as to any State over child custody pro-  
23 ceedings involving Indian children who reside or are domi-  
24 ciled within any of the following geographic areas:

25 “(A) In the case of a tribe presently located in  
26 Oklahoma, the lands that are within the jurisdic-

1 tional area of any such tribe and are within the  
2 boundaries of such tribe’s last reservation estab-  
3 lished by final treaty, Federal agreement, Executive  
4 or secretarial order, Executive or secretarial procla-  
5 mation, United States patent, Federal statute, or  
6 final judicial or administrative determination.

7 “(B) Lands located in a State other than Okla-  
8 homa, including Alaska, that are within the Indian  
9 tribe’s last recognized reservation within the State  
10 or States within which such Indian tribe is presently  
11 located.

12 “(C) In the case of a tribe located in Alaska—

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

18 “(ii) any other lands located within or con-  
19 tiguous to the areas described in clause (i) of  
20 this subparagraph, including the lands de-  
21 scribed in section 22(l) of the Alaska Native  
22 Claims Settlement Act (85 Stat. 688, 715; 42  
23 U.S.C. 1921(l)); or

24 “(iii) lands withdrawn pursuant to section  
25 14(h) of the Alaska Native Claims Settlement

1 Act (85 Stat. 688, 704, 705; 42 U.S.C.  
2 1613(h)), that are located within a 25-mile ra-  
3 dius of the seat of government of any such  
4 tribe.

5 “(D) Lands held in trust or restricted status by  
6 the United States for an Indian tribe or individual  
7 member of such tribe that are located within a 100-  
8 mile radius of the seat of government of any such  
9 tribe.

10 “(E) Lands owned in fee simple by an Indian  
11 tribe.

12 “(2) Subject to section 101(a)(5) and (6), whenever  
13 existing Federal law vests exclusive jurisdiction in the  
14 State over any of the areas described in paragraph (1),  
15 a tribe may assume jurisdiction, under said paragraph,  
16 that is exclusive as to any State or concurrent with the  
17 jurisdiction exercised by any State. Such a tribe may limit  
18 its assumption of jurisdiction to types of child custody pro-  
19 ceedings, transfer jurisdiction under section 101(b), or  
20 otherwise accept less than exclusive jurisdiction over child  
21 custody proceedings.

22 “(c) RESOLUTION OF GOVERNING BODY.—Before  
23 any Indian tribe may assume jurisdiction over Indian child  
24 custody proceedings, such tribe shall present to the Sec-  
25 retary a resolution of its governing body authorizing the

1 assumption of such jurisdiction. The governing body of an  
2 Indian tribe referred to in subsection (b) shall include in  
3 its jurisdiction assumption resolution a clear and definite  
4 description of the territory over which jurisdiction is to  
5 be assumed and, in accordance with subsection (b)(2), the  
6 nature of the jurisdiction assumed.

7 “(d) PUBLICATION OF NOTICE.—Not later than 60  
8 days after receipt of a jurisdiction assumption resolution  
9 from the governing body of an Indian tribe, the Secretary  
10 shall publish in the Federal Register a notice that includes  
11 the resolution and informs the public of the tribe’s action.  
12 The Secretary shall also notify the affected State or States  
13 of such resolution. The Indian tribe concerned shall as-  
14 sume jurisdiction 30 days after publication in the Federal  
15 Register of the notice of the tribe’s resolution unless such  
16 resolution specifies a later date.

17 “(e) RETROCESSION OF JURISDICTION.—Any Indian  
18 tribe that, pursuant to this section, has assumed jurisdic-  
19 tion exclusive as to any State over child custody pro-  
20 ceedings may retrocede such jurisdiction as it assumed to  
21 any such State by presenting to the Secretary a resolution  
22 of its governing body authorizing the retrocession of such  
23 jurisdiction. Not later than 60 days after receipt of a juris-  
24 diction retrocession resolution from the governing body of  
25 an Indian tribe, the Secretary shall publish in the Federal

1 Register a notice that includes the resolution and informs  
2 the public of the tribe’s action. The Secretary shall also  
3 notify the affected State or States of such resolution. The  
4 retrocession of jurisdiction shall take effect 30 days after  
5 publication in the Federal Register of the notice of the  
6 tribe’s resolution unless such resolution specifies a later  
7 date. Nothing in this subsection shall affect the right of  
8 any Indian tribe to assume jurisdiction, pursuant to this  
9 section, subsequent to a retrocession of such jurisdiction.

10 “(f) EFFECT ON CERTAIN ACTIONS.—Assumption or  
11 retrocession of jurisdiction under this section shall not af-  
12 fect any action or proceeding over which a court has al-  
13 ready assumed jurisdiction, except as may be provided in  
14 an order of such court or pursuant to any agreement  
15 under section 109.”.

16 **SEC. 17. AGREEMENTS.**

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

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

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

22 “(2) When an agreement entered into under para-  
23 graph (1) involves an Indian tribe that has entered into  
24 a land claims settlement with the United States or a State,  
25 or an Indian tribe that has been restored to Federal super-

1 vision, or an Indian tribe that has been recognized in or  
2 pursuant to an act of Congress, the jurisdiction provisions  
3 of such agreement, if any, may recognize the concurrent  
4 or exclusive jurisdiction of any such tribe, within any serv-  
5 ice area established for such tribe and its members in any  
6 Federal law, regulation or agreement or within any area  
7 within which the Secretary is authorized to take land in  
8 trust for any such tribe, over child custody proceedings  
9 involving Indian children who reside or are domiciled with-  
10 in any such area. Nothing in this paragraph shall affect  
11 the right of any such tribe to exercise exclusive jurisdiction  
12 under section 101(a) or to assume exclusive or other juris-  
13 diction within the areas described in section 108(a) and  
14 (b).”.

15 (b) TRIBAL-STATE AGREEMENTS.—Section 109 of  
16 the Indian Child Welfare Act of 1978 (25 U.S.C. 1919)  
17 is amended by adding at the end the following:

18 “(c) An agreement respecting the care and custody  
19 of Indian children, entered into under subsection (a), shall  
20 govern such care and custody, any law to the contrary not-  
21 withstanding. For purposes of carrying out any agreement  
22 entered into pursuant to this section, the terms ‘Indian  
23 child’ and ‘Indian tribe,’ as defined in any such agree-  
24 ment, shall govern. Nothing in this subsection shall be  
25 construed to authorize Federal Funds appropriated for In-

1 dian tribes, or for the members of Indian tribes, to be ex-  
2 pended for any other person or entity.”

3 **SEC. 18. FRAUDULENT REPRESENTATION; VISITATION.**

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

7 **“SEC. 114. FRAUDULENT REPRESENTATION.**

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

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

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

19 “(B) a parent is an Indian;

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

22 “(B) falsifies a written document knowing that  
23 the document contains a false, fictitious, or fraudu-  
24 lent statement or entry relating to a material fact  
25 described in paragraph (1); or

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

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

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

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

14 **“SEC. 115. VISITATION.**

15           “Notwithstanding any other provision of law (includ-  
16 ing any State law)—

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

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

6   **“SEC. 116. COMPLIANCE REVIEWS.**

7           “(a) IN GENERAL.—The Secretary of Health and  
8           Human Services, in consultation with the Secretary of the  
9           Interior and affected Indian tribes, shall promulgate regu-  
10          lations for the review and determination of whether States  
11          and State agencies, including agencies licensed by the  
12          State, are acting in substantial conformity with the re-  
13          quirements of this Act in matters involving Indian children  
14          subject to this Act.

15          “(b) ELEMENTS OF REVIEW SYSTEM.—The regula-  
16          tions referred to in subsection (a) of this section shall—

17                 “(1) limit conformity reviews to States in which  
18                 either a federally recognized Indian tribe is located  
19                 or there is an Indian population of more than  
20                 10,000;

21                 “(2) require consultation with the Secretary of  
22                 the Interior and affected Indian tribes in carrying  
23                 out any conformity review;

24                 “(3) specify the timetable for conformity re-  
25                 views, including—

1           “(A) an initial review of each covered State  
2           within 3 years following the promulgation of the  
3           regulations referred to in subsection (a);

4           “(B) a timely review of a covered State’s  
5           conformity following a review in which such  
6           program was found not to be in substantial con-  
7           formity; and

8           “(C) less frequent reviews of States which  
9           have been found to be in substantial conformity,  
10          but such regulations shall require reviews at  
11          least every 3 years and shall permit the Sec-  
12          retary to reinstate more frequent reviews based  
13          on information which indicates that a State  
14          may not be in conformity;

15          “(4) specify the requirements subject to review,  
16          and the criteria to be used to measure conformity  
17          with such requirements and to determine whether  
18          there is a substantial failure to so conform;

19          “(5) require the Secretary, not later than 10  
20          days after a final determination that a State or any  
21          of its agencies, including agencies licensed by the  
22          State, is not in conformity, to notify the State of the  
23          basis for the determination; and

1           “(6) require the Secretary, with respect to any  
2 State found to have failed substantially to so  
3 conform—

4           “(A) to afford the State an opportunity, to  
5 adopt, within 180 days of such final determina-  
6 tion, a corrective action plan, developed in con-  
7 sultation with affected tribes and approved by  
8 the Secretary, designed, with specific implemen-  
9 tation timetables, to end the failure to so con-  
10 form; and

11           “(B) to make technical assistance available  
12 to the State to the extent feasible to enable the  
13 State to develop and implement such a correc-  
14 tive action plan.

15           “(c) PROMULGATION OF REGULATIONS.—The regu-  
16 lations referred to in subsection (a) of this section shall  
17 be promulgated not later than 180 days following the ef-  
18 fective date of this section.

19           “(d) ENFORCEMENT OF NONCONFORMITY DETER-  
20 MINATION.—

21           “(1) IN GENERAL.—Whenever a State or any  
22 agency of the State, including agencies licensed by  
23 the State, has failed to adopt a corrective action  
24 plan within 180 days following a final determination  
25 by the Secretary that such State or agency is not in

1 conformity with the requirements of this Act or has  
2 failed to implement a corrective action plan within  
3 the timeframes specified in such plan, the Attorney  
4 General may bring an action against such State or  
5 agency in any appropriate United States district  
6 court seeking to compel the adoption of such an ac-  
7 tion plan or, as the case may be, to enforce such cor-  
8 rective action plan through declaratory, injunctive,  
9 or other appropriate equitable relief.

10 “(2) ACTION BY AFFECTED INDIAN TRIBES.—  
11 An action described in paragraph (1) may be  
12 brought by any affected Indian tribe against any ap-  
13 propriate official of a State or, for failure to imple-  
14 ment a corrective action plan, against any agency li-  
15 censed by a State.

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

23 “(4) LIMITATION OF ACTIONS.—Any action  
24 under paragraph (1) may not be brought more than  
25 3 years after the date of the Secretary’s determina-

1       tion. The computation of such 3-year period shall  
2       not include any time during which an administrative  
3       proceeding was pending with respect to the Sec-  
4       retary's determination.

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

17   **“SEC. 117. CHILDREN OF STATE-RECOGNIZED TRIBES.**

18               “(a) For the purposes of sections 101(c), 102, 103,  
19   104, 105, 106, 107, 110, 111, 112, 114, and 115 of this  
20   Act, the term ‘Indian child’ shall also include any unmar-  
21   ried person who is under age 18 who is a member of or  
22   eligible for membership in a tribe recognized by a State,  
23   and the term ‘Indian tribe’ shall also include such tribal  
24   entities.

1       “(b)(1) The provisions of this Act identified in sub-  
2 section (a) shall apply to children who are members of or  
3 eligible for membership in a tribe recognized by a State,  
4 only when any such tribe has adopted and provided to the  
5 Secretary a resolution—

6           “(A) consenting to the application of such pro-  
7 visions to such children;

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

11          “(C) providing the tribe’s address and tele-  
12 phone number;

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

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

20          “(F) including, as an attachment, a law or  
21 other documentation from a State establishing that  
22 such State recognizes such tribe and that such State  
23 consents to the application of such provisions to  
24 such tribe’s children.

1           “(2) In the absence of a resolution described in para-  
2 graph (1), the provisions of this Act identified in sub-  
3 section (a) shall apply to such children whenever the Gov-  
4 ernor of a State provides to the Secretary documentation  
5 that an Indian tribe is recognized by such State. Such doc-  
6 umentation, at a minimum, shall include the information  
7 required by subsection (b)(1)(A), (C), and (F).

8           “(3) In the absence of a resolution described in para-  
9 graph (1), the provisions of section 102(e) and (f) and  
10 section 105 shall apply to such children whenever a party  
11 in an involuntary foster care placement or termination of  
12 parental rights proceeding, within 30 days following the  
13 filing of such proceeding, presents evidence that the child  
14 involved in the proceeding is a member of or eligible for  
15 membership in an Indian tribe recognized by a State and  
16 that such State has consented to the application of such  
17 provisions to such tribe’s children.

18           “(c) Not later than 60 days after receipt of a resolu-  
19 tion described in subsection (b)(1) or the documentation  
20 described in subsection (b)(2), the Secretary shall publish  
21 in the Federal Register a notice that includes such resolu-  
22 tion or documentation and informs the public that the pro-  
23 visions of this Act identified in subsection (a) apply to the  
24 tribe or tribes identified in such notice and to children who  
25 are members of or eligible for membership in such tribe

1 or tribes. The Secretary shall also notify the affected State  
2 or States of such publication. The provisions of this Act  
3 identified in subsection (a) shall apply to such tribe or  
4 tribes and children 30 days after publication in the Fed-  
5 eral Register of the notice of such resolution or docu-  
6 mentation.

7 “(d) The Indian tribe of a child covered under sub-  
8 section (a) may by resolution designate a federally recog-  
9 nized Indian tribe or an Indian organization as its agent  
10 for the purposes of this Act. Any such resolution shall not  
11 be effective unless delivered to the Secretary together with  
12 a resolution of the designated Indian tribe or Indian orga-  
13 nization consenting to such designation. Not later than 60  
14 days after receipt of the resolution of an Indian tribe of  
15 a child covered under subsection (a), the Secretary shall  
16 publish in the Federal Register a notice that includes such  
17 resolution. The designation shall be effective upon such  
18 publication unless the resolution specifies a later effective  
19 date.”.

20 **SEC. 19. DEFINITIONS.**

21 Section 4 of the Indian Child Welfare Act of 1978  
22 (25 U.S.C. 1903) is amended—

23 (1) by amending paragraph (1)(i), (1)(ii), and  
24 (1)(iii) to read as follows:

1           “(i) ‘foster care placement’ which shall  
2 mean any action which may result in the place-  
3 ment of an Indian child in a foster home or in-  
4 stitution or in the home of a guardian or con-  
5 servator, where parental rights have not been  
6 terminated;

7           “(ii) ‘preadoptive placement’ which shall  
8 mean the placement of an Indian child in a fos-  
9 ter home or institution or in the home of a  
10 guardian or conservator after the termination of  
11 parental rights, but prior to or in lieu of adop-  
12 tive placement, or any action which results in  
13 the prospective adoptive placement of an Indian  
14 child prior to any termination of parental  
15 rights;

16           “(iii) ‘adoptive placement’ which shall  
17 mean the permanent placement of an Indian  
18 child in the home of a guardian or conservator  
19 or for adoption, including any action resulting  
20 in a final decree of adoption.”;

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

1           (3) by amending paragraphs (4) and (5) to  
2 read as follows:

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

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

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

8                   “(C) if the child is not a member of or eli-  
9 gible for membership in an Indian tribe, the  
10 child is considered by an Indian tribe to be a  
11 part of its community and is a child or grand-  
12 child of a member of an Indian tribe and—

13                           “(i) resides or is domiciled within the  
14 reservation of such child’s parent or grand-  
15 parent;

16                           “(ii) is an Alaska Native who resides  
17 or is domiciled within the State of Alaska;  
18 or

19                           “(iii) resides or is domiciled within  
20 any lands described in a resolution of an  
21 Indian tribe adopted pursuant to section  
22 108(c).

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

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

1           “(B) for an Indian child described in sub-  
2           paragraph (C) of paragraph (4), an Indian  
3           tribe that considers such a child to be part of  
4           its community; or

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

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

1 **SEC. 20. LICENSING OR APPROVAL QUALIFICATIONS FOR**  
2 **ASSISTANCE.**

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

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