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BILL ANALYSIS



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Senate Bill 1232 (Substitute S-1 as reported)
Sponsor: Senator Judy K. Emmons
Committee: Families, Seniors and Human Services

CONTENT

The bill would add Chapter XIIB, the "Michigan Indian Family Preservation Act", to the Probate Code, to do the following:

- Require that, in Indian child custody proceedings, the best interests of the Indian child be determined in accordance with Federal law and Chapter XIIB.
- Require courts to protect the best interests of Indian children and promote the stability and security of Indian tribes and families.
- Specify that an Indian tribe would have exclusive jurisdiction over any child custody proceeding involving an Indian child who lived or was domiciled within the tribe's reservation, and allow a State court to exercise certain limited jurisdiction.
- Specify circumstances under which a State court could exercise jurisdiction over an Indian child custody proceeding and when it would have to transfer the proceeding to an Indian tribe's jurisdiction.
- Require notification to the parent or Indian custodian of an Indian child in a child custody proceeding.
- Require the Department of Human Services (DHS) to seek to determine at initial contact whether a child was an Indian child, and exercise due diligence to determine, document, and contact an Indian child's extended family members.
- Establish procedures for voluntary petitions for guardianship or adoptive placement of an Indian child.
- Allow a parent or Indian custodian who consented to guardianship to withdraw consent at any time, and allow a parent who executed a consent to adoption to withdraw it at any time before entry of a final order for adoption.
- Establish requirements for notice and proceedings when an Indian child was the subject of a child protective proceeding alleging neglect, including criteria for removing an Indian child from a parent or Indian custodian and placing the child in foster care.
- Require a court to accept the testimony of an expert witness who was a member of an Indian tribe or approved by the tribe, and/or who had knowledge of the tribe's customs and how they pertained to family organization and child-rearing practices.
- Require a court to return an Indian child to his or her parent or Indian custodian if it determined that a petitioner improperly removed the child, unless doing so would subject the child to a substantial and immediate danger.
- Specify that the parent or Indian custodian would have the right to court-appointed counsel if the court determined indigence.
- Require an Indian child to be placed in the least restrictive setting that most approximated a family and in which his or her special needs, if any, could be met, and specify orders of preference for certain types of placement.

- Establish procedures for dealing with petitions for involuntary guardianship, including determining whether the child was an Indian child and whether a tribe had exclusive jurisdiction.
- Establish procedures for adoption proceedings.
- Establish procedures for dealing with an Indian child taken into custody under the juvenile code.
- Authorize the State to enter into agreements with tribes in Michigan regarding the care and custody of Indian children, funding of the care and custody of Indian children, and jurisdiction over child custody proceedings.
- Require a Michigan court to give a copy of a final decree of adoption of an Indian child to the U.S. Secretary of the Interior and the tribal enrollment officer.
- Require the DHS to publish an annual census of all Indian children in the Department's care and custody, without individually identifiable information.
- Allow an Indian child, parent, Indian custodian, or tribe to petition a court to invalidate an action for foster care placement or the termination of parental rights.

"Indian" would mean any member of any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians.

"Indian child" would mean an unmarried person who is under the age of 18 and is either a member of an Indian tribe or eligible for membership in an Indian tribe, as determined by that tribe.

"Indian custodian" would mean any Indian person who has custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control have been transferred by the child's parent.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill's requirements to provide culturally sensitive child welfare services to Indian tribes and children are already Department of Human Services policy. Additionally, in the absence of a State-level policy, the Federal policy (under the Indian Child Welfare Act of 1978 – ICWA) should apply to relevant matters in the State of Michigan. However, since ICWA requirements are not presently codified in State law, evidently the requirements are sometimes overlooked and advocates for Indian children must engage in an appeals process, which can be lengthy. Therefore, by providing clarity in State law, the bill has the potential to marginally reduce caseload and administrative costs to both State and local court systems.

Date Completed: 9-24-12

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.