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HOUSE FILE 2572  
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HF 2358)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act implementing the federal Indian Child Welfare Act.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2572

1 Section 1. NEW SECTION. 232.7 IOWA INDIAN CHILD WELFARE  
2 ACT.

3 If a proceeding held under this chapter involves an Indian  
4 child as defined in section 232B.3 and the proceeding is  
5 subject to the Iowa Indian child welfare Act under chapter  
6 232B, the proceeding and other actions taken in connection  
7 with the proceeding or this chapter shall comply with chapter  
8 232B.

9 Sec. 2. NEW SECTION. 232B.1 SHORT TITLE.

10 This chapter shall be known and may be cited as the "Iowa  
11 Indian Child Welfare Act".

12 Sec. 3. NEW SECTION. 232B.2 PURPOSE -- POLICY OF STATE.

13 The purpose of the Iowa Indian child welfare Act is to  
14 clarify state policies and procedures regarding implementation  
15 of the federal Indian Child Welfare Act, Pub. L. No. 95-608,  
16 as codified in 25 U.S.C. chapter 21. It is the policy of the  
17 state to cooperate fully with Indian tribes and tribal  
18 citizens in Iowa in order to ensure that the intent and  
19 provisions of the federal Indian Child Welfare Act are  
20 enforced. This cooperation includes recognition by the state  
21 that Indian tribes have a compelling governmental interest in  
22 an Indian child whether or not the child is in the physical or  
23 legal custody of an Indian parent, Indian custodian, or an  
24 Indian extended family member at the commencement of a child  
25 custody proceeding or the child has resided or domiciled on an  
26 Indian reservation. The state is committed to protecting the  
27 essential tribal relations and best interests of an Indian  
28 child by promoting practices, in accordance with the federal  
29 Indian Child Welfare Act and other applicable law, designed to  
30 prevent the child's voluntary or involuntary out-of-home  
31 placement and, whenever such placement is necessary or  
32 ordered, by placing the child, whenever possible, in a foster  
33 home, adoptive home, or other type of custodial placement that  
34 reflects the unique values of the child's tribal culture and  
35 is best able to assist the child in establishing, developing,

1 and maintaining a political and social relationship with the  
2 child's tribe and tribal community.

3 Sec. 4. NEW SECTION. 232B.3 DEFINITIONS.

4 For the purposes of this chapter unless the context  
5 otherwise requires:

6 1. "Adoptive placement" means the permanent placement of  
7 an Indian child for adoption including, but not limited to,  
8 any action under chapter 232, 600, or 600A resulting in a  
9 final decree of adoption.

10 2. "Child custody proceeding" means a voluntary or  
11 involuntary proceeding that may result in an Indian child's  
12 adoptive placement, foster care placement, preadoptive  
13 placement, or termination of parental rights.

14 3. "Foster care placement" means the temporary placement  
15 of an Indian child in an individual or agency foster care  
16 placement or in the personal custody of a guardian or  
17 conservator prior to the termination of parental rights, from  
18 which the child cannot be returned upon demand to the custody  
19 of the parent or Indian custodian. "Foster care placement"  
20 does not include a placement based upon an act by an Indian  
21 child which, if committed by an adult, would be deemed a  
22 crime, or upon an award, in a divorce proceeding, of custody  
23 to one of the child's parents.

24 4. "Indian" means a person who is a member of an Indian  
25 tribe, or is eligible for membership in an Indian tribe, or  
26 who is an Alaska native and a member of a regional corporation  
27 as defined in 43 U.S.C. § 1606.

28 5. "Indian child" or "child" means an unmarried Indian  
29 person who is under eighteen years of age.

30 6. "Indian child's tribe" means a tribe in which an Indian  
31 child is a member or is eligible for membership.

32 7. "Indian child's family" or "extended family member"  
33 means a person who is an Indian child's family member or  
34 extended family member under the law or custom of the Indian  
35 child's tribe or, in absence of such law or custom, a person

1 who has any of the following relationships with the Indian  
2 child:

- 3 a. Parent.
- 4 b. Sibling.
- 5 c. Grandparent.
- 6 d. Aunt or uncle.
- 7 e. Cousin.
- 8 f. Clan member.
- 9 g. Band member.
- 10 h. Brother-in-law.
- 11 i. Sister-in-law.
- 12 j. Niece.
- 13 k. Nephew.
- 14 l. Stepparent.

15 8. "Indian custodian" means an Indian child's custodian as  
16 defined in section 232.2 or a person who has legal custody of  
17 an Indian child under tribal law, tribal custom, or state law.

18 9. "Indian organization" means any of the following  
19 entities that is owned or controlled by Indians, or a majority  
20 of the members are Indians:

- 21 a. A group.
- 22 b. An association.
- 23 c. A partnership.
- 24 d. A corporation.
- 25 e. Other legal entity.

26 10. "Indian tribe" or "tribe" means an Indian tribe, band,  
27 nation, or other organized Indian group, or a community of  
28 Indians, including any Alaska native village as defined in 43  
29 U.S.C. § 1602(c) recognized as eligible for services provided  
30 to Indians by the United States secretary of the interior  
31 because of the community members' status as Indians.

32 11. "Parent" means a biological parent of an Indian child  
33 or a person who has lawfully adopted an Indian child,  
34 including adoptions made under tribal law or custom. "Parent"  
35 does not include an unwed father whose paternity has not been

1 acknowledged or established. Except for purposes of the  
2 federal Indian Child Welfare Act as codified in 25 U.S.C. §  
3 1913(c) and (d), 1916, 1917, and 1951, "parent" does not  
4 include a person whose parental rights to that child have been  
5 terminated.

6 12. "Preadoptive placement" means the temporary placement  
7 of an Indian child in an individual or agency foster care  
8 placement after the termination of parental rights, but prior  
9 to or in lieu of an adoptive placement.

10 13. "Secretary of the interior" means the secretary of the  
11 United States department of the interior.

12 14. "Termination of parental rights" means any action  
13 resulting in the permanent termination of the parent-child  
14 relationship.

15 15. "Tribal court" means a court or administrative body  
16 vested by an Indian tribe with jurisdiction over child custody  
17 proceedings or a federal court of Indian offenses.

18 Sec. 5. NEW SECTION. 232B.4 APPLICATION OF CHAPTER --  
19 EXEMPTIONS -- DETERMINATION OF INDIAN STATUS.

20 1. This chapter applies to child custody proceedings  
21 involving an Indian child whether the child is in the physical  
22 or legal custody of an Indian parent, Indian custodian, or an  
23 Indian extended family member or another person at the  
24 commencement of the proceedings or whether the child has  
25 resided or domiciled on or off an Indian reservation.

26 2. The party seeking the foster care placement of,  
27 termination of parental rights over, or the adoption of, an  
28 Indian child shall seek to determine whether the child is an  
29 Indian child through contact with any Indian tribe in which  
30 the child may be a member or eligible for membership, any  
31 extended family members of the child, and any other person  
32 that reasonably can be expected to have information regarding  
33 the child's possible membership or eligibility for membership  
34 in an Indian tribe.

35 3. A written determination by an Indian tribe that a child

1 is a member of or eligible for membership in that tribe, or  
2 testimony attesting to such status by a person authorized by  
3 the tribe to provide that determination, shall be conclusive.  
4 A written determination by an Indian tribe, or testimony by a  
5 person authorized by the tribe to provide that determination  
6 or testimony, that a child is not a member of or eligible for  
7 membership in that tribe shall be conclusive as to that tribe.  
8 If an Indian tribe does not provide evidence of the child's  
9 status as an Indian child, the court shall determine the  
10 child's status.

11 4. The determination of the Indian status of a child shall  
12 be made as soon as practicable in order to serve the best  
13 interest of the child and to ensure compliance with the notice  
14 requirements of this chapter.

15 Sec. 6. NEW SECTION. 232B.5 INDIAN CHILD CUSTODY  
16 PROCEEDINGS -- NOTICE, JURISDICTION, TRANSFER OF PROCEEDINGS.

17 1. An Indian tribe has jurisdiction exclusive as to this  
18 state over any child custody proceeding held in this state  
19 involving an Indian child who resides or is domiciled within  
20 the reservation of that tribe, except when the jurisdiction is  
21 otherwise vested in this state by existing federal law. If an  
22 Indian child is a ward of a tribal court, the Indian tribe  
23 shall retain exclusive jurisdiction, notwithstanding the  
24 residence or domicile of the child.

25 2. In a child custody proceeding, the court or any party  
26 to the proceeding shall be deemed to know or have reason to  
27 know that an Indian child is involved whenever any of the  
28 following circumstances exist:

29 a. A party to the proceeding or the court has been  
30 informed by any interested person, an officer of the court, a  
31 tribe, an Indian organization, a public or private agency, or  
32 a member of the child's extended family that the child is or  
33 may be an Indian child.

34 b. The child who is the subject of the proceeding gives  
35 the court reason to believe the child is an Indian child.

1 c. The court has reason to believe the residence or  
2 domicile of the child is in a predominately Indian community.

3 3. In any involuntary child custody proceeding, including  
4 review hearings following an adjudication, the court shall  
5 establish in the record that the party seeking the foster care  
6 placement of, or termination of parental rights over, or the  
7 adoption of an Indian child has sent notice by registered  
8 mail, return receipt requested, to all of the following:

9 a. The child's parents.

10 b. The child's Indian custodians.

11 c. Any tribe in which the child may be a member or  
12 eligible for membership.

13 4. If the identity or location of the child's parent,  
14 Indian custodian, or tribe cannot be determined, the notice  
15 under subsection 3 shall be provided to the secretary of the  
16 interior, who shall have fifteen days after receipt of the  
17 notice to provide the notice to the child's parent, Indian  
18 custodian, and tribe. A foster care placement or termination  
19 of parental rights proceeding involving the child shall not be  
20 held until at least ten days after receipt of notice by the  
21 child's parent, Indian custodian, and tribe, or the secretary  
22 of the interior. Upon request, the child's parent or Indian  
23 custodian or tribe shall be granted up to twenty additional  
24 days to prepare for the proceeding.

25 5. The court shall also establish in the record that a  
26 notice of any involuntary custody proceeding has been sent to  
27 the Indian child's tribe. If an adjudication is made ordering  
28 the placement of the child in a foster home, preadoptive  
29 placement, or adoptive home, the court shall establish in the  
30 record that notice has been provided to any member of the  
31 Indian child's extended family who is entitled to a placement  
32 preference under this chapter.

33 6. The notice in any involuntary child custody proceeding  
34 involving an Indian child shall be written in clear and  
35 understandable language and shall include all of the following

1 information:

2 a. The name and tribal affiliation of the Indian child.

3 b. A copy of the petition by which the proceeding was  
4 initiated.

5 c. A statement listing the rights of the child's parents,  
6 Indian custodians, and tribes and, if applicable, the rights  
7 of the Indian child's family. The rights shall include all of  
8 the following:

9 (1) The right to intervene in the proceeding.

10 (2) The right to petition the court to transfer the  
11 proceeding to the tribal court of the Indian child's tribe.

12 (3) The right to request an additional twenty days from  
13 the receipt of the notice to prepare for the proceeding.

14 (4) The right to request that the court grant further  
15 extensions of time.

16 (5) In the case of an extended family member, the right to  
17 intervene and be considered as a preferred placement for the  
18 child.

19 d. A statement of the potential legal consequences of an  
20 adjudication on the future custodial rights of the child's  
21 parents or Indian custodians.

22 e. A statement that if the parents or Indian custodians  
23 are unable to afford counsel in an involuntary proceeding,  
24 counsel will be appointed to represent the parents or  
25 custodians.

26 f. A statement that an official of an Indian tribe  
27 receiving the notice shall keep confidential the information  
28 contained in the notice.

29 7. In a voluntary child custody proceeding involving an  
30 Indian child, the court shall establish in the record that the  
31 party seeking the foster care placement of, termination of  
32 parental rights to, or the adoption of, an Indian child has  
33 sent notice at least ten days prior to the hearing by  
34 registered mail, return receipt requested, to all of the  
35 following:

1 a. The child's parents, except for a parent whose parental  
2 rights have been terminated.

3 b. The child's Indian custodians, except for a custodian  
4 whose parental or Indian custodian rights have been  
5 terminated.

6 c. Any tribe in which the child may be a member or  
7 eligible for membership.

8 d. Any member of the child's extended family who is  
9 entitled to a placement preference under this chapter.

10 8. The notice in a voluntary child custody proceeding  
11 involving an Indian child shall be written in clear and  
12 understandable language and shall include all of the following  
13 information:

14 a. The name and tribal affiliation of the child.

15 b. A copy of the petition by which the proceeding was  
16 initiated.

17 c. A statement listing the rights of the child's parents,  
18 Indian custodians, Indian tribe or tribes, and, if applicable,  
19 extended family members. The rights shall include all of the  
20 following:

21 (1) The right to intervene in the proceeding.

22 (2) The right to petition the court to transfer a foster  
23 care placement or termination of parental rights proceeding to  
24 the tribal court of the Indian child's tribe.

25 (3) In the case of extended family members, the right to  
26 intervene and be considered as a preferred placement for the  
27 child.

28 d. A statement that an official of an Indian tribe  
29 receiving the notice shall keep confidential the information  
30 contained in the notice.

31 9. Unless either of an Indian child's parents objects, in  
32 any child custody proceeding involving an Indian child who is  
33 not domiciled or residing within the jurisdiction of the  
34 Indian child's tribe, the court shall transfer the proceeding  
35 to the jurisdiction of the Indian child's tribe, upon the

1 petition of any of the following persons:

- 2 a. Either of the child's parents.
- 3 b. The child's Indian custodian.
- 4 c. The child's tribe.

5 10. Notwithstanding entry of an objection to a transfer of  
6 proceedings as described in subsection 9, the court shall  
7 reject any objection that is inconsistent with the purposes of  
8 this chapter.

9 11. A transfer of proceedings under subsection 9 may be  
10 declined by the Indian child's tribe. If the tribe declines  
11 to assume jurisdiction, the court shall reassume jurisdiction  
12 and shall apply all of the following in any proceeding:

13 a. The requirements of the federal Indian Child Welfare  
14 Act.

15 b. This chapter.

16 c. The applicable provisions of any agreement between the  
17 Indian child's tribe and the state concerning the welfare,  
18 care, and custody of Indian children.

19 12. The Indian child's tribe or tribes and Indian  
20 custodian have the right to intervene at any point in any  
21 foster care placement or termination of parental rights  
22 proceeding involving the child. The Indian child's tribe  
23 shall also have the right to intervene at any point in any  
24 adoption proceeding involving the child. Any member of the  
25 Indian child's family may intervene in an adoption proceeding  
26 involving the child for the purpose of petitioning the court  
27 for the adoptive placement of the child in accordance with the  
28 order of preference provided for in this chapter.

29 13. The state shall give full faith and credit to the  
30 public acts, records, judicial proceedings, and judgments of  
31 any Indian tribe applicable to the Indian child custody  
32 proceedings to the same extent that the tribe gives full faith  
33 and credit to the public acts, records, judicial proceedings,  
34 and judgments of the state.

35 14. Any person or court involved in the foster care,

1 preadoptive placement, or adoptive placement of an Indian  
2 child shall use the services of the Indian child's tribe or  
3 tribes, whenever possible, in seeking to secure placement  
4 within the order of placement preference established in  
5 section 232B.7 and in the supervision of the placement.

6 15. The state of Iowa recognizes that an Indian tribe may  
7 contract with another Indian tribe for supervision regarding  
8 placement, case management, and the provision of services to  
9 an Indian child.

10 Sec. 7. NEW SECTION. 232B.6 EMERGENCY REMOVAL OF INDIAN  
11 CHILD.

12 1. This chapter shall not be construed to prevent the  
13 emergency removal of an Indian child who is a resident of or  
14 is domiciled on an Indian reservation, but is temporarily  
15 located off the reservation, or is away from the child's  
16 parent or Indian custodian, or the emergency placement of such  
17 child in a foster home or institution, under applicable state  
18 law, in order to prevent imminent physical damage or harm to  
19 the child. In a case of emergency removal of an Indian child,  
20 regardless of residence or domicile of the child, the state  
21 shall ensure that the emergency removal or placement  
22 terminates immediately when the removal or placement is no  
23 longer necessary to prevent imminent physical damage or harm  
24 to the child and shall expeditiously initiate a child custody  
25 proceeding subject to the provisions of this chapter, transfer  
26 the child to the jurisdiction of the appropriate Indian tribe,  
27 or restore the child to the child's parent or Indian  
28 custodian, as may be appropriate.

29 2. A petition commencing an emergency removal or foster  
30 care placement proceeding under chapter 232 involving an  
31 Indian child shall be accompanied by all of the following:

32 a. An affidavit containing the names, tribal affiliations,  
33 and addresses of the Indian child, and of the child's parents  
34 and Indian custodians.

35 b. A specific and detailed account of the circumstances

1 supporting the removal of the child.

2 c. Official reports from each public or private agency  
3 involved with the emergency removal. The reports shall  
4 include all of the following information:

5 (1) The name of each agency.

6 (2) The names of agency administrators and professionals  
7 involved in the removal.

8 (3) A description of the emergency justifying the removal  
9 of the child.

10 (4) All observations made and actions taken by the agency.

11 (5) The date, time, and place of each such action.

12 (6) The signatures of all agency personnel involved.

13 (7) A statement of the specific actions taken and to be  
14 taken by each involved agency to effectuate the safe return of  
15 the child to the custody of the child's parent or Indian  
16 custodian.

17 3. Within one business day following the issuance of an  
18 order of emergency removal or placement of an Indian child,  
19 the court issuing the order shall notify the Indian child's  
20 tribe of the emergency removal or placement by registered  
21 mail, return receipt requested. The notice shall include the  
22 court order, any information required by this chapter, and a  
23 statement informing the child's tribe of the tribe's right to  
24 intervene in the proceeding.

25 4. An emergency removal or placement of an Indian child  
26 shall immediately terminate, and any court order approving the  
27 removal or placement shall be vacated, when the removal or  
28 placement is no longer necessary to prevent imminent physical  
29 damage or harm to the child. In no case shall an emergency  
30 removal or placement order remain in effect for more than  
31 fifteen days unless, upon a showing that continuation of the  
32 order is necessary to prevent imminent physical damage or harm  
33 to the child, the court extends the order for a period not to  
34 exceed an additional thirty days.

35 5. Upon termination of the emergency removal or placement

1 order, the child shall immediately be returned to the custody  
2 of the child's parent or Indian custodian unless any of the  
3 following circumstances exist:

4 a. The child is transferred to the jurisdiction of the  
5 child's tribe.

6 b. In an involuntary foster care placement proceeding  
7 pursuant to the federal Indian Child Welfare Act, the court  
8 orders that the child shall be placed in foster care upon a  
9 determination, supported by clear and convincing evidence,  
10 including testimony by at least one qualified expert witness,  
11 that custody of the child by the child's parent or Indian  
12 custodian is likely to result in serious emotional or physical  
13 damage to the child.

14 c. The child's parent or Indian custodian voluntarily  
15 consents to the foster care placement of the child pursuant to  
16 the provisions of the federal Indian Child Welfare Act.

17 Sec. 8. NEW SECTION. 232B.7 PLACEMENT PREFERENCES.

18 1. In any adoptive or other permanent placement of an  
19 Indian child, preference shall be given to a placement with  
20 one of the following, in descending priority order:

21 a. A member of the Indian child's family.

22 b. Other members of the Indian child's tribe.

23 c. Another Indian family.

24 d. A non-Indian family approved by the Indian child's  
25 tribe.

26 e. A non-Indian family that is committed to enabling the  
27 child to have extended family visitation and participation in  
28 the cultural and ceremonial events of the child's tribe,  
29 provided such contacts would not expose the child to danger of  
30 serious physical injury or harm.

31 2. An emergency removal, foster care, or preadoptive  
32 placement of an Indian child shall be in the least restrictive  
33 setting which most approximates a family situation and in  
34 which the child's special needs, if any, may be met. The  
35 child shall also be placed within reasonable proximity to the

1 child's home, taking into account any special needs of the  
2 child. In any foster care or preadoptive placement, a  
3 preference shall be given to the child's placement with one of  
4 the following in descending priority order:

5 a. A member of the child's family.

6 b. A foster home licensed, approved, or specified by the  
7 child's tribe.

8 c. An Indian foster home licensed or approved by an  
9 authorized non-Indian licensing authority.

10 d. A child foster care agency approved by an Indian tribe  
11 or operated by an Indian organization which has a program  
12 suitable to meet the Indian child's needs.

13 e. A non-Indian child foster care agency approved by the  
14 child's tribe.

15 f. A non-Indian family committed to enabling the child to  
16 have extended family visitation and participation in the  
17 cultural and ceremonial events of the child's tribe, provided  
18 the contacts would not expose the child to danger of serious  
19 physical injury or harm.

20 3. Notwithstanding the placement preferences listed in  
21 subsections 1 and 2, if a different order of placement  
22 preference is established by the child's tribe or in a binding  
23 agreement between the child's tribe and the state entered into  
24 pursuant to section 232B.9, the court or agency effecting the  
25 placement shall follow the order of preference established by  
26 the tribe or in the agreement.

27 4. As appropriate, the placement preference of the Indian  
28 child or parent shall be considered. In applying the  
29 preferences, a consenting parent's request for anonymity shall  
30 also be given weight by the court or agency effecting the  
31 placement. Unless there is clear and convincing evidence that  
32 placement within the order of preference applicable under  
33 subsection 1, 2, or 3 would be harmful to the Indian child,  
34 consideration of the preference of the Indian child or parent  
35 or a parent's request for anonymity shall not be a basis for

1 placing an Indian child outside of the applicable order of  
2 preference.

3 5. The prevailing social and cultural standards of the  
4 Indian community in which the parent or extended family  
5 members of an Indian child reside, or with which such parent  
6 or extended family members maintain social and cultural ties,  
7 or the prevailing social and cultural standards of the Indian  
8 child's tribe shall be applied in qualifying any placement  
9 having a preference under this section.

10 6. A record of each foster care, preadoptive placement, or  
11 adoptive placement of an Indian child, under the laws of this  
12 state, shall be maintained in perpetuity by the department of  
13 human services in accordance with section 232B.11. The record  
14 shall document the efforts to comply with the applicable order  
15 of preference specified in this section.

16 7. The state of Iowa recognizes the authority of Indian  
17 tribes to license foster homes and to license agencies to  
18 receive children for control, care, and maintenance outside of  
19 the children's own homes, or to place, receive, arrange the  
20 placement of, or assist in the placement of children for  
21 foster care or adoption. The department of human services and  
22 child-placing agencies licensed under chapter 238 may place  
23 children in foster homes and facilities licensed by an Indian  
24 tribe.

25 Sec. 9. NEW SECTION. 232B.8 TRIBALLY RECOGNIZED EXPERT  
26 WITNESSES -- STANDARD OF PROOF.

27 1. For the purposes of this section, unless the context  
28 otherwise requires, a "qualified expert witness" may include,  
29 but is not limited to, a social worker, sociologist,  
30 physician, psychologist, traditional tribal therapist and  
31 healer, spiritual leader, historian, or elder.

32 2. In considering whether to involuntarily place an Indian  
33 child in foster care or to terminate the parental rights of  
34 the parent of an Indian child, the court shall require that  
35 qualified expert witnesses with specific knowledge of the

1 child's Indian tribe testify regarding that tribe's family  
2 organization and child-rearing practices, and regarding  
3 whether the tribe's culture, customs, and laws would support  
4 the placement of the child in foster care or the termination  
5 of parental rights on the grounds that continued custody of  
6 the child by the parent or Indian custodian is likely to  
7 result in serious emotional or physical damage to the child.

8 3. In the following descending order of preference, a  
9 qualified expert witness is a person who is one of the  
10 following:

11 a. A member of the child's Indian tribe who is recognized  
12 by the child's tribal community as knowledgeable regarding  
13 tribal customs as the customs pertain to family organization  
14 or child-rearing practices.

15 b. A member of another tribe who is formally recognized by  
16 the Indian child's tribe as having the knowledge to be a  
17 qualified expert witness.

18 c. A layperson having substantial experience in the  
19 delivery of child and family services to Indians, and  
20 substantial knowledge of the prevailing social and cultural  
21 standards and child-rearing practices within the Indian  
22 child's tribe.

23 d. A professional person having substantial education and  
24 experience in the person's professional specialty and having  
25 substantial knowledge of the prevailing social and cultural  
26 standards and child-rearing practices within the Indian  
27 child's tribe.

28 4. a. Termination of parental rights over an Indian child  
29 shall not be ordered in the absence of a determination,  
30 supported by evidence beyond a reasonable doubt, including the  
31 testimony of qualified expert witnesses, that the continued  
32 custody of the child by the child's parent or Indian custodian  
33 is likely to result in serious emotional or physical damage to  
34 the child.

35 b. Foster care placement of an Indian child shall not be

1 ordered in the absence of a determination, supported by clear  
2 and convincing evidence, including the testimony of qualified  
3 expert witnesses, that the continued custody of the child by  
4 the child's parent or Indian custodian is likely to result in  
5 serious emotional or physical damage to the child.

6 Sec. 10. NEW SECTION. 232B.9 AGREEMENTS WITH TRIBES FOR  
7 CARE AND CUSTODY OF INDIAN CHILDREN.

8 1. The director of human services or the director's  
9 designee shall make a good faith effort to enter into  
10 agreements with Indian tribes regarding the care and custody  
11 of Indian children whose tribes have land within Iowa,  
12 including but not limited to the Sac and Fox tribe, the Omaha  
13 tribe, the Ponca tribe, and the Winnebago tribe, and whose  
14 tribes have an Indian child who resides in the state of Iowa.  
15 An agreement shall seek to promote the continued existence and  
16 integrity of the Indian tribe as a political entity and the  
17 vital interest of Indian children in securing and maintaining  
18 a political and social relationship with their tribes. An  
19 agreement shall assure that tribal services and Indian  
20 organizations or agencies, where available, are used to the  
21 greatest extent practicable in planning and implementing any  
22 action pursuant to the agreement concerning the care and  
23 custody of Indian children. If tribal services are not  
24 available, an agreement shall assure that community services  
25 and resources developed specifically for Indian families will  
26 be used whenever possible.

27 2. In the event that an agreement entered into between the  
28 tribe and the department of human services pertaining to the  
29 funding of foster care placements for Indian children  
30 conflicts with any federal or state law, the state in a  
31 timely, good faith manner shall agree to amend the agreement,  
32 if possible, in a way that prevents any interruption of  
33 services to eligible Indian children.

34 Sec. 11. NEW SECTION. 232B.10 PAYMENT OF FOSTER CARE  
35 EXPENSES.

1 1. If the department of human services has legal custody  
2 of an Indian child and that child is placed in foster care  
3 according to the placement preferences under section 232B.7  
4 the state shall pay, subject to any applicable federal funding  
5 limitations and requirements, the cost of the foster care in  
6 the manner and to the same extent the state pays for foster  
7 care of non-Indian children, including the administrative and  
8 training costs associated with the placement. In addition,  
9 the state shall pay the other costs related to the foster care  
10 placement of an Indian child as may be provided for in an  
11 agreement entered into between a tribe and the state.

12 2. The department of human services may, subject to any  
13 applicable federal funding limitations and requirements and  
14 within funds appropriated for foster care services, purchase  
15 care for Indian children who are in the custody of a federally  
16 recognized Indian tribe or tribally licensed child-placing  
17 agency pursuant to parental consent, tribal court order, or  
18 state court order; and the purchase of the care is subject to  
19 the same eligibility standards and rates of support applicable  
20 to other children for whom the department purchases care.

21 Sec. 12. NEW SECTION. 232B.11 RECORDS.

22 1. The department of human services shall establish a  
23 database in a single location where a record shall be  
24 maintained of every involuntary or voluntary foster care,  
25 preadoptive placement, or adoptive placement of an Indian  
26 child that is ordered by a court of this state. The record  
27 shall document the efforts made to comply with the order of  
28 placement preference specified in section 232B.7.

29 2. An Indian child's placement record shall be maintained  
30 in perpetuity by the department of human services and shall  
31 include, but not be limited to, all of the following  
32 information:

- 33 a. The name and tribal affiliation of the child.  
34 b. The location of the child's Indian tribe or tribes.  
35 c. The names and addresses of the child's biological

- 1 parents.
- 2 d. The child's certificate of degree of Indian blood.
- 3 e. The child's tribal enrollment or other membership
- 4 documentation, if any.
- 5 f. The child's medical records.
- 6 g. The social and medical history of the child's
- 7 biological family.
- 8 h. The names, ages, and gender of the child's siblings.
- 9 i. The names, ages, and gender of the child's kinship or
- 10 extended family members.
- 11 j. The names and addresses of the child's adoptive
- 12 parents.
- 13 k. The identity of any agency having files or information
- 14 relating to the placement.
- 15 l. All reports concerning the child or the child's family,
- 16 including detailed information regarding case plans and other
- 17 efforts to rehabilitate the parents of the child.
- 18 m. A record of efforts made to place the child within and
- 19 outside of the placement preferences under section 232B.7.
- 20 n. A statement of the reason for the final placement
- 21 decision.
- 22 3. If a court orders the foster care, preadoptive
- 23 placement, or adoptive placement of an Indian child, the court
- 24 and any state-licensed child-placing agency involved in the
- 25 placement shall provide the department of human services with
- 26 the records described in subsections 1 and 2.
- 27 4. A record maintained by the department of human services
- 28 pursuant to this section shall be made available within seven
- 29 days of a request for the record by the Indian child's tribe
- 30 or the secretary of the interior.
- 31 5. Upon the request of an Indian person, who is eighteen
- 32 years of age or older, or upon the request of an Indian
- 33 child's parent, Indian custodian, attorney, guardian ad litem,
- 34 guardian, legal custodian, or caseworker of the Indian child,
- 35 the department of human services shall provide access to the

1 records pertaining to the Indian person or child maintained by  
2 the department pursuant to this section. The records shall  
3 also be made available upon the request of the descendants of  
4 the Indian person or child.

5 6. If a parent of an Indian child wishes to remain  
6 anonymous, records concerning any such parent shall not be  
7 released unless necessary to secure, maintain, or enforce the  
8 Indian child's right to enrollment or membership in the  
9 child's Indian tribe, for determining a right or benefit  
10 associated with the enrollment or membership, or for  
11 determining a right to an inheritance.

12 Sec. 13. NEW SECTION. 232B.12 COMPLIANCE.

13 1. The department of human services shall establish  
14 standards for the department's review of cases subject to this  
15 chapter. The review shall occur on an annual basis.

16 2. The court shall vacate a state court order and remand  
17 the case for appropriate disposition for any of the following  
18 violations of this chapter:

19 a. Failure to notify an Indian parent, Indian custodian,  
20 or tribe.

21 b. Failure to recognize the legitimate jurisdiction of an  
22 Indian tribe.

23 c. Failure, without cause as specified under this chapter,  
24 to transfer jurisdiction to an Indian tribe appropriately  
25 seeking transfer.

26 d. Failure to give full faith and credit to the public  
27 acts, records, or judicial proceedings of an Indian tribe.

28 e. Failure to allow intervention by an Indian custodian or  
29 Indian tribe.

30 f. Failure to return the child to the child's parent or  
31 Indian custodian when removal or placement is no longer  
32 necessary to prevent imminent physical damage or harm.

33 g. Failure to provide the testimony of an expert witness  
34 as required by this chapter.

35 Sec. 14. Section 600.1, Code 2001, is amended by adding

1 the following new unnumbered paragraph:

2 NEW UNNUMBERED PARAGRAPH. If a proceeding held under this  
3 chapter involves an Indian child as defined in section 232B.3  
4 and the proceeding is subject to the Iowa Indian child welfare  
5 Act under chapter 232B, the proceeding and other actions taken  
6 in connection with the proceeding or this chapter shall comply  
7 with chapter 232B.

8 Sec. 15. Section 600A.3, Code 2001, is amended by adding  
9 the following new unnumbered paragraph:

10 NEW UNNUMBERED PARAGRAPH. If a proceeding held under this  
11 chapter involves an Indian child as defined in section 232B.3  
12 and the proceeding is subject to the Iowa Indian child welfare  
13 Act under chapter 232B, the proceeding and other actions taken  
14 in connection with the proceeding or this chapter shall comply  
15 with chapter 232B.

16 EXPLANATION

17 This bill implements the federal Indian Child Welfare Act  
18 of 1978. The bill establishes requirements for the courts,  
19 department of human services, and others for use in any  
20 voluntary or involuntary proceeding that may result in an  
21 Indian child's adoptive placement, preadoptive placement,  
22 foster care placement, or termination of parental rights.

23 The bill addresses definitions, determination of a child's  
24 Indian status, notice of proceedings, transfers of  
25 jurisdiction, emergency removals, preferences for permanent  
26 out-of-home placements, usage of tribally recognized expert  
27 witnesses, agreements with tribes for care and custody of  
28 Indian children, payment of foster care expenses, maintenance  
29 of records in perpetuity, and compliance requirements  
30 including civil liability and criminal penalties.

31 The bill amends Code chapter 232, the juvenile justice  
32 code, Code chapter 600, relating to adoptions, and Code  
33 chapter 600A, relating to termination of parental rights, to  
34 provide that if a proceeding held under any of those Code  
35 chapters involves an Indian child and the proceeding is

1 subject to the Iowa Indian child welfare Act, the proceeding  
2 and other actions taken in connection with the proceeding or  
3 the applicable Code chapter must comply with Code chapter  
4 232B.

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## HOUSE FILE 2572

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- 1 Amend House File 2572 as follows:
- 2 1. Page 1, line 21, by inserting before the word  
3 "compelling" the following: "continuing and".
- 4 2. Page 1, line 26, by inserting after the word  
5 "reservation" the following: "prior to, during, or  
6 following a state child custody proceeding".
- 7 3. Page 2, line 1, by inserting after the word  
8 "political" the following: ", cultural,".
- 9 4. Page 2, line 33, by striking the words "a  
10 person" and inserting the following: "an adult  
11 person".
- 12 5. Page 2, line 35, by striking the words "a  
13 person" and inserting the following: "an adult  
14 person".
- 15 6. Page 3, by striking lines 15 through 17 and  
16 inserting the following:
- 17 "8. "Indian custodian" means an Indian person who  
18 has legal custody of an Indian child under tribal law,  
19 tribal custom, or state law or to whom temporary  
20 physical care, custody, and control has been  
21 transferred by the child's parent."
- 22 7. Page 4, line 3, by striking the figure "(c)"  
23 and inserting the following: "(b), (c),".
- 24 8. Page 4, by inserting after line 9 the  
25 following:
- 26 "\_\_\_\_. "Reservation" means Indian country as  
27 defined in 18 U.S.C. § 1151 or land that is not  
28 covered under that definition but the title to which  
29 is either held by the United States in trust for the  
30 benefit of an Indian tribe or Indian person or held by  
31 an Indian tribe or Indian person subject to a  
32 restriction by the United States against alienation."
- 33 9. Page 4, line 13, by striking the word  
34 "permanent".
- 35 10. Page 4, by striking lines 15 through 17 and  
36 inserting the following:
- 37 "\_\_\_\_. "Tribal court" means a court or body vested  
38 by an Indian tribe with jurisdiction over child  
39 custody proceedings and which is a federal court of  
40 Indian offenses, a court established and operated  
41 under the code or custom of an Indian tribe, or an  
42 administrative body of an Indian tribe vested with  
43 authority over child custody proceedings."
- 44 11. Page 4, line 26, by inserting after the word  
45 "The" the following: "court shall require a".
- 46 12. Page 4, line 28, by striking the word "shall"  
47 and inserting the following: "to".
- 48 13. Page 4, line 34, by inserting after the word  
49 "tribe" the following: ", including but not limited  
50 to the United States department of the interior."

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- 1 14. Page 6, line 1, by inserting after the word  
2 "court" the following: "or a party to the  
3 proceeding".
- 4 15. Page 6, line 2, by striking the word  
5 "predominately" and inserting the following:  
6 "predominantly".
- 7 16. Page 6, line 24, by inserting after the word  
8 "days" the following: "after receipt of the notice".
- 9 17. Page 6, line 32, by inserting after the word  
10 "chapter" the following: "and whose identity is  
11 known. The identity of such extended family members  
12 shall be ascertained by an inquiry of each of the  
13 child's parents and by making other reasonable  
14 inquiries of persons, including but not limited to the  
15 child's Indian tribe and the known members of the  
16 child's extended family".
- 17 18. Page 7, line 12, by striking the word  
18 "request" and inserting the following: "be granted up  
19 to".
- 20 19. Page 7, by striking lines 26 through 28 and  
21 inserting the following:  
22 "f. A statement that the court may appoint counsel  
23 for the child upon a finding that the appointment is  
24 in the best interest of the child.  
25 g. A statement that the information contained in  
26 the notice, petition, pleading, and other court  
27 documents is confidential."
- 28 20. Page 7, line 30, by inserting after the word  
29 "child," the following: "the procedures described in  
30 25 U.S.C. § 1913 shall govern the proceedings. In  
31 addition,".
- 32 21. Page 9, line 8, by inserting after the word  
33 "chapter" the following: ", including but not limited  
34 to the purposes of maintaining the vital relationship  
35 between Indian tribes and the tribes' children and  
36 that the best interests of an Indian child require  
37 that the child be placed in a foster or adoptive home  
38 that reflects the unique values of Indian culture.  
39 \_\_\_\_\_. Notwithstanding the absence of an objection  
40 to a transfer of proceedings as described in  
41 subsection 9 or a declination of the transfer as  
42 described in subsection 11, the court may order the  
43 transfer in circumstances in which the evidence  
44 necessary to the case cannot be adequately presented  
45 in the tribal court without undue hardship to the  
46 parties or the witnesses, or the tribal court is  
47 unable to mitigate such hardship by making  
48 arrangements to receive and consider such evidence by  
49 remote communication, hearing the evidence at a  
50 location convenient to the parties or the witnesses,

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1 or any other means permitted in the tribe's rules of  
2 evidence or discovery".

3 22. Page 9, by striking lines 32 through 34 and  
4 inserting the following: "proceedings."

5 23. Page 10, line 3, by striking the words "  
6 whenever possible,".

7 24. Page 10, by inserting after line 5 the  
8 following:

9 "\_\_\_\_. A party seeking an involuntary foster care  
10 placement of or termination of parental rights over an  
11 Indian child shall provide evidence to the court that  
12 active efforts have been made to provide remedial  
13 services and rehabilitative programs designed to  
14 prevent the breakup of the Indian family and that  
15 these efforts have proved unsuccessful."

16 25. Page 10, line 26, by striking the word  
17 "jursidiction" and inserting the following:  
18 "jurisdiction".

19 26. Page 11, line 22, by inserting before the  
20 word "court" the following: "petition,".

21 27. Page 11, line 34, by inserting after the word  
22 "days." the following: "If the Indian child's tribe  
23 has been identified, the court shall notify the tribe  
24 of the date and time of any hearing scheduled to  
25 determine whether to extend an emergency removal or  
26 placement order."

27 28. Page 12, line 10, by striking the words "at  
28 least one qualified expert witness" and inserting the  
29 following: "qualified expert witnesses".

30 29. Page 13, line 5, by inserting after the word  
31 "child's" the following: "extended".

32 30. Page 14, line 9, by inserting after the word  
33 "section." the following: "A determination of the  
34 applicable prevailing social and cultural standards  
35 shall be confirmed by the testimony or other  
36 documented support of qualified expert witnesses."

37 31. Page 14, line 10, by striking the word  
38 "care," and inserting the following: "care placement,  
39 emergency removal,".

40 32. Page 14, line 14, by inserting before the  
41 word "efforts" the following: "active".

42 33. Page 14, line 26, by inserting after the word  
43 "PROOF" the following: " -- CHANGE OF ADOPTIVE OR  
44 FOSTER CARE PLACEMENT".

45 34. Page 16, by inserting after line 5 the  
46 following:

47 "5. a. Notwithstanding any other law to the  
48 contrary, if a final decree of adoption of an Indian  
49 child has been vacated or set aside or the adoptive  
50 parents voluntarily consent to the termination of

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1 parental rights to the Indian child, a biological  
2 parent of the child or prior Indian custodian may  
3 petition for return of custody and the court shall  
4 grant such petition unless there is a showing, in a  
5 proceeding subject to the provisions of 25 U.S.C. §  
6 1912, that the return of custody is not in the best  
7 interests of the child.

8 b. If an Indian child is removed from a foster  
9 care placement for the purpose of further foster care  
10 or preadoptive or adoptive placement, the placement  
11 shall be in accordance with this chapter and the  
12 federal Indian Child Welfare Act, unless the Indian  
13 child is being returned to the parent or Indian  
14 custodian from whose custody the child was originally  
15 removed."

16 35. Page 16, line 10, by inserting after the word  
17 "regarding" the following: "jurisdiction over child  
18 custody proceedings and".

19 36. Page 16, line 18, by inserting after the word  
20 "political" the following: ", cultural,".

21 37. Page 16, line 20, by striking the words "  
22 where available,".

23 38. Page 16, line 26, by striking the words  
24 "whenever possible".

25 39. Page 16, lines 31 and 32, by striking the  
26 words ", if possible,".

27 40. Page 16, by inserting after line 33 the  
28 following:

29 "3. An agreement entered into under this section  
30 may be revoked by either party by giving one hundred  
31 eighty days' advance written notice to the other  
32 party. The revocation shall not affect any action or  
33 proceeding over which a court has already assumed  
34 jurisdiction, unless the agreement provides  
35 otherwise."

36 41. Page 17, line 27, by inserting before the  
37 word "efforts" the following: "active".

38 42. Page 19, by inserting after line 4 the  
39 following:

40 "\_\_\_ . Upon application of an Indian person who is  
41 eighteen years of age or older and was the subject of  
42 an adoptive placement, the court that entered the  
43 final decree shall provide the person, through an  
44 appropriate order, if necessary, with information  
45 described in subsection 2 as may be secured from the  
46 court, agency, or private attorney records."

47 43. Page 19, line 6, by inserting after the word  
48 "anonymous," the following: "identifying".

49 44. Page 19, line 13, by inserting after the word  
50 "services" the following: ", in consultation with the

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Page 5

1 Indian tribes having land within this state,".

2 45. Page 19, line 16, by striking the words "The  
3 court" and inserting the following: "An appellate  
4 court".

5 46. Page 19, line 19, by inserting after the word  
6 "custodian," the following: "extended family  
7 member,".

8 47. Page 19, line 29, by inserting after the word  
9 "tribe" the following: ", or if applicable, an  
10 extended family member".

11 48. Page 19, line 33, by striking the words "an  
12 expert witness" the following: "qualified expert  
13 witnesses".

14 49. Page 19, by inserting after line 34 the  
15 following:

16 "h. Any other violation that is not harmless  
17 error, including but not limited to a failure to  
18 comply with 25 U.S.C. § 1911, 1912, 1913, 1915, 1916,  
19 or 1917.

20 3. If a petitioner in an Indian child custody  
21 proceeding before a state court has improperly removed  
22 the child from the custody of the child's parent or  
23 Indian custodian or has improperly retained custody  
24 after a visit or other temporary relinquishment of  
25 custody, the court shall decline jurisdiction over the  
26 petition and shall immediately return the child to the  
27 child's parent or Indian custodian unless returning  
28 the child to the parent or Indian custodian would  
29 subject the child to a substantial and immediate  
30 danger or threat of such danger."

31 50. By renumbering, redesignating, and correcting  
32 internal references as necessary.

**By** WARNSTADT of Woodbury

**H-8285** FILED MARCH 13, 2002