

AN ACT

ENTITLED, An Act to establish a commission to study compliance with the federal Indian Child Welfare Act, to afford due regard to the Act, and to declare an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. There is hereby established the Governor's Commission on the Indian Child Welfare Act. The commission shall study the requirements of the federal Indian Child Welfare Act, (25 U.S.C. §§ 1901-1963), as amended to January 1, 2004, including compliance with the requirements for notice, placement, expert witness testimony, intervention, transfer of jurisdiction, and active efforts, and the means by which Indian tribes can assist in pursuing the policies of the Act.

Section 2. The Governor shall appoint an independent reviewer to complete an analysis of compliance with the Act by the Department of Social Services, the states attorneys, the Unified Judicial System, and private agencies involved in foster care and adoption, and the means by which Indian tribes can assist the state and private agencies in achieving compliance. Upon completion, the independent reviewer shall submit the analysis of compliance to the commission.

Section 3. The commission may not exceed twenty-nine members. The Governor shall appoint up to eighteen members including a representative of each of the nine Indian tribes of South Dakota upon the written recommendation of the tribal chairman or the appointed representative of the tribal chairman, a representative from a court appointed special advocates program, two representatives of private child placement agencies, four representatives from the Department of Social Services, and two representatives from the Department of Corrections, one of whom is a member of the Council of Juvenile Services. The President of the Senate shall appoint two members, including one from each political party. The Speaker of the House shall appoint two members, including one from each political party. The Chief Justice of the Supreme Court of South Dakota shall appoint five members. The South Dakota State's Attorney Association shall appoint two members.

Section 4. The commission is administered by the Office of the Governor. The commission shall hold not less than four meetings and shall dissolve and cease to exist on December 31, 2004. The study by the commission shall include the following areas:

- (1) Review the analysis of compliance completed by the independent reviewer and based upon the results, identify and prioritize any issues or barriers preventing or hindering compliance;
- (2) Review the efforts of the Department of Social Services to enter into agreements with Indian tribes regarding licensing of foster homes, access to federal funding, and contracting of child protection services;
- (3) Explore and evaluate options to address and resolve identified issues and barriers preventing or hindering compliance; and
- (4) Make recommendations to improve compliance with the federal Indian Child Welfare Act, (25 U.S.C. §§ 901-1963), as amended to January 1, 2004, and identify additional resources needed to implement the recommendations.

Section 5. The commission shall provide a final report to the Eightieth Session of the Legislative Assembly which shall include the findings of the commission and any recommendations to improve compliance with the federal Indian Child Welfare Act, (25 U.S.C. §§ 1901-1963), as amended to January 1, 2004.

Section 6. Notwithstanding §§ 26-7A-28, 26-7A-37 and 26-8A-13, the records and files of the Department of Social Services and its licensees, and the records of court proceedings pursuant to chapter 26-7A and chapter 26-8A involving an apparent, alleged or adjudicated abused or neglected child, including transcripts contained in such records, are open to inspection by the independent reviewer to complete the analysis of compliance described in section 2 of this Act. Any information received by the independent reviewer and its agents or employees which identifies a parent, guardian,

custodian, or child shall be held confidential as required by § 26-8A-13.

Section 7. That § 25-5A-35 be amended to read as follows:

25-5A-35. Sixty days after the emergency medical services provider or licensed child placement agency takes possession of the child a hearing shall be held in circuit court to terminate parental rights.

Section 8. That chapter 25-5A be amended by adding thereto a NEW SECTION to read as follows:

Due regard shall be afforded to the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963), as amended to January 1, 2004, if that Act is applicable.

Section 9. That chapter 25-6 be amended by adding thereto a NEW SECTION to read as follows:

Due regard shall be afforded to the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963), as amended to January 1, 2004, if that Act is applicable.

Section 10. That chapter 26-8A be amended by adding thereto a NEW SECTION to read as follows:

Due regard shall be afforded to the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963), as amended to January 1, 2004, if that Act is applicable.

Section 11. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

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I certify that the attached Act
originated in the

SENATE as Bill No. 211

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 211
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State