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Date: (Filing No. S-)

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**STATE OF MAINE
SENATE
131ST LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 804, L.D. 1970, “An Act to Enact the Maine Indian Child Welfare Act”

Amend the bill by inserting after the title and before the enacting clause the following:

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation provides essential protections for Indian children in protective custody and guardianship actions; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,'

Amend the bill by inserting before section 1 the following:

Sec. 1. 18-C MRSA §5-213 is enacted to read:

§5-213. Indian Child Welfare Act of 1978 and Maine Indian Child Welfare Act

The federal Indian Child Welfare Act of 1978, 25 United States Code, Section 1901 et seq. and the Maine Indian Child Welfare Act govern all proceedings under this Article that pertain to an Indian child as defined in those Acts.

Sec. 2. 18-C MRSA §9-107, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

§9-107. Indian Child Welfare Act of 1978 and Maine Indian Child Welfare Act

The federal Indian Child Welfare Act of 1978, 25 United States Code, ~~Title 25~~, Section 1901 et seq. ~~governs~~ and the Maine Indian Child Welfare Act govern all proceedings under this Article that pertain to an Indian child as defined in ~~that Act~~ those Acts.

Sec. 3. 19-A MRSA §1658, sub-§2-A, ¶F, as enacted by PL 2021, c. 340, §2, is amended to read:

COMMITTEE AMENDMENT

1 F. The federal Indian Child Welfare Act of 1978, 25 United States Code, Title 25,
2 Section 1901 et seq., governs and the Maine Indian Child Welfare Act govern all
3 proceedings under this section that pertain to an Indian child as defined in ~~that Act~~
4 those Acts.

5 **Sec. 4. 19-A MRSA §1734, sub-§1**, as enacted by PL 1999, c. 486, §3 and affected
6 by §6, is amended to read:

7 **1. Proceedings governed by federal Indian Child Welfare Act of 1978 or Maine**
8 **Indian Child Welfare Act.** A child custody proceeding that pertains to an Indian child as
9 defined in the federal Indian Child Welfare Act of 1978, 25 United States Code, Section
10 1901 et seq., or the Maine Indian Child Welfare Act is not subject to this chapter to the
11 extent that it is governed by the Indian Child Welfare either Act.'

12 Amend the bill in section 1 in c. 1066 by striking out all of §3942 (page 1, lines 7 to
13 21 in L.D.) and inserting the following:

14 **§3942. Legislative finding and declaration of policy**

15 **1. Finding.** The Legislature finds and declares that membership or citizenship in an
16 Indian tribe, as well as eligibility for membership or citizenship in an Indian tribe, as
17 determined by each Indian tribe is a political classification.

18 **2. Declaration of policy.** The purpose of the Maine Indian Child Welfare Act is
19 recognition by the State that Indian tribes have a continuing and compelling governmental
20 interest in an Indian child whether or not the Indian child is in the physical or legal custody
21 of an Indian parent, an Indian custodian or an Indian extended family member at the
22 commencement of an Indian child custody proceeding or the Indian child has resided or is
23 domiciled on an Indian reservation. The State is committed to protecting the essential tribal
24 relations and best interests of an Indian child by promoting practices in accordance with all
25 laws designed to prevent the Indian child's voluntary or involuntary out-of-home placement
26 and, whenever such placement is necessary or ordered, by placing the Indian child,
27 whenever possible, in a placement that reflects the unique values of the Indian child's tribal
28 culture and that is best able to assist the Indian child in establishing, developing and
29 maintaining a political, cultural and social relationship with the Indian child's tribe and
30 tribal community. It is the policy of the State to cooperate fully with Indian tribes and tribal
31 members and citizens in this State and elsewhere in order to ensure that the intent and
32 provisions of this Act are enforced.'

33 Amend the bill in section 1 in c. 1066 in §3943 in subsection 1 in the 6th line (page 1,
34 line 30 in L.D.) by inserting after the following: "plan." the following: "To the maximum
35 extent possible, active efforts should be provided in a manner consistent with the prevailing
36 social and cultural conditions and way of life of the Indian child's tribe and should be
37 conducted in partnership with the Indian child and the Indian child's parents, extended
38 family members, Indian custodians and tribe.'

39 Amend the bill in section 1 in c. 1066 in §3943 by striking out all of subsection 4 (page
40 2, lines 29 to 31 in L.D.) and inserting the following:

41 **4. Emergency proceeding.** "Emergency proceeding" means a court action that
42 involves the emergency removal or emergency placement of an Indian child, including
43 those pursuant to section 4034 or Title 18-C, Article 5. "Emergency proceeding" does not
44 include a court action involving an emergency award of custody of the Indian child to one

1 of the parents including, but not limited to, an emergency parental rights and
2 responsibilities order or a protection from abuse proceeding.'

3 Amend the bill in section 1 in c. 1066 in §3943 in subsection 9 in the 3rd line (page 3,
4 line 13 in L.D.) by inserting after the following: "outcomes" the following: 'for or related
5 to an Indian child'

6 Amend the bill in section 1 in c. 1066 in §3943 in subsection 9 by striking out all of
7 the first blocked paragraph (page 3, lines 18 to 21 in L.D.) and inserting the following:

8 'An Indian child custody proceeding does not include a proceeding in tribal court or a
9 proceeding that may culminate in an outcome for which placement is based upon an act by
10 an Indian child that, if committed by an adult, would be considered a crime or a proceeding
11 involving an award of custody to one of the Indian child's parents, including, but not limited
12 to, a divorce proceeding, a parental rights and responsibilities proceeding, a judicial
13 separation proceeding, a protection from abuse proceeding or other domestic relations
14 proceeding.'

15 Amend the bill in section 1 in c. 1066 in §3945 by striking out all of subsection 1 (page
16 5, lines 35 to 39 in L.D.) and inserting the following:

17 '**1. Determination of Indian child status.** In any proceeding that would qualify as an
18 Indian child custody proceeding or emergency proceeding if the child were an Indian child,
19 the District Court or Probate Court shall ask each participant whether the participant knows
20 or has reason to know that the child is an Indian child. The court shall use the procedures
21 in 25 Code of Federal Regulations, Section 23.107 to determine if a child may be an Indian
22 child.'

23 Amend the bill in section 1 in c. 1066 in §3945 in subsection 2 by striking out all of
24 paragraph C (page 6, lines 13 to 16 in L.D.) and inserting the following:

25 'C. If the identity or location of the parent or Indian custodian and the Indian tribe
26 cannot be determined, notice under this subsection must be given to the appropriate
27 regional director of the United States Department of the Interior, Bureau of Indian
28 Affairs in like manner.'

29 Amend the bill in section 1 in c. 1066 in §3945 in subsection 2 by striking out all of
30 paragraph E (page 6, lines 19 to 21 in L.D.) and inserting the following:

31 'E. The first hearing in the proceeding may not be held until at least 10 days after
32 receipt of the notice by the parent, Indian custodian and Indian tribe or the appropriate
33 regional director of the United States Department of the Interior, Bureau of Indian
34 Affairs.'

35 Amend the bill in section 1 in c. 1066 in §3945 by striking out all of subsection 3 (page
36 6, lines 25 to 31 in L.D.) and inserting the following:

37 '**3. Appointment of counsel.** Parents and Indian custodians are entitled to legal
38 counsel in any Indian child custody proceeding or emergency proceeding. A parent or
39 Indian custodian may request the court to appoint legal counsel for them. The District
40 Court or Probate Court, upon a finding that the parent or Indian custodian is indigent, shall
41 appoint and pay the reasonable costs and expenses of their legal counsel. The court may,
42 in its discretion, appoint counsel for the Indian child upon a finding that such appointment
43 is in the best interest of the Indian child.'

1 Amend the bill in section 1 in c. 1066 in §3945 by striking out all of subsection 5 (page
2 6, lines 36 to 40 in L.D.) and inserting the following:

3 **'5. Remedial services, rehabilitative programs and preventive measures. A party**
4 **seeking to effect a foster care placement of, or termination of parental rights to, an Indian**
5 **child under chapter 1071, Title 18-C, Article 5 or 9 or Title 19-A, section 1658 shall satisfy**
6 **the court, in accordance with the standard of proof required by the governing statute, that**
7 **active efforts have been made to provide remedial services and rehabilitative programs**
8 **designed to prevent the breakup of the Indian family and that these efforts have proved**
9 **unsuccessful.'**

10 Amend the bill in section 1 in c. 1066 in §3945 in subsection 6 in the first line (page 6,
11 line 41 in L.D.) by striking out the following: "**Foster**" and inserting the following:
12 **'Involuntary foster'**

13 Amend the bill in section 1 in c. 1066 in §3945 in subsection 6 in the first line (page 6,
14 line 41 in L.D.) by striking out the following: "**Foster**" and inserting the following:
15 **'Involuntary foster'**

16 Amend the bill in section 1 in c. 1066 in §3945 in subsection 7 in the first line (page 7,
17 line 5 in L.D.) by striking out the following: "**Termination**" and inserting the following:
18 **'Involuntary termination'**

19 Amend the bill in section 1 in c. 1066 in §3945 in subsection 7 in the first line (page 7,
20 line 5 in L.D.) by striking out the following: "**Termination**" and inserting the following:
21 **'Involuntary termination'**

22 Amend the bill in section 1 in c. 1066 in §3946 in subsection 4 in the 5th line (page 7,
23 line 37 in L.D.) by inserting after the following: "**finding**" the following: **'by clear and**
24 **convincing evidence'**

25 Amend the bill in section 1 in c. 1066 in §3947 in the first indented paragraph in the
26 4th line (page 8, line 2 in L.D.) by inserting after the following: "**showing**" the following:
27 **'by clear and convincing evidence'**

28 Amend the bill in section 1 in c. 1066 in §3953 by striking out all of subsection 2 (page
29 10, lines 41 and 42 and page 11, lines 1 to 12 in L.D.) and inserting the following:

30 **'2. Procedure applicable to emergency proceedings. In any emergency proceeding**
31 **in District Court or Probate Court, the court shall:**

32 **A. Make a finding on the record, supported by clear and convincing evidence, that the**
33 **emergency removal or placement is necessary to prevent imminent physical damage or**
34 **harm to the Indian child;**

35 **B. Promptly hold a hearing on whether the emergency removal or placement continues**
36 **to be necessary whenever new information indicates that the emergency situation has**
37 **ended; and**

38 **C. At any court hearing during the emergency proceeding, determine whether there is**
39 **clear and convincing evidence demonstrating that the emergency removal or placement**
40 **remains necessary to prevent imminent physical damage or harm to the Indian child**
41 **and, if not, immediately terminate or ensure that the petitioning party immediately**
42 **terminates the emergency proceeding.'**

1 Amend the bill by inserting after section 1 the following:

2 **'Sec. 2. 22 MRSA §4002, sub-§9-B**, as amended by PL 2017, c. 411, §4, is further
3 amended to read:

4 **9-B. Relative.** "Relative" means a family member related to the child within the 3rd
5 degree through parentage established under Title 19-A, chapter 61 or any spouse of that
6 family member. "Relative" also includes the adoptive parent of the child's siblings.
7 "Relative" includes, for an Indian child as defined by the federal Indian Child Welfare Act
8 of 1978, 25 United States Code, Section 1903, Subsection 4, or by the Maine Indian Child
9 Welfare Act, section 3943, subsection 8, an extended family member as defined by the law
10 or custom of the Indian child's tribe or, in the absence of such law or custom, an extended
11 family member as defined by the federal Indian Child Welfare Act of 1978, 25 United
12 States Code, Section 1903, Subsection 2 or the Maine Indian Child Welfare Act, section
13 3943, subsection 5.

14 **Sec. 3. 22 MRSA §4008, sub-§2, ¶I**, as amended by PL 2007, c. 140, §5, is further
15 amended to read:

16 I. The representative designated to provide child welfare services by the tribe of an
17 Indian child as defined by the federal Indian Child Welfare Act of 1978, 25 United
18 States Code, Section 1903 or the Maine Indian Child Welfare Act, section 3943,
19 subsections 8 and 10, or a representative designated to provide child welfare services
20 by an Indian tribe of Canada;

21 **Sec. 4. 22 MRSA §4062, sub-§1**, as amended by PL 1999, c. 392, §1, is further
22 amended by amending the first blocked paragraph to read:

23 Notwithstanding section 4061, subsection 3, any federally recognized Indian tribe in this
24 State or any Indian foster family home is eligible for benefits and reimbursement under any
25 state or federally funded program administered by the State for the benefit of Maine
26 children, including, but not limited to, children within the jurisdiction of the
27 Passamaquoddy Tribe of, Penobscot Indian Nation, Houlton Band of Maliseet Indians or
28 Mi'kmaq Nation under the federal Indian Child Welfare Act of 1978, 25 United States
29 Code, Section 1901, et seq. or the Maine Indian Child Welfare Act.

30 **Sec. 5. 22 MRSA §8101, sub-§3-A**, as enacted by PL 1999, c. 392, §5, is amended
31 to read:

32 **3-A. Indian foster family home.** "Indian foster family home" means a foster home
33 licensed, approved or specified by the Indian child's tribe where substitute parental care is
34 provided for an Indian child as defined in the federal Indian Child Welfare Act of 1978, 25
35 United States Code, Section 1901, et seq. or the Maine Indian Child Welfare Act, section
36 3943, subsection 8.

37 **Sec. 6. 30 MRSA §6209-A, sub-§1, ¶D**, as amended by PL 2021, c. 650, §10 and
38 affected by §13, is further amended to read:

39 D. Indian child custody proceedings to the extent authorized by applicable state and
40 federal law;

41 **Sec. 7. 30 MRSA §6209-B, sub-§1, ¶D**, as enacted by PL 1995, c. 388, §6 and
42 affected by §8, is amended to read:

1 D. Indian child custody proceedings to the extent authorized by applicable state and
2 federal law; and

3 **Sec. 8. 30 MRSA §6209-C, sub-§1, ¶D**, as enacted by PL 2009, c. 384, Pt. B, §1
4 and affected by §2, is amended to read:

5 D. Indian child custody proceedings to the extent authorized by applicable state and
6 federal law; and

7 **Sec. 9. Contingent effective date.** This Act is subject to the following
8 contingencies.

9 1. That section of this Act that amends the Maine Revised Statutes, Title 30, section
10 6209-A, subsection 1, paragraph D takes effect 120 days after adjournment of the First
11 Special Session of the 131st Legislature only if, within 90 days after adjournment of the
12 First Special Session of the 131st Legislature, the Secretary of State receives written
13 certification from the Joint Tribal Council of the Passamaquoddy Tribe that the tribe has
14 agreed to the provisions of this Act, copies of which must be submitted by the Secretary of
15 State to the Secretary of the Senate, the Clerk of the House and the Revisor of Statutes.

16 2. That section of this Act that amends the Maine Revised Statutes, Title 30, section
17 6209-B, subsection 1, paragraph D takes effect 120 days after adjournment of the First
18 Special Session of the 131st Legislature only if, within 90 days after adjournment of the
19 First Special Session of the 131st Legislature, the Secretary of State receives written
20 certification from the Governor and the Council of the Penobscot Nation that the nation has
21 agreed to the provisions of this Act, copies of which must be submitted by the Secretary of
22 State to the Secretary of the Senate, the Clerk of the House and the Revisor of Statutes.

23 3. That section of this Act that amends the Maine Revised Statutes, Title 30, section
24 6209-C, subsection 1, paragraph D takes effect 120 days after adjournment of the First
25 Special Session of the 131st Legislature only if, within 90 days after adjournment of the
26 First Special Session of the 131st Legislature, the Secretary of State receives written
27 certification from the Houlton Band Council of the Houlton Band of Maliseet Indians that
28 the band has agreed to the provisions of this Act, copies of which must be submitted by the
29 Secretary of State to the Secretary of the Senate, the Clerk of the House and the Revisor of
30 Statutes. Upon such written certification by the Houlton Band Council of the Houlton Band
31 of Maliseet Indians, each section of this Act regarding or affecting the Houlton Band of
32 Maliseet Indians and its tribal members and lands constitutes a jurisdictional agreement for
33 purposes of the federal Maine Indian Claims Settlement Act of 1980, Public Law 96-420,
34 Section 6(e)(2).

35 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
36 takes effect when approved, except as otherwise indicated.'

37 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
38 number to read consecutively.

39

SUMMARY

40 This amendment, which is the unanimous report of the committee, adds an emergency
41 preamble and clause and:

1 1. Provides that the Legislature finds and declares that membership or citizenship in an
2 Indian tribe, as well as eligibility for membership or citizenship in an Indian tribe, is a
3 political classification;

4 2. Adds language to the definition of "active efforts" to more closely track the definition
5 of "active efforts" in 25 Code of Federal Regulations, Section 23.2;

6 3. Provides that the Maine Indian Child Welfare Act does not govern proceedings in
7 tribal court or emergency or nonemergency court actions awarding custody of an Indian
8 child to one of the parents, including, but not limited to, divorce proceedings, parental rights
9 and responsibilities proceedings, judicial separation proceedings, protection from abuse
10 proceedings or other domestic relation proceedings;

11 4. Provides that a court must explore whether a child is an Indian child in any
12 proceeding that would qualify as an Indian child custody proceeding or emergency
13 proceeding under the Maine Indian Child Welfare Act if the child were an Indian child;

14 5. Requires, in conformity with 25 Code of Federal Regulations, Section 23.111, that
15 a court that does not know the identity or location of the parent, Indian custodian or Indian
16 tribe of an Indian child provide a notice required by the Maine Indian Child Welfare Act
17 to the appropriate regional director of the United States Department of the Interior, Bureau
18 of Indian Affairs;

19 6. Clarifies the standard of proof applicable at different stages of an Indian child
20 custody proceeding under the Maine Indian Child Welfare Act;

21 7. Provides appropriate cross-references to the Maine Indian Child Welfare Act in
22 provisions of the Maine Revised Statutes that currently refer to the federal Indian Child
23 Welfare Act of 1978; and

24 8. Provides that, if the tribal government of the relevant tribe, nation or band consents,
25 the tribal courts of the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band
26 of Maliseet Indians have exclusive jurisdiction over Indian child custody proceedings to
27 the extent provided in the Maine Indian Child Welfare Act.