

Assembly Bill No. 65

CHAPTER 275

An act to add Sections 305.5 and 7810 to the Family Code, and to add Section 360.6 to the Welfare and Institutions Code, relating to child custody, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 31, 1999. Filed with Secretary of State September 1, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 65, Ducheny. Indian Child Welfare Act.

Existing federal law, contained in the Indian Child Welfare Act, specifies that an Indian tribe shall have exclusive jurisdiction, except in specified cases, over any custody proceeding involving an Indian child, as defined, and specifies procedures and rights applicable to state court proceedings involving an Indian child.

This bill would direct the courts to strive to promote the stability and security of Indian tribes and families and to comply with the Indian Child Welfare Act in all Indian child custody proceedings, as specified, and would require that the federal act be applied in those proceedings if the tribe determines that an unmarried person, who is under the age of 18 years, is a member of the tribe or is eligible for membership and is a biological child of a member of a tribe. The bill would also require state and local authorities to transfer child custody proceedings to the tribe within a specified period in cases where an Indian child has been removed from parental custody by those authorities and the tribe has exclusive jurisdiction, as specified.

The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 7810 is added to the Family Code, to read:

7810. (a) The Legislature finds and declares the following:

(1) There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe.

(2) It is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected.

(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), the

court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child.

(c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings.

SEC. 2. Section 305.5 is added to the Welfare and Institutions Code, to read:

305.5. (a) Where an Indian child, who resides or is domiciled within a reservation of an Indian tribe that has reassumed exclusive jurisdiction over Indian child custody proceedings pursuant to Section 1918 of Title 25 of the United States Code, has been removed by a state or local authority from the custody of his or her parents or Indian custodian, the state or local authority shall provide notice of the removal to the tribe no later than the next working day following the removal and shall provide all relevant documentation to the tribe regarding the removal and the child's identity. If the tribe determines that the child is an Indian child, the state or local authority shall transfer the child custody proceeding to the tribe within 24 hours after receipt of written notice from the tribe of that determination.

(b) As used in this section, the terms "Indian child" and "Indian child custody proceedings" shall be defined as provided in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

SEC. 3. Section 360.6 is added to the Welfare and Institutions Code, to read:

360.6. (a) The Legislature finds and declares the following:

(1) There is no resource that is more vital to the continued existence and integrity of Indian tribes than their children, and the State of California has an interest in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe.

(2) It is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected.

(b) In all Indian child custody proceedings, as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), the court shall consider all of the findings contained in subdivision (a), strive to promote the stability and security of Indian tribes and families, comply with the federal Indian Child Welfare Act, and seek to protect the best interest of the child.

(c) A determination by an Indian tribe that an unmarried person, who is under the age of 18 years, is either (1) a member of an Indian



tribe or (2) eligible for membership in an Indian tribe and a biological child of a member of an Indian tribe shall constitute a significant political affiliation with the tribe and shall require the application of the federal Indian Child Welfare Act to the proceedings.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to immediately protect and preserve the rights of Indian children, their parents or custodians, and their tribes in custody proceedings, it is necessary that this act take effect immediately.

