



**ASSEMBLY AMENDMENT 5,
TO ASSEMBLY BILL 581**

February 13, 2014 – Offered by Representative KLEEFISCH.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 4, line 1: delete that line and substitute:

3 **“SECTION 1d.** 48.028 (2) (d) 5. of the statutes is created to read:

4 48.028 (2) (d) 5. A delegation of powers by a parent regarding the care and
5 custody of an Indian child for longer than one year under s. 48.979.

6 **SECTION 1f.** 48.028 (2) (e) of the statutes is amended to read:

7 48.028 (2) (e) “Out-of-home care placement” means the removal of an Indian
8 child from the home of his or her parent or Indian custodian for temporary placement
9 in a foster home, group home, residential care center for children and youth, or
10 shelter care facility, in the home of a relative other than a parent, or in the home of
11 a guardian, from which placement the parent or Indian custodian cannot have the
12 child returned upon demand. “Out-of-home care placement” does not include an

1 adoptive placement, a preadoptive placement, a delegation of powers, as described
2 in par. (d) 5., or holding an Indian child in custody under ss. 48.19 to 48.21.

3 **SECTION 1h.** 48.028 (3) (c) (intro.) of the statutes is amended to read:

4 48.028 (3) (c) *Transfer of proceedings to tribe.* (intro.) In any Indian child
5 custody proceeding under this chapter involving an out-of-home placement of, ~~or~~
6 termination of parental rights to, or delegation of powers, as described in sub. (2) (d)
7 5., regarding, an Indian child who is not residing or domiciled within the reservation
8 of the Indian child's tribe, the court assigned to exercise jurisdiction under this
9 chapter shall, upon the petition of the Indian child's parent, Indian custodian, or
10 tribe, transfer the proceeding to the jurisdiction of the tribe unless any of the
11 following applies:

12 **SECTION 1j.** 48.028 (3) (e) of the statutes is amended to read:

13 48.028 (3) (e) *Intervention.* An Indian child's Indian custodian or tribe may
14 intervene at any point in an Indian child custody proceeding under this chapter
15 involving an out-of-home care placement of, ~~or~~ termination of parental rights to, or
16 delegation of powers, as described in sub. (2) (d) 5., regarding, the Indian child.

17 **SECTION 1m.** 48.028 (4) (a) of the statutes is amended to read:

18 48.028 (4) (a) *Notice.* In any involuntary proceeding involving the out-of-home
19 care placement of ~~or~~, termination of parental rights to, or delegation of powers, as
20 described in sub. (2) (d) 5., regarding, a child whom the court knows or has reason
21 to know is an Indian child, the party seeking the out-of-home care placement ~~or~~,
22 termination of parental rights, or delegation of powers shall, for the first hearing of
23 the proceeding, notify the Indian child's parent, Indian custodian, and tribe, by
24 registered mail, return receipt requested, of the pending proceeding and of their
25 right to intervene in the proceeding and shall file the return receipt with the court.

1 Notice of subsequent hearings in a proceeding shall be in writing and may be given
2 by mail, personal delivery, or facsimile transmission, but not by electronic mail. If
3 the identity or location of the Indian child’s parent, Indian custodian, or tribe cannot
4 be determined, that notice shall be given to the U.S. secretary of the interior in like
5 manner. The first hearing in the proceeding may not be held until at least 10 days
6 after receipt of the notice by the parent, Indian custodian, and tribe or until at least
7 15 days after receipt of the notice by the U.S. secretary of the interior. On request
8 of the parent, Indian custodian, or tribe, the court shall grant a continuance of up to
9 20 additional days to enable the requester to prepare for that hearing.

10 **SECTION 1o.** 48.028 (7) (title) of the statutes is repealed and recreated to read:

11 48.028 (7) (title) PLACEMENTS AND DELEGATIONS OF POWERS; PREFERENCES.

12 **SECTION 1p.** 48.028 (7) (a) (intro.) of the statutes is amended to read:

13 48.028 (7) (a) *Adoptive placement or delegation of powers; preferences.* (intro.)

14 Subject to pars. (c) and (d), in placing an Indian child for adoption or in delegating
15 powers, as described in sub. (2) (d) 5., regarding an Indian child, preference shall be
16 given, in the absence of good cause, as described in par. (e), to the contrary, to a
17 placement with or delegation to one of the following, in the order of preference listed:

18 **SECTION 1r.** 48.028 (7) (c) of the statutes is amended to read:

19 48.028 (7) (c) *Tribal or personal preferences.* In placing an Indian child under
20 par. (a), (b), or (bm) or in delegating powers regarding an Indian child under par. (a),
21 if the Indian child’s tribe has established, by resolution, an order of preference that
22 is different from the order specified in par. (a) or (b), the order of preference
23 established by that tribe shall be followed, in the absence of good cause, as described
24 in par. (e), to the contrary, so long as the placement or delegation under par. (a) is
25 appropriate for the Indian child’s special needs, if any, and the placement under par.

1 (b) or (bm) is the least restrictive setting appropriate for the Indian child’s needs as
2 specified in par. (b). When appropriate, the preference of the Indian child or parent
3 shall be considered, and, when a parent who has consented to the placement or
4 delegation evidences a desire for anonymity, that desire shall be given weight, in
5 determining the placement or delegation.

6 **SECTION 1t.** 48.028 (7) (e) 1. b. of the statutes is amended to read:

7 48.028 (7) (e) 1. b. Any extraordinary physical, mental, or emotional health
8 needs of the Indian child requiring highly specialized treatment services as
9 established by the testimony of an expert witness, including a qualified expert
10 witness. The length of time that an Indian child has been in a placement or subject
11 to a delegation of powers, as described in sub. (2) (d) 5., does not, in itself, constitute
12 an extraordinary emotional health need.

13 **SECTION 1u.** 48.028 (7) (e) 1. c. of the statutes is amended to read:

14 48.028 (7) (e) 1. c. The unavailability of a suitable placement for the Indian
15 child after diligent efforts have been made to place the Indian child in the order of
16 preference under par. (a), (b), or (c) or the unavailability of a suitable agent to whom
17 to delegate powers, as described in sub. (2) (d) 5., regarding the Indian child after
18 diligent efforts have been made to delegate those powers in the order of preference
19 under par. (a).

20 **SECTION 1v.** 48.028 (7) (f) of the statutes is amended to read:

21 48.028 (7) (f) *Report of placement placements and delegations of powers.* The
22 department, a county department, or a child welfare agency shall maintain a record
23 of each adoptive placement, out-of-home care placement, and preadoptive
24 placement, and delegation of powers, as described in sub. (2) (d) 5., made of an Indian
25 child, evidencing the efforts made to comply with the placement preference

1 requirements specified in this subsection, and shall make that record available at
2 any time on the request of the U.S. secretary of the interior or the Indian child’s tribe.

3 **SECTION 1x.** 48.825 (1) (a) of the statutes is amended to read:”.

4 **2.** Page 5, line 21: after that line insert:

5 “**SECTION 8g.** 48.979 (1) (dm) of the statutes is amended to read:

6 48.979 (1) (dm) A delegation of powers under par. (a) regarding the care and
7 custody of an Indian child for any length of time is subject to the requirements of s.
8 48.028 (5) (a). A delegation of powers under par. (a) regarding the care and custody
9 of an Indian child for longer than one year is also subject to the requirements of s.
10 48.028 (3) (c), (4) (a), and (7) (a), (c), (e), and (f).”.

11 **3.** Page 7, line 5: after “subject to” insert “s. 48.028 or 938.028 or”.

12 **4.** Page 7, line 6: after “1963” insert “, and, if the child may be subject to those
13 sections or that act, the names and addresses of the child’s Indian custodian, if any,
14 and Indian tribe, if known”.

15 **5.** Page 7, line 7: delete “The” and substitute “Except as provided in par. (bm),
16 the”.

17 **6.** Page 7, line 12: delete “child; and” and substitute “child;”.

18 **7.** Page 7, line 13: after “power” insert “; and, if the child is an Indian child,
19 the Indian child’s Indian custodian, if any, and tribe, if known.”.

20 **8.** Page 7, line 16: after that line insert:

21 “(bm) If the petitioner knows or has reason to know that the child is an Indian
22 child, service under par. (b) to the Indian child’s parent, Indian custodian, and tribe
23 shall be provided in the manner specified in s. 48.028 (4) (a). No hearing may be held
24 under par. (c) until at least 10 days after receipt of service by the Indian child’s

1 parent, Indian custodian, and tribe or, if the identity or location of the Indian child's
2 parent, Indian custodian, or tribe cannot be determined, until at least 15 days after
3 receipt of service by the U.S. secretary of the interior. On request of the Indian child's
4 parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20
5 additional days to enable the requester to prepare for the hearing.”.

6 **9.** Page 8, line 5: delete “and”.

7 **10.** Page 8, line 6: after “powers” insert “, and, if the child is an Indian child,
8 the order of placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028
9 (7) (c), unless the court finds good cause, as described in s. 48.028 (7) (e), for departing
10 from that order”.

11 (END)