

LEGISLATIVE BILL 475

Approved by the Governor April 28, 1999

Introduced by Bohlke, 33

AN ACT relating to Native Americans; to amend sections 43-1503, 71-1906, 71-1906.01, 71-5009.01, 71-5027, and 81-2508, Reissue Revised Statutes of Nebraska, and section 71-1906.02, Revised Statutes Supplement, 1998; to provide for native-language teaching approval; to provide a duty for the Department of Health and Human Services relating to tribal property residents; to define tribal service area; to change provisions relating to Indian reservations; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. (1) Teaching American Indian languages is essential to the proper education of American Indian children. School districts and postsecondary educational institutions may employ approved American Indian language teachers to teach their native language. For purposes of this section, approved American Indian language teacher means a teacher who has passed the tribe's written and oral approval test.

(2) Approved American Indian language teachers that do not also have a Nebraska teaching certificate shall not teach any subject other than the American Indian language they are approved to teach by the tribe.

(3) Each tribe shall develop both a written and an oral test that must be successfully completed in order to determine that a teacher is approved to teach the tribe's native language. When developing such approval tests, the tribe shall include, but not be limited to, which dialects will be used, whether it will standardize its writing system, and how the teaching methods will be evaluated in the classroom. The teacher approval tests shall be administered at a community college or state college.

Sec. 2. The Department of Health and Human Services shall make state funds available which are appropriated to meet the needs of people living on tribal lands or in tribal service areas as defined in section 43-1503 if the people residing on tribal lands or in tribal services areas choose to operate their own welfare reform programs.

Sec. 3. Section 43-1503, Reissue Revised Statutes of Nebraska, is amended to read:

43-1503. For the purposes of the Nebraska Indian Child Welfare Act, except as may be specifically provided otherwise, the term:

(1) Child custody proceeding shall mean and include:

(a) Foster care placement which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) Termination of parental rights which shall mean any action resulting in the termination of the parent-child relationship;

(c) Preadoptive placement which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(d) Adoptive placement which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents;

(2) Extended family member shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) Indian means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a regional corporation defined in section 7 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1606;

(4) Indian child means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) Indian child's tribe means (a) the Indian tribe in which an

Indian child is a member or eligible for membership or (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) Indian organization means any group, association, partnership, limited liability company, corporation, or other legal entity owned or controlled by Indians or a majority of whose members are Indians;

(8) Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act, as amended, 42 U.S.C. 1602(c);

(9) Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father when paternity has not been acknowledged or established;

(10) Reservation means Indian country as defined in 18 U.S.C. 1151 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) Secretary means the Secretary of the Interior; ~~and~~

(12) Tribal court means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings; and

(13) Tribal service area means a geographic area in which tribal services and programs are provided to Native American people.

Sec. 4. Section 71-1906, Reissue Revised Statutes of Nebraska, is amended to read:

71-1906. In order to achieve the goals and further the purposes of the federal Indian Child Welfare Act of 1978 and the Nebraska Indian Child Welfare Act, it is the intent of the Legislature that Native American families have the option to meet separate licensing standards for Native American foster homes located outside the boundaries of any Indian reservation or tribal service area as defined in section 43-1503.

Sec. 5. Section 71-1906.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-1906.01. The department may adopt and promulgate rules and regulations establishing separate licensing standards for Native American foster homes located outside the boundaries of any Indian reservation or tribal service area as defined in section 43-1503. The department shall, in consultation with the Commission on Indian Affairs, develop appropriate standards for the licensing of such foster homes. Such standards shall comply with the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901 et seq., the Nebraska Indian Child Welfare Act, and all other applicable federal and state laws.

Sec. 6. Section 71-1906.02, Revised Statutes Supplement, 1998, is amended to read:

71-1906.02. An advisory committee is established which shall be made up of Native Americans knowledgeable in Indian child welfare matters jointly appointed by the executive director of the Commission on Indian Affairs and the Director of Health and Human Services. The advisory committee shall advise the department and the commission on the development of the appropriate standards for the licensing of Native American foster homes located outside the boundaries of any Indian reservation or tribal service area as defined in section 43-1503.

Sec. 7. Section 71-5009.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-5009.01. Regional governing boards shall not be required to provide the matching funds provided for in the Nebraska Comprehensive Community Mental Health Services Act for mental health treatment programs located on Indian reservations or tribal service areas as defined in section 43-1503.

Sec. 8. Section 71-5027, Reissue Revised Statutes of Nebraska, is amended to read:

71-5027. The six regional governing boards established pursuant to

section 71-5004 shall provide community alcoholism facilities, programs, and services. The boards shall provide funds for such community-based projects. Federal funding, private sources, third-party payments, and fees collected may be used as sources of necessary funds. Each regional governing board shall provide one dollar for every three dollars provided by the state General Fund. Of the amount provided by each regional governing board, not less than forty percent shall be provided by local and county taxes and the remainder shall come from other nonfederal sources. Regional governing boards shall not be required to provide such matching funds for alcohol treatment programs located on Indian reservations or programs administered by Indian tribes. The regional governing boards shall account for all sources and expenditure of funds for any agency receiving any state funds under the provisions of sections 71-5016 to 71-5040, 83-1009, and 83-1009.01.

Sec. 9. Section 81-2508, Reissue Revised Statutes of Nebraska, is amended to read:

81-2508. (1) For the purpose of administration of the Commission on Indian Affairs during the interim between its regular quarterly meetings, there is hereby established an executive board of the Commission on Indian Affairs consisting of the ~~chairman~~ chairperson of the commission, two members representing the reservations or tribal service areas as defined in section 43-1503, one member representing the urban areas, and one member who represents the western Nebraska areas or is the member at large.

(2) The executive board shall have the authority to enter into contracts for consultation services, supplies, and equipment if the amount contracted for does not exceed the sum of two thousand dollars in any one contract, and to supervise all programs relating to the affairs of Indian tribes instituted and authorized by the commission.

Sec. 10. Original sections 43-1503, 71-1906, 71-1906.01, 71-5009.01, 71-5027, and 81-2508, Reissue Revised Statutes of Nebraska, and section 71-1906.02, Revised Statutes Supplement, 1998, are repealed.