

## MICHIGAN FAMILY PRESERVATION ACT REVISIONS

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**Senate Bill 503 (reported by House committee w/o amendment)**

**Sponsor: Sen. Judy K. Emmons**

**House Committee: Judiciary**

**Senate Committee: Families, Senior and Human Services**

**Complete to 2-9-16**

Analysis available at  
<http://www.legislature.mi.gov>

*(Enacted as Public Act 26 of 2016)*

### **BRIEF SUMMARY:** The bill:

- Clarifies that only a parent or parents may consent to the voluntary adoptive placement of an Indian child or to voluntary termination of parental rights for the express purpose of adoption.
- Revises the requirement regarding the testimony of an expert witness in a proceeding for the removal of an Indian child from a parent or Indian custodian.
- Requires a court that discovers that a child for whom guardianship has already been ordered may be an Indian child to notify the tribe, the parents or Indian custodian, and the current guardian of the guardianship and that the Michigan Family Preservation Act in addition to the Indian Child Welfare Act may apply.
- Refers to an "Indian child" throughout the act rather than "child".

**FISCAL IMPACT:** The bill would not have a fiscal impact on state or local governments.

### **THE APPARENT PROBLEM:**

Public Act 565 of 2012 added Chapter XIIB, the Michigan Indian Family Preservation Act (MIFPA), to the Probate Code to establish standards and procedures for proceedings that involve an Indian child, including proceedings for custody, guardianship, and adoption. The act helps clarify, and fills in some gaps, of the federal Indian Child Welfare Act (ICWA). For instance, guardianships are not specifically addressed in ICWA, but are in MIFPA.

If has been several years since the provisions of MIFPA took effect, and it has become apparent to those impacted by the act that some technical amendments are needed for clarity and that a few other provisions need tweaking, as well. For instance, only parents should be able to voluntarily place their child for adoption, or to voluntarily have their parental rights terminated. Yet, as currently worded, an Indian custodian may execute a release for adoption or termination of parental rights. Tribal leaders have requested that legislation be offered to make the changes necessary to protect Indian children and preserve their families.

### **THE CONTENT OF THE BILL:**

The bill amends Chapter XIIB of the Probate Code, the Michigan Indian Family Preservation Act (MIFPA). The amendments made by the bill are considered technical in nature or are needed for clarification. For instance, instead of referring to a "child"

throughout the act, the bill refers to an "Indian child." However, a few significant changes have been offered.

#### Voluntary placement for adoption/termination of parental rights for adoption

Currently, MIFPA states that if both parents or Indian custodian voluntarily consent to a petition for guardianship under the Estates and Protected Individuals Code, or to adoptive placement or the termination of parental rights for the express purpose of adoption by executing a release under Section 28 or consent under Section 44 of Chapter X (the Adoption Code), certain requirements must be met.

Under the bill, both parents or the Indian custodian could voluntarily consent to a petition for guardianship. However, only a parent could consent to adoptive placement or the termination of his or her parental rights. (Currently, MIFPA defines the term "parent" to mean any biological parent or parents of an Indian child or any person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The term does not include the putative father if paternity has not been acknowledged or established.)

Further, as noted above, the release/consent provisions required to be executed under the Adoption Code only reference Section 28 and Section 43. The bill would include Section 29 (release of parental rights) and Section 44 (consent to adoption), both of which apply to executing a separate document, execution in another state, explaining the legal rights to the parent or guardian, among other matters. In addition, references to Section 29 and Section 44 have been added to several other provisions, as needed.

#### Expert witness testimony

MIFPA currently provides that an Indian child may be removed from a parent or Indian custodian, placed into a foster care placement, or, for an Indian child already taken into protective custody, remain removed from a parent or Indian custodian pending further proceedings, only upon clear and convincing evidence, *that includes testimony of at least one expert witness who has knowledge of child rearing practices of the Indian child's tribe*, that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, that those efforts were unsuccessful, and that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

The bill would delete the italicized portion. Regarding the "clear and convincing evidence" standard, the bill would specify that the "evidence must include the testimony of at least one qualified expert witness, who has knowledge of the child rearing practices of the Indian child's tribe, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child."

#### Voluntary guardianship

The bill clarifies that a provision pertaining to a parent or Indian custodian withdrawing consent for guardianship or a guardianship being terminated refers to "voluntary" guardianships.

#### Applicability of MIFPA

Currently, if a court discovers that a child may be an Indian child after a guardianship is ordered, the court is required to provide notice of the guardianship and the potential

applicability of the federal Indian Child Welfare Act to the tribe, the parents or Indian custodian, and the current guardian. The bill would require that notice of the potential applicability of the Michigan Indian Family Preservation Act be provided to the designated recipients, as well.

The bill takes effect 90 days after enactment.

MCL 712B.3 et al.

***HOUSE COMMITTEE ACTION:***

No changes were made to the Senate-passed version of the bill.

***ARGUMENTS:***

***For:***

The Michigan Indian Family Preservation Act (MIFPA) both clarifies and heightens awareness of the federal Indian Child Welfare Act (ICWA). MIFPA establishes standards and procedures for proceedings that involve an Indian child, including proceedings for custody, guardianship, and adoption to help protect and preserve Indian families and their unique culture. However, several provisions have been identified as needing tweaking for increased clarity and consistency with ICWA and also consistency in the application of MIFPA.

For instance, the bill will ensure that in cases in which a child is not identified as, or suspected to be, an Indian child until after guardianship has been ordered, notice that MIFPA (and not just ICWA) may apply to the guardianship must be given to the tribe, the parents or Indian custodian, and the current guardianship. The bill also clarifies the role of expert witness testimony as evidence in meeting the clear and convincing standard of proof in a proceeding to remove an Indian child in a neglect or abuse proceeding.

Importantly, the bill corrects and clarifies a provision pertaining to voluntary guardianships and voluntary consent placement of an Indian child for adoption. Specifically, the bill makes clear that an Indian custodian may voluntarily consent to a petition for guardianship, as can both parents, but that only a parent can consent to adoptive placement or consent to termination of his or her parental rights. Further, in executing that consent, the bill includes compliance to two sections in the Adoption Code that had been left out when MIFPA was first enacted. The Adoption Code contains the procedures and the protections for a parent or parents choosing to place a child up for adoption, including under which circumstances only one parent's consent is needed (e.g., the other parent's parental rights have previously been terminated by a court or voluntarily terminated). Including references to the provisions left out in the original legislation strengthens MIFPA and ensures proper compliance with Adoption Code requirements and protections.

***POSITIONS:***

A representative of the Nottawaseppi Huron Band of the Potawatomi testified in support of the bill. (2-2-16)

A representative of the Tribal State Federal Forum testified in support of the bill. (2-2-16)

The Saginaw Chippewa Indian Tribe indicated support for the bill. (2-2-16)

The Department of Health and Human Services indicated support for the bill. (2-2-16)

A resolution adopted by the United Tribes of Michigan in 2014 requesting technical amendments to MIFPA was submitted as an expression of support for the bill. (2-2-16)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.