

HOUSE BILL NO. 53
INTRODUCED BY N. BIXBY
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT; REQUIRING DISTRICT COURTS TO ENFORCE TRIBAL COURT CUSTODY ORDERS IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 40-7-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-7-135, MCA, is amended to read:

"40-7-135. Application to Indian tribes. (1) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

(2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, 40-7-134 through 40-7-140, and part 2 of this chapter.

(3) A child custody determination made by a tribe ~~under factual circumstances~~ in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under part 3 of this chapter. A tribal court child custody determination that is certified by the same tribe's tribal court judge as final and effective must be considered as being in substantial conformity with the jurisdictional standards of this chapter."

NEW SECTION. **Section 2. Contested validity or enforcement of tribal court custody order.** (1) A party against whom a tribal court custody determination is sought to be enforced under this chapter may contest the validity or enforcement of the order by proving one or more of the following defenses:

- (a) the issuing tribal court lacked personal subject matter jurisdiction over the contesting party;
- (b) the order was obtained by fraud;
- (c) the order has been vacated, suspended, or modified by a later order of a court of competent jurisdiction;
- (d) the issuing tribal court has stayed the order pending appeal;

- (e) there is a defense under the laws of this state to the remedy sought; or
- (f) the order was not certified as required by 40-7-135.

(2) If a party presents evidence establishing a full or partial defense under subsection (1), the district court may stay enforcement of the order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the order may be enforced by all remedies available under the laws of this state.

(3) If the contesting party does not establish a defense under subsection (1) to the validity or enforcement of the order, the district court shall issue an order confirming the contested order.

NEW SECTION. Section 3. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 40, chapter 4, and the provisions of Title 40, chapter 4, apply to [section 2].

NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

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