

SENATE NO. 108

AN ACT TO IMPROVE THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Section 1 of chapter 452 of the acts of 1963 is hereby amended by striking section
2 1 and inserting in place thereof the following:

3 A compact is hereby entered into with all Jurisdictions legally joining therein in substantially
4 the following form:

5 INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN

6 ARTICLE I. PURPOSE

7 The purpose of this compact is to:

- 8 A. Provide a process through which children subject to this compact are placed in safe and
9 suitable homes in a timely manner.
- 10 B. Facilitate ongoing supervision of a placement, the delivery of services, and
11 communication between the states.
- 12 C. Provide operating procedures that will ensure that children are placed in safe and
13 suitable homes in a timely manner.
- 14 D. Provide for the promulgation and enforcement of administrative rules implementing the
15 provisions of this compact and regulating the covered activities of the member states.

- 16 E. Provide for uniform data collection and information sharing between member states
17 under this compact.
- 18 F. Promote coordination between this compact, the Interstate Compact for Juveniles, the
19 Interstate Compact on Adoption and Medical Assistance and other compacts affecting
20 the placement of and which provide services to children otherwise subject to this
21 compact.
- 22 G. Provide for a state's continuing legal jurisdiction and responsibility for placement and
23 care of a child that it would have had if the placement were intrastate.
- 24 H. Provide for the promulgation of guidelines, in collaboration with Indian tribes, for
25 interstate cases involving Indian children as is or may be permitted by federal law.

26 ARTICLE II. DEFINITIONS

27 As used in this compact,

- 28 A. "Approved placement" means the receiving state has determined after an assessment that
29 the placement is both safe and suitable for the child and is in compliance with the
30 applicable laws of the receiving state governing the placement of children therein.
- 31 B. "Assessment" means an evaluation of a prospective placement to determine whether the
32 placement meets the individualized needs of the child, including but not limited to the
33 child's safety and stability, health and well-being, and mental, emotional and physical
34 development.
- 35 C. "Child" means an individual who has not attained the age of eighteen (18).
- 36 D. "Default" means the failure of a member state to perform the obligations or
37 responsibilities imposed upon it by this compact, the bylaws or rules of the Interstate
38 Commission.

- 39 E. “Indian tribe” means any Indian tribe, band, nation, or other organized group or
40 community of Indians recognized as eligible for services provided to Indians by the
41 Secretary of the Interior because of their status as Indians, including any Alaskan native
42 village as defined in section 3 (c) of the Alaska Native Claims settlement Act at 43 USC
43 §1602(c).
- 44 F. “Interstate Commission for the Placement of Children” means the commission that is
45 created under Article VIII of this compact and which is generally referred to as the
46 Interstate Commission.
- 47 G. “Jurisdiction” means the power and authority of a court to hear and decide matters.
- 48 H. “Member state” means a state that has enacted this compact.
- 49 I. “Non-custodial parent” means a person who, at the time of the commencement of court
50 proceedings in the sending state, does not have sole legal custody of the child or has
51 joint legal custody of a child, and who is not the subject of allegations or findings of
52 child abuse or neglect.
- 53 J. “Non-member state” means a state which has not enacted this compact.
- 54 K. “Notice of residential placement” means information regarding a placement into a
55 residential facility provided to the receiving state including, but not limited to the name,
56 date and place of birth of the child, the identity and address of the parent or legal
57 guardian, evidence of authority to make the placement, and the name and address of the
58 facility in which the child will be placed. Notice of residential placement shall also
59 include information regarding a discharge and any unauthorized absence from the
60 facility.

- 61 L. “Placement” means the act by a public or private child placing agency intended to
62 arrange for the care or custody of a child in another state.
- 63 M. “Private child placing agency” means any private corporation, agency, foundation,
64 institution, or charitable organization, or any private person or attorney that facilitates,
65 causes, or is involved in the placement of a child from one state to another and that is not
66 an instrumentality of the state or acting under color of state law.
- 67 N. “Provisional placement” means that the receiving state has determined that the proposed
68 placement is safe and suitable, and, to the extent allowable, the receiving state has
69 temporarily waived its standards or requirements otherwise applicable to prospective
70 foster or adoptive parents so as to not delay the placement. Completion of the receiving
71 state requirements regarding training for prospective foster or adoptive parents shall not
72 delay an otherwise safe and suitable placement.
- 73 O. “Public child placing agency” means any government child welfare agency or child
74 protection agency or a private entity under contract with such an agency, regardless of
75 whether they act on behalf of a state, county, municipality or other governmental unit
76 and which facilitates, causes, or is involved in the placement of a child from one state to
77 another.
- 78 P. “Receiving state” means the state to which a child is sent, brought, or caused to be sent
79 or brought.
- 80 Q. “Relative” means someone who is related to the child as a parent, step-parent, sibling by
81 half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin or a non-
82 relative with such significant ties to the child that they may be regarded as relatives as
83 determined by the court in the sending state.

- 84 R. “Residential Facility” means a facility providing a level of care that is sufficient to
85 substitute for parental responsibility or foster care, and is beyond what is needed for
86 assessment or treatment of an acute condition. For purposes of the compact, residential
87 facilities do not include institutions primarily educational in character, hospitals or other
88 medical facilities.
- 89 S. “Rule” means a written directive, mandate, standard or principle issued by the Interstate
90 Commission promulgated pursuant to Article XI of this compact that is of general
91 applicability and that implements, interprets or prescribes a policy or provision of the
92 compact. “Rule” has the force and effect of statutory law in a member state, and includes
93 the amendment, repeal, or suspension of an existing rule.
- 94 T. “Sending state” means the state from which the placement of a child is initiated.
- 95 U. “Service member’s permanent duty station” means the military installation where an
96 active duty Armed Services member is currently assigned and is physically located
97 under competent orders that do not specify the duty as temporary.
- 98 V. “Service member’s state of legal residence” means the state in which the active duty
99 Armed Services member is considered a resident for tax and voting purposes.
- 100 W. “State” means a state of the United States, the District of Columbia, the Commonwealth
101 of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas
102 Islands and any other territory of the United States.
- 103 X. “State court” means a judicial body of a state that is vested by law with responsibility for
104 adjudicating cases involving abuse, neglect, deprivation, delinquency or status offenses
105 of individuals who have not attained the age of eighteen (18).

106 Y. "Supervision" means monitoring provided by the receiving state once a child has been
107 placed in a receiving state pursuant to this compact.

108 ARTICLE III. APPLICABILITY

109 A. Except as otherwise provided in Article III, Section B, this compact shall apply to:

110 1. The interstate placement of a child subject to ongoing court jurisdiction in the
111 sending state, due to allegations or findings that the child has been abused,
112 neglected, or deprived as defined by the laws of the sending state, provided,
113 however, that the placement of such a child into a residential facility shall only
114 require notice of residential placement to the receiving state prior to placement.

115 2. The interstate placement of a child adjudicated delinquent or unmanageable based on
116 the laws of the sending state and subject to ongoing court jurisdiction of the sending
117 state if:

118 a. the child is being placed in a residential facility in another
119 member state and is not covered under another compact; or

120 b. the child is being placed in another member state and the determination of safety
121 and suitability of the placement and services required is not provided through
122 another compact.

123 3. The interstate placement of any child by a public child placing agency or private child
124 placing agency as defined in this compact as a preliminary step to a possible
125 adoption.

126 B. The provisions of this compact shall not apply to:

- 127 1. The interstate placement of a child with a non-relative in a receiving state by a parent
128 with the legal authority to make such a placement provided, however, that the
129 placement is not intended to effectuate an adoption.
- 130 2. The interstate placement of a child by one relative with the lawful authority to make
131 such a placement directly with a relative in a receiving state.
- 132 3. The placement of a child, not subject to Article III, Section A, into a residential
133 facility by his parent.
- 134 4. The placement of a child with a non-custodial parent provided that:
- 135 a. The non-custodial parent proves to the satisfaction of a court in the sending state
136 a substantial relationship with the child; and
- 137 b. The court in the sending state makes a written finding that placement with the
138 non-custodial parent is in the best interests of the child; and
- 139 c. The court in the sending state dismisses its jurisdiction over the child's case.
- 140 5. A child entering the United States from a foreign country for the purpose of adoption
141 or leaving the United States to go to a foreign country for the purpose of adoption in
142 that country.
- 143 6. Cases in which a U.S. citizen child living overseas with his family, at least one of
144 whom is in the U.S. Armed Services, and who is stationed overseas, is removed and
145 placed in a state.
- 146 7. The sending of a child by a public child placing agency or a private child placing
147 agency for a visit as defined by the rules of the Interstate Commission.
- 148 C. For purposes of determining the applicability of this compact to the placement of a child
149 with a family in the Armed Services, the public child placing agency or private child

150 placing agency may choose the state of the service member's permanent duty station or
151 the service member's declared legal residence.

152 D. Nothing in this compact shall be construed to prohibit the concurrent application of the
153 provisions of this compact with other applicable interstate compacts including the
154 Interstate Compact for Juveniles and the Interstate Compact on Adoption and Medical
155 Assistance. The Interstate Commission may in cooperation with other interstate compact
156 commissions having responsibility for the interstate movement, placement or transfer of
157 children, promulgate like rules to ensure the coordination of services, timely placement
158 of children, and the reduction of unnecessary or duplicative administrative or procedural
159 requirements.

160 ARTICLE IV. JURISDICTION

161 A. The sending state shall retain jurisdiction over a child with respect to all matters of
162 custody and disposition of the child which it would have had if the child had remained in
163 the sending state. Such jurisdiction shall also include the power to order the return of the
164 child to the sending state.

165 B. When an issue of child protection or custody is brought before a court in the receiving
166 state, such court shall confer with the court of the sending state to determine the most
167 appropriate forum for adjudication.

168 C. In accordance with its own laws, the court in the sending state shall have authority to
169 terminate its jurisdiction if:

170 1. The child is reunified with the parent in the receiving state who is the subject of
171 allegations or findings of abuse or neglect, only with the concurrence of the public
172 child placing agency in the receiving state; or

- 173 2. The child is adopted; or
- 174 3. The child reaches the age of majority under the laws of the sending state; or
- 175 4. The child achieves legal independence pursuant to the laws of the sending state; or
- 176 5. A guardianship is created by a court in the receiving state with the concurrence of
- 177 the court in the sending state; or
- 178 6. An Indian tribe has petitioned for and received jurisdiction from the court in the
- 179 sending state; or
- 180 7. The public child placing agency of the sending state requests termination and has
- 181 obtained the concurrence of the public child placing agency in the receiving the
- 182 state.

183 D. When a sending state court terminates its jurisdiction, the receiving state child placing

184 agency shall be notified.

185 E. Nothing in this article shall defeat a claim of jurisdiction by a receiving state court

186 sufficient to deal with an act of truancy, delinquency, crime or behavior involving a

187 child as defined by the laws of the receiving state committed by the child in the

188 receiving state which would be a violation of its laws.

189 F. Nothing in this article shall limit the receiving state's ability to take emergency

190 jurisdiction for the protection of the child.

191 ARTICLE V. ASSESSMENTS

192 A. Prior to sending, bringing, or causing a child to be sent or brought into a receiving state,

193 the public child placing agency shall provide a written request for assessment to the

194 receiving state.

- 195 B. Prior to the sending, bringing, or causing a child to be sent or brought into a receiving
196 state, the private child placing agency shall:
- 197 1. Provide evidence that the applicable laws of the sending state have been complied
198 with; and
 - 199 2. Certification that the consent or relinquishment is in compliance with applicable law
200 of the birth parent's state of residence or, where permitted, the laws of the state of
201 where the finalization of the adoption will occur; and
 - 202 3. Request through the public child placing agency in the sending state an assessment
203 to be conducted in the receiving state; and
 - 204 4. Upon completion of the assessment, obtain the approval of the public child placing
205 agency in the receiving state.
- 206 C. The procedures for making and the request for an assessment shall contain all
207 information and be in such form as provided for in the rules of the Interstate
208 Commission.
- 209 D. Upon receipt of a request from the public child welfare agency of the sending state, the
210 receiving state shall initiate an assessment of the proposed placement to determine its
211 safety and suitability. If the proposed placement is a placement with a relative, the
212 public child placing agency of the sending state may request a determination of whether
213 the placement qualifies as a provisional placement.
- 214 E. The public child placing agency in the receiving state may request from the public child
215 placing agency or the private child placing agency in the sending state, and shall be
216 entitled to receive supporting or additional information necessary to complete the
217 assessment.

218 F. The public child placing agency in the receiving state shall complete or arrange for the
219 completion of the assessment within the timeframes established by the rules of the
220 Interstate Commission.

221 G. The Interstate Commission may develop uniform standards for the assessment of the
222 safety and suitability of interstate placements.

223 ARTICLE VI. PLACEMENT AUTHORITY

224 A. Except as provided in Article VI, Section C, no child subject to this compact shall be
225 placed into a receiving state until approval for such placement is obtained.

226 B. If the public child placing agency in the receiving state does not approve the proposed
227 placement then the child shall not be placed. The receiving state shall provide written
228 documentation of any such determination in accordance with the rules promulgated by
229 the Interstate Commission. Such determination is not subject to judicial review in the
230 sending state.

231 C. If the proposed placement is not approved, any interested party shall have standing to
232 seek an administrative review of the receiving state's determination.

233 1. The administrative review and any further judicial review associated with the
234 determination shall be conducted in the receiving state pursuant to its applicable
235 administrative procedures.

236 2. If a determination not to approve the placement of the child in the receiving state is
237 overturned upon review, the placement shall be deemed approved, provided however
238 that all administrative or judicial remedies have been exhausted or the time for such
239 remedies has passed.

240 ARTICLE VII. STATE RESPONSIBILITY

- 241 A. For the interstate placement of a child made by a public child placing agency or state
242 court:
- 243 1. The public child placing agency in the sending state shall have financial
244 responsibility for:
- 245 a. the ongoing support and maintenance for the child during the period of the
246 placement, unless otherwise provided for in the receiving state; and
- 247 b. as determined by the public child placing agency in the sending state, services for
248 the child beyond the public services for which the child is eligible in the
249 receiving state.
- 250 2. The receiving state shall only have financial responsibility for:
- 251 a. any assessment conducted by the receiving state; and
- 252 b. supervision conducted by the receiving state at the level necessary to support the
253 placement as agreed upon by the public child placing agencies of the receiving
254 and sending state.
- 255 3. Nothing in this provision shall prohibit public child placing agencies in the sending
256 state from entering into agreements with licensed agencies or persons in the
257 receiving state to conduct assessments and provide supervision.
- 258 B. For the placement of a child by a private child placing agency preliminary to a possible
259 adoption, the private child placing agency shall be:
- 260 1. Legally responsible for the child during the period of placement as provided for in
261 the law of the sending state until the finalization of the adoption.
- 262 2. Financially responsible for the child absent a contractual agreement to the contrary.

- 263 C. A private child placing agency shall be responsible for any assessment conducted in the
264 receiving state and any supervision conducted by the receiving state at the level required
265 by the laws of the receiving state or the rules of the Interstate Commission.
- 266 D. The public child placing agency in the receiving state shall provide timely assessments,
267 as provided for in the rules of the Interstate Commission.
- 268 E. The public child placing agency in the receiving state shall provide, or arrange for the
269 provision of, supervision and services for the child, including timely reports, during the
270 period of the placement.
- 271 F. Nothing in this compact shall be construed as to limit the authority of the public child
272 placing agency in the receiving state from contracting with a licensed agency or person
273 in the receiving state for an assessment or the provision of supervision or services for the
274 child or otherwise authorizing the provision of supervision or services by a licensed
275 agency during the period of placement.
- 276 G. Each member state shall provide for coordination among its branches of government
277 concerning the state's participation in, and compliance with, the compact and Interstate
278 Commission activities, through the creation of an advisory council or use of an existing
279 body or board.
- 280 H. Each member state shall establish a central state compact office, which shall be
281 responsible for state compliance with the compact and the rules of the Interstate
282 Commission.
- 283 I. The public child placing agency in the sending state shall oversee compliance with the
284 provisions of the Indian Child Welfare Act (25 USC 1901 et seq.) for placements subject
285 to the provisions of this compact, prior to placement.

286 J. With the consent of the Interstate Commission, states may enter into limited agreements
287 that facilitate the timely assessment and provision of services and supervision of
288 placements under this compact.

289 ARTICLE VIII. INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN

290 The member states hereby establish, by way of this compact, a commission known as the
291 “Interstate Commission for the Placement of Children.” The activities of the Interstate
292 Commission are the formation of public policy and are a discretionary state function. The
293 Interstate Commission shall:

294 A. Be a joint commission of the member states and shall have the responsibilities, powers
295 and duties set forth herein, and such additional powers as may be conferred upon it by
296 subsequent concurrent action of the respective legislatures of the member states.

297 B. Consist of one commissioner from each member state who shall be appointed by the
298 executive head of the state human services administration with ultimate responsibility
299 for the child welfare program. The appointed commissioner shall have the legal
300 authority to vote on policy related matters governed by this compact binding the state.

301 1. Each member state represented at a meeting of the Interstate Commission is entitled
302 to one vote.

303 2. A majority of the member states shall constitute a quorum for the transaction of
304 business, unless a larger quorum is required by the bylaws of the Interstate
305 Commission.

306 3. A representative shall not delegate a vote to another member state.

307 4. A representative may delegate voting authority to another person from their state for
308 a specified meeting.

309 C. In addition to the commissioners of each member state, the Interstate Commission shall
310 include persons who are members of interested organizations as defined in the bylaws or
311 rules of the Interstate Commission. Such members shall be ex officio and shall not be
312 entitled to vote on any matter before the Interstate Commission.

313 D. Establish an executive committee which shall have the authority to administer the day-
314 to-day operations and administration of the Interstate Commission. It shall not have the
315 power to engage in rulemaking.

316 ARTICLE IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

317 The Interstate Commission shall have the following powers:

318 A. To promulgate rules and take all necessary actions to effect the goals, purposes and
319 obligations as enumerated in this compact.

320 B. To provide for dispute resolution among member states.

321 C. To issue, upon request of a member state, advisory opinions concerning the meaning or
322 interpretation of the interstate compact, its bylaws, rules or actions.

323 D. To enforce compliance with this compact or the bylaws or rules of the Interstate
324 Commission pursuant to Article XII.

325 E. Collect standardized data concerning the interstate placement of children subject to this
326 compact as directed through its rules which shall specify the data to be collected, the
327 means of collection and data exchange and reporting requirements.

328 F. To establish and maintain offices as may be necessary for the transacting of its business.

329 G. To purchase and maintain insurance and bonds.

- 330 H. To hire or contract for services of personnel or consultants as necessary to carry out its
331 functions under the compact and establish personnel qualification policies, and rates of
332 compensation.
- 333 I. To establish and appoint committees and officers including, but not limited to, an
334 executive committee as required by Article X.
- 335 J. To accept any and all donations and grants of money, equipment, supplies, materials,
336 and services, and to receive, utilize, and dispose thereof.
- 337 K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold,
338 improve or use any property, real, personal, or mixed.
- 339 L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of
340 any property, real, personal or mixed.
- 341 M. To establish a budget and make expenditures.
- 342 N. To adopt a seal and bylaws governing the management and operation of the Interstate
343 Commission.
- 344 O. To report annually to the legislatures, governors, the judiciary, and state advisory
345 councils of the member states concerning the activities of the Interstate Commission
346 during the preceding year. Such reports shall also include any recommendations that
347 may have been adopted by the Interstate Commission.
- 348 P. To coordinate and provide education, training and public awareness regarding the
349 interstate movement of children for officials involved in such activity.
- 350 Q. To maintain books and records in accordance with the bylaws of the Interstate
351 Commission.

352 R. To perform such functions as may be necessary or appropriate to achieve the purposes of
353 this compact.

354 ARTICLE X. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

355 A. Bylaws

356 1. Within 12 months after the first Interstate Commission meeting, the Interstate
357 Commission shall adopt bylaws to govern its conduct as may be necessary or
358 appropriate to carry out the purposes of the compact.

359 2. The Interstate Commission's bylaws and rules shall establish conditions and
360 procedures under which the Interstate Commission shall make its information and
361 official records available to the public for inspection or copying. The Interstate
362 Commission may exempt from disclosure information or official records to the
363 extent they would adversely affect personal privacy rights or proprietary interests.

364 B. Meetings

365 1. The Interstate Commission shall meet at least once each calendar year. The
366 chairperson may call additional meetings and, upon the request of a simple majority
367 of the member states shall call additional meetings.

368 2. Public notice shall be given by the Interstate Commission of all meetings and all
369 meetings shall be open to the public, except as set forth in the rules or as otherwise
370 provided in the compact. The Interstate Commission and its committees may close a
371 meeting, or portion thereof, where it determines by two-thirds vote that an open
372 meeting would be likely to:

373 a. relate solely to the Interstate Commission's internal personnel practices and
374 procedures; or

- 375 b. disclose matters specifically exempted from disclosure by federal law; or
- 376 c. disclose financial or commercial information which is privileged, proprietary or
- 377 confidential in nature; or
- 378 d. involve accusing a person of a crime, or formally censuring a person; or
- 379 e. disclose information of a personal nature where disclosure would constitute a
- 380 clearly unwarranted invasion of personal privacy or physically endanger one or
- 381 more persons; or
- 382 f. disclose investigative records compiled for law enforcement purposes; or
- 383 g. specifically relate to the Interstate Commission's participation in a civil action or
- 384 other legal proceeding.
- 385 3. For a meeting, or portion of a meeting, closed pursuant to this provision, the
- 386 Interstate Commission's legal counsel or designee shall certify that the meeting may
- 387 be closed and shall reference each relevant exemption provision. The Interstate
- 388 Commission shall keep minutes which shall fully and clearly describe all matters
- 389 discussed in a meeting and shall provide a full and accurate summary of actions
- 390 taken, and the reasons therefore, including a description of the views expressed and
- 391 the record of a roll call vote. All documents considered in connection with an action
- 392 shall be identified in such minutes. All minutes and documents of a closed meeting
- 393 shall remain under seal, subject to release by a majority vote of the Interstate
- 394 Commission or by court order.
- 395 4. The bylaws may provide for meetings of the Interstate Commission to be conducted
- 396 by telecommunication or other electronic communication.

397 C. Officers and Staff

- 398 1. The Interstate Commission may, through its executive committee, appoint or retain a
399 staff director for such period, upon such terms and conditions and for such
400 compensation as the Interstate Commission may deem appropriate. The staff
401 director shall serve as secretary to the Interstate Commission, but shall not have a
402 vote. The staff director may hire and supervise such other staff as may be authorized
403 by the Interstate Commission.
- 404 2. The Interstate Commission shall elect, from among its members, a chairperson and a
405 vice chairperson of the executive committee and other necessary officers, each of
406 whom shall have such authority and duties as may be specified in the bylaws.

407 D. Qualified Immunity, Defense and Indemnification

- 408 1. The Interstate Commission's staff director and its employees shall be immune from
409 suit and liability, either personally or in their official capacity, for a claim for
410 damage to or loss of property or personal injury or other civil liability caused or
411 arising out of or relating to an actual or alleged act, error, or omission that occurred,
412 or that such person had a reasonable basis for believing occurred within the scope of
413 Commission employment, duties, or responsibilities; provided, that such person shall
414 not be protected from suit or liability for damage, loss, injury, or liability caused
415 by a criminal act or the intentional or willful and wanton misconduct of such person.
- 416 a. The liability of the Interstate Commission's staff director and employees or
417 Interstate Commission representatives, acting within the scope of such person's
418 employment or duties for acts, errors, or omissions occurring within such
419 person's state may not exceed the limits of liability set forth under the
420 Constitution and laws of that state for state officials, employees, and agents. The

421 Interstate Commission is considered to be an instrumentality of the states for the
422 purposes of any such action. Nothing in this subsection shall be construed to
423 protect such person from suit or liability for damage, loss, injury, or liability
424 caused by a criminal act or the intentional or willful and wanton misconduct of
425 such person.

426 b. The Interstate Commission shall defend the staff director and its employees and,
427 subject to the approval of the Attorney General or other appropriate legal counsel
428 of the member state shall defend the commissioner of a member state in a civil
429 action seeking to impose liability arising out of an actual or alleged act, error or
430 omission that occurred within the scope of Interstate Commission employment,
431 duties or responsibilities, or that the defendant had a reasonable basis for
432 believing occurred within the scope of Interstate Commission employment,
433 duties, or responsibilities, provided that the actual or alleged act, error, or
434 omission did not result from intentional or willful and wanton misconduct on the
435 part of such person.

436 c. To the extent not covered by the state involved, member state, or the Interstate
437 Commission, the representatives or employees of the Interstate Commission shall
438 be held harmless in the amount of a settlement or judgment, including attorney's
439 fees and costs, obtained against such persons arising out of an actual or alleged
440 act, error, or omission that occurred within the scope of Interstate Commission
441 employment, duties, or responsibilities, or that such persons had a reasonable
442 basis for believing occurred within the scope of Interstate Commission
443 employment, duties, or responsibilities, provided that the actual or alleged act,

444 error, or omission did not result from intentional or willful and wanton
445 misconduct on the part of such persons.

446 ARTICLE XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

447 A. The Interstate Commission shall promulgate and publish rules in order to effectively and
448 efficiently achieve the purposes of the compact.

449 B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws
450 and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the
451 principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws
452 Annotated, Vol. 15, p.1 (2000), or such other administrative procedure acts as the
453 Interstate Commission deems appropriate consistent with due process requirements
454 under the United States Constitution as now or hereafter interpreted by the U. S.
455 Supreme Court. All rules and amendments shall become binding as of the date
456 specified, as published with the final version of the rule as approved by the Interstate
457 Commission.

458 C. When promulgating a rule, the Interstate Commission shall, at a minimum:

- 459 1. Publish the proposed rule's entire text stating the reason(s) for that proposed rule;
460 and
- 461 2. Allow and invite any and all persons to submit written data, facts, opinions and
462 arguments, which information shall be added to the record, and be made publicly
463 available; and
- 464 3. Promulgate a final rule and its effective date, if appropriate, based on input from
465 state or local officials, or interested parties.

466 D. Rules promulgated by the Interstate Commission shall have the force and effect of
467 statutory law and shall supersede any state law, rule or regulation to the extent of any
468 conflict.

469 E. Not later than 60 days after a rule is promulgated, an interested person may file a
470 petition in the U.S. District Court for the District of Columbia or in the Federal District
471 Court where the Interstate Commission's principal office is located for judicial review of
472 such rule. If the court finds that the Interstate Commission's action is not supported by
473 substantial evidence in the rulemaking record, the court shall hold the rule unlawful and
474 set it aside.

475 F. If a majority of the legislatures of the member states rejects a rule, those states may by
476 enactment of a statute or resolution in the same manner used to adopt the compact cause
477 that such rule shall have no further force and effect in any member state.

478 G. The existing rules governing the operation of the Interstate Compact on the Placement of
479 Children superseded by this act shall be null and void no less than 12, but no more than
480 24 months after the first meeting of the Interstate Commission created hereunder, as
481 determined by the members during the first meeting.

482 H. Within the first 12 months of operation, the Interstate Commission shall promulgate
483 rules addressing the following:

- 484 1. Transition rules
- 485 2. Forms and procedures
- 486 3. Time lines
- 487 4. Data collection and reporting
- 488 5. Rulemaking

- 489 6. Visitation
- 490 7. Progress reports/supervision
- 491 8. Sharing of information/confidentiality
- 492 9. Financing of the Interstate Commission
- 493 10. Mediation, arbitration and dispute resolution
- 494 11. Education, training and technical assistance
- 495 12. Enforcement
- 496 13. Coordination with other interstate compacts
- 497 I. Upon determination by a majority of the members of the Interstate Commission that an
- 498 emergency exists:
- 499 1. The Interstate Commission may promulgate an emergency rule only if it is required
- 500 to:
- 501 a. Protect the children covered by this compact from an imminent threat to their
- 502 health, safety and well-being; or
- 503 b. Prevent loss of federal or state funds; or
- 504 c. Meet a deadline for the promulgation of an administrative rule required by federal
- 505 law.
- 506 2. An emergency rule shall become effective immediately upon adoption, provided that
- 507 the usual rulemaking procedures provided hereunder shall be retroactively applied to
- 508 said rule as soon as reasonably possible, but no later than 90 days after the effective
- 509 date of the emergency rule.
- 510 3. An emergency rule shall be promulgated as provided for in the rules of the Interstate
- 511 Commission.

512 ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

513 A. Oversight

514 1. The Interstate Commission shall oversee the administration and operations of the
515 compact.

516 2. The executive, legislative and judicial branches of state government in each member
517 state shall enforce this compact and the rules of the Interstate Commission and shall
518 take all actions necessary and appropriate to effectuate the compact's purposes and
519 intent. The compact and its rules shall supercede state law, rules or regulations to
520 the extent of any conflict therewith.

521 3. All courts shall take judicial notice of the compact and the rules in any judicial or
522 administrative proceeding in a member state pertaining to the subject matter of this
523 compact.

524 4. The Interstate Commission shall be entitled to receive service of process in any
525 action in which the validity of a compact provision or rule is the issue for which a
526 judicial determination has been sought and shall have standing to intervene in any
527 proceedings. Failure to provide service of process to the Interstate Commission shall
528 render any judgment, order or other determination, however so captioned or
529 classified, void as to the Interstate Commission, this compact, its bylaws or rules of
530 the Interstate Commission.

531 B. Dispute Resolution

532 1. The Interstate Commission shall attempt, upon the request of a member state, to
533 resolve disputes which are subject to the compact and which may arise among
534 member states and between member and non-member states.

535 2. The Interstate Commission shall promulgate a rule providing for both mediation and
536 binding dispute resolution for disputes among compacting states. The costs of such
537 mediation or dispute resolution shall be the responsibility of the parties to the
538 dispute.

539 C. Enforcement

540 1. If the Interstate Commission determines that a member state has defaulted in the
541 performance of its obligations or responsibilities under this compact, its bylaws or
542 rules, the Interstate Commission may:

- 543 a. Provide remedial training and specific technical assistance; or
- 544 b. Provide written notice to the defaulting state and other member states, of the
545 nature of the default and the means of curing the default. The Interstate
546 Commission shall specify the conditions by which the defaulting state must cure
547 its default; or
- 548 c. By majority vote of the members, initiate against a defaulting member state legal
549 action in the United State District Court for the District of Columbia or, at the
550 discretion of the Interstate Commission, in the federal district where the
551 Interstate Commission has its principal offices, to enforce compliance with the
552 provisions of the compact, its bylaws or rules. The relief sought may include
553 both injunctive relief and damages. In the event judicial enforcement is necessary
554 the prevailing party shall be awarded all costs of such litigation including
555 reasonable attorney's fees; or
- 556 d. Avail itself of any other remedies available under state law or the regulation of
557 official or professional conduct.

558 ARTICLE XIII. FINANCING OF THE COMMISSION

559 A. The Interstate Commission shall pay, or provide for the payment of the reasonable
560 expenses of its establishment, organization and ongoing activities.

561 B. The Interstate Commission may levy on and collect an annual assessment from each
562 member state to cover the cost of the operations and activities of the Interstate
563 Commission and its staff which must be in a total amount sufficient to cover the
564 Interstate Commission's annual budget as approved by its members each year. The
565 aggregate annual assessment amount shall be allocated based upon a formula to be
566 determined by the Interstate Commission which shall promulgate a rule binding upon all
567 member states.

568 C. The Interstate Commission shall not incur obligations of any kind prior to securing the
569 funds adequate to meet the same; nor shall the Interstate Commission pledge the credit
570 of any of the member states, except by and with the authority of the member state.

571 D. The Interstate Commission shall keep accurate accounts of all receipts and
572 disbursements. The receipts and disbursements of the Interstate Commission shall be
573 subject to the audit and accounting procedures established under its bylaws. However,
574 all receipts and disbursements of funds handled by the Interstate Commission shall be
575 audited yearly by a certified or licensed public accountant and the report of the audit
576 shall be included in and become part of the annual report of the Interstate Commission.

577 ARTICLE XIV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

578 A. Any state is eligible to become a member state.

579 B. The compact shall become effective and binding upon legislative enactment of the
580 compact into law by no less than 35 states. The effective date shall be the later of July 1,

581 2007 or upon enactment of the compact into law by the 35th state. Thereafter it shall
582 become effective and binding as to any other member state upon enactment of the
583 compact into law by that state. The governors of non-member states or their designees
584 shall be invited to participate in the activities of the Interstate Commission on a non-
585 voting basis prior to adoption of the compact by all states.

586 C. The Interstate Commission may propose amendments to the compact for enactment by
587 the member states. No amendment shall become effective and binding on the member
588 states unless and until it is enacted into law by unanimous consent of the member states.

589 ARTICLE XV. WITHDRAWAL AND DISSOLUTION

590 A. Withdrawal

591 1. Once effective, the compact shall continue in force and remain binding upon each
592 and every member state; provided that a member state may withdraw from the
593 compact specifically repealing the statute which enacted the compact into law.

594 2. Withdrawal from this compact shall be by the enactment of a statute repealing the
595 same. The effective date of withdrawal shall be the effective date of the repeal of the
596 statute.

597 3. The withdrawing state shall immediately notify the president of the Interstate
598 Commission in writing upon the introduction of legislation repealing this compact in
599 the withdrawing state. The Interstate Commission shall then notify the other
600 member states of the withdrawing state's intent to withdraw.

601 4. The withdrawing state is responsible for all assessments, obligations and liabilities
602 incurred through the effective date of withdrawal.

603 5. Reinstatement following withdrawal of a member state shall occur upon the
604 withdrawing state reenacting the compact or upon such later date as determined by
605 the members of the Interstate Commission.

606 B. Dissolution of Compact

607 1. This compact shall dissolve effective upon the date of the withdrawal or default of
608 the member state which reduces the membership in the compact to one member
609 state.

610 2. Upon the dissolution of this compact, the compact becomes null and void and shall
611 be of no further force or effect, and the business and affairs of the Interstate
612 Commission shall be concluded and surplus funds shall be distributed in accordance
613 with the bylaws.

614 ARTICLE XVI. SEVERABILITY AND CONSTRUCTION

615 A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or
616 provision is deemed unenforceable, the remaining provisions of the compact shall be
617 enforceable.

618 B. The provisions of this compact shall be liberally construed to effectuate its purposes.

619 C. Nothing in this compact shall be construed to prohibit the concurrent applicability of
620 other interstate compacts to which the states are members.

621 ARTICLE XVII. BINDING EFFECT OF COMPACT AND OTHER LAWS

622 A. Other Laws

623 1. Nothing herein prevents the enforcement of any other law of a member state that is
624 not inconsistent with this compact.

625 2. All member states' laws conflicting with this compact or its rules are superseded to
626 the extent of the conflict.

627 B. Binding Effect of the Compact

628 1. All lawful actions of the Interstate Commission, including all rules and bylaws
629 promulgated by the Interstate Commission, are binding upon the member states.

630 2. All agreements between the Interstate Commission and the member states are
631 binding in accordance with their terms.

632 3. In the event any provision of this compact exceeds the constitutional limits imposed
633 on the legislature of any member state, such provision shall be ineffective to the
634 extent of the conflict with the constitutional provision in question in that member
635 state.

636 ARTICLE XVIII. INDIAN TRIBES

637 Notwithstanding any other provision in this compact, the Interstate Commission may
638 promulgate guidelines to permit Indian tribes to utilize the compact to achieve any or all
639 of the purposes of the compact as specified in Article I. The Interstate Commission shall
640 make reasonable efforts to consult with Indian tribes in promulgating guidelines to
641 reflect the diverse circumstances of the various Indian tribes.

642 SECTION 2: Section 3 of chapter 452 of the acts of 1963 is hereby amended by striking the
643 word “Article V” and inserting in place thereof the following word “Article VII”.

644 SECTION 3: Section 4 of chapter 452 of the acts of 1963 is hereby amended by striking section
645 4 and inserting in place thereof the following:

646 The state Department of Social Services shall be the central state compact office as that
647 term is used in Article VII (H) of the interstate compact on the placement of children.

648 SECTION 4: Section 5 of chapter 452 of the acts of 1963 is hereby amended by striking the
649 word “Article V(b)” and inserting in place thereof the following words “Article VII(A)(3) and
650 VII(F)”.

651 SECTION 5: Section 6 of chapter 452 of the acts of 1963 is hereby amended by striking the
652 words “sections fourteen, fifteen and sixteen of said chapter on hundred and nineteen” and
653 inserting in place thereof the following words “the laws of the Commonwealth”.

654 SECTION 6: Section 6 of chapter 452 of the acts of 1963 is hereby further amended by
655 striking the word “Article V(b)” and inserting in place thereof the word “Article VII(A)(3).

656 SECTION 7: Section 7 of chapter 452 of the acts of 1963 is hereby further amended by striking
657 the words “Article VI” and “Article I” and inserting in place thereof the words “Article III(2)”
658 and “Article III(2)” respectively.

659 SECTION 8: Section 8 of chapter 452 of the acts of 1963 is hereby repealed.