

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

D

SENATE DRS65205-LU-76 (3/12)

Short Title: Adopt New Interstate Compact/Child Placement. (Public)

Sponsors: Senator Boseman.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ADOPT A NEW INTERSTATE COMPACT FOR THE PLACEMENT
OF CHILDREN.

The General Assembly of North Carolina enacts:

SECTION 1. Article 38 of Chapter 7B of the General Statutes is repealed.

SECTION 2. Chapter 7B of the General Statutes is amended by adding the
following new Article to read:

"Article 41.

"Interstate Compact for the Placement of Children.

"§7B-4100. Adoption of Compact.

The Interstate Compact for the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in a form substantially as contained in this Article. It is the intent of the General Assembly that Article 37 of this Chapter shall govern interstate placements of children between North Carolina and any other jurisdictions not a party to this Compact. It is the intent of the General Assembly that Chapter 48 of the General Statutes shall govern the adoption of children within the boundaries of North Carolina.

Article I. Purpose.

The purpose of this Interstate Compact for the Placement of Children is to:

(a) Provide a process through which children subject to this Compact are placed in safe and suitable homes in a timely manner.

(b) Facilitate ongoing supervision of a placement, the delivery of services, and communication between the states.

(c) Provide operating procedures that will ensure that children are placed in safe and suitable homes in a timely manner.

1 (d) Provide for the promulgation and enforcement of administrative rules
2 implementing the provisions of this Compact and regulating the covered activities of the
3 member states.

4 (e) Provide for uniform data collection and information sharing between member
5 states under this Compact.

6 (f) Promote coordination between this Compact, the Interstate Compact for
7 Juveniles, the Interstate Compact on Adoption and Medical Assistance, and other
8 compacts affecting the placement of and which provide services to children otherwise
9 subject to this Compact.

10 (g) Provide for a state's continuing legal jurisdiction and responsibility for
11 placement and care of a child that it would have had if the placement were intrastate.

12 (h) Provide for the promulgation of guidelines, in collaboration with Indian
13 tribes, for interstate cases involving Indian children as is or may be permitted by federal
14 law.

15 Article II. Definitions.

16 As used in this Compact:

17
18
19 (a) 'Approved placement' means the receiving state has determined after an
20 assessment that the placement is both safe and suitable for the child and is in
21 compliance with the applicable laws of the receiving state governing the placement of
22 children therein.

23 (b) 'Assessment' means an evaluation of a prospective placement to determine
24 whether the placement meets the individualized needs of the child, including the child's
25 safety and stability, health and well-being, and mental, emotional, and physical
26 development.

27 (c) 'Child' means an individual who has not attained the age of 18.

28 (d) 'Default' means the failure of a member state to perform the obligations or
29 responsibilities imposed upon it by this Compact or the bylaws or rules of the Interstate
30 Commission.

31 (e) 'Indian tribe' means any Indian tribe, band, nation, or other organized group
32 or community of Indians recognized as eligible for services provided to Indians by the
33 Secretary of the Interior because of their status as Indians, including any Alaskan native
34 village as defined in Section 3(c) of the Alaska Native Claims Settlement Act at 43
35 U.S.C. § 1602(c).

36 (f) 'Interstate Commission for the Placement of Children' means the commission
37 that is created under Article VIII of this Compact and which is generally referred to as
38 the 'Interstate Commission'.

39 (g) 'Jurisdiction' means the power and authority of a court to hear and decide
40 matters.

41 (h) 'Member state' means a state that has enacted this Compact.

42 (i) 'Noncustodial parent' means a person who, at the time of the commencement
43 of court proceedings in the sending state, does not have sole legal custody of the child

1 or has joint legal custody of a child, and who is not the subject of allegations or findings
2 of child abuse or neglect.

3 (j) 'Nonmember state' means a state which has not enacted this Compact.

4 (k) 'Notice of residential placement' means information regarding a placement
5 into a residential facility provided to the receiving state, including the name, date, and
6 place of birth of the child, the identity and address of the parent or legal guardian,
7 evidence of authority to make the placement, and the name and address of the facility in
8 which the child will be placed. Notice of residential placement shall also include
9 information regarding a discharge and any unauthorized absence from the facility.

10 (l) 'Placement' means the act by a public or private child placing agency intended
11 to arrange for the care or custody of a child in another state.

12 (m) 'Private child placing agency' means any private corporation agency,
13 foundation, institution, or charitable organization, or any private person or attorney that
14 facilitates, causes, or is involved in the placement of a child from one state to another
15 and that is not an instrumentality of the state or acting under color of state law.

16 (n) 'Public child placing agency' means any government child welfare agency or
17 child protection agency or a private entity under contract with such an agency,
18 regardless of whether they act on behalf of a state, county, municipality, or other
19 governmental unit and which facilitates, causes, or is involved in the placement of a
20 child from one state to another.

21 (o) 'Receiving state' means the state to which a child is sent, brought, or caused to
22 be sent or brought.

23 (p) 'Relative' means someone who is related to the child as a parent, step-parent,
24 sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin
25 or a nonrelative with such significant ties to the child that they may be regarded as
26 relatives as determined by the court in the sending state.

27 (q) 'Residential facility' means a facility providing a level of care that is sufficient
28 to substitute for parental responsibility or foster care, and is beyond what is needed for
29 assessment or treatment of an acute condition. For purposes of the Compact, residential
30 facilities do not include institutions primarily educational in character, hospitals, or
31 other medical facilities.

32 (r) 'Rule' means a written directive, mandate, standard, or principle issued by the
33 Interstate Commission promulgated pursuant to Article XI of this Compact that is of
34 general applicability and that implements, interprets, or prescribes a policy or provision
35 of the Compact. The term 'rule' has the force and effect of statutory law in a member
36 state, and includes the amendment, repeal, or suspension of an existing rule.

37 (s) 'Sending state' means the state from which the placement of a child is
38 initiated.

39 (t) 'Service member's permanent duty station' means the military installation
40 where an active duty Armed Services member is currently assigned and is physically
41 located under competent orders that do not specify the duty as temporary.

42 (u) 'Service member's state of legal residence' means the state in which the active
43 duty Armed Services member is considered a resident for tax and voting purposes.

1 (v) 'State' means a state of the United States, the District of Columbia, the
2 Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the
3 Northern Marianas Islands, and any other territory of the United States.

4 (w) 'State court' means a judicial body of a state that is vested by law with
5 responsibility for adjudicating cases involving abuse, neglect, deprivation, delinquency,
6 or status offenses of individuals who have not attained the age of 18.

7 (x) 'Supervision' means monitoring provided by the receiving state once a child
8 has been placed in a receiving state pursuant to this compact.

9
10 Article III. Applicability.
11

12 (a) Except as otherwise provided in subsection (b) of this Article III of the
13 Compact, this Compact shall apply to:

14 (1) The interstate placement of a child subject to ongoing court
15 jurisdiction in the sending state, due to allegations or findings that the
16 child has been abused, neglected, or deprived, as defined by the laws
17 of the sending state, provided, however, that, the placement of such a
18 child into a residential facility shall only require notice of residential
19 placement to the receiving state prior to placement.

20 (2) The interstate placement of a child adjudicated delinquent or
21 unmanageable based on the laws of the sending state and subject to
22 ongoing court jurisdiction of the sending state if:

23 a. The child is being placed in a residential facility in another
24 member state and is not covered under another compact; or

25 b. The child is being placed in another member state and the
26 determination of safety and suitability of the placement and
27 services required is not provided through another compact.

28 (3) The interstate placement of any child by a public child placing agency
29 or private child placing agency as defined in this Compact as a
30 preliminary step to a possible adoption.

31 (b) The provisions of this Compact shall not apply to:

32 (1) The interstate placement of a child with a nonrelative in a receiving
33 state by a parent with the legal authority to make such a placement
34 provided, however, that the placement is not intended to effectuate an
35 adoption.

36 (2) The interstate placement of a child by one relative with the lawful
37 authority to make such a placement directly with a relative in a
38 receiving state.

39 (3) The placement of a child, not subject to subsection (a) of this Article
40 of the Compact, into a residential facility by the child's parent.

41 (4) The placement of a child with a noncustodial parent, provided that:

42 a. The noncustodial parent proves to the satisfaction of a court in
43 the sending state a substantial relationship with the child;

- b. The court in the sending state makes a written finding that placement with the noncustodial parent is in the best interests of the child; and
- c. The court in the sending state dismisses its jurisdiction over the child's case.

- (5) A child entering the United States from a foreign country for the purpose of adoption or leaving the United States to go to a foreign country for the purpose of adoption in that country.
- (6) Cases in which a U.S. citizen child living overseas with his or her family, at least one of whom is in the U.S. Armed Services and is stationed overseas, is removed and placed in a state.
- (7) The sending of a child by a public child placing agency or a private child placing agency for a visit as defined by the rules of the Interstate Commission.

(c) For purposes of determining the applicability of this Compact to the placement of a child with a family in the Armed Services, the public child placing agency or private child placing agency may choose the state of the service member's permanent duty station or the service member's declared legal residence.

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

Article IV. Jurisdiction.

(a) The sending state shall retain jurisdiction over a child with respect to all matters of custody and disposition of the child that it would have had if the child had remained in the sending state. Jurisdiction shall also include the power to order the return of the child to the sending state.

(b) When an issue of child protection or custody is brought before a court in the receiving state, the court shall confer with the court of the sending state to determine the most appropriate forum for adjudication.

(c) In accordance with its own laws, the court in the sending state shall have authority to terminate its jurisdiction if:

- (1) The child is reunified with the parent in the receiving state who is the subject of allegations or findings of abuse or neglect, only with the concurrence of the public child placing agency in the receiving state;
- (2) The child is adopted;
- (3) The child reaches the age of majority under the laws of the sending state;

1 (4) The child achieves legal independence pursuant to the laws of the
2 sending state;

3 (5) A guardianship is created by a court in the receiving state with the
4 concurrence of the court in the sending state;

5 (6) An Indian tribe has petitioned for and received jurisdiction from the
6 court in the sending state; or

7 (7) The public child placing agency of the sending state requests
8 termination and has obtained the concurrence of the public child
9 placing agency in the receiving state.

10 (e) When a sending state court terminates its jurisdiction, the receiving state child
11 placing agency shall be notified.

12 (f) Nothing in this Article of the Compact shall defeat a claim of jurisdiction by a
13 receiving state court sufficient to deal with an act of truancy, delinquency, crime, or
14 behavior involving a child as defined by the laws of the receiving state committed by
15 the child in the receiving state which would be a violation of its laws.

16 (g) Nothing in this Article of the Compact shall limit the receiving state's ability
17 to take emergency jurisdiction for the protection of the child.

18
19 Article V. Assessments.

20
21 (a) Before sending or bringing or causing a child to be sent or brought into a
22 receiving state, the public child placing agency shall provide a written request for
23 assessment to the receiving state.

24 (b) Before sending or bringing or causing a child to be sent or brought into the
25 receiving state, the private child placing agency shall:

26 (1) Provide evidence that the applicable laws of the sending state have
27 been complied with;

28 (2) Certify that the consent or relinquishment is in compliance with
29 applicable law of the birth parent's state of residence or, where
30 permitted, the laws of the state where finalization of the adoption will
31 occur;

32 (3) Request through the public child placing agency in the sending state an
33 assessment to be conducted in the receiving state; and

34 (4) Upon completion of the assessment, obtain the approval of the public
35 child placing agency in the receiving state.

36 (c) The procedures for making an assessment and the request for an assessment
37 shall contain all information and be in a form provided for in the rules of the Interstate
38 Commission.

39 (d) Upon receipt of a request from the public child welfare agency of the sending
40 state, the receiving state shall initiate an assessment of the proposed placement to
41 determine its safety and suitability. If the proposed placement is a placement with a
42 relative, the public child placing agency of the sending state may request a
43 determination of whether the placement qualifies as a provisional placement.

1 (e) The public child placing agency in the receiving state may request an
2 assessment from the public child placing agency or the private child placing agency in
3 the sending state, and shall be entitled to receive supporting or additional information
4 necessary to complete the assessment.

5 (f) The public child placing agency in the receiving state shall complete or
6 arrange for the completion of the assessment within the time frames established by the
7 rules of the Interstate Commission.

8 (g) The Interstate Commission may develop uniform standards for the
9 assessment of the safety and suitability of interstate placements.

10
11 Article VI. Placement Authority.
12

13 (a) Except as provided in subsections (c) through (e) of this Article of the
14 Compact, no child subject to this Compact shall be placed into a receiving state until
15 approval for the placement is obtained.

16 (b) If the public child placing agency in the receiving state does not approve the
17 proposed placement, the child shall not be placed. The receiving state shall provide
18 written documentation of any such determination in accordance with the rules
19 promulgated by the Interstate Commission. The determination is not subject to judicial
20 review in the sending state.

21 (c) If the proposed placement is not approved, any interested party shall have
22 standing to seek an administrative review of the receiving state's determination.

23 (d) The administrative review and any further judicial review associated with the
24 determination shall be conducted in the receiving state pursuant to its applicable
25 administrative procedures.

26 (e) If a determination not to approve the placement of the child in the receiving
27 state is overturned upon review, the placement shall be deemed approved, provided that,
28 all administrative or judicial remedies have been exhausted or the time for such
29 remedies has passed.

30
31 Article VII. State Responsibility.
32

33 (a) For the interstate placement of a child made by a public child placing agency
34 or state court:

35 (1) The public child placing agency in the sending state shall have
36 financial responsibility for:

37 a. The ongoing support and maintenance for the child during the
38 period of the placement, unless otherwise provided for in the
39 receiving state; and

40 b. As determined by the public child placing agency in the sending
41 state, services for the child beyond the public services for which
42 the child is eligible in the receiving state.

43 (2) The receiving state shall only have financial responsibility for:

44 a. Any assessment conducted by the receiving state; and

1 b. Supervision conducted by the receiving state at the level
2 necessary to support the placement as agreed upon by the public
3 child placing agencies of the receiving and sending states.

4 (3) Nothing in this subsection shall prohibit public child placing agencies
5 in the sending state from entering into agreements with licensed
6 agencies or persons in the receiving state to conduct assessments and
7 provide supervision.

8 (b) For the placement of a child by a private child placing agency preliminary to
9 possible adoption, the private child placing agency shall be:

10 (1) Legally responsible for the child during the period of placement as
11 provided for in the law of the sending state until the finalization of the
12 adoption.

13 (2) Financially responsible for the child absent a contractual agreement to
14 the contrary.

15 (c) A private child placing agency shall be responsible for any assessment
16 conducted in the receiving state and any supervision conducted by the receiving state at
17 the level required by the laws of the receiving state or the rules of the Interstate
18 Commission.

19 (d) The public child placing agency in the receiving state shall provide timely
20 assessments, as provided for in the rules of the Interstate Commission.

21 (e) The public child placing agency in the receiving state shall provide or arrange
22 for the provision of supervision and services for the child, including timely reports
23 during the period of the placement.

24 (f) Nothing in this Compact shall be construed as to limit the authority of the
25 public child placing agency in the receiving state from contracting with a licensed
26 agency or person in the receiving state for an assessment or the provision of supervision
27 or services for the child or otherwise authorizing the provision of supervision or
28 services by a licensed agency during the period of placement.

29 (g) Each member state shall provide for coordination among its branches of
30 government concerning the state's participation in, and compliance with, the Compact
31 and Interstate Commission activities through the creation of an advisory council or use
32 of an existing body or board.

33 (h) Each member state shall establish a central state compact office that is
34 responsible for state compliance with the Compact and the rules of the Interstate
35 Commission.

36 (i) The public child placing agency in the sending state shall oversee compliance
37 with the provisions of the Indian Child Welfare Act, 25 U.S.C. § 1901, et seq., for
38 placements subject to the provisions of this Compact before placement.

39 (j) With the consent of the Interstate Commission, states may enter into limited
40 agreements that facilitate the timely assessment and provision of services and
41 supervision of placements under this Compact.

42
43 Article VIII. Interstate Commission for the Placement of Children.
44

1 (a) The member states hereby establish, by way of this Compact, a commission
2 known as the 'Interstate Commission for the Placement of Children'. The activities of
3 the Interstate Commission are the formation of public policy and are a discretionary
4 state function. The Interstate Commission shall:

5 (1) Be a joint commission of the member states and shall have the
6 responsibilities, power, and duties set forth herein, and any additional
7 powers as may be conferred upon it by subsequent concurrent action of
8 the respective legislatures of the member states; and

9 (2) Consist of one commissioner from each member state who shall be
10 appointed by the executive head of the state human services
11 administration with ultimate responsibility for the child welfare
12 program. The appointed commissioner shall have the legal authority to
13 vote on policy related matters governed by this Compact binding the
14 state.

15 (b) Each member state represented at a meeting of the Interstate Commission is
16 entitled to one vote.

17 (c) A majority of the member states shall constitute a quorum for the transaction
18 of business, unless a larger quorum is required by the bylaws of the Interstate
19 Commission.

20 (d) A representative shall not delegate a vote to another member state.

21 (e) A representative may delegate voting authority to another person from their
22 state for a specified meeting.

23 (f) In addition to the commissioners of each member state, the Interstate
24 Commission shall include persons who are members of interested organizations as
25 defined in the bylaws or rules of the Interstate Commission. The members shall be ex
26 officio and shall not be entitled to vote on any matter before the Interstate Commission.

27 (g) The Interstate Commission shall establish an executive committee that has the
28 authority to administer the day-to-day operations and administration of the Interstate
29 Commission. The Interstate Commission shall not have the power to engage in
30 rulemaking.

31
32 Article IX. Powers and Duties of the Interstate Commission.
33

34 The Interstate Commission shall have the power to:

35 (a) Promulgate rules and take all necessary actions to effect the goals, purposes,
36 and obligations as enumerated in this Compact.

37 (b) Provide for dispute resolution among member states.

38 (c) Issue, upon request of a member state, advisory opinions concerning the
39 meaning or interpretation of the Interstate Compact, its bylaws, rules, or actions.

40 (d) Enforce compliance with this Compact or the bylaws or rules of the Interstate
41 Commission pursuant to Article XII of this Compact.

42 (e) Collect standardized data concerning the interstate placement of children
43 subject to this Compact as directed through its rules, which rules shall specify the data
44 to be collected, the means of collection and data exchange, and reporting requirements.

1 (f) Establish and maintain offices as may be necessary for transacting its
2 business.

3 (g) Purchase and maintain insurance and bonds.

4 (h) Hire or contract for services of personnel or consultants as necessary to carry
5 out its functions under the Compact and establish personnel qualification policies and
6 rates of compensation.

7 (i) Establish and appoint committees and officers, including an executive
8 committee, as required by Article X of this Compact.

9 (j) Accept any and all donations and grants of money, equipment, supplies,
10 materials, and services, and receive, utilize, and dispose thereof.

11 (k) Lease, purchase, accept contributions or donations of, or otherwise own, hold,
12 improve, or use any property, real, personal, or mixed.

13 (l) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise
14 dispose of any property, real, personal, or mixed.

15 (m) Establish a budget and make expenditures.

16 (n) Adopt a seal and bylaws governing the management and operation of the
17 Interstate Commission.

18 (o) Report annually to the legislatures, governors, the judiciary, and state
19 advisory councils of the member states concerning the activities of the Interstate
20 Commission during the preceding year. The reports shall also include any
21 recommendations that may have been adopted by the Interstate Commission.

22 (p) Coordinate and provide education, training, and public awareness regarding
23 the interstate movement of children for officials involved in such activity.

24 (q) Maintain books and records in accordance with the bylaws of the Interstate
25 Commission.

26 (r) Perform any other functions as may be necessary or appropriate to achieve
27 the purposes of this Compact.

28
29 Article X. Organization and Operation of the Interstate Commission.

30
31 (a) Bylaws.

32 (1) Within 12 months after the first Interstate Commission meeting, the
33 Interstate Commission shall adopt bylaws to govern its conduct as may
34 be necessary or appropriate to carry out the purposes of the Compact.

35 (2) The Interstate Commission's bylaws and rules shall establish
36 conditions and procedures under which the Interstate Commission
37 shall make its information and official records available to the public
38 for inspection or copying. The Interstate Commission may exempt
39 from disclosure information or official records to the extent they
40 would adversely affect personal privacy rights or proprietary interests.

41 (b) Meetings.

42 (1) The Interstate Commission shall meet at least once each calendar year.
43 The chairperson may call additional meetings and, upon the request of
44 a majority of the member states, call additional meetings.

- 1 (2) Public notice shall be given by the Interstate Commission of all
2 meetings and all meetings shall be open to the public, except as set
3 forth in the rules or otherwise provided in the Compact. The Interstate
4 Commission and its committees may close a meeting, or portion
5 thereof, where it determines by two-thirds vote that an open meeting
6 would likely:
- 7 a. Relate solely to the Interstate Commission's internal personnel
8 practices and procedures;
- 9 b. Disclose matters specifically exempted from disclosure by
10 federal law;
- 11 c. Disclose financial or commercial information that is privileged,
12 proprietary, or confidential in nature;
- 13 d. Involve accusing a person of a crime or formally censuring a
14 person;
- 15 e. Disclose information of a personal nature where disclosure
16 would constitute a clearly unwarranted invasion of personal
17 privacy or physically endanger one or more persons;
- 18 f. Disclose investigative records compiled for law enforcement
19 purposes; or
- 20 g. Specifically relate to the Interstate Commission's participation
21 in a civil action or other legal proceedings.
- 22 (3) For a meeting, or portion of a meeting, closed pursuant to this
23 subsection, the Interstate Commission's legal counsel or designee shall
24 certify that the meeting may be closed and shall reference each
25 relevant exemption provision. The Interstate Commission shall keep
26 minutes that fully and clearly describe all matters discussed in a
27 meeting and shall provide a full and accurate summary of actions taken
28 and the reasons for taking those actions, including a description of the
29 views expressed and the record of a roll call vote. All documents
30 considered in connection with an action shall be identified in the
31 minutes. All minutes and documents of a closed meeting shall remain
32 under seal, subject to release by a majority vote of the Interstate
33 Commission or by court order.
- 34 (4) The bylaws may provide for meetings of the Interstate Commission to
35 be conducted by telecommunication or other electronic
36 communication.
- 37 (c) Officers and Staff.
- 38 (1) The Interstate Commission may, through its executive committee,
39 appoint or retain a staff director for such period, upon such terms and
40 conditions and for such compensation as the Interstate Commission
41 may deem appropriate. The staff director shall serve as secretary to the
42 Interstate Commission, but shall not have a vote. The staff director
43 may hire and supervise any other staff as may be authorized by the
44 Interstate Commission.

- 1 (2) The Interstate Commission shall elect, from among its members, a
2 chairperson and a vice-chairperson of the executive committee and
3 other necessary officers, each of whom shall have authority and duties
4 as may be specified in the bylaws.
- 5 (d) Qualified Immunity, Defense, and Indemnification.
- 6 (1) The Interstate Commission's staff director and its employees shall be
7 immune from suit and liability, either personally or in their official
8 capacity, for a claim for damage to or loss of property or personal
9 injury or other civil liability caused or arising out of or relating to an
10 actual or alleged act, error, or omission that occurred, or that the
11 person had a reasonable basis for believing occurred, within the scope
12 of Commission employment duties, or responsibilities; provided, that
13 the person shall not be protected from suit or liability for damage, loss,
14 injury, or liability caused by a criminal act or the intentional or willful
15 and wanton misconduct of the person.
- 16 (2) The liability of the Interstate Commission's staff director and
17 employees or Interstate Commission representatives, acting within the
18 scope of the person's employment or duties for acts, errors, or
19 omissions occurring within the person's state may not exceed the limits
20 of liability set forth under the Constitution and laws of that state for
21 state officials, employees, and agents. The Interstate Commission is
22 considered to be an instrumentality of the states for the purposes of
23 any such action. Nothing in this subdivision shall be construed to
24 protect the person from suit or liability for damage, loss, injury, or
25 liability caused by a criminal act or the intentional or willful and
26 wanton misconduct of the person.
- 27 (3) The Interstate Commission shall defend the staff director and its
28 employees and, subject to the approval of the Attorney General or
29 other appropriate legal counsel of the member state, defend the
30 commissioner of a member state in a civil action seeking to impose
31 liability arising out of an actual or alleged act, error, or omission that
32 occurred within the scope of Interstate Commission employment,
33 duties, or responsibilities, or that the defendant had a reasonable basis
34 for believing occurred within the scope of Interstate Commission
35 employment, duties, or responsibilities; provided, that the actual or
36 alleged act, error, or omission did not result from intentional or willful
37 and wanton misconduct on the part of the person.
- 38 (4) To the extent not covered by the state involved, member state, or the
39 Interstate Commission, the representatives or employees of the
40 Interstate Commission shall be held harmless in the amount of a
41 settlement or judgment, including attorneys' fees and costs, obtained
42 against the persons arising out of an actual or alleged act, error, or
43 omission that occurred within the scope of Interstate Commission
44 employment, duties, or responsibilities, or that the persons had a

1 reasonable basis for believing occurred within the scope of Interstate
2 Commission employment, duties, or responsibilities; provided, that the
3 actual or alleged act, error, or omission did not result from intentional
4 or willful and wanton misconduct on the part of the persons.

5
6 Article XI. Rulemaking Functions of the Interstate Commission.
7

8 (a) The Interstate Commission shall promulgate and publish rules in order to
9 effectively and efficiently achieve the purposes of the Compact.

10 (b) Rulemaking shall occur pursuant to the criteria set forth in this Article of the
11 Compact and the bylaws and rules adopted pursuant thereto. Rulemaking shall
12 substantially conform to the principles of the 'Model State Administrative Procedures
13 Act of 1981', Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other
14 administrative procedure acts as the Interstate Commission deems appropriate
15 consistent with due process requirements under the United States Constitution as now or
16 hereafter interpreted by the United States Supreme Court. All rules and amendments
17 shall become binding as of the date specified, as published with the final version of the
18 rule approved by the Interstate Commission.

19 (c) When promulgating a rule, the Interstate Commission shall, at a minimum:

20 (1) Publish the proposed rule's entire text stating the reason for the
21 proposed rule;

22 (2) Allow and invite any and all persons to submit written data, facts,
23 opinions, and arguments, which information shall be added to the
24 record and made publicly available; and

25 (3) Promulgate a final rule and its effective date, if appropriate, based on
26 input from state or local officials or interested parties.

27 (d) Rules promulgated by the Interstate Commission shall have the force and
28 effect of statutory law and shall supersede any state law, rule, or regulation to the extent
29 of any conflict.

30 (e) Not later than 60 days after a rule is promulgated, an interested person may
31 file a petition in the U.S. District Court for the District of Columbia or in the federal
32 district court where the Interstate Commission's principal office is located for judicial
33 review of the rule. If the court finds that the Interstate Commission's action is not
34 supported by substantial evidence in the rulemaking record, the court shall hold the rule
35 unlawful and set it aside.

36 (f) If a majority of the legislatures of the member states reject a rule, those states
37 may, by enactment of a statute or resolution in the same manner used to adopt the
38 Compact, cause the rule to have no further force and effect in any member state.

39 (g) The existing rules governing the operation of the Interstate Compact on the
40 Placement of Children superseded by this Compact shall be null and void not less than
41 12, but not more than 24 months, after the first meeting of the Interstate Commission
42 created by this Compact, as determined by the members during the first meeting.

43 (h) Within the first 12 months of operation, the Interstate Commission shall
44 promulgate rules addressing the following:

- 1 (1) Transition rules.
- 2 (2) Forms and procedures.
- 3 (3) Time lines.
- 4 (4) Data collection and reporting.
- 5 (5) Rulemaking.
- 6 (6) Visitation.
- 7 (7) Progress reports and supervision.
- 8 (8) Sharing of information and confidentiality.
- 9 (9) Financing of the Interstate Commission.
- 10 (10) Mediation, arbitration, and dispute resolution.
- 11 (11) Education, training, and technical assistance.
- 12 (12) Enforcement of the Compact.
- 13 (13) Coordination with other interstate compacts.

14 (i) Upon determination by a majority of the members of the Interstate
15 Commission that an emergency exists, the Interstate Commission may promulgate an
16 emergency rule only if creation of the rule is necessary to:

- 17 (1) Protect the children covered by this Compact from an imminent threat
18 to their health, safety, and well-being;
- 19 (2) Prevent loss of federal or State funds; or
- 20 (3) Meet a deadline for the promulgation of an administrative rule
21 required by federal law.

22 An emergency rule shall become effective immediately upon adoption if the usual
23 rulemaking procedures provided in this Article of the Compact shall be retroactively
24 applied to the rule as soon as reasonably possible, but not later than 90 days after the
25 effective date of the emergency rule. An emergency rule shall be promulgated as
26 provided for in the rules of the Interstate Commission.

27
28 Article XII Oversight, Dispute Resolution, and Enforcement.

- 29
- 30 (a) Oversight.
- 31 (1) The Interstate Commission shall oversee the administration and
32 operation of the Compact.
- 33 (2) The executive, legislative, and judicial branches of state government in
34 each member state shall enforce this Compact and the rules of the
35 Interstate Commission and shall take all actions necessary and
36 appropriate to effectuate the Compact's purposes and intent. The
37 Compact and its rules shall supersede state law, rules, or regulations to
38 the extent of any conflict therewith.
- 39 (3) All courts shall take judicial notice of the Compact and the rules in any
40 judicial or administrative proceeding in a member state pertaining to
41 the subject matter of this Compact.
- 42 (4) The Interstate Commission shall be entitled to receive service of
43 process in any action in which the validity of a Compact provision or
44 rule is the issue for which a judicial determination has been sought and

1 shall have standing to intervene in any proceedings. Failure to provide
2 service of process to the Interstate Commission shall render any
3 judgment, order, or other determination, however so captioned or
4 classified, void as to the Interstate Commission, this Compact, or
5 bylaws or rules of the Interstate Commission.

6 (b) Dispute Resolution.

7 (1) The Interstate Commission shall attempt, upon the request of a
8 member state, to resolve disputes that are subject to the Compact and
9 that may arise among member states and between member and
10 nonmember states.

11 (2) The Interstate Commission shall promulgate a rule providing for both
12 mediation and binding, dispute resolution for disputes among
13 compacting states. The costs of the mediation or dispute resolution
14 shall be the responsibility of the parties to the dispute.

15 (c) Enforcement. – If the Interstate Commission determines that a member state
16 has defaulted in the performance of its obligations or responsibilities under this
17 Compact, its bylaws, or rules, the Interstate Commission may do any of the following:

18 (1) Provide remedial training and specific technical assistance to the
19 defaulting member state.

20 (2) Provide written notice to the defaulting state and other member states,
21 of the nature of the default and the means for curing the default and
22 Interstate Commission shall specify the conditions by which the
23 defaulting state shall cure its default.

24 (3) By majority vote of the members, initiate against a defaulting member
25 state legal action in the United States District Court for the District of
26 Columbia or, at the discretion of the Interstate Commission, in the
27 federal district where the Interstate Commission has its principal
28 office, to enforce compliance with the provisions of the Compact, its
29 bylaws, or rules. The relief sought may include both injunctive relief
30 and damages. In the event judicial enforcement is necessary, the
31 prevailing party shall be awarded all costs of the litigation, including
32 reasonable attorneys' fees.

33 (4) Avail itself of any other remedies available under state law or the
34 regulation of official or professional conduct.

35
36 Article XIII. Financing of the Commission.
37

38 (a) The Interstate Commission shall pay or provide for the payment of the
39 reasonable expenses of its establishment, organization, and ongoing activities.

40 (b) The Interstate Commission may levy and collect an annual assessment from
41 each member state to cover the cost of the operations and activities of the Interstate
42 Commission and its staff that is in a total amount sufficient to cover the Interstate
43 Commission's annual budget as approved by its members each year. The aggregate
44 annual assessment amount shall be allocated based upon a formula to be determined by

1 the Interstate Commission. The Interstate Commission shall promulgate a rule regarding
2 the annual assessment that is binding upon all member states.

3 (c) The Interstate Commission shall not incur obligations of any kind before
4 securing the funds adequate to meet the obligations, nor shall the Interstate Commission
5 pledge the credit of any of the member states, except by and with the authority of the
6 member state.

7 (d) The Interstate Commission shall keep accurate accounts of all receipts and
8 disbursements. The receipts and disbursements of the Interstate Commission shall be
9 subject to the audit and accounting procedures established under its bylaws. However,
10 all receipts and disbursements of funds handled by the Interstate Commission shall be
11 audited yearly by a certified or licensed public accountant and the report of the audit
12 shall be included in and become part of the annual report of the Interstate Commission.

13 Article XIV. Member States; Effective Date; Amendments.

14
15
16 (a) Any state is eligible to become a member state.

17 (b) The Compact shall become effective and binding upon legislative enactment
18 of the Compact into law by not less than 35 states. The effective date shall be the later
19 of July 1, 2007, or upon enactment of the Compact into law by the 35th state.
20 Thereafter, it shall become effective and binding as to any other member state upon
21 enactment of the Compact into law by that state. The executive heads of the state human
22 services administration with ultimate responsibility for the child welfare program of
23 nonmember states or their designees shall be invited to participate in the activities of the
24 Interstate Commission on a nonvoting basis before adoption of the Compact by all
25 states.

26 (c) The Interstate Commission may propose amendments to the Compact for
27 enactment by the member states. No amendment shall become effective and binding on
28 the member states unless and until it is enacted into law by unanimous consent of the
29 member states.

30 Article XV. Withdrawal and Dissolution.

31
32
33 (a) Withdrawal.

34 (1) Once effective, the Compact shall continue in force and remain
35 binding upon each and every member state; provided, that a member
36 state may withdraw from the Compact specifically repealing the statute
37 that enacted the Compact into law.

38 (2) Withdrawal from this Compact shall be by the enactment of a statute
39 repealing the same. The effective date of withdrawal shall be the
40 effective date of the repeal of the statute.

41 (3) The withdrawing state shall immediately notify the president of the
42 Interstate Commission in writing upon the introduction of legislation
43 repealing this Compact in the withdrawing state. The Interstate

1 Commission shall then notify the other member state's of the
2 withdrawing state's intent to withdraw.

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

5 (5) Reinstatement following withdrawal of a member state shall occur
6 upon the withdrawing state reenacting the Compact or upon such later
7 date as determined by the members of the Interstate Commission.

8 (b) Dissolution of Compact.

9 (1) This Compact shall dissolve effective upon the date of the withdrawal
10 or default of the member state which reduces the membership in the
11 Compact to one member state.

12 (2) Upon the dissolution of this Compact, the Compact becomes null and
13 void and shall be of no further force or effect and the business and
14 affairs of the Interstate Commission shall be concluded and surplus
15 funds shall be distributed in accordance with the bylaws.

16
17 Article XVI. Severability and Construction.

18
19 (a) The provisions of this Compact shall be severable, and if any phrase, clause,
20 sentence, or provision is deemed unenforceable, the remaining provisions of the
21 Compact shall be enforceable.

22 (b) The provisions of this Compact shall be liberally construed to effectuate its
23 purposes.

24 (c) Nothing in this Compact shall be construed to prohibit the concurrent
25 applicability of other interstate compacts to which the states are members.

26
27 Article XVII. Binding Effect of Compact and Other Laws.

28
29 (a) Other Laws.

30 (1) Nothing in this Article of the Compact prevents the enforcement of
31 any other law of a member state that is not inconsistent with this
32 Compact.

33 (2) All member states' laws conflicting with this Compact or its rules are
34 superseded by this Compact to the extent of the conflict.

35 (b) Binding Effect of the Compact.

36 (1) All lawful actions of the Interstate Commission, including all rules and
37 bylaws promulgated by the Interstate Commission, are binding upon
38 the member states.

39 (2) All agreements between the Interstate Commission and the member
40 states are binding in accordance with their terms.

41 (3) In the event any provision of this Compact exceeds the constitutional
42 limits imposed on the legislature of any member state, the provision
43 shall be ineffective to the extent of the conflict with the constitutional
44 provision in question in that member state.

Article XVIII. Indian Tribes.

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

"§7B-4101. Financial responsibility under Compact.

Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact for the Placement of Children shall be determined in accordance with the provisions of Article VII of the Interstate Compact for the Placement of Children in the first instance. However, in the event of partial or complete default of performance under the Compact, the provisions of any other state laws fixing responsibility for the support of children also may be invoked.

"§7B-4102. Agreements under Compact.

The officers and agencies of this State and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to Article VII of the Interstate Compact for the Placement of Children. Any agreement that contains a financial commitment or imposes a financial obligation on this State or subdivision or agency thereof shall not be binding unless it has the approval in writing of the Secretary of the Department of Health and Human Services in the case of the State, the county director of social services in the case of the county, or other subdivision of the state.

"§7B-4103. Visitation, inspection, or supervision.

Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state that may apply under the laws of this State shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this State or a subdivision thereof as contemplated by Article VII of the Interstate Compact for the Placement of Children.

"§7B-4104. Compact to govern between party states.

The provisions of Article 37 of this Chapter shall not apply to placements pursuant to the Interstate Compact for the Placement of Children.

"§7B-4105. Placement of delinquents.

Any court having jurisdiction to place delinquent children may place the child in an institution or in another state pursuant to Articles III and VI of the Interstate Compact for the Placement of Children and shall retain jurisdiction as provided in Article IV of the Compact.

"§7B-4106. Compact administrator.

The Governor is hereby authorized to appoint a Compact administrator in accordance with the terms of Article VII of the Interstate Compact for the Placement of Children."

1 **SECTION 3.** The Secretary of the Department of Health and Human
2 Services shall notify the Revisor of Statutes when the Interstate Compact for the
3 Placement of Children becomes effective under the terms of the Compact. The
4 Secretary of Health and Human Services shall notify the Revisor of Statutes when the
5 Interstate Compact for the Placement of Children has been adopted by all states, as
6 defined in the Compact.

7 **SECTION 4.** This act shall not be construed to obligate the General
8 Assembly to appropriate funds to implement the provisions of this act. The Department
9 of Health and Human Services shall implement the provisions of this act with funds that
10 are otherwise appropriated or available to the Department.

11 **SECTION 5.** Section 1 of this act becomes effective only when all states, as
12 defined in the Compact, have adopted the Interstate Compact for the Placement of
13 Children. Section 2 of this act becomes effective only when 35 states have adopted the
14 Interstate Compact for the Placement of Children, as set forth in the Compact. The
15 remainder of this act is effective when it becomes law.