

HOUSE BILL No. 2455

By Committee on Federal and State Affairs

2-7

9 AN ACT concerning children; relating to the interstate compact on
10 placement of children.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. The interstate compact on the placement of children is
14 hereby enacted into law and entered into with any other state or states
15 legally joining therein in the form substantially as follows:

16 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

17 The contracting states solemnly agree that:

18

ARTICLE I. PURPOSE

19 The purpose of this interstate compact for the placement of children
20 is to:

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

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

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

27 (D) Provide for the promulgation and enforcement of administrative
28 rules implementing the provisions of this compact and regulating the
29 covered activities of the member states.

30 (E) Provide for uniform data collection and information sharing be-
31 tween member states under this compact.

32 (F) Promote coordination between this compact, the interstate com-
33 pact for juveniles, the interstate compact on adoption and medical assis-
34 tance and other compacts affecting the placement of and which provide
35 services to children otherwise subject to this compact.

36 (G) Provide for a state's continuing legal jurisdiction and responsi-
37 bility for placement and care of a child that it would have had if the
38 placement were intrastate.

39 (H) Provide for the promulgation of guidelines, in collaboration with
40 Indian tribes, for interstate cases involving Indian children as is or may
41 be permitted by federal law.

42

ARTICLE II. DEFINITIONS

43 As used in this compact:

- 1 (A) “Approved placement” means the receiving state has determined
2 after an assessment that the placement is both safe and suitable for the
3 child and is in compliance with the applicable laws of the receiving state
4 governing the placement of children therein.
- 5 (B) “Assessment” means an evaluation of a prospective placement to
6 determine whether the placement meets the individualized needs of the
7 child, including but not limited to the child’s safety and stability, health
8 and well-being, and mental, emotional and physical development.
- 9 (C) “Child” means an individual who has not attained the age of 18.
- 10 (D) “Default” means the failure of a member state to perform the
11 obligations or responsibilities imposed upon it by this compact, the bylaws
12 or rules of the interstate commission.
- 13 (E) “Indian tribe” means any Indian tribe, band, nation, or other
14 organized group or community of Indians recognized as eligible for serv-
15 ices provided to Indians by the secretary of the interior because of their
16 status as Indians, including any Alaskan native village as defined in section
17 3 (c) of the Alaska native claims settlement act at 43 U.S.C. §1602(c).
- 18 (F) “Interstate commission for the placement of children” means the
19 commission that is created under article VIII of this compact and which
20 is generally referred to as the interstate commission.
- 21 (G) “Jurisdiction” means the power and authority of a court to hear
22 and decide matters.
- 23 (H) “Member state” means a state that has enacted this compact.
- 24 (I) “Non-custodial parent” means a person who, at the time of the
25 commencement of court proceedings in the sending state, does not have
26 sole legal custody of the child or has joint legal custody of a child, and
27 who is not the subject of allegations or findings of child abuse or neglect.
- 28 (J) “Non-member state” means a state which has not enacted this
29 compact.
- 30 (K) “Notice of residential placement” means information regarding
31 a placement into a residential facility provided to the receiving state in-
32 cluding, but not limited to the name, date and place of birth of the child,
33 the identity and address of the parent or legal guardian, evidence of au-
34 thority to make the placement, and the name and address of the facility
35 in which the child will be placed. Notice of residential placement shall
36 also include information regarding a discharge and any unauthorized ab-
37 sence from the facility.
- 38 (L) “Placement” means the act by a public or private child placing
39 agency intended to arrange for the care or custody of a child in another
40 state.
- 41 (M) “Private child placing agency” means any private corporation,
42 agency, foundation, institution, or charitable organization, or any private
43 person or attorney that facilitates, causes, or is involved in the placement

- 1 of a child from one state to another and that is not an instrumentality of
2 the state or acting under color of state law.
- 3 (N) “Provisional placement” means that the receiving state has de-
4 termined that the proposed placement is safe and suitable, and, to the
5 extent allowable, the receiving state has temporarily waived its standards
6 or requirements otherwise applicable to prospective foster or adoptive
7 parents so as not to delay the placement. Completion of the receiving
8 state requirements regarding training for prospective foster or adoptive
9 parents shall not delay an otherwise safe and suitable placement.
- 10 (O) “Public child placing agency” means any government child wel-
11 fare agency or child protection agency or a private entity under contract
12 with such an agency, regardless of whether they act on behalf of a state,
13 county, municipality or other governmental unit and which facilitates,
14 causes, or is involved in the placement of a child from one state to another.
- 15 (P) “Receiving state” means the state to which a child is sent,
16 brought, or caused to be sent or brought.
- 17 (Q) “Relative” means someone who is related to the child as a parent,
18 step-parent, sibling by half or whole blood or by adoption, grandparent,
19 aunt, uncle, or first cousin or a non-relative with such significant ties to
20 the child that they may be regarded as relatives as determined by the
21 court in the sending state.
- 22 (R) “Residential Facility” means a facility providing a level of care
23 that is sufficient to substitute for parental responsibility or foster care,
24 and is beyond what is needed for assessment or treatment of an acute
25 condition. For purposes of the compact, residential facilities do not in-
26 clude institutions primarily educational in character, hospitals or other
27 medical facilities.
- 28 (S) “Rule” means a written directive, mandate, standard or principle
29 issued by the interstate commission promulgated pursuant to article XI
30 of this compact that is of general applicability and that implements, in-
31 terprets or prescribes a policy or provision of the compact. “Rule” has
32 the force and effect of statutory law in a member state, and includes the
33 amendment, repeal, or suspension of an existing rule.
- 34 (T) “Sending state” means the state from which the placement of a
35 child is initiated.
- 36 (U) “Service member’s permanent duty station” means the military
37 installation where an active duty armed services member is currently as-
38 signed and is physically located under competent orders that do not spec-
39 ify the duty as temporary.
- 40 (V) “Service member’s state of legal residence” means the state in
41 which the active duty armed services member is considered a resident
42 for tax and voting purposes.
- 43 (W) “State” means a state of the United States, the District of Co-

1 lumbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands,
2 Guam, American Samoa, the Northern Marianas Islands and any other
3 territory of the United States.

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

8 (Y) "Supervision" means monitoring provided by the receiving state
9 once a child has been placed in a receiving state pursuant to this compact.

10 ARTICLE III. APPLICABILITY

11 (A) Except as otherwise provided in Article III, Section B, this com-
12 pact shall apply to:

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

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

22 (a) The child is being placed in a residential facility in another mem-
23 ber state and is not covered under another compact; or

24 (b) the child is being placed in another member state and the deter-
25 mination of safety and suitability of the placement and services required
26 is not provided through another compact.

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

30 (B) The provisions of this compact shall not apply to:

31 (1) The interstate placement of a child with a non-relative in a re-
32 ceiving state by a parent with the legal authority to make such a placement
33 provided, however, that the placement is not intended to effectuate an
34 adoption.

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

38 (3) The placement of a child, not subject to article III, section A, into
39 a residential facility by his parent.

40 (4) The placement of a child with a non-custodial parent provided
41 that:

42 (a) The non-custodial parent proves to the satisfaction of a court in
43 the sending state a substantial relationship with the child; and

1 (b) the court in the sending state makes a written finding that place-
2 ment with the non-custodial parent is in the best interests of the child;
3 and

4 (c) the court in the sending state dismisses its jurisdiction over the
5 child's case.

6 (5) A child entering the United States from a foreign country for the
7 purpose of adoption or leaving the United States to go to a foreign country
8 for the purpose of adoption in that country.

9 (6) Cases in which a U.S. citizen child living overseas with his family,
10 at least one of whom is in the U.S. armed services, and who is stationed
11 overseas, is removed and placed in a state.

12 (7) The sending of a child by a public child placing agency or a private
13 child placing agency for a visit as defined by the rules of the interstate
14 commission.

15 (C) For purposes of determining the applicability of this compact to
16 the placement of a child with a family in the armed services, the public
17 child placing agency or private child placing agency may choose the state
18 of the service member's permanent duty station or the service member's
19 declared legal residence.

20 (D) Nothing in this compact shall be construed to prohibit the con-
21 current application of the provisions of this compact with other applicable
22 interstate compacts including the interstate compact for juveniles and the
23 interstate compact on adoption and medical assistance. The interstate
24 commission may in cooperation with other interstate compact commis-
25 sions having responsibility for the interstate movement, placement or
26 transfer of children, promulgate like rules to ensure the coordination of
27 services, timely placement of children, and the reduction of unnecessary
28 or duplicative administrative or procedural requirements.

29 ARTICLE IV. JURISDICTION

30 (A) The sending state shall retain jurisdiction over a child with respect
31 to all matters of custody and disposition of the child which it would have
32 had if the child had remained in the sending state. Such jurisdiction shall
33 also include the power to order the return of the child to the sending
34 state.

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

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

40 (1) The child is reunified with the parent in the receiving state who
41 is the subject of allegations or findings of abuse or neglect, only with the
42 concurrence of the public child placing agency in the receiving state; or

43 (2) the child is adopted; or

- 1 (3) the child reaches the age of majority under the laws of the sending
- 2 state; or
- 3 (4) the child achieves legal independence pursuant to the laws of the
- 4 sending state; or
- 5 (5) a guardianship is created by a court in the receiving state with the
- 6 concurrence of the court in the sending state; or
- 7 (6) an Indian tribe has petitioned for and received jurisdiction from
- 8 the court in the sending state; or
- 9 (7) the public child placing agency of the sending state requests ter-
- 10 mination and has obtained the concurrence of the public child placing
- 11 agency in the receiving state.
- 12 (D) When a sending state court terminates its jurisdiction, the re-
- 13 ceiving state child placing agency shall be notified.
- 14 (E) Nothing in this article shall defeat a claim of jurisdiction by a
- 15 receiving state court sufficient to deal with an act of truancy, delinquency,
- 16 crime or behavior involving a child as defined by the laws of the receiving
- 17 state committed by the child in the receiving state which would be a
- 18 violation of its laws.
- 19 (F) Nothing in this article shall limit the receiving state's ability to
- 20 take emergency jurisdiction for the protection of the child.

21 ARTICLE V. ASSESSMENTS

- 22 (A) Prior to sending, bringing or causing a child to be sent or brought
- 23 into a receiving state, the public child placing agency shall provide a writ-
- 24 ten request for assessment to the receiving state.
- 25 (B) Prior to the sending, bringing or causing a child to be sent or
- 26 brought into a receiving state, the private child placing agency shall:
- 27 (1) Provide evidence that the applicable laws of the sending state have
- 28 been complied with; and
- 29 (2) certification that the consent or relinquishment is in compliance
- 30 with applicable law of the birth parent's state of residence or, where
- 31 permitted, the laws of the state of where the finalization of the adoption
- 32 will occur; and
- 33 (3) request through the public child placing agency in the sending
- 34 state an assessment to be conducted in the receiving state; and
- 35 (4) upon completion of the assessment, obtain the approval of the
- 36 public child placing agency in the receiving state.
- 37 (C) The procedures for making and the request for an assessment
- 38 shall contain all information and be in such form as provided for in the
- 39 rules of the interstate commission.
- 40 (D) Upon receipt of a request from the public child welfare agency
- 41 of the sending state, the receiving state shall initiate an assessment of the
- 42 proposed placement to determine its safety and suitability. If the pro-
- 43 posed placement is a placement with a relative, the public child placing

1 agency of the sending state may request a determination of whether the
2 placement qualifies as a provisional placement.

3 (E) The public child placing agency in the receiving state may request
4 from the public child placing agency or the private child placing agency
5 in the sending state, and shall be entitled to receive supporting or addi-
6 tional information necessary to complete the assessment.

7 (F) The public child placing agency in the receiving state shall com-
8 plete or arrange for the completion of the assessment within the timefra-
9 mes established by the rules of the interstate commission.

10 (G) The interstate commission may develop uniform standards for
11 the assessment of the safety and suitability of interstate placements.

12 ARTICLE VI. PLACEMENT AUTHORITY

13 (A) Except as provided in article VI, section C, no child subject to
14 this compact shall be placed into a receiving state until approval for such
15 placement is obtained.

16 (B) If the public child placing agency in the receiving state does not
17 approve the proposed placement then the child shall not be placed. The
18 receiving state shall provide written documentation of any such deter-
19 mination in accordance with the rules promulgated by the interstate com-
20 mission. Such determination is not subject to judicial review in the send-
21 ing state.

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

25 (1) The administrative review and any further judicial review associ-
26 ated with the determination shall be conducted in the receiving state
27 pursuant to its applicable administrative procedures.

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

32 ARTICLE VII. STATE RESPONSIBILITY

33 (A) For the interstate placement of a child made by a public child
34 placing agency 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 receiving
39 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 the child
42 is eligible in the receiving state.

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

- 1 (a) Any assessment conducted by the receiving state; and
2 (b) supervision conducted by the receiving state at the level necessary
3 to support the placement as agreed upon by the public child placing
4 agencies of the receiving and sending state.
- 5 (3) Nothing in this provision shall prohibit public child placing agen-
6 cies in the sending state from entering into agreements with licensed
7 agencies or persons in the receiving state to conduct assessments and
8 provide supervision.
- 9 (B) For the placement of a child by a private child placing agency
10 preliminary to a possible adoption, the private child placing agency shall
11 be:
- 12 (1) Legally responsible for the child during the period of placement
13 as provided for in the law of the sending state until the finalization of the
14 adoption.
- 15 (2) Financially responsible for the child absent a contractual agree-
16 ment to the contrary.
- 17 (C) A private child placing agency shall be responsible for any as-
18 sessment conducted in the receiving state and any supervision conducted
19 by the receiving state at the level required by the laws of the receiving
20 state or the rules of the interstate commission.
- 21 (D) The public child placing agency in the receiving state shall pro-
22 vide timely assessments, as provided for in the rules of the interstate
23 commission.
- 24 (E) The public child placing agency in the receiving state shall pro-
25 vide, or arrange for the provision of, supervision and services for the child,
26 including timely reports, during the period of the placement.
- 27 (F) Nothing in this compact shall be construed as to limit the au-
28 thority of the public child placing agency in the receiving state from con-
29 tracting with a licensed agency or person in the receiving state for an
30 assessment or the provision of supervision or services for the child or
31 otherwise authorizing the provision of supervision or services by a li-
32 censed agency during the period of placement.
- 33 (G) Each member state shall provide for coordination among its
34 branches of government concerning the state's participation in, and com-
35 pliance with, the compact and interstate commission activities, through
36 the creation of an advisory council or use of an existing body or board.
- 37 (H) Each member state shall establish a central state compact office,
38 which shall be responsible for state compliance with the compact and the
39 rules of the interstate commission.
- 40 (I) The public child placing agency in the sending state shall oversee
41 compliance with the provisions of the Indian child welfare act (25 U.S.C.
42 1901 et seq.) for placements subject to the provisions of this compact,
43 prior to placement.

1 (J) With the consent of the interstate commission, states may enter
 2 into limited agreements that facilitate the timely assessment and provision
 3 of services and supervision of placements under this compact.

4 ARTICLE VIII. INTERSTATE COMMISSION FOR THE
 5 PLACEMENT OF CHILDREN

6 The member states hereby establish, by way of this compact, a com-
 7 mission known as the “interstate commission for the placement of chil-
 8 dren.” The activities of the interstate commission are the formation of
 9 public policy and are a discretionary state function. The interstate com-
 10 mission shall:

11 (A) Be a joint commission of the member states and shall have the
 12 responsibilities, powers and duties set forth herein, and such additional
 13 powers as may be conferred upon it by subsequent concurrent action of
 14 the respective legislatures of the member states.

15 (B) Consist of one commissioner from each member state who shall
 16 be appointed by the executive head of the state human services admin-
 17 istration with ultimate responsibility for the child welfare program. The
 18 appointed commissioner shall have the legal authority to vote on policy
 19 related matters governed by this compact binding the state.

20 (1) Each member state represented at a meeting of the interstate
 21 commission is entitled to one vote.

22 (2) A majority of the member states shall constitute a quorum for the
 23 transaction of business, unless a larger quorum is required by the bylaws
 24 of the interstate commission.

25 (3) A representative shall not delegate a vote to another member
 26 state.

27 (4) A representative may delegate voting authority to another person
 28 from their state for a specified meeting.

29 (C) In addition to the commissioners of each member state, the in-
 30 terstate commission shall include persons who are members of interested
 31 organizations as defined in the bylaws or rules of the interstate commis-
 32 sion. Such members shall be ex officio and shall not be entitled to vote
 33 on any matter before the interstate commission.

34 (D) Establish an executive committee which shall have the authority
 35 to administer the day-to-day operations and administration of the inter-
 36 state commission. It shall not have the power to engage in rulemaking.

37 ARTICLE IX. POWERS AND DUTIES OF THE
 38 INTERSTATE COMMISSION

39 The interstate commission shall have the following powers:

40 (A) To promulgate rules and take all necessary actions to effect the
 41 goals, purposes and obligations as enumerated in this compact.

42 (B) To provide for dispute resolution among member states.

43 (C) To issue, upon request of a member state, advisory opinions con-

- 1 cerning the meaning or interpretation of the interstate compact, its by-
2 laws, rules or actions.
- 3 (D) To enforce compliance with this compact or the bylaws or rules
4 of the interstate commission pursuant to article XII.
- 5 (E) Collect standardized data concerning the interstate placement of
6 children subject to this compact as directed through its rules which shall
7 specify the data to be collected, the means of collection and data exchange
8 and reporting requirements.
- 9 (F) To establish and maintain offices as may be necessary for the
10 transacting of its business.
- 11 (G) To purchase and maintain insurance and bonds.
- 12 (H) To hire or contract for services of personnel or consultants as
13 necessary to carry out its functions under the compact and establish per-
14 sonnel qualification policies, and rates of compensation.
- 15 (I) To establish and appoint committees and officers including, but
16 not limited to, an executive committee as required by article X.
- 17 (J) To accept any and all donations and grants of money, equipment,
18 supplies, materials, and services, and to receive, utilize, and dispose
19 thereof.
- 20 (K) To lease, purchase, accept contributions or donations of, or oth-
21 erwise to own, hold, improve or use any property, real, personal, or mixed.
- 22 (L) To sell, convey, mortgage, pledge, lease, exchange, abandon, or
23 otherwise dispose of any property, real, personal or mixed.
- 24 (M) To establish a budget and make expenditures.
- 25 (N) To adopt a seal and bylaws governing the management and op-
26 eration of the interstate commission.
- 27 (O) To report annually to the legislatures, governors, the judiciary,
28 and state advisory councils of the member states concerning the activities
29 of the interstate commission during the preceding year. Such reports shall
30 also include any recommendations that may have been adopted by the
31 interstate commission.
- 32 (P) To coordinate and provide education, training and public aware-
33 ness regarding the interstate movement of children for officials involved
34 in such activity.
- 35 (Q) To maintain books and records in accordance with the bylaws of
36 the interstate commission.
- 37 (R) To perform such functions as may be necessary or appropriate to
38 achieve the purposes of this compact.
- 39 ARTICLE X. ORGANIZATION AND OPERATION OF THE
40 INTERSTATE COMMISSION
- 41 (A) Bylaws
- 42 (1) Within 12 months after the first interstate commission meeting,
43 the interstate commission shall adopt bylaws to govern its conduct as may

- 1 be necessary or appropriate to carry out the purposes of the compact.
- 2 (2) The interstate commission's bylaws and rules shall establish con-
3 ditions and procedures under which the interstate commission shall make
4 its information and official records available to the public for inspection
5 or copying. The interstate commission may exempt from disclosure in-
6 formation or official records to the extent they would adversely affect
7 personal privacy rights or proprietary interests.
- 8 (B) Meetings
- 9 (1) The interstate commission shall meet at least once each calendar
10 year. The chairperson may call additional meetings and, upon the request
11 of a simple majority of the member states shall call additional meetings.
- 12 (2) Public notice shall be given by the interstate commission of all
13 meetings and all meetings shall be open to the public, except as set forth
14 in the rules or as otherwise provided in the compact. The interstate com-
15 mission and its committees may close a meeting, or portion thereof, where
16 it determines by two-thirds vote that an open meeting would be likely to:
- 17 (a) Relate solely to the interstate commission's internal personnel
18 practices and procedures; or
- 19 (b) disclose matters specifically exempted from disclosure by federal
20 law; or
- 21 (c) disclose financial or commercial information which is privileged,
22 proprietary or confidential in nature; or
- 23 (d) involve accusing a person of a crime, or formally censuring a per-
24 son; or
- 25 (e) disclose information of a personal nature where disclosure would
26 constitute a clearly unwarranted invasion of personal privacy or physically
27 endanger one or more persons; or
- 28 (f) disclose investigative records compiled for law enforcement pur-
29 poses; or
- 30 (g) specifically relate to the interstate commission's participation in a
31 civil action or other legal proceeding.
- 32 (3) For a meeting, or portion of a meeting, closed pursuant to this
33 provision, the interstate commission's legal counsel or designee shall cer-
34 tify that the meeting may be closed and shall reference each relevant
35 exemption provision. The interstate commission shall keep minutes which
36 shall fully and clearly describe all matters discussed in a meeting and shall
37 provide a full and accurate summary of actions taken, and the reasons
38 therefore, including a description of the views expressed and the record
39 of a roll call vote. All documents considered in connection with an action
40 shall be identified in such minutes. All minutes and documents of a closed
41 meeting shall remain under seal, subject to release by a majority vote of
42 the interstate commission or by court order.
- 43 (4) The bylaws may provide for meetings of the interstate commission

1 to be conducted by telecommunication or other electronic
2 communication.

3 (C) Officers and staff

4 (1) The interstate commission may, through its executive committee,
5 appoint or retain a staff director for such period, upon such terms and
6 conditions and for such compensation as the interstate commission may
7 deem appropriate. The staff director shall serve as secretary to the inter-
8 state commission, but shall not have a vote. The staff director may hire
9 and supervise such other staff as may be authorized by the interstate
10 commission.

11 (2) The interstate commission shall elect, from among its members,
12 a chairperson and a vice chairperson of the executive committee and other
13 necessary officers, each of whom shall have such authority and duties as
14 may be specified in the bylaws.

15 (D) Qualified immunity, defense and indemnification

16 (1) The interstate commission's staff director and its employees shall
17 be immune from suit and liability, either personally or in their official
18 capacity, for a claim for damage to or loss of property or personal injury
19 or other civil liability caused or arising out of or relating to an actual or
20 alleged act, error, or omission that occurred, or that such person had a
21 reasonable basis for believing occurred within the scope of commission
22 employment, duties, or responsibilities; provided, that such person shall
23 not be protected from suit or liability for damage, loss, injury, or liability
24 caused by a criminal act or the intentional or willful and wanton miscon-
25 duct of such person.

26 (a) The liability of the interstate commission's staff director and em-
27 ployees or interstate commission representatives, acting within the scope
28 of such person's employment or duties for acts, errors, or omissions oc-
29 ccurring within such person's state may not exceed the limits of liability
30 set forth under the constitution and laws of that state for state officials,
31 employees, and agents. The interstate commission is considered to be an
32 instrumentality of the states for the purposes of any such action. Nothing
33 in this subsection shall be construed to protect such person from suit or
34 liability for damage, loss, injury, or liability caused by a criminal act or
35 the intentional or willful and wanton misconduct of such person.

36 (b) The interstate commission shall defend the staff director and its
37 employees and, subject to the approval of the attorney general or other
38 appropriate legal counsel of the member state, shall defend the commis-
39 sioner of a member state in a civil action seeking to impose liability arising
40 out of an actual or alleged act, error or omission that occurred within the
41 scope of interstate commission employment, duties or responsibilities, or
42 that the defendant had a reasonable basis for believing occurred within
43 the scope of interstate commission employment, duties, or responsibili-

1 ties, provided that the actual or alleged act, error, or omission did not
 2 result from intentional or willful and wanton misconduct on the part of
 3 such person.

4 (c) To the extent not covered by the state involved, member state, or
 5 the interstate commission, the representatives or employees of the inter-
 6 state commission shall be held harmless in the amount of a settlement or
 7 judgment, including attorney’s fees and costs, obtained against such per-
 8 sons arising out of an actual or alleged act, error, or omission that occurred
 9 within the scope of interstate commission employment, duties, or re-
 10 sponsibilities, or that such persons had a reasonable basis for believing
 11 occurred within the scope of interstate commission employment, duties,
 12 or responsibilities, provided that the actual or alleged act, error, or omis-
 13 sion did not result from intentional or willful and wanton misconduct on
 14 the part of such persons

15 ARTICLE XI. RULEMAKING FUNCTIONS OF THE
 16 INTERSTATE COMMISSION

17 (A) The interstate commission shall promulgate and publish rules in
 18 order to effectively and efficiently achieve the purposes of the compact.

19 (B) Rulemaking shall occur pursuant to the criteria set forth in this
 20 article and the bylaws and rules adopted pursuant thereto. Such rule-
 21 making shall substantially conform to the principles of the “model state
 22 administrative procedures act,” 1981 act, uniform laws annotated, Vol.
 23 15, p.1 (2000), or such other administrative procedure acts as the inter-
 24 state commission deems appropriate consistent with due process require-
 25 ments under the United States constitution as now or hereafter inter-
 26 preted by the U. S. supreme court. All rules and amendments shall
 27 become binding as of the date specified, as published with the final ver-
 28 sion of the rule as approved by the interstate commission.

29 (C) When promulgating a rule, the interstate commission shall, at a
 30 minimum:

31 (1) Publish the proposed rule’s entire text stating the reason for that
 32 proposed rule; and

33 (2) allow and invite any and all persons to submit written data, facts,
 34 opinions and arguments, which information shall be added to the record,
 35 and be made publicly available; and

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

38 (D) Rules promulgated by the interstate commission shall have the
 39 force and effect of statutory law and shall supersede any state law, rule
 40 or regulation to the extent of any conflict.

41 (E) Not later than 60 days after a rule is promulgated, an interested
 42 person may file a petition in the U.S. district court for the District of
 43 Columbia or in the federal district court where the interstate commis-

1 sion's principal office is located for judicial review of such rule. If the
2 court finds that the interstate commission's action is not supported by
3 substantial evidence in the rulemaking record, the court shall hold the
4 rule unlawful and set it aside.

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

9 (G) The existing rules governing the operation of the interstate com-
10 pact on the placement of children superseded by this act shall be null
11 and void no less than 12, but no more than 24 months after the first
12 meeting of the interstate commission created hereunder, as determined
13 by the members during the first meeting.

14 (H) Within the first 12 months of operation, the interstate commis-
15 sion shall promulgate rules addressing the following:

- 16 (1) Transition rules;
- 17 (2) forms and procedures;
- 18 (3) time lines;
- 19 (4) data collection and reporting;
- 20 (5) rulemaking;
- 21 (6) visitation;
- 22 (7) progress reports and supervision;
- 23 (8) sharing of information and confidentiality;
- 24 (9) financing of the interstate commission;
- 25 (10) mediation, arbitration and dispute resolution;
- 26 (11) education, training and technical assistance;
- 27 (12) enforcement; and
- 28 (13) coordination with other interstate compacts.

29 (I) Upon determination by a majority of the members of the inter-
30 state commission that an emergency exists:

31 (1) The interstate commission may promulgate an emergency rule
32 only if it is required to:

- 33 (a) Protect the children covered by this compact from an imminent
34 threat to their health, safety and well-being; or
- 35 (b) prevent loss of federal or state funds; or
- 36 (c) meet a deadline for the promulgation of an administrative rule
37 required by federal law.

38 (2) An emergency rule shall become effective immediately upon
39 adoption, provided that the usual rulemaking procedures provided here-
40 under shall be retroactively applied to such rule as soon as reasonably
41 possible, but no later than 90 days after the effective date of the emer-
42 gency rule.

43 (3) An emergency rule shall be promulgated as provided for in the

1 rules of the interstate commission.

2 ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION,
3 ENFORCEMENT

4 (A) Oversight

5 (1) The interstate commission shall oversee the administration and
6 operation of the compact.

7 (2) The executive, legislative and judicial branches of state govern-
8 ment in each member state shall enforce this compact and the rules of
9 the interstate commission and shall take all actions necessary and appro-
10 priate to effectuate the compact's purposes and intent. The compact and
11 its rules shall supercede state law, rules or regulations to the extent of
12 any conflict therewith.

13 (3) All courts shall take judicial notice of the compact and the rules
14 in any judicial or administrative proceeding in a member state pertaining
15 to the subject matter of this compact.

16 (4) The interstate commission shall be entitled to receive service of
17 process in any action in which the validity of a compact provision or rule
18 is the issue for which a judicial determination has been sought and shall
19 have standing to intervene in any proceedings. Failure to provide service
20 of process to the interstate commission shall render any judgment, order
21 or other determination, however so captioned or classified, void as to the
22 interstate commission, this compact, its bylaws or rules of the interstate
23 commission.

24 (B) Dispute resolution

25 (1) The interstate commission shall attempt, upon the request of a
26 member state, to resolve disputes which are subject to the compact and
27 which may arise among member states and between member and non-
28 member states.

29 (2) The interstate commission shall promulgate a rule providing for
30 both mediation and binding dispute resolution for disputes among com-
31 pacting states. The costs of such mediation or dispute resolution shall be
32 the responsibility of the parties to the dispute.

33 (C) Enforcement

34 (1) If the interstate commission determines that a member state has
35 defaulted in the performance of its obligations or responsibilities under
36 this compact, its bylaws or rules, the interstate commission may:

37 (a) Provide remedial training and specific technical assistance; or

38 (b) provide written notice to the defaulting state and other member
39 states, of the nature of the default and the means of curing the default.
40 The interstate commission shall specify the conditions by which the de-
41 faulting state must cure its default; or

42 (c) by majority vote of the members, initiate against a defaulting
43 member state legal action in the United State district court for the District

1 of Columbia or, at the discretion of the interstate commission, in the
2 federal district where the interstate commission has its principal office,
3 to enforce compliance with the provisions of the compact, its bylaws or
4 rules. The relief sought may include both injunctive relief and damages.
5 In the event judicial enforcement is necessary the prevailing party shall
6 be awarded all costs of such litigation including reasonable attorney's fees;
7 or

8 (d) avail itself of any other remedies available under state law or the
9 regulation of official or professional conduct.

10 ARTICLE XIII. FINANCING OF THE COMMISSION

11 (A) The interstate commission shall pay, or provide for the payment
12 of the reasonable expenses of its establishment, organization and ongoing
13 activities.

14 (B) The interstate commission may levy on and collect an annual
15 assessment from each member state to cover the cost of the operations
16 and activities of the interstate commission and its staff which must be in
17 a total amount sufficient to cover the interstate commission's annual
18 budget as approved by its members each year. The aggregate annual
19 assessment amount shall be allocated based upon a formula to be deter-
20 mined by the interstate commission which shall promulgate a rule binding
21 upon all member states.

22 (C) The interstate commission shall not incur obligations of any kind
23 prior to securing the funds adequate to meet the same; nor shall the
24 interstate commission pledge the credit of any of the member states,
25 except by and with the authority of the member state.

26 (D) The interstate commission shall keep accurate accounts of all
27 receipts and disbursements. The receipts and disbursements of the in-
28 terstate commission shall be subject to the audit and accounting proce-
29 dures established under its bylaws. However, all receipts and disburse-
30 ments of funds handled by the interstate commission shall be audited
31 yearly by a certified or licensed public accountant and the report of the
32 audit shall be included in and become part of the annual report of the
33 interstate commission.

34 ARTICLE XIV. MEMBER STATES, EFFECTIVE DATE 35 AND AMENDMENT

36 (A) Any state is eligible to become a member state.

37 (B) The compact shall become effective and binding upon legislative
38 enactment of the compact into law by no less than 35 states. The effective
39 date shall be the later of July 1, 2007 or upon enactment of the compact
40 into law by the 35th state. Thereafter it shall become effective and binding
41 as to any other member state upon enactment of the compact into law
42 by that state. The executive heads of the state human services adminis-
43 tration with ultimate responsibility for the child welfare program of non-

1 member states or their designees shall be invited to participate in the
2 activities of the interstate commission on a non-voting basis prior to adop-
3 tion of the compact by all states.

4 (C) The interstate commission may propose amendments to the com-
5 pact for enactment by the member states. No amendment shall become
6 effective and binding on the member states unless and until it is enacted
7 into law by unanimous consent of the member states.

8 ARTICLE XV. WITHDRAWAL AND DISSOLUTION

9 (A) Withdrawal

10 (1) Once effective, the compact shall continue in force and remain
11 binding upon each and every member state; provided that a member state
12 may withdraw from the compact specifically repealing the statute which
13 enacted the compact into law.

14 (2) Withdrawal from this compact shall be by the enactment of a
15 statute repealing the same. The effective date of withdrawal shall be the
16 effective date of the repeal of the statute.

17 (3) The withdrawing state shall immediately notify the president of
18 the interstate commission in writing upon the introduction of legislation
19 repealing this compact in the withdrawing state. The interstate commis-
20 sion shall then notify the other member states of the withdrawing state's
21 intent to withdraw.

22 (4) The withdrawing state is responsible for all assessments, obliga-
23 tions and liabilities incurred through the effective date of withdrawal.

24 (5) Reinstatement following withdrawal of a member state shall occur
25 upon the withdrawing state reenacting the compact or upon such later
26 date as determined by the members of the interstate commission.

27 (B) Dissolution of compact

28 (1) This compact shall dissolve effective upon the date of the with-
29 drawal or default of the member state which reduces the membership in
30 the compact to one member state.

31 (2) Upon the dissolution of this compact, the compact becomes null
32 and void and shall be of no further force or effect, and the business and
33 affairs of the interstate commission shall be concluded and surplus funds
34 shall be distributed in accordance with the bylaws.

35 ARTICLE XVI. SEVERABILITY AND CONSTRUCTION

36 (A) The provisions of this compact shall be severable, and if any
37 phrase, clause, sentence or provision is deemed unenforceable, the re-
38 maining provisions of the compact shall be enforceable.

39 (B) The provisions of this compact shall be liberally construed to ef-
40 fectuate its purposes.

41 (C) Nothing in this compact shall be construed to prohibit the con-
42 current applicability of other interstate compacts to which the states are
43 members.

