

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Karen Spilka**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to improve the interstate compact on the placement of children .

PETITION OF:

NAME:

Karen Spilka

DISTRICT/ADDRESS:

Second Middlesex and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S00108 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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

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

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

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

5 INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN

6 ARTICLE I. PURPOSE

7 The purpose of this compact is to:

8 A. Provide a process through which children subject to this compact are placed in safe and suitable  
9 homes in a timely manner.

- 10 B. Facilitate ongoing supervision of a placement, the delivery of services, and communication  
11 between the states.
- 12 C. Provide operating procedures that will ensure that children are placed in safe and suitable  
13 homes in a timely manner.
- 14 D. Provide for the promulgation and enforcement of administrative rules implementing the  
15 provisions of this compact and regulating the covered activities of the member states.
- 16 E. Provide for uniform data collection and information sharing between member states under this  
17 compact.
- 18 F. Promote coordination between this compact, the Interstate Compact for Juveniles, the  
19 Interstate Compact on Adoption and Medical Assistance and other compacts affecting the  
20 placement of and which provide services to children otherwise subject to this compact.
- 21 G. Provide for a state's continuing legal jurisdiction and responsibility for placement and care of a  
22 child that it would have had if the placement were intrastate.
- 23 H. Provide for the promulgation of guidelines, in collaboration with Indian tribes, for interstate  
24 cases involving Indian children as is or may be permitted by federal law.

25 ARTICLE II. DEFINITIONS

26 As used in this compact,

- 27 A. "Approved placement" means the receiving state has determined after an assessment that the  
28 placement is both safe and suitable for the child and is in compliance with the applicable laws of  
29 the receiving state governing the placement of children therein.
- 30 B. "Assessment" means an evaluation of a prospective placement to determine whether the  
31 placement meets the individualized needs of the child, including but not limited to the child's  
32 safety and stability, health and well-being, and mental, emotional and physical development.

- 33 C. "Child" means an individual who has not attained the age of eighteen (18).
- 34 D. "Default" means the failure of a member state to perform the obligations or responsibilities  
35 imposed upon it by this compact, the bylaws or rules of the Interstate Commission.
- 36 E. "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of  
37 Indians recognized as eligible for services provided to Indians by the Secretary of the Interior  
38 because of their status as Indians, including any Alaskan native village as defined in section 3 (c)  
39 of the Alaska Native Claims settlement Act at 43 USC §1602(c).
- 40 F. "Interstate Commission for the Placement of Children" means the commission that is created  
41 under Article VIII of this compact and which is generally referred to as the Interstate  
42 Commission.
- 43 G. "Jurisdiction" means the power and authority of a court to hear and decide matters.
- 44 H. "Member state" means a state that has enacted this compact.
- 45 I. "Non-custodial parent" means a person who, at the time of the commencement of court  
46 proceedings in the sending state, does not have sole legal custody of the child or has joint legal  
47 custody of a child, and who is not the subject of allegations or findings of child abuse or neglect.
- 48 J. "Non-member state" means a state which has not enacted this compact.
- 49 K. "Notice of residential placement" means information regarding a placement into a residential  
50 facility provided to the receiving state including, but not limited to the name, date and place of  
51 birth of the child, the identity and address of the parent or legal guardian, evidence of authority  
52 to make the placement, and the name and address of the facility in which the child will be  
53 placed. Notice of residential placement shall also include information regarding a discharge and  
54 any unauthorized absence from the facility.
- 55 L. "Placement" means the act by a public or private child placing agency intended to arrange for  
56 the care or custody of a child in another state.

- 57 M. "Private child placing agency" means any private corporation, agency, foundation, institution, or  
58 charitable organization, or any private person or attorney that facilitates, causes, or is involved  
59 in the placement of a child from one state to another and that is not an instrumentality of the  
60 state or acting under color of state law.
- 61 N. "Provisional placement" means that the receiving state has determined that the proposed  
62 placement is safe and suitable, and, to the extent allowable, the receiving state has temporarily  
63 waived its standards or requirements otherwise applicable to prospective foster or adoptive  
64 parents so as to not delay the placement. Completion of the receiving state requirements  
65 regarding training for prospective foster or adoptive parents shall not delay an otherwise safe  
66 and suitable placement.
- 67 O. "Public child placing agency" means any government child welfare agency or child protection  
68 agency or a private entity under contract with such an agency, regardless of whether they act on  
69 behalf of a state, county, municipality or other governmental unit and which facilitates, causes,  
70 or is involved in the placement of a child from one state to another.
- 71 P. "Receiving state" means the state to which a child is sent, brought, or caused to be sent or  
72 brought.
- 73 Q. "Relative" means someone who is related to the child as a parent, step-parent, sibling by half or  
74 whole blood or by adoption, grandparent, aunt, uncle, or first cousin or a non-relative with such  
75 significant ties to the child that they may be regarded as relatives as determined by the court in  
76 the sending state.
- 77 R. "Residential Facility" means a facility providing a level of care that is sufficient to substitute for  
78 parental responsibility or foster care, and is beyond what is needed for assessment or treatment  
79 of an acute condition. For purposes of the compact, residential facilities do not include  
80 institutions primarily educational in character, hospitals or other medical facilities.

81 S. "Rule" means a written directive, mandate, standard or principle issued by the Interstate  
82 Commission promulgated pursuant to Article XI of this compact that is of general applicability  
83 and that implements, interprets or prescribes a policy or provision of the compact. "Rule" has  
84 the force and effect of statutory law in a member state, and includes the amendment, repeal, or  
85 suspension of an existing rule.

86 T. "Sending state" means the state from which the placement of a child is initiated.

87 U. "Service member's permanent duty station" means the military installation where an active duty  
88 Armed Services member is currently assigned and is physically located under competent orders  
89 that do not specify the duty as temporary.

90 V. "Service member's state of legal residence" means the state in which the active duty Armed  
91 Services member is considered a resident for tax and voting purposes.

92 W. "State" means a state of the United States, the District of Columbia, the Commonwealth of  
93 Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and  
94 any other territory of the United States.

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

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

#### 100 ARTICLE III. APPLICABILITY

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

102 1. The interstate placement of a child subject to ongoing court jurisdiction in the sending state,  
103 due to allegations or findings that the child has been abused, neglected, or deprived as

104 defined by the laws of the sending state, provided, however, that the placement of such a  
105 child into a residential facility shall only require notice of residential placement to the  
106 receiving state prior to placement.

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

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

111 b. the child is being placed in another member state and the determination of safety and  
112 suitability of the placement and services required is not provided through another  
113 compact.

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

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

117 1. The interstate placement of a child with a non-relative in a receiving state by a parent with  
118 the legal authority to make such a placement provided, however, that the placement is not  
119 intended to effectuate an adoption.

120 2. The interstate placement of a child by one relative with the lawful authority to make such a  
121 placement directly with a relative in a receiving state.

122 3. The placement of a child, not subject to Article III, Section A, into a residential facility by his  
123 parent.

124 4. The placement of a child with a non-custodial parent provided that:

- 125           a. The non-custodial parent proves to the satisfaction of a court in the sending state a  
126           substantial relationship with the child; and
- 127           b. The court in the sending state makes a written finding that placement with the non-  
128           custodial parent is in the best interests of the child; and
- 129           c. The court in the sending state dismisses its jurisdiction over the child's case.
- 130       5. A child entering the United States from a foreign country for the purpose of adoption or  
131       leaving the United States to go to a foreign country for the purpose of adoption in that  
132       country.
- 133       6. Cases in which a U.S. citizen child living overseas with his family, at least one of whom is in  
134       the U.S. Armed Services, and who is stationed overseas, is removed and placed in a state.
- 135       7. The sending of a child by a public child placing agency or a private child placing agency for a  
136       visit as defined by the rules of the Interstate Commission.
- 137   C. For purposes of determining the applicability of this compact to the placement of a child with a  
138       family in the Armed Services, the public child placing agency or private child placing agency may  
139       choose the state of the service member's permanent duty station or the service member's  
140       declared legal residence.
- 141   D. Nothing in this compact shall be construed to prohibit the concurrent application of the  
142       provisions of this compact with other applicable interstate compacts including the Interstate  
143       Compact for Juveniles and the Interstate Compact on Adoption and Medical Assistance. The  
144       Interstate Commission may in cooperation with other interstate compact commissions having  
145       responsibility for the interstate movement, placement or transfer of children, promulgate like  
146       rules to ensure the coordination of services, timely placement of children, and the reduction of  
147       unnecessary or duplicative administrative or procedural requirements.



148 ARTICLE IV. JURISDICTION

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

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

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

- 158 1. The child is reunified with the parent in the receiving state who is the subject of allegations  
159 or findings of abuse or neglect, only with the concurrence of the public child placing agency  
160 in the receiving state; or
- 161 2. The child is adopted; or
- 162 3. The child reaches the age of majority under the laws of the sending state; or
- 163 4. The child achieves legal independence pursuant to the laws of the sending state; or
- 164 5. A guardianship is created by a court in the receiving state with the concurrence of the court  
165 in the sending state; or
- 166 6. An Indian tribe has petitioned for and received jurisdiction from the court in the sending  
167 state; or
- 168 7. The public child placing agency of the sending state requests termination and has obtained  
169 the concurrence of the public child placing agency in the receiving the state.

170 D. When a sending state court terminates its jurisdiction, the receiving state child placing agency  
171 shall be notified.

172 E. Nothing in this article shall defeat a claim of jurisdiction by a receiving state court sufficient to  
173 deal with an act of truancy, delinquency, crime or behavior involving a child as defined by the  
174 laws of the receiving state committed by the child in the receiving state which would be a  
175 violation of its laws.

176 F. Nothing in this article shall limit the receiving state's ability to take emergency jurisdiction for the  
177 protection of the child.

#### 178 ARTICLE V. ASSESSMENTS

179 A. Prior to sending, bringing, or causing a child to be sent or brought into a receiving state, the  
180 public child placing agency shall provide a written request for assessment to the receiving state.

181 B. Prior to the sending, bringing, or causing a child to be sent or brought into a receiving state, the  
182 private child placing agency shall:

183 1. Provide evidence that the applicable laws of the sending state have been complied with;  
184 and

185 2. Certification that the consent or relinquishment is in compliance with applicable law of the  
186 birth parent's state of residence or, where permitted, the laws of the state of where the  
187 finalization of the adoption will occur; and

188 3. Request through the public child placing agency in the sending state an assessment to be  
189 conducted in the receiving state; and

190 4. Upon completion of the assessment, obtain the approval of the public child placing agency  
191 in the receiving state.

192 C. The procedures for making and the request for an assessment shall contain all information and be  
193 in such form as provided for in the rules of the Interstate Commission.

194 D. Upon receipt of a request from the public child welfare agency of the sending state, the  
195 receiving state shall initiate an assessment of the proposed placement to determine its safety  
196 and suitability. If the proposed placement is a placement with a relative, the public child placing  
197 agency of the sending state may request a determination of whether the placement qualifies as  
198 a provisional placement.

199 E. The public child placing agency in the receiving state may request from the public child placing  
200 agency or the private child placing agency in the sending state, and shall be entitled to receive  
201 supporting or additional information necessary to complete the assessment.

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

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

#### 207 ARTICLE VI. PLACEMENT AUTHORITY

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

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

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

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

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

## 223 ARTICLE VII. STATE RESPONSIBILITY

224 A. For the interstate placement of a child made by a public child placing agency or state court:

225 1. The public child placing agency in the sending state shall have financial responsibility for:

226 a. the ongoing support and maintenance for the child during the period of the placement,  
227 unless otherwise provided for in the receiving state; and

228 b. as determined by the public child placing agency in the sending state, services for the  
229 child beyond the public services for which the child is eligible in the receiving state.

230 2. The receiving state shall only have financial responsibility for:

231 a. any assessment conducted by the receiving state; and

232 b. supervision conducted by the receiving state at the level necessary to support the  
233 placement as agreed upon by the public child placing agencies of the receiving and  
234 sending state.

235 3. Nothing in this provision shall prohibit public child placing agencies in the sending state from  
236 entering into agreements with licensed agencies or persons in the receiving state to conduct  
237 assessments and provide supervision.

238 B. For the placement of a child by a private child placing agency preliminary to a possible adoption,  
239 the private child placing agency shall be:

240 1. Legally responsible for the child during the period of placement as provided for in the law of  
241 the sending state until the finalization of the adoption.

242 2. Financially responsible for the child absent a contractual agreement to the contrary.

243 C. A private child placing agency shall be responsible for any assessment conducted in the receiving  
244 state and any supervision conducted by the receiving state at the level required by the laws of  
245 the receiving state or the rules of the Interstate Commission.

246 D. The public child placing agency in the receiving state shall provide timely assessments, as  
247 provided for in the rules of the Interstate Commission.

248 E. The public child placing agency in the receiving state shall provide, or arrange for the provision  
249 of, supervision and services for the child, including timely reports, during the period of the  
250 placement.

251 F. Nothing in this compact shall be construed as to limit the authority of the public child placing  
252 agency in the receiving state from contracting with a licensed agency or person in the receiving  
253 state for an assessment or the provision of supervision or services for the child or otherwise  
254 authorizing the provision of supervision or services by a licensed agency during the period of  
255 placement.

256 G. Each member state shall provide for coordination among its branches of government concerning  
257 the state's participation in, and compliance with, the compact and Interstate Commission  
258 activities, through the creation of an advisory council or use of an existing body or board.

259 H. Each member state shall establish a central state compact office, which shall be responsible for  
260 state compliance with the compact and the rules of the Interstate Commission.

261 I. The public child placing agency in the sending state shall oversee compliance with the provisions  
262 of the Indian Child Welfare Act (25 USC 1901 et seq.) for placements subject to the provisions of  
263 this compact, prior to placement.

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

#### 267 ARTICLE VIII. INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN

268 The member states hereby establish, by way of this compact, a commission known as the "Interstate  
269 Commission for the Placement of Children." The activities of the Interstate Commission are the  
270 formation of public policy and are a discretionary state function. The Interstate Commission shall:

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

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

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

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

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

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

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

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

## 292 ARTICLE IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

293 The Interstate Commission shall have the following powers:

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

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

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

- 299 D. To enforce compliance with this compact or the bylaws or rules of the Interstate Commission  
300 pursuant to Article XII.
- 301 E. Collect standardized data concerning the interstate placement of children subject to this  
302 compact as directed through its rules which shall specify the data to be collected, the means of  
303 collection and data exchange and reporting requirements.
- 304 F. To establish and maintain offices as may be necessary for the transacting of its business.
- 305 G. To purchase and maintain insurance and bonds.
- 306 H. To hire or contract for services of personnel or consultants as necessary to carry out its  
307 functions under the compact and establish personnel qualification policies, and rates of  
308 compensation.
- 309 I. To establish and appoint committees and officers including, but not limited to, an executive  
310 committee as required by Article X.
- 311 J. To accept any and all donations and grants of money, equipment, supplies, materials, and  
312 services, and to receive, utilize, and dispose thereof.
- 313 K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or  
314 use any property, real, personal, or mixed.
- 315 L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any  
316 property, real, personal or mixed.
- 317 M. To establish a budget and make expenditures.
- 318 N. To adopt a seal and bylaws governing the management and operation of the Interstate  
319 Commission.
- 320 O. To report annually to the legislatures, governors, the judiciary, and state advisory councils of the  
321 member states concerning the activities of the Interstate Commission during the preceding year.



322 Such reports shall also include any recommendations that may have been adopted by the  
323 Interstate Commission.

324 P. To coordinate and provide education, training and public awareness regarding the interstate  
325 movement of children for officials involved in such activity.

326 Q. To maintain books and records in accordance with the bylaws of the Interstate Commission.

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

## 329 ARTICLE X. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

### 330 A. Bylaws

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

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

### 339 B. Meetings

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

343 2. Public notice shall be given by the Interstate Commission of all meetings and all meetings  
344 shall be open to the public, except as set forth in the rules or as otherwise provided in the

345 compact. The Interstate Commission and its committees may close a meeting, or portion  
346 thereof, where it determines by two-thirds vote that an open meeting would be likely to:

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

349 b. disclose matters specifically exempted from disclosure by federal law; or

350 c. disclose financial or commercial information which is privileged, proprietary or  
351 confidential in nature; or

352 d. involve accusing a person of a crime, or formally censuring a person; or

353 e. disclose information of a personal nature where disclosure would constitute a clearly  
354 unwarranted invasion of personal privacy or physically endanger one or more persons;

355 or

356 f. disclose investigative records compiled for law enforcement purposes; or

357 g. specifically relate to the Interstate Commission's participation in a civil action or other  
358 legal proceeding.

359 3. For a meeting, or portion of a meeting, closed pursuant to this provision, the Interstate  
360 Commission's legal counsel or designee shall certify that the meeting may be closed and  
361 shall reference each relevant exemption provision. The Interstate Commission shall keep  
362 minutes which shall fully and clearly describe all matters discussed in a meeting and shall  
363 provide a full and accurate summary of actions taken, and the reasons therefore, including a  
364 description of the views expressed and the record of a roll call vote. All documents  
365 considered in connection with an action shall be identified in such minutes. All minutes and  
366 documents of a closed meeting shall remain under seal, subject to release by a majority vote  
367 of the Interstate Commission or by court order.

368 4. The bylaws may provide for meetings of the Interstate Commission to be conducted by  
369 telecommunication or other electronic communication.

370 C. Officers and Staff

371 1. The Interstate Commission may, through its executive committee, appoint or retain a staff  
372 director for such period, upon such terms and conditions and for such compensation as the  
373 Interstate Commission may deem appropriate. The staff director shall serve as secretary to  
374 the Interstate Commission, but shall not have a vote. The staff director may hire and  
375 supervise such other staff as may be authorized by the Interstate Commission.

376 2. The Interstate Commission shall elect, from among its members, a chairperson and a vice  
377 chairperson of the executive committee and other necessary officers, each of whom shall  
378 have such authority and duties as may be specified in the bylaws.

379 D. Qualified Immunity, Defense and Indemnification

380 1. The Interstate Commission's staff director and its employees shall be immune from suit and  
381 liability, either personally or in their official capacity, for a claim for damage to or loss of  
382 property or personal injury or other civil liability caused or arising out of or relating to an  
383 actual or alleged act, error, or omission that occurred, or that such person had a reasonable  
384 basis for believing occurred within the scope of Commission employment, duties, or  
385 responsibilities; provided, that such person shall not be protected from suit or liability for  
386 damage, loss, injury, or liability caused by a criminal act or the intentional or willful and  
387 wanton misconduct of such person.

388 a. The liability of the Interstate Commission's staff director and employees or Interstate  
389 Commission representatives, acting within the scope of such person's employment or

390 duties for acts, errors, or omissions occurring within such person's state may not exceed  
391 the limits of liability set forth under the Constitution and laws of that state for state  
392 officials, employees, and agents. The Interstate Commission is considered to be an  
393 instrumentality of the states for the purposes of any such action. Nothing in this  
394 subsection shall be construed to protect such person from suit or liability for damage,  
395 loss, injury, or liability caused by a criminal act or the intentional or willful and wanton  
396 misconduct of such person.

397 b. The Interstate Commission shall defend the staff director and its employees and, subject  
398 to the approval of the Attorney General or other appropriate legal counsel of the  
399 member state shall defend the commissioner of a member state in a civil action seeking  
400 to impose liability arising out of an actual or alleged act, error or omission that occurred  
401 within the scope of Interstate Commission employment, duties or responsibilities, or  
402 that the defendant had a reasonable basis for believing occurred within the scope of  
403 Interstate Commission employment, duties, or responsibilities, provided that the actual  
404 or alleged act, error, or omission did not result from intentional or willful and wanton  
405 misconduct on the part of such person.

406 c. To the extent not covered by the state involved, member state, or the Interstate  
407 Commission, the representatives or employees of the Interstate Commission shall be  
408 held harmless in the amount of a settlement or judgment, including attorney's fees and  
409 costs, obtained against such persons arising out of an actual or alleged act, error, or  
410 omission that occurred within the scope of Interstate Commission employment, duties,  
411 or responsibilities, or that such persons had a reasonable basis for believing occurred  
412 within the scope of Interstate Commission employment, duties, or responsibilities,

413 provided that the actual or alleged act, error, or omission did not result from intentional  
414 or willful and wanton misconduct on the part of such persons.

415 ARTICLE XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

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

418 B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules  
419 adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the  
420 "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1  
421 (2000), or such other administrative procedure acts as the Interstate Commission deems  
422 appropriate consistent with due process requirements under the United States Constitution as  
423 now or hereafter interpreted by the U. S. Supreme Court. All rules and amendments shall  
424 become binding as of the date specified, as published with the final version of the rule as  
425 approved by the Interstate Commission.

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

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

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

434 E. Not later than 60 days after a rule is promulgated, an interested person may file a petition in the  
435 U.S. District Court for the District of Columbia or in the Federal District Court where the

436 Interstate Commission's principal office is located for judicial review of such rule. If the court  
437 finds that the Interstate Commission's action is not supported by substantial evidence in the  
438 rulemaking record, the court shall hold the rule unlawful and set it aside.

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

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

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

- 448 1. Transition rules
- 449 2. Forms and procedures
- 450 3. Time lines
- 451 4. Data collection and reporting
- 452 5. Rulemaking
- 453 6. Visitation
- 454 7. Progress reports/supervision
- 455 8. Sharing of information/confidentiality
- 456 9. Financing of the Interstate Commission
- 457 10. Mediation, arbitration and dispute resolution
- 458 11. Education, training and technical assistance
- 459 12. Enforcement

- 460 13. Coordination with other interstate compacts
- 461 I. Upon determination by a majority of the members of the Interstate Commission that an
- 462 emergency exists:
- 463 1. The Interstate Commission may promulgate an emergency rule only if it is required to:
- 464 a. Protect the children covered by this compact from an imminent threat to their health,
- 465 safety and well-being; or
- 466 b. Prevent loss of federal or state funds; or
- 467 c. Meet a deadline for the promulgation of an administrative rule required by federal law.
- 468 2. An emergency rule shall become effective immediately upon adoption, provided that the
- 469 usual rulemaking procedures provided hereunder shall be retroactively applied to said rule
- 470 as soon as reasonably possible, but no later than 90 days after the effective date of the
- 471 emergency rule.
- 472 3. An emergency rule shall be promulgated as provided for in the rules of the Interstate
- 473 Commission.

474 ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

475 A. Oversight

- 476 1. The Interstate Commission shall oversee the administration and operations of the compact.
- 477 2. The executive, legislative and judicial branches of state government in each member state
- 478 shall enforce this compact and the rules of the Interstate Commission and shall take all
- 479 actions necessary and appropriate to effectuate the compact's purposes and intent. The

480 compact and its rules shall supersede state law, rules or regulations to the extent of any  
481 conflict therewith.

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

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

491 B. Dispute Resolution

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

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

498 C. Enforcement

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

502 a. Provide remedial training and specific technical assistance; or



- 503           b. Provide written notice to the defaulting state and other member states, of the nature of  
504           the default and the means of curing the default. The Interstate Commission shall specify  
505           the conditions by which the defaulting state must cure its default; or
  
- 506           c. By majority vote of the members, initiate against a defaulting member state legal action  
507           in the United State District Court for the District of Columbia or, at the discretion of the  
508           Interstate Commission, in the federal district where the Interstate Commission has its  
509           principal offices, to enforce compliance with the provisions of the compact, its bylaws or  
510           rules. The relief sought may include both injunctive relief and damages. In the event  
511           judicial enforcement is necessary the prevailing party shall be awarded all costs of such  
512           litigation including reasonable attorney’s fees; or
  
- 513           d. Avail itself of any other remedies available under state law or the regulation of official or  
514           professional conduct.

515   ARTICLE XIII. FINANCING OF THE COMMISSION

- 516           A. The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of  
517           its establishment, organization and ongoing activities.
  
- 518           B. The Interstate Commission may levy on and collect an annual assessment from each member  
519           state to cover the cost of the operations and activities of the Interstate Commission and its staff  
520           which must be in a total amount sufficient to cover the Interstate Commission’s annual budget  
521           as approved by its members each year. The aggregate annual assessment amount shall be  
522           allocated based upon a formula to be determined by the Interstate Commission which shall  
523           promulgate a rule binding upon all member states.

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

527 D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The  
528 receipts and disbursements of the Interstate Commission shall be subject to the audit and  
529 accounting procedures established under its bylaws. However, all receipts and disbursements  
530 of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed  
531 public accountant and the report of the audit shall be included in and become part of the annual  
532 report of the Interstate Commission.

#### 533 ARTICLE XIV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

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

535 B. The compact shall become effective and binding upon legislative enactment of the compact into  
536 law by no less than 35 states. The effective date shall be the later of July 1, 2007 or upon  
537 enactment of the compact into law by the 35<sup>th</sup> state. Thereafter it shall become effective and  
538 binding as to any other member state upon enactment of the compact into law by that state.  
539 The governors of non-member states or their designees shall be invited to participate in the  
540 activities of the Interstate Commission on a non-voting basis prior to adoption of the compact  
541 by all states.

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

#### 545 ARTICLE XV. WITHDRAWAL AND DISSOLUTION

546 A. Withdrawal

- 547 1. Once effective, the compact shall continue in force and remain binding upon each and every  
548 member state; provided that a member state may withdraw from the compact specifically  
549 repealing the statute which enacted the compact into law.
- 550 2. Withdrawal from this compact shall be by the enactment of a statute repealing the same.  
551 The effective date of withdrawal shall be the effective date of the repeal of the statute.
- 552 3. The withdrawing state shall immediately notify the president of the Interstate Commission  
553 in writing upon the introduction of legislation repealing this compact in the withdrawing  
554 state. The Interstate Commission shall then notify the other member states of the  
555 withdrawing state's intent to withdraw.
- 556 4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred  
557 through the effective date of withdrawal.
- 558 5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing  
559 state reenacting the compact or upon such later date as determined by the members of the  
560 Interstate Commission.

561 B. Dissolution of Compact

- 562 1. This compact shall dissolve effective upon the date of the withdrawal or default of the  
563 member state which reduces the membership in the compact to one member state.
- 564 2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no  
565 further force or effect, and the business and affairs of the Interstate Commission shall be  
566 concluded and surplus funds shall be distributed in accordance with the bylaws.

567 ARTICLE XVI. SEVERABILITY AND CONSTRUCTION

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

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

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

#### 574 ARTICLE XVII. BINDING EFFECT OF COMPACT AND OTHER LAWS

##### 575 A. Other Laws

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

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

##### 580 B. Binding Effect of the Compact

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

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

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

#### 588 ARTICLE XVIII. INDIAN TRIBES

589 Notwithstanding any other provision in this compact, the Interstate Commission may  
590 promulgate guidelines to permit Indian tribes to utilize the compact to achieve any or all of the

591 purposes of the compact as specified in Article I. The Interstate Commission shall make  
592 reasonable efforts to consult with Indian tribes in promulgating guidelines to reflect the diverse  
593 circumstances of the various Indian tribes.

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

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

598 The state Department of Children and Families shall be the central state compact office as that  
599 term is used in Article VII (H) of the interstate compact on the placement of children.

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

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

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

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

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

611