

SENATE No. 67

The Commonwealth of Massachusetts

PRESENTED BY:

Ms. 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:

Ms. Spilka
James R. Miceli

DISTRICT/ADDRESS:

Second Middlesex and Norfolk
19th Middlesex

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

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 homes
13 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 Interstate
19 Compact on Adoption and Medical Assistance and other compacts affecting the placement of and
20 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 cases
24 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 to
52 make the placement, and the name and address of the facility in which the child will be placed.
53 Notice of residential placement shall also include information regarding a discharge and any
54 unauthorized absence from the facility.
- 55 L. “Placement” means the act by a public or private child placing agency intended to arrange for the
56 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 in
59 the placement of a child from one state to another and that is not an instrumentality of the state or
60 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 and
66 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, or
70 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 of
79 an acute condition. For purposes of the compact, residential facilities do not include institutions
80 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 the
84 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 Puerto
93 Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any
94 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 a
99 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 defined
104 by the laws of the sending state, provided, however, that the placement of such a child into a
105 residential facility shall only require notice of residential placement to the receiving state
106 prior to placement.

107 2. The interstate placement of a child adjudicated delinquent or unmanageable based on the laws
108 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 the
118 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
139 may 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 provisions
142 of this compact with other applicable interstate compacts including the Interstate Compact for
143 Juveniles and the Interstate Compact on Adoption and Medical Assistance. The Interstate
144 Commission may in cooperation with other interstate compact commissions having responsibility
145 for the interstate movement, placement or transfer of children, promulgate like rules to ensure the
146 coordination of services, timely placement of children, and the reduction of unnecessary or
147 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 state.

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

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

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

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

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

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

177 ARTICLE V. ASSESSMENTS

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

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

- 182 1. Provide evidence that the applicable laws of the sending state have been complied with; and
- 183 2. Certification that the consent or relinquishment is in compliance with applicable law of the
184 birth parent's state of residence or, where permitted, the laws of the state of where the
185 finalization of the adoption will occur; and
- 186 3. Request through the public child placing agency in the sending state an assessment to be
187 conducted in the receiving state; and
- 188 4. Upon completion of the assessment, obtain the approval of the public child placing agency in
189 the receiving state.

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

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

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

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

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

205 ARTICLE VI. PLACEMENT AUTHORITY

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

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

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

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

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

220 ARTICLE VII. STATE RESPONSIBILITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

264 ARTICLE VIII. INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN

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

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

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

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

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

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

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

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

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

289 ARTICLE IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

290 The Interstate Commission shall have the following powers:

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

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

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

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

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

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

302 G. To purchase and maintain insurance and bonds.

303 H. To hire or contract for services of personnel or consultants as necessary to carry out its functions
304 under the compact and establish personnel qualification policies, and rates of compensation.

305 I. To establish and appoint committees and officers including, but not limited to, an executive
306 committee as required by Article X.

307 J. To accept any and all donations and grants of money, equipment, supplies, materials, and
308 services, and to receive, utilize, and dispose thereof.

309 K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or
310 use any property, real, personal, or mixed.

311 L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any
312 property, real, personal or mixed.

313 M. To establish a budget and make expenditures.

314 N. To adopt a seal and bylaws governing the management and operation of the Interstate
315 Commission.

316 O. To report annually to the legislatures, governors, the judiciary, and state advisory councils of the
317 member states concerning the activities of the Interstate Commission during the preceding year.
318 Such reports shall also include any recommendations that may have been adopted by the
319 Interstate Commission.

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

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

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

325 ARTICLE X. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

326 A. Bylaws

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

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

335 B. Meetings

- 336 1. The Interstate Commission shall meet at least once each calendar year. The chairperson may
337 call additional meetings and, upon the request of a simple majority of the member states shall
338 call additional meetings.
- 339 2. Public notice shall be given by the Interstate Commission of all meetings and all meetings
340 shall be open to the public, except as set forth in the rules or as otherwise provided in the
341 compact. The Interstate Commission and its committees may close a meeting, or portion
342 thereof, where it determines by two-thirds vote that an open meeting would be likely to:
- 343 a. relate solely to the Interstate Commission's internal personnel practices and procedures;
 - 344 or
 - 345 b. disclose matters specifically exempted from disclosure by federal law; or
 - 346 c. disclose financial or commercial information which is privileged, proprietary or
347 confidential in nature; or
 - 348 d. involve accusing a person of a crime, or formally censuring a person; or
 - 349 e. disclose information of a personal nature where disclosure would constitute a clearly
350 unwarranted invasion of personal privacy or physically endanger one or more persons; or
 - 351 f. disclose investigative records compiled for law enforcement purposes; or
 - 352 g. specifically relate to the Interstate Commission's participation in a civil action or other
353 legal proceeding.
- 354 3. For a meeting, or portion of a meeting, closed pursuant to this provision, the Interstate
355 Commission's legal counsel or designee shall certify that the meeting may be closed and shall
356 reference each relevant exemption provision. The Interstate Commission shall keep minutes
357 which shall fully and clearly describe all matters discussed in a meeting and shall provide a
358 full and accurate summary of actions taken, and the reasons therefore, including a description
359 of the views expressed and the record of a roll call vote. All documents considered in
360 connection with an action shall be identified in such minutes. All minutes and documents of a

361 closed meeting shall remain under seal, subject to release by a majority vote of the Interstate
362 Commission or by court order.

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

365 C. Officers and Staff

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

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

374 D. Qualified Immunity, Defense and Indemnification

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

383 a. The liability of the Interstate Commission's staff director and employees or Interstate
384 Commission representatives, acting within the scope of such person's employment or
385 duties for acts, errors, or omissions occurring within such person's state may not exceed
386 the limits of liability set forth under the Constitution and laws of that state for state
387 officials, employees, and agents. The Interstate Commission is considered to be an
388 instrumentality of the states for the purposes of any such action. Nothing in this
389 subsection shall be construed to protect such person from suit or liability for damage,
390 loss, injury, or liability caused by a criminal act or the intentional or willful and wanton
391 misconduct of such person.

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

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

408 the actual or alleged act, error, or omission did not result from intentional or willful and
409 wanton misconduct on the part of such persons.

410 ARTICLE XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

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

413 B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules
414 adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the
415 "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1
416 (2000), or such other administrative procedure acts as the Interstate Commission deems
417 appropriate consistent with due process requirements under the United States Constitution as now
418 or hereafter interpreted by the U. S. Supreme Court. All rules and amendments shall become
419 binding as of the date specified, as published with the final version of the rule as approved by the
420 Interstate Commission.

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

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

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

429 E. Not later than 60 days after a rule is promulgated, an interested person may file a petition in the
430 U.S. District Court for the District of Columbia or in the Federal District Court where the
431 Interstate Commission's principal office is located for judicial review of such rule. If the court

432 finds that the Interstate Commission's action is not supported by substantial evidence in the
433 rulemaking record, the court shall hold the rule unlawful and set it aside.

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

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

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

- 443 1. Transition rules
- 444 2. Forms and procedures
- 445 3. Time lines
- 446 4. Data collection and reporting
- 447 5. Rulemaking
- 448 6. Visitation
- 449 7. Progress reports/supervision
- 450 8. Sharing of information/confidentiality
- 451 9. Financing of the Interstate Commission
- 452 10. Mediation, arbitration and dispute resolution
- 453 11. Education, training and technical assistance
- 454 12. Enforcement
- 455 13. Coordination with other interstate compacts

456 I. Upon determination by a majority of the members of the Interstate Commission that an
457 emergency exists:

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

469 ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

470 A. Oversight

- 471 1. The Interstate Commission shall oversee the administration and operations of the compact.
- 472 2. The executive, legislative and judicial branches of state government in each member state
- 473 shall enforce this compact and the rules of the Interstate Commission and shall take all
- 474 actions necessary and appropriate to effectuate the compact's purposes and intent. The
- 475 compact and its rules shall supercede state law, rules or regulations to the extent of any
- 476 conflict therewith.
- 477 3. All courts shall take judicial notice of the compact and the rules in any judicial or
- 478 administrative proceeding in a member state pertaining to the subject matter of this compact.

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

485 B. Dispute Resolution

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

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

492 C. Enforcement

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

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

497 b. Provide written notice to the defaulting state and other member states, of the nature of the
498 default and the means of curing the default. The Interstate Commission shall specify the
499 conditions by which the defaulting state must cure its default; or

500 c. By majority vote of the members, initiate against a defaulting member state legal action
501 in the United State District Court for the District of Columbia or, at the discretion of the
502 Interstate Commission, in the federal district where the Interstate Commission has its

503 principal offices, to enforce compliance with the provisions of the compact, its bylaws or
504 rules. The relief sought may include both injunctive relief and damages. In the event
505 judicial enforcement is necessary the prevailing party shall be awarded all costs of such
506 litigation including reasonable attorney's fees; or

507 d. Avail itself of any other remedies available under state law or the regulation of official or
508 professional conduct.

509 ARTICLE XIII. FINANCING OF THE COMMISSION

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

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

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

521 D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The
522 receipts and disbursements of the Interstate Commission shall be subject to the audit and
523 accounting procedures established under its bylaws. However, all receipts and disbursements of
524 funds handled by the Interstate Commission shall be audited yearly by a certified or licensed
525 public accountant and the report of the audit shall be included in and become part of the annual
526 report of the Interstate Commission.

527 ARTICLE XIV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

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

529 B. The compact shall become effective and binding upon legislative enactment of the compact into
530 law by no less than 35 states. The effective date shall be the later of July 1, 2007 or upon
531 enactment of the compact into law by the 35th state. Thereafter it shall become effective and
532 binding as to any other member state upon enactment of the compact into law by that state. The
533 governors of non-member states or their designees shall be invited to participate in the activities
534 of the Interstate Commission on a non-voting basis prior to adoption of the compact by all states.

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

538 ARTICLE XV. WITHDRAWAL AND DISSOLUTION

539 A. Withdrawal

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

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

545 3. The withdrawing state shall immediately notify the president of the Interstate Commission in
546 writing upon the introduction of legislation repealing this compact in the withdrawing state.
547 The Interstate Commission shall then notify the other member states of the withdrawing
548 state's intent to withdraw.

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

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

554 B. Dissolution of Compact

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

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

560 ARTICLE XVI. SEVERABILITY AND CONSTRUCTION

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

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

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

566 ARTICLE XVII. BINDING EFFECT OF COMPACT AND OTHER LAWS

567 A. Other Laws

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

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

572 B. Binding Effect of the Compact

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

- 575 2. All agreements between the Interstate Commission and the member states are binding in
576 accordance with their terms.
- 577 3. In the event any provision of this compact exceeds the constitutional limits imposed on the
578 legislature of any member state, such provision shall be ineffective to the extent of the
579 conflict with the constitutional provision in question in that member state.

580 ARTICLE XVIII. INDIAN TRIBES

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

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

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

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

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

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

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

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

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