

SENATE No. 2211

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act revising 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. Chapter 452 of the acts of 1963 is hereby amended by striking out section 1
2 and inserting in place thereof the following section:

3 Section 1. A compact is hereby entered into with all jurisdictions legally joining therein
4 in substantially the following form:

5 INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN

6 ARTICLE I. PURPOSE

7 The purpose of this compact is to:

8 (A) provide a process through which children subject to this compact are placed in safe
9 and suitable homes in a timely manner;

10 (B) facilitate ongoing supervision of a placement, the delivery of services, and
11 communication between the states;

12 (C) provide operating procedures that will ensure that children are placed in safe and
13 suitable homes in a timely manner;

14 (D) provide for the promulgation and enforcement of administrative rules implementing
15 this compact and regulating the covered activities of the member states;

16 (E) provide for uniform data collection and information sharing between member states
17 under this compact;

18 (F) promote coordination between this compact, the interstate compact for juveniles, the
19 interstate compact on adoption and medical assistance and other compacts affecting 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
22 and care of a child that it would have had if the placement were intrastate; and

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

25 ARTICLE II. DEFINITIONS

26 As used in this compact, the following words shall have the following meanings unless
27 the context clearly requires otherwise:

28 “Approved placement”, a placement that the public child placing agency in the receiving
29 state has determined is both safe and suitable for the child.

30 “Assessment”, an evaluation of a prospective placement by a public child placing agency
31 in the receiving state to determine if the placement meets the individualized needs of the child,

32 including but not limited to, the child's safety and stability, health and well-being and mental,
33 emotional, and physical development.

34 “Certification”, to attest, declare or swear to before a judge or notary public.

35 “Child”, an individual who has not attained the age of 18 years.

36 “Default”, the failure of a member state to perform the obligations or responsibilities
37 imposed upon it by this compact, the by-laws or rules of the Interstate Commission.

38 “Home study”, an evaluation of a home environment conducted in accordance with the
39 applicable requirements of the state in which the home is located, which documents the
40 preparation and suitability of the placement resource for placement of a child in accordance with
41 the laws and requirements of that state.

42 “Indian tribe”, a tribe, band, nation or other organized group or community of Indians
43 recognized as eligible for services provided to Indians by the Secretary of the Interior because of
44 the status of its members as Indians, including any native village as defined in section 3 (c) of the
45 Alaska Native Claims settlement Act, 43 USC Section 1602(c).

46 “Interstate Commission”, the Interstate Commission for the Placement of Children
47 created under Article VIII of this compact.

48 “Jurisdiction”, the power and authority of a court to hear and decide matters.

49 “Legal risk placement”, a placement made preliminary to an adoption where the
50 prospective adoptive parents acknowledge in writing that a child may be ordered returned to the
51 sending state or the birth mother’s state of residence, if different from the sending state, and a

52 final decree of adoption shall not be entered in any jurisdiction until all required consents are
53 obtained or are dispensed with in accordance with applicable law.

54 “Member state”, a state that has enacted this compact.

55 “Non-custodial parent”, a person who, at the time of the commencement of court
56 proceedings in the sending state, does not have sole legal custody or joint legal custody of the
57 child, and who is not the subject of allegations or findings of child abuse or neglect.

58 “Non-member state”, a state which has not enacted this compact.

59 “Notice of residential placement”, information regarding a placement into a residential
60 facility provided to the receiving state including, but not limited to, the name, date and place of
61 birth of the child, the identity and address of the parent or legal guardian, evidence of authority
62 to make the placement, the name and address of the facility in which the child will be placed and
63 information regarding a discharge and any unauthorized absence from the facility.

64 “Placement”, the act by a public or private child placing agency intended to arrange for
65 the care or custody of a child in another state.

66 “Private child placing agency”, a private corporation, agency, foundation, institution, or
67 charitable organization, or a private person or attorney that facilitates, causes or is involved in
68 the placement of a child from one state to another and that is not an instrumentality of the state or
69 acting under color of state law.

70 “Provisional placement”, a determination made by the public child placing agency in the
71 receiving state that the proposed placement is safe and suitable and, to the extent allowable, the
72 receiving state has temporarily waived its standards or requirements otherwise applicable to

73 prospective foster or adoptive parents so as to not delay the placement. Completion of the
74 receiving state requirements regarding training for prospective foster or adoptive parents shall
75 not delay an otherwise safe and suitable placement.

76 “Public child placing agency”, a government child welfare agency or child protection
77 agency or a private entity under contract with such an agency, regardless of whether the agency
78 or entity acts on behalf of a state, county, municipality or other governmental unit and which
79 facilitates, causes or is involved in the placement of a child from one state to another.

80 “Receiving state”, the state to which a child is sent, brought or caused to be sent or
81 brought.

82 “Relative”, a person who is related to the child as a parent, step-parent, sibling by half or
83 whole blood or by adoption, grandparent, aunt, uncle, first cousin or a non-relative with such
84 significant ties to the child that such person may be regarded as a relative as determined by a
85 court of competent jurisdiction in the sending state.

86 “Residential facility”, a facility providing a level of care that is sufficient to substitute for
87 parental responsibility or foster care, and is beyond what is needed for assessment or treatment of
88 an acute condition; but not including institutions primarily educational in character, hospitals or
89 other medical facilities.

90 “Rule”, a written directive, mandate, standard or principle issued by the Interstate
91 Commission promulgated under Article XI of this compact that is of general applicability and
92 that implements, interprets or prescribes a policy or provision of the compact. “Rule” has the
93 force and effect of an administrative rule in a member state, and includes the amendment, repeal,
94 or suspension of an existing rule.

95 “Sending state”, the state from which the placement of a child is initiated.

96 “Service member’s permanent duty station”, the military installation where an active duty
97 Armed Services member is currently assigned and is physically located under competent orders
98 that do not specify the duty as temporary.

99 “Service member’s state of legal residence”, the state in which the active duty Armed
100 Services member is considered a resident for tax and voting purposes.

101 “State”, a state of the United States, the District of Columbia, the Commonwealth of
102 Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands or
103 any other territory of the United States.

104 “State court”, a judicial body of a state that is vested by law with responsibility for
105 adjudicating cases involving abuse, neglect, deprivation, delinquency or status offenses of
106 individuals who have not attained the age of 18 years.

107 “Supervision”, monitoring provided by the receiving state once a child has been placed in
108 a receiving state pursuant to this compact.

109 ARTICLE III. APPLICABILITY

110 (A) Except as otherwise provided in section (B), this compact shall apply to:

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

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

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

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

122 (3) the interstate placement of any child by a public child placing agency or private child
123 placing agency as a preliminary step to a possible adoption.

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

125 (1) the interstate placement of a child in a custody proceeding in which a public child
126 placing agency is not a party; provided, however, that the placement is not intended to effectuate
127 an adoption;

128 (2) the interstate placement of a child with a non-relative in a receiving state by a parent
129 with the legal authority to make the placement; provided, however, that the placement is not
130 intended to effectuate an adoption;

131 (3) the interstate placement of a child by one relative with the lawful authority to make
132 the placement directly with a relative in a receiving state.

133 (4) the placement of a child, not subject to section (a), into a residential facility by the
134 child's parent.

135 (5) The placement of a child with a non-custodial parent; provided that:

136 the non-custodial parent proves, to the satisfaction of a court of competent jurisdiction in
137 the sending state, a substantial relationship with the child; and

138 a court of competent jurisdiction in the sending state makes a written finding that
139 placement with the non-custodial parent is in the best interests of the child; and

140 a court of competent jurisdiction in the sending state dismisses its jurisdiction in
141 interstate placements in which the public child placing agency is a party to the proceeding.

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

145 (7) Cases in which a United States citizen child living overseas with his family, at least 1
146 of whom is in the armed services of the United States and stationed overseas, is removed and
147 placed in a state.

148 (8) The sending of a child by a public child placing agency or a private child placing
149 agency for a visit as defined by the rules of the Interstate Commission.

150 (C) For purposes of determining the applicability of this compact to the placement of a
151 child with a family in the armed services of the United States, the public child placing agency or
152 private child placing agency may choose the state of the service member's permanent duty
153 station or the service member's declared legal residence.

154 (D) Nothing in this compact shall be construed to prohibit the concurrent application
155 of the provisions of this compact with other applicable interstate compacts including the
156 Interstate Compact for Juveniles and the Interstate Compact on Adoption and Medical

157 Assistance. The Interstate Commission may, in cooperation with other interstate compact
158 commissions having responsibility for the interstate movement, placement or transfer of
159 children, promulgate like rules to ensure the coordination of services, timely placement of
160 children and the reduction of unnecessary or duplicative administrative or procedural
161 requirements.

162 ARTICLE IV. JURISDICTION

163 Except as provided in subsection (H) and paragraphs 2 and 3 of subsection (B) of Article
164 V, concerning private and independent adoptions and in interstate placements in which the public
165 child placing agency is not a party to a custody proceeding, the sending state shall retain
166 jurisdiction over a child with respect to all matters of custody and disposition of the child which
167 it would have had if the child had remained in the sending state. Such jurisdiction shall also
168 include the power to order the return of the child to the sending state.

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

172 In a case that is before a court and subject to this compact, the taking of testimony for a
173 hearing before any judicial officer may occur in person, by telephone, by audio-video conference
174 or by such other means as approved by the rules of the Interstate Commission; and judicial
175 officers may communicate with other judicial officers and persons involved in the interstate
176 process as may be permitted by their Canons of Judicial Conduct and any rules promulgated by
177 the Interstate Commission.

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

180 the child is reunified with the parent in the receiving state who is the subject of
181 allegations or findings of abuse or neglect, only with the concurrence of the public child placing
182 agency in the receiving state;

183 the child is adopted;

184 the child reaches the age of majority under the laws of the sending state;

185 the child achieves legal independence under the laws of the sending state;

186 a guardianship is created by a court in the receiving state with the concurrence of the
187 court in the sending state;

188 an Indian tribe has petitioned for and received jurisdiction from the court in the sending
189 state; or

190 the public child placing agency of the sending state requests termination and has obtained
191 the concurrence of the public child placing agency in the receiving the state.

192 (E) When a court in a sending state terminates its jurisdiction, it shall notify the child
193 placing agency in the receiving state. .

194 (F) Nothing in this Article shall defeat a claim of jurisdiction by a court in a receiving
195 state sufficient to deal with an act of truancy, delinquency, crime or behavior involving a child as
196 defined by the laws of the receiving state committed by the child in the receiving state which
197 would be a violation of its laws.

198 (G) Nothing in this Article shall limit the ability of the receiving state to take
199 emergency jurisdiction for the protection of the child.

200 (H) The substantive laws of the state in which an adoption will be finalized shall
201 solely govern all issues relating to the adoption of the child and the court in which the adoption
202 proceeding is filed shall have subject matter jurisdiction regarding all substantive issues relating
203 to the adoption, except:

204 when the child is a ward of another court that established jurisdiction over the child prior
205 to the placement;

206 when the child is in the legal custody of a public agency in the sending state; or

207 when a court in the sending state has otherwise appropriately assumed jurisdiction over
208 the child, prior to the submission of the request for approval of placement.

209 (I) A final decree of adoption shall not be entered in any jurisdiction until the
210 placement is authorized as an “approved placement” by the public child placing agency in the
211 receiving state.

212 ARTICLE V. PLACEMENT EVALUATION

213 Before sending, bringing or causing a child to be sent or brought into a receiving state,
214 the public child placing agency shall provide a written request for assessment to the receiving
215 state.

216 For placements by a private child placing agency, a child may be sent or brought, or
217 caused to be sent or brought, into a receiving state, upon receipt and immediate review of the
218 required content in a request for approval of a placement in both the sending and receiving state

219 public child placing agency. The required content to accompany a request for approval shall the
220 following:

221 a request for approval identifying the child, birth parent or parents, the prospective
222 adoptive parent or parents and the supervising agency, signed by the person requesting approval;

223 the appropriate consents or relinquishments signed by the birth parents in accordance
224 with the laws of the sending state, or where permitted the laws of the state where the adoption
225 will be finalized;

226 certification by a licensed attorney or authorized agent of a private adoption agency that
227 the consent or relinquishment is in compliance with the applicable laws of the sending state or
228 where permitted the laws of the state where finalization of the adoption will occur;

229 a home study; and

230 an acknowledgment of legal risk signed by the prospective adoptive parents.

231 The sending state and the receiving state may request additional information or
232 documents prior to finalization of an approved placement, but may not delay travel by the
233 prospective adoptive parents with the child if the required content for approval has been
234 submitted, received and reviewed by the public child place agency in both the sending state and
235 the receiving state.

236 Approval from the public child placing agency in the receiving state for a provisional or
237 approved placement is required as provided for in the rules of the Interstate Commission.

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

240 Upon receipt of a request from the public child placing agency of the sending state, the
241 receiving state shall initiate an assessment of the proposed placement to determine its safety and
242 suitability. If the proposed placement is a placement with a relative, the public child placing
243 agency of the sending state may request a determination for a provisional placement.

244 The public child placing agency in the receiving state may request from the public child
245 placing agency or the private child placing agency in the sending state, and shall be entitled to
246 receive, supporting or additional information necessary to complete the assessment or approve
247 the placement.

248 The public child placing agency in the receiving state shall approve a provisional
249 placement and complete or arrange for the completion of the assessment within the timeframes
250 established by the rules of the Interstate Commission.

251 For a placement by a private child placing agency, the sending state shall not impose any
252 additional requirements to complete the home study that are not required by the receiving state,
253 unless the adoption is finalized in the sending state.

254 The Interstate Commission may develop uniform standards for the assessment of the
255 safety and suitability of interstate placements.

256 ARTICLE VI. PLACEMENT AUTHORITY

257 Except as otherwise provided in this compact, a child subject to this compact shall not be
258 placed in a receiving state until approval for the placement is obtained.

259 (B) If the public child placing agency in the receiving state does not approve the
260 proposed placement then the child shall not be placed. The receiving state shall provide written

261 documentation of the determination in accordance with the rules promulgated by the Interstate
262 Commission. That determination shall not be subject to judicial review in the sending state.

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

265 (1) The administrative review and any further judicial review associated with the
266 determination shall be conducted in the receiving state pursuant to its applicable Administrative
267 Procedures Act.

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

272 ARTICLE VII. PLACING AGENCY RESPONSIBILITY

273 (A) For the interstate placement of a child made by a public child placing agency or state
274 court:

275 the public child placing agency in the sending state shall have financial responsibility for:

276 (a) the ongoing support and maintenance for the child during the period of the
277 placement, unless otherwise provided for in the receiving state; and

278 (b) as determined by the public child placing agency in the sending state, services for the
279 child beyond the public services for which the child is eligible in the receiving state;

280 (2) the receiving state shall only have financial responsibility for:

281 (a) any assessment conducted by the receiving state; and

282 (b) supervision conducted by the receiving state at the level necessary to support the
283 placement as agreed upon by the public child placing agencies of the receiving and sending state;
284 and

285 (3) nothing in this compact shall prohibit public child placing agencies in the sending
286 state from entering into agreements with licensed agencies or persons in the receiving state to
287 conduct assessments and provide supervision.

288 (B) For the placement of a child by a private child placing agency preliminary to a
289 possible adoption, the private child placing agency shall be:

290 (1) legally responsible for the child during the period of placement as provided for in
291 the law of the sending state until the finalization of the adoption; and

292 (2) financially responsible for the child absent a contractual agreement to the
293 contrary.

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

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

299 (E) The public child placing agency in the receiving state shall provide, or arrange for the
300 provision of, supervision and services for the child, including timely reports, during the period of
301 the placement.

302 (F) Nothing in this compact shall be construed as to limit the authority of the public child
303 placing agency in the receiving state from contracting with a licensed agency or person in the
304 receiving state for an assessment or the provision of supervision or services for the child or
305 otherwise authorizing the provision of supervision or services by a licensed agency during the
306 period of placement.

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

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

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

316 (J) With the consent of the Interstate Commission, a state may enter into limited
317 agreements that facilitate the timely assessment and provision of services and supervision of
318 placements under this compact.

319 ARTICLE VIII. INTERSTATE COMMISSION FOR THE PLACEMENT OF
320 CHILDREN

321 The member states hereby establish, by way of this compact, a commission known as the
322 “Interstate Commission for the Placement of Children.” The activities of the Interstate
323 Commission are the formation of public policy and are a discretionary state function.

324 The Interstate Commission shall be a joint commission of the member states and shall
325 have the responsibilities, powers and duties set forth herein, and such additional powers as may
326 be conferred upon it by subsequent concurrent action of the respective legislatures of the member
327 states.

328 (B) The Interstate Commission shall consist of 1 commissioner from each member
329 state who shall be appointed by the executive head of the state human services administration
330 with ultimate responsibility for the child welfare program. The appointed commissioner shall
331 have the legal authority to vote on policy related matters governed by this compact binding the
332 state.

333 (1) Each member state represented at a meeting of the Interstate Commission is
334 entitled to 1 vote.

335 (2) A majority of the member states shall constitute a quorum for the transaction of
336 business, unless a larger quorum is required by the by-laws of the Interstate Commission.

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

338 (4) A representative may delegate voting authority to another person from the
339 representative’s state for a specified meeting.

340 (C) In addition to the commissioners of each member state, the Interstate Commission
341 shall include persons who are members of interested organizations as defined in the by-laws or

342 rules of the Interstate Commission. Such members shall be ex officio and shall not be entitled to
343 vote on any matter before the Interstate Commission.

344 (D) The Interstate Commission shall establish an executive committee which shall have
345 the authority to administer the day-to-day operations and administration of the Interstate
346 Commission, but shall not have the power to engage in rulemaking.

347 ARTICLE IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

348 The Interstate Commission shall have the following powers:

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

351 To provide for dispute resolution among member states.

352 To issue, upon request of a member state, advisory opinions concerning the meaning or
353 interpretation of the interstate compact, its by-laws, rules or actions.

354 To enforce compliance with this compact or the by-laws or rules of the Interstate
355 Commission, pursuant to Article XII.

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

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

360 To purchase and maintain insurance and bonds.

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

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

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

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

370 To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any
371 property, real, personal or mixed.

372 To establish a budget and make expenditures.

373 To adopt a seal and by-laws governing the management and operation of the Interstate
374 Commission.

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

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

381 To maintain books and records in accordance with the by-laws of the Interstate
382 Commission.

383 To perform functions necessary or appropriate to achieve the purposes of this compact.

384 ARTICLE X. ORGANIZATION AND OPERATION OF THE INTERSTATE
385 COMMISSION

386 (A) By-laws

387 Within 12 months after the first Interstate Commission meeting, the Interstate
388 Commission shall adopt by-laws to govern its conduct as may be necessary or appropriate to
389 carry out the purposes of the compact.

390 The by-laws and rules of the Interstate Commission shall establish conditions and
391 procedures under which the Interstate Commission shall make its information and official
392 records available to the public for inspection or copying. The Interstate Commission may
393 exempt from disclosure information or official records to the extent that disclosure would
394 adversely affect personal privacy rights or proprietary interests.

395 (B) Meetings

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

399 (2) The Interstate Commission shall give public notice of all meetings and all meetings
400 shall be open to the public, except as set forth in the rules or as otherwise provided in the

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

- 403 relate solely to the Interstate Commission's internal personnel practices and procedures;
- 404 disclose matters specifically exempted from disclosure by federal law;
- 405 disclose financial or commercial information which is privileged, proprietary or
406 confidential in nature;
- 407 involve accusing a person of a crime, or formally censuring a person;
- 408 disclose information of a personal nature where disclosure would constitute a clearly
409 unwarranted invasion of personal privacy or physically endanger 1 or more persons;
- 410 disclose investigative records compiled for law enforcement purposes; or
- 411 specifically relate to the Interstate Commission's participation in a civil action or other
412 legal proceeding.

413 For a meeting, or portion of a meeting, closed pursuant to paragraph (2), the Interstate
414 Commission's legal counsel or designee shall certify that the meeting may be closed and shall
415 reference each relevant exemption provision. The Interstate Commission shall keep minutes
416 which shall fully and clearly describe all matters discussed in a meeting and shall provide a full
417 and accurate summary of actions taken, and the reasons therefore, including a description of the
418 views expressed and the record of a roll call vote. All documents considered in connection with
419 an action shall be identified in the minutes. All minutes and documents of a closed meeting shall
420 remain under seal, subject to release by a majority vote of the Interstate Commission or by court
421 order.

422 (4) The by-laws may provide for meetings of the Interstate Commission to be conducted
423 by telecommunication or other electronic communication.

424 (C) Officers and Staff

425 (1) The Interstate Commission may, through its executive committee, appoint or
426 retain a staff director for such period, upon such terms and conditions and for such compensation
427 as the Interstate Commission may consider appropriate. The staff director shall serve as
428 secretary to the Interstate Commission, but shall not have a vote. The staff director may hire and
429 supervise such other staff as may be authorized by the Interstate Commission.

430 (2) The Interstate Commission shall elect, from among its members, a chairperson
431 and a vice chairperson of the executive committee and other necessary officers, each of whom
432 shall have such authority and duties as may be specified in the by-laws.

433 (D) Qualified Immunity, Defense and Indemnification

434 (1) The Interstate Commission's staff director and its employees shall be immune
435 from suit and liability, either personally or in their official capacity, for a claim for damage to or
436 loss of property or personal injury or other civil liability caused or arising out of or relating to an
437 actual or alleged act, error or omission that occurred, or that such person had a reasonable basis
438 for believing occurred within the scope of Commission employment, duties or responsibilities;
439 provided, however, that such person shall not be protected from suit or liability for damage, loss,
440 injury or liability caused by a criminal act or the intentional or willful and wanton misconduct of
441 such person.

442 (a) The liability of the Interstate Commission’s staff director and employees or Interstate
443 Commission representatives, acting within the scope of their employment or duties for acts,
444 errors or omissions occurring within their state may not exceed the limits of liability set forth
445 under the Constitution and laws of that state for state officials, employees and agents. The
446 Interstate Commission is considered to be an instrumentality of the states for the purposes of any
447 such action. Nothing in this subsection shall be construed to protect such person from suit or
448 liability for damage, loss, injury or liability caused by a criminal act or the intentional or willful
449 and wanton misconduct of such person.

450 (b) The Interstate Commission shall defend the staff director and its employees and,
451 subject to the approval of the attorney general or other appropriate legal counsel of the member
452 state shall defend the commissioner of a member state in a civil action seeking to impose liability
453 arising out of an actual or alleged act, error or omission that occurred within the scope of
454 Interstate Commission employment, duties or responsibilities, or that the defendant had a
455 reasonable basis for believing occurred within the scope of Interstate Commission employment,
456 duties or responsibilities; provided, however, that the actual or alleged act, error or omission did
457 not result from intentional or willful and wanton misconduct on the part of such person.

458 (c) To the extent not covered by the state involved, member state or the Interstate
459 Commission, the representatives or employees of the Interstate Commission shall be held
460 harmless in the amount of a settlement or judgment, including attorney’s fees and costs,
461 obtained against such persons arising out of an actual or alleged act, error or omission that
462 occurred within the scope of Interstate Commission employment, duties or responsibilities, or
463 that such persons had a reasonable basis for believing occurred within the scope of Interstate
464 Commission employment, duties or responsibilities; provided, however, that the actual or alleged

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

467 ARTICLE XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

468 The Interstate Commission shall promulgate and publish rules in order to effectively and
469 efficiently achieve the purposes of the compact.

470 Rulemaking shall occur under the criteria set forth in this Article and the by-laws and
471 rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of
472 the Model State Administrative Procedures Act, 1981 Act, Uniform Laws Annotated, Vol. 15,
473 p.1, (2000), or such other administrative procedure acts as the Interstate Commission considers
474 appropriate consistent with due process requirements under the United States Constitution as
475 now or hereafter interpreted by the United States Supreme Court. All rules and amendments
476 shall become binding as of the date specified, as published with the final version of the rule as
477 approved by the Interstate Commission.

478 When promulgating a rule, the Interstate Commission shall, at a minimum:
479 publish the entire text of the proposed rule stating the reason for that proposed rule;
480 allow and invite any and all persons to submit written data, facts, opinions and
481 arguments, which information shall be added to the record, and be made publicly available; and
482 promulgate a final rule and its effective date, if appropriate, based on input from state or
483 local officials or interested parties.

484 Rules promulgated by the Interstate Commission shall have the force and effect of
485 administrative rules and shall be binding in the compacting states to the extent and in the manner
486 provided for in this compact.

487 Not later than 60 days after a rule is promulgated, an interested person may file a petition
488 in the United States District Court for the District of Columbia or in the Federal District Court
489 where the Interstate Commission's principal office is located for judicial review of such rule. If
490 the court finds that the Interstate Commission's action is not supported by substantial evidence in
491 the rulemaking record, the court shall hold the rule unlawful and set it aside.

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

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

499 Within the first 12 months of operation, the Interstate Commission shall promulgate rules
500 addressing the following:

501 transition rules;

502 forms and procedures;

503 time lines;

504 data collection and reporting;

505 rulemaking;

506 visitation;

507 progress reports and supervision;

508 sharing of information and confidentiality;

509 financing of the Interstate Commission;

510 mediation, arbitration and dispute resolution;

511 education, training and technical assistance;

512 enforcement; and

513 coordination with other interstate compacts

514 Upon determination by a majority of the members of the Interstate Commission that an
515 emergency exists:

516 (1) The Interstate Commission may promulgate an emergency rule only if it is required
517 to:

518 protect the children covered by this compact from an imminent threat to their health,
519 safety and well-being;

520 prevent loss of federal or state funds; or

521 meet a deadline for the promulgation of an administrative rule required by federal law.

522 An emergency rule shall become effective immediately upon adoption; provided,
523 however, that the usual rulemaking procedures provided hereunder shall be retroactively applied
524 to the emergency rule as soon as reasonably possible, but no later than 90 days after the effective
525 date of the emergency rule.

526 An emergency rule shall be promulgated as provided for in the rules of the Interstate
527 Commission.

528 ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

529 (A) Oversight

530 The Interstate Commission shall oversee the administration and operations of the
531 compact.

532 The executive, legislative and judicial branches of state government in each member state
533 shall enforce this compact and the rules of the Interstate Commission and shall take all actions
534 necessary and appropriate to effectuate the compact's purposes and intent. The compact and its
535 rules shall be binding in the member states to the extent and in the manner provided for in this
536 compact.

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

539 The Interstate Commission shall be entitled to receive service of process in any action in
540 which the validity of a compact provision or rule is the issue for which a judicial determination
541 has been sought and shall have standing to intervene in any proceedings. Failure to provide
542 service of process to the Interstate Commission shall render any judgment, order or other

543 determination, however so captioned or classified, void as to the Interstate Commission, this
544 compact, its by-laws or rules of the Interstate Commission.

545 (B) Dispute Resolution

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

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

552 (C) Enforcement

553 (1) If the Interstate Commission determines that a member state has defaulted in the
554 performance of its obligations or responsibilities under this compact, its by-laws or rules, the
555 Interstate Commission may:

556 provide remedial training and specific technical assistance;

557 provide written notice to the defaulting state and other member states, of the nature of the
558 default and the means of curing the default. The Interstate Commission shall specify the
559 conditions by which the defaulting state must cure its default;

560 by majority vote of the members, initiate against a defaulting member state legal action in
561 the United State District Court for the District of Columbia or, at the discretion of the Interstate
562 Commission, in the federal district where the Interstate Commission has its principal offices, to
563 enforce compliance with the provisions of the compact, its by-laws or rules. The relief sought

564 may include both injunctive relief and damages. In the event judicial enforcement is necessary
565 the prevailing party shall be awarded all costs of such litigation including reasonable attorney's
566 fees; or

567 avail itself of any other remedies available under state law or the regulation of official or
568 professional conduct.

569 ARTICLE XIII. FINANCING OF THE COMMISSION

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

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

578 The Interstate Commission shall not incur obligations of any kind prior to securing the
579 funds adequate to meet that obligation; nor shall the Interstate Commission pledge the credit of
580 any of the member states, except by and with the authority of the member state.

581 The Interstate Commission shall keep accurate accounts of all receipts and
582 disbursements. The receipts and disbursements of the Interstate Commission shall be subject to
583 the audit and accounting procedures established under its by-laws. All receipts and
584 disbursements of funds handled by the Interstate Commission shall be audited yearly by a

585 certified or licensed public accountant and the report of the audit shall be included in and become
586 part of the annual report of the Interstate Commission.

587 ARTICLE XIV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

588 Any state is eligible to become a member state.

589 The compact shall become effective and binding upon legislative enactment of the
590 compact into law by no fewer than 35 states. The effective date shall be the later of July 1, 2007
591 or upon enactment of the compact into law by the thirty-fifth state. Thereafter it shall become
592 effective and binding as to any other member state upon enactment of the compact into law by
593 that state. The governors of non-member states or their designees shall be invited to participate
594 in the activities of the Interstate Commission on a non-voting basis prior to adoption of the
595 compact by all states.

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

599 ARTICLE XV. WITHDRAWAL AND DISSOLUTION

600 (A) Withdrawal

601 Once effective, the compact shall continue in force and remain binding upon each
602 member state; provided that a member state may withdraw from the compact specifically
603 repealing the statute which enacted the compact into law.

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

606 The withdrawing state shall immediately notify the chairperson of the Interstate
607 Commission in writing upon the introduction of legislation repealing this compact in the
608 withdrawing state. The Interstate Commission shall then notify the other member states of the
609 withdrawing state’s intent to withdraw.

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

612 Reinstatement following withdrawal of a member state shall occur upon the withdrawing
613 state reenacting the compact or upon such later date as determined by the members of the
614 Interstate Commission.

615 (B) Dissolution of Compact

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

618 Upon the dissolution of this compact, the compact becomes null and void and shall be of
619 no further force or effect, and the business and affairs of the Interstate Commission shall be
620 concluded and surplus funds shall be distributed in accordance with the by-laws.

621 ARTICLE XVI. SEVERABILITY AND CONSTRUCTION

622 This compact shall be severable, and if any phrase, clause, sentence or provision is
623 deemed unenforceable, the remaining provisions of the compact shall be enforceable.

624 This compact shall be liberally construed to effectuate its purposes.

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

627 ARTICLE XVII. BINDING EFFECT OF COMPACT AND OTHER LAWS

628 (A) Other Laws

629 Nothing herein prevents the enforcement of any other law of a member state that is
630 consistent with this compact.

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

633 (B) Binding Effect of the Compact

634 All lawful actions of the Interstate Commission, including all rules and by-laws
635 promulgated by the Interstate Commission, are binding upon the member states.

636 All agreements between the Interstate Commission and the member states are binding in
637 accordance with their terms.

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

641 ARTICLE XVIII. INDIAN TRIBES

642 Notwithstanding any other provision in this compact, the Interstate Commission may
643 promulgate guidelines to permit Indian tribes to utilize the compact to achieve the purposes of
644 the compact as specified in Article I. The Interstate Commission shall make reasonable efforts to

645 consult with Indian tribes in promulgating guidelines to reflect the diverse circumstances of the
646 various Indian tribes.

647 SECTION 2. The first sentence of section 3 of said chapter 452 is hereby amended by
648 striking out the words “Article V” and inserting in place thereof the following words:- Article
649 VII.

650 SECTION 3. Said chapter 452 is hereby amended by striking out section 4 and inserting
651 in place thereof the following section:-

652 Section 4. The department of children and families shall be the central state compact
653 office under subsection (H) of Article VII of the Interstate Compact on the Placement of
654 Children.

655 SECTION 4. The first sentence of section 5 of said chapter 452 is hereby amended by
656 striking out the words “Article V (b)” and inserting in place thereof the following words:-
657 paragraph (3) of subsection (A) of Article VII and subsection (F) of said Article VII.

658 SECTION 5. Section 6 of said chapter 452 is hereby amended by striking out the words
659 “sections fourteen, fifteen and sixteen of said chapter on hundred and nineteen” and inserting in
660 place thereof the following words:- the laws of the Commonwealth.

661 SECTION 6. Said section 6 of said chapter 452 is hereby further amended by striking
662 out the words “Article V (b)” and inserting in place thereof the following words:- paragraph (3)
663 of subsection (A) of Article VII.

664 SECTION 7. Section 7 of said chapter 452 is hereby amended by striking out the words
665 “Article VI” and inserting in place thereof the following words;- paragraph (2) of subsection (A)
666 of Article III.

667 SECTION 8. Said section 7 of said chapter 452 is hereby further amended by striking
668 out the words “Article V” and inserting in place thereof the following words:- Article IV.

669 SECTION 9. Section 8 of said chapter 452 is hereby repealed.

670 SECTION 10. Sections 2 to 9, inclusive, of this act shall take effect upon the effective
671 date of the new Interstate Compact on the Placement of Children, under section 1.