SENATE DOCKET, NO. 182 FILED ON: 1/14/2013

SENATE . . . . . No. 25

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. 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 adoption of the accompanying bill:

An Act revising the interstate compact on the placement of children.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Karen E. Spilka	*Second Middlesex and Norfolk*

SENATE DOCKET, NO. 182 FILED ON: 1/14/2013

SENATE . . . . . No. 25

By Ms. Spilka, a petition (accompanied by bill, Senate, No. 25) of Karen E. Spilka for legislation to revise the interstate compact on the placement of children. Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *63* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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:

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

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

INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN

ARTICLE I. PURPOSE

The purpose of this compact is to:

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

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

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

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

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

(F) promote coordination between this compact, the interstate compact for juveniles, the interstate compact on adoption and medical assistance and other compacts affecting the placement of and which provide services to children otherwise subject to this compact;

(G) provide for a state's continuing legal jurisdiction and responsibility for placement and care of a child that it would have had if the placement were intrastate; and

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

ARTICLE II. DEFINITIONS

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

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

"Assessment", an evaluation of a prospective placement by a public child placing agency in the receiving state to determine if the placement meets the individualized needs of the child, including but not limited to, the child's safety and stability, health and well-being and mental, emotional, and physical development.

"Certification", to attest, declare or swear to before a judge or notary public.

"Child", an individual who has not attained the age of 18 years.

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

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

"Indian tribe", a tribe, band, nation or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Interior

because of the status of its members as Indians, including any native village as defined in section 3 (c) of the Alaska Native Claims settlement Act, 43 USC Section1602(c).

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

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

"Legal risk placement”, a placement made preliminary to an adoption where the prospective adoptive parents acknowledge in writing that a child may be ordered returned to the sending state or the birth mother’s state of residence, if different from the sending state, and a final decree of adoption shall not be entered in any jurisdiction until all required consents are obtained or are dispensed with in accordance with applicable law.

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

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

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

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

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

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

“Provisional placement”, a determination made by the public child placing agency in the receiving state that the proposed placement is safe and suitable and, to the extent allowable, the receiving state has temporarily waived its standards or requirements otherwise applicable to prospective foster or adoptive parents so as to not delay the placement. Completion of the receiving state requirements regarding training for prospective foster or adoptive parents shall not delay an otherwise safe and suitable placement.

“Public child placing agency”, a government child welfare agency or child protection agency or a private entity under contract with such an agency, regardless of whether

80 the agency or entity acts on behalf of a state, county, municipality or other governmental unit and
81 which facilitates, causes or is involved in the placement of a child from one state to another.

82 "Receiving state", the state to which a child is sent, brought or caused to be sent
83 or brought.

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

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

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

97 "Sending state", the state from which the placement of a child is initiated.

98 "Service member's permanent duty station", the military installation where an
99 active duty Armed Services member is currently assigned and is physically located under
100 competent orders that do not specify the duty as temporary.

101 "Service member's state of legal residence", the state in which the active duty
102 Armed Services member is considered a resident for tax and voting purposes.

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

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

109 "Supervision", monitoring provided by the receiving state once a child has been
110 placed in a receiving state pursuant to this compact.

111 ARTICLE III. APPLICABILITY

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

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

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

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

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

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

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

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

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

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

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

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

141 (a) the non-custodial parent proves, to the satisfaction of a
142 court of competent jurisdiction in the sending state, a substantial relationship with the child; and

143 (b) a court of competent jurisdiction in the sending state
144 makes a written finding that placement with the non-custodial parent is in the best interests of the
145 child; and

146 (c) a court of competent jurisdiction in the sending state
147 dismisses its jurisdiction in interstate placements in which the public child placing agency is a
148 party to the proceeding.

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

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

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

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

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

169 ARTICLE IV. JURISDICTION

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

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

179 (C) In a case that is before a court and subject to this compact, the taking of
180 testimony for a hearing before any judicial officer may occur in person, by telephone, by audio-

181 video conference or by such other means as approved by the rules of the Interstate Commission;
182 and judicial officers may communicate with other judicial officers and persons involved in the
183 interstate process as may be permitted by their Canons of Judicial Conduct and any rules
184 promulgated by the Interstate Commission.

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

187 (1) the child is reunified with the parent in the receiving state
188 who is the subject of allegations or findings of abuse or neglect, only with the concurrence of the
189 public child placing agency in the receiving state;

190 (2) the child is adopted;

191 (3) the child reaches the age of majority under the laws of the
192 sending state;

193 (4) the child achieves legal independence under the laws of the
194 sending state;

195 (5) a guardianship is created by a court in the receiving state
196 with the concurrence of the court in the sending state;

197 (6) an Indian tribe has petitioned for and received jurisdiction
198 from the court in the sending state; or

199 (7) the public child placing agency of the sending state
200 requests termination and has obtained the concurrence of the public child placing agency in the
201 receiving the state.

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

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

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

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

214 (1) when the child is a ward of another court that established
215 jurisdiction over the child prior to the placement;

216 (2) when the child is in the legal custody of a public agency in
217 the sending state; or

218 (3) when a court in the sending state has otherwise
219 appropriately assumed jurisdiction over the child, prior to the submission of the request for
220 approval of placement.

221 (I) A final decree of adoption shall not be entered in any jurisdiction until the
222 placement is authorized as an "approved placement" by the public child placing agency in the
223 receiving state.

224 ARTICLE V. PLACEMENT EVALUATION

225 (A) Before sending, bringing or causing a child to be sent or brought into a
226 receiving state, the public child placing agency shall provide a written request for assessment to
227 the receiving state.

228 (B) For placements by a private child placing agency, a child may be sent or
229 brought, or caused to be sent or brought, into a receiving state, upon receipt and immediate
230 review of the required content in a request for approval of a placement in both the sending and
231 receiving state public child placing agency. The required content to accompany a request for
232 approval shall the following:

233 (1) a request for approval identifying the child, birth parent or
234 parents, the prospective adoptive parent or parents and the supervising agency, signed by the
235 person requesting approval;

236 (2) the appropriate consents or relinquishments signed by the
237 birth parents in accordance with the laws of the sending state, or where permitted the laws of the
238 state where the adoption will be finalized;

239 (3) certification by a licensed attorney or authorized agent of a
240 private adoption agency that the consent or relinquishment is in compliance with the applicable
241 laws of the sending state or where permitted the laws of the state where finalization of the
242 adoption will occur;

243 (4) a home study; and

244 (5) an acknowledgment of legal risk signed by the prospective
245 adoptive parents.

246 (C) The sending state and the receiving state may request additional
247 information or documents prior to finalization of an approved placement, but may not delay
248 travel by the prospective adoptive parents with the child if the required content for approval has
249 been submitted, received and reviewed by the public child place agency in both the sending state
250 and the receiving state.

251 (D) Approval from the public child placing agency in the receiving state for a
252 provisional or approved placement is required as provided for in the rules of the Interstate
253 Commission.

254 (E) The procedures for making and the request for an assessment shall contain
255 all information and be in such form as provided for in the rules of the Interstate Commission.

256 (F) Upon receipt of a request from the public child placing agency of the
257 sending state, the receiving state shall initiate an assessment of the proposed placement to
258 determine its safety and suitability. If the proposed placement is a placement with a relative, the
259 public child placing agency of the sending state may request a determination for a provisional
260 placement.

261 (G) The public child placing agency in the receiving state may request from
262 the public child placing agency or the private child placing agency in the sending state, and shall
263 be entitled to receive, supporting or additional information necessary to complete the assessment
264 or approve the placement.

265 (H) The public child placing agency in the receiving state shall approve a
266 provisional placement and complete or arrange for the completion of the assessment within the
267 timeframes established by the rules of the Interstate Commission.

268 (I) For a placement by a private child placing agency, the sending state shall
269 not impose any additional requirements to complete the home study that are not required by the
270 receiving state, unless the adoption is finalized in the sending state.

271 (J) The Interstate Commission may develop uniform standards for the
272 assessment of the safety and suitability of interstate placements.

273 ARTICLE VI. PLACEMENT AUTHORITY

274 (A) Except as otherwise provided in this compact, a child subject to this
275 compact shall not be placed in a receiving state until approval for the placement is obtained.

276 (B) If the public child placing agency in the receiving state does not approve the
277 proposed placement then the child shall not be placed. The receiving state shall provide written
278 documentation of the determination in accordance with the rules promulgated by the Interstate
279 Commission. That determination shall not be subject to judicial review in the sending state.

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

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

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

289 ARTICLE VII. PLACING AGENCY RESPONSIBILITY

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

292 (1) the public child placing agency in the sending state shall have financial
293 responsibility for:

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

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

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

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

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

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

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

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

311 (2) financially responsible for the child absent a contractual agreement to the
312 contrary.

313 (C) A private child placing agency shall be responsible for any assessment
314 conducted in the receiving state and any supervision conducted by the receiving state at the level
315 required by the laws of the receiving state or the rules of the Interstate Commission.

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

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

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

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

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

332 (I) The public child placing agency in the sending state shall oversee
333 compliance with the provisions of the Indian Child Welfare Act, 25 USC Section1901 et seq. for
334 placements subject to this compact, before placement.

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

338 ARTICLE VIII. INTERSTATE COMMISSION FOR THE PLACEMENT OF
339 CHILDREN

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

343 (A) The Interstate Commission shall be a joint commission of the member states and
344 shall have the responsibilities, powers and duties set forth herein, and such additional powers as

345 may be conferred upon it by subsequent concurrent action of the respective legislatures of the
346 member states.

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

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

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

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

357 (4) A representative may delegate voting authority to another person from the
358 representative's state for a specified meeting.

359 (C) In addition to the commissioners of each member state, the Interstate Commission
360 shall include persons who are members of interested organizations as defined in the by-laws or
361 rules of the Interstate Commission. Such members shall be ex officio and shall not be entitled to
362 vote on any matter before the Interstate Commission.

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

366 ARTICLE IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

367 The Interstate Commission shall have the following powers:

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

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

371 (C) To issue, upon request of a member state, advisory opinions concerning the
372 meaning or interpretation of the interstate compact, its by-laws, rules or actions.

373 (D) To enforce compliance with this compact or the by-laws or rules of the Interstate
374 Commission, pursuant to Article XII.

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

378 (F) To establish and maintain offices as may be necessary for the transacting of its
379 business.

380 (G) To purchase and maintain insurance and bonds.

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

384 (I) To establish and appoint committees and officers including, but not limited to, an
385 executive committee as required by Article X.

386 (J) To accept any and all donations and grants of money, equipment, supplies,
387 materials and services and to receive, utilize and dispose thereof.

388 (K) To lease, purchase, accept contributions or donations of, or otherwise to own,
389 hold, improve or use any property, real, personal or mixed.

390 (L) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose
391 of any property, real, personal or mixed.

392 (M) To establish a budget and make expenditures.

393 (N) To adopt a seal and by-laws governing the management and operation of the
394 Interstate Commission.

395 (O) To report annually to the legislatures, governors, the judiciary and state advisory
396 councils of the member states concerning the activities of the Interstate Commission during the
397 preceding year. Such reports shall also include any recommendations that may have been
398 adopted by the Interstate Commission.

399 (P) To coordinate and provide education, training and public awareness regarding the
400 interstate movement of children for officials involved in such activity.

401 (Q) To maintain books and records in accordance with the by-laws of the Interstate
402 Commission.

403 (R) To perform functions necessary or appropriate to achieve the purposes of this
404 compact.

405 ARTICLE X. ORGANIZATION AND OPERATION OF THE INTERSTATE
406 COMMISSION

407 (A) By-laws

408 (1) Within 12 months after the first Interstate Commission meeting, the
409 Interstate Commission shall adopt by-laws to govern its conduct as may be necessary or
410 appropriate to carry out the purposes of the compact.

411 (2) The by-laws and rules of the Interstate Commission shall establish
412 conditions and procedures under which the Interstate Commission shall make its information and
413 official records available to the public for inspection or copying. The Interstate Commission
414 may exempt from disclosure information or official records to the extent that disclosure would
415 adversely affect personal privacy rights or proprietary interests.

416 (B) Meetings

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

420 (2) The Interstate Commission shall give public notice of all meetings and all
421 meetings shall be open to the public, except as set forth in the rules or as otherwise provided in
422 the compact. The Interstate Commission and its committees may close a meeting, or portion
423 thereof, where it determines by two-thirds vote that an open meeting would be likely to:

424 (a) relate solely to the Interstate Commission's internal
425 personnel practices and procedures;

426 (b) disclose matters specifically exempted from disclosure by
427 federal law;

428 (c) disclose financial or commercial information which is
429 privileged, proprietary or confidential in nature;

430 (d) involve accusing a person of a crime, or formally censuring
431 a person;

432 (e) disclose information of a personal nature where disclosure
433 would constitute a clearly unwarranted invasion of personal privacy or physically endanger 1 or
434 more persons;

435 (f)disclose investigative records compiled for law enforcement
436 purposes; or

437 (g) specifically relate to the Interstate Commission's
438 participation in a civil action or other legal proceeding.

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

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

450 (C) Officers and Staff

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

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

459 (D) Qualified Immunity, Defense and Indemnification

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

468 (a) The liability of the Interstate Commission's staff director and
469 employees or Interstate Commission representatives, acting within the scope of their
470 employment or duties for acts, errors or omissions occurring within their state may not exceed
471 the limits of liability set forth under the Constitution and laws of that state for state officials,
472 employees and agents. The Interstate Commission is considered to be an instrumentality of the
473 states for the purposes of any such action. Nothing in this subsection shall be construed to protect

474 such person from suit or liability for damage, loss, injury or liability caused by a criminal act or
475 the intentional or willful and wanton misconduct of such person.

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

485 (c) To the extent not covered by the state involved, member
486 state or the Interstate Commission, the representatives or employees of the Interstate
487 Commission shall be held harmless in the amount of a settlement or judgment, including
488 attorney's fees and costs, obtained against such persons arising out of an actual or alleged act,
489 error or omission that occurred within the scope of Interstate Commission employment, duties or
490 responsibilities, or that such persons had a reasonable basis for believing occurred within the
491 scope of Interstate Commission employment, duties or responsibilities; provided, however, that
492 the actual or alleged act, error or omission did not result from intentional or willful and wanton
493 misconduct on the part of such persons.

494 ARTICLE XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

495 (A) The Interstate Commission shall promulgate and publish rules in order to effectively
496 and efficiently achieve the purposes of the compact.

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

505 (C) When promulgating a rule, the Interstate Commission shall, at a minimum:

506 (1) publish the entire text of the proposed rule stating the reason for that
507 proposed rule;

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

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

513 (D) Rules promulgated by the Interstate Commission shall have the force and effect of
514 administrative rules and shall be binding in the compacting states to the extent and in the manner
515 provided for in this compact.

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

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

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

528 (H) Within the first 12 months of operation, the Interstate Commission shall promulgate
529 rules addressing the following:

530 (1) transition rules;

531 (2) forms and procedures;

532 (3) time lines;

533 (4) data collection and reporting;

534 (5) rulemaking;

535 (6) visitation;

536 (7) progress reports and supervision;

537 (8) sharing of information and confidentiality;

538 (9) financing of the Interstate Commission;

539 (10) mediation, arbitration and dispute resolution;

540 (11) education, training and technical assistance;

541 (12) enforcement; and

542 (13) coordination with other interstate compacts

543 (I) Upon determination by a majority of the members of the Interstate Commission
544 that an emergency exists:

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

547 (a) protect the children covered by this compact from an
548 imminent threat to their health, safety and well-being;

549 (b) prevent loss of federal or state funds; or

550 (c) meet a deadline for the promulgation of an administrative
551 rule required by federal law.

552 (2) An emergency rule shall become effective immediately upon adoption;
553 provided, however, that the usual rulemaking procedures provided hereunder shall be
554 retroactively applied to the emergency rule as soon as reasonably possible, but no later than 90
555 days after the effective date of the emergency rule.

556 (3) An emergency rule shall be promulgated as provided for in the rules of the
557 Interstate Commission.

558 ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

559 (A) Oversight

560 (1) The Interstate Commission shall oversee the administration and operations
561 of the compact.

562 (2) The executive, legislative and judicial branches of state government in each
563 member state shall enforce this compact and the rules of the Interstate Commission and shall
564 take all actions necessary and appropriate to effectuate the compact's purposes and intent. The
565 compact and its rules shall be binding in the member states to the extent and in the manner
566 provided for in this compact.

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

570 (4) The Interstate Commission shall be entitled to receive service of process in
571 any action in which the validity of a compact provision or rule is the issue for which a judicial
572 determination has been sought and shall have standing to intervene in any proceedings. Failure to
573 provide service of process to the Interstate Commission shall render any judgment, order or other
574 determination, however so captioned or classified, void as to the Interstate Commission, this
575 compact, its by-laws or rules of the Interstate Commission.

576 (B) Dispute Resolution

577 (1) The Interstate Commission shall attempt, upon the request of a member
578 state, to resolve disputes which are subject to the compact and which may arise among member
579 states and between member and non-member states.

580 (2) The Interstate Commission shall promulgate a rule providing for both
581 mediation and binding dispute resolution for disputes among compacting states. The costs of
582 such mediation or dispute resolution shall be the responsibility of the parties to the dispute.

583 (C) Enforcement

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

587 (a) provide remedial training and specific technical assistance;

588 (b) provide written notice to the defaulting state and other member
589 states, of the nature of the default and the means of curing the default. The Interstate
590 Commission shall specify the conditions by which the defaulting state must cure its default;

591 (c) by majority vote of the members, initiate against a defaulting
592 member state legal action in the United State District Court for the District of Columbia or, at the
593 discretion of the Interstate Commission, in the federal district where the Interstate Commission
594 has its principal offices, to enforce compliance with the provisions of the compact, its by-laws or
595 rules. The relief sought may include both injunctive relief and damages. In the event judicial
596 enforcement is necessary the prevailing party shall be awarded all costs of such litigation
597 including reasonable attorney's fees; or

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

600 ARTICLE XIII. FINANCING OF THE COMMISSION

601 (A) The Interstate Commission shall pay, or provide for the payment of the reasonable
602 expenses of its establishment, organization and ongoing activities.

603 (B) The Interstate Commission may levy on and collect an annual assessment from each
604 member state to cover the cost of the operations and activities of the Interstate Commission and
605 its staff which must be in a total amount sufficient to cover the Interstate Commission's annual
606 budget as approved by its members each year. The aggregate annual assessment amount shall be
607 allocated based upon a formula to be determined by the Interstate Commission which shall
608 promulgate a rule binding upon all member states.

609 (C) The Interstate Commission shall not incur obligations of any kind prior to securing
610 the funds adequate to meet that obligation; nor shall the Interstate Commission pledge the credit
611 of any of the member states, except by and with the authority of the member state.

612 (D) The Interstate Commission shall keep accurate accounts of all receipts and
613 disbursements. The receipts and disbursements of the Interstate Commission shall be subject to
614 the audit and accounting procedures established under its by-laws. All receipts and
615 disbursements of funds handled by the Interstate Commission shall be audited yearly by a
616 certified or licensed public accountant and the report of the audit shall be included in and become
617 part of the annual report of the Interstate Commission.

618 ARTICLE XIV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

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

620 (B) The compact shall become effective and binding upon legislative enactment of the
621 compact into law by no fewer than 35 states. The effective date shall be the later of July 1, 2007
622 or upon enactment of the compact into law by the thirty-fifth state. Thereafter it shall become
623 effective and binding as to any other member state upon enactment of the compact into law by
624 that state. The governors of non-member states or their designees shall be invited to participate
625 in the activities of the Interstate Commission on a non-voting basis prior to adoption of the
626 compact by all states.

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

630 ARTICLE XV. WITHDRAWAL AND DISSOLUTION

631 (A) Withdrawal

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

635 (2) Withdrawal from this compact shall be by the enactment of a statute
636 repealing the same. The effective date of withdrawal shall be the effective date of the repeal of
637 the statute.

638 (3) The withdrawing state shall immediately notify the chairperson of the
639 Interstate Commission in writing upon the introduction of legislation repealing this compact in
640 the withdrawing state. The Interstate Commission shall then notify the other member states of
641 the withdrawing state's intent to withdraw.

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

644 (5) Reinstatement following withdrawal of a member state shall occur upon the
645 withdrawing state reenacting the compact or upon such later date as determined by the members
646 of the Interstate Commission.

647 (B) Dissolution of Compact

648 (1) This compact shall dissolve effective upon the date of the withdrawal or
649 default of the member state which reduces the membership in the compact to 1 member state.

650 (2) Upon the dissolution of this compact, the compact becomes null and void
651 and shall be of no further force or effect, and the business and affairs of the Interstate
652 Commission shall be concluded and surplus funds shall be distributed in accordance with the by-
653 laws.

654 ARTICLE XVI. SEVERABILITY AND CONSTRUCTION

655 (A) This compact shall be severable, and if any phrase, clause, sentence or provision is
656 deemed unenforceable, the remaining provisions of the compact shall be enforceable.

657 (B) This compact shall be liberally construed to effectuate its purposes.

658 (C) Nothing in this compact shall be construed to prohibit the concurrent applicability of
659 other interstate compacts to which the states are members.

660 ARTICLE XVII. BINDING EFFECT OF COMPACT AND OTHER LAWS

661 (A) Other Laws

662 (1) Nothing herein prevents the enforcement of any other law of a member
663 state that is consistent with this compact.

664 (2) All member states' laws conflicting with this compact or its rules are
665 superseded to the extent of the conflict.

666 (B) Binding Effect of the Compact

667 (1) All lawful actions of the Interstate Commission, including all rules and by-
668 laws promulgated by the Interstate Commission, are binding upon the member states.

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

671 (3) In the event any provision of this compact exceeds the constitutional limits
672 imposed on the legislature of any member state, such provision shall be ineffective to the extent
673 of the conflict with the constitutional provision in question in that member state.

674 ARTICLE XVIII. INDIAN TRIBES

675 Notwithstanding any other provision in this compact, the Interstate Commission
676 may promulgate guidelines to permit Indian tribes to utilize the compact to achieve the purposes
677 of the compact as specified in Article I. The Interstate Commission shall make reasonable
678 efforts to consult with Indian tribes in promulgating guidelines to reflect the diverse
679 circumstances of the various Indian tribes.

680 SECTION 2. The first sentence of section 3 of said chapter 452 is hereby
681 amended by striking out the words "Article V" and inserting in place thereof the following
682 words:- Article VII.

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

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

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

691 SECTION 5. Section 6 of said chapter 452 is hereby amended by striking out
692 the words "sections fourteen, fifteen and sixteen of said chapter on hundred and nineteen" and
693 inserting in place thereof the following words:- "the laws of the Commonwealth".

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

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

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

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

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