February 3, 2009

HOUSE BILL No. 1107

DIGEST OF HB 1107 (Updated January 29, 2009 10:37 am - DI 116)

Citations Affected: IC 20-38.

Synopsis: Compact for education for military children. Enacts the Interstate Compact on Educational Opportunity for Military Children. Provides for the coordination of efforts among state agencies and other states to facilitate the transfer of students of military families between schools, including the transfer of educational and other records. Provides for the recognition of coursework to facilitate timely graduation of students of military families.

Effective: July 1, 2009.

Tincher, Koch, Turner, Reske

January 8, 2009, read first time and referred to Committee on Veterans Affairs and Public Safety.
February 2, 2009, reported — Do Pass.

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February 3, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1107

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 20-38-3 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 3. Interstate Compact on Educational Opportunity for Military Children

Sec. 1. ARTICLE I. PURPOSE

It is the purpose of this compact to remove barriers to educational success imposed on children of military families due to frequent moves and deployment of their parents by doing the following:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of educational records from the school corporations the children previously attended or variations in admissions requirements.

B. Facilitating the student placement process to ensure that children of military families are not placed at a disadvantage

due to variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment.

C. Facilitating the qualifications and eligibility for enrollment and participation in educational programs and extracurricular academic, athletic, and social activities.

D. Facilitating the timely graduation of children of military families.

E. Providing for the adoption and enforcement of rules to implement this chapter.

F. Providing for the uniform collection and sharing of information among member states, schools, and military families.

G. Promoting coordination among this compact and other compacts affecting children of military families.

H. Promoting flexibility and cooperation among the educational system, students, and families to achieve educational success for the students.

Sec. 2. ARTICLE II. DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. "Active duty" means full-time duty status in the armed forces of the United States or the National Guard and Reserve on active duty orders under 10 U.S.C. 1209 and 10 U.S.C 1211.

B. "Children of military families" means school aged children who are enrolled in kindergarten through grade 12 and are members of the household of an active duty member.

C. "Compact commissioner" means the voting representative of each member state appointed under section 9 of this chapter.

D. "Deployment" means the period beginning one (1) month before a service member departs from the member's home station on military orders and ending six (6) months after the service member returns to the member's home station.

E. "Educational records" means the official records, files, and data that are directly related to a student and maintained by a school or local education agency. The term includes general identifying data, records of attendance and academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

F. "Extracurricular activities" means voluntary activities

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sponsored by a school, a local education agency, or an organization approved by a local education agency. The term includes preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

G. "Interstate commission" refers to the interstate commission on Educational Opportunity for Military Children created by Article IX of this compact.

H. "Local education agency" means a public administrative agency authorized by the state to control and direct kindergarten through grade 12 public educational institutions.

I. "Member state" means a state that has enacted this compact.

J. "Military installation" means a base, a camp, a post, a station, a yard, a center, a homeport facility for a ship, or any other activity under the jurisdiction of the United States Department of Defense. The term includes a leased facility located within the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, or any other United States territory. The term does not include a facility used primarily for civil works, rivers and harbors projects, or flood control projects.

K. "Nonmember state" means a state that has not enacted this compact.

L. "Receiving state" means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

M. "Rule" means a written statement by the interstate commission adopted under Article XII of this compact that is of general applicability, that implements, interprets, or prescribes a policy of provision of the interstate compact, and that has the force and effect of statutory law on a member state. The term includes the amendment, repeal, or suspension of an existing rule.

N. "Sending state" means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

O. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern

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Marianas Islands, or any other United States territory.

P. "Student" means a child of a military family for whom a local education agency receives public funding and who is formally enrolled in kindergarten through grade 12.

Q. "Transition" means the formal and physical process of transferring a student between schools or the period during which a student transfers from a school in the sending state to a school in the receiving states.

R. "Uniformed services" means the United States Army, Navy, Air Force, Marine Corps, or Coast Guard. The term includes the commission corp of the National Oceanic and Atmospheric Administration and the Public Health Services.

S. "Veteran" means an individual who served in and was discharged or released from the uniformed services under conditions other than dishonorable.

Sec. 3. ARTICLE III. APPLICABILITY

A. Except as otherwise provided paragraph B, this compact applies to the children of the following:

1. An active duty member of the uniformed services, including a member of the National Guard and Reserve on active duty orders under 10 U.S.C. 1209 and 10 U.S.C 1211.

2. A member or veteran of the uniformed services who is severely injured and medically discharged or retired for at least one (1) year after medical discharge or retirement.

3. A member of the uniformed services who dies on active duty or as a result of injuries sustained on active duty, for one (1) year after the member's death.

B. This compact applies only to local education agencies as defined in this compact.

C. This compact does not apply to the children of the following:

1. Inactive members of the National Guard and military reserves.

2. Retired members of the uniformed services, except as provided in paragraph A.

3. Veterans of the uniformed services, except as provided in paragraph A.

4. Other United States Department of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

Sec. 4. ARTICLE IV. EDUCATIONAL RECORDS AND ENROLLMENT

A. If official educational records cannot be released to the

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parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the interstate commission. Upon receipt of the unofficial educational records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records, pending validation by the official records, as quickly as possible.

B. At the same time as the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official educational record from the school in the sending state. Upon receipt of this request, the school in the sending state shall process and furnish the official educational records to the school in the receiving state within ten (10) days of such time as is reasonably determined under the rules adopted by the interstate commission.

C. Member states shall give thirty (30) days after the date of enrollment, or within such time as is reasonably determined under the rules adopted by the interstate commission, for students to obtain immunizations required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty (30) days or within such time as is reasonably determined under the rules adopted by the interstate commission.

D. Students may continue their enrollment at grade level in the receiving state commensurate with their grade level (including kindergarten) from a local education agency in the sending state at the time of transition, regardless of age. A student who has satisfactorily completed the prerequisite grade level in the local education agency in the sending state is eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student who transfers after the start of the school year in the receiving state shall enter the school in the receiving state on the student's validated level from an accredited school in the sending state.

Sec. 5. ARTICLE V. PLACEMENT AND ATTENDANCE

A. When a student transfers before or during a school year, the receiving state school initially shall honor placement of the student in educational courses based on the student's enrollment in the sending state school, on educational assessments conducted at the school in the sending state if the courses are offered, or on both the enrollment and assessments. Course placement includes honors,

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international baccalaureate, advanced placement, vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses are paramount when considering placement. The school in the receiving state may perform subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the courses.

B. The receiving state school initially shall honor placement of a student in educational programs based on current educational assessments conducted at the school in the sending state or by participation or placement in similar programs in the sending state. Similar programs include gifted and talented programs and English as a second language programs. A school in a receiving state may perform subsequent evaluations to ensure appropriate placement of a student.

C. In compliance with the federal requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on the student's current individualized education program.

D. In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C. 12131 through 12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 Plan or Title II Plan, to provide the student with equal access to education. A school in a receiving state may perform subsequent evaluations to ensure appropriate placement of a student.

E. Local education agency administrative officials have flexibility in waiving course or program prerequisites or other preconditions for placement in courses or programs offered under the jurisdiction of the local education agency.

F. A student whose parent or legal guardian is an active duty member of the uniformed services and has been called to duty for, is on leave from, or has immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with the parent or legal guardian before the leave or deployment.

Sec. 6. ARTICLE VI. ELIGIBILITY

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A. Eligibility for enrollment

1. A special power of attorney, relative to the guardianship of a child of a military family, is sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

2. A local education agency is prohibited from charging local tuition to a transitioning child of a military family placed in the care of a noncustodial parent or another person standing in loco parentis who lives in a jurisdiction other than the jurisdiction of the custodial parent.

3. A transitioning child of a military family, placed in the care of a noncustodial parent or another person standing in loco parentis who lives in a jurisdiction other than the jurisdiction of the custodial parent, may attend the school in which the child was enrolled while residing with the custodial parent.

B. States and local education agencies shall facilitate the opportunity for the inclusion of transitioning children of military families in extracurricular activities, regardless of application deadlines, to the extent the children are otherwise qualified.

Sec. 7. ARTICLE VII. GRADUATION

To facilitate the on time graduation of children of military families, states and local education agencies shall follow the following procedures:

A. Local education agency administrative officials shall waive specific courses required for graduation if a student has satisfactorily completed similar course work in another local education agency. If a local education agency does not grant a waiver to a student who would qualify to graduate from the sending school, the local education agency must provide reasonable justification for denial of the waiver and provide alternative means to acquire the required course work so the student may graduate on time.

B. A receiving state shall accept any of the following in place of testing requirements for graduation in the receiving state:

1. Exit or end of course exams required for graduation from the sending state.

2. National norm referenced achievement tests.

3. Alternative testing.

If a receiving state fails to accept an alternative listed in this paragraph for a student transferring during the student's senior year, paragraph C applies.

C. If a student who transfers at the beginning of the student's

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senior year is ineligible to graduate from the receiving local education agency after all alternatives under paragraph B have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency if the student meets the graduation requirements of the sending local education agency. If a sending or receiving state is not a member state, the state that is a member state shall use best efforts to facilitate the on time graduation of the student under paragraphs A and B.

Sec. 8. ARTICLE VIII. STATE COORDINATION

A. A member state shall create a state council or use an existing body or board to coordinate the actions of government agencies, local education agencies, and military installations concerning the state's participation in and compliance with this compact and interstate commission activities. A state council created under this section must include at least the following members:

1. The state superintendent of education.

2. A superintendent of a school district with a high concentration of children of military families. If a member state does not contain a school district with a high concentration of children of military families, a superintendent of a school district to represent local education agencies.

3. A representative of a military installation.

4. A member of the legislative branch.

5. A member of the executive branch.

B. The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of a member state's participation in this compact shall be appointed by the governor of the member state or as otherwise determined by the member state.

D. The compact commissioner and the military family education liaison appointed under this section are ex officio members of the state council unless either is already a voting member of the state council.

Sec. 9. ARTICLE IX. INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the interstate commission on Educational Opportunity for Military Children. The activities of

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the interstate commission are the formation of public policy and are a discretionary state function. The interstate commission:

A. Is a body corporate and joint agency of the member states and has all the responsibilities, powers, and duties set forth in this compact and such additional powers as may be conferred upon it by a subsequent concurrent action of the legislatures of the member states under the terms of this compact.

B. Consists of one (1) interstate commission voting representative from each member state who is the member state's compact commissioner.

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

2. A majority of the total member states constitutes a quorum for the transaction of business unless the bylaws of the interstate commission require a larger quorum.

3. A representative may not delegate a vote to another member state. If a compact commissioner is unable to attend a meeting of the interstate commission, the governor or the state council may delegate voting authority to another person from the compact commissioner's state for a specified meeting.

4. The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.

C. Consists of ex officio, nonvoting representatives who are members of interested organizations, including members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military families.

D. Shall meet at least one (1) time each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, must call additional meetings.

E. Shall establish an executive committee. Members of the executive committee include the officers of the interstate commission and other members of the interstate commission as determined by the bylaws. Members of the executive committee shall serve a one (1) year term. Members of the executive committee are entitled to one (1) vote each. The executive

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committee has the power to act on behalf of the interstate commission, except for rulemaking, during periods when the interstate commission is not in session. The executive committee shall oversee the daily activities of the administration of this compact, including enforcement and compliance with this compact, its bylaws, and its rules, and other necessary duties. The United States Department of Defense is an ex officio nonvoting member of the executive committee.

F. Shall establish bylaws and rules that provide for conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

G. Shall give public notice of all meetings. All meetings are open to the public except as set forth in the rules or as otherwise provided in this compact. The interstate commission and its committees may close a meeting or part of a meeting if the interstate commission determines by a two-thirds (2/3) majority that an open meeting would be likely to:

1. relate solely to the interstate commission's internal personnel practices and procedures;

2. disclose matters specifically exempted from disclosure by federal or state law;

3. disclose trade secrets or privileged or confidential commercial or financial information;

4. involve accusing a person of a crime or formally censuring a person;

5. disclose information of a personal nature in a clearly unwarranted invasion of personal privacy;

6. disclose investigative records compiled for law enforcement purposes; or

7. specifically relate to the interstate commission's participation in a civil action or another legal proceedings.

H. Shall cause its legal counsel or designee to certify that a meeting may be closed and reference each relevant exemptible provision for any meeting or part of a meeting that is closed under this section. The interstate commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and provide a full and accurate summary of actions taken and the reasons for taking the actions, including a description of the views expressed and the record of a roll call vote. All documents considered in

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connection with an action must be identified in the minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the interstate commission.

I. Shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through the interstate commission's rules. The rules must specify the data to be collected, the means of collection, and data exchange and reporting requirements. The methods of data collection, exchange, and reporting must, to the extent reasonably possible, conform to current technology and coordinate information functions with the appropriate custodian of records as identified in the interstate commission's bylaws and rules.

J. Shall create a process to permit military officials, education officials, and parents to inform the interstate commission of alleged violations of this compact or the rules of the interstate commissions, or when issues subject to the jurisdiction of this compact or the rules of the interstate commission are not addressed by a state or local education agency. This section may not be construed to create a private right of action against the interstate commission or any member state.

Sec. 10. ARTICLE X. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission has the following powers:

A. To provide for dispute resolution among member states.

B. To adopt rules and take all necessary actions to effect the goals, purposes, and obligations set forth in this compact. The rules have the force and effect of statutory law and are binding in the member states to the extent and in the manner provided in this compact.

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

D. To enforce compliance with compact provisions, rules adopted by the interstate commission, and the bylaws, using all necessary and proper means, including the use of judicial process.

E. To establish and maintain offices located within one (1) or more member states.

F. To purchase and maintain insurance and bonds.

G. To borrow, accept, hire, or contract for personnel services.

H. To establish and appoint committees, including an executive committee required by Article IX, Section E. The executive

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committee has the power to act on behalf of the interstate commission in carrying out the powers and duties of the interstate commission.

I. To elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications, and to establish the interstate commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

J. To accept donations and grants of money, equipment, supplies, materials, and services, and to receive, use, and dispose of the donations and grants.

K. To lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use any property.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the interstate commission.

O. To report annually to the legislatures, governors, judiciary, and the state councils of the member states about the activities of the interstate commission during the preceding year. A report must include any recommendations adopted by the interstate commission. A report to the general assembly must be in an electronic format under IC 5-14-6.

P. To coordinate education, training, and public awareness for officials and parents regarding the compact and its implementation and operation.

Q. To establish uniform standards for the reporting, collecting, and exchanging of data.

R. To maintain corporate books and records in accordance with the bylaws.

S. To perform necessary and appropriate functions to achieve the purposes of this compact.

T. To provide for the uniform collection and sharing of information among member states, schools, and military families under this compact.

Sec. 11. ARTICLE XI. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. The interstate commission shall, by a majority of members present and voting, within twelve (12) months after the first interstate commission meeting, adopt bylaws to govern its conduct and carry out the purposes of this compact, including the

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following:

1. Establishing the fiscal year of the interstate commission.

2. Establishing an executive committee and other necessary committees.

3. Providing for the establishment of committees and for governing any delegation of authority or function of the interstate commission.

4. Providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each meeting.

5. Establishing the titles and responsibilities of the officers and staff of the interstate commission.

6. Providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds existing upon the termination of the compact after the payment and reserving of all the debts and obligations of the interstate commission.

7. Providing "start up" rules for initial administration of this compact.

B. The interstate commission shall, by a majority of members, elect annually from its members a chairperson, a vice chairperson, and a treasurer, each of whom has the authority and duties specified in the bylaws. The chairperson or vice chairperson, as applicable, shall preside at all meetings of the interstate commission. The elected officers shall serve without compensation or remuneration from the interstate commission. However, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred in the performance of their responsibilities as officers of the interstate commission.

C. Executive Committee, Officers, and Personnel

1. The executive committee has the authority and duties set forth in the bylaws, including:

a. managing the affairs of the interstate commission in a manner consistent with the bylaws and purposes of the interstate commission;

b. overseeing an organizational structure within, and appropriate procedures for, the interstate commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

c. planning, implementing, and coordinating communications and activities with other state, federal,

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and local government organizations to advance the goals of the interstate commission.

2. The executive committee may, subject to the approval of the interstate commission, appoint or retain an executive director for a period, upon such terms and conditions, and for such compensation as the interstate commission may consider appropriate. The executive director shall serve as secretary to the interstate commission but is not a member of the interstate commission. The executive director shall hire and supervise other persons authorized by the interstate commission.

D. The interstate commission's executive director and interstate commission employees are immune from suit and liability, personally or in their official capacities, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such a person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities. However, a person is not protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the person.

1. The liability of the interstate commission's executive director, an employee, or a representative, acting within the scope of the person's employment or duties for acts, errors, or omissions occurring within the person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The interstate commission is an instrumentality of the states for purposes of such an action. This subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the person.

2. The interstate commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of a member state represented by an interstate commission representative, shall defend the interstate commission representative in a civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant

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reasonably believed occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the defendant.

3. To the extent not covered by the state involved, a member state, the interstate commission, and the representatives and employees of the interstate commission are held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the persons reasonably believed occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the persons.

Sec. 12. ARTICLE XII. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The interstate commission shall adopt reasonable rules to effectively and efficiently achieve the purposes of this compact. However, if the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of or power granted under this compact, the action by the interstate commission is invalid and has no force or effect.

B. Rules shall be made under a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000) as amended, as may be appropriate to the operations of the interstate commission.

C. Not later than thirty (30) days after a rule is adopted, a person may file a petition for judicial review of the rule. However, the filing of a petition does not stay or otherwise prevent the rule from becoming effective unless a court finds that the petitioner has a substantial likelihood of success. The court shall defer to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission's authority.

D. If a majority of the legislatures of the member states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, the rule has no further force and effect

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in any compacting state.

Sec. 13. ARTICLE XIII. OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

A. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. This compact and the rules adopted under this compact have standing as statutory law.

2. All courts shall take judicial notice of this compact and the rules adopted under this compact in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the interstate commission.

3. The interstate commission is entitled to receive all service of process in any proceeding and has standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission renders a judgment or an order void as to the interstate commission, this compact, or adopted rules.

B. If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, the bylaws, or the adopted rules, the interstate commission shall do the following:

1. Provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default, and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default.

2. Provide remedial training and specific technical assistance regarding the default.

3. If the defaulting state fails to cure the default, the defaulting state shall be withdrawn from this compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact are terminated from the effective date of the defaulting state's withdrawal. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

4. Suspension or termination of membership in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend

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or withdraw shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

5. The member state that has been suspended or withdrawn is responsible for all assessments, obligations, and liabilities incurred through the effective date of its suspension or termination, including obligations, the performance of which extends beyond the effective date of suspension or withdrawal.

6. The interstate commission shall not bear any costs relating to any member state that has been found to be in default or that has been suspended or withdrawn from this compact unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting member state.

7. The defaulting member state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. The interstate commission shall attempt, upon the request of a member state, to resolve disputes that are subject to this compact and that may arise among member states and between member and nonmember states.

2. The interstate commission shall adopt a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. The interstate commission may, by majority vote of the members, initiate legal action in the United State District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with this compact and its adopted rules and bylaws against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

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3. The remedies set forth in this section are not the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

Sec. 14. ARTICLE XIV. FINANCING OF THE INTERSTATE COMMISSION

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

B. The interstate commission may levy on, and collect an annual assessment from, each member state to cover the cost of the operations and activities of the interstate commission and its staff. The total amount of the assessment must be sufficient to cover the interstate commission's annual budget as approved each year. The total annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, which shall adopt a rule binding upon all member states.

C. The interstate commission may not incur obligations of any kind before securing the funds adequate to meet the obligations, nor shall the interstate commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the interstate commission.

Sec. 15. ARTICLE XV. MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT

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

B. This compact becomes effective and binding upon legislative enactment of the compact into law by at least ten (10) of the states. It becomes effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis before adoption of the compact by all states.

C. The interstate commission may propose amendments to this compact for enactment by the member states. An amendment shall

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not become effective and binding upon the interstate commission and the member states unless and until the amendment is enacted into law by unanimous consent of the member states.

Sec. 16. ARTICLE XVI. WITHDRAWAL AND DISSOLUTION

A. Withdrawal

1. Once effective, this compact continues in force and remains binding upon each and every member state. However, a member state may withdraw from this compact by repealing the statute that enacted the compact into law.

2. Withdrawal from this compact shall be by repealing the statute that enacted this compact into law but does not take effect until one (1) year after the effective date of the repealing statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.

3. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt of the written notification.

4. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of its withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting this compact or upon a later date as determined by the interstate commission.

B. Dissolution of Compact

1. This compact dissolves effective upon the date of the withdrawal or default of the member state that reduces the membership in the compact to one (1) member state.

2. Upon the dissolution of this compact, this compact becomes void and is of no further force or effect, and the business and affairs of the interstate commission shall be concluded, and surplus funds shall be distributed, in accordance with the bylaws.

Sec. 17. ARTICLE XVII. SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact are severable, and if any

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phrase, clause, sentence, or provision is considered unenforceable, the remaining provisions of this compact are enforceable.

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

C. This compact may not be construed to prohibit the applicability of other interstate compacts to which the states are members.

Sec. 18. ARTICLE XVIII. BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws

1. This compact does not prevent the enforcement of any other law of a member state that is not inconsistent with this compact.

2. All member states' laws that conflict with this compact are superseded to the extent of the conflict.

B. Binding Effect of the Compact

1. All lawful actions of the interstate commission, including all rules and bylaws adopted by the interstate commission, are binding upon the member states.

2. All agreements between the interstate commission and the member states are binding in accordance with their terms.

3. If a provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, the provision is ineffective to the extent of the conflict with the constitutional provision in question in that member state.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Veterans Affairs and Public Safety, to which was referred House Bill 1107, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BARNES, Chair

Committee Vote: yeas 9, nays 0.

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