

IC 31-28-6

Chapter 6. Interstate Compact for the Placement of Children

IC 31-28-6-1

Enactment; provision

Sec. 1. Subject to IC 31-28-4-1.5, the interstate compact for the placement of children is enacted into law under this chapter and entered into with all other jurisdictions legally joining the compact in a form consistent with the compact terms and provisions as stated in this section in a form substantially as follows:

ARTICLE 1. PURPOSE

The purpose of this interstate compact for the placement of children is to do the following:

- (1) Provide a process through which children subject to this compact are placed in safe and suitable homes in a timely manner.
- (2) Facilitate ongoing supervision of a placement, the delivery of services, and communication between the states.
- (3) Provide operating procedures that will ensure that children are placed in safe and suitable homes in a timely manner.
- (4) Provide for the adoption and enforcement of administrative rules implementing the provisions of this compact and regulating the covered activities of the member states.
- (5) Provide for uniform data collection and information sharing between member states under this compact.
- (6) Promote coordination between this compact, the Interstate Compact for Juveniles, the Interstate Compact on Adoption and Medical Assistance, and other compacts that affect the placement of and that provide services to children otherwise subject to this compact.
- (7) 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.
- (8) 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

The following definitions apply throughout this compact:

- (1) "Approved placement" means the public child placing agency in the receiving state has determined that the placement is both safe and suitable for the child.
- (2) "Assessment" means an evaluation of a prospective placement by a public child placing agency in the receiving state to determine whether the placement meets the individualized needs of the child, including the child's safety and stability, health and well-being, and mental, emotional, and physical development. An assessment is applicable only to a placement by a public child placing agency.
- (3) "Certification" means to attest, declare, or swear to before

a judge or notary public.

(4) "Child" means an individual who is less than eighteen (18) years of age.

(5) "Default" means the failure of a member state to perform the obligations or responsibilities imposed upon it by this compact or by the bylaws or rules of the interstate commission.

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

(7) "Indian tribe" means any Indian 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 their status as Indians, including any Alaskan native village as defined in section 3(c) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(c).

(8) "Interstate commission for the placement of children" means the commission that is created under Article VIII of this compact and that is generally referred to as "the interstate commission".

(9) "Jurisdiction" means the power and authority of a court to hear and decide matters.

(10) "Legal risk adoption" means a placement made preliminary to an adoption in which the prospective adoptive parents acknowledge in writing that a child can 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.

(11) "Legal risk placement" means legal risk adoption.

(12) "Member state" means a state that has enacted this compact.

(13) "Noncustodial parent" means a person who, at the time of the commencement of court proceedings in the sending state, does not have sole legal custody of the child or has joint legal custody of a child, and who is not the subject of allegations or findings of child abuse or neglect.

(14) "Nonmember state" means a state that has not enacted this compact.

(15) "Notice of residential placement" means information regarding a placement into a residential facility that is provided to the receiving state, including, but not limited to, the name of the child, the 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, and the name and address of the facility in which the child will be placed. The term also includes information regarding a discharge and any

unauthorized absence from the facility.

(16) "Placement" means the act by a public or private child placing agency intended to arrange for the care or custody of a child in another state.

(17) "Private child placing agency" means any private corporation, agency, foundation, institution, or charitable organization, or any private person or attorney, that facilitates, causes, or is involved in the placement of a child from one (1) state to another and that is not an instrumentality of the state or acting under color of state law.

(18) "Provisional placement" means a determination made by the public child placing agency in the receiving state that the receiving state has determined 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 not to 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.

(19) "Public child placing agency" means any government child welfare agency or child protection agency, or a private entity under contract with such an agency, regardless of whether the agency or entity acts on behalf of a state, county, municipality, or other governmental unit, that facilitates, causes, or is involved in the placement of a child from one (1) state to another.

(20) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought.

(21) "Relative" means someone who is related to the child as a parent, stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, or a nonrelative with such significant ties to the child that they may be regarded as relatives as determined by the court in the sending state.

(22) "Residential facility" means a facility providing a level of care that is sufficient to substitute for parental responsibility or foster care and is beyond what is needed for assessment or treatment of an acute condition. For purposes of the compact, residential facilities do not include institutions that are primarily educational in character, hospitals, or other medical facilities.

(23) "Rule" means a written directive, mandate, standard, or principle that is issued by the interstate commission and promulgated under Article XI of this compact, that is of general applicability, and that implements, interprets, or prescribes a policy or provision of the compact. A rule has the force and effect of an administrative rule in a member state, and includes the amendment, repeal, or suspension of an existing rule.

(24) "Sending state" means the state from which the placement

of a child is initiated.

(25) "Service member's permanent duty station" means the military installation where an active duty armed services member is currently assigned and is physically located under competent orders that do not specify the duty as temporary.

(26) "Service member's state of legal residence" means the state in which the active duty armed services member is considered a resident for tax and voting purposes.

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

(28) "State court" means a judicial body of a state that is vested by law with responsibility for adjudicating cases involving abuse, neglect, deprivation, delinquency, or status offenses of individuals less than eighteen (18) years of age.

(29) "Supervision" means monitoring provided by the receiving state once a child has been placed in a receiving state under this compact.

ARTICLE III. APPLICABILITY

(a) Except as otherwise provided in subsection (b), this compact applies to the following:

(1) The interstate placement of a child subject to ongoing court jurisdiction in the sending state, due to allegations or findings that the child has been abused, neglected, or deprived as defined by the laws of the sending state. However, the placement of such a child into a residential facility requires only notice of residential placement to the receiving state before placement.

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

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

(B) the child is being placed in another member state and the determination of safety and suitability of the placement and services required is not provided through another compact.

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

(b) The provisions of this compact do not apply to the following:

(1) The interstate placement of a child in a custody proceeding in which a public child placing agency is not a party, if the placement is not intended to effectuate an adoption.

(2) The interstate placement of a child with a nonrelative in a receiving state by a parent with the legal authority to make such a placement. However, the placement is not intended to effectuate an adoption.

(3) The interstate placement of a child by one (1) relative with the lawful authority to make such a placement directly with a

relative in a receiving state.

(4) The placement of a child not subject to subsection (a) into a residential facility by the child's parent.

(5) The placement of a child with a noncustodial parent if:

(A) the noncustodial parent proves to the satisfaction of a court in the sending state a substantial relationship with the child;

(B) the court in the sending state makes a written finding that placement with the noncustodial parent is in the best interests of the child; and

(C) the court in the sending state dismisses its jurisdiction over the child's case.

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

(7) Cases in which a United States citizen child living overseas with the child's family, at least one (1) member of which is in the United States armed services and is stationed overseas, is removed and placed in a state.

(8) The sending of a child by a public child placing agency or a private child placing agency for a visit as defined by the rules of the interstate commission.

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

(d) This compact shall not be construed to prohibit the concurrent application of the provisions of this compact with other applicable interstate compacts, including the interstate compact for juveniles and the interstate compact on adoption and medical assistance. The interstate commission may, in cooperation with other interstate compact commissions having responsibility for the interstate movement, placement, or transfer of children, promulgate like rules to ensure the coordination of services, the timely placement of children, and the reduction of unnecessary or duplicative administrative or procedural requirements.

ARTICLE IV. JURISDICTION

(a) Except as provided in subsection (g) and ARTICLE V, subsection (b)(2) and (b)(3), concerning private and independent adoptions, and in interstate placements in which the public child placing agency is not a party to a custody proceeding, the sending state retains jurisdiction over a child with respect to all matters of custody and disposition of the child which it would have had if the child had remained in the sending state. Jurisdiction also includes the power to order the return of the child to the sending state.

(b) When an issue of child protection or custody is brought before a court in the receiving state, the court shall confer with the court of the sending state to determine the most appropriate forum for

adjudication.

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

- (1) the parent with whom the child is reunified in the receiving state is the subject of allegations or findings of abuse or neglect, but only with the concurrence of the public child placing agency in the receiving state;
- (2) the child is adopted;
- (3) the child reaches the age of majority under the laws of the sending state;
- (4) the child achieves legal independence under the laws of the sending state;
- (5) a guardianship is created by a court in the receiving state with the concurrence of the court in the sending state;
- (6) an Indian tribe has petitioned for and received jurisdiction from the court in the sending state; or
- (7) the public child placing agency of the sending state requests termination and has obtained the concurrence of the public child placing agency in the receiving state.

(d) When a sending state court terminates its jurisdiction, the receiving state child placing agency shall be notified.

(e) Nothing in this article shall defeat a claim of jurisdiction by a receiving state court sufficient to deal with an act of truancy, delinquency, crime, or behavior that involves a child as defined by the laws of the receiving state, that is committed by the child in the receiving state, and that would be a violation of the laws of the receiving state.

(f) This article does not limit the receiving state's ability to take emergency jurisdiction for the protection of the child.

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

- (1) when the child is a ward of another court that established jurisdiction over the child prior to the placement;
- (2) when the child is in the legal custody of a public agency in the sending state; or
- (3) when a court in the sending state has otherwise appropriately assumed jurisdiction over the child, prior to the submission of the request for approval of placement.

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

ARTICLE V. PLACEMENT EVALUATION

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

(b) For placements by a private child placing agency, a child may be sent or brought, or caused to be sent or brought, into a receiving

state upon receipt and immediate review of the required content in a request for approval of a placement by both the sending state's and the receiving state's public child placing agency. The required content to accompany a request for provisional approval shall include all of the following:

- (1) A request for approval identifying the child, the birth parent(s), the prospective adoptive parent(s), and the supervising agency, signed by the person requesting approval.
- (2) The appropriate consents or relinquishments signed by the birth parents in accordance with the laws of the sending state, or where permitted, the laws of the state where the adoption will be finalized.
- (3) Certification by a licensed attorney or authorized agent of a private adoption agency that the consent or relinquishment is in compliance with the applicable laws of the sending state, or where permitted the laws of the state where finalization of the adoption will occur.
- (4) A home study.
- (5) An acknowledgment of legal risk signed by the prospective adoptive parents.

(c) The sending state and the receiving state may request additional information or documents before finalization of an approved placement, but they may not delay travel by the prospective adoptive parents with the child if the required content for approval has been submitted and has been received and reviewed by the public child placing agency in both the sending state and the receiving state.

(d) Approval from the public child placing agency in the receiving state for a provisional or approved placement is required as provided for in the rules of the interstate commission.

(e) The procedures for making and the request for an assessment shall contain all information and be in such form as provided for in the rules of the interstate commission.

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

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

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

(i) The public child placing agency in the receiving state shall

approve a provisional placement and complete or arrange for the completion of the assessment within the timeframes established by the rules of the interstate commission.

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

(k) The interstate commission may develop uniform standards for the assessment of the safety and suitability of interstate placements.

ARTICLE VI. PLACEMENT AUTHORITY

(a) Except as otherwise provided in this compact, no child subject to this compact shall be placed into a receiving state until approval for such placement is obtained.

(b) If the public child placing agency in the receiving state does not approve the proposed placement, the child shall not be placed. The receiving state shall provide written documentation of any such determination in accordance with the rules promulgated by the interstate commission. Such a determination is not subject to judicial review in the sending state.

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

(d) The administrative review and any further judicial review associated with the determination shall be conducted in the receiving state under its applicable administrative procedures.

(e) If a determination not to approve the placement of the child in the receiving state is overturned upon review, the placement shall be considered approved. However, all administrative or judicial remedies must be exhausted or the time for such remedies must have passed.

ARTICLE VII. PLACING AGENCY RESPONSIBILITY

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

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

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

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

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

(A) any assessment conducted by the receiving state; and

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

(3) nothing in this compact prohibits public child placing agencies in the sending state from entering into agreements with

licensed agencies or persons in the receiving state to conduct assessments and provide supervision.

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

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

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

(c) The public child placing agency in the receiving state shall provide timely assessments, as provided for in the rules of the interstate commission.

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

(e) This compact does not limit the authority of the public child placing agency in the receiving state to contract with a licensed agency or person in the receiving state for an assessment or the provision of supervision or services for the child or otherwise authorize the provision of supervision or services by a licensed agency during the period of placement.

(f) Each member state shall provide for coordination among its branches of government concerning the state's participation in, and compliance with, the compact and interstate commission activities, through the creation of an advisory council or use of an existing body or board.

(g) Each member state shall establish a central state compact office, which shall be responsible for state compliance with the compact and the rules of the interstate commission.

(h) The public child placing agency in the sending state shall oversee compliance with the provisions of the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) for placements subject to the provisions of this compact, before placement.

(i) With the consent of the interstate commission, states may enter into limited agreements that facilitate the timely assessment and provision of services and supervision of placements under this compact.

ARTICLE VIII. INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN

The member states hereby establish, by way of this compact, a commission known as the "interstate commission for the placement of children". The activities of the interstate commission are the formation of public policy and are a discretionary state function. The interstate commission:

(1) is a joint commission of the member states and shall have the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by subsequent concurrent action of the respective legislatures of

the member states;

(2) consists of one (1) commissioner from each member state, who shall be appointed by the executive head of the state human services administration with ultimate responsibility for the child welfare program, and who shall have the legal authority to vote on policy related matters governed by this compact binding the state;

(3) operates under:

(A) a requirement that each member state represented at a meeting of the interstate commission is entitled to one (1) vote;

(B) a requirement that a majority of the member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission;

(C) a requirement that a representative shall not delegate a vote to another member state;

(D) a requirement that a representative may delegate voting authority to another person from the same member state for a specified meeting; and

(E) a requirement that the interstate commission shall include, in addition to the commissioners of each member state, persons who are members of interested organizations as defined in the bylaws or rules of the interstate commission and who shall be ex officio and shall not be entitled to vote on any matter before the interstate commission; and

(4) shall establish an executive committee, which shall have the authority to administer the day to day operations and administration of the interstate commission but does not have the power to engage in rulemaking.

ARTICLE IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission has powers to do the following:

(1) Promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact.

(2) Provide for dispute resolution among member states.

(3) Issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact or the interstate commission's bylaws, rules, or actions.

(4) Enforce compliance with this compact or the bylaws or rules of the interstate commission under Article XII.

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

(6) Establish and maintain offices as may be necessary for the transacting of its business.

(7) Purchase and maintain insurance and bonds.

(8) Hire or contract for services of personnel or consultants as necessary to carry out its functions under the compact and establish personnel qualification policies and rates of compensation.

(9) Establish and appoint committees and officers, including, but not limited to, an executive committee as required by Article X.

(10) Accept any and all donations and grants of money, equipment, supplies, materials, and services, and receive, use, and dispose of the donations and grants.

(11) Lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use any property, whether real, personal, or mixed.

(12) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed.

(13) Establish a budget and make expenditures.

(14) Adopt a seal and bylaws governing the management and operation of the interstate commission.

(15) Report annually to the legislatures, the governors, the judiciary, and the state advisory councils of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission.

(16) Coordinate and provide education, training, and public awareness regarding the interstate movement of children for officials involved in such activity.

(17) Maintain books and records in accordance with the bylaws of the interstate commission.

(18) Perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

ARTICLE X. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(a) Bylaws.

(1) Within twelve (12) months after the first interstate commission meeting, the interstate commission shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of this compact.

(2) The interstate commission's bylaws and rules shall establish 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.

(b) Meetings.

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

shall call additional meetings.

(2) Public notice shall be given by the interstate commission of all meetings, and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and its committees may close a meeting, or part of a meeting, where it determines by two-thirds (2/3) vote that an open meeting would be likely to:

(A) relate solely to the interstate commission's internal personnel practices and procedures;

(B) disclose matters specifically exempted from disclosure by federal law;

(C) disclose financial or commercial information that is privileged, proprietary, or confidential in nature;

(D) involve accusing a person of a crime, or formally censuring a person;

(E) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy or physically endanger one (1) or more persons;

(F) disclose investigative records compiled for law enforcement purposes; or

(G) specifically relate to the interstate commission's participation in a civil action or other legal proceeding.

(3) For a meeting, or part of a meeting, closed under this provision, the interstate commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemption provision. The interstate commission shall keep minutes that shall fully and clearly describe all matters discussed in the meeting and shall provide a full and accurate summary of actions taken and the reasons for the actions, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall 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 or by court order.

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

(c) Officers and staff.

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

(2) The interstate commission shall elect, from among its members, a chairperson and a vice chairperson of the executive

committee and other necessary officers, each of whom shall have such authority and duties as may be specified in the bylaws.

(d) Qualified immunity, defense, and indemnification.

(1) The interstate commission's staff director and the employees of the commission are immune from suit and liability, either personally or in official capacity, 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 any actual or alleged act, error, or omission that occurred, or that the staff director or employee had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. The staff director or an employee is not protected from suit or liability for damage, loss, injury, or liability caused by a criminal act or intentional or willful and wanton misconduct.

(2) The liability of the interstate commission's staff director and employees or interstate commission representatives, acting within the scope of such person's employment or duties, for acts, errors, or omissions occurring within such 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 considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by a criminal act or the intentional or willful and wanton misconduct of such person.

(3) The interstate commission shall defend the staff director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state, shall defend the commissioner of a member state 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 had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(4) To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such 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 such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from intentional or willful

and wanton misconduct on the part of such persons.

ARTICLE XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(a) The interstate commission shall promulgate and publish rules in order effectively and efficiently to achieve the purposes of the compact.

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

(c) When promulgating a rule, the interstate commission shall, at a minimum:

(1) publish the proposed rule's entire text, stating the reasons for that proposed rule;

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

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

(d) Rules promulgated by the interstate commission shall have the force and effect of administrative rules and shall be binding in the compacting states to the extent and in the manner provided for in this compact.

(e) Not later than sixty (60) days after a rule is promulgated, an interested person may file a petition in the U.S. District Court for the District of Columbia or in the federal district court of the district where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside.

(f) A majority of the legislatures of the member states may reject a rule by enacting, in the same manner used to adopt the compact, a statute or resolution that provides that the rule shall have no further force and effect in any member state.

(g) The existing rules governing the operation of the interstate compact on the placement of children that are superseded by this act shall be null and void not less than twelve (12), but not more than twenty-four (24), months after the first meeting of the interstate commission created hereunder, as determined by the members during the first meeting.

(h) Within the first twelve (12) months of operation, the interstate commission shall promulgate rules addressing the following:

- (1) Transition rules.
- (2) Forms and procedures.
- (3) Time lines.
- (4) Data collection and reporting.
- (5) Rulemaking.
- (6) Visitation.
- (7) Progress reports/supervision.
- (8) Sharing of information/confidentiality.
- (9) Financing of the interstate commission.
- (10) Mediation, arbitration, and dispute resolution.
- (11) Education, training, and technical assistance.
- (12) Enforcement.
- (13) Coordination with other interstate compacts.

(i) Upon determination by a majority of the members of the interstate commission that an emergency exists, the interstate commission may promulgate an emergency rule, subject to the following:

- (1) The interstate commission may promulgate an emergency rule only if the emergency rule is required to:
 - (A) protect the children covered by this compact from an imminent threat to their health, safety, and well-being;
 - (B) prevent loss of federal or state funds; or
 - (C) meet a deadline for the promulgation of an administrative rule required by federal law.
- (2) An emergency rule shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to the rule as soon as reasonably possible, but not later than ninety (90) days after the effective date of the emergency rule.
- (3) An emergency rule shall be promulgated as provided for in the rules of the interstate commission.

ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

(a) Oversight.

- (1) The interstate commission shall oversee the administration and operation of the compact.
- (2) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and the rules of the interstate commission and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The compact and its rules shall be binding in the compacting states to the extent and in the manner provided for in this compact.
- (3) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact.
- (4) The interstate commission shall be entitled to receive service of process in any action in which the validity of a compact provision or rule is the issue for which a judicial determination has been sought and shall have standing to

intervene in any proceedings. Failure to provide service of process to the interstate commission shall render any judgment, order, or other determination, however so captioned or classified, void as to the interstate commission, this compact, or the bylaws or rules of the interstate commission.

(b) Dispute resolution.

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

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

(c) Enforcement.

(1) If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, its bylaws, or rules, the interstate commission may:

(A) provide remedial training and specific technical assistance;

(B) provide written notice to the defaulting state and other member states of the nature of the default and the means of curing the default. The interstate commission shall specify the conditions by which the defaulting state must cure its default;

(C) by majority vote of the members, initiate against a defaulting member state legal action in the United States 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 office, to enforce compliance with the provisions of the compact or with the interstate commission's bylaws or rules. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees; or

(D) avail itself of any other remedies available under state law or the rules relating to the regulation of official or professional conduct.

ARTICLE XIII. FINANCING OF THE 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, which must be in a total amount sufficient to cover the interstate commission's annual budget as approved by its members each year.

The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

(c) The interstate commission shall not incur obligations of any kind before securing the funds adequate to meet the obligations. The interstate commission shall not 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 shall be 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.

ARTICLE XIV. MEMBER STATES, AMENDMENT

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

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by thirty-five (35) states. The effective date shall be the later of July 1, 2007, or upon enactment of the compact into law by the thirty-fifth state. Thereafter, the compact shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The executive heads of the state human services administration with ultimate responsibility for the child welfare program 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 the compact for enactment by the member states. No amendment shall become effective and binding on the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XV. 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 the compact by specifically repealing the statute that enacted the compact into law.

(2) Withdrawal from this compact shall be by the enactment of a statute repealing the statute establishing the compact. The effective date of withdrawal is the effective date of the repeal of the statute.

(3) The withdrawing state shall immediately notify the president of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall then notify the other member states of the withdrawing state's intent to withdraw.

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

withdrawal.

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

(b) Dissolution of compact.

(1) This compact shall dissolve 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, the 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.

ARTICLE XVI. SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is considered unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

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

ARTICLE XVII. 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 conflicting with this compact or its rules are superseded to the extent of the conflict.

(b) Binding effect of this compact.

(1) All lawful actions of the interstate commission, including all rules and bylaws promulgated 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 any 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.

ARTICLE XVIII. INDIAN TRIBES

Notwithstanding any other provision in this compact, the interstate commission may promulgate guidelines to permit Indian tribes to use the compact to achieve any or all of the purposes of the compact as specified in Article I. The interstate commission shall make reasonable efforts to consult with Indian tribes in promulgating guidelines to reflect the diverse circumstances of the various Indian tribes.

As added by P.L.143-2008, SEC.12.