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## SENATE BILL NO. 366

Offered January 11, 2012

Prefiled January 11, 2012

A *BILL to amend and reenact § 63.2-1000 of the Code of Virginia, relating to the Interstate Compact on the Placement of Children.*

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Patron—Deeds

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Referred to Committee on Privileges and Elections

**Be it enacted by the General Assembly of Virginia:****1. That § 63.2-1000 of the Code of Virginia is amended and reenacted as follows:**

§ 63.2-1000. Interstate Compact on the Placement of Children; form of compact.

The Governor of Virginia is hereby authorized and requested to execute, on behalf of the Commonwealth of Virginia, with any other state or states legally joining therein, a compact which shall be in form substantially as follows:

The contracting states solemnly agree that:

**ARTICLE I.****Purpose and Policy.**

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

*The purpose of the Interstate Compact on the Placement of Children is to:*

1. *Provide a process and operating procedures by 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 for the promulgation and enforcement of administrative rules implementing the provisions of this compact and regulating the covered activities of the member states;*

4. *Provide for uniform data collection and information sharing between member states under this compact;*

5. *Promote coordination between this compact, the Interstate Compact for Juveniles, the Interstate Compact on Adoption and Medical Assistance, and other compacts affecting the placement and provision of services to children otherwise subject to this compact;*

6. *Provide for a state's continuing legal jurisdiction and responsibility for placement and care of a child that is the same as it would have if the placement were intrastate; and*

7. *Provide for the promulgation of guidelines, in collaboration with Indian tribes, for interstate cases involving Indian children as is or may be permitted by federal law.*

**ARTICLE II.****Definitions.**

As used in this compact:

1. "Approved placement" means a placement that has been determined to be both safe and suitable for the child by the public child-placing agency in the receiving state.

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

(a) 3. "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control an individual who has not attained the age of 18 years.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable

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59 agency or other entity which sends, brings, or causes to be sent or brought any child to another party  
60 state.

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

62 5. "Default" means the failure of a member state to perform the obligations or responsibilities  
63 imposed upon it by this compact, or the bylaws or rules of the Interstate Commission.

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

68 7. "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of  
69 Indians recognized as eligible for services provided to Indians by the U.S. Secretary of the Interior  
70 because of their status as Indians, including any Alaskan native village as defined in § 3(c) of the  
71 Alaska Native Claims Settlement Act, 43 U.S.C. § 1602(c).

72 8. "Interstate Commission for the Placement of Children" or "Interstate Commission" means the  
73 commission that is created under Article VIII of this compact and which is generally referred to as the  
74 Interstate Commission.

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

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

81 11. "Member state" means a state that has enacted this compact.

82 12. "Non-custodial parent" means a person who, at the time of the commencement of court  
83 proceedings in the sending state, does not have sole legal custody of the child or has joint legal custody  
84 of the child, and who is not the subject of allegations or findings of child abuse or neglect.

85 13. "Non-member state" means a state which has not enacted this compact.

86 14. "Notice of residential placement" means information regarding a placement into a residential  
87 facility provided to the receiving state including but not limited to the name, date, and place of birth of  
88 the child, the identity and address of the parent or legal guardian, evidence of authority to make the  
89 placement, and the name and address of the facility in which the child will be placed. Notice of  
90 residential placement shall also include information regarding a discharge and any unauthorized  
91 absence from the facility.

92 15. "Placement" means the act by a public or private child-placing agency intended to arrange for  
93 the care or custody of a child in another state.

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

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

104 18. "Public child-placing agency" means any government child welfare agency or child protection  
105 agency or a private entity under contract with such an agency, regardless of whether they act on behalf  
106 of a state, county, municipality, or other governmental unit, which facilitates, causes, or is involved in  
107 the placement of a child from one state to another.

108 (e) 19. "Receiving state" means the state to which a child is sent, brought, or caused to be sent or  
109 brought, whether by public authorities or private persons or agencies, and whether for placement with  
110 state or local public authorities or for placement with private agencies or persons.

111 (d) "Placement" means the arrangement for the care of a child in a family free or boarding home or  
112 in a child-caring agency or institution but does not include any institution caring for the mentally ill,  
113 mentally defective or epileptic or any institution primarily educational in character, and any hospital or  
114 other medical facility.

115 20. "Relative" means someone who is related to the child as a parent, stepparent, sibling by half or  
116 whole blood or by adoption, grandparent, aunt, uncle, or first cousin or a non-relative with such  
117 significant ties to the child that they may be regarded as relatives as determined by the court in the  
118 sending state.

119 21. "Residential facility" means a facility providing a level of care that is sufficient to substitute for  
120 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 primarily educational in character, hospitals, or other medical facilities.

22. "Rule" means a written directive, mandate, standard, or principle issued by the Interstate Commission promulgated pursuant to Article XI of this compact that is of general applicability; that implements, interprets, or prescribes a policy or provision of the compact; and that has the force and effect of an administrative rule in a member state. "Rule" includes any amendment, repeal, or suspension of an existing rule.

23. "Sending state" means the state from which the placement of a child is initiated.

24. "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.

25. "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.

26. "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, and any other territory of the United States.

27. "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 who have not attained the age of 18.

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

### ARTICLE III.

#### Conditions for PlacementApplicability.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

### ARTICLE IV.

#### Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

A. Except as otherwise provided in subsection B, this compact shall apply to:

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, provided that the placement of such a child into a residential facility shall only require notice of residential placement to the receiving state prior to 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 (i) the child is being placed in a residential facility in another member state and is not covered under another compact or (ii) 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; and

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 shall not apply to:

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

2. The interstate placement of a child with a non-relative in a receiving state by a parent with the legal authority to make such a placement, provided that the placement is not intended to effectuate an adoption;

3. The interstate placement of a child by one 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 his parent;

5. The placement of a child with a non-custodial parent provided that (i) the non-custodial parent proves to the satisfaction of a court in the sending state a substantial relationship with the child, (ii) the court in the sending state makes a written finding that placement with the non-custodial parent is in the best interests of the child, and (iii) the court in the sending state dismisses its jurisdiction in interstate placements in which the public child-placing agency is a party to the proceeding;

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 child who is a U.S. citizen living overseas with his family, at least one of whom is in the United States armed services, and who is stationed overseas, is removed and placed in a state; or

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 in the 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. Nothing in this compact shall 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, timely placement of children, and the reduction of unnecessary or duplicative administrative or procedural requirements.

#### ARTICLE V. IV.

##### Retention of Jurisdiction.

(a) The A. Except as provided in subsection H of this article and subdivisions B 2 and B 3 of Article V 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 agency state shall retain jurisdiction over the child sufficient to determine with respect to all matters in relation to the of custody; supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state; until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein. Such jurisdiction shall also include the power to order the return of the child to the sending state.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such cases by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

B. When an issue of child protection or custody is brought before a court in the receiving state, such

court shall confer with the court of the sending state to determine the most appropriate forum for adjudication.

C. In cases that are before courts and subject to this compact, the taking of testimony for hearings before any judicial officer may occur in person or by telephone, audio-video conference, or such other means as approved by the rules of the Interstate Commission, and judicial officers may communicate with other judicial officers and persons involved in the interstate process as may be permitted by their Canons of Judicial Conduct and any rules promulgated by the Interstate Commission.

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

1. The child is reunified with the parent in the receiving state who is the subject of allegations or findings of abuse or neglect, 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 pursuant to 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.

E. When a sending state court terminates its jurisdiction, the receiving state child-placing agency shall be notified.

F. 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 involving a child as defined by the laws of the receiving state and committed by the child in the receiving state which would be a violation of its laws.

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

H. 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 shall have subject matter jurisdiction regarding all substantive issues relating to the adoption, except when (i) the child is a ward of another court that established jurisdiction over the child prior to the placement, (ii) the child is in the legal custody of a public agency in the sending state, or (iii) 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.

I. 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 VI.

##### Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

#### ARTICLE VII.

##### Compact Administrator.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have the power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

#### ARTICLE VIII.

##### Limitations.

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

## ARTICLE IX.

## Enactment and Withdrawal.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

## ARTICLE X.

## Construction and Severability.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

## ARTICLE V.

## Placement Evaluation.

A. Prior to 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 in both the sending and receiving states' public child-placing agencies. The required content to accompany a request for 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; and

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 prior to 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, 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 an assessment 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-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.

G. 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 or approve the placement.

H. 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.

I. 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.

J. 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, then 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 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. The administrative review and any further judicial review associated with the determination shall be conducted in the receiving state pursuant to its applicable administrative procedures act. If a determination not to approve the placement of the child in the receiving state is overturned upon review, the placement shall be deemed approved, provided that all administrative or judicial remedies have been exhausted or the time for such remedies has 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 (i) the ongoing support and maintenance for the child during the period of the placement, unless otherwise provided for in the receiving state and (ii) services for the child beyond the public services for which the child is eligible in the receiving state, as determined by the public child-placing agency in the sending state;

2. The receiving state shall only have financial responsibility for (i) any assessment conducted by the receiving state and (ii) 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 provision shall prohibit 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 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 shall be 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. Nothing in this compact shall be construed to limit the authority of the public child-placing agency in the receiving state from contracting 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 authorizing 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 the 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, prior to 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.*

A. 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.

B. The Interstate Commission shall be a joint commission of the member states; 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; and shall consist of one 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. The

428 appointed commissioner shall have the legal authority to vote on policy-related matters governed by this  
429 compact binding the state. Each member state represented at a meeting of the Interstate Commission is  
430 entitled to one vote. A majority of the member states shall constitute a quorum for the transaction of  
431 business, unless a larger quorum is required by the bylaws of the Interstate Commission. A  
432 representative shall not delegate a vote to another member state; however, a representative may  
433 delegate voting authority to another person from his state for a specified meeting.

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

438 D. The Interstate Commission shall establish an executive committee which shall have the authority  
439 to administer the day-to-day operations and administration of the Interstate Commission. It shall not  
440 have the power to engage in rulemaking.

#### 441 ARTICLE IX.

##### 442 Powers and Duties of the Interstate Commission for the Placement of Children.

443 The Interstate Commission shall have the power to:

- 444 1. Promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as  
445 enumerated in this compact;
- 446 2. Provide for dispute resolution among member states;
- 447 3. Issue, upon request of a member state, advisory opinions concerning the meaning or interpretation  
448 of the interstate compact, its bylaws, rules, or actions;
- 449 4. Enforce compliance with this compact or the bylaws or rules of the Interstate Commission  
450 pursuant to Article XII;
- 451 5. Collect standardized data concerning the interstate placement of children subject to this compact  
452 as directed through its rules which shall specify the data to be collected, the means of collection, and  
453 data exchange and reporting requirements;
- 454 6. Establish and maintain offices as may be necessary for the transacting of its business;
- 455 7. Purchase and maintain insurance and bonds;
- 456 8. Hire or contract for services of personnel or consultants as necessary to carry out its functions  
457 under the compact and establish personnel qualification policies and rates of compensation;
- 458 9. Establish and appoint committees and officers including, but not limited to, an executive committee  
459 as required by Article VIII;
- 460 10. Accept any and all donations and grants of money, equipment, supplies, materials, and services,  
461 and to receive, utilize, and dispose thereof;
- 462 11. Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use  
463 any property, real, personal, or mixed;
- 464 12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property,  
465 real, personal, or mixed;
- 466 13. Establish a budget and make expenditures;
- 467 14. Adopt a seal and bylaws governing the management and operation of the Interstate Commission;
- 468 15. Report annually to the legislatures, governors, the judiciary, and state advisory councils of the  
469 member states concerning the activities of the Interstate Commission during the preceding year. Such  
470 reports shall also include any recommendations that may have been adopted by the Interstate  
471 Commission;
- 472 16. Coordinate and provide education, training and public awareness regarding the interstate  
473 movement of children for officials involved in such activity;
- 474 17. Maintain books and records in accordance with the bylaws of the Interstate Commission; and  
475 18. Perform such functions as may be necessary or appropriate to achieve the purposes of this  
476 compact.

#### 477 ARTICLE X.

##### 478 Organization and Operation of the Interstate Commission for the Placement of Children.

479 A. Within 12 months after the first Interstate Commission meeting, the Interstate Commission shall  
480 adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the  
481 compact. The Interstate Commission's bylaws and rules shall establish conditions and procedures under  
482 which the Interstate Commission shall make its information and official records available to the public  
483 for inspection or copying. The Interstate Commission may exempt from disclosure information or official  
484 records to the extent they would adversely affect personal privacy rights or proprietary interests.

485 B. The Interstate Commission shall meet at least once each calendar year. The chairperson may call  
486 additional meetings and, upon the request of a simple majority of the member states, shall call  
487 additional meetings. Public notice shall be given by the Interstate Commission of all meetings, and all  
488 meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the  
489 compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where



it determines by two-thirds vote 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 law;
3. Disclose financial or commercial information which is privileged, proprietary, or confidential in nature;
4. Involve accusing a person of a crime or formally censuring a person;
5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy or physically endanger one or more persons;
6. Disclose investigative records compiled for law enforcement purposes; or
7. Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

C. For a meeting, or portion of a meeting, closed pursuant to 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 which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, 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 such 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. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or other electronic communication.

D. 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 deem 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.

E. 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.

F. The Interstate Commission's staff director and its employees shall be immune from suit and liability, either personally or in their 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 an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities, provided that such person shall not be protected 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.

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.

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, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

To the extent not covered by the state involved, the 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 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, provided that 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 for the Placement of Children.

A. The Interstate Commission shall promulgate and publish rules in order to effectively and

efficiently achieve the purposes of the compact. Rulemaking shall occur pursuant to 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 deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the U.S. 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.

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

1. Publish the proposed rule's entire text stating the reason(s) 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.

C. 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.

D. Not later than 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 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.

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

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

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

1. Transition rules;

2. Forms and procedures;

3. Timelines;

4. Data collection and reporting;

5. Rulemaking;

6. Visitation;

7. Progress reports and supervision;

8. Sharing of information and confidentiality;

9. Financing of the Interstate Commission;

10. Mediation, arbitration, and dispute resolution;

11. Education, training, and technical assistance;

12. Enforcement; and

12. Coordination with other interstate compacts.

H. Upon determination by a majority of the members of the Interstate Commission that an emergency exists, the Interstate Commission may promulgate an emergency rule only if it is required to (i) protect the children covered by this compact from an imminent threat to their health, safety, and well-being; (ii) prevent loss of federal or state funds; or (iii) meet a deadline for the promulgation of an administrative rule required by federal law. An emergency rule shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but not later than 90 days after the effective date of the emergency rule. An emergency rule shall be promulgated as provided for in the rules of the Interstate Commission.

## ARTICLE XII.

### Oversight, Dispute Resolution, Enforcement.

A. The Interstate Commission shall oversee the administration and operation of the compact. 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. 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. 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, its bylaws, or the rules of the Interstate Commission.

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

1. Provide remedial training and specific technical assistance;
2. 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;
3. 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, its bylaws, or rules. 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 fees; or
4. Avail itself of any other remedies available under state law or the regulation of official or professional conduct.

#### ARTICLE XIII.

##### *Financing 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 prior to securing the funds adequate to meet the same, 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 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, Effective Date, Amendments.*

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 no less than 35 states. The effective date shall be the later of July 1, 2007, or upon enactment of the compact into law by the 35th state. Thereafter, it 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 non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a non-voting basis prior to 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. Once effective, the compact shall continue in force and remain binding upon each and every member state, provided that a member state may withdraw from the compact specifically repealing the statute which enacted the compact into law. Withdrawal from this compact shall be by the enactment of

674 a statute repealing the same. The effective date of withdrawal shall be the effective date of the repeal of  
675 the statute. The withdrawing state shall immediately notify the president of the Interstate Commission in  
676 writing upon the introduction of legislation repealing this compact in the withdrawing state. The  
677 Interstate Commission shall then notify the other member states of the withdrawing state's intent to  
678 withdraw. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred  
679 through the effective date of withdrawal. Reinstatement following withdrawal of a member state shall  
680 occur upon the withdrawing state reenacting the compact or upon such later date as determined by the  
681 members of the Interstate Commission.

682 B. This compact shall dissolve effective upon the date of the withdrawal or default of the member  
683 state which reduces the membership in the compact to one member state. Upon the dissolution of this  
684 compact, the compact becomes null and void and shall be of no further force or effect, and the business  
685 and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in  
686 accordance with the bylaws.

#### 687 ARTICLE XVI.

##### 688 Severability and Construction.

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

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

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

#### 694 ARTICLE XVII.

##### 695 Binding Effect of Compact and Other Laws.

696 A. Nothing herein prevents the enforcement of any other law of a member state that is not  
697 inconsistent with this compact.

698 B. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the  
699 Interstate Commission, are binding upon the member states. All agreements between the Interstate  
700 Commission and the member states are binding in accordance with their terms. In the event any  
701 provision of this compact exceeds the constitutional limits imposed on the legislature of any member  
702 state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in  
703 question in that member state.

#### 704 ARTICLE XVIII.

##### 705 Indian Tribes.

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