

SENATE No. 101

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:

Karen E. Spilka

DISTRICT/ADDRESS:

Second Middlesex and Norfolk

SENATE No. 101

By Ms. Spilka, a petition (accompanied by bill, Senate, No. 101) of Karen E. Spilka for legislation to revise the interstate compact on the placement of children. Children, Families and Persons with Disabilities.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 25 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

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

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

5 INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN

6 ARTICLE I. PURPOSE

7 The purpose of this compact is to:

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

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

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

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

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

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

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

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

25 ARTICLE II. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

54 "Member state", a state that has enacted this compact.

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

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

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

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

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

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

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

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

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

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

90 “Rule”, a written directive, mandate, standard or principle issued by the Interstate
91 Commission promulgated under Article XI of this compact that is of general applicability and

92 that implements, interprets or prescribes a policy or provision of the compact. “Rule” has the
93 force and effect of an administrative rule in a member state, and includes the amendment, repeal,
94 or suspension of an existing rule.

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

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

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

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

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

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

109 ARTICLE III. APPLICABILITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

154 (D) Nothing in this compact shall be construed to prohibit the concurrent application of
155 the provisions of this compact with other applicable interstate compacts including the Interstate
156 Compact for Juveniles and the Interstate Compact on Adoption and Medical Assistance. The
157 Interstate Commission may, in cooperation with other interstate compact commissions having
158 responsibility for the interstate movement, placement or transfer of children, promulgate like
159 rules to ensure the coordination of services, timely placement of children and the reduction of
160 unnecessary or duplicative administrative or procedural requirements.

161 ARTICLE IV. JURISDICTION

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

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

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

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

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

182 (2) the child is adopted;

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

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

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

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

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

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

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

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

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

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

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

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

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

211 ARTICLE V. PLACEMENT EVALUATION

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

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

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

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

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

228 (4) a home study; and

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

230 (C) The sending state and the receiving state may request additional information or
231 documents prior to finalization of an approved placement, but may not delay travel by the
232 prospective adoptive parents with the child if the required content for approval has been

233 submitted, received and reviewed by the public child place agency in both the sending state and
234 the receiving state.

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

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

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

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

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

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

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

255 ARTICLE VI. PLACEMENT AUTHORITY

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

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

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

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

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

271 ARTICLE VII. PLACING AGENCY RESPONSIBILITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

345 ARTICLE IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

346 The Interstate Commission shall have the following powers:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

386 (A) By-laws

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

390 (2) The by-laws and rules of the Interstate Commission shall establish conditions and
391 procedures under which the Interstate Commission shall make its information and official
392 records available to the public for inspection or copying. The Interstate Commission may

393 exempt from disclosure information or official records to the extent that disclosure would
394 adversely affect personal privacy rights or proprietary interests.

395 (B) Meetings

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

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

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

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

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

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

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

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

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

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

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

425 (C) Officers and Staff

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

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

434 (D) Qualified Immunity, Defense and Indemnification

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

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

451 (b) The Interstate Commission shall defend the staff director and its employees and,
452 subject to the approval of the attorney general or other appropriate legal counsel of the member
453 state shall defend the commissioner of a member state in a civil action seeking to impose liability
454 arising out of an actual or alleged act, error or omission that occurred within the scope of
455 Interstate Commission employment, duties or responsibilities, or that the defendant had a

456 reasonable basis for believing occurred within the scope of Interstate Commission employment,
457 duties or responsibilities; provided, however, that the actual or alleged act, error or omission did
458 not result from intentional or willful and wanton misconduct on the part of such person.

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

468 ARTICLE XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

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

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

477 shall become binding as of the date specified, as published with the final version of the rule as
478 approved by the Interstate Commission.

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

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

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

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

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

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

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

496 (G) The existing rules governing the operation of the Interstate Compact on the
497 Placement of Children superseded by this act shall be null and void no less than 12, but no more

498 than 24 months after the first meeting of the Interstate Commission created hereunder, as
499 determined by the members during the first meeting.

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

502 (1) transition rules;

503 (2) forms and procedures;

504 (3) time lines;

505 (4) data collection and reporting;

506 (5) rulemaking;

507 (6) visitation;

508 (7) progress reports and supervision;

509 (8) sharing of information and confidentiality;

510 (9) financing of the Interstate Commission;

511 (10) mediation, arbitration and dispute resolution;

512 (11) education, training and technical assistance;

513 (12) enforcement; and

514 (13) coordination with other interstate compacts

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

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

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

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

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

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

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

530 ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

531 (A) Oversight

532 (1) The Interstate Commission shall oversee the administration and operations of the
533 compact.

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

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

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

547 (B) Dispute Resolution

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

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

554 (C) Enforcement

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

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

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

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

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

571 ARTICLE XIII. FINANCING OF THE COMMISSION

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

574 (B) The Interstate Commission may levy on and collect an annual assessment from each
575 member state to cover the cost of the operations and activities of the Interstate Commission and

576 its staff which must be in a total amount sufficient to cover the Interstate Commission's annual
577 budget as approved by its members each year. The aggregate annual assessment amount shall be
578 allocated based upon a formula to be determined by the Interstate Commission which shall
579 promulgate a rule binding upon all member states.

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

583 (D) The Interstate Commission shall keep accurate accounts of all receipts and
584 disbursements. The receipts and disbursements of the Interstate Commission shall be subject to
585 the audit and accounting procedures established under its by-laws. All receipts and
586 disbursements of funds handled by the Interstate Commission shall be audited yearly by a
587 certified or licensed public accountant and the report of the audit shall be included in and become
588 part of the annual report of the Interstate Commission.

589 ARTICLE XIV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

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

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

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

601 ARTICLE XV. WITHDRAWAL AND DISSOLUTION

602 (A) Withdrawal

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

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

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

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

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

617 (B) Dissolution of Compact

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

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

623 ARTICLE XVI. SEVERABILITY AND CONSTRUCTION

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

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

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

629 ARTICLE XVII. BINDING EFFECT OF COMPACT AND OTHER LAWS

630 (A) Other Laws

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

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

635 (B) Binding Effect of the Compact

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

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

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

643 ARTICLE XVIII. INDIAN TRIBES

644 Notwithstanding any other provision in this compact, the Interstate Commission may
645 promulgate guidelines to permit Indian tribes to utilize the compact to achieve the purposes of
646 the compact as specified in Article I. The Interstate Commission shall make reasonable efforts to
647 consult with Indian tribes in promulgating guidelines to reflect the diverse circumstances of the
648 various Indian tribes.

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

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

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

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

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

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

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

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

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

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