

House Bill 2173

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Human Services)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Enacts Interstate Compact for the Placement of Children.

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A BILL FOR AN ACT

Relating to Interstate Compact for the Placement of Children.

Be It Enacted by the People of the State of Oregon:

SECTION 1. The Interstate Compact for the Placement of Children is enacted into law and entered into on behalf of this state with all other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN ARTICLE I PURPOSE

The purpose of this Interstate Compact for the Placement of Children is to:

- (a) Provide a process through which children subject to this compact are placed in safe and suitable homes in a timely manner.**
- (b) Facilitate ongoing supervision of a placement, the delivery of services and communication between the states.**
- (c) Provide operating procedures that will ensure that children are placed in safe and suitable homes in a timely manner.**
- (d) Provide for the promulgation and enforcement of administrative rules implementing the provisions of this compact and regulating the covered activities of the member states.**
- (e) Provide for uniform data collection and information sharing between member states under this compact.**
- (f) Promote coordination between this compact, the Interstate Compact on Juveniles, the Interstate Compact on Adoption and Medical Assistance and other compacts affecting the placement of and that provide services to children otherwise subject to this compact.**
- (g) Provide for a state's continuing legal jurisdiction and responsibility for placement and care of a child that it would have had if the placement were intrastate.**
- (h) Provide for the promulgation of guidelines, in collaboration with Indian tribes, for interstate cases involving Indian children as is or may be permitted by federal law.**

ARTICLE II

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

DEFINITIONS

1
2 As used in this compact:

3 (a) "Approved placement" means the receiving state has determined after an assessment
4 that the placement is both safe and suitable for the child and is in compliance with the ap-
5 plicable laws of the receiving state governing the placement of children therein.

6 (b) "Assessment" means an evaluation of a prospective placement to determine whether
7 the placement meets the individualized needs of the child, including but not limited to the
8 child's safety and stability, health and well-being and mental, emotional and physical devel-
9 opment.

10 (c) "Child" means an individual who has not attained the age of 18.

11 (d) "Default" means the failure of a member state to perform the obligations or respon-
12 sibilities imposed upon it by this compact, the bylaws or rules of the Interstate Commission.

13 (e) "Indian tribe" means any Indian tribe, band, nation or other organized group or
14 community of Indians recognized as eligible for services provided to Indians by the Secretary
15 of the Interior because of their status as Indians, including any Alaskan native village as
16 defined in section 3(c) of the Alaska Native Claims Settlement Act at 43 U.S.C. 1602(c).

17 (f) "Interstate Commission for the Placement of Children" means the commission that
18 is created under Article VIII of this compact and that is generally referred to as the Inter-
19 state Commission.

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

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

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

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

27 (k) "Notice of residential placement" means information regarding a placement into a
28 residential facility provided to the receiving state including, but not limited to, the name,
29 date and place of birth of the child, the identity and address of the parent or legal guardian,
30 evidence of authority to make the placement, and the name and address of the facility in
31 which the child will be placed. Notice of residential placement shall also include information
32 regarding a discharge and any unauthorized absence from the facility.

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

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

39 (n) "Provisional placement" means that the receiving state has determined that the
40 proposed placement is safe and suitable, and, to the extent allowable, the receiving state has
41 temporarily waived its standards or requirements otherwise applicable to prospective foster
42 or adoptive parents so as to not delay the placement. Completion of the receiving state re-
43 quirements regarding training for prospective foster or adoptive parents may not delay an
44 otherwise safe and suitable placement.

45 (o) "Public child placing agency" means any government child welfare agency or child

1 protection agency or a private entity under contract with the an agency, regardless of
 2 whether they act on behalf of a state, county, municipality or other governmental unit and
 3 that facilitates, causes or is involved in the placement of a child from one state to another.

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

6 (q) "Relative" means someone who is related to the child as a parent, step-parent, sibling
 7 by half or whole blood or by adoption, grandparent, aunt, uncle or first cousin or a nonrela-
 8 tive with such significant ties to the child that the nonrelative may be regarded as a relative
 9 as determined by the court in the sending state.

10 (r) "Residential facility" means a facility providing a level of care that is sufficient to
 11 substitute for parental responsibility or foster care, and is beyond what is needed for as-
 12 sessment or treatment of an acute condition. For purposes of the compact, residential fa-
 13 cilities do not include institutions primarily educational in character, hospitals or other
 14 medical facilities.

15 (s) "Rule" means a written directive, mandate, standard or principle issued by the
 16 Interstate Commission promulgated pursuant to Article XI of this compact that is of general
 17 applicability and that implements, interprets or prescribes a policy or provision of the com-
 18 pact. "Rule" has the force and effect of statutory law in a member state, and includes the
 19 amendment, repeal or suspension of an existing rule.

20 (t) "Sending state" means the state from which the placement of a child is initiated.

21 (u) "Service member's permanent duty station" means the military installation where
 22 an active duty Armed Services member is currently assigned and is physically located under
 23 competent orders that do not specify the duty as temporary.

24 (v) "Service member's state of legal residence" means the state in which the active duty
 25 Armed Services member is considered a resident for tax and voting purposes.

26 (w) "State" means a state of the United States, the District of Columbia, the Common-
 27 wealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern
 28 Marianas Islands and any other territory of the United States.

29 (x) "State court" means a judicial body of a state that is vested by law with responsibility
 30 for adjudicating cases involving abuse, neglect, deprivation, delinquency or status offenses
 31 of individuals who have not attained the age of 18.

32 (y) "Supervision" means monitoring provided by the receiving state once a child has been
 33 placed in a receiving state pursuant to this compact.

34 **ARTICLE III**

35 **APPLICABILITY**

36 (a) Except as otherwise provided in Article III, section (b), this applies to:

37 (1) The interstate placement of a child subject to ongoing court jurisdiction in the send-
 38 ing state, due to allegations or findings that the child has been abused, neglected or deprived
 39 as defined by the laws of the sending state, provided, however, that the placement of the
 40 child into a residential facility shall only require notice of residential placement to the re-
 41 ceiving state prior to placement.

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

45 (A) The child is being placed in a residential facility in another member state and is not

1 covered under another compact; or

2 (B) The child is being placed in another member state and the determination of safety
3 and suitability of the placement and services required is not provided through another com-
4 pact.

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

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

8 (1) The interstate placement of a child with a nonrelative in a receiving state by a parent
9 with the legal authority to make a placement, provided, however, that the placement is not
10 intended to effectuate an adoption.

11 (2) The interstate placement of a child by one relative with the lawful authority to make
12 a placement directly with a relative in a receiving state.

13 (3) The placement of a child, not subject to Article III, section (a), into a residential fa-
14 cility by the child's parent.

15 (4) The placement of a child with a noncustodial parent when:

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

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

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

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

24 (6) Cases in which a U.S. citizen child living overseas with the child's family, at least one
25 of whom is in the U.S. Armed Services, and who is stationed overseas, is removed and placed
26 in a state.

27 (7) The sending of a child by a public child placing agency or a private child placing
28 agency for a visit as defined by the rules of the Interstate Commission.

29 (c) For purposes of determining the applicability of this compact to the placement of a
30 child with a family in the Armed Services, the public child placing agency or private child
31 placing agency may choose the state of the service member's permanent duty station or the
32 service member's declared legal residence.

33 (d) Nothing in this compact shall be construed to prohibit the concurrent application of
34 the provisions of this compact with other applicable interstate compacts including the
35 Interstate Compact on Juveniles and the Interstate Compact on Adoption and Medical As-
36 sistance. The Interstate Commission may, in cooperation with other interstate compact
37 commissions having responsibility for the interstate movement, placement or transfer of
38 children, promulgate like rules to ensure the coordination of services, timely placement of
39 children and the reduction of unnecessary or duplicative administrative or procedural re-
40 quirements.

41 **ARTICLE IV**

42 **JURISDICTION**

43 (a) The sending state shall retain jurisdiction over a child with respect to all matters of
44 custody and disposition of the child that it would have had if the child had remained in the
45 sending state. Such jurisdiction includes the power to order the return of the child to the

1 sending state.

2 (b) When an issue of child protection or custody is brought before a court in the receiv-
3 ing state, the court shall confer with the court of the sending state to determine the most
4 appropriate forum for adjudication.

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

7 (1) The child is reunified with the parent in the receiving state who is the subject of
8 allegations or findings of abuse or neglect, only with the concurrence of the public child
9 placing agency in the receiving state;

10 (2) The child is adopted;

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

12 (4) The child achieves legal independence pursuant to the laws of the sending state;

13 (5) A guardianship is created by a court in the receiving state with the concurrence of
14 the court in the sending state;

15 (6) An Indian tribe has petitioned for and received jurisdiction from the court in the
16 sending state; or

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

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

21 (e) Nothing in this Article shall defeat a claim of jurisdiction by a receiving state court
22 sufficient to deal with an act of truancy, delinquency, crime or behavior involving a child as
23 defined by the laws of the receiving state committed by the child in the receiving state that
24 would be a violation of the laws of the receiving state.

25 (f) Nothing in this Article limits the receiving state's ability to take emergency jurisdic-
26 tion for the protection of the child.

27 ARTICLE V

28 ASSESSMENTS

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

32 (b) Prior to the sending, bringing or causing a child to be sent or brought into a receiving
33 state, the private child placing agency shall:

34 (1) Provide evidence that the applicable laws of the sending state have been complied
35 with;

36 (2) Certify that the consent or relinquishment is in compliance with applicable law of the
37 birth parent's state of residence or, where permitted, the laws of the state where the
38 finalization of the adoption will occur;

39 (3) Request through the public child placing agency in the sending state an assessment
40 to be conducted in the receiving state; and

41 (4) Upon completion of the assessment, obtain the approval of the public child placing
42 agency in the receiving state.

43 (c) The procedures for requesting and making an assessment must contain all informa-
44 tion and be in the form as provided in the rules of the Interstate Commission.

45 (d) Upon receipt of a request from the public child welfare agency of the sending state,

1 the receiving state shall initiate an assessment of the proposed placement to determine its
2 safety and suitability. If the proposed placement is a placement with a relative, the public
3 child placing agency of the sending state may request a determination of whether the
4 placement qualifies as a provisional placement.

5 (e) The public child placing agency in the receiving state may request, and shall be enti-
6 tled to receive, from the public child placing agency or the private child placing agency in
7 the sending state, supporting or additional information necessary to complete the assess-
8 ment.

9 (f) The public child placing agency in the receiving state shall complete or arrange for
10 the completion of the assessment within the time frames established by the rules of the
11 Interstate Commission.

12 (g) The Interstate Commission may develop uniform standards for the assessment of the
13 safety and suitability of interstate placements.

14 **ARTICLE VI**

15 **PLACEMENT AUTHORITY**

16 (a) Except as provided in Article VI, section (c), no child subject to this compact may
17 be placed into a receiving state until approval for such placement is obtained.

18 (b) If the public child placing agency in the receiving state does not approve the proposed
19 placement, the child may not be placed. The receiving state shall provide written documen-
20 tation of any such determination in accordance with the rules promulgated by the Interstate
21 Commission. Such determination is not subject to judicial review in the sending state.

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

24 (1) The administrative review and any judicial review associated with the determination
25 must be conducted in the receiving state pursuant to applicable administrative procedures
26 of the receiving state.

27 (2) If a determination not to approve the placement of the child in the receiving state is
28 overturned upon review, the placement is deemed approved, provided, however, that all ad-
29 ministrative or judicial remedies have been exhausted or the time for such remedies has
30 passed.

31 **ARTICLE VII**

32 **STATE RESPONSIBILITY**

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

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

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

39 (B) As determined by the public child placing agency in the sending state, services for
40 the child beyond the public services for which the child is eligible in the receiving state.

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

42 (A) Assessments conducted by the receiving state; and

43 (B) Supervision conducted by the receiving state at the level necessary to support the
44 placement as agreed upon by the public child placing agencies of the receiving and sending
45 states.

1 (3) Nothing in this Article shall prohibit public child placing agencies in the sending state
 2 from entering into agreements with licensed agencies or persons in the receiving state to
 3 conduct assessments and provide supervision.

4 (b) When a child is placed by a private child placing agency preliminary to a possible
 5 adoption, the private child placing agency is:

6 (1) Legally responsible for the child during the period of placement as provided in the law
 7 of the sending state until the finalization of the adoption.

8 (2) Financially responsible for the child, unless there is a contractual agreement to the
 9 contrary.

10 (c) A private child placing agency shall be responsible for any assessment conducted in
 11 the receiving state and any supervision conducted by the receiving state at the level required
 12 by the laws of the receiving state or the rules of the Interstate Commission.

13 (d) The public child placing agency in the receiving state shall provide timely assess-
 14 ments, as provided in the rules of the Interstate Commission.

15 (e) The public child placing agency in the receiving state shall provide, or arrange for the
 16 provision of, supervision and services for the child, including timely reports, during the pe-
 17 riod of the placement.

18 (f) Nothing in this compact limits the authority of the public child placing agency in the
 19 receiving state from contracting with a licensed agency or person in the receiving state for
 20 an assessment or the provision of supervision or services for the child or otherwise author-
 21 izing the provision of supervision or services by a licensed agency during the period of
 22 placement.

23 (g) Each member state shall provide for coordination among its branches of government
 24 concerning the state's participation in, and compliance with, the compact and Interstate
 25 Commission activities, through the creation of an advisory council or use of an existing body
 26 or board.

27 (h) Each member state shall establish a central state compact office, which shall be re-
 28 sponsible for state compliance with the compact and the rules of the Interstate Commission.

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

32 (j) With the consent of the Interstate Commission, states may enter into limited agree-
 33 ments that facilitate the timely assessment and provision of services and supervision of
 34 placements under this compact.

35 **ARTICLE VIII**
 36 **INTERSTATE COMMISSION FOR**
 37 **THE PLACEMENT OF CHILDREN**

38 The member states hereby establish, by way of this compact, a commission known as the
 39 Interstate Commission for the Placement of Children. The activities of the Interstate Com-
 40 mission are the formation of public policy and are a discretionary state function. The
 41 Interstate Commission shall:

42 (a) Be a joint commission of the member states and shall have the responsibilities, pow-
 43 ers and duties set forth in this compact, and such additional powers as may be conferred
 44 upon it by subsequent concurrent action of the respective legislatures of the member states.

45 (b) Consist of one commissioner from each member state who shall be appointed by the

1 executive head of the state human services administration with ultimate responsibility for
2 the child welfare program. The appointed commissioner has the legal authority to vote on
3 policy related matters governed by this compact binding the state.

4 (1) Each member state represented at a meeting of the Interstate Commission is entitled
5 to one vote.

6 (2) A majority of the member states constitutes a quorum for the transaction of busi-
7 ness, unless a larger quorum is required by the bylaws of the Interstate Commission.

8 (3) An appointed commissioner may not delegate a vote to another member state.

9 (4) An appointed commissioner may delegate voting authority to another person from
10 their state for a specified meeting.

11 (c) Include persons who are members of interested organizations as defined in the bylaws
12 or rules of the Interstate Commission, in addition to the appointed commissioners of each
13 member state. The persons shall serve as ex officio members and are not entitled to vote
14 on any matter before the Interstate Commission.

15 (d) Establish an executive committee. The executive committee shall have the authority
16 to administer the day-to-day operations and administration of the Interstate Commission.
17 The executive committee may not engage in rulemaking.

18 **ARTICLE IX**
19 **POWERS AND DUTIES OF THE**
20 **INTERSTATE COMMISSION**

21 **The Interstate Commission has the following powers:**

22 (a) To promulgate rules and take necessary actions to effect the goals, purposes and ob-
23 ligations enumerated in this compact.

24 (b) To provide for dispute resolution among member states.

25 (c) To issue, upon request of a member state, advisory opinions concerning the meaning
26 or interpretation of the interstate compact, or its bylaws, rules or actions.

27 (d) To enforce compliance with this compact or the bylaws or rules of the Interstate
28 Commission pursuant to Article XII.

29 (e) To collect standardized data concerning the interstate placement of children subject
30 to this compact as directed through Interstate Commission rules. The rules shall specify the
31 data to be collected, the means of collection and data exchange and reporting requirements.

32 (f) To establish and maintain offices as necessary for the transacting of Interstate
33 Commission business.

34 (g) To purchase and maintain insurance and bonds.

35 (h) To hire or contract for services of personnel or consultants as necessary to carry out
36 Interstate Commission functions under the compact and establish personnel qualification
37 policies and rates of compensation.

38 (i) To establish and appoint committees and officers including, but not limited to, the
39 executive committee required by Article X.

40 (j) To accept, receive, utilize and dispose of donations and grants of money, equipment,
41 supplies, materials and services.

42 (k) To lease, purchase, accept contributions or donations of, or otherwise to own, hold,
43 improve or use, any property that is real, personal or mixed property.

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

1 (m) To establish a budget and make expenditures.

2 (n) To adopt a seal and bylaws governing the management and operation of the Interstate
3 Commission.

4 (o) To report annually to the legislatures, governors, the judiciary and state advisory
5 councils of the member states concerning the activities of the Interstate Commission during
6 the preceding year. The reports shall also include any recommendations adopted by the
7 Interstate Commission.

8 (p) To coordinate and provide education, training and public awareness regarding the
9 interstate movement of children for officials involved in the interstate movement of children.

10 (q) To maintain books and records in accordance with the bylaws of the Interstate
11 Commission.

12 (r) To perform necessary or appropriate functions to achieve the purposes of this com-
13 pact.

14 **ARTICLE X**
15 **ORGANIZATION AND OPERATION OF**
16 **THE INTERSTATE COMMISSION**

17 (a) Bylaws:

18 (1) Within 12 months after the first Interstate Commission meeting, the Interstate
19 Commission shall adopt bylaws to govern its conduct that are necessary or appropriate to
20 carry out the purposes of the compact.

21 (2) The bylaws and rules of the Interstate Commission must establish conditions and
22 procedures under which the Interstate Commission makes its information and official re-
23 cords available to the public for inspection or copying. The Interstate Commission may ex-
24 empt from disclosure information or official records to the extent the disclosure would
25 adversely affect personal privacy rights or proprietary interests.

26 (b) Meetings:

27 (1) The Interstate Commission shall meet at least once each calendar year. The chair-
28 person may call additional meetings and, upon the request of a simple majority of the
29 member states, shall call additional meetings.

30 (2) The Interstate Commission shall give public notice of all meetings. All meetings of the
31 Interstate Commission and meetings of commission committees must be open to the public,
32 except as set forth in the rules or as otherwise provided in this compact. The Interstate
33 Commission and commission committees may close a meeting, or portion thereof, when the
34 commission or the committee determines by a two-thirds vote that an open meeting would
35 be likely to:

36 (A) Relate solely to the Interstate Commission's internal personnel practices and proce-
37 dures;

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

39 (C) Disclose financial or commercial information that is privileged, proprietary or confi-
40 dential in nature;

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

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

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

45 (G) Specifically relate to the Interstate Commission's participation in a civil action or

1 other legal proceeding.

2 (3) When the Interstate Commission closes a meeting, or any portion of a meeting, pur-
3 suant to this provision, the Interstate Commission's legal counsel or designee shall certify
4 that the meeting may be closed and shall reference each relevant exemption provision. The
5 Interstate Commission shall keep minutes that fully and clearly describe all matters dis-
6 cussed in a meeting. The minutes must provide a full and accurate summary of actions
7 taken, and the reasons for the actions, including a description of the views expressed and the
8 record of a roll call vote. All documents considered in connection with an action must be
9 identified in the minutes. All minutes and documents of a closed meeting remain under seal,
10 subject to release by a majority vote of the Interstate Commission or by court order.

11 (4) The bylaws may provide for meetings of the Interstate Commission to be conducted
12 by telecommunication or other electronic communication.

13 (c) Officers and staff:

14 (1) The Interstate Commission may, through the executive committee, appoint or retain
15 a staff director for the period, upon the terms and conditions and for the compensation that
16 Interstate Commission deems appropriate. The staff director shall serve as secretary to the
17 Interstate Commission, but may not vote. The staff director may hire and supervise other
18 staff as authorized by the Interstate Commission.

19 (2) The Interstate Commission shall elect from among its members a chairperson and a
20 vice chairperson of the executive committee and other necessary officers. The chairperson,
21 vice chairperson and officers elected by the Interstate Commission have the authority and
22 duties specified in the bylaws.

23 (d) Qualified immunity, defense and indemnification:

24 (1) The Interstate Commission's staff director and its employees are immune from suit
25 and liability, either personally or in their official capacity, for a claim for damage to or loss
26 of property or personal injury or other civil liability caused or arising out of or relating to
27 an actual or alleged act, error or omission that occurred, or that the person had a reasonable
28 basis for believing occurred within the scope of Interstate Commission employment, duties,
29 or responsibilities; provided, that the person is not protected from suit or liability for dam-
30 age, loss, injury or liability caused by a criminal act or the intentional or willful and wanton
31 misconduct of the person.

32 (A) When a person acting as staff director, employee or representative of the Interstate
33 Commission, acts within the scope of employment or duties, the liability of the person for
34 acts, errors or omissions occurring within the person's state may not exceed the limits of
35 liability set forth under the Constitution and laws of that state for state officials, employees
36 and agents. The Interstate Commission is considered to be an instrumentality of the states
37 for the purposes of any such action. Nothing in this subsection may be construed to protect
38 such person from suit or liability for damage, loss, injury or liability caused by a criminal
39 act or the intentional or willful and wanton misconduct of such person.

40 (B) The Interstate Commission shall defend the staff director and commission employees
41 and, subject to the approval of the Attorney General or other appropriate legal counsel of
42 the member state, shall defend the commissioner of a member state in a civil action seeking
43 to impose liability arising out of an actual or alleged act, error or omission that occurred
44 within the scope of Interstate Commission employment, duties or responsibilities, or that the
45 defendant had a reasonable basis for believing occurred within the scope of Interstate Com-

1 mission employment, duties or responsibilities, provided that the actual or alleged act, error
 2 or omission did not result from intentional or willful and wanton misconduct on the part of
 3 the defendant.

4 (C) To the extent not covered by the state involved, member state or the Interstate
 5 Commission, a person acting as a representative or employee of the Interstate Commission
 6 shall be held harmless in the amount of a settlement or judgment, including attorney's fees
 7 and costs, obtained against the person arising out of an actual or alleged act, error or
 8 omission that occurred within the scope of Interstate Commission employment, duties or
 9 responsibilities or that the person had a reasonable basis for believing occurred within the
 10 scope of Interstate Commission employment, duties or responsibilities, provided that the
 11 actual or alleged act, error or omission did not result from intentional or willful and wanton
 12 misconduct on the part of the person.

13 **ARTICLE XI**
 14 **RULEMAKING FUNCTIONS OF**
 15 **THE INTERSTATE COMMISSION**

16 (a) The Interstate Commission shall promulgate and publish rules in order to effectively
 17 and efficiently achieve the purposes of the compact.

18 (b) Rulemaking shall occur pursuant to the criteria set forth in this Article and the by-
 19 laws and rules adopted pursuant thereto. Rulemaking shall substantially conform to the
 20 principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws An-
 21 notated, Vol. 15, p.1 (2000), or other administrative procedure Acts as the Interstate Com-
 22 mission deems appropriate consistent with due process requirements under the United States
 23 Constitution as now or hereafter interpreted by the United States Supreme Court. All rules
 24 and amendments become binding as of the date specified, as published with the final version
 25 of the rule as approved by the Interstate Commission.

26 (c) When promulgating a rule, the Interstate Commission shall, at a minimum:

27 (1) Publish the proposed rule's entire text stating the reason or reasons for that proposed
 28 rule;

29 (2) Allow and invite any person to submit written data, facts, opinions or arguments, add
 30 the submitted information to the record and make the submitted information publicly avail-
 31 able; and

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

34 (d) Rules promulgated by the Interstate Commission have the force and effect of statu-
 35 tory law and supersede any state law, rule or regulation to the extent of any conflict.

36 (e) Not later than 60 days after a rule is promulgated, an interested person may file a
 37 petition in the United States District Court for the District of Columbia or in the Federal
 38 District Court where the Interstate Commission's principal office is located for judicial re-
 39 view of such rule. If the court finds that the Interstate Commission's action is not supported
 40 by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and
 41 set it aside.

42 (f) If a majority of the legislatures of the member states rejects a rule, the majority
 43 states may by enactment of a statute or resolution in the same manner used to adopt the
 44 compact, cause the rejected rule to be of no further force and effect in any member state.

45 (g) The existing rules governing the operation of the Interstate Compact on the Place-

1 **ment of Children superseded by this Act shall be null and void no less than 12 but no more**
2 **than 24 months after the first meeting of the Interstate Commission created hereunder, as**
3 **determined by the members during the first meeting.**

4 **(h) Within the first 12 months of operation, the Interstate Commission shall promulgate**
5 **rules addressing the following:**

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

19 **(i) Upon determination by a majority of the members of the Interstate Commission that**
20 **an emergency exists:**

21 **(1) The Interstate Commission may promulgate an emergency rule only if it is required**
22 **to:**

23 **(A) Protect children covered by this compact from an imminent threat to their health,**
24 **safety and well-being;**

25 **(B) Prevent loss of federal or state funds; or**

26 **(C) Meet a deadline for the promulgation of an administrative rule required by federal**
27 **law.**

28 **(2) An emergency rule becomes effective immediately upon adoption. The usual**
29 **rulemaking procedures provided in this compact must be retroactively applied to the emer-**
30 **gency rule as soon as reasonably possible, but no later than 90 days after the effective date**
31 **of the emergency rule.**

32 **(3) An emergency rule shall be promulgated as provided in the rules of the Interstate**
33 **Commission.**

34 **ARTICLE XII**
35 **OVERSIGHT; DISPUTE**
36 **RESOLUTION; ENFORCEMENT**

37 **(a) Oversight:**

38 **(1) The Interstate Commission shall oversee the administration and operation of the**
39 **compact.**

40 **(2) The executive, legislative and judicial branches of state government in each member**
41 **state shall enforce this compact and the rules of the Interstate Commission and shall take**
42 **all actions necessary and appropriate to effectuate the compact's purposes and intent. The**
43 **compact and its rules supersede state law, rules or regulations to the extent of any conflict**
44 **therewith.**

45 **(3) All courts shall take judicial notice of the compact and the rules in any judicial or**

1 administrative proceeding in a member state pertaining to the subject matter of this com-
 2 pact.

3 (4) The Interstate Commission is entitled to receive service of process in any judicial
 4 action in which the validity of a compact provision or rule is at issue. The Interstate Com-
 5 mission has standing to intervene in any judicial action when the validity of a compact pro-
 6 vision or rule is at issue. Failure to provide service of process to the Interstate Commission
 7 renders any judgment, order or other determination, however so captioned or classified, void
 8 as to the Interstate Commission, this compact, its bylaws or rules of the Interstate Com-
 9 mission.

10 (b) Dispute resolution:

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

14 (2) The Interstate Commission shall promulgate a rule providing for both mediation and
 15 binding dispute resolution for disputes among compacting states. The costs of mediation or
 16 dispute resolution are the responsibility of the parties to the dispute.

17 (c) Enforcement:

18 (1) If the Interstate Commission determines that a member state has defaulted in the
 19 performance of its obligations or responsibilities under this compact, its bylaws or rules, the
 20 Interstate Commission may:

21 (A) Provide remedial training and specific technical assistance;

22 (B) Provide written notice to the defaulting state and other member states, of the nature
 23 of the default and the means of curing the default. The Interstate Commission shall specify
 24 the conditions by which the defaulting state must cure its default;

25 (C) By majority vote of the members, initiate legal action in the United State District
 26 Court for the District of Columbia against a defaulting member state or, at the discretion
 27 of the Interstate Commission, in the federal district where the Interstate Commission has
 28 its principal office, to enforce compliance with the provisions of the compact, its bylaws or
 29 rules. The relief sought may include both injunctive relief and damages. In the event judicial
 30 enforcement is necessary, the prevailing party must be awarded all costs of such litigation
 31 including reasonable attorney's fees; or

32 (D) Avail itself of any other remedies available under state law or the regulation of offi-
 33 cial or professional conduct.

34 **ARTICLE XIII**

35 **FINANCING OF THE COMMISSION**

36 (a) The Interstate Commission shall pay, or provide for the payment of, the reasonable
 37 expenses of its establishment, organization and ongoing activities.

38 (b) The Interstate Commission may levy on and collect an annual assessment from each
 39 member state to cover the cost of the operations and activities of the Interstate Commission
 40 and its staff, which must be in a total amount sufficient to cover the Interstate Commis-
 41 sion's annual budget as approved by its members each year. The Interstate Commission shall
 42 allocate the aggregate annual assessment amount based upon a formula determined by the
 43 Interstate Commission, which shall promulgate a rule binding upon all member states.

44 (c) The Interstate Commission may not incur obligations of any kind prior to securing
 45 the funds adequate to meet the obligations. The Interstate Commission may not pledge the

1 credit of any of the member states, except by and with the authority of the member state.

2 (d) The Interstate Commission shall keep accurate accounts of all receipts and dis-
 3 bursements. The receipts and disbursements of the Interstate Commission are subject to the
 4 audit and accounting procedures established under Interstate Commission bylaws. However,
 5 all receipts and disbursements of funds handled by the Interstate Commission shall be au-
 6 dited yearly by a certified or licensed public accountant. The report of the audit must be
 7 included in and become part of the annual report of the Interstate Commission.

8 **ARTICLE XIV**

9 **MEMBER STATES; EFFECTIVE**

10 **DATE; AMENDMENT**

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

12 (b) The compact becomes effective and binding upon legislative enactment of the compact
 13 into law by no fewer than 35 states. The effective date is the later of July 1, 2007, or upon
 14 enactment of the compact into law by the 35th state. Thereafter the compact is effective and
 15 binding as to any other member state upon enactment of the compact into law by that state.
 16 The executive heads of the state human services administration with ultimate responsibility
 17 for the child welfare program of nonmember states or their designees shall be invited to
 18 participate in the activities of the Interstate Commission on a nonvoting basis prior to
 19 adoption of the compact by all states.

20 (c) The Interstate Commission may propose amendments to the compact for enactment
 21 by the member states. No amendment is effective and binding on the member states until
 22 the amendment is enacted into law by unanimous consent of the member states.

23 **ARTICLE XV**

24 **WITHDRAWAL AND DISSOLUTION**

25 (a) **Withdrawal:**

26 (1) Once the compact is effective, the compact continues in force and remains binding
 27 upon the member states, provided that a member state may withdraw from the compact by
 28 specifically repealing the statute that enacted the compact into law.

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

32 (3) The withdrawing state shall immediately notify the Interstate Commission in writing
 33 upon the introduction of legislation repealing this compact in the withdrawing state. The
 34 Interstate Commission shall then notify the other member states of the withdrawing state's
 35 intent to withdraw.

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

38 (5) Reinstatement following withdrawal of a member state occurs when the withdrawing
 39 state reenacts the compact or upon a later date determined by the members of the Inter-
 40 state Commission.

41 (b) **Dissolution of compact:**

42 (1) This compact dissolves upon the date that a member state withdraws or defaults, if
 43 the withdrawal or default results in a reduction in the membership in the compact to one
 44 member state.

45 (2) Upon the dissolution of this compact, the compact is null and void and is of no further

1 force or effect, and the business and affairs of the Interstate Commission shall conclude
2 commission business and affairs and distribute surplus funds in accordance with the bylaws.

3 **ARTICLE XVI**

4 **SEVERABILITY AND CONSTRUCTION**

5 (a) The provisions of this compact shall be severable, and if any phrase, clause, sentence
6 or provision is deemed unenforceable, the remaining provisions of the compact are enforce-
7 able.

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

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

11 **ARTICLE XVII**

12 **BINDING EFFECT OF COMPACT**

13 **AND OTHER LAWS**

14 (a) Other laws:

15 (1) Nothing herein prevents the enforcement of any other law of a member state that is
16 not inconsistent with this compact.

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

19 (b) Binding effect of the compact:

20 (1) All lawful actions of the Interstate Commission, including all rules and bylaws
21 promulgated by the Interstate Commission, are binding upon the member states.

22 (2) All agreements between the Interstate Commission and the member states are bind-
23 ing in accordance with their terms.

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

27 (c) The State of Oregon is bound by this compact and the bylaws and rules promulgated
28 under this compact only to the extent that the operation of the compact and the bylaws and
29 rules do not impose an obligation exceeding any limitation on state power or authority con-
30 tained in the Oregon Constitution, as interpreted by Oregon courts.

31 **ARTICLE XVIII**

32 **INDIAN TRIBES**

33 Notwithstanding any other provision in this compact, the Interstate Commission may
34 promulgate guidelines to permit Indian tribes to utilize the compact to achieve any or all of
35 the purposes of the compact as specified in Article I. The Interstate Commission shall make
36 reasonable efforts to consult with Indian tribes in promulgating guidelines to reflect the di-
37 verse circumstances of the various Indian tribes.

38
39
40 **SECTION 2.** (1) Section 1 of this 2007 Act becomes operative the day after the date on
41 which 35 states have enacted the compact into law.

42 (2) The Director of Human Services shall notify Legislative Counsel when 35 states have
43 enacted the compact into law.

44 (3) Unless the Legislative Assembly has withdrawn from the compact, the Director of
45 Human Services shall notify Legislative Counsel when default or withdrawal of member

1 **states results in fewer than two participating member states.**

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