

Regular Session, 2010

SENATE BILL NO. 644

BY SENATOR BROOME

CHILDREN'S CODE. Provides for the Interstate Compact on the Placement of Children.
(see Act)

AN ACT

To enact Chapter 2-A of Title XVI of the Louisiana Children's Code, comprised of Arts. 1623 through 1640, and to repeal Chapter 2 of Title XVI of the Louisiana Children's Code, comprised of Arts. 1608 through 1622, relative to the Interstate Compact on the Placement of Children; to authorize the state to enter into an interstate compact on the placement of children; to provide procedures, terms, conditions, requirements, and effects; to provide purposes and definitions; to provide relative to compact applicability; to provide relative to jurisdiction, assessments, placement, and state responsibility; to establish an interstate commission for the placement of children and provide for its powers, duties, membership, procedures, organization, operation, officers and staff; to provide certain qualified immunity, defenses, and indemnification; to provide for rulemaking functions and procedures; to provide for the effects of rules promulgated by the commission; to provide for judicial review of such rules; to provide for oversight of the compact by the commission; to provide for dispute resolution and enforcement of the compact; to provide for financing of the commission; to provide for effective dates of the compact; to provide for withdrawal and dissolution of the compact; to provide for legal effects of the

1 compact; to provide for Indian tribes; to provide for rulemaking authority by the
2 Department of Social Services; to provide certain effective dates; and to provide for
3 related matters.

4 Be it enacted by the Legislature of Louisiana:

5 Section 1. Chapter 2-A of Title XVI of the Louisiana Children's Code, comprised of
6 Arts. 1623 through 1640, is hereby enacted to read as follows:

7 **Art. 1623. Interstate compact on the placement of children; purpose**

8 **The provisions of this Chapter shall constitute the Interstate Compact**
9 **for the Placement of Children. The purpose of the compact is to:**

10 **A. Provide a process through which children subject to the compact are**
11 **placed in safe and suitable homes in a timely manner.**

12 **B. Facilitate ongoing supervision of a placement, the delivery of services,**
13 **and communication between the states.**

14 **C. Provide operating procedures that will ensure that children are placed**
15 **in safe and suitable homes in a timely manner.**

16 **D. Provide for the promulgation and enforcement of administrative rules**
17 **implementing the provisions of the compact and regulating the covered**
18 **activities of the member states.**

19 **E. Provide for uniform data collection and information sharing between**
20 **member states under the compact.**

21 **F. Promote coordination between the compact, the Interstate Compact**
22 **for Juveniles, the Interstate Compact on Adoption and Medical Assistance and**
23 **other compacts affecting the placement of and which provide services to**
24 **children otherwise subject to the compact.**

25 **G. Provide for a state's continuing legal jurisdiction and responsibility**
26 **for placement and care of a child that it would have had if the placement were**
27 **intrastate.**

28 **H. Provide for the promulgation of guidelines, in collaboration with**
29 **Indian tribes, for interstate cases involving Indian children as is or may be**

1 permitted by federal law.

2 Art. 1624. Definitions

3 As used in this Chapter:

4 (1) "Approved placement" means the receiving state has determined
5 after an assessment that the placement is both safe and suitable for the child
6 and is in compliance with the applicable laws of the receiving state governing
7 the placement of children therein.

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

12 (3) "Child" means an individual who has not attained eighteen years of
13 age.

14 (4) "Default" means the failure of a member state to perform the
15 obligations or responsibilities imposed upon it by the compact, the bylaws or
16 rules of the Interstate Commission.

17 (5) "Indian tribe" means any Indian tribe, band, nation, or other
18 organized group or community of Indians recognized as eligible for services
19 provided to Indians by the Secretary of the Interior because of their status as
20 Indians, including any Alaskan native village as defined in section 3(C) of the
21 Alaska Native Claims Settlement Act at 43 USC §1602(C).

22 (6) "Interstate Commission for the Placement of Children" means the
23 commission that is created under this Chapter and the compact and which is
24 generally referred to as the Interstate Commission.

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

27 (8) "Member state" means a state that has enacted the compact.

28 (9) "Non custodial parent" means a person who, at the time of the
29 commencement of court proceedings in the sending state, does not have sole

1 legal custody of the child or has joint legal custody of a child, and who is not the
2 subject of allegations or findings of child abuse or neglect.

3 (10) "Non-member state" means a state which has not enacted the
4 compact.

5 (11) "Notice of residential placement" means information regarding a
6 placement into a residential facility provided to the receiving state including,
7 but not limited to the name, date and place of birth of the child, the identity and
8 address of the parent or legal guardian, evidence of authority to make the
9 placement, and the name and address of the facility in which the child will be
10 placed. Notice of residential placement shall also include information regarding
11 a discharge and any unauthorized absence from the facility.

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

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

19 (14) "Provisional placement" means that the receiving state has
20 determined that the proposed placement is safe and suitable, and, to the extent
21 allowable, the receiving state has temporarily waived its standards or
22 requirements otherwise applicable to prospective foster or adoptive parents so
23 as to not delay the placement. Completion of the receiving state requirements
24 regarding training for prospective foster or adoptive parents shall not delay an
25 otherwise safe and suitable placement.

26 (15) "Public child placing agency" means any government child welfare
27 agency or child protection agency or a private entity under contract with such
28 an agency, regardless of whether they act on behalf of a state, county,
29 municipality or other governmental unit and which facilitates, causes, or is

1 involved in the placement of a child from one state to another.

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

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

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

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

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

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

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

29 (23) "State" means a state of the United States, the District of Columbia,

1 the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American
2 Samoa, the Northern Marianas Islands and any other territory of the United
3 States.

4 (24) "State court" means a judicial body of a state that is vested by law
5 with responsibility for adjudicating cases involving abuse, neglect, deprivation,
6 delinquency or status offenses of individuals who have not attained the age of
7 eighteen.

8 (25) "Supervision" means monitoring provided by the receiving state
9 once a child has been placed in a receiving state pursuant to the compact.

10 Art. 1625. Compact applicability

11 A. Except as otherwise provided in Paragraph B, the compact shall apply
12 to:

13 (1) The interstate placement of a child subject to ongoing court
14 jurisdiction in the sending state, due to allegations or findings that the child has
15 been abused, neglected, or deprived as defined by the laws of the sending state,
16 provided, however, that the placement of such a child into a residential facility
17 shall only require notice of residential placement to the receiving state prior to
18 placement.

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

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

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

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

1 **B. The provisions of the compact shall not apply to:**

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

5 **(2) The interstate placement of a child by one relative with the lawful**
6 **authority to make such a placement directly with a relative in a receiving state.**

7 **(3) The placement of a child, not subject to Article 1625(A), into a**
8 **residential facility by his parent.**

9 **(4) The placement of a child with a noncustodial parent provided that:**

10 **(a) The noncustodial parent proves to the satisfaction of a court in the**
11 **sending state a substantial relationship with the child; and**

12 **(b) The court in the sending state makes a written finding that**
13 **placement with the noncustodial parent is in the best interests of the child; and**

14 **(c) The court in the sending state dismisses its jurisdiction over the**
15 **child's case.**

16 **(5) A child entering the United States from a foreign country for the**
17 **purpose of adoption or leaving the United States to go to a foreign country for**
18 **the purpose of adoption in that country.**

19 **(6) Cases in which a U.S. citizen child living overseas with his family, at**
20 **least one of whom is in the U.S. Armed Services, and who is stationed overseas,**
21 **is removed and placed in a state.**

22 **(7) The sending of a child by a public child placing agency or a private**
23 **child placing agency for a visit as defined by the rules of the Interstate**
24 **Commission.**

25 **C. For purposes of determining the applicability of the compact to the**
26 **placement of a child with a family in the Armed Services, the public child**
27 **placing agency or private child placing agency may choose the state of the**
28 **service member's permanent duty station or the service member's declared**
29 **legal residence.**

1 **D. Nothing in this Chapter shall be construed to prohibit the concurrent**
2 **application of the provisions of the compact with other applicable interstate**
3 **compacts including the Interstate Compact for Juveniles and the Interstate**
4 **Compact on Adoption and Medical Assistance. The Interstate Commission may**
5 **in cooperation with other interstate compact commissions having responsibility**
6 **for the interstate movement, placement or transfer of children, promulgate like**
7 **rules to ensure the coordination of services, timely placement of children, and**
8 **the reduction of unnecessary or duplicative administrative or procedural**
9 **requirements.**

10 **Art. 1626. Jurisdiction**

11 **A. The sending state shall retain jurisdiction over a child with respect to**
12 **all matters of custody and disposition of the child which it would have had if the**
13 **child had remained in the sending state. Such jurisdiction shall also include the**
14 **power to order the return of the child to the sending state.**

15 **B. When an issue of child protection or custody is brought before a court**
16 **in the receiving state, such court shall confer with the court of the sending state**
17 **to determine the most appropriate forum for adjudication.**

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

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

23 **(2) The child is adopted; or**

24 **(3) The child reaches the age of majority under the laws of the sending**
25 **state; or**

26 **(4) The child achieves legal independence pursuant to the laws of the**
27 **sending state; or**

28 **(5) A guardianship is created by a court in the receiving state with the**
29 **concurrence of the court in the sending state; or**

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

3 **(7) The public child placing agency of the sending state requests**
4 **termination and has obtained the concurrence of the public child placing agency**
5 **in the receiving state.**

6 **D. When a sending state court terminates its jurisdiction, the receiving**
7 **state child placing agency shall be notified.**

8 **E. Nothing in this Article shall defeat a claim of jurisdiction by a**
9 **receiving state court sufficient to deal with an act of truancy, delinquency, crime**
10 **or behavior involving a child as defined by the laws of the receiving state**
11 **committed by the child in the receiving state which would be a violation of its**
12 **laws.**

13 **F. Nothing in this Article shall limit the receiving state's ability to take**
14 **emergency jurisdiction for the protection of the child.**

15 **Art. 1627. Assessments**

16 **A. Prior to sending, bringing, or causing a child to be sent or brought**
17 **into a receiving state, the public child placing agency shall provide a written**
18 **request for assessment to the receiving state.**

19 **B. Prior to the sending, bringing, or causing a child to be sent or brought**
20 **into a receiving state, the private child placing agency shall:**

21 **(1) Provide evidence that the applicable laws of the sending state have**
22 **been complied with; and**

23 **(2) Certification that the consent or relinquishment is in compliance with**
24 **applicable law of the birth parent's state of residence or, where permitted, the**
25 **laws of the state of where the finalization of the adoption will occur; and**

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

28 **(4) Upon completion of the assessment, obtain the approval of the public**
29 **child placing agency in the receiving state.**

1 **C. The procedures for making and the request for an assessment shall**
2 **contain all information and be in such form as provided for in the rules of the**
3 **Interstate Commission.**

4 **D. Upon receipt of a request from the public child welfare agency of the**
5 **sending state, the receiving state shall initiate an assessment of the proposed**
6 **placement to determine its safety and suitability. If the proposed placement is**
7 **a placement with a relative, the public child placing agency of the sending state**
8 **may request a determination of whether the placement qualifies as a provisional**
9 **placement.**

10 **E. The public child placing agency in the receiving state may request**
11 **from the public child placing agency or the private child placing agency in the**
12 **sending state, and shall be entitled to receive supporting or additional**
13 **information necessary to complete the assessment.**

14 **F. The public child placing agency in the receiving state shall complete**
15 **or arrange for the completion of the assessment within the timeframes**
16 **established by the rules of the Interstate Commission.**

17 **G. The Interstate Commission may develop uniform standards for the**
18 **assessment of the safety and suitability of interstate placements.**

19 **Art. 1628. Placement authority**

20 **A. Except as provided in Paragraph C, no child subject to the compact**
21 **shall be placed into a receiving state until approval for such placement is**
22 **obtained.**

23 **B. If the public child placing agency in the receiving state does not**
24 **approve the proposed placement then the child shall not be placed. The**
25 **receiving state shall provide written documentation of any such determination**
26 **in accordance with the rules promulgated by the Interstate Commission. Such**
27 **determination is not subject to judicial review in the sending state.**

28 **C. If the proposed placement is not approved, any interested party shall**
29 **have standing to seek an administrative review of the receiving state's**

1 determination.

2 D. The administrative review and any further judicial review associated
3 with the determination shall be conducted in the receiving state pursuant to its
4 applicable administrative procedures.

5 E. If a determination not to approve the placement of the child in the
6 receiving state is overturned upon review, the placement shall be deemed
7 approved, provided however that all administrative or judicial remedies have
8 been exhausted or the time for such remedies has passed.

9 Art. 1629. State Responsibility

10 A. For the interstate placement of a child made by a public child placing
11 agency or state court:

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

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

16 (b) as determined by the public child placing agency in the sending state,
17 services for the child beyond the public services for which the child is eligible
18 in the receiving state.

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

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

21 (b) supervision conducted by the receiving state at the level necessary
22 to support the placement as agreed upon by the public child placing agencies of
23 the receiving and sending state.

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

27 B. For the placement of a child by a private child placing agency
28 preliminary to a possible adoption, the private child placing agency shall be:

29 (1) Legally responsible for the child during the period of placement as

1 provided for in the law of the sending state until the finalization of the adoption.

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

4 C. A private child placing agency shall be responsible for any assessment
5 conducted in the receiving state and any supervision conducted by the receiving
6 state at the level required by the laws of the receiving state or the rules of the
7 Interstate Commission.

8 D. The public child placing agency in the receiving state shall provide
9 timely assessments, as provided for in the rules of the Interstate Commission.

10 E. The public child placing agency in the receiving state shall provide,
11 or arrange for the provision of, supervision and services for the child, including
12 timely reports, during the period of the placement.

13 F. Nothing in this Chapter or the compact shall be construed as to limit
14 the authority of the public child placing agency in the receiving state from
15 contracting with a licensed agency or person in the receiving state for an
16 assessment or the provision of supervision or services for the child or otherwise
17 authorizing the provision of supervision or services by a licensed agency during
18 the period of placement.

19 G. Each member state shall provide for coordination among its branches
20 of government concerning the state's participation in, and compliance with, the
21 compact and Interstate Commission activities, through the creation of an
22 advisory council or use of an existing body or board.

23 H. Each member state shall establish a central state compact office,
24 which shall be responsible for state compliance with the compact and the rules
25 of the Interstate Commission.

26 I. The public child placing agency in the sending state shall oversee
27 compliance with the provisions of the Indian Child Welfare Act (25 USC 1901
28 et seq.) for placements subject to the provisions of the compact, prior to
29 placement.

1 **J. With the consent of the Interstate Commission, states may enter into**
2 **limited agreements that facilitate the timely assessment and provision of**
3 **services and supervision of placements under the compact.**

4 **Art. 1630. Interstate commission for the placement of children**

5 **A. The member states hereby establish, by way of the compact, a**
6 **commission known as the "Interstate Commission for the Placement of**
7 **Children." The activities of the Interstate Commission are the formation of**
8 **public policy and are a discretionary state function. The Interstate Commission**
9 **shall:**

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

14 **(2) Consist of one commissioner from each member state who shall be**
15 **appointed by the executive head of the state human services administration with**
16 **ultimate responsibility for the child welfare program. The appointed**
17 **commissioner shall have the legal authority to vote on policy related matters**
18 **governed by the compact binding the state.**

19 **B. Each member state represented at a meeting of the Interstate**
20 **Commission is entitled to one vote.**

21 **C. A majority of the member states shall constitute a quorum for the**
22 **transaction of business, unless a larger quorum is required by the bylaws of the**
23 **Interstate Commission.**

24 **D. A representative shall not delegate a vote to another member state.**

25 **E. A representative may delegate voting authority to another person**
26 **from their state for a specified meeting.**

27 **F. In addition to the commissioners of each member state, the Interstate**
28 **Commission shall include persons who are members of interested organizations**
29 **as defined in the bylaws or rules of the Interstate Commission. Such members**

1 shall be ex officio and shall not be entitled to vote on any matter before the
2 Interstate Commission.

3 G. The Interstate Commission shall establish an executive committee
4 which shall have the authority to administer the day-to-day operations and
5 administration of the commission. The executive committee shall not have the
6 power to engage in rulemaking.

7 Art. 1631. Powers and duties of the interstate commission

8 A. The Interstate Commission shall have the following powers:

9 (1) To promulgate rules and take all necessary actions to effect the goals,
10 purposes and obligations as enumerated in the compact.

11 (2) To provide for dispute resolution among member states.

12 (3) To issue, upon request of a member state, advisory opinions
13 concerning the meaning or interpretation of the interstate compact, its bylaws,
14 rules or actions.

15 (4) To enforce compliance with the compact or the bylaws or rules of the
16 Interstate Commission pursuant to this Chapter.

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

21 (6) To establish and maintain offices as may be necessary for the
22 transacting of its business.

23 (7) To purchase and maintain insurance and bonds.

24 (8) To hire or contract for services of personnel or consultants as
25 necessary to carry out its functions under the compact and establish personnel
26 qualification policies, and rates of compensation.

27 (9) To establish and appoint committees and officers including, but not
28 limited to, an executive committee as required by this Chapter.

29 (10) To accept any and all donations and grants of money, equipment,

1 supplies, materials, and services, and to receive, utilize, and dispose thereof.

2 (11) To lease, purchase, accept contributions or donations of, or
3 otherwise to own, hold, improve or use any property, real, personal, or mixed.

4 (12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or
5 otherwise dispose of any property, real, personal or mixed.

6 (13) To establish a budget and make expenditures.

7 (14) To adopt a seal and bylaws governing the management and
8 operation of the Interstate Commission.

9 B. The commission shall report annually to the legislatures, governors,
10 the judiciary, and state advisory councils of the member states concerning the
11 activities of the Interstate Commission during the preceding year. Such reports
12 shall also include any recommendations that may have been adopted by the
13 Interstate Commission.

14 C. The commission shall coordinate and provide education, training and
15 public awareness regarding the interstate movement of children for officials
16 involved in such activity.

17 D. The commission shall maintain books and records in accordance with
18 the bylaws of the Interstate Commission.

19 E. The commission may perform such other functions as may be
20 necessary or appropriate to achieve the purposes of the compact.

21 Art. 1632. Organization and operation of the interstate commission

22 A. Bylaws:

23 (1) Within twelve months after the first Interstate Commission meeting,
24 the Interstate Commission shall adopt bylaws to govern its conduct as may be
25 necessary or appropriate to carry out the purposes of the compact.

26 (2) The Interstate Commission's bylaws and rules shall establish
27 conditions and procedures under which the Interstate Commission shall make
28 its information and official records available to the public for inspection or
29 copying. The Interstate Commission may exempt from disclosure information

1 or official records to the extent they would adversely affect personal privacy
2 rights or proprietary interests.

3 **B. Meetings:**

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

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

12 (a) relate solely to the Interstate Commission's internal personnel
13 practices and procedures; or

14 (b) disclose matters specifically exempted from disclosure by federal law;
15 or

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

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

20 (e) disclose information of a personal nature where disclosure would
21 constitute a clearly unwarranted invasion of personal privacy or physically
22 endanger one or more persons; or

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

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

27 (3) For a meeting, or portion of a meeting, closed pursuant to this
28 provision, the Interstate Commission's legal counsel or designee shall certify
29 that the meeting may be closed and shall reference each relevant exemption

1 provision. The Interstate Commission shall keep minutes which shall fully and
2 clearly describe all matters discussed in a meeting and shall provide a full and
3 accurate summary of actions taken, and the reasons therefore, including a
4 description of the views expressed and the record of a roll call vote. All
5 documents considered in connection with an action shall be identified in such
6 minutes. All minutes and documents of a closed meeting shall remain under
7 seal, subject to release by a majority vote of the Interstate Commission or by
8 court order.

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

11 C. Officers and staff:

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

18 (2) The Interstate Commission shall elect, from among its members, a
19 chairperson and a vice chairperson of the executive committee and other
20 necessary officers, each of whom shall have such authority and duties as may
21 be specified in the bylaws.

22 D. Qualified immunity, defense and indemnification:

23 (1) The Interstate Commission's staff director and its employees shall be
24 immune from suit and liability, either personally or in their official capacity, for
25 a claim for damage to or loss of property or personal injury or other civil
26 liability caused or arising out of or relating to an actual or alleged act, error, or
27 omission that occurred, or that such person had a reasonable basis for believing
28 occurred within the scope of Commission employment, duties, or
29 responsibilities; provided, that such person shall not be protected from suit or

1 liability for damage, loss, injury, or liability caused by a criminal act or the
2 intentional or willful and wanton misconduct of such person.

3 (a) The liability of the Interstate Commission's staff director and
4 employees or Interstate Commission representatives, acting within the scope of
5 such person's employment or duties for acts, errors, or omissions occurring
6 within such person's state may not exceed the limits of liability set forth under
7 the Constitution and laws of that state for state officials, employees, and agents.
8 The Interstate Commission is considered to be an instrumentality of the states
9 for the purposes of any such action. Nothing in this Chapter shall be construed
10 to protect such person from suit or liability for damage, loss, injury, or liability
11 caused by a criminal act or the intentional or willful and wanton misconduct of
12 such person.

13 (b) The Interstate Commission shall defend the staff director and its
14 employees and, subject to the approval of the attorney general or other
15 appropriate legal counsel of the member state, shall defend the commissioner
16 of a member state in a civil action seeking to impose liability arising out of an
17 actual or alleged act, error or omission that occurred within the scope of
18 Interstate Commission employment, duties or responsibilities, or that the
19 defendant had a reasonable basis for believing occurred within the scope of
20 Interstate Commission employment, duties, or responsibilities, provided that
21 the actual or alleged act, error, or omission did not result from intentional or
22 willful and wanton misconduct on the part of such person.

23 (c) To the extent not covered by the state involved, member state, or the
24 Interstate Commission, the representatives or employees of the Interstate
25 Commission shall be held harmless in the amount of a settlement or judgment,
26 including attorney fees and costs, obtained against such persons arising out of
27 an actual or alleged act, error, or omission that occurred within the scope of
28 Interstate Commission employment, duties, or responsibilities, or that such
29 persons had a reasonable basis for believing occurred within the scope of

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

4 Art. 1633. Rulemaking functions of the interstate commission

5 A. The Interstate Commission shall promulgate and publish rules in
6 order to effectively and efficiently achieve the purposes of the compact.

7 B. Rulemaking shall occur pursuant to the criteria set forth in this article
8 and the bylaws and rules adopted pursuant thereto. Such rulemaking shall
9 substantially conform to the principles of the "Model State Administrative
10 Procedure Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or
11 such other administrative procedure acts as the Interstate Commission deems
12 appropriate consistent with due process requirements under the United States
13 Constitution as now or hereafter interpreted by the U. S. Supreme Court. All
14 rules and amendments shall become binding as of the date specified, as
15 published with the final version of the rule as approved by the Interstate
16 Commission.

17 C. When promulgating a rule, the Interstate Commission shall, at a
18 minimum:

19 (1) Publish the proposed rule's entire text stating the reason(s) for that
20 proposed rule; and

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

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

26 D. The existing rules governing the operation of the Interstate Compact
27 on the Placement of Children superseded by this act shall be null and void no
28 less than twelve, but no more than twenty-four months after the first meeting
29 of the Interstate Commission created hereunder, as determined by the members

1 **during the first meeting.**

2 **E. Within the first twelve months of operation, the Interstate**
3 **Commission shall promulgate rules addressing the following:**

4 **(1) Transition rules**

5 **(2) Forms and procedures**

6 **(3) Timelines**

7 **(4) Data collection and reporting**

8 **(5) Rulemaking**

9 **(6) Visitation**

10 **(7) Progress reports/supervision**

11 **(8) Sharing of information/confidentiality**

12 **(9) Financing of the Interstate Commission**

13 **(10) Mediation, arbitration and dispute resolution**

14 **(11) Education, training and technical assistance**

15 **(12) Enforcement**

16 **(13) Coordination with other interstate compacts**

17 **F. Upon determination by a majority of the members of the Interstate**
18 **Commission that an emergency exists:**

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

21 **(a) Protect the children covered by the compact from an imminent threat**
22 **to their health, safety and well-being; or**

23 **(b) Prevent loss of federal or state funds; or**

24 **(c) Meet a deadline for the promulgation of an administrative rule**
25 **required by federal law.**

26 **(2) An emergency rule shall become effective immediately upon**
27 **adoption, provided that the usual rulemaking procedures provided hereunder**
28 **shall be retroactively applied to said rule as soon as reasonably possible, but no**
29 **later than 90 days after the effective date of the emergency rule.**

1 **(3) An emergency rule shall be promulgated as provided for in the rules**
2 **of the Interstate Commission.**

3 **Art. 1634. Oversight, dispute resolution, enforcement**

4 **A. Oversight:**

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

7 **(2) The executive, legislative and judicial branches of state government**
8 **in each member state shall enforce the compact and the rules of the Interstate**
9 **Commission and shall take all actions necessary and appropriate to effectuate**
10 **the compact's purposes and intent.**

11 **(3) All courts shall take judicial notice of the compact and the rules in**
12 **any judicial or administrative proceeding in a member state pertaining to the**
13 **subject matter of the compact.**

14 **(4) The Interstate Commission shall be entitled to receive service of**
15 **process in any action in which the validity of a compact provision or rule is the**
16 **issue for which a judicial determination has been sought and shall have standing**
17 **to intervene in any proceedings. Failure to provide service of process to the**
18 **Interstate Commission shall render any judgment, order or other**
19 **determination, however so captioned or classified, void as to the Interstate**
20 **Commission, the compact, its bylaws or rules of the Interstate Commission.**

21 **B. Dispute Resolution:**

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

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

29 **C. Enforcement:**

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

4 **(a) Provide remedial training and specific technical assistance; or**

5 **(b) Provide written notice to the defaulting state and other member**
6 **states, of the nature of the default and the means of curing the default. The**
7 **Interstate Commission shall specify the conditions by which the defaulting state**
8 **must cure its default; or**

9 **(c) By majority vote of the members, initiate against a defaulting**
10 **member state legal action in the United State District Court for the District of**
11 **Columbia or, at the discretion of the Interstate Commission, in the federal**
12 **district where the Interstate Commission has its principal office, to enforce**
13 **compliance with the provisions of the compact, its bylaws or rules. The relief**
14 **sought may include both injunctive relief and damages. In the event judicial**
15 **enforcement is necessary the prevailing party shall be awarded all costs of such**
16 **litigation including reasonable attorney fees; or**

17 **(d) Avail itself of any other remedies available under state law or the**
18 **regulation of official or professional conduct.**

19 **Art. 1635. Financing of the commission**

20 **A. The Interstate Commission shall pay, or provide for the payment of**
21 **the reasonable expenses of its establishment, organization and ongoing**
22 **activities.**

23 **B. The Interstate Commission may levy on and collect an annual**
24 **assessment from each member state to cover the cost of the operations and**
25 **activities of the Interstate Commission and its staff which must be in a total**
26 **amount sufficient to cover the Interstate Commission's annual budget as**
27 **approved by its members each year. The aggregate annual assessment amount**
28 **shall be allocated based upon a formula to be determined by the Interstate**
29 **Commission which shall promulgate a rule binding upon all member states.**

1 **C. The Interstate Commission shall not incur obligations of any kind**
2 **prior to securing the funds adequate to meet the same; nor shall the Interstate**
3 **Commission pledge the credit of any of the member states, except by and with**
4 **the authority of the member state.**

5 **D. The Interstate Commission shall keep accurate accounts of all receipts**
6 **and disbursements. The receipts and disbursements of the Interstate**
7 **Commission shall be subject to the audit and accounting procedures established**
8 **under its bylaws. However, all receipts and disbursements of funds handled by**
9 **the Interstate Commission shall be audited yearly by a certified or licensed**
10 **public accountant and the report of the audit shall be included in and become**
11 **part of the annual report of the Interstate Commission.**

12 **Art. 1636. Member States, effective date and amendment**

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

14 **B. The compact shall become effective and binding upon legislative**
15 **enactment of the compact into law by no less than thirty-fifth states. The**
16 **effective date shall be the later of July 1, 2007 or upon enactment of the compact**
17 **into law by the thirty-fifth state. Thereafter it shall become effective and**
18 **binding as to any other member state upon enactment of the compact into law**
19 **by that state. The executive heads of the state human services administration**
20 **with ultimate responsibility for the child welfare program of non-member states**
21 **or their designees shall be invited to participate in the activities of the Interstate**
22 **Commission on a non-voting basis prior to adoption of the compact by all states.**

23 **C. The Interstate Commission may propose amendments to the compact**
24 **for enactment by the member states. No amendment shall become effective and**
25 **binding on the member states unless and until it is enacted into law by**
26 **unanimous consent of the member states.**

27 **Art. 1637. Withdrawal and dissolution**

28 **A. Withdrawal:**

29 **(1) Once effective, the compact shall continue in force and remain**

1 binding upon each and every member state; provided that a member state may
2 withdraw from the compact specifically repealing the statute which enacted the
3 compact into law.

4 (2) Withdrawal from the compact shall be by the enactment of a statute
5 repealing the same. The effective date of withdrawal shall be the effective date
6 of the repeal of the statute.

7 (3) The withdrawing state shall immediately notify the president of the
8 Interstate Commission in writing upon the introduction of legislation repealing
9 the compact in the withdrawing state. The Interstate Commission shall then
10 notify the other member states of the withdrawing state's intent to withdraw.

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

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

16 **B. Dissolution of Compact:**

17 (1) The compact shall dissolve effective upon the date of the withdrawal
18 or default of the member state which reduces the membership in the compact
19 to one member state.

20 (2) Upon the dissolution of the compact, the compact becomes null and
21 void and shall be of no further force or effect, and the business and affairs of the
22 Interstate Commission shall be concluded and surplus funds shall be distributed
23 in accordance with the bylaws.

24 **Art. 1638. Severability and construction**

25 **A. The provisions of this Chapter and the compact shall be severable,**
26 **and if any phrase, clause, sentence or provision is deemed unenforceable, the**
27 **remaining provisions of the compact shall be enforceable.**

28 **B. The provisions of this Chapter and the compact shall be liberally**
29 **construed to effectuate its purposes.**

1 **C. Nothing in this Chapter or the compact shall be construed to prohibit**
2 **the concurrent applicability of other interstate compacts to which the states are**
3 **members.**

4 **Art. 1639. Indian tribes**

5 **Notwithstanding any other provision in this Chapter or the compact, the**
6 **Interstate Commission may promulgate guidelines to permit Indian tribes to**
7 **utilize the compact to achieve any or all of the purposes of the compact as**
8 **specified in Article 1623. The Interstate Commission shall make reasonable**
9 **efforts to consult with Indian tribes in promulgating guidelines to reflect the**
10 **diverse circumstances of the various Indian tribes.**

11 **Art. 1640. Rulemaking authority**

12 **The Department of Social Services shall have the authority to**
13 **promulgate rules and regulations in accordance with the Administrative**
14 **Procedure Act as necessary to carry out the provisions of this Chapter.**

15 Section 2. Chapter 2 of Title XVI of the Louisiana Children's Code, comprised of
16 Arts. 1608 through 1622, is hereby repealed in its entirety.

17 Section 3. Sections 1 and 2 of this Act shall become effective upon the legislative
18 enactment of the Interstate Compact for the Placement of Children language set forth in
19 Section 1 into law by no less than thirty-five (35) states.

20 Section 4. The secretary of the Department of Social Services shall notify the
21 President of the Louisiana Senate and the Speaker of the Louisiana House of Representatives
22 when the thirty-fifth (35th) state has enacted the Interstate Compact for the Placement of
23 Children language set forth in Section 1 of this Act.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Jerry G. Jones.

DIGEST

Present law in Children's Code provides for Interstate Compact on the Placement of Children. Provides procedures, definitions, and requirements. Provides that is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that: (1) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type

of care. (2) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child. (3) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made. (4) Appropriate jurisdictional arrangements for the care of children will be promoted.

Proposed law repeals present law and enacts new language constituting the Interstate Compact on the Placement of Children. Provides that it shall become effective upon the legislative enactment of the Interstate Compact for the Placement of Children language set forth in the proposed law by no less than 35 states. Also provides that the secretary of the Department of Social Services shall notify the President of the Louisiana Senate and the Speaker of the Louisiana House of Representatives when the thirty-fifth (35th) state has enacted the Interstate Compact for the Placement of Children language set forth in Section 1 of this Act.

Proposed law provides definitions. Provides that the compact shall apply to:

- (1) The interstate placement of a child subject to ongoing court jurisdiction in the sending state, due to allegations or findings that the child has been abused, neglected, or deprived as defined by the laws of the sending state, provided, however, that the placement of such a child into a residential facility shall only require notice of residential placement to the receiving state prior to placement.
- (2) The interstate placement of a child adjudicated delinquent or unmanageable based on the laws of the sending state and subject to ongoing court jurisdiction of the sending state if: (a) the child is being placed in a residential facility in another member state and is not covered under another compact; or (b) the child is being placed in another member state and the determination of safety and suitability of the placement and services required is not provided through another compact.
- (3) The interstate placement of any child by a public child placing agency or private child placing agency as defined in the compact as a preliminary step to a possible adoption.

Proposed law provides that the compact shall not apply to:

- (1) The interstate placement of a child with a non-relative in a receiving state by a parent with the legal authority to make such a placement provided, however, that the placement is not intended to effectuate an adoption.
- (2) The interstate placement of a child by one relative with the lawful authority to make such a placement directly with a relative in a receiving state.
- (3) The placement of certain children into a residential facility by his parent.
- (4) The placement of a child with a non-custodial parent provided that: (a) The non-custodial parent proves to the satisfaction of a court in the sending state a substantial relationship with the child, (b) The court in the sending state makes a written finding that placement with the non-custodial parent is in the best interests of the child; and (c) The court in the sending state dismisses its jurisdiction over the child's case.
- (5) A child entering the United States from a foreign country for the purpose of adoption or leaving the United States to go to a foreign country for the purpose of adoption in that country.
- (6) Cases in which a U.S. citizen child living overseas with his family, at least one of

whom is in the U.S. Armed Services, and who is stationed overseas, is removed and placed in a state.

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

Proposed law provides relative to jurisdiction over the child by the courts of the sending state and receiving state.

Proposed law provides for the public child placing agency to request a written assessment from the receiving state prior to the sending of a child to the receiving state. Provides procedures for approval of placement of the child into the receiving state.

Proposed law provides the public child placing agency in the sending state has certain financial responsibilities concerning the child during the period of the placement. Also provides that the receiving state shall have financial responsibility for the conducting of an assessment and supervision of the child.

Proposed law creates Interstate Commission for the Placement of Children. Provides that each member state shall establish a central state compact office, which shall be responsible for state compliance with the compact and the rules of the commission.

Proposed law provides for membership of the commission and its duties and powers. Provides for meetings of the commission. Provides for qualified immunity for commission staff.

Proposed law provides that the commission shall have the authority to promulgate rules and take all necessary actions to effect the goals of the compact, including dispute resolution among the member states, oversight of the administration and operation of the compact, and certain enforcement authority, including legal action to enforce compliance with the compact, bylaws and rules.

Proposed law provides that the commission shall be financed by annual member assessment to cover costs of operations and activities.

Proposed law provides that the compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 states. The effective date shall be the later of July 1, 2007 or upon enactment of the compact into law by the 35th state.

Proposed law provides procedures for withdrawal of a member state and for dissolution of the compact.

Proposed law authorizes Indian tribes to utilize the compact.

Proposed law provides that the Dept. of Social Services shall have the authority to promulgate rules and regulations in accordance with the APA as necessary to carry out the provisions of the proposed law.

(Adds Ch.C. Arts. 1623-1640; repeals Ch.C. Arts. 1608-1622)