

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 1643, 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 for 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 1643, is hereby enacted to read as follows:

7 **Art. 1623. Interstate compact for 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 public child placing agency in the
5 receiving state has determined that the placement is both safe and suitable for
6 the child.

7 (2) "Assessment" means an evaluation of a prospective placement by a
8 public child placing agency in the receiving state to determine if the placement
9 meets the individualized needs of the child, including but not limited to the
10 child's safety and stability, health and well-being, and mental, emotional and
11 physical development. An assessment is only applicable to a placement by a
12 public child placing agency.

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

15 (4) "Certification" means to attest, declare or swear to before a judge or
16 notary public.

17 (5) "Default" means the failure of a member state to perform the
18 obligations or responsibilities imposed upon it by the compact, the bylaws or
19 rules of the Interstate Commission.

20 (6) "Home study" means an evaluation of a home environment
21 conducted in accordance with the applicable requirements of the state in which
22 the home is located, and documenting the preparation and the suitability of the
23 placement resource for placement of a child in accordance with the laws and
24 requirements of the state in which the home is located.

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

1 **(8) "Interstate Commission for the Placement of Children" means the**
2 **commission that is created under Article 1630 of this Chapter and which is**
3 **generally referred to as the Interstate Commission.**

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

6 **(10) "Legal Risk Placement" ("Legal Risk adoption") means a**
7 **placement made preliminary to an adoption where the prospective adoptive**
8 **parents acknowledge in writing that a child can be ordered returned to the**
9 **sending state or the birth mother's state of residence, if different from the**
10 **sending state, and a final decree of adoption shall not be entered in any**
11 **jurisdiction until all required consents are obtained or are dispensed with in**
12 **accordance with applicable law.**

13 **(11) "Member state" means a state that has enacted the compact.**

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

18 **(13) "Nonmember state" means a state which has not enacted the**
19 **compact.**

20 **(14) "Notice of residential placement" means information regarding a**
21 **placement into a residential facility provided to the receiving state including,**
22 **but not limited to the name, date and place of birth of the child, the identity and**
23 **address of the parent or legal guardian, evidence of authority to make the**
24 **placement, and the name and address of the facility in which the child will be**
25 **placed. Notice of residential placement shall also include information regarding**
26 **a discharge and any unauthorized absence from the facility.**

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

29 **(16) "Private child placing agency" means any private corporation,**

1 agency, foundation, institution, or charitable organization, or any private
2 person or attorney that facilitates, causes, or is involved in the placement of a
3 child from one state to another and that is not an instrumentality of the state or
4 acting under color of state law.

5 (17) "Provisional placement" means a determination made by the public
6 child placing agency in the receiving state that the proposed placement is safe
7 and suitable, and, to the extent allowable, the receiving state has temporarily
8 waived its standards or requirements otherwise applicable to prospective foster
9 or adoptive parents so as to not delay the placement. Completion of the
10 receiving state requirements regarding training for prospective foster or
11 adoptive parents shall not delay an otherwise safe and suitable placement.

12 (18) "Public child placing agency" means any government child welfare
13 agency or child protection agency or a private entity under contract with such
14 an agency, regardless of whether they act on behalf of a state, county,
15 municipality or other governmental unit and which facilitates, causes, or is
16 involved in the placement of a child from one state to another.

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

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

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

29 (22) "Rule" means a written directive, mandate, standard or principle

1 issued by the Interstate Commission promulgated pursuant to this Chapter that
2 is of general applicability and that implements, interprets or prescribes a policy
3 or provision of the compact. "Rule" has the force and effect of an
4 administrative rule in a member state, and includes the amendment, repeal, or
5 suspension of an existing rule.

6 (23) "Sending state" means the state from which the placement of a child
7 is initiated.

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

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

15 (26) "State" means a state of the United States, the District of Columbia,
16 the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American
17 Samoa, the Northern Marianas Islands and any other territory of the United
18 States.

19 (27) "State court" means a judicial body of a state that is vested by law
20 with responsibility for adjudicating cases involving abuse, neglect, deprivation,
21 delinquency or status offenses of individuals who have not attained the age of
22 eighteen.

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

25 Art. 1625. Compact applicability

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

28 (1) The interstate placement of a child subject to ongoing court
29 jurisdiction in the sending state, due to allegations or findings that the child has

1 been abused, neglected, or deprived as defined by the laws of the sending state,
2 provided, however, that the placement of such a child into a residential facility
3 shall only require notice of residential placement to the receiving state prior to
4 placement.

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

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

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

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

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

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

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

23 (3) The interstate placement of a child by one relative with the lawful
24 authority to make such a placement directly with a relative in a receiving state.

25 (4) The placement of a child, not subject to Article 1625(A), into a
26 residential facility by his parent.

27 (5) The placement of a child with a noncustodial parent provided that:

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

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

3 **(c) The court in the sending state dismisses its jurisdiction in interstate**
4 **placements in which the public child placing agency is a party to the proceeding.**

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

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

11 **(8) The sending of a child by a public child placing agency or a private**
12 **child placing agency for a visit as defined by the rules of the Interstate**
13 **Commission.**

14 **C. For purposes of determining the applicability of the compact to the**
15 **placement of a child with a family in the Armed Services, the public child**
16 **placing agency or private child placing agency may choose the state of the**
17 **service member's permanent duty station or the service member's declared**
18 **legal residence.**

19 **D. Nothing in this Chapter shall be construed to prohibit the concurrent**
20 **application of the provisions of the compact with other applicable interstate**
21 **compacts including the Interstate Compact for Juveniles and the Interstate**
22 **Compact on Adoption and Medical Assistance. The Interstate Commission may**
23 **in cooperation with other interstate compact commissions having responsibility**
24 **for the interstate movement, placement or transfer of children, promulgate like**
25 **rules to ensure the coordination of services, timely placement of children, and**
26 **the reduction of unnecessary or duplicative administrative or procedural**
27 **requirements.**

28 **Art. 1626. Jurisdiction**

29 **A. Except as provided in Paragraph H of this Article, and Article**

1 1628(B)(2) and (3) concerning private and independent adoptions, and in
2 interstate placements in which the public child placing agency is not a party to
3 a custody proceeding, the sending state shall retain jurisdiction over a child
4 with respect to all matters of custody and disposition of the child which it would
5 have had if the child had remained in the sending state. Such jurisdiction shall
6 also include the power to order the return of the child to the sending state.

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

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

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

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

22 (2) The child is adopted; or

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

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

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

29 (6) An Indian tribe has petitioned for and received jurisdiction from the

1 court in the sending state; or

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

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

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

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

14 H. The substantive laws of the state in which an adoption will be
15 finalized shall solely govern all issues relating to the adoption of the child and
16 the court in which the adoption proceeding is filed shall have subject matter
17 jurisdiction regarding all substantive issues relating to the adoption, except:

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

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

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

25 I. A final decree of adoption shall not be entered in any jurisdiction until
26 the placement is authorized as an “approved placement” by the public child
27 placing agency in the receiving state.

28 Art. 1627. Placement Evaluation

29 A. Prior to sending, bringing, or causing a child to be sent or brought

1 into a receiving state, the public child placing agency shall provide a written
2 request for assessment to the receiving state.

3 B. For placements by a private child placing agency, a child may be sent
4 or brought, or caused to be sent or brought, into a receiving state, upon receipt
5 and immediate review of the required content in a request for approval of a
6 placement in both the sending and receiving state public child placing agency.

7 The required content to accompany a request for approval shall include all of
8 the following:

9 (1) A request for approval identifying the child, birth parents, the
10 prospective adoptive parent(s), and the supervising agency, signed by the person
11 requesting approval.

12 (2) The appropriate consents or relinquishments signed by the birth
13 parents in accordance with the laws of the sending state or, where permitted,
14 the laws of the state where the adoption will be finalized.

15 (3) Certification by a licensed attorney or authorized agent of a private
16 adoption agency that the consent or relinquishment is in compliance with the
17 applicable laws of the sending state or, where permitted, the laws of the state
18 where finalization of the adoption will occur.

19 (4) A home study.

20 (5) An acknowledgment of legal risk signed by the prospective adoptive
21 parents.

22 C. The sending state and the receiving state may request additional
23 information or documents prior to finalization of an approved placement, but
24 they may not delay travel by the prospective adoptive parents with the child if
25 the required content for approval has been submitted, received, and reviewed
26 by the public child placing agency in both the sending state and the receiving
27 state.

28 D. Approval from the public child placing agency in the receiving state
29 for a provisional or approved placement is required as provided for in the rules

1 of the Interstate Commission.

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

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

10 G. 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 or approve the placement.

14 H. The public child placing agency in the receiving state shall approve
15 a provisional placement and complete or arrange for the completion of the
16 assessment within the timeframes established by the rules of the Interstate
17 Commission.

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

22 J. The Interstate Commission may develop uniform standards for the
23 assessment of the safety and suitability of interstate placements.

24 Art. 1628. Placement authority

25 A. Except as provided in this Compact, no child subject to the compact
26 shall be placed into a receiving state until approval for such placement is
27 obtained.

28 B. If the public child placing agency in the receiving state does not
29 approve the proposed placement then the child shall not be placed. The

1 receiving state shall provide written documentation of any such determination
2 in accordance with the rules promulgated by the Interstate Commission. Such
3 determination is not subject to judicial review in the sending state.

4 C. If the proposed placement is not approved, any interested party shall
5 have standing to seek an administrative review of the receiving state's
6 determination.

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

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

14 Art. 1629. Placing Agency Responsibility

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

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

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

21 (b) as determined by the public child placing agency in the sending state,
22 services for the child beyond the public services for which the child is eligible
23 in the receiving state.

24 (2) The receiving state shall have financial responsibility only for the
25 following:

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

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

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

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

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

8 **(2) Financially responsible for the child absent a contractual agreement**
9 **to the contrary.**

10 **C. The public child placing agency in the receiving state shall provide**
11 **timely assessments, as provided for in the rules of the Interstate Commission.**

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

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

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

25 **G. Each member state shall establish a central state compact office,**
26 **which shall be responsible for state compliance with the compact and the rules**
27 **of the Interstate Commission.**

28 **H. The public child placing agency in the sending state shall oversee**
29 **compliance with the provisions of the Indian Child Welfare Act (25 USC 1901**

1 et seq.) for placements subject to the provisions of the compact, prior to
2 placement.

3 I. With the consent of the Interstate Commission, states may enter into
4 limited agreements that facilitate the timely assessment and provision of
5 services and supervision of placements under the compact.

6 Art. 1630. Interstate commission for the placement of children

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

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

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

21 B. Each member state represented at a meeting of the Interstate
22 Commission is entitled to one vote.

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

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

27 E. A representative may delegate voting authority to another person
28 from their state for a specified meeting.

1 **F. In addition to the commissioners of each member state, the Interstate**
2 **Commission shall include persons who are members of interested organizations**
3 **as defined in the bylaws or rules of the Interstate Commission. Such members**
4 **shall be ex officio and shall not be entitled to vote on any matter before the**
5 **Interstate Commission.**

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

10 **Art. 1631. Powers and duties of the Interstate Commission**

11 **A. The Interstate Commission shall have the following powers:**

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

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

15 **(3) To issue, upon request of a member state, advisory opinions**
16 **concerning the meaning or interpretation of the interstate compact, its bylaws,**
17 **rules or actions.**

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

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

24 **(6) To establish and maintain offices as may be necessary for the**
25 **transacting of its business.**

26 **(7) To purchase and maintain insurance and bonds.**

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

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

3 **(10) To accept any and all donations and grants of money, equipment,**
4 **supplies, materials, and services, and to receive, utilize, and dispose thereof.**

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

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

9 **(13) To establish a budget and make expenditures.**

10 **(14) To adopt a seal and bylaws governing the management and**
11 **operation of the Interstate Commission.**

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

17 **C. The commission shall coordinate and provide education, training and**
18 **public awareness regarding the interstate movement of children for officials**
19 **involved in such activity.**

20 **D. The commission shall maintain books and records in accordance with**
21 **the bylaws of the Interstate Commission.**

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

24 **Art. 1632. Organization and operation of the Interstate Commission**

25 **A. Bylaws:**

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

1 **(2) The Interstate Commission's bylaws and rules shall establish**
2 **conditions and procedures under which the Interstate Commission shall make**
3 **its information and official records available to the public for inspection or**
4 **copying. The Interstate Commission may exempt from disclosure information**
5 **or official records to the extent they would adversely affect personal privacy**
6 **rights or proprietary interests.**

7 **B. Meetings:**

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

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

16 **(a) relate solely to the Interstate Commission's internal personnel**
17 **practices and procedures; or**

18 **(b) disclose matters specifically exempted from disclosure by federal law;**
19 **or**

20 **(c) disclose financial or commercial information which is privileged,**
21 **proprietary or confidential in nature; or**

22 **(d) involve accusing a person of a crime, or formally censuring a person;**
23 **or**

24 **(e) disclose information of a personal nature where disclosure would**
25 **constitute a clearly unwarranted invasion of personal privacy or physically**
26 **endanger one or more persons; or**

27 **(f) disclose investigative records compiled for law enforcement purposes;**
28 **or**

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

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

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

16 C. Officers and staff:

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

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

27 D. Qualified immunity, defense and indemnification:

28 (1) The Interstate Commission's staff director and its employees shall be
29 immune from suit and liability, either personally or in their official capacity, for

1 a claim for damage to or loss of property or personal injury or other civil
2 liability caused or arising out of or relating to an actual or alleged act, error, or
3 omission that occurred, or that such person had a reasonable basis for believing
4 occurred within the scope of commission employment, duties, or
5 responsibilities; provided, that such person shall not be protected from suit or
6 liability for damage, loss, injury, or liability caused by a criminal act or the
7 intentional or willful and wanton misconduct of such person.

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

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

28 (4) To the extent not covered by the state involved, member state, or the
29 Interstate Commission, the representatives or employees of the Interstate

1 Commission shall be held harmless in the amount of a settlement or judgment,
2 including attorney fees and costs, obtained against such persons arising out of
3 an actual or alleged act, error, or omission that occurred within the scope of
4 Interstate Commission employment, duties, or responsibilities, or that such
5 persons had a reasonable basis for believing occurred within the scope of
6 Interstate Commission employment, duties, or responsibilities, provided that
7 the actual or alleged act, error, or omission did not result from intentional or
8 willful and wanton misconduct on the part of such persons.

9 Art. 1633. Rulemaking functions of the Interstate Commission

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

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

22 C. When promulgating a rule, the Interstate Commission shall, at a
23 minimum:

24 (1) Publish the proposed rule's entire text stating the reason(s) for that
25 proposed rule.

26 (2) Allow and invite any and all persons to submit written data, facts,
27 opinions and arguments, which information shall be added to the record, and
28 be made publicly available.

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

3 **D. Rules promulgated by the Interstate Commission shall have the force**
4 **and effect of administrative rules and shall be binding in the compacting states**
5 **to the extent and in the manner provided for in this compact.**

6 **E. Not later than sixty days after a rule is promulgated, an interested**
7 **person may file a petition in the U.S. District Court for the District of Columbia**
8 **or in the Federal District Court where the Interstate Commission's principal**
9 **office is located for judicial review of such rule. If the court finds that the**
10 **Interstate Commission's action is not supported by substantial evidence in the**
11 **rulemaking record, the court shall hold the rule unlawful and set it aside.**

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

16 **G. The existing rules governing the operation of the Interstate Compact**
17 **on the Placement of Children superseded by this act shall be null and void no less**
18 **than twelve, but no more than twenty-four months after the first meeting of the**
19 **Interstate Commission created hereunder, as determined by the members during**
20 **the first meeting.**

21 **H. Within the first twelve months of operation, the Interstate Commission**
22 **shall promulgate rules addressing the following:**

23 **(1) Transition rules**

24 **(2) Forms and procedures**

25 **(3) Timelines**

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

27 **(5) Rulemaking**

28 **(6) Visitation**

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

1 (8) Sharing of information/confidentiality

2 (9) Financing of the Interstate Commission

3 (10) Mediation, arbitration and dispute resolution

4 (11) Education, training and technical assistance

5 (12) Enforcement

6 (13) Coordination with other interstate compacts

7 I. Upon determination by a majority of the members of the Interstate
 8 Commission that an emergency exists:

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

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

13 (b) Prevent loss of federal or state funds; or

14 (c) Meet a deadline for the promulgation of an administrative rule
 15 required by federal law.

16 (2) An emergency rule shall become effective immediately upon adoption,
 17 provided that the usual rulemaking procedures provided hereunder shall be
 18 retroactively applied to said rule as soon as reasonably possible, but no later than
 19 ninety days after the effective date of the emergency rule.

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

22 Art. 1634. Oversight, dispute resolution, enforcement

23 A. Oversight:

24 (1) The Interstate Commission shall oversee the administration and
 25 operation of the compact.

26 (2) The executive, legislative and judicial branches of state government in
 27 each member state shall enforce the compact and the rules of the Interstate
 28 Commission and shall take all actions necessary and appropriate to effectuate

1 the compact's purposes and intent. The compact and its rules shall be binding
2 in the compacting states to the extent and in the manner provided for in this
3 compact.

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

7 (4) The Interstate Commission shall be entitled to receive service of process
8 in any action in which the validity of a compact provision or rule is the issue for
9 which a judicial determination has been sought and shall have standing to
10 intervene in any proceedings. Failure to provide service of process to the
11 Interstate Commission shall render any judgment, order or other determination,
12 however so captioned or classified, void as to the Interstate Commission, the
13 compact, its bylaws or rules of the Interstate Commission.

14 **B. Dispute Resolution:**

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

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

22 **C. Enforcement:**

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

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

27 (b) Provide written notice to the defaulting state and other member states,
28 of the nature of the default and the means of curing the default. The Interstate

1 Commission shall specify the conditions by which the defaulting state must cure
2 its default; or

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

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

13 Art. 1635. Financing of the commission

14 A. The Interstate Commission shall pay, or provide for the payment of the
15 reasonable expenses of its establishment, organization and ongoing activities.

16 B. The Interstate Commission may levy on and collect an annual
17 assessment from each member state to cover the cost of the operations and
18 activities of the Interstate Commission and its staff which must be in a total
19 amount sufficient to cover the Interstate Commission's annual budget as
20 approved by its members each year. The aggregate annual assessment amount
21 shall be allocated based upon a formula to be determined by the Interstate
22 Commission which shall promulgate a rule binding upon all member states.

23 C. The Interstate Commission shall not incur obligations of any kind prior
24 to securing the funds adequate to meet the same; nor shall the Interstate
25 Commission pledge the credit of any of the member states, except by and with the
26 authority of the member state.

27 D. The Interstate Commission shall keep accurate accounts of all receipts
28 and disbursements. The receipts and disbursements of the Interstate Commission
29 shall be subject to the audit and accounting procedures established under its

1 bylaws. However, all receipts and disbursements of funds handled by the
2 Interstate Commission shall be audited yearly by a certified or licensed public
3 accountant and the report of the audit shall be included in and become part of the
4 annual report of the Interstate Commission.

5 Art. 1636. Member states, effective date and amendment

6 A. Any state is eligible to become a member state.

7 B. The compact shall become effective and binding upon legislative
8 enactment of the compact into law by no less than thirty-five states. The effective
9 date shall be the later of July 1, 2007 or upon enactment of the compact into law
10 by the thirty-fifth state. Thereafter it shall become effective and binding as to any
11 other member state upon enactment of the compact into law by that state. The
12 executive heads of the state human services administration with ultimate
13 responsibility for the child welfare program of nonmember states or their
14 designees shall be invited to participate in the activities of the Interstate
15 Commission on a nonvoting basis prior to adoption of the compact by all states.

16 C. The Interstate Commission may propose amendments to the compact
17 for enactment by the member states. No amendment shall become effective and
18 binding on the member states unless and until it is enacted into law by unanimous
19 consent of the member states.

20 Art. 1637. Withdrawal and dissolution

21 A. Withdrawal:

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

26 (2) Withdrawal from the compact shall be by the enactment of a statute
27 repealing the same. The effective date of withdrawal shall be the effective date of
28 the repeal of the statute.

1 **(3) The withdrawing state shall immediately notify the president of the**
2 **Interstate Commission in writing upon the introduction of legislation repealing**
3 **the compact in the withdrawing state. The Interstate Commission shall then**
4 **notify the other member states of the withdrawing state's intent to withdraw.**

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

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

10 **B. Dissolution of Compact:**

11 **(1) The compact shall dissolve effective upon the date of the withdrawal or**
12 **default of the member state which reduces the membership in the compact to one**
13 **member state.**

14 **(2) Upon the dissolution of the compact, the compact becomes null and**
15 **void and shall be of no further force or effect, and the business and affairs of the**
16 **Interstate Commission shall be concluded and surplus funds shall be distributed**
17 **in accordance with the bylaws.**

18 **Art. 1638. Severability and construction**

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

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

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

27 **Art. 1639. Binding effect of compact and other laws**

28 **A. Other laws.**

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

3 B. Binding effect of the compact.

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

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

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

13 Art. 1640. Indian tribes

14 Notwithstanding any other provision in this Chapter or the compact, the
15 Interstate Commission may promulgate guidelines to permit Indian tribes to
16 utilize the compact to achieve any or all of the purposes of the compact as
17 specified in Article 1623. The Interstate Commission shall make reasonable
18 efforts to consult with Indian tribes in promulgating guidelines to reflect the
19 diverse circumstances of the various Indian tribes.

20 Art. 1641. Rulemaking authority; effect of rules

21 A. The Department of Social Services shall have the authority to
22 promulgate rules and regulations in accordance with the Administrative
23 Procedure Act as necessary to carry out the provisions of this Chapter.

24 B. Notwithstanding any other provision of this chapter, rules adopted by
25 the Interstate Commission shall not supersede state law, and shall not be binding
26 unless also promulgated by this state in accordance with the Administrative
27 Procedure Act. The provisions of this Subsection shall control to the extent of
28 conflict with any other provision of law.

29 Art. 1642. Financial responsibility for children

1 **Financial responsibility for any child placed pursuant to the provisions of**
 2 **this compact shall be determined in accordance with the provisions of Article**
 3 **1629 in the first instance. However, in the event of partial or complete default of**
 4 **performance there under, the provisions of Louisiana's laws fixing the**
 5 **responsibility for the support of children also may be invoked.**

6 **Art. 1643. Authority to enter into agreements; approval of state treasurer**

7 **A. The officers and agencies of this state and its political subdivisions**
 8 **having authority to place children are hereby empowered to enter into**
 9 **agreements with appropriate officers or agencies of or in other party states**
 10 **pursuant to Article 1629.**

11 **B. Any such agreement which contains a financial commitment or imposes**
 12 **a financial obligation on this state or subdivision or agency thereof shall not be**
 13 **binding unless it has the approval in writing of the state treasurer in the case of**
 14 **the state and of the chief local fiscal officer in the case of a subdivision of the state.**

15 Section 2. Chapter 2 of Title XVI of the Louisiana Children's Code, comprised of Arts.
 16 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 was prepared by Jerry G. Jones. The following digest,
 which does not constitute a part of the legislative instrument, was prepared by
 Linda Nugent.

DIGEST

Broome (SB 644)

Present law in Children's Code provides for Interstate Compact on the Placement of Children. Provides procedures, definitions, and requirements. Provides that it is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that: (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 in a custody proceeding in which a public child placing agency is not a party, provided that the placement is not intended to effectuate an adoption.
- (2) The interstate placement of a child with a non-relative in a receiving state by a parent with the legal authority to make such a placement provided, however, that the placement is not intended to effectuate an adoption.
- (3) The interstate placement of a child by one relative with the lawful authority to make such a placement directly with a relative in a receiving state.
- (4) The placement of certain children into a residential facility by his parent.
- (5) The placement of a child with a noncustodial parent provided that:

- (a) The noncustodial parent proves to the satisfaction of a court in the sending state a substantial relationship with the child,
 - (b) The court in the sending state makes a written finding that placement with the noncustodial parent is in the best interests of the child; and
 - (c) The court in the sending state dismisses its jurisdiction.
- (6) A child entering the United States from a foreign country for the purpose of adoption or leaving the United States to go to a foreign country for the purpose of adoption in that country.
- (7) Cases in which a 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.
- (8) The sending of a child by a public child placing agency or a private child placing agency for a visit as defined by the rules of the Interstate Commission.

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

Proposed law provides for placement evaluation, and for financial responsibility for children.

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. Further provides that rules adopted by the Interstate Commission shall not supersede state law and shall not be binding unless also promulgated by this state in accordance with the APA.

(Adds Ch.C. Arts. 1623-1643; repeals Ch.C. Arts. 1608-1622)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Added language on promulgation of rules and regulations.
2. Revised definitions, jurisdictional procedures, and placement evaluation and procedures.

Senate Floor Amendments to engrossed bill.

1. Technical Legislative Bureau amendments.