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AN ACT
RELATING TO CHILDREN; ENACTING THE REVISED INTERSTATE COMPACT
ON THE PLACEMENT OF CHILDREN; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 32A-11-1 NMSA 1978 (being Laws 1977,
Chapter 151, Section 1) is repealed and a new Section
32A-11-1 NMSA 1978 is enacted to read:

"32A-11-1. INTERSTATE COMPACT.--The Revised Interstate
Compact on the Placement of Children is hereby enacted into
law and entered into with all other jurisdictions legally
joining therein in form substantially as follows:

REVISED INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE 1. PURPOSE

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

- A. provide a process through which children
subject to this compact are placed in safe and suitable homes
in a timely manner;
- B. facilitate ongoing supervision of a placement,
the delivery of services and communication between the
states;
- C. provide operating procedures that will ensure
that children are placed in safe and suitable homes in a

1 timely manner;

2 D. provide for the promulgation and enforcement of
3 administrative rules implementing the provisions of this
4 compact and regulating the covered activities of the member
5 states;

6 E. provide for uniform data collection and
7 information sharing between member states under this compact;

8 F. promote coordination between this compact, the
9 Interstate Compact for Juveniles, the Interstate Compact on
10 Adoption and Medical Assistance and other compacts affecting
11 the placement of and which provide services to children
12 otherwise subject to this compact;

13 G. provide for a state's continuing legal
14 jurisdiction and responsibility for placement and care of a
15 child that it would have had if the placement were
16 intrastate; and

17 H. provide for the promulgation of guidelines, in
18 collaboration with Indian nations, tribes and pueblos, for
19 interstate cases involving Indian children as is or may be
20 permitted by federal law.

21 ARTICLE 2. DEFINITIONS

22 As used in this compact:

23 A. "approved placement" means the public child
24 placing agency in the receiving state has determined that the
25 placement is both safe and suitable for the child;

1 B. "assessment" means an evaluation of a
2 prospective placement by a public child placing agency in the
3 receiving state to determine if the placement meets the
4 individualized needs of the child, including but not limited
5 to the child's safety and stability, health and well-being
6 and mental, emotional and physical development. An
7 assessment is only applicable to a placement by a public
8 child placing agency;

9 C. "child" means an individual who has not
10 attained the age of eighteen;

11 D. "certification" means to attest, declare or
12 swear to before a judge or notary public;

13 E. "default" means the failure of a member state
14 to perform the obligations or responsibilities imposed upon
15 it by this compact, the bylaws or rules of the interstate
16 commission;

17 F. "home study" means an evaluation of a home
18 environment conducted in accordance with the applicable
19 requirements of the state in which the home is located, and
20 documents the preparation and the suitability of the
21 placement resource for the placement of a child in accordance
22 with the laws and requirements of the state in which the home
23 is located;

24 G. "Indian nations, tribes and pueblos" means any
25 Indian tribe, band, nation, pueblo or other organized group

1 or community of Indians recognized as eligible for services
2 provided to Indians by the United States secretary of the
3 interior because of their status as Indians, including any
4 Alaskan native village as defined in section 3 (c) of the
5 Alaska Native Claims Settlement Act at 43 U.S.C. Section
6 1602(c);

7 H. "interstate commission for the placement of
8 children" means the commission that is created under
9 Article 8 of this compact and that is generally referred to
10 as the "interstate commission";

11 I. "jurisdiction" means the power and authority of
12 a court to hear and decide matters;

13 J. "legal risk placement" or "legal risk adoption"
14 means a placement made preliminary to an adoption where the
15 prospective adoptive parents acknowledge in writing that a
16 child can be ordered returned to the sending state or the
17 birth mother's state of residence, if different from the
18 sending state, and a final decree of adoption shall not be
19 entered in any jurisdiction until all required consents are
20 obtained or are dispensed with in accordance with applicable
21 law;

22 K. "member state" means a state that has enacted
23 this compact;

24 L. "noncustodial parent" means a person who, at
25 the time of the commencement of court proceedings in the

1 sending state, does not have sole legal custody of the child
2 or has joint legal custody of a child and who is not the
3 subject of allegations or findings of child abuse or neglect;

4 M. "nonmember state" means a state that has not
5 enacted this compact;

6 N. "notice of residential placement" means
7 information regarding a placement into a residential facility
8 provided to the receiving state, including the name, date and
9 place of birth of the child, the identity and address of the
10 parent or legal guardian, evidence of authority to make the
11 placement, and the name and address of the facility in which
12 the child will be placed; "notice of residential placement"
13 also includes information regarding a discharge and any
14 unauthorized absence from the facility;

15 O. "placement" means the act by a public or
16 private child placing agency intended to arrange for the care
17 or custody of a child in another state;

18 P. "private child placing agency" means any
19 private corporation, agency, foundation, institution or
20 charitable organization, or any private person or attorney
21 that facilitates, causes or is involved in the placement of a
22 child from one state to another and that is not an
23 instrumentality of the state or acting under color of state
24 law;

25 Q. "provisional placement" means a determination

1 made by the public child placing agency in the receiving
2 state that the proposed placement is safe and suitable and,
3 to the extent allowable, the receiving state has temporarily
4 waived its standards or requirements otherwise applicable to
5 prospective foster or adoptive parents so as to not delay the
6 placement. Completion of the receiving state requirements
7 regarding training for prospective foster or adoptive parents
8 shall not delay an otherwise safe and suitable placement;

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

16 S. "receiving state" means the state to which a
17 child is sent, brought or caused to be sent or brought;

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

24 U. "residential facility" means a facility
25 providing a level of care that is sufficient to substitute

1 for parental responsibility or foster care, and is beyond
2 what is needed for assessment or treatment of an acute
3 condition. For purposes of the compact, "residential
4 facilities" do not include institutions primarily educational
5 in character, hospitals or other medical facilities;

6 V. "rule" means a written directive, mandate,
7 standard or principle issued by the interstate commission
8 promulgated pursuant to Article 9 of this compact that is of
9 general applicability and that implements, interprets or
10 prescribes a policy or provision of the compact; "rule" has
11 the force and effect of an administrative rule in a member
12 state, and includes the amendment, repeal or suspension of an
13 existing rule;

14 W. "sending state" means the state from which the
15 placement of a child is initiated;

16 X. "service member's permanent duty station" means
17 the military installation where an active duty armed services
18 member is currently assigned and is physically located under
19 competent orders that do not specify the duty as temporary;

20 Y. "service member's state of legal residence"
21 means the state in which the active duty armed services
22 member is considered a resident for tax and voting purposes;

23 Z. "state" means a state of the United States, the
24 District of Columbia, the Commonwealth of Puerto Rico, the
25 U.S. Virgin Islands, Guam, American Samoa, the Northern

1 Mariana Islands and any other territory of the United States;

2 AA. "state court" means a judicial body of a state
3 that is vested by law with responsibility for adjudicating
4 cases involving abuse, neglect, deprivation, delinquency or
5 status offenses of individuals who have not attained the age
6 of eighteen; and

7 BB. "supervision" means monitoring provided by the
8 receiving state once a child has been placed in a receiving
9 state pursuant to this compact.

10 ARTICLE 3. APPLICABILITY

11 A. Except as otherwise provided in Section B of
12 this article, this compact shall apply to:

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

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

25 (a) the child is being placed in a

1 residential facility in another member state and is not
2 covered under another compact; or

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

7 (3) the interstate placement of any child by
8 a public child placing agency or private child placing agency
9 as defined in this compact as a preliminary step to a
10 possible adoption.

11 B. The provisions of this compact shall not apply
12 to:

13 (1) the interstate placement of a child in a
14 custody proceeding in which a public child placing agency is
15 not a party; provided that the placement is not intended to
16 effectuate an adoption;

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

21 (3) the interstate placement of a child by
22 one relative with the lawful authority to make such a
23 placement directly with a relative in a receiving state;

24 (4) the placement of a child, not subject to
25 Section A of this article into a residential facility by the

1 child's parent;

2 (5) the placement of a child with a
3 noncustodial parent; provided that:

4 (a) the noncustodial parent proves to
5 the satisfaction of a court in the sending state a
6 substantial relationship with the child;

7 (b) the court in the sending state
8 makes a written finding that placement with the noncustodial
9 parent is in the best interests of the child; and

10 (c) the court in the sending state
11 dismisses its jurisdiction in interstate placements in which
12 the public child placing agency is a party to the proceeding;

13 (6) a child entering the United States from
14 a foreign country for the purpose of adoption or leaving the
15 United States to go to a foreign country for the purpose of
16 adoption in that country;

17 (7) cases in which a United States citizen
18 child living overseas with the child's family, at least one
19 of whom is in the United States armed services and who is
20 stationed overseas, is removed and placed in a state; and

21 (8) the sending of a child by a public child
22 placing agency or a private child placing agency for a visit
23 as defined by the rules of the interstate commission.

24 C. For purposes of determining the applicability
25 of this compact to the placement of a child with a family in

1 the armed services, the public child placing agency or
2 private child placing agency may choose the state of the
3 service member's permanent duty station or the service
4 member's declared legal residence.

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

16 ARTICLE 4. JURISDICTION

17 A. Except as provided in Section H of Article 4
18 and Paragraphs (2) and (3) of Section B of Article 5
19 concerning private and independent adoptions, and in
20 interstate placements in which the public child placing
21 agency is not a party to a custody proceeding, the sending
22 state shall retain jurisdiction over a child with respect to
23 all matters of custody and disposition of the child that it
24 would have had if the child had remained in the sending
25 state. Such jurisdiction shall also include the power to

1 order the return of the child to the sending state.

2 B. When an issue of child protection or custody is
3 brought before a court in the receiving state, the court
4 shall confer with the court of the sending state to determine
5 the most appropriate forum for adjudication.

6 C. In cases that are before courts and subject to
7 this compact, the taking of testimony for hearings before any
8 judicial officer may occur in person or by telephone, audio-
9 video conference or such other means as approved by the rules
10 of the interstate commission; and judicial officers may
11 communicate with other judicial officers and persons involved
12 in the interstate process as may be permitted by their canons
13 of judicial conduct and any rules promulgated by the
14 interstate commission.

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

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

22 (2) the child is adopted;

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

25 (4) the child achieves legal independence

1 pursuant to the laws of the sending state;

2 (5) a guardianship is created by a court in
3 the receiving state with the concurrence of the court in the
4 sending state;

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

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

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

14 F. Nothing in this article shall defeat a claim of
15 jurisdiction by a receiving state court sufficient to deal
16 with an act of truancy, delinquency, crime or behavior
17 involving a child as defined by the laws of the receiving
18 state committed by the child in the receiving state which
19 would be a violation of its laws.

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

23 H. The substantive laws of the state in which an
24 adoption will be finalized shall solely govern all issues
25 relating to the adoption of the child and the court in which

1 the adoption proceeding is filed shall have subject matter
2 jurisdiction regarding all substantive issues relating to the
3 adoption, except:

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

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

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

13 I. A final decree of adoption shall not be entered
14 in any jurisdiction until the placement is authorized as an
15 "approved placement" by the public child placing agency in
16 the receiving state.

17 ARTICLE 5. PLACEMENT EVALUATION

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

22 B. For placements by a private child placing
23 agency, a child may be sent or brought, or caused to be sent
24 or brought, into a receiving state, upon receipt and
25 immediate review of the required content in a request for

1 approval of a placement in both the sending and receiving
2 state public child placing agency. The required content to
3 accompany a request for approval shall include all of the
4 following:

5 (1) a request for approval identifying the
6 child, the birth parent(s), the prospective adoptive
7 parent(s) and the supervising agency, signed by the person
8 requesting approval;

9 (2) the appropriate consents or
10 relinquishments signed by the birth parents in accordance
11 with the laws of the sending state, or where permitted by the
12 laws of the state where the adoption will be finalized;

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

19 (4) a home study; and

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

22 C. The sending state and the receiving state may
23 request additional information or documents prior to
24 finalization of an approved placement, but they may not delay
25 travel by the prospective adoptive parents with the child if

1 the required content for approval has been submitted,
2 received and reviewed by the public child placing agency in
3 both the sending state and the receiving state.

4 D. Approval from the public child placing agency
5 in the receiving state for a provisional or approved
6 placement is required as provided for in the rules of the
7 interstate commission.

8 E. The procedures for making and the request for
9 an assessment shall contain all information and be in a form
10 as provided for in the rules of the interstate commission.

11 F. Upon receipt of a request from the public child
12 placing agency of the sending state, the receiving state
13 shall initiate an assessment of the proposed placement to
14 determine its safety and suitability. If the proposed
15 placement is a placement with a relative, the public child
16 placing agency of the sending state may request a
17 determination for a provisional placement.

18 G. The public child placing agency in the
19 receiving state may request from the public child placing
20 agency or the private child placing agency in the sending
21 state, and shall be entitled to receive, supporting or
22 additional information necessary to complete the assessment
23 or approve the placement.

24 H. The public child placing agency in the
25 receiving state shall approve a provisional placement and

1 complete or arrange for the completion of the assessment
2 within the time frames established by the rules of the
3 interstate commission.

4 I. For a placement by a private child placing
5 agency, the sending state shall not impose any additional
6 requirements to complete the home study that are not required
7 by the receiving state, unless the adoption is finalized in
8 the sending state.

9 J. The interstate commission may develop uniform
10 standards for the assessment of the safety and suitability of
11 interstate placements.

12 ARTICLE 6. PLACEMENT AUTHORITY

13 A. Except as otherwise provided in this compact,
14 no child subject to this compact shall be placed into a
15 receiving state until approval for such placement is
16 obtained.

17 B. If the public child placing agency in the
18 receiving state does not approve the proposed placement, then
19 the child shall not be placed. The receiving state shall
20 provide written documentation of any such determination in
21 accordance with the rules promulgated by the interstate
22 commission. Such determination is not subject to judicial
23 review in the sending state.

24 C. If the proposed placement is not approved, any
25 interested party shall have standing to seek an

1 administrative review of the receiving state's determination;

2 (1) the administrative review and any
3 further judicial review associated with the determination
4 shall be conducted in the receiving state pursuant to its
5 applicable administrative procedures act; and

6 (2) if a determination not to approve the
7 placement of the child in the receiving state is overturned
8 upon review, the placement shall be deemed approved;
9 provided, however, that all administrative or judicial
10 remedies have been exhausted or the time for such remedies
11 has passed.

12 ARTICLE 7. PLACING AGENCY RESPONSIBILITY

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

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

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

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

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

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

3 (b) supervision conducted by the
4 receiving state at the level necessary to support the
5 placement as agreed upon by the public child placing agencies
6 of the receiving and sending state; and

7 (3) nothing in this provision shall prohibit
8 public child placing agencies in the sending state from
9 entering into agreements with licensed agencies or persons in
10 the receiving state to conduct assessments and provide
11 supervision.

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

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

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

20 C. The public child placing agency in the
21 receiving state shall provide timely assessments, as provided
22 for in the rules of the interstate commission.

23 D. The public child placing agency in the
24 receiving state shall provide, or arrange for the provision
25 of, supervision and services for the child, including timely

1 reports, during the period of the placement.

2 E. Nothing in this compact shall be construed as
3 to limit the authority of the public child placing agency in
4 the receiving state from contracting with a licensed agency
5 or person in the receiving state for an assessment or the
6 provision of supervision or services for the child or
7 otherwise authorizing the provision of supervision or
8 services by a licensed agency during the period of placement.

9 F. Each member state shall provide for
10 coordination among its branches of government concerning the
11 state's participation in, and compliance with, the compact
12 and interstate commission activities through the creation of
13 an advisory council or use of an existing body or board.

14 G. Each member state shall establish a central
15 state compact office that shall be responsible for state
16 compliance with the compact and the rules of the interstate
17 commission.

18 H. The public child placing agency in the sending
19 state shall oversee compliance with the provisions of the
20 federal Indian Child Welfare Act (25 U.S.C. Section 1901, et
21 seq.) for placements subject to the provisions of this
22 compact, prior to placement.

23 I. With the consent of the interstate commission,
24 states may enter into limited agreements that facilitate the
25 timely assessment and provision of services and supervision

1 of placements under this compact.

2 ARTICLE 8. INTERSTATE COMMISSION FOR THE PLACEMENT OF
3 CHILDREN

4 The member states hereby establish, by way of this
5 compact, a commission known as the "interstate commission for
6 the placement of children". The activities of the interstate
7 commission are the formation of public policy and are a
8 discretionary state function. The interstate commission
9 shall:

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

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

21 (1) each member state represented at a
22 meeting of the interstate commission is entitled to one vote;

23 (2) a majority of the member states shall
24 constitute a quorum for the transaction of business, unless a
25 larger quorum is required by the bylaws of the interstate

1 commission;

2 (3) a representative shall not delegate a
3 vote to another member state; and

4 (4) a representative may delegate voting
5 authority to another person from the representative's state
6 for a specified meeting;

7 C. in addition to the commissioners of each member
8 state, the interstate commission shall include persons who
9 are members of interested organizations as defined in the
10 bylaws or rules of the interstate commission. Such members
11 shall be ex officio and shall not be entitled to vote on any
12 matter before the interstate commission; and

13 D. establish an executive committee that shall
14 have the authority to administer the day-to-day operations
15 and administration of the interstate commission. The
16 executive committee shall not have the power to engage in
17 rulemaking.

18 ARTICLE 9. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

19 The interstate commission shall have the following
20 powers:

21 A. to promulgate rules and take all necessary
22 actions to effect the goals, purposes and obligations as
23 enumerated in this compact;

24 B. to provide for dispute resolution among member
25 states;

1 C. to issue, upon request of a member state,
2 advisory opinions concerning the meaning or interpretation of
3 the Revised Interstate Compact on the Placement of Children
4 or the commission's bylaws, rules or actions;

5 D. to enforce compliance with this compact or the
6 bylaws or rules of the interstate commission pursuant to
7 Article 12;

8 E. collect standardized data concerning the
9 interstate placement of children subject to this compact as
10 directed through its rules, which shall specify the data to
11 be collected, the means of collection and data exchange and
12 reporting requirements;

13 F. to establish and maintain offices as may be
14 necessary for the transacting of its business;

15 G. to purchase and maintain insurance and bonds;

16 H. to hire or contract for services of personnel
17 or consultants as necessary to carry out its functions under
18 this compact and establish personnel qualification policies
19 and rates of compensation;

20 I. to establish and appoint committees and
21 officers, including an executive committee as required by
22 Article 10;

23 J. to accept any and all donations and grants of
24 money, equipment, supplies, materials and services, and to
25 receive, utilize and dispose thereof;

1 K. to lease, purchase, accept contributions or
2 donations of, or otherwise to own, hold, improve or use any
3 property, real, personal or mixed;

4 L. to sell, convey, mortgage, pledge, lease,
5 exchange, abandon or otherwise dispose of any property, real,
6 personal or mixed;

7 M. to establish a budget and make expenditures;

8 N. to adopt a seal and bylaws governing the
9 management and operation of the interstate commission;

10 O. to report annually to the legislatures,
11 governors, the judiciary and state advisory councils of the
12 member states concerning the activities of the interstate
13 commission during the preceding year. Such reports shall
14 also include any recommendations that may have been adopted
15 by the interstate commission;

16 P. to coordinate and provide education, training
17 and public awareness regarding the interstate movement of
18 children for officials involved in such activity;

19 Q. to maintain books and records in accordance
20 with the bylaws of the interstate commission; and

21 R. to perform such functions as may be necessary
22 or appropriate to achieve the purposes of this compact.

23 ARTICLE 10. ORGANIZATION AND OPERATION OF THE INTERSTATE
24 COMMISSION

25 A. Bylaws:

1 (1) within twelve months after the first
2 interstate commission meeting, the interstate commission
3 shall adopt bylaws to govern its conduct as may be necessary
4 or appropriate to carry out the purposes of this compact; and

5 (2) the interstate commission's bylaws and
6 rules shall establish conditions and procedures under which
7 the interstate commission shall make its information and
8 official records available to the public for inspection or
9 copying. The interstate commission may exempt from
10 disclosure information or official records to the extent they
11 would adversely affect personal privacy rights or proprietary
12 interests.

13 B. Meetings:

14 (1) the interstate commission shall meet at
15 least once each calendar year. The chairperson may call
16 additional meetings and, upon the request of a simple
17 majority of the member states, shall call additional
18 meetings;

19 (2) public notice shall be given by the
20 interstate commission of all meetings and all meetings shall
21 be open to the public, except as set forth in the rules or as
22 otherwise provided in this compact. The interstate
23 commission and its committees may close a meeting, or portion
24 thereof, where it determines by a two-thirds' vote that an
25 open meeting would be likely to:

1 (a) relate solely to the interstate
2 commission's internal personnel practices and procedures;

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

5 (c) disclose financial or commercial
6 information that is privileged, proprietary or confidential
7 in nature;

8 (d) involve accusing a person of a
9 crime or formally censuring a person;

10 (e) disclose information of a personal
11 nature when disclosure would constitute a clearly unwarranted
12 invasion of personal privacy or physically endanger one or
13 more persons;

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

16 (g) specifically relate to the
17 interstate commission's participation in a civil action or
18 other legal proceeding;

19 (3) for a meeting, or portion of a meeting,
20 closed pursuant to this provision, the interstate
21 commission's legal counsel or designee shall certify that the
22 meeting may be closed and shall reference each relevant
23 exemption provision. The interstate commission shall keep
24 minutes that shall fully and clearly describe all matters
25 discussed in a meeting and shall provide a full and accurate

1 summary of actions taken, and the reasons therefore,
2 including a description of the views expressed and the record
3 of a roll call vote. All documents considered in connection
4 with an action shall be identified in such minutes. All
5 minutes and documents of a closed meeting shall remain under
6 seal, subject to release by a majority vote of the interstate
7 commission or by court order; and

8 (4) the bylaws may provide for meetings of
9 the interstate commission to be conducted by
10 telecommunication or other electronic communication.

11 C. Officers and Staff:

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

20 (2) the interstate commission shall elect,
21 from among its members, a chairperson and a vice chairperson
22 of the executive committee and other necessary officers, each
23 of whom shall have such authority and duties as may be
24 specified in the bylaws.

25 D. Qualified Immunity, Defense and

1 Indemnification:

2 (1) the interstate commission's staff
3 director and its employees shall be immune from suit and
4 liability, either personally or in their official capacity,
5 for a claim for damage to or loss of property or personal
6 injury or other civil liability caused or arising out of or
7 relating to an actual or alleged act, error or omission that
8 occurred, or that a person had a reasonable basis for
9 believing occurred within the scope of commission employment,
10 duties or responsibilities; provided that such person shall
11 not be protected from suit or liability for damage, loss,
12 injury or liability caused by a criminal act or the
13 intentional or willful and wanton misconduct of such person;

14 (a) the liability of the interstate
15 commission's staff director and employees or interstate
16 commission representatives, acting within the scope of the
17 person's employment or duties for acts, errors or omissions
18 occurring within the person's state may not exceed the limits
19 of liability set forth under the constitution and laws of
20 that state for state officials, employees and agents. The
21 interstate commission is considered to be an instrumentality
22 of the states for the purposes of any such action. Nothing
23 in this subparagraph shall be construed to protect such
24 person from suit or liability for damage, loss, injury or
25 liability caused by a criminal act or the intentional or

1 willful and wanton misconduct of such person;

2 (b) the interstate commission shall
3 defend the staff director and its employees and, subject to
4 the approval of the attorney general or other appropriate
5 legal counsel of the member state, shall defend the
6 commissioner of a member state in a civil action seeking to
7 impose liability arising out of an actual or alleged act,
8 error or omission that occurred within the scope of
9 interstate commission employment, duties or responsibilities,
10 or that the defendant had a reasonable basis for believing
11 occurred within the scope of interstate commission
12 employment, duties or responsibilities; provided that the
13 actual or alleged act, error or omission did not result from
14 intentional or willful and wanton misconduct on the part of
15 the person; and

16 (c) to the extent not covered by the
17 state involved, member state or the interstate commission,
18 the representatives or employees of the interstate commission
19 shall be held harmless in the amount of a settlement or
20 judgment, including attorney fees and costs, obtained against
21 such persons arising out of an actual or alleged act, error
22 or omission that occurred within the scope of interstate
23 commission employment, duties or responsibilities, or that
24 such persons had a reasonable basis for believing occurred
25 within the scope of interstate commission employment, duties

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

4 ARTICLE 11. RULEMAKING FUNCTIONS OF THE INTERSTATE
5 COMMISSION

6 A. The interstate commission shall promulgate and
7 publish rules in order to effectively and efficiently achieve
8 the purposes of this compact.

9 B. Rulemaking shall occur pursuant to the criteria
10 set forth in this article and the bylaws and rules adopted
11 pursuant thereto. Such rulemaking shall substantially
12 conform to the principles of the "Model State Administrative
13 Procedures Act," 1981 Act, Uniform Laws Annotated, Vol.215,
14 p.1 (2000), or other administrative procedure acts that the
15 interstate commission deems appropriate and consistent with
16 due process requirements under the United States constitution
17 as now or hereafter interpreted by the United States supreme
18 court. All rules and amendments shall become binding as of
19 the date specified, as published with the final version of
20 the rule as approved by the interstate commission.

21 C. When promulgating a rule, the interstate
22 commission shall, at a minimum:

23 (1) publish the proposed rule's entire text
24 stating the reason(s) for that proposed rule;

25 (2) allow and invite any and all persons to

1 submit written data, facts, opinions and arguments, which
2 information shall be added to the record, and be made
3 publicly available; and

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

7 D. Rules promulgated by the interstate commission
8 shall have the force and effect of administrative rules and
9 shall be binding in the compacting states to the extent and
10 in the manner provided for in this compact.

11 E. Not later than sixty days after a rule is
12 promulgated, an interested person may file a petition in the
13 United States district court for the District of Columbia or
14 in the federal district court where the interstate
15 commission's principal office is located for judicial review
16 of such rule. If the court finds that the interstate
17 commission's action is not supported by substantial evidence
18 in the rulemaking record, the court shall hold the rule
19 unlawful and set it aside.

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

25 G. The existing rules governing the operation of

1 the Revised Interstate Compact on the Placement of Children
2 superseded by this act shall be null and void no less than
3 twelve, but no more than twenty-four months after the first
4 meeting of the interstate commission created hereunder, as
5 determined by the members during the first meeting.

6 H. Within the first twelve months of operation,
7 the interstate commission shall promulgate rules addressing
8 the following:

- 9 (1) transition rules;
- 10 (2) forms and procedures;
- 11 (3) time lines;
- 12 (4) data collection and reporting;
- 13 (5) rulemaking;
- 14 (6) visitation;
- 15 (7) progress reports and supervision;
- 16 (8) sharing of information and
17 confidentiality;
- 18 (9) financing of the interstate commission;
- 19 (10) mediation, arbitration and dispute
20 resolution;
- 21 (11) education, training and technical
22 assistance;
- 23 (12) enforcement; and
- 24 (13) coordination with other interstate
25 compacts.

1 I. Upon determination by a majority of the members
2 of the interstate commission that an emergency exists:

3 (1) the interstate commission may promulgate
4 an emergency rule only if it is required to:

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

8 (b) prevent loss of federal or state
9 funds; or

10 (c) meet a deadline for the
11 promulgation of an administrative rule required by federal
12 law;

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

19 (3) an emergency rule shall be promulgated
20 as provided for in the rules of the interstate commission.

21 ARTICLE 12. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

22 A. Oversight:

23 (1) the interstate commission shall oversee
24 the administration and operation of this compact;

25 (2) the executive, legislative and judicial

1 branches of state government in each member state shall
2 enforce this compact and the rules of the interstate
3 commission and shall take all actions necessary and
4 appropriate to effectuate this compact's purposes and intent.
5 This compact and its rules shall be binding in the compacting
6 states to the extent and in the manner provided for in this
7 compact;

8 (3) all courts shall take judicial notice of
9 this compact and the rules in any judicial or administrative
10 proceeding in a member state pertaining to the subject matter
11 of this compact; and

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

22 B. Dispute Resolution:

23 (1) the interstate commission shall attempt,
24 upon the request of a member state, to resolve disputes that
25 are subject to the compact and that may arise among member

1 states and between member and non-member states; and

2 (2) the interstate commission shall
3 promulgate a rule providing for both mediation and binding
4 dispute resolution for disputes among compacting states. The
5 costs of such mediation or dispute resolution shall be the
6 responsibility of the parties to the dispute.

7 C. Enforcement:

8 (1) if the interstate commission determines
9 that a member state has defaulted in the performance of its
10 obligations or responsibilities under this compact, its by
11 laws or rules, the interstate commission may:

12 (a) provide remedial training and
13 specific technical assistance;

14 (b) provide written notice to the
15 defaulting state and other member states, of the nature of
16 the default and the means of curing the default. The
17 interstate commission shall specify the conditions by which
18 the defaulting state must cure its default;

19 (c) by majority vote of the members,
20 initiate against a defaulting member state legal action in
21 the United States district court for the District of Columbia
22 or, at the discretion of the interstate commission, in the
23 federal district where the interstate commission has its
24 principal office, to enforce compliance with the provisions
25 of this compact, its bylaws or rules. The relief sought may

1 include both injunctive relief and damages. In the event
2 judicial enforcement is necessary, the prevailing party shall
3 be awarded all costs of such litigation, including reasonable
4 attorney fees; or

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

8 ARTICLE 13. FINANCING OF THE COMMISSION

9 A. The interstate commission shall pay, or provide
10 for the payment of the reasonable expenses of its
11 establishment, organization and ongoing activities.

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

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

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

10 ARTICLE 14. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

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

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

25 C. The interstate commission may propose

1 amendments to this compact for enactment by the member
2 states. No amendment shall become effective and binding on
3 the member states unless and until it is enacted into law by
4 unanimous consent of the member states.

5 ARTICLE 15. WITHDRAWAL AND DISSOLUTION

6 A. Withdrawal:

7 (1) once effective, the compact shall
8 continue in force and remain binding upon each and every
9 member state; provided that a member state may withdraw from
10 the compact specifically repealing the statute that enacted
11 the compact into law;

12 (2) withdrawal from this compact shall be by
13 the enactment of a statute repealing the same. The effective
14 date of withdrawal shall be the effective date of the repeal
15 of the statute;

16 (3) the withdrawing state shall immediately
17 notify the president of the interstate commission in writing
18 upon the introduction of legislation repealing this compact
19 in the withdrawing state. The interstate commission shall
20 then notify the other member states of the withdrawing
21 state's intent to withdraw;

22 (4) the withdrawing state is responsible for
23 all assessments, obligations and liabilities incurred through
24 the effective date of withdrawal; and

25 (5) reinstatement following withdrawal of a

1 member state shall occur upon the withdrawing state
2 reenacting the compact or upon such later date as determined
3 by the members of the interstate commission.

4 B. Dissolution of Compact:

5 (1) this compact shall dissolve effective
6 upon the date of the withdrawal or default of the member
7 state that reduces the membership in the compact to one
8 member state;

9 (2) upon the dissolution of this compact,
10 the compact becomes null and void and shall be of no further
11 force or effect, and the business and affairs of the
12 interstate commission shall be concluded and surplus funds
13 shall be distributed in accordance with the bylaws.

14 ARTICLE 16. SEVERABILITY AND CONSTRUCTION

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

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

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

24 ARTICLE 17. BINDING EFFECT OF COMPACT AND OTHER LAWS

25 A. Other Laws:

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

4 B. Binding Effect of the Compact:

5 (1) all lawful actions of the interstate
6 commission, including all rules and bylaws promulgated by the
7 interstate commission, are binding upon the member states;

8 (2) all agreements between the interstate
9 commission and the member states are binding in accordance
10 with their terms; and

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

16 ARTICLE 18. INDIAN NATIONS, TRIBES AND PUEBLOS

17 Notwithstanding any other provision in this compact, the
18 interstate commission may promulgate guidelines to permit
19 Indian nations, tribes and pueblos to utilize the compact to
20 achieve any or all of the purposes of the compact as
21 specified in Article 1. The interstate commission shall make
22 reasonable efforts to consult with Indian nations, tribes and
23 pueblos in promulgating guidelines to reflect the diverse
24 circumstances of the various Indian nations, tribes and
25 pueblos."

1 SECTION 2. Section 32A-11-2 NMSA 1978 (being Laws 1977,
2 Chapter 151, Section 2) is amended to read:

3 "32A-11-2. FINANCIAL RESPONSIBILITY--DEFAULT IN
4 COMPACT.--Financial responsibility for any child placed
5 pursuant to the provisions of the Revised Interstate Compact
6 on the Placement of Children shall be determined in
7 accordance with the provisions of Article 7 and Article 12 of
8 that compact in the first instance. However, in the event of
9 partial or complete default of performance under that
10 compact, the provisions of the New Mexico law fixing
11 responsibility for the support of children also may be
12 invoked."

13 SECTION 3. Section 32A-11-5 NMSA 1978 (being Laws 1977,
14 Chapter 151, Section 5, as amended) is amended to read:

15 "32A-11-5. FINANCIAL COMMITMENT--APPROVAL.--The
16 officers and agencies of the state and of its political
17 subdivisions having authority to place children are hereby
18 empowered to enter into agreements with appropriate officers
19 or agencies of or in other party states pursuant to Paragraph
20 (3) of Section A of Article 7 of the Revised Interstate
21 Compact on the Placement of Children. Any such agreement
22 that contains a financial commitment or imposes a financial
23 obligation on the state or political subdivision or agency
24 thereof shall not be binding unless it has the approval in
25 writing of the secretary of finance and administration and of

1 the chief local fiscal officer in the case of a political
2 subdivision of the state."

3 SECTION 4. Section 32A-11-6 NMSA 1978 (being Laws 1977,
4 Chapter 151, Section 6) is amended to read:

5 "32A-11-6. COURT JURISDICTION IN PLACEMENT OF
6 DELINQUENT CHILDREN.--Any court having jurisdiction to place
7 delinquent children may place such a child in an institution
8 in another state pursuant to Article 3 of the Revised
9 Interstate Compact on the Placement of Children and shall
10 retain jurisdiction as provided in Article 4 of that
11 compact."

12 SECTION 5. Section 32A-11-7 NMSA 1978 (being Laws 1977,
13 Chapter 151, Section 7) is amended to read:

14 "32A-11-7. GOVERNOR.--As used in Article 8 of the
15 Revised Interstate Compact on the Placement of Children, the
16 term "executive head" means the governor. The governor is
17 hereby authorized to appoint a compact administrator in
18 accordance with the terms of Article 8 of that compact."

19 SECTION 6. REPEAL.--Sections 32A-11-3 and 32A-11-4
20 NMSA 1978 (being Laws 1977, Chapter 151, Sections 3 and 4)
21 are repealed.

22 SECTION 7. CONTINGENT EFFECTIVE DATE.--The provisions
23 of this act shall become effective when the thirty-fifth state
24 has enacted the Revised Interstate Compact on the Placement of
25 Children as provided in Section B of Article 14 of the Revised

1 Interstate Compact on the Placement of Children. The
2 secretary of children, youth and families shall notify the
3 governor, the executive director of the New Mexico compilation
4 commission and the director of the legislative council service
5 when the thirty-fifth state has enacted. _____

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