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SENATE BILL 315

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Gerald Ortiz y Pino

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 Section 32A-11-1 NMSA 1978 (being Laws 1977, Chapter 151, Section 1) is repealed and a new Section 32A-11-1 NMSA 1978 is enacted to read: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

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

3 A. provide a process through which children subject to
4 this compact are placed in safe and suitable homes in a timely
5 manner;

6 B. facilitate ongoing supervision of a placement, the
7 delivery of services and communication between the states;

8 C. provide operating procedures that will ensure that
9 children are placed in safe and suitable homes in a timely
10 manner;

11 D. provide for the promulgation and enforcement of
12 administrative rules implementing the provisions of this
13 compact and regulating the covered activities of the member
14 states;

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

17 F. promote coordination between this compact, the
18 Interstate Compact for Juveniles, the Interstate Compact on
19 Adoption and Medical Assistance and other compacts affecting
20 the placement of and which provide services to children
21 otherwise subject to this compact;

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

25 H. provide for the promulgation of guidelines, in

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1 collaboration with Indian nations, tribes and pueblos, for
2 interstate cases involving Indian children as is or may be
3 permitted by federal law.

4 ARTICLE 2. DEFINITIONS

5 As used in this compact:

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

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

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

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

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

23 F. "home study" means an evaluation of a home environment
24 conducted in accordance with the applicable requirements of the
25 state in which the home is located, and documents the

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1 preparation and the suitability of the placement resource for
2 the placement of a child in accordance with the laws and
3 requirements of the state in which the home is located;

4 G. "Indian nations, tribes and pueblos" means any Indian
5 tribe, band, nation, pueblo or other organized group or
6 community of Indians recognized as eligible for services
7 provided to Indians by the United States secretary of the
8 interior because of their status as Indians, including any
9 Alaskan native village as defined in section 3 (c) of the
10 Alaska Native Claims Settlement Act at 43 U.S.C. Section
11 1602(c);

12 H. "interstate commission for the placement of children"
13 means the commission that is created under Article 8 of this
14 compact and that is generally referred to as the "interstate
15 commission";

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

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

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1 K. "member state" means a state that has enacted this
2 compact;

3 L. "noncustodial parent" means a person who, at the time
4 of the commencement of court proceedings in the sending state,
5 does not have sole legal custody of the child or has joint
6 legal custody of a child and who is not the subject of
7 allegations or findings of child abuse or neglect;

8 M. "nonmember state" means a state that has not enacted
9 this compact;

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

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

22 P. "private child placing agency" means any private
23 corporation, agency, foundation, institution or charitable
24 organization, or any private person or attorney that
25 facilitates, causes or is involved in the placement of a child

1 from one state to another and that is not an instrumentality of
2 the state or acting under color of state law;

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

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

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

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

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1 U. "residential facility" means a facility providing a
2 level of care that is sufficient to substitute for parental
3 responsibility or foster care, and is beyond what is needed for
4 assessment or treatment of an acute condition. For purposes of
5 the compact, "residential facilities" do not include
6 institutions primarily educational in character, hospitals or
7 other medical facilities;

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

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

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

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

25 Z. "state" means a state of the United States, the

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

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

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

12 ARTICLE 3. APPLICABILITY

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

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

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

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1 state if:

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

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

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

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

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

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

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

25 (4) the placement of a child, not subject to

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1 Section A of this article into a residential facility by the
2 child's parent;

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

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

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

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

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

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

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

25 C. For purposes of determining the applicability of this

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1 compact to the placement of a child with a family in the armed
2 services, the public child placing agency or private child
3 placing agency may choose the state of the service member's
4 permanent duty station or the service member's declared legal
5 residence.

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

17 ARTICLE 4. JURISDICTION

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

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1 also include the power to order the return of the child to the
2 sending state.

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

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

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

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

23 (2) the child is adopted;

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

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1 (4) the child achieves legal independence pursuant
2 to the laws of the sending state;

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

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

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

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

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

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

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

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

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

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

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

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

15 ARTICLE 5. PLACEMENT EVALUATION

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

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

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1 approval shall include all of the following:

2 (1) a request for approval identifying the child,
3 the birth parent(s), the prospective adoptive parent(s) and the
4 supervising agency, signed by the person requesting approval;

5 (2) the appropriate consents or relinquishments
6 signed by the birth parents in accordance with the laws of the
7 sending state, or where permitted by the laws of the state
8 where the adoption will be finalized;

9 (3) certification by a licensed attorney or
10 authorized agent of a private adoption agency that the consent
11 or relinquishment is in compliance with the applicable laws of
12 the sending state, or where permitted by the laws of the state
13 where finalization of the adoption will occur;

14 (4) a home study; and

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

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

24 D. Approval from the public child placing agency in the
25 receiving state for a provisional or approved placement is

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1 required as provided for in the rules of the interstate
2 commission.

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

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

13 G. The public child placing agency in the receiving state
14 may request from the public child placing agency or the private
15 child placing agency in the sending state, and shall be
16 entitled to receive, supporting or additional information
17 necessary to complete the assessment or approve the placement.

18 H. The public child placing agency in the receiving state
19 shall approve a provisional placement and complete or arrange
20 for the completion of the assessment within the time frames
21 established by the rules of the interstate commission.

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

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1 J. The interstate commission may develop uniform
2 standards for the assessment of the safety and suitability of
3 interstate placements.

4 ARTICLE 6. PLACEMENT AUTHORITY

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

8 B. If the public child placing agency in the receiving
9 state does not approve the proposed placement, then the child
10 shall not be placed. The receiving state shall provide written
11 documentation of any such determination in accordance with the
12 rules promulgated by the interstate commission. Such
13 determination is not subject to judicial review in the sending
14 state.

15 C. If the proposed placement is not approved, any
16 interested party shall have standing to seek an administrative
17 review of the receiving state's determination;

18 (1) the administrative review and any further
19 judicial review associated with the determination shall be
20 conducted in the receiving state pursuant to its applicable
21 administrative procedures act; and

22 (2) if a determination not to approve the placement
23 of the child in the receiving state is overturned upon review,
24 the placement shall be deemed approved; provided, however, that
25 all administrative or judicial remedies have been exhausted or

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1 the time for such remedies has passed.

2 ARTICLE 7. PLACING AGENCY RESPONSIBILITY

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

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

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

10 (b) as determined by the public child placing
11 agency in the sending state, services for the child beyond the
12 public services for which the child is eligible in the
13 receiving state;

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

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

18 (b) supervision conducted by the receiving
19 state at the level necessary to support the placement as agreed
20 upon by the public child placing agencies of the receiving and
21 sending state; and

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

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

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

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

9 C. The public child placing agency in the receiving state
10 shall provide timely assessments, as provided for in the rules
11 of the interstate commission.

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

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

23 F. Each member state shall provide for coordination among
24 its branches of government concerning the state's participation
25 in, and compliance with, the compact and interstate commission

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1 activities through the creation of an advisory council or use
2 of an existing body or board.

3 G. Each member state shall establish a central state
4 compact office that shall be responsible for state compliance
5 with the compact and the rules of the interstate commission.

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

11 I. With the consent of the interstate commission, states
12 may enter into limited agreements that facilitate the timely
13 assessment and provision of services and supervision of
14 placements under this compact.

15 ARTICLE 8. INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN

16 The member states hereby establish, by way of this
17 compact, a commission known as the "interstate commission for
18 the placement of children". The activities of the interstate
19 commission are the formation of public policy and are a
20 discretionary state function. The interstate commission shall:

21 A. be a joint commission of the member states and shall
22 have the responsibilities, powers and duties set forth herein,
23 and such additional powers as may be conferred upon it by
24 subsequent concurrent action of the respective legislatures of
25 the member states;

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1 B. consist of one commissioner from each member state who
2 shall be appointed by the executive head of the state human
3 services administration with ultimate responsibility for the
4 child welfare program. The appointed commissioner shall have
5 the legal authority to vote on policy related matters governed
6 by this compact binding the state;

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

9 (2) a majority of the member states shall
10 constitute a quorum for the transaction of business, unless a
11 larger quorum is required by the bylaws of the interstate
12 commission;

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

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

18 C. in addition to the commissioners of each member state,
19 the interstate commission shall include persons who are members
20 of interested organizations as defined in the bylaws or rules
21 of the interstate commission. Such members shall be ex officio
22 and shall not be entitled to vote on any matter before the
23 interstate commission; and

24 D. establish an executive committee that shall have the
25 authority to administer the day-to-day operations and

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1 administration of the interstate commission. The executive
2 committee shall not have the power to engage in rulemaking.

3 ARTICLE 9. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

4 The interstate commission shall have the following powers:

5 A. to promulgate rules and take all necessary actions to
6 effect the goals, purposes and obligations as enumerated in
7 this compact;

8 B. to provide for dispute resolution among member states;

9 C. to issue, upon request of a member state, advisory
10 opinions concerning the meaning or interpretation of the
11 Revised Interstate Compact on the Placement of Children or the
12 commission's bylaws, rules or actions;

13 D. to enforce compliance with this compact or the bylaws
14 or rules of the interstate commission pursuant to Article 12;

15 E. collect standardized data concerning the interstate
16 placement of children subject to this compact as directed
17 through its rules, which shall specify the data to be
18 collected, the means of collection and data exchange and
19 reporting requirements;

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

22 G. to purchase and maintain insurance and bonds;

23 H. to hire or contract for services of personnel or
24 consultants as necessary to carry out its functions under this
25 compact and establish personnel qualification policies and

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1 rates of compensation;

2 I. to establish and appoint committees and officers,
3 including an executive committee as required by Article 10;

4 J. to accept any and all donations and grants of money,
5 equipment, supplies, materials and services, and to receive,
6 utilize and dispose thereof;

7 K. to lease, purchase, accept contributions or donations
8 of, or otherwise to own, hold, improve or use any property,
9 real, personal or mixed;

10 L. to sell, convey, mortgage, pledge, lease, exchange,
11 abandon or otherwise dispose of any property, real, personal or
12 mixed;

13 M. to establish a budget and make expenditures;

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

16 O. to report annually to the legislatures, governors, the
17 judiciary and state advisory councils of the member states
18 concerning the activities of the interstate commission during
19 the preceding year. Such reports shall also include any
20 recommendations that may have been adopted by the interstate
21 commission;

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

25 Q. to maintain books and records in accordance with the

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1 bylaws of the interstate commission; and

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

4 ARTICLE 10. ORGANIZATION AND OPERATION OF THE INTERSTATE
5 COMMISSION

6 A. Bylaws:

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

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

18 B. Meetings:

19 (1) the interstate commission shall meet at least
20 once each calendar year. The chairperson may call additional
21 meetings and, upon the request of a simple majority of the
22 member states, shall call additional meetings;

23 (2) public notice shall be given by the interstate
24 commission of all meetings and all meetings shall be open to
25 the public, except as set forth in the rules or as otherwise

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1 provided in this compact. The interstate commission and its
2 committees may close a meeting, or portion thereof, where it
3 determines by a two-thirds' vote that an open meeting would be
4 likely to:

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

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

9 (c) disclose financial or commercial
10 information that is privileged, proprietary or confidential in
11 nature;

12 (d) involve accusing a person of a crime or
13 formally censuring a person;

14 (e) disclose information of a personal nature
15 when disclosure would constitute a clearly unwarranted invasion
16 of personal privacy or physically endanger one or more persons;

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

19 (g) specifically relate to the interstate
20 commission's participation in a civil action or other legal
21 proceeding;

22 (3) for a meeting, or portion of a meeting, closed
23 pursuant to this provision, the interstate commission's legal
24 counsel or designee shall certify that the meeting may be
25 closed and shall reference each relevant exemption provision.

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

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

13 C. Officers and Staff:

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

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

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1 bylaws.

2 D. Qualified Immunity, Defense and Indemnification:

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

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

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1 caused by a criminal act or the intentional or willful and
2 wanton misconduct of such person;

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

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

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1 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 COMMISSION

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

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

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

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

24 (2) allow and invite any and all persons to submit
25 written data, facts, opinions and arguments, which information

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1 shall be added to the record, and be made publicly available;
2 and

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

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

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

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

23 G. The existing rules governing the operation of the
24 Revised Interstate Compact on the Placement of Children superseded
25 by this act shall be null and void no less than twelve, but no

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1 more than twenty-four months after the first meeting of the
2 interstate commission created hereunder, as determined by the
3 members during the first meeting.

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

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

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

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

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

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

2 (c) meet a deadline for the promulgation of an
3 administrative rule required by federal law;

4 (2) an emergency rule shall become effective
5 immediately upon adoption; provided that the usual rulemaking
6 procedures provided hereunder shall be retroactively applied to
7 said rule as soon as reasonably possible, but no later than ninety
8 days after the effective date of the emergency rule; and

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

11 ARTICLE 12. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

12 A. Oversight:

13 (1) the interstate commission shall oversee the
14 administration and operation of this compact;

15 (2) the executive, legislative and judicial branches
16 of state government in each member state shall enforce this
17 compact and the rules of the interstate commission and shall take
18 all actions necessary and appropriate to effectuate this compact's
19 purposes and intent. This compact and its rules shall be binding
20 in the compacting states to the extent and in the manner provided
21 for in this compact;

22 (3) all courts shall take judicial notice of this
23 compact and the rules in any judicial or administrative proceeding
24 in a member state pertaining to the subject matter of this
25 compact; and

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1 (4) the interstate commission shall be entitled to
2 receive service of process in any action in which the validity of
3 a compact provision or rule is the issue for which a judicial
4 determination has been sought and shall have standing to intervene
5 in any proceedings. Failure to provide service of process to the
6 interstate commission shall render any judgment, order or other
7 determination, however so captioned or classified, void as to the
8 interstate commission, this compact, its bylaws or rules of the
9 interstate commission.

10 B. Dispute Resolution:

11 (1) the interstate commission shall attempt, upon the
12 request of a member state, to resolve disputes that are subject to
13 the compact and that may arise among member states and between
14 member and non-member states; and

15 (2) the interstate commission shall promulgate a rule
16 providing for both mediation and binding dispute resolution for
17 disputes among compacting states. The costs of such mediation or
18 dispute resolution shall be the responsibility of the parties to
19 the dispute.

20 C. Enforcement:

21 (1) if the interstate commission determines that a
22 member state has defaulted in the performance of its obligations
23 or responsibilities under this compact, its by laws or rules, the
24 interstate commission may:

25 (a) provide remedial training and specific

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1 technical assistance;

2 (b) provide written notice to the defaulting
3 state and other member states, of the nature of the default and
4 the means of curing the default. The interstate commission shall
5 specify the conditions by which the defaulting state must cure its
6 default;

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

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

19 ARTICLE 13. FINANCING OF THE COMMISSION

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

23 B. The interstate commission may levy on and collect an
24 annual assessment from each member state to cover the cost of the
25 operations and activities of the interstate commission and its

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1 staff, which must be in a total amount sufficient to cover the
2 interstate commission's annual budget as approved by its members
3 each year. The aggregate annual assessment amount shall be
4 allocated based upon a formula to be determined by the interstate
5 commission, which shall promulgate a rule binding upon all member
6 states.

7 C. The interstate commission shall not incur obligations of
8 any kind prior to securing the funds adequate to meet the same;
9 nor shall the interstate commission pledge the credit of any of
10 the member states, except by and with the authority of the member
11 states.

12 D. The interstate commission shall keep accurate accounts
13 of all receipts and disbursements. The receipts and disbursements
14 of the interstate commission shall be subject to the audit and
15 accounting procedures established under its bylaws. However, all
16 receipts and disbursements of funds handled by the interstate
17 commission shall be audited yearly by a certified or licensed
18 public accountant and the report of the audit shall be
19 included in and become part of the annual report of the interstate
20 commission.

21 ARTICLE 14. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

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

23 B. This compact shall become effective and binding upon
24 legislative enactment of the compact into law by no less than
25 thirty-five states. The effective date shall be the later of July

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1 1, 2007 or upon enactment of the compact into law by the thirty-
2 fifth state. Thereafter, it shall become effective and binding as
3 to any other member state upon enactment of the compact into law
4 by that state. The executive heads of the state human services
5 administration with ultimate responsibility for the child welfare
6 program of non-member states or their designees shall be invited
7 to participate in the activities of the interstate commission on a
8 non-voting basis prior to adoption of this compact by all states.

9 C. The interstate commission may propose amendments to this
10 compact for enactment by the member states. No amendment shall
11 become effective and binding on the member states unless and until
12 it is enacted into law by unanimous consent of the member states.

13 ARTICLE 15. WITHDRAWAL AND DISSOLUTION

14 A. Withdrawal:

15 (1) once effective, the compact shall continue in
16 force and remain binding upon each and every member state;
17 provided that a member state may withdraw from the compact
18 specifically repealing the statute that enacted the compact into
19 law;

20 (2) withdrawal from this compact shall be by the
21 enactment of a statute repealing the same. The effective date of
22 withdrawal shall be the effective date of the repeal of the
23 statute;

24 (3) the withdrawing state shall immediately notify the
25 president of the interstate commission in writing upon the

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1 introduction of legislation repealing this compact in the
2 withdrawing state. The interstate commission shall then notify
3 the other member states of the withdrawing state's intent to
4 withdraw;

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

8 (5) reinstatement following withdrawal of a member
9 state shall occur upon the withdrawing state reenacting the
10 compact or upon such later date as determined by the members of
11 the interstate commission.

12 B. Dissolution of Compact:

13 (1) this compact shall dissolve effective upon the
14 date of the withdrawal or default of the member state that reduces
15 the membership in the compact to one member state;

16 (2) upon the dissolution of this compact, the compact
17 becomes null and void and shall be of no further force or effect,
18 and the business and affairs of the interstate commission shall be
19 concluded and surplus funds shall be distributed in accordance
20 with the bylaws.

21 ARTICLE 16. SEVERABILITY AND CONSTRUCTION

22 A. The provisions of this compact shall be severable, and
23 if any phrase, clause, sentence or provision is deemed
24 unenforceable, the remaining provisions of the compact shall be
25 enforceable.

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1 B. The provisions of this compact shall be liberally
2 construed to effectuate its purposes.

3 C. Nothing in this compact shall be construed to prohibit
4 the concurrent applicability of other interstate compacts to which
5 the states are members.

6 ARTICLE 17. BINDING EFFECT OF COMPACT AND OTHER LAWS

7 A. Other Laws:

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

11 B. Binding Effect of the Compact:

12 (1) all lawful actions of the interstate commission,
13 including all rules and bylaws promulgated by the interstate
14 commission, are binding upon the member states;

15 (2) all agreements between the interstate commission
16 and the member states are binding in accordance with their terms;
17 and

18 (3) in the event any provision of this compact exceeds
19 the constitutional limits imposed on the legislature of any member
20 state, such provision shall be ineffective to the extent of the
21 conflict with the constitutional provision in question in that
22 member state.

23 ARTICLE 18. INDIAN NATIONS, TRIBES AND PUEBLOS

24 Notwithstanding any other provision in this compact, the
25 interstate commission may promulgate guidelines to permit Indian

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1 nations, tribes and pueblos to utilize the compact to achieve any
2 or all of the purposes of the compact as specified in Article 1.
3 The interstate commission shall make reasonable efforts to consult
4 with Indian nations, tribes and pueblos in promulgating guidelines
5 to reflect the diverse circumstances of the various Indian
6 nations, tribes and pueblos."

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

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

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

20 "32A-11-5. FINANCIAL COMMITMENT--APPROVAL.--The officers
21 and agencies of the state and of its political subdivisions having
22 authority to place children are hereby empowered to enter into
23 agreements with appropriate officers or agencies of or in other
24 party states pursuant to Paragraph [~~B of Article 5~~] (3) of Section
25 A of Article 7 of the Revised Interstate Compact on the Placement

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1 of Children. Any such agreement [~~which~~] that contains a financial
2 commitment or imposes a financial obligation on the state or
3 political subdivision or agency thereof shall not be binding
4 unless it has the approval in writing of the secretary of finance
5 and administration and of the chief local fiscal officer in the
6 case of a political subdivision of the state."

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

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

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

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

22 SECTION 6. REPEAL.--Sections 32A-11-3 and 32A-11-4 NMSA
23 1978 (being Laws 1977, Chapter 151, Sections 3 and 4) are
24 repealed.

25 SECTION 7. CONTINGENT EFFECTIVE DATE.--The provisions of
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1 this act shall become effective when the thirty-fifth state has
2 enacted the Revised Interstate Compact on the Placement of
3 Children as provided in Section B of Article 14 of the Revised
4 Interstate Compact on the Placement of Children. The secretary of
5 children, youth and families shall notify the governor, the
6 executive director of the New Mexico compilation commission and
7 the director of the legislative council service when the
8 thirty-fifth state has enacted the Revised Interstate Compact on
9 the Placement of Children.