

## HOUSE BILL No. 2557

By Committee on Child Welfare and Foster Care

Requested by Rebecca Gerhardt on behalf of the Kansas Department for Children and Families

1-27

1 AN ACT concerning children and minors; relating to the adoption and  
2 placement of a child among states; enacting the interstate compact for  
3 the placement of children; declaring legislative findings for the  
4 enactment of the compact; authorizing the administration and  
5 implementation of such compact; allowing for supplementary or  
6 financial agreements; requiring compliance with the compact and  
7 imposing a penalty for noncompliance; repealing K.S.A. 38-1201, 38-  
8 1202, 38-1203, 38-1204, 38-1205 and 38-1206.  
9

10 *Be it enacted by the Legislature of the State of Kansas:*

11 Section 1. (a) It is hereby found and declared:

12 (1) That finding suitable homes for children who have lost or never  
13 had homes requires the full attention and resources of the state of Kansas;  
14 (2) that the needs of children and adults cannot be met by restricting  
15 child placement services and supervision to the state of Kansas;

16 (3) that would-be parents and children have a need for love, security  
17 and fulfillment that can be met only when children in need of placement  
18 are matched with adults who can care for them; and

19 (4) a variety of circumstances makes interstate placements of children  
20 essential and offers compelling reasons for an interstate compact under  
21 which the jurisdictional, administrative and human rights and obligations  
22 involved can be protected.

23 (b) It shall be the policy of this state, in adopting the interstate  
24 compact for the placement of children, to cooperate fully with other states  
25 in providing that no children shall be sent or brought into any other party  
26 state for placement in foster care or as a preliminary to a possible adoption  
27 unless the sending state complies with each and every requirement in this  
28 interstate compact.

29 Sec. 2. INTERSTATE COMPACT FOR THE PLACEMENT OF  
30 CHILDREN

31 The contracting states solemnly agree that:

32 ARTICLE I. Purpose and Policy.

33 The purpose of this interstate compact for the placement of children is  
34 to:

- 1       (a) Provide a process through which children subject to this compact  
2 are placed in safe and suitable homes in a timely manner.
- 3       (b) Facilitate ongoing supervision of a placement, the delivery of  
4 services and communication between the states.
- 5       (c) Provide operating procedures that will ensure that children are  
6 placed in safe and suitable homes in a timely manner.
- 7       (d) Provide for the promulgation and enforcement of administrative  
8 rules implementing the provisions of this compact and regulating the  
9 covered activities of the member states.
- 10      (e) Provide for uniform data collection and information sharing  
11 between member states under this compact.
- 12      (f) Promote coordination between this compact, the interstate  
13 compact for juveniles, the interstate compact on adoption and medical  
14 assistance and other compacts affecting the placement of and that provide  
15 services to children otherwise subject to this compact.
- 16      (g) Provide for a state's continuing legal jurisdiction and  
17 responsibility for placement and care of a child that it would have had if  
18 the placement were intrastate.
- 19      (h) Provide for the promulgation of guidelines, in collaboration with  
20 Indian tribes, for interstate cases involving Indian children as is or may be  
21 permitted by federal law.

## 22                   ARTICLE II. Definitions.

23                   As used in this compact:

- 24       (a) "Approved placement" means the public child placing agency in  
25 the receiving state that has determined that the placement is both safe and  
26 suitable for the child.
- 27       (b) "Assessment" means an evaluation of a prospective placement by  
28 a public child placing agency in the receiving state to determine if the  
29 placement meets the individualized needs of the child, including, but not  
30 limited to, the child's safety and stability, health and well-being and  
31 mental, emotional and physical development. An assessment is only  
32 applicable to a placement by a public child placing agency.
- 33       (c) "Child" means an individual who has not attained the age of 18.
- 34       (d) "Certification" means to attest, declare or swear to before a judge  
35 or notary public.
- 36       (e) "Default" means the failure of a member state to perform the  
37 obligations or responsibilities imposed upon it by this compact, the bylaws  
38 or rules of the interstate commission.
- 39       (f) "Home study" means an evaluation of a home environment  
40 conducted in accordance with the applicable requirements of the state  
41 where the home is located, and documents the preparation and the  
42 suitability of the placement resource for placement of a child in  
43 accordance with the laws and requirements of the state where the home is

1 located.

2 (g) "Indian tribe" means any Indian tribe, band, nation or other  
3 organized group or community of Indians recognized as eligible for  
4 services provided to Indians by the U.S. secretary of the interior because  
5 of their status as Indians, including any Alaskan native village as defined  
6 in section 3(c) of the Alaska native claims settlement act, 43 U.S.C.  
7 §1602(c).

8 (h) "Interstate commission for the placement of children" means the  
9 commission that is created under article VIII of this compact and is  
10 generally referred to as the interstate commission.

11 (i) "Jurisdiction" means the power and authority of a court to hear and  
12 decide matters.

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

20 (k) "Member state" means a state that has enacted this compact.

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

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

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

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

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

43 (q) "Provisional placement" means a determination made by the

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

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

13 (s) "Receiving state" means the state to where a child is sent, brought  
14 or caused to be sent or brought.

15 (t) "Relative" means someone who is related to the child as a parent,  
16 stepparent, sibling by half or whole blood or by adoption, grandparent,  
17 aunt, uncle or first cousin or a nonrelative with such significant ties to the  
18 child that they may be regarded as relatives as determined by the court in  
19 the sending state.

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

26 (v) "Rule" means a written directive, mandate, standard or principle  
27 issued by the interstate commission promulgated pursuant to article XI of  
28 this compact that is of general applicability and that implements, interprets  
29 or prescribes a policy or provision of the compact. "Rule" has the force  
30 and effect of an administrative rule in a member state, and includes the  
31 amendment, repeal or suspension of an existing rule.

32 (w) "Sending state" means the state from where the placement of a  
33 child is initiated.

34 (x) "Service member's permanent duty station" means the military  
35 installation where an active duty armed services member is currently  
36 assigned and is physically located under competent orders that do not  
37 specify the duty as temporary.

38 (y) "Service member's state of legal residence" means the state where  
39 the active duty armed services member is considered a resident for tax and  
40 voting purposes.

41 (z) "State" means a state of the United States, the District of  
42 Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa,  
43 the Northern Marianas Islands and any other territory of the United States.

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

5 (bb) "Supervision" means monitoring provided by the receiving state  
6 once a child has been placed in a receiving state pursuant to this compact.

### ARTICLE III. Applicability.

8 (a) Except as otherwise provided in subsection (b) of article III, this  
9 compact shall apply to:

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

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

19 (A) The child is being placed in a residential facility in another  
20 member state and is not covered under another compact; or

21 (B) the child is being placed in another member state and the  
22 determination of safety and suitability of the placement and services  
23 required is not provided through another compact.

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

27 (b) The provisions of this compact shall not apply to:

28       (1) The interstate placement of a child in a custody proceeding when  
29 a public child placing agency is not a party, provided that the placement is  
30 not intended to effectuate an adoption.

31       (2) The interstate placement of a child with a nonrelative in a  
32 receiving state by a parent with the legal authority to make such a  
33 placement provided, however, that the placement is not intended to  
34 effectuate an adoption.

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

38 (4) The placement of a child, not subject to subsection (a) of article  
39 III, into a residential facility by their parent.

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

41 (A) The noncustodial parent proves to the satisfaction  
42 the sending state a substantial relationship with the child; and

43 (B) the court in the sending state makes a written finding that

1 placement with the noncustodial parent is in the best interests of the child;  
2 and

3 (C) the court in the sending state dismisses its jurisdiction in  
4 interstate placements when the public child placing agency is a party to the  
5 proceeding.

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

9 (7) Cases when a U.S. citizen child living overseas with their family,  
10 at least one of whom is in the U.S. armed services, and who is stationed  
11 overseas, is removed and placed in a state.

12 (8) The sending of a child by a public child placing agency or a  
13 private child placing agency for a visit as defined by the rules of the  
14 interstate commission.

15 (c) For purposes of determining the applicability of this compact to  
16 the placement of a child with a family in the armed services, the public  
17 child placing agency or private child placing agency may choose the state  
18 of the service member's permanent duty station or the service member's  
19 declared legal residence.

20 (d) Nothing in this compact shall be construed to prohibit the  
21 concurrent application of the provisions of this compact with other  
22 applicable interstate compacts including the interstate compact for  
23 juveniles and the interstate compact on adoption and medical assistance.  
24 The interstate commission may, in cooperation with other interstate  
25 compact commissions having responsibility for the interstate movement,  
26 placement or transfer of children, promulgate like rules to ensure the  
27 coordination of services, timely placement of children and the reduction of  
28 unnecessary or duplicative administrative or procedural requirements.

#### 29 ARTICLE IV. Jurisdiction.

30 (a) Except as provided in subsection (h) of article IV and subsection  
31 (b)(2) and (b)(3) of article V concerning private and independent  
32 adoptions, and in interstate placements when the public child placing  
33 agency is not a party to a custody proceeding, the sending state shall retain  
34 jurisdiction over a child with respect to all matters of custody and  
35 disposition of the child that it would have had if the child had remained in  
36 the sending state. Such jurisdiction shall also include the power to order  
37 the return of the child to the sending state.

38 (b) When an issue of child protection or custody is brought before a  
39 court in the receiving state, such court shall confer with the court of the  
40 sending state to determine the most appropriate forum for adjudication.

41 (c) In cases that are before courts and subject to this compact, the  
42 taking of testimony for hearings before any judicial officer may occur in  
43 person or by telephone, audio-video conference or such other means as

1 approved by the rules of the interstate commission and judicial officers  
2 may communicate with other judicial officers and persons involved in the  
3 interstate process as may be permitted by their canons of judicial conduct  
4 and any rules promulgated by the interstate commission.

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

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

10 (2) the child is adopted;

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

13 (4) the child achieves legal independence pursuant to the laws of the  
14 sending state;

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

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

19 (7) the public child placing agency of the sending state requests  
20 termination and has obtained the concurrence of the public child placing  
21 agency in the receiving state.

22 (e) When a sending state court terminates its jurisdiction, the  
23 receiving state child placing agency shall be notified.

24 (f) Nothing in this article shall defeat a claim of jurisdiction by a  
25 receiving state court sufficient to deal with an act of truancy, delinquency,  
26 crime or behavior involving a child as defined by the laws of the receiving  
27 state committed by the child in the receiving state that would be a violation  
28 of its laws.

29 (g) Nothing in this article shall limit the receiving state's ability to  
30 take emergency jurisdiction for the protection of the child.

31 (h) The substantive laws of the state where an adoption will be  
32 finalized shall solely govern all issues relating to the adoption of the child  
33 and the court where the adoption proceeding is filed shall have subject  
34 matter jurisdiction regarding all substantive issues relating to the adoption,  
35 except:

36 (1) When the child is a ward of another court that established  
37 jurisdiction over the child prior to the placement;

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

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

43 (i) A final decree of adoption shall not be entered in any jurisdiction

1 until the placement is authorized as an approved placement by the public  
2 child placing agency in the receiving state.

## ARTICLE V. Placement Evaluation.

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

7 (b) For placements by a private child placing agency, a child may be  
8 sent or brought or caused to be sent or brought, into a receiving state, upon  
9 receipt and immediate review of the required content in a request for  
10 approval of a placement in both the sending and receiving state public  
11 child placing agency. The required content to accompany a request for  
12 approval shall include all of the following:

13       (1) A request for approval identifying the child, birth parent(s), the  
14 prospective adoptive parent(s) and the supervising agency, signed by the  
15 person requesting approval;

16 (2) the appropriate consents or relinquishments signed by the birth  
17 parents in accordance with the laws of the sending state, or where  
18 permitted the laws of the state where the adoption will be finalized;

19 (3) certification by a licensed attorney or authorized agent of a private  
20 adoption agency that the consent or relinquishment is in compliance with  
21 the applicable laws of the sending state, or where permitted the laws of the  
22 state where finalization of the adoption will occur;

23 (4) a home study; and

24 (5) an acknowledgment of legal risk signed by the prospective  
25 adoptive parents.

26 (c) The sending state and the receiving state may request additional  
27 information or documents prior to finalization of an approved placement,  
28 but they shall not delay travel by the prospective adoptive parents with the  
29 child if the required content for approval has been submitted, received and  
30 reviewed by the public child placing agency in both the sending state and  
31 the receiving state.

32 (d) Approval from the public child placing agency in the receiving  
33 state for a provisional or approved placement is required as provided for in  
34 the rules of the interstate commission.

35 (e) The procedures for making and the request for an assessment shall  
36 contain all information and be in such form as provided for in the rules of  
37 the interstate commission.

38 (f) Upon receipt of a request from the public child placing agency of  
39 the sending state, the receiving state shall initiate an assessment of the  
40 proposed placement to determine its safety and suitability. If the proposed  
41 placement is a placement with a relative, the public child placing agency  
42 of the sending state may request a determination for a provisional  
43 placement.

1       (g) The public child placing agency in the receiving state may request  
2 from the public child placing agency or the private child placing agency in  
3 the sending state, and shall be entitled to receive supporting or additional  
4 information necessary to complete the assessment or approve the  
5 placement.

6       (h) The public child placing agency in the receiving state shall  
7 approve a provisional placement and complete or arrange for the  
8 completion of the assessment within the timeframes established by the  
9 rules of the interstate commission.

10      (i) For a placement by a private child placing agency, the sending  
11 state shall not impose any additional requirements to complete the home  
12 study that are not required by the receiving state, unless the adoption is  
13 finalized in the sending state.

14      (j) The interstate commission may develop uniform standards for the  
15 assessment of the safety and suitability of interstate placements.

#### 16           ARTICLE VI. Placement Authority.

17      (a) Except as otherwise provided in this compact, no child subject to  
18 this compact shall be placed into a receiving state until approval for such  
19 placement is obtained.

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

26      (c) If the proposed placement is not approved, any interested party  
27 shall have standing to seek an administrative review of the receiving state's  
28 determination.

29       (1) The administrative review and any further judicial review  
30 associated with the determination shall be conducted in the receiving state  
31 pursuant to its applicable administrative procedures act.

32       (2) If a determination not to approve the placement of the child in the  
33 receiving state is overturned upon review, the placement shall be deemed  
34 approved, provided however that all administrative or judicial remedies  
35 have been exhausted or the time for such remedies has passed.

#### 36           ARTICLE VII. Placing Agency Responsibility.

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

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

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

1       (B) as determined by the public child placing agency in the sending  
2 state, services for the child beyond the public services that the child is  
3 eligible in the receiving state.

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

5       (A) Any assessment conducted by the receiving state; and

6       (B) supervision conducted by the receiving state at the level  
7 necessary to support the placement as agreed upon by the public child  
8 placing agencies of the receiving and sending state.

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

13       (b) For the placement of a child by a private child placing agency  
14 preliminary to a possible adoption, the private child placing agency shall  
15 be:

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

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

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

24       (d) The public child placing agency in the receiving state shall  
25 provide, or arrange for the provision of, supervision and services for the  
26 child, including timely reports, during the period of the placement.

27       (e) Nothing in this compact shall be construed as to limit the authority  
28 of the public child placing agency in the receiving state from contracting  
29 with a licensed agency or person in the receiving state for an assessment or  
30 the provision of supervision or services for the child or otherwise  
31 authorizing the provision of supervision or services by a licensed agency  
32 during the period of placement.

33       (f) Each member state shall provide for coordination among its  
34 branches of government concerning the state's participation in, and  
35 compliance with, the compact and interstate commission activities,  
36 through the creation of an advisory council or use of an existing body or  
37 board.

38       (g) Each member state shall establish a central state compact office  
39 that shall be responsible for state compliance with the compact and the  
40 rules of the interstate commission.

41       (h) The public child placing agency in the sending state shall oversee  
42 compliance with the provisions of the Indian child welfare act, 25 U.S.C.  
43 1901 et seq., for placements subject to the provisions of this compact, prior

1 to placement.

2 (i) With the consent of the interstate commission, states may enter  
3 into limited agreements that facilitate the timely assessment and provision  
4 of services and supervision of placements under this compact.

5 ARTICLE VIII. Interstate Commission for the Placement of Children.

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

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

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

20 (1) Each member state represented at a meeting of the interstate  
21 commission is entitled to one vote.

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

25 (3) A representative shall not delegate a vote to another member state.

26 (4) A representative may delegate voting authority to another person  
27 from their state for a specified meeting.

28 (c) In addition to the commissioners of each member state, the  
29 interstate commission shall include persons who are members of interested  
30 organizations as defined in the bylaws or rules of the interstate  
31 commission. Such members shall be ex officio and shall not be entitled to  
32 vote on any matter before the interstate commission.

33 (d) Establish an executive committee that shall have the authority to  
34 administer the day-to-day operations and administration of the interstate  
35 commission. It shall not have the power to engage in rulemaking.

36 ARTICLE IX. Powers and Duties of the Interstate Commission.

37 The interstate commission shall have the following powers:

38 (a) To promulgate rules and take all necessary actions to effect the  
39 goals, purposes and obligations as enumerated in this compact.

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

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

- 1       (d) To enforce compliance with this compact or the bylaws or rules of  
2 the interstate commission pursuant to article XII.
- 3       (e) Collect standardized data concerning the interstate placement of  
4 children subject to this compact as directed through its rules that shall  
5 specify the data to be collected, the means of collection and data exchange  
6 and reporting requirements.
- 7       (f) To establish and maintain offices as may be necessary for the  
8 transacting of its business.
- 9       (g) To purchase and maintain insurance and bonds.
- 10      (h) To hire or contract for services of personnel or consultants as  
11 necessary to carry out its functions under the compact and establish  
12 personnel qualification policies, and rates of compensation.
- 13      (i) To establish and appoint committees and officers, including, but  
14 not limited to, an executive committee as required by article X.
- 15      (j) To accept any and all donations and grants of money, equipment,  
16 supplies, materials and services and to receive, utilize and dispose thereof.
- 17      (k) To lease, purchase, accept contributions or donations of, or  
18 otherwise to own, hold, improve or use any property, real, personal or  
19 mixed.
- 20      (l) To sell, convey, mortgage, pledge, lease, exchange, abandon, or  
21 otherwise dispose of any property, real, personal or mixed.
- 22      (m) To establish a budget and make expenditures.
- 23      (n) To adopt a seal and bylaws governing the management and  
24 operation of the interstate commission.
- 25      (o) To report annually to the legislatures, governors, the judiciary and  
26 state advisory councils of the member states concerning the activities of  
27 the interstate commission during the preceding year. Such reports shall  
28 also include any recommendations that may have been adopted by the  
29 interstate commission.
- 30      (p) To coordinate and provide education, training and public  
31 awareness regarding the interstate movement of children for officials  
32 involved in such activity.
- 33      (q) To maintain books and records in accordance with the bylaws of  
34 the interstate commission.
- 35      (r) To perform such functions as may be necessary or appropriate to  
36 achieve the purposes of this compact.

37      ARTICLE X. Organization and Operation of the Interstate Commission.

- 38       (a) Bylaws.
  - 39        (1) Within 12 months after the first interstate commission meeting,  
40 the interstate commission shall adopt bylaws to govern its conduct as may  
41 be necessary or appropriate to carry out the purposes of the compact.
  - 42        (2) The interstate commission's bylaws and rules shall establish  
43 conditions and procedures under which the interstate commission shall

1 make its information and official records available to the public for  
2 inspection or copying. The interstate commission may exempt from  
3 disclosure information or official records to the extent they would  
4 adversely affect personal privacy rights or proprietary interests.

5 (b) Meetings.

6 (1) The interstate commission shall meet at least once each calendar  
7 year. The chairperson may call additional meetings and, upon the request  
8 of a simple majority of the member states shall call additional meetings.

9 (2) Public notice shall be given by the interstate commission of all  
10 meetings and all meetings shall be open to the public, except as set forth in  
11 the rules or as otherwise provided in the compact. The interstate  
12 commission and its committees may close a meeting, or a portion thereof,  
13 when it determines by a  $2/3$  vote that an open meeting would be likely to:

14 (A) Relate solely to the interstate commission's internal personnel  
15 practices and procedures;

16 (B) disclose matters specifically exempted from disclosure by federal  
17 law;

18 (C) disclose financial or commercial information that is privileged,  
19 proprietary or confidential in nature;

20 (D) involve accusing a person of a crime or formally censuring a  
21 person;

22 (E) disclose information of a personal nature when disclosure would  
23 constitute a clearly unwarranted invasion of personal privacy or physically  
24 endanger one or more persons;

25 (F) disclose investigative records compiled for law enforcement  
26 purposes; or

27 (G) specifically relate to the interstate commission's participation in a  
28 civil action or other legal proceeding.

29 (3) For a meeting, or a portion of a meeting, closed pursuant to this  
30 provision, the interstate commission's legal counsel or designee shall  
31 certify that the meeting may be closed and shall reference each relevant  
32 exemption provision. The interstate commission shall keep minutes that  
33 shall fully and clearly describe all matters discussed in a meeting and shall  
34 provide a full and accurate summary of actions taken, and the reasons  
35 therefore, including a description of the views expressed and the record of  
36 a roll call vote. All documents considered in connection with an action  
37 shall be identified in such minutes. All minutes and documents of a closed  
38 meeting shall remain under seal, subject to release by a majority vote of  
39 the interstate commission or by court order.

40 (4) The bylaws may provide for meetings of the interstate  
41 commission to be conducted by telecommunication or other electronic  
42 communication.

43 (c) Officers and staff.

1       (1) The interstate commission may, through its executive committee,  
2 appoint or retain a staff director for such period, upon such terms and  
3 conditions and for such compensation as the interstate commission may  
4 deem appropriate. The staff director shall serve as secretary to the  
5 interstate commission, but shall not have a vote. The staff director may  
6 hire and supervise such other staff as may be authorized by the interstate  
7 commission.

8       (2) The interstate commission shall elect, from among its members, a  
9 chairperson and a vice chairperson of the executive committee and other  
10 necessary officers, each of whom shall have such authority and duties as  
11 may be specified in the bylaws.

12       (d) Qualified immunity, defense and indemnification.

13       (1) The interstate commission's staff director and its employees shall  
14 be immune from suit and liability, either personally or in their official  
15 capacity, for a claim for damage to or loss of property or personal injury or  
16 other civil liability caused or arising out of or relating to an actual or  
17 alleged act, error or omission that occurred, or that such person had a  
18 reasonable basis for believing occurred within the scope of commission  
19 employment, duties or responsibilities, provided, that such person shall not  
20 be protected from suit or liability for damage, loss, injury, or liability  
21 caused by a criminal act or the intentional or willful and wanton  
22 misconduct of such person.

23       (A) The liability of the interstate commission's staff director and  
24 employees or interstate commission representatives, acting within the  
25 scope of such person's employment or duties for acts, errors or omissions  
26 occurring within such person's state shall not exceed the limits of liability  
27 set forth under the constitution and laws of that state for state officials,  
28 employees and agents. The interstate commission is considered to be an  
29 instrumentality of the states for the purposes of any such action. Nothing  
30 in this subsection shall be construed to protect such person from suit or  
31 liability for damage, loss, injury or liability caused by a criminal act or the  
32 intentional or willful and wanton misconduct of such person.

33       (B) The interstate commission shall defend the staff director and its  
34 employees and, subject to the approval of the attorney general or other  
35 appropriate legal counsel of the member state shall defend the  
36 commissioner of a member state in a civil action seeking to impose  
37 liability arising out of an actual or alleged act, error or omission that  
38 occurred within the scope of interstate commission employment, duties or  
39 responsibilities, or that the defendant had a reasonable basis for believing  
40 occurred within the scope of interstate commission employment, duties or  
41 responsibilities, provided that the actual or alleged act, error or omission  
42 did not result from intentional or willful and wanton misconduct on the  
43 part of such person.

1       (C) To the extent not covered by the state involved, member state or  
2 the interstate commission, the representatives or employees of the  
3 interstate commission shall be held harmless in the amount of a settlement  
4 or judgment, including attorney fees and costs, obtained against such  
5 persons arising out of an actual or alleged act, error or omission that  
6 occurred within the scope of interstate commission employment, duties or  
7 responsibilities, or that such persons had a reasonable basis for believing  
8 occurred within the scope of interstate commission employment, duties or  
9 responsibilities, provided that the actual or alleged act, error or omission  
10 did not result from intentional or willful and wanton misconduct on the  
11 part of such persons.

12       ARTICLE XI. Rulemaking Functions of the Interstate Commission.

13       (a) The interstate commission shall promulgate and publish rules in  
14 order to effectively and efficiently achieve the purposes of the compact.

15       (b) Rulemaking shall occur pursuant to the criteria set forth in this  
16 article and the bylaws and rules adopted pursuant thereto. Such rulemaking  
17 shall substantially conform to the principles of the model state  
18 administrative procedures act, 1981 act, uniform laws annotated, volume  
19 15, page 1 (2000) or such other administrative procedure acts as the  
20 interstate commission deems appropriate consistent with due process  
21 requirements under the United States constitution as now or hereafter  
22 interpreted by the U. S. supreme court. All rules and amendments shall  
23 become binding as of the date specified, as published with the final version  
24 of the rule as approved by the interstate commission.

25       (c) When promulgating a rule, the interstate commission shall, at a  
26 minimum:

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

29           (2) allow and invite any and all persons to submit written data, facts,  
30 opinions and arguments, and such information shall be added to the record,  
31 and be made publicly available; and

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

34       (d) Rules promulgated by the interstate commission shall have the  
35 force and effect of administrative rules and shall be binding in the  
36 compacting states to the extent and in the manner provided for in this  
37 compact.

38       (e) Not later than 60 days after a rule is promulgated, an interested  
39 person may file a petition in the U.S. district court for the District of  
40 Columbia or in the federal district court where the interstate commission's  
41 principal office is located for judicial review of such rule. If the court finds  
42 that the interstate commission's action is not supported by substantial  
43 evidence in the rulemaking record, the court shall hold the rule unlawful

1 and set it aside.

2 (f) If a majority of the legislatures of the member states rejects a rule,  
3 those states may by enactment of a statute or resolution in the same  
4 manner used to adopt the compact cause that such rule shall have no  
5 further force and effect in any member state.

6 (g) The existing rules governing the operation of the interstate  
7 compact on the placement of children superseded by this act shall be null  
8 and void not less than 12, but not more than 24 months after the first  
9 meeting of the interstate commission created hereunder, as determined by  
10 the members during the first meeting.

11 (h) Within the first 12 months of operation, the interstate commission  
12 shall promulgate rules addressing the following:

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

26 (i) Upon determination by a majority of the members of the interstate  
27 commission that an emergency exists:

28 (1) The interstate commission may promulgate an emergency rule  
29 only if it is required to:

- 30 (A) Protect the children covered by this compact from an imminent  
31 threat to their health, safety and well-being;
- 32 (B) prevent loss of federal or state funds; or
- 33 (C) meet a deadline for the promulgation of an administrative rule  
34 required by federal law.

35 (2) An emergency rule shall become effective immediately upon  
36 adoption, provided that the usual rulemaking procedures provided  
37 hereunder shall be retroactively applied to such rule as soon as reasonably  
38 possible, but no later than 90 days after the effective date of the emergency  
39 rule.

40 (3) An emergency rule shall be promulgated as provided for in the  
41 rules of the interstate commission.

42 ARTICLE XII. Oversight, Dispute Resolution and Enforcement.

43 (a) Oversight.

1       (1) The interstate commission shall oversee the administration and  
2 operation of the compact.

3       (2) The executive, legislative and judicial branches of state  
4 government in each member state shall enforce this compact and the rules  
5 of the interstate commission and shall take all actions necessary and  
6 appropriate to effectuate the compact's purposes and intent. The compact  
7 and its rules shall be binding in the compacting states to the extent and in  
8 the manner provided for in this compact.

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

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

20       (b) Dispute resolution.

21       (1) The interstate commission shall attempt, upon the request of a  
22 member state, to resolve disputes that are subject to the compact and may  
23 arise among member states and between member and nonmember states.

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

28       (c) Enforcement.

29       (1) If the interstate commission determines that a member state has  
30 defaulted in the performance of its obligations or responsibilities under  
31 this compact, its bylaws or rules, the interstate commission may:

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

33           (B) provide written notice to the defaulting state and other member  
34 states, of the nature of the default and the means of curing the default. The  
35 interstate commission shall specify the conditions that the defaulting state  
36 shall cure its default;

37           (C) by majority vote of the members, initiate against a defaulting  
38 member state legal action in the United State district court for the District  
39 of Columbia or, at the discretion of the interstate commission, in the  
40 federal district where the interstate commission has its principal office, to  
41 enforce compliance with the provisions of the compact, its bylaws or rules.  
42 The relief sought may include both injunctive relief and damages. In the  
43 event judicial enforcement is necessary, the prevailing party shall be

awarded all costs of such litigation including reasonable attorney fees; or  
(D) avail itself of any other remedies available under state law or the regulation of official or professional conduct.

## ARTICLE XIII. Financing of the Commission.

(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(b) The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff shall be in a total amount sufficient to cover the interstate commission's annual budget as approved by its members each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission who shall promulgate a rule binding upon all member states.

(c) The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same, nor shall the interstate commission pledge the credit of any of the member states, except by and with the authority of the member state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

#### ARTICLE XIV. Member States, Effective Date and Amendment.

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

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by not less than 35 states. The effective date shall be the later of July 1, 2007, or upon enactment of the compact into law by the 35<sup>th</sup> state. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The executive heads of the state human services administration with ultimate responsibility for the child welfare program of nonmember states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states.

(c) The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding on the member states unless and until it is enacted into law by unanimous consent of the member states.

## ARTICLE XV. Withdrawl and Dissolution.

(a) Withdrawal.

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

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

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

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

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

### (b) Dissolution of compact.

(1) This compact shall dissolve effective upon the date of the withdrawal or default of the member state that reduces the membership in the compact to one member state.

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

## ARTICLE XVI. Severability and Construction.

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

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

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

## ARTICLE XVII. Binding Effect of Compact and Other Laws.

(a) Other laws. Nothing in this compact prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

(b) Binding effect of the compact.

(1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon

1 the member states.

2 (2) All agreements between the interstate commission and the  
3 member states are binding in accordance with their terms.

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

8 ARTICLE XVIII. Indian Tribes.

9 Notwithstanding any other provision in this compact, the interstate  
10 commission may promulgate guidelines to permit Indian tribes to utilize  
11 the compact to achieve any or all of the purposes of the compact as  
12 specified in article I. The interstate commission shall make reasonable  
13 efforts to consult with Indian tribes in promulgating guidelines to reflect  
14 the diverse circumstances of the various Indian tribes.

15 Sec. 3. Pursuant to the interstate compact for the placement of  
16 children as adopted by this state, the governor is hereby authorized and  
17 empowered to designate an officer who shall be the compact administrator.  
18 The compact administrator:

19 (a) Acting jointly with like officers of other party states, shall adopt  
20 rules and regulations to effectively carry out the terms of the compact;

21 (b) shall serve at the pleasure of the governor; and

22 (c) is authorized, empowered and directed to cooperate with all  
23 departments, agencies and officers of and in the government of this state  
24 and the government's subdivisions in facilitating the proper administration  
25 of the compact or of any supplementary agreement or agreements entered  
26 into by this state pursuant to sections 1 through 6, and amendments  
27 thereto.

28 Sec. 4. (a) The compact administrator is authorized and empowered  
29 to enter into supplementary agreements with appropriate officials of other  
30 states pursuant to the compact.

31 (b) In the event that a supplementary agreement shall require or  
32 contemplate the use of any institution or facility of this state or require or  
33 contemplate the provision of any service by this state, the supplementary  
34 agreement shall have no force or effect until approved by the head of the  
35 department or agency under whose jurisdiction the institution or facility is  
36 operated or whose department or agency will be charged with the  
37 rendering of the service.

38 Sec. 5. The compact administrator, subject to the approval of the state  
39 director of accounts and reports, may make or arrange for any payments  
40 necessary to discharge any financial obligations imposed upon this state by  
41 the compact or by any supplementary agreement entered into pursuant to  
42 sections 1 through 6, and amendments thereto.

43 Sec. 6. (a) The courts, departments, agencies and officers of this state

1 and its subdivisions shall enforce this compact and do all things  
2 appropriate to the effectuate the compact's purposes and intent that may be  
3 within their respective jurisdictions.

4 (b) Failure to comply with the provisions of the interstate compact for  
5 the placement of children by any professional providing services related to  
6 the placement of children is a class C misdemeanor.

7 (c) As used in this section, "professional" means any person who  
8 receives payment or compensation for providing services related to the  
9 placement of children for adoption.

10 Sec. 7. K.S.A. 38-1201, 38-1202, 38-1203, 38-1204, 38-1205 and 38-  
11 1206 are hereby repealed.

12 Sec. 8. This act shall take effect and be in force from and after its  
13 publication in the statute book.