WEST VIRGINIA CODE CHAPTER 18 ARTICLE 10F

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§18-10F-1. Interstate Compact on Educational Opportunity for Military Children.

This article is known and may be cited as the “Interstate Compact on Educational Opportunity for Military Children”.

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§18-10F-2. Enactment of Interstate Compact.

The Interstate Compact on Educational Opportunity for Military Children is hereby enacted into law and entered into by the State of West Virginia with any and all states legally joining therein in accordance with its terms, in the form substantially as follows:

INTERSTATE COMPACT ON EDUCATIONAL

OPPORTUNITY FOR MILITARY CHILDREN

ARTICLE I. PURPOSE.

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

(a) Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from a previous school district or variations in entrance or age requirements;

(b) Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content or assessment;

(c) Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic and social activities;

(d) Facilitating the on-time graduation of children of military families;

(e) Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact;

(f) Providing for the uniform collection and sharing of information between and among member states, schools and military families under this compact;

(g) Promoting coordination between this compact and other compacts affecting military children; and

(h) Promoting flexibility and cooperation between the educational system, parents and students in order to achieve educational success for students.

ARTICLE II. DEFINITIONS.

As used in this article and compact, unless the context clearly requires a different meaning:

(a) "Active duty" means full-time duty status in any of the active uniformed services of the United States, including service in the National Guard and Reserve pursuant to active duty orders in accordance with 10 U.S.C. Sections 1209 and 1211;

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(b) "Child of a military family" means any school-aged child enrolled in any of grades kindergarten through twelfth who is in the household of an active duty uniformed services member;

(c) "Compact commissioner" means the voting representative of a compacting state appointed pursuant to Article VIII of this compact;

(d) "Deployment" means the time period beginning one month prior to a uniformed services member's departure from his or her home station on military orders and ending six months after return to his or her home station;

(e) "Education records" means all documents, files, data and official records directly related to a student and maintained by a school or county board. This includes all material kept in the student's cumulative file, such as but not limited to generally-identifying data, attendance records, academic work completion records, achievement records, evaluative test results, health data, disciplinary records, test protocols, and individualized education program or service records;

(f) "Extracurricular activities" means voluntary activities sponsored by a school, a county board or an organization sanctioned by a county board or the state board of education. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, organizations and clubs;

(g) "Interstate Commission on Educational Opportunity for Military Children" or "Interstate Commission" means the Commission that is created by Article IX of this compact;

(h) "County board" means a county board of education, which is the public entity legally constituted by this state as an administrative agency to provide control of and direction for grades kindergarten through twelfth in the public schools in the county in which it operates;

(i) "Member state" means a state that has enacted this compact;

(j) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other facility under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands or any other United States Territory. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects;

(k) "Non-member state" means a state that has not enacted this compact;

(l) "Receiving state" means a state to which a child of a military family is sent, brought, or caused to be sent or brought;

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(m) "Rule" means a written statement by the Interstate Commission which:

(1) Is promulgated pursuant to Article XII of this compact;

(2) Is of general applicability;

(3) Implements, interprets or prescribes a policy or provision of this compact, or an organizational, procedural, or practice requirement of the Interstate Commission;

(4) Has the force and effect of statutory law in a member state; and

(5) May be amended, repealed, or suspended by act of the Interstate Commission;

(n) "Sending state" means a state from which a child of a military family is sent, brought, or caused to be sent or brought;

(o) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other United States Territory;

(p) "Student" means a child of a military family who is formally enrolled in any of grades kindergarten through twelfth and for whom a county board receives public funding;

(q) "Transition" means:

(1) The formal and physical process of transferring from one school to another; or

(2) The period of time during which a student moves from one school in a sending state to another school in the receiving state;

(r) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, and the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services;

(s) "Veteran" means a person who performed active duty service and was discharged or released therefrom under conditions other than dishonorable; and

(t) "The West Virginia Council for Educational Opportunity for Military Children" or "West Virginia Council" means the state coordinating council established in Article VIII of this compact.

ARTICLE III. APPLICABILITY.

(a) This compact applies to:

(1) Each county board of education; and

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(2) The children of:

(A) Active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Sections 1209 and 1211;

(B) Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and

(C) Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one (1) year after death.

(b) Except as provided in subsection (a) of this Article III, this compact does not apply to the children of:

(1) Inactive members of the National Guard or military reserves;

(2) Retired members of the uniformed services;

(3) Veterans of the uniformed services;

(4) Other United States Department of Defense personnel; nor

(5) Any other federal agency civilian or contract employees not defined as active duty members of the uniformed services.

ARTICLE IV. EDUCATIONAL RECORDS & ENROLLMENT.

(a) Unofficial or "hand-carried" education records —

In the event that official education records cannot be released to a student's parents or legal guardians for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parents a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. As quickly as possible upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records.

(b) Official education records/transcripts —

Simultaneous with the enrollment and conditional placement of a student, the school in the receiving state shall request the student's official education records from the school in the sending state. Upon receipt of this request, the school in the sending state shall process and furnish the official education records to the school in the receiving state within 10 days or such other time period as is determined reasonable under the rules promulgated by the Interstate Commission.

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(c) Immunizations —

(1) A county board shall allow a student 30 days from the date of enrollment to obtain any required immunizations, or such other time period as is determined reasonable under the rules promulgated by the Interstate Commission.

(2) In any case where a series of immunizations is required, the student shall obtain the initial vaccination within 30 days of enrollment, or such other time period as is determined reasonable under the rules promulgated by the Interstate Commission.

(d) Enrollment at current grade level —

(1) A student shall be permitted to enroll in the grade level in this state, including kindergarten, which is commensurate with the grade level in which he or she was enrolled in the sending state at the time of transition, regardless of his or her age.

(2) A student that has satisfactorily completed the prerequisite grade level in the sending state is eligible for enrollment in the next highest grade level in this state, regardless of his or her age.

ARTICLE V. PLACEMENT & ATTENDANCE.

(a) Course placement —

(1) When a student transfers to this state before or during the school year, the school in this state shall initially place the student in educational courses based on the courses in which he or she was enrolled in the sending state, educational assessments conducted at the school in the sending state, or both, if the courses are offered at the school to which the student is transferring. This course placement provision includes, but is not limited to Honors, International Baccalaureate, Advanced Placement, vocational, technical and career pathways courses.

(2) A school shall give paramount consideration to continuing a student's academic program from the previous school, and promoting placement in academically and career-challenging courses, when considering course placement.

(3) A school is not precluded from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in any course.

(b) Educational program placement —

When a student transfers to this state, the school shall initially place the student in educational programs based on current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include, but are not limited to gifted and talented programs and English as a second language (ESL). A school is not precluded from performing subsequent evaluations to

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ensure appropriate placement of the student.

(c) Special education services —

(1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. Section 1400 *et seq*. a school in this state shall initially provide comparable services to a student with disabilities based on his or her current Individualized Education Program (IEP); and

(2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794 (Section 504), and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165 (Title II), any school in this state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing Section 504 or Title II plan, to provide the student with equal access to education. The school is not precluded from performing subsequent evaluations to ensure appropriate placement of the student.

(d) Placement flexibility —

County board administrative officials have flexibility in waiving course and program prerequisites, or other preconditions for placement in courses or programs offered under the authority of the county board.

(e) Absence as related to deployment activities —

A student whose parent or legal guardian is an active duty member of the uniformed services and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the county superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

ARTICLE VI. ELIGIBILITY.

(a) Eligibility for enrollment —

(1) Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law is sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

(2) A county board may not charge local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a school district other than that of the custodial parent.

(3) A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a school district other than that of the custodial parent, may continue to attend the school in which he or she was enrolled while residing with the

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custodial parent.

(b) Eligibility for extracurricular participation —

The State Board of Education and county boards shall facilitate the opportunity for transitioning military children to be included in extracurricular activities, regardless of application deadlines, to the extent the children are otherwise qualified.

ARTICLE VII. GRADUATION.

In order to facilitate the on-time graduation of children of military families the State Board of Education and each county board shall incorporate the following procedures:

(a) Waiver requirements —

County board administrative officials shall either waive specific courses required for graduation if a student has satisfactorily completed similar course work in another local education agency, or provide reasonable justification for denial. If a waiver is not granted to a student who would qualify to graduate from the sending school, the county board shall provide an alternative means of acquiring required coursework so that the student may graduate on time.

(b) Exit exams —

Any school in this state shall accept:

(1) Exit or end-of-course exams required for graduation from the sending state;

(2) National norm-referenced achievement tests; or

(3) Alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event that the alternatives in this subsection cannot be accommodated by a school for a student transferring in his or her senior year, then the provisions of subsection (c) of Article VII of this compact apply.

(c) Transfers during senior year —

If a student transferring at the beginning of or during his or her senior year is ineligible to graduate from a school in this state after all alternatives have been considered, the county board and the local education agency in the sending state shall ensure that the student receives a diploma from the sending state, if the student meets the graduation requirements of the local education agency in the sending state. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with subsections (a) and (b) of this Article VII.

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ARTICLE VIII. STATE COORDINATION.

(a) The West Virginia Council for Educational Opportunity for Military Children is hereby established for the purpose of coordinating entities in this state regarding participation in the Interstate Compact on Educational Opportunity for Military Children.

(b) Membership of the Council consists of at least six members as follows:

(1) The State Superintendent of Schools;

(2) The superintendent of a county board in the state which has a high concentration of military children, appointed by the Governor. If the Governor determines there is not a county school district that contains a high concentration of military children, he or she may appoint a superintendent from any county school district to represent county boards on the State Council;

(3) An individual representing a military installation in this state appointed by the Governor by and with the advice and consent of the Senate. This member serves a term of four years, except that the term of the individual initially appointed expires June 30, 2015. Each subsequent term begins on July 1 in the year of appointment.

(4) An individual representing the executive branch of government, appointed by the Governor;

(5) One member of the West Virginia Senate, appointed by the President of the West Virginia Senate; and

(6) One member of the West Virginia House of Delegates, appointed by the Speaker of the West Virginia House of Delegates.

(c) The Governor shall appoint a Compact Commissioner who is responsible for administering and managing the state's participation in the compact. The Governor may select the Commissioner from members appointed to the Council as provided in subsection (b) of this Article VIII, or may appoint another individual to serve in this capacity. A individual who is not already a full voting member of the Council becomes an ex-officio member of the Council if appointed as Commissioner.

(d) The West Virginia Council has and may exercise all powers necessary or appropriate to carry out and effectuate the purpose and intent of this compact, including, but not limited to the following:

(1) Facilitate coordination among state agencies and governmental entities of West Virginia, including county boards and military installations, concerning the state's participation in, and compliance with, this compact and Interstate Commission activities; and

(2) Appoint or designate a military family education liaison to assist military families and the

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state in facilitating implementation of the compact. This individual becomes an ex-officio member of the West Virginia Council if he or she is not already a full voting member of the Council when so appointed or designated.

ARTICLE IX. INTERSTATE COMMISSION ON EDUCATIONAL

OPPORTUNITY FOR MILITARY CHILDREN.

(a) The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function.

(b) The Interstate Commission:

(1) Is a body corporate and joint agency of the member states and has all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective Legislatures of the member states in accordance with the terms of this compact;

(2) Consists of one Interstate Commission voting representative from each member state who is that state's Compact Commissioner.

(A) Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

(B) A majority of the total member states constitutes a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(C) A representative may not delegate a vote to another member state. In the event a Compact Commissioner is unable to attend a meeting of the Interstate Commission, the Governor or State Council of the Compact Commissioner's state may delegate voting authority to another person from that state for a specified meeting.

(D) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication;

(3) Consists of ex-officio, nonvoting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include, but are not limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members;

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

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meetings;

(5) Establishes an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as established in the bylaws. Each member of the executive committee serves a one-year term. Each member of the executive committee is entitled to one vote. The executive committee has the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the daily activities of the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and such other duties as it determines are necessary. A representative of the United States Department of Defense serves as an ex-officio, nonvoting member of the executive committee;

(6) Establishes bylaws and rules that provide for conditions and procedures under which the Interstate Commission makes its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests;

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

(A) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(B) Disclose matters specifically exempted from disclosure by federal and state statute;

(C) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(D) Involve accusing a person of a crime, or formally censuring a person;

(E) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(F) Disclose investigative records compiled for law enforcement purposes; or

(G) Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding;

(8) Causes its legal counsel or designee to certify that a meeting may be closed, and reference each relevant exemptable provision for any meeting or portion of a meeting which is closed pursuant to this provision. The Interstate Commission shall maintain a minute record of each meeting which shall fully and clearly describe all matters discussed in the meeting. The minute record shall provide a full and accurate summary of actions taken, and

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the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in the minute record. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

(9) Collects standardized data concerning the educational transition of the children of military families under this compact as directed through its rules. The rules shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules; and

(10) Creates a process that permits military officials, education officials and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This subdivision does not create a private right of action against the Interstate Commission or any member state.

ARTICLE X. POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

The Interstate Commission has the following powers:

(a) To provide for dispute resolution among member states;

(b) To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact. The rules have the force and effect of statutory law and are binding in the compact states to the extent and in the manner provided in this compact;

(c) To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules and actions;

(d) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

(e) To establish and maintain offices which shall be located within one or more of the member states;

(f) To purchase and maintain insurance and bonds;

(g) To borrow, accept, hire or contract for services of personnel;

(h) To establish and appoint committees including, but not limited to, an executive committee as required by Article IX of this compact, which have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder;

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(i) To elect or appoint such officers, attorneys, employees, agents or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

(j) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of such;

(k) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

(l) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed;

(m) To establish a budget and make expenditures;

(n) To adopt a seal and bylaws governing the management and operation of the Interstate Commission;

(o) To report annually to the Legislatures, Governors, Judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports also shall include any recommendations that may have been adopted by the Interstate Commission;

(p) To coordinate education, training and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity;

(q) To establish uniform standards for reporting, collecting and exchanging data;

(r) To maintain corporate books and records in accordance with the bylaws;

(s) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and

(t) To provide for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

ARTICLE XI. ORGANIZATION AND OPERATION OF THE

INTERSTATE COMMISSION.

(a) The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

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(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee, and such other committees as may be necessary;

(3) Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

(4) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each meeting;

(5) Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;

(6) Providing a mechanism for concluding the operations of the Interstate Commission and the returning surplus funds that may exist upon termination of the compact after the payment and reserving of all of its debts and obligations; and

(7) Providing start-up rules for initial administration of the compact.

(b) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected serve without compensation or remuneration from the Interstate Commission. Subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

(c) Executive Committee, Officers and Personnel —

(1) The executive committee has such authority and duties as may be set forth in the bylaws, including but not limited to:

(A) Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

(B) Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

(C) Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Interstate Commission.

(2) The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and

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for such compensation, as the Interstate Commission may deem appropriate. The executive director serves as secretary to the Interstate Commission, but is not a Member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

(d) The Interstate Commission's executive director and its employees are immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities. The executive director and employees are not protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(1) The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of employment or duties for acts, errors, or omissions occurring within his or her state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. This subsection does not protect the executive director or employees from suit or liability for damage, loss, injury, or liability caused by his or her intentional or willful and wanton misconduct.

(2) The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(3) To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against the individual arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the individual had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the individual.

ARTICLE XII. RULEMAKING FUNCTIONS

OF THE INTERSTATE COMMISSION.

(a) Rulemaking Authority —

The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Interstate Commission is invalid and has no force nor effect.

(b) Rulemaking Procedure —

Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

(c) Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule. Filing such a petition does not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

(d) If a majority of the Legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then that rule has no further force nor effect in any compacting state.

ARTICLE XIII. OVERSIGHT, ENFORCEMENT,

AND DISPUTE RESOLUTION.

(a) Oversight —

(1) The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

(2) All courts shall take judicial notice of this compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission.

(3) The Interstate Commission is entitled to receive all service of process in any such proceeding, and has standing to intervene in the proceeding for all purposes. Failure to

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provide service of process to the Interstate Commission renders a judgment or order void as to the Interstate Commission, this compact or promulgated rules.

(b) Default, Technical Assistance, Suspension and Termination —

If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

(1) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default; and

(2) Provide remedial training and specific technical assistance regarding the default.

(3) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(4) Suspension or termination of membership in the compact may be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's Legislature, and each of the member states.

(5) The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

(6) The Interstate Commission does not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(7) The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(c) Dispute Resolution —

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

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between member and nonmember states.

(2) The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(d) Enforcement —

(1) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) The Interstate Commission may by majority vote of the members initiate legal action in the United State District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(3) The remedies herein are not the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XIV. FINANCING OF THE INTERSTATE 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 which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

(c) The Interstate Commission may not incur obligations of any kind prior to securing the funds adequate to meet the same; nor may 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 are 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 annually 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 XV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT.

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

(b) This compact became effective and binding upon legislative enactment of the compact into law by ten states in July 2008. It becomes effective and binding as to any other member state upon enactment of the compact into law by that state. The Governors 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. An amendment does not become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

AND ARTICLE XVI. WITHDRAWAL DISSOLUTION.

(a) Withdrawal —

(1) Once effective, the compact continues in force and remains binding upon each member state. A member state may withdraw from the compact upon repealing the specific statute that enacted the compact into law.

(2) Withdrawal from the compact occurs by repeal of the enacting statute, but withdrawal does not take effect until one year after the effective date of the repealing legislation and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member state.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of any legislation to repeal this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's potential to withdraw within 60 days of receiving notice.

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

(5) Reinstatement following withdrawal of a member state shall occur if the withdrawing state reenacts the compact or upon such later date as may be determined by the Interstate Commission.

(b) Dissolution of Compact —

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

(2) Upon the dissolution of this compact, the compact becomes null and void and is of no further force or effect, and the business and affairs of the Interstate Commission shall be

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concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII. SEVERABILITY AND CONSTRUCTION.

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

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

(c) Nothing in this compact prohibits the applicability of any other interstate compact to which the states are members.

ARTICLE XVIII. BINDING EFFECT OF COMPACT AND OTHER LAWS.

(a) Other Laws —

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

(2) All member states' laws conflicting with this compact are superseded to the extent of the conflict.

(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 the member states.

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

(3) In the event any provision of this compact exceeds the constitutional limits imposed on the Legislature of any member state, that provision is ineffective to the extent of the conflict with the constitutional provision in question in that member state.

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§18-10F-3.

Repealed.

Acts, 1994 Reg. Sess., Ch. 146.

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§18-10F-4.

Repealed.

Acts, 1994 Reg. Sess., Ch. 146.

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§18-10F-5.

Repealed.

Acts, 1994 Reg. Sess., Ch. 146.

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§18-10F-6.

Repealed.

Acts, 1994 Reg. Sess., Ch. 146.

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§18-10F-7.

Repealed.

Acts, 1994 Reg. Sess., Ch. 146.

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