

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 2240

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Rich

SUBJECT: Interstate Compact on the Placement of Children

DATE: March 25, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Walsh	CF	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	GO	_____
4.	_____	_____	HA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill authorizes and directs the Governor to execute an updated Interstate Compact on the Placement of Children (ICPC) on behalf of Florida. The bill sets out the provisions of the compact and provides that the existing compact will remain in effect until superseded by the new one.

This bill creates the following sections of the Florida Statutes: 409.408, 409.409 and 409.410.

II. Present Situation:

Interstate Compact on the Placement of Children (ICPC)

The ICPC provides a uniform set of regulations meant to ensure that children placed across state lines for purposes of adoption (public or private) or foster care are placed with individuals who are safe, suitable, and able to provide proper care.¹ It establishes the legal, financial, and

¹ FLORIDA'S CTR. FOR THE ADVANCEMENT OF CHILD WELFARE PRACTICE, *History of the ICPC*, available at <http://centerforchildwelfare.fmhi.usf.edu/kb/icpc/Forms/AllItems.aspx> (follow "History of ICPC" link) (last visited February 16, 2009).

supervisory responsibilities of all parties involved in the placement.² Like other interstate compacts, the ICPC is a formal, binding agreement among the states that has characteristics of both statutory and contract law. According to the American Public Human Services Association (APHSA), interstate compacts “are enacted by state legislatures that adopt reciprocal laws that substantively mirror one another,” and they are binding on all member states.³

The ICPC prescribes an in-depth home study to be conducted by the receiving state⁴ that involves the assessment of the financial, criminal, social, and medical histories of the prospective family, as well as a physical evaluation of their home.⁵ The ICPC establishes that once a placement is determined to be suitable, the receiving state is responsible for ongoing supervision and for providing support services to the family, as well as for providing regular reports to the sending state agency and court.⁶ The ICPC also contemplates an agreement between the sending and receiving states on how services and supports will be financed.⁷

First drafted in 1960, the ICPC has been enacted by all of the states, the District of Columbia, and the U.S. Virgin Islands.⁸ The ICPC has recently been rewritten in response to criticisms that, in its current form, it is not relevant for the 21st century. The advent of interstate highways and the Internet, and the development of administrative law, have redefined the parameters under which the compact was first drafted, and its language and procedures are outdated, misunderstood, and inadequately enforced.⁹

The proposed, redrafted ICPC was sent to each state for final approval in November 2005.¹⁰ It has been enacted in eight states.¹¹ Once 35 states have adopted the new compact, and after a twelve-month transitional period during which the old compact’s rules will remain in effect

² *Id.*

³ AMERICAN PUBLIC HUMAN SERVS. ASS’N, INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN, *Understanding Interstate Compacts*, available at <http://www.aphsa.org/Policy/icpc2006rewrite.htm> (follow “Understanding Interstate Compacts” link under the “Understanding Interstate Commission” heading) (last visited February 16, 2009).

⁴ The current ICPC (codified at s. 409.401, F.S.) defines “receiving state” to mean the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons. The compact defines a “sending agency” to mean a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

⁵ *History of the ICPC*, *supra* note 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* Section 409.401, F.S., enacts the ICPC into Florida law.

⁹ *History of the ICPC*, *supra* note 1.

¹⁰ The redrafted ICPC has also been approved by the American Bar Association, the American Association of Adoption Attorneys and the Uniform Law Commission. DCF, *Staff Analysis and Economic Impact Statement, Senate Bill Number 2240* (February 27, 2009).

¹¹ See AMERICAN PUBLIC HUMAN SERVS. ASS’N, INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN, *Enactment Progress*, available at <http://www.aphsa.org/Policy/icpc2006rewrite.htm> (last visited February 16, 2009). The ICPC has been enacted in Alaska, Delaware, Indiana, Maine, Minnesota, Missouri, Ohio and Oklahoma.

among both old and new compact states,¹² any state that is not a party to the new compact will have “no meaningful way to place children in new compact states.”¹³

While allowances may be made for formatting, an interstate compact is contractual in nature and, as such, the operative language of the agreement must be identical from state to state; material differences in language in any state statute purporting to adopt the compact could render it void or voidable.¹⁴

The new ICPC “provides a solid legal framework for ensuring the timely placement of children across state lines, the suitability of prospective families, and the provision of needed support services.”¹⁵ Specifically, the ICPC:

- Narrows the applicability of the compact to the interstate placement of children in the foster care system and children placed across state lines for adoption;
- Requires the development of time frames for completion of the approval process;
- Establishes rulemaking authority;
- Provides enforcement mechanisms;
- Clarifies state responsibility; and
- Ensures a state’s ability to purchase home studies from licensed agencies to expedite the process.¹⁶

According to the department, the new ICPC will standardize the process for placing children across state lines, provide a forum for review and reconsideration of decisions by states, and provide a mechanism for enforcement of ICPC provisions.¹⁷

In FY 2007-08, 52 children from Florida were privately adopted by families in other states, and 383 children were adopted from Florida’s child welfare system by families in other states. In the same time frame, 66 children from other states were placed in Florida through private adoption, and 15 children were placed for adoption with parents or relatives in Florida.¹⁸

¹² The transitional period will allow interstate placements to be made in both old and new compact states. After that time, new compact rules promulgated under the new agreement will only allow new compact states to do business with each other.

¹³ AMERICAN PUBLIC HUMAN SERVS. ASS’N, INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN, *Proposed ICPC: Frequently Asked Questions, No. 11*, at 4, available at <http://www.aphsa.org/Policy/icpc2006rewrite.htm> (follow “Proposed ICPC Frequently Asked Questions” link under the “Resource Materials” heading) (last visited February 16, 2009). This will allow interstate placements to be made in both old and new compact states during that twelve-month period. After that time, new compact rules promulgated under the new agreement will only allow new compact states to do business with each other.

¹⁴ AMERICAN PUBLIC HUMAN SERVS. ASS’N, INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN, *Proposed ICPC: Frequently Asked Questions, No. 7*, at 2, available at <http://www.aphsa.org/Policy/icpc2006rewrite.htm> (follow “Proposed ICPC Frequently Asked Questions” link under the “Resource Materials” heading) (last visited February 16, 2009).

¹⁵ See AMERICAN PUBLIC HUMAN SERVS. ASS’N, INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN, *Enactment Progress*, available at <http://www.aphsa.org/Policy/icpc2006rewrite.htm> (follow “Highlights of the Proposed Compact Provisions” link under the “Resource Materials” heading) (last visited February 16, 2009).

¹⁶ *Id.*

¹⁷ DCF, *Staff Analysis and Economic Impact Statement, Senate Bill Number 2240* (February 27, 2009).

¹⁸ E-mail correspondence from Julie Mayo, DCF, Family Safety Legislative Coordinator (November 21, 2008, 4:41 P.M.).

III. Effect of Proposed Changes:

The bill creates s. 409.408, F.S., authorizing and directing the Governor to execute a compact on behalf of Florida on July 1, 2009, or upon the enactment of the compact into law by the 35th state, whichever occurs later. The bill delineates the provisions of the compact, which are the provisions of the redrafted ICPC.

Specifically, the bill:

- Describes the purposes of the compact (Article I);
- Provides definitions (Article II);
- Prescribes the applicability of the compact (Article III);
- Prescribes the jurisdiction of the sending and receiving states (Article IV);
- Describes the process for placement evaluations (Article V);
- Delineates the placement authority and responsibilities of child-placing agencies (Articles VI and VII);
- Establishes the Interstate Commission for the Placement of Children (Commission) (Article VIII), and prescribes its:
 - Powers and duties (Article IX);
 - Organization and operation (Article X);
 - Rulemaking functions (Article XI);
 - Oversight and enforcement authority (Article XII); and
 - Financing (Article XIII);
- Provides information about the effective date of the compact (Article XIV);
- Describes the process for withdrawal from and dissolution of the compact (Article XV);
- Provides for the severability, liberal construction, and binding effect of the compact (Articles XVI and XVII); and
- Makes particular provisions for the application of the compact to Indian tribes (Article XVIII).

The bill provides that the existing ICPC (s.409.401, F.S.) will remain in effect until repealed by entry into the new compact by the Governor.

The bill provides that following entry into the compact, any rules adopted by the Interstate Commission will not be binding on Florida unless also adopted by Florida through the rulemaking process. The bill gives DCF rulemaking authority to implement the provisions of the compact.

The bill provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Under the new ICPC, the Commission will be permitted to charge a fee to states for its operating expenses. Pursuant to the existing ICPC provisions, a fee is currently assessed and paid annually by the department. Accordingly, there will be no additional fiscal impact resulting from this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not amend or repeal ss. 409.402 - 409.405, F.S., which relate to the ICPC as currently enacted (s. 409.401, F.S.). The bill does not specify if these provisions will remain in effect after the passage of the compact or if they will be superseded by the new ICPC. These provisions will likely require repeal or conforming amendments.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 25, 2009:

The Committee Substitute for Senate Bill 2240 removes provisions from the bill that may have violated Florida's public records and open meetings laws. The CS also provides that any rules adopted by the Interstate Commission will not be binding unless also adopted by Florida through the rulemaking process, and makes other technical and conforming changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
