

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law, have redefined the parameters under which the compact was first drafted, and its language and procedures are outdated, misunderstood, and inadequately enforced.⁹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 12-month transitional period during which the old compact’s rules will remain in effect among both old and new compact states, any state that is not a party to the new compact will have “no meaningful way to place children in new compact states.”¹²

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 Mar. 28, 2009).

⁴ The current ICPC defines “receiving state” as “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” as “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.” See s. 409.401, F.S.

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

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* In Florida, the ICPC is codified at s. 409.401, F.S.

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

¹⁰ *Id.* The redrafted ICPC has also been approved by the American Bar Association, the American Association of Adoption Attorneys, and the Uniform Law Commission. Dep’t of Children and Families, *Staff Analysis and Economic Impact, Senate Bill Number 2240*, 2 (Feb. 27, 2009) (on file with the Senate Committee on Judiciary).

¹¹ See American Public Human Servs. Ass’n, *supra* note 3, at *Enactment Progress*. The ICPC has been enacted in Alaska, Delaware, Indiana, Maine, Minnesota, Missouri, Ohio, and Oklahoma.

¹² American Public Human Servs. Ass’n, *supra* note 3, at *Proposed ICPC: Frequently Asked Questions*, 4 (follow “Proposed ICPC Frequently Asked Questions” link under the “Resource Materials” heading). 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.

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.¹³

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.”¹⁴ 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.¹⁵

According to the Department of Children and Families, 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.¹⁶

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.¹⁷

III. Effect of Proposed Changes:

The bill creates s. 409.408, F.S., authorizing and directing the Governor to execute the redrafted Interstate Compact for the Placement of Children (ICPC) on behalf of Florida, effective 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. 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);

¹³ *Id.* at 3.

¹⁴ American Public Human Servs. Ass’n, *supra* note 3, at *Highlights of Proposed Compact Provisions* (follow “Highlights of the Proposed Compact Provisions” link under the “Resource Materials” heading).

¹⁵ *Id.*

¹⁶ Dep’t of Children and Families, *supra* note 10, at 2.

¹⁷ E-mail from Julie Mayo, Family Safety Legislative Coordinator, Dep’t of Children and Families, to staff of the Senate Committee on Children, Families, and Elder Affairs (Nov. 21, 2008) (on file with the Senate Committee on Judiciary).

- Delineates the placement authority and responsibilities of child-placing agencies (Articles VI and VII);
- Establishes the Interstate Commission for the Placement of Children (Interstate Commission) (Article VIII), and prescribes its:
 - Powers and duties (Article IX);
 - Organization and operation (Article X);
 - Rulemaking functions (Article XI);
 - Oversight, dispute resolution, 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 creates s. 409.409, F.S., to provide that the existing ICPC (s. 409.401, F.S.) will remain in effect until repealed by entry into the new compact by the Governor.

Section 409.410, F.S., is also created to provide that following entry into the new 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 the Department of Children and Families rulemaking authority to implement the provisions of the ICPC.

This bill shall take effect upon becoming law. However, the ICPC will not become effective until it is enacted by at least 35 states.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill creates the Interstate Compact for the Placement of Children (ICPC), which authorizes the Interstate Commission to adopt rules to achieve the purposes of the compact. The ICPC specifies that these rules have the force and effect of administrative rules, and further provides that a member state's failure to follow the rules may result in

remedial training or technical assistance, notice of the default and the means to cure the default, or legal action. All rules are to become binding as of the date specified by the Interstate Commission.

By enacting into law the ICPC, the state could effectively bind itself to rules not yet promulgated by the Interstate Commission. The Florida Supreme Court has held that while it is within the province of the Legislature to adopt federal statutes enacted by Congress and rules promulgated by federal administrative bodies that are in existence at the time the Legislature acts, it is an unconstitutional delegation of legislative power for the Legislature to prospectively adopt federal statutes not yet enacted by Congress and rules not yet promulgated by federal administrative bodies.¹⁸

However, it appears that the terms of the ICPC do not bind states if the provisions are in conflict with any constitutional provision of that state. Specifically:

In the event any provision of this compact exceeds the constitutional limits imposed on the legislature or executive branch of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.¹⁹

Additionally, the ICPC provides that if a majority of the legislatures of the member states rejects a rule, that rule will have no further force and effect in the member state if so enacted by statute.²⁰

The bill also contains specific language exempting Florida from rules adopted by the Interstate Commission unless they are also adopted by the state through its rulemaking process.

Accordingly, the rulemaking provisions of the ICPC may pass constitutional scrutiny.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Under the new Interstate Compact for the Placement of Children (ICPC), the Interstate Commission will be permitted to charge a fee to states for its operating expenses.

¹⁸ *Freimuth v. State*, 272 So. 2d 473, 476 (Fla. 1972).

¹⁹ See Article XVII of the proposed ICPC.

²⁰ See Article XI, s. F, of the proposed ICPC.

Pursuant to the existing ICPC provisions, a fee is currently assessed and paid annually by the Department of Children and Families (department). Accordingly, the department anticipates that there will be no additional fiscal impact resulting from this bill.²¹

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 removes provisions from the bill that may have violated Florida's public records and open meetings laws. The committee substitute also provides that any rules adopted by the Interstate Commission will not be binding unless also adopted by Florida through the rulemaking process, and it 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.

²¹ Dep't of Children and Families, *supra* note 10, at 3-4. Based on data from the Council of State Governments, the estimated cost to organize and operate the Interstate Commission for the first year will be \$500,000, which will be split among the member states. American Public Human Servs. Ass'n, *supra* note 3, at *Proposed ICPC: Frequently Asked Questions*, 3 (follow "Proposed ICPC Frequently Asked Questions" link under the "Resource Materials" heading); *see also House of Representatives Staff Analysis CS/HB 1409*, 5 (Mar. 25, 2009), available at <http://www.flsenate.gov/data/session/2009/House/bills/analysis/pdf/h1409c.HFPC.pdf> (last visited Mar. 28, 2009).