

HB

309

**REPRESENTATIVE
MIKE CHENAULT**

STATE OF ALASKA



Official Business

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HOUSE OF REPRESENTATIVES

January 23, 2002

TO: Fred Dyson, Chair
House Health and Social Services Committee

FROM: Representative Mike Chenault

A handwritten signature in black ink, appearing to read "Mike", written over the "FROM:" line.

Please consider this a request for a hearing on House Bill 309 " An Act relating to the Interstate Compact on Placement of Children".

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SPONSOR STATEMENT

The Division of Family and Youth Services has been transferring in and out of the State of Alaska in violation of the Interstate Compact on the Placement of Children.

This bill would tighten the requirements of the Compact and will increase the penalties for violations.

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Sectional Analysis of House Bill 309

The proposed changes to the Interstate Compact on Placement of Children in House Bill 309 is two-fold.

First, it requires the sending and receiving state to have IN WRITING prior to sending or receiving a child, an agreement outlining the child's needs, and a home study of the receiving state.

The Division of Family and Youth Services have been accepting and originating transfers of children with verbal agreements. Page 2, lines 6-8 would prohibit that activity.

The second and final change would increase the penalty of any person who sends or brings or causes a child to be sent from or brought into the State of Alaska in violation of the Interstate Compact on Placement of Children shall face increased penalties, both financial and penal.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 309
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: RELATING TO THE INTERSTATE COMPACT ON PLACEMENT OF CHILDREN BRU: Purchased Services
 Component: Residential Child Care
 Sponsor: CHENAULT
 Requestor: HOUSE (HES) Component Number: 253

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	240.3	240.3	240.3	240.3	240.3	240.3
Miscellaneous						
TOTAL OPERATING	240.3	240.3	240.3	240.3	240.3	240.3

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	240.3	240.3	240.3	240.3	240.3	240.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--do not abbreviate)						
TOTAL	240.3	240.3	240.3	240.3	240.3	240.3

Estimate of any current year (FY2002) cost: _____

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This proposed legislation amends AS 47.70, the Alaska statute governing the Interstate Compact on the Placement of Children (ICPC). The ICPC is a federal law that establishes procedures for the interstate placement of children and fixes responsibility for those involved in placing the child.

HB 309 would require the department to send originals of documents, whenever a receiving state requests supplemental information pursuant to the ICPC. In addition, the legislation prohibits the department from accepting a child from another state unless the sending state provides original documents. It also requires the department to maintain original written agreements with other states and determines the penalty for violations of the Interstate Compact.

Prepared by: Mike Lesmann Phone _____
 Division: Family & Youth Services Date/Time _____
 Approved by: Elmer A. Lindstrom, Deputy Commissioner Date 01/28/2002
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. HB 309

ANALYSIS CONTINUATION

The process of requesting, receiving, and sending original supporting documentation would significantly delay the placement of children in custody with parents, relatives and other potential permanent placements. Placement for children in need of residential psychiatric treatment would also be delayed. These requests would be made to public and private providers, many of whom would not be able to release originals. Original documents would have to be requested from psychiatrists, psychologists and other health care providers. The delays in processing these requests would cause a minimum of two weeks delay in the placement of children. These delays would also increase the costs of providing additional foster care, residential care and inpatient hospitalization services, while the children are awaiting placement.

These delays would also affect parents of non-custody children who are placing their children in residential treatment programs in other states. In addition, private national and international adoptions would also experience these delays as well as additional costs.

Other sending states may not be able to send original supporting documentation requested by this department, thus preventing the placement of children with parents, relatives and other potentially permanent homes in Alaska.

The Secretariat to the Association of Administrators of the Interstate Compact on the Placement of Children has provided a legal analysis of the proposed amendment. We have attached this report to our analysis. According to the Secretariat, each of the four provisions of Section 1 of HB309 would conflict with the provisions of the ICPC. The ICPC is not only state law, it is an interstate compact between the jurisdictions that have adopted it. Interstate compacts are, in addition to being compacts, contracts between the states that have adopted the compacts. Since compacts are also contracts between the states, compacts take precedence over state laws that conflict with an interstate compact. When such a conflict occurs, the statutory provision that conflicts with the compact is invalidated. Since all of these provisions conflict with the ICPC, they would likely be invalidated if challenged in a legal proceeding.

The department estimates that the proposed legislation would affect approximately 99 Interstate Compact on Placement of Children (ICPC) placements in FY2003. The department anticipates the original supporting documentation requirement would cause a delay of up to 14 days in placing or transferring children out-of-state. This would result in children remaining in Residential Care Facilities additional days, at an added projected cost of \$240.3 in FY2003. Grant funds would be used for the additional Residential Care Facilities services created by the delay in ICPC placements. An estimated 41 children would remain in residential care facilities at a projected cost of \$240.3.

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SECTIONAL ANALYSIS
OF
HOUSE BILL 309
CHANGES ONLY

Section 47.70.040 Agreements is amended to read, " an agreement under this section must be in writing, and an original of the agreement shall be held in the files of the department". This simply means that the Division of Family and Youth Services must obtain in writing and NOT VERBAL approval for the movement of children in and out of the State of Alaska.

Section 47.70.070 Violations of Compact is amended to read "a definite term of imprisonment of not more than 180 days and a fine of not more than \$1,000 for each violation. Each day that a child is in this state of a party state due to a violation of the compact is a separate violation for purposes of this section." This means that if an employee of the Division of Family and Youth Services is found to be in violation of the Interstate Compact on the Placement of Children the fine shall be increased, and each DAY a child is misplaced shall be considered a violation.

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Lauterbach
2/5/02

CS FOR HOUSE BILL NO. 309()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Dyson

A BILL
FOR AN ACT ENTITLED

"An Act relating to the Interstate Compact on Placement of Children."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1. AS 47.70 is amended by adding a new section to read:**

Sec. 47.70.035. Documentation required. (a) When the Department of Health and Social Services is the sending agency and supporting documentation is requested by the receiving state under art. III(c) of the Interstate Compact on the Placement of Children, the department shall supply to the receiving state a certified copy of the documents requested. When the Department of Health and Social Services is intended to be the receiving agency under the compact, the department may not accept placement of the child unless documentation requested under art. III(c) of the compact is supplied in the form of certified copies. Oral information, facsimiles, uncertified photocopies, and internet communications are not considered to be in the required form for purposes of this section.

(b) Each agreement under which the Department of Health and Social Services is the sending or receiving agency for a particular child must be in writing,

1 and a certified copy of the agreement shall be held in the files of the department for
2 each child sent from or brought into this state by the department under the Interstate
3 Compact on the Placement of Children.

4 * Sec. 2. AS 47.70.040 is amended to read:

5 Sec. 47.70.040. **Agreements.** The officers and agencies of this state and its
6 subdivisions having authority to place children are empowered to enter into
7 agreements with appropriate officers or agencies of or in other party states under art.
8 V(b) of the Interstate Compact on the Placement of Children. An agreement under
9 this section that includes the Department of Health and Social Services as a party
10 must be in writing, and a certified copy of the agreement shall be held in the files
11 of the department.

12 * Sec. 3. AS 47.70.070 is amended to read:

13 Sec. 47.70.070. **Violations of compact.** A person who sends, brings, or
14 causes to be sent or brought into this state from any party state, or from this state into
15 any party state, a person under the age of 19, in violation of the Interstate Compact on
16 the Placement of Children, is guilty of a misdemeanor, and upon conviction is
17 punishable by a definite term of imprisonment of not more than 180 days and a
18 fine of not more than \$1,000 for each violation. Each day that a child is in this
19 state or a party state due to a violation of the compact is a separate violation for
20 purposes of this section [\$200].
21

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HOUSE OF REPRESENTATIVES

February 7, 2002

TO: Representative Fred Dyson, Chair
Health and Social Services Committee

FROM: Representative Mike Chenault 

RE: House Bill 309

Please consider this a request to hear House Bill 309 on Tuesday, February 12, 2002. My staff is awaiting legal opinions and documentation from the Alaska Court System, South Carolina, Arizona, Washington D.C. and Kentucky. In light of the last HESS meeting I feel this documentation is necessary to present this bill.

I would like to take this opportunity to express my appreciation in allowing my staff to make this presentation.

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February 12, 2002

TO: Representative Fred Dyson
Health and Social Services Chairman

FROM: Representative Mike Chenault 

RE: House Bill 309

My staff has requested legal opinions from several different firms regarding issues, which were addressed a week ago in committee. We were hoping the information would be complete to proceed today with the hearing on HB 309, unfortunately copies of files are not in hand this morning. We have exercised due diligence in our attempts to get the legal opinions we need to support our concerns. Some information has been requested from Washington D.C. and simply takes time to arrive.

We have concerns as the Division represented that the Smith case did not become an ICPC case until after the child was allowed to leave the State of Alaska on August 3, 2001. In fact the first ICPC documents were filed in May 2001.

We would appreciate it if you would schedule HB 309 for a week from today.

We regret the delay and appreciate your understanding.

February 19, 2002

TO: Representative Fred Dyson, Chair
House Health and Social Services

FROM: Representative Mike Chenault

RE: House Bill 309



Two organizations from Washington D.C. have a problem with their schedules this afternoon. They are clear for Thursday. Thank you. In light of the previous testimony I feel it is imperative they have the opportunity to speak.



Alaska State Legislature

Please enter into the record my testimony to the H H E S S
committee name

Committee on HB0309a A Bill, dated 3-5-02
bill # / subject

In the matter of I.C.P.C. the D.H.S.S.; shall & like us, as citizens, should be required by law to supply all documentation first not when its convenient for them, or, when availability is convenient.

Children entering this state or leaving this state must have the proper paper work in order to justify any transactions between another state. Oral information, facsimiles, photocopies, and internet communications could or may be construed as false documentation.

Only original documentation cannot be considered as false. This bill should be considered as important as receiving a drivers licence, applying for the permanent fund, enrolling children in school, and so on.

Protecting children is our job and allowing children to slip through the cracks of hearsay, and politics, is an abuse of

Signed: Vernon Lee Smith (Vernon Lee Smith)
Testifier

Representing (optional)

P.O. Box 8704 NIKISKI AK 99635
Address

(907)-776-8619
Phone number

Power. By presenting the proper paperwork in order, in
relative time, protects children and the laws that
Govern us



Alaska State Legislature

Please enter into the record my testimony to the H H E S S
committee name

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American Public Human Services Association

Association of Administrators of the Interstate Compact on the Placement of Children

ALASKA HOUSE BILL NUMBER 309

ANALYSIS OF THE SECRETARIAT TO THE ASSOCIATION OF ADMINISTRATORS OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

January 11, 2002

A brief summary of sections one through three of House Bill Number 309 appears below. Immediately following the summary is a brief analysis of each section.

Section 1

Summary

Section 1 contains four discrete provisions, as follows:

1. the Department of Health and Social Services of Alaska would be obligated to send originals of documents whenever a state, in its capacity as a receiving state, requests that Alaska, in its capacity as the state of the sending agency, send additional documents to the receiving state pursuant to the authority of Article III(c) of the ICPC;
2. the Department of Health and Social Services of Alaska would be prohibited from allowing placements into Alaska when it had requested additional documentation from a sending state under the authority of Article III(c) and such documentation is either provided in any form other than original documents or is not provided at all;
3. for the purpose of supplying the documentation described in points #1 and #2, above, oral information, facsimiles, photocopies, and internet communications are prohibited from being considered original documents; and
4. each agreement wherein a child is placed from another state into Alaska or by Alaska into another state must be in writing and an original document memorializing each such agreement must be maintained in the Alaska Department of Health and Social Services.

Analysis The proposed bill would conflict with the ICPC substantially. Such conflicts for each provision in section 1 are as follows:

1. (a) Article III(c) of the ICPC allows the receiving state compact administrator to request supporting or additional information as it deems necessary. If the receiving state compact administrator deems the supporting or additional information that is necessary to be something other than original documents as defined by the proposed bill, then the proposed bill would restrict the additional information that can be furnished by Alaska to a much narrower class of information than the ICPC allows. This would represent a clear conflict with the ICPC.

(b) Article III(c) of the ICPC allows the receiving state compact administrator to request supporting or additional information from the sending agency or any other appropriate officer or agency of the sending state. The sending agency frequently is some person or entity other than the Alaska Department of Health and Social Services. By requiring the Department to send an original document upon the request of a receiving state compact administrator, the proposed bill would impose a duty on the Department to perform an act over which it would frequently have no control. The Department will not have original documents in its possession, but the proposed bill would require the Department to transmit the original document. This would represent a conflict in practice with the language in Article III(c) of the ICPC.

2. The prohibition on placements into Alaska unless documentation that is furnished to the Alaska compact administrator is in the form of original documents conflicts with the language of the ICPC. Article III(c) of the ICPC allows the receiving state compact administrator to request supporting or additional information—it is not restricted to occasions when original documents, as defined in the proposed bill, are furnished to the receiving state compact administrator. There are occasions when legitimate and intellectually respectable supporting or additional information could be helpful for a compact administrator to determine whether a placement will be approved, even though such supporting or additional information is not in the form of original documents. To the extent that the proposed bill would prohibit such supporting or additional information from being used, it would conflict with Article III(c) of the ICPC.

3. The proposed bill restricts the supporting documentation that can be supplied upon request so that it clearly excludes oral information, facsimiles, photocopies, and internet communications. Again, Article III(c) of the ICPC says that the receiving state compact administrator may request supporting or additional information. It does not restrict the information that may be requested to documents other than oral information, facsimiles, photocopies, and internet communications. In fact, such methods of communication may routinely be used by administrators as an acceptable business means of communicating crucial information. The definition would create a class of acceptable forms of communicating the requested information that is much narrower than the class of

information that is described in the ICPC. For that reason, the definition of original documents also conflicts with the language of the ICPC.

4. (a) The provision that requires each agreement for the placement of a child to be in writing is redundant. Article III(d) of the ICPC requires the receiving state compact administrator to notify the sending agency *in writing* (emphasis added) that the proposed placement of a child does not appear to be contrary to the interests of the child. The receiving state compact administrator sends this written notice on the ICPC-100A Form, which then becomes the agreement to place a child. Since there is already a statutory requirement for the agreement to place a child to be in writing, there is no need to add a provision to the statutes of Alaska that requires the agreement to be in writing.

(b) The ICPC requires a sending agency to indicate a proposal to place a child by filling out an ICPC-100A Form. The 100A Form is completed by writing on the top page of paper which is formatted to allow the writing impression made on the top page of the form to be impressed through five additional pages of the Form that are positioned underneath the top page. The top page becomes the original, and the other five pages become copies of the original. The AAICPC has adopted rules that require the original of the 100A Form to be returned to the sending agency when the ICPC referral process is complete. Only in cases wherein the Alaska Department of Health and Social Services is the sending agency for a child placed outside of Alaska would the Department have possession of the original of the 100A Form to place the Form in its files. In cases wherein Alaska is the receiving state or where the sending agency is some entity in Alaska other than the Department of Health and Social Services, the Department would not have the original of the agreement to place a child in its possession so that it could place the original document in its files. The Department would have a copy of the agreement. Therefore, this provision would signify a substantial conflict with the provisions of the ICPC.

Each of the four provisions of Article 1 of proposed Alaska House Bill Number 309 would conflict with the provisions of the ICPC. The ICPC is not only state law, it is an interstate compact between the jurisdictions that have adopted it. The U.S. Constitution recognizes that interstate compacts are, in addition to being compacts, contracts between the states that have adopted the compacts. Since compacts are also contracts between the states, compacts take precedence over state laws that conflict with an interstate compact. When such a conflict occurs, the statutory provision that conflicts with the compact is invalidated. Since the provisions of Article 1 of proposed House Bill Number 309 all conflict with the ICPC, they would likely be invalidated if challenged in a legal proceeding.

Section 2

Summary This section states that the officers and agencies of Alaska and Alaska's subdivisions who have authority under Alaska law to place children would be authorized to enter into agreements with officers or agencies located in other states that have adopted the ICPC. The authority to enter into such agreements is said to be Article V(b) of the

ICPC. The section also states that any such agreements must be in writing, with "an original" of the agreement required to be held in the files of the Department of Health and Social Services.

Analysis Article V(b) of the ICPC says that a sending agency that is a public agency may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter (i.e., the authorized public or private agency in the receiving state) as agent for the sending agency. To the extent that the provision of Section 2 of proposed House Bill Number 309 embodies the notion that the "officers and agencies" of Alaska who have the authority to place children can make agreements *to place children* with public or private agencies in receiving states, the provision does not conflict with the ICPC. However, since the ICPC allows public agencies to make agreements with public or private agencies in other party states, the provision of section 2 that allows such agreements to be made is redundant and repetitive. To the extent that the provision of section 2 would allow any sending agency in Alaska to be something other than a public agency, it would conflict with the ICPC. As discussed above, any state statute that conflicts with an interstate compact is invalidated.

Section 2 also purports to require an original of any agreement made to be held in the files of the Department of Health and Social Services. Presumably, the reference to an original is meant to exclude oral information, facsimiles, photocopies, and internet communications in the same manner as such phenomena are excluded according to the language in section 1 of proposed House Bill Number 309. However, section 1 of proposed House Bill Number 309 says that the identified exclusions are "not considered to be in original form for purposes of this section." That is, the exclusions are clearly meant to identify the things that are not original documents for the purpose of section 1. The reference to original agreements in section 2 of proposed House Bill Number 309 is unaffected by the exclusions named in section 1 of the bill since section 1 clearly says that the exclusions are intended to be for the purposes of section 1. It is, therefore, at best, unclear what is meant by section 2 when the language of that section says that the agreements described in that section must be originals. The language in section 2 that applies to originals is, as a result, unacceptably vague.

Section 3

Summary This section would establish that violations of the ICPC are misdemeanors, and that convictions for such violations are punishable by certain definite incarceration terms and fines.

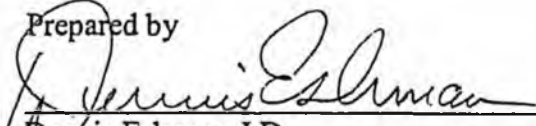
The proposed bill also would establish that sending, bringing, or causing an individual to be sent or brought into Alaska or out of Alaska in violation of the ICPC would be a misdemeanor that is subject to the penalties described in the section.

Analysis Article IV of the ICPC says that violations of the ICPC are violations of the laws of both a sending state and a receiving state. It goes on to say that such violations may be punishable according to the applicable laws of either sending states or

receiving states. The provisions of section 3 of proposed House Bill Number 309 establish penalties for the violation of the ICPC, whether Alaska is a sending state or a receiving state. Such penalties are consistent with the language of Article IV of the ICPC and are clearly the type of penalties contemplated in Article IV. There is no conflict with the ICPC with respect to the penalties that are described in proposed House Bill Number 309.

However, the section also seeks to establish that persons who send, bring, or cause to be sent or brought into Alaska individuals who are under age 19 commit the specified misdemeanors. It is the law of the sending state that determines the age of majority for children who are sent out of that state for placement pursuant to the ICPC. In the case of a state with an age of majority that is lower than age 19, proposed House Bill Number 309 would make illegal an act that would otherwise be a legal act. The bill would make it illegal for an individual who is recognized as an adult in his own home state to come to Alaska, unless the ICPC were to be invoked. ICPC compact administrators in other states would refuse to invoke the ICPC to place a person who is recognized as an adult in that person's own home state. Therefore, any person who is recognized as an adult in his own home state but who is not yet age 19 would be committing a misdemeanor by moving to Alaska. This provision in Alaska law would undoubtedly be found, when challenged, to be an unconstitutional restraint on an individual's right to travel within the United States.

Prepared by


Dennis Eshman, J.D.

Secretariat to the Association of Administrators of the Interstate Compact on the
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Association of Administrators of the Interstate Compact on the Placement of Children

**ALASKA HOUSE BILL NUMBER 309
VERSION DATED 2/5/02**

**ANALYSIS OF THE SECRETARIAT TO THE
ASSOCIATION OF ADMINISTRATORS OF THE
INTERSTATE COMPACT ON THE PLACEMENT OF
CHILDREN**

February 7, 2002

Summary

The earlier version of HB 309 would have required original documents to be transmitted by Alaska to other Compact states when an Alaskan entity seeks to place a child from Alaska into another state under the auspices of the Interstate Compact on the Placement of Children (ICPC). Similarly, the earlier version of the bill would have required original documents to be transmitted by entities in other states to Alaska when those other entities seek to place children from other Compact states into Alaska. The earlier version of the bill would also impose misdemeanor penalties on violations of the ICPC, and would define placements that are in violation as those of any person under the age of 19.

The 2/5/02 version of HB 309 would leave the earlier version of the bill substantially intact. Amendments that have been made to the original bill, however, are to replace the requirements that original documents must be the ones that are transmitted in connection with ICPC referrals with requirements that certified documents (instead of original documents) must be the ones that are used to process ICPC referrals. Additional amendments in the 2/5/02 version of the bill are to define violations of the ICPC to mean that each day on which a placement in violation of the ICPC exists is a separate violation.

and each violation is subject to penalties of up to 180 days imprisonment and fines of up to \$1,000.

Analysis

The Secretariat prepared an analysis of the original version of HB 309. That analysis was dated January 11, 2002. In that analysis, the Secretariat provided its opinion on the effects of requiring original documents only to be documents transmitted for the purpose of making ICPC referrals either into or out of Alaska. The effects of requiring certified documents, instead of original documents, to be used in ICPC referrals are the same as if original documents were still required. Therefore, the analytical points that are described in the analysis dated January 11, 2002 in connection with original documents apply to the provisions of the 2/5/02 draft of HB 309 in connection with certified documents. There is no practical difference from the standpoint of complying with the ICPC statutes.

Although the 2/5/02 version of HB 309 does not apparently seek to amend the language enacted in Alaska statutes that embodies the language of the ICPC, it may be relevant to point out the implications of amending that statute. That is, the language of an interstate compact is adopted in identical form, or nearly identical form, in every jurisdiction that becomes a member of the compact. Adoption of identical language is crucial because an interstate compact is also a contract between the parties to the compact. If a state adopts language that is substantially different than the compact language—or if a state amends its previously adopted compact language so that it is no longer substantially similar to the compact language—the state has, in effect, disavowed its contract with the other states that are parties to the compact. Because the state would be using language that is different than the contractual language that forms the basis of the conduct by all other party jurisdictions, the state would be operating outside the compact. Legal challenges to actions that are purportedly taken under the compact would likely reveal those actions to be ones that do not enjoy the protections of the compact.

Prepared by



Dennis Eshman, J.D.

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ALASKA HOUSE BILL 309-2