

**HB**

**50**

# ALASKA STATE HOUSE OF REPRESENTATIVES

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**Session**


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FAX# (907)-465-3258  
State Capitol  
Room 204**

## REPRESENTATIVE JOHN COGHILL

### MEMORANDUM

Date: April 1, 2008

To: Senator Hollis French, Chair  
Senate Judiciary Committee

From: Representative John Coghill 

Re: HB 50 Pending Referral

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I am requesting a hearing for HB 50, "An Act relating to the Interstate Compact for the Placement of Children; establishing an interstate commission for the placement of children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date." Attached is the legislation and backup for committee members.

Thank you for your consideration.

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## REPRESENTATIVE JOHN COGHILL

### SPONSOR STATEMENT

#### HB 50 Interstate Compact for the Placement of Children

In an effort to control the language of a new interstate compact for child placement, I agreed to introduce HB 50. Throughout the last year my office has been a participant in bringing out our concerns about the original language and working on amending the language to preserve state sovereignty. The HESS committee substitute is the latest version of the compact supported by the American Public Human Services Association and the American Academy of Adoption Attorneys.

The current ICPC was drafted in 1959 to assure that children placed across state lines were placed with the same protections and services as children placed intrastate.. Through the years, however, it has become evident that the ICPC has resulted in unnecessary delays in moving children across state lines, lack of accountability, and an outdated administrative process. Additionally, the current ICPC applies to all interstate placements such as placement with relative and residential treatment centers, not just those placements involving children in state custody.

The new compact holds member states to a higher standard of duty, eliminates regulation of children not in state custody, makes provisions for private child placement agencies, and brings the administrative process into the 21<sup>st</sup> century with home study incentives, definitions for new terminology, requiring consideration of interstate placements, requires cooperation between member states in sharing information, and gives foster parents more participation in the process.

HB 50 gives state child placement agencies and courts the tools to make faster interstate placements and hold all parties accountable for providing a safe, reliable home for children in out-of-state placement.

## **HB 50 Interstate Compact for the Placement of Children**

### **Sectional Analysis for Version "K" Judiciary Committee Substitute**

**Section 1.** Amendment language for title change of Compact.

**Sec. 2.** Repeals and reenacts Interstate Compact for the Placement of Children

**Article I. PURPOSE.** Provide uniform data collection; administrative rules implementing and regulating child placement in member states; provide coordination with other compacts affecting the placement of children; providing continuing jurisdiction and responsibility as if intrastate placement; promulgation of guidelines of Indian tribes; provide procedures to insure safe and suitable placement for children.

**Article II. DEFINITIONS.** New definitions for approved placement, assessment, child, certification, default, home study, Indian tribe, Interstate Commission for the Placement of Children, Jurisdiction, legal risk, member state, non-custodial parent, non-member state, notice of residential placement, placement, private child-placing agency, private child-placing agency, provisional placement, public child-placing agency, receiving state, relative, residential facility, rule, sending state, service member's permanent duty station, service member's state of legal residence, state, state court, and supervision.

**Article III. APPLICABILITY.** Interstate placement of a child in state custody as a child in need of aid or a child adjudicated delinquent or unmanageable based on the sending state; interstate placement of a child by a public child placement agency or private child placing agency as a preliminary step to a possible adoption.

Does not apply to a child in a custody proceeding in which a public child placing agency is not a party; interstate placement by one relative to another relative; placement of a non-state custody child in a residential facility by a parent; placement of a child with non-custodial parent under certain circumstances.

**Article IV. JURISDICTION.** The sending state retains jurisdiction over child, including power to order return of child; receiving state court shall confer with sending state court to determine forum for adjudication; sending state can terminate its jurisdiction under certain circumstances and is required to notify receiving state of that action; allows receiving state jurisdiction sufficient to deal with truancy, delinquency, crime or behavior involving a child violating receiving state laws; permits receiving state to take emergency jurisdiction for the protection of a child.

**Article V. PLACEMENT EVALUATION.** Sets out in the compact a process for the sending state requesting an assessment from the receiving state on placement,

provide evidence the placement is legal, certification that consent or relinquishment is in compliance, and obtain approval of public child placement agency in the receiving state. Allows the Commission to develop uniform standards for the assessment of the safety and suitability of interstate placements. A final decree of adoption cannot happen until the placement is authorized as an "approved placement" by the public child placing agency in the receiving state.

**Article VI. PLACEMENT AUTHORITY.** Placement cannot be made until approval is obtained from receiving state or until administrative reversal of a denial of placement.

**Article VII. PLACING AGENCY RESPONSIBILITY.**

- A. Sending state has financial responsibility for ongoing support and maintenance of child, including those services beyond the public services available in the receiving state. Receiving state's financial responsibility is for any assessment conducted and supervision conducted by the receiving state at the level necessary to support placement.
- B. Private child placement agencies shall be legally and financially responsible for the child as provided by law in the sending state until adoption is final and legally financial absent a contractual agreement to the contrary.
- C. Receiving state assessment shall be done in a timely manner.
- D. Public child placement agency will provide supervision and services for the child including timely reports to the sending state.
- E. Receiving state agency provides supervision and services for the child, including timely reports during the period placement.
- F. Compact does not limit receiving state from contracting for assessments, supervision or services for the child.
- G. Member states shall provide coordination among its branches of government by forming an advisory council or use of existing board.
- H. Requires each member state to have a central state compact office.
- I. Public child placement agency will oversee ICWA compliance.
- J. With consent of Interstate Commission, states may enter into limited agreements that facilitate the timely assessment and provision of services and supervision of placements under this compact. (Does this conflict with E?)

**Article VIII. INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN.**

Establishes the commission to be a joint commission of member states that shall have responsibilities, powers and duties set forth in HB 50 and additional powers as conferred by concurrent action of respective legislatures of the member states. Each member state will have a commissioner appointed by the HSS Commissioner and this member shall have legal authority to vote on policy related matters by the compact which binds the state. A majority constitutes a quorum and a member can delegate to another person from his or her state but cannot proxy their vote to another member of the commission.

The commission can appoint ex officio members who are from interested organizations and an executive committee shall be established to administer the day-to-day activities of the commission, which do not include rulemaking.

**Article IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION.**

- (A) Promulgate rules and take all necessary actions to effect the goals, purposes, and obligations enumerated in the compact.
- (B) Provide dispute resolution to member states.
- (C) Issue advisory opinions concerning interpretation of compact, bylaws, rules or actions.
- (D) Enforce compliance with compact.
- (E) Determine needs for collection of data and collect that data.
- (F) Establish and maintain offices.
- (G) Purchase and maintain insurance and bonds,
- (H) Hire or contract for services of personnel or contracts.
- (I) Establish and appoint committees and officers, including the executive committee.
- (J) Accept funds.
- (K) Lease, purchase, accept contributions or donations of real, personal, or mixed properties.

- (L) Sell, convey, mortgage, pledge, lease, exchange, abandon or dispose of real or personal property.
- (M) Establish budget and make expenditures.
- (N) Adopt a seal and bylaws.
- (O) Establishes annual reporting requirements tot legislatures, governors, judiciary and state advisory councils.
- (P) Coordinate public awareness of the commission and its purpose.
- (Q) Maintenance of books and records.
- (R) Perform functions necessary to achieve purposes of this compact.

**Article X. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.**

Requirement to set up by laws within one year of first commission meeting and make all records public unless records would adversely affect the personal privacy rights or proprietary interests.

The Commission must meet at lest once a year and have proper public notice. A public meeting could be closed by a two-thirds vote if discussion would include personnel issues; information privileged, proprietary or confidential in nature; accusation or a crime or censuring a person; investigative records; matters exempted by federal law; civil or legal proceedings; Meetings may be held by telecommunications or other electronic communication.

The Commission may appoint, through its executive committee, a non-voting staff director as secretary to the commission. It may also elect a chairperson and vice chairperson from among the commission members.

The commission's staff director and employees are immune from suit and liability unless the liability was caused by a criminal act or intentional or willful and wanton misconduct of such person.

**Article XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION.**

Commission shall promulgate and publish rule that substantially conform to the principles of "Model State Administrative Procedures Act", 1981, Uniform Laws Annotated, Vol. 15, p.1 (2000) or other acts commission deems appropriate. Rules promulgated by the Interstate Commission shall have the force and effect of administrative rules.

Allows for an interested person to challenge a rule in the U.S District Court for the District of Columbia within 60 days of the rule being enacted. A majority of members may reject a rule. The new rules shall be enacted and the existing rules voided. Emergency rules can be adopted by a majority vote of the commission.

#### **Article XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT.**

The commission shall oversee the administration and operation of the compact and make sure the three branches of state government enforce the compact. The compact and its rules will be binding on compact states as administrative rules.

Requires state courts to take judicial notice of the compact and rules in any judicial or administrative proceedings. If there is a judicial challenge of a rule as provided for in Article XI, the Commission is entitled to receive service of process.

The commission shall adopt rules providing for mediation and binding dispute resolution and the cost of such actions will be the responsibility of the parties to the dispute. This would apply to disputing member states and member non-member disputes.

If the Commission determines a member has defaulted it may provide remedial training and specific TA or provide written notice of default and the means of curing the default. By a majority vote, the Commission can initiate legal action against the member state in the U.S. District Court for the District of Columbia or a federal district court where the Commission has its principal office. The relief sought may be both injunctive relief and damages.

Rule 24, Alaska Rules of Civil Procedure is amended by entitling the Commission to have standing to intervene in a judicial proceeding in a state pertains to the Compact and in which the validity of a compact provision or rule is an issue for which judicial determination has been sought.

#### **Article XIII. FINANCING OF THE COMMISSION.**

The Commission can levy on and collect an annual assessment from each member state to cover cost of operations. The Commission shall determine what formula to use and shall promulgate a rule binding upon all member states.

The Commission cannot incur any obligations prior to securing funding and shall not pledge credit of any member state without prior to being given authority to do so by that member state.

The Commission shall keep accurate books and have an annual audit by a certified or licensed public accountant.

**Article XIV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT.**

Any state is eligible to become a member of the Commission and Compact will become effective upon legislative enactment by thirty-five (35) states. Non-member states can participate on a non-voting basis.

No proposed amendments to the Compact may be enacted without unanimous consent of the member states.

**Article XV. WITHDRAWAL AND DISSOLUTION.**

Member states may withdraw from the compact by repealing the statute that adopted the compact and the effective date of the repeal will be the effective date of withdrawal. The withdrawing state shall be responsible for all assessments, obligations, and liabilities incurred through the effective date of the withdrawal. Reinstatement is accomplished by readopting the compact.

Dissolution of the compact occurs when only one state remains in the compact.

**Article XVI. SEVERABILITY AND CONSTRUCTION.**

The provision of the Compact are severable. If one or more provisions in the compact are found to be unenforceable, the remaining provisions are enforceable.

**Article XVII. BINDING EFFECT OF COMPACT AND OTHER LAWS.**

**A. Other Laws**

Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

**(B) Binding Effect of the Compact**

All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

If any provision of the compact exceeds constitutional limits of a member state, that provision will be ineffective to the extent of the constitutional conflict.

**Article XVIII. INDIAN TRIBES.**

The Commission may promulgate guidelines to permit Indian Tribes to utilize the compact and make reasonable effort to consult with Indian tribes in promulgating guidelines.

**Sec. 3.** Conforming language for financial responsibility section of the Compact.

**Sec. 4.** Conforming language for entering into agreements with appropriate officers or agencies.

**Sec. 5.** Conforming language for delegation by agreement for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state.

**Sec. 6.** Redefines executive head from the governor to the commissioner of health and social services and provides for establishing a central compact office.

**Sec. 7.** Language conformance on short title of Compact.

**Sec. 8.** The following statutes are repealed:

**AS 47.70.030. Designation of authority.** The term appropriate public authority is no longer used in this title as the compact is now administered by the member states' member of the commission.

**AS 47.70.070. Violations of the compact.** The Commission will now determine the violations and the enforcement of the compact, so this section is no longer needed.

**Sec. 9.** Court Rule change to provide the Commission with notice when a judicial proceeding has been filed relating to the validity of a compact rule or provision is an amendment to Rule 4, Alaska Rules of Civil Procedure.

Rule 24(b), Alaska Rules of Civil Procedure is amended by entitling the Commission to have permissive intervention in a judicial proceeding in a state pertains to the Compact and in which the validity of a compact provision or rule is an issue for which judicial determination has been sought.

**Sec. 10.** Those sections of Art. XII(4) become effective only if Section 9 amending court rules is approved by a two-thirds majority vote of each house.

**Sec. 11.** Effect of Act occurs when 34 other states have ratified the Compact. The Department shall notify the lieutenant governor and the revisor of statutes when this occurs.

**Sec. 12.** The effective date of sections 1 through 10 is one day after the Health and Social Services notifies the revisor of statutes that 34 other states have ratified the Compact.

REPRESENTATIVE  
**JOHN COGHILL**  
HOUSE RULES  
COMMITTEE CHAIRMAN

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# Alaska State Legislature



DISTRICT 11

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## House of Representatives

March 6, 2007

Steve Dale, Commissioner  
Department for Child and Family Services  
103 S Main Street  
Waterbury VT 05671-9800

Dear Mr. Dale:

I introduced HB 50 in the Alaska Legislature after hearing the need at a CSG meeting for a new Interstate Compact. However, we have not scheduled the bill for committee at this time due concerns we have with the current revised ICPC.

We have met with our local ICPC administrator as well as other groups concerned with the revised ICPC and have come to the conclusion that specific items need to be addressed before we can proceed with the bill. These problems include:

- Art. XII (A)(2); Art. XII (C)(c): Enforcement issues
- Art. XIII (B): Program cost
- Art. VI. (B); Art. XI (D): Potential conflicts with state sovereignty
- Art. IX. (A) (C) (D); Art. XI (A) (D) (H): Formulation of regulations

We are strongly supportive of working with the ICPC and other states to improve the process of adopting and placing foster children in order to ensure a safe and timely procedure. This requires a process that is open and responsive. To this end we would like to have the opportunity to view the feedback that the drafters received from the various states about the concerns they had with the draft as well as suggestions for improvement.

We would like to work with the commission and compact coordinators of CSG to come up with proposals to current problems that we have with the new ICPC and we look

forward to the opportunity to do this. We want an ICPC that we can fully support and will work for passage in our state legislature. However, we are just as strongly committed to block the passage of the ICPC in its current form.

The need for fixing problems that exist with the current ICPC is real and urgent and we support this effort. We look forward to hearing from you and would appreciate your comments and recommendations regarding the issues aforementioned.

Thank you for your work on the new ICPC.

Sincerely,



Representative John Coghill  
Rules Chairman

cc:

Leslie McGee  
Dr. Bruce Goldberg  
Howard Hendrick  
Carmen Hooker Odom  
Chris Peterson  
Lewis H. Spence  
Brenda Harvey  
Kevin Concannon  
Jim Robertson  
John Mountjoy



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**January 14, 2008**

**VIA EMAIL ATTACHMENT**

**Carla Fults, Project Manager  
American Public Human Services Association (APHSA)  
810 First Street, N.E., Suite 500  
Washington, DC 20002**

**Dear Ms. Fults:**

**On behalf of the American Academy of Adoption Attorneys (AAAA), it is my pleasure to inform you that the January 7, 2008, draft of the new Interstate Compact for the Placement of Children (ICPC) that you provided to us has been approved by AAAA Board of Trustees.**

**In a message to all the Fellows of the Academy sent today, I announced the official position of the Academy to recommend passage of this version by the states.**

**Please let me know if you need anything further at this time regarding AAAA's support of The New Compact.**

**Very truly yours,**

**Herbert A. Brail, President**

**HAB/cr**

# APHSA

American Public Human Services Association

TO: Commissioners, Child Welfare Directors, Compact Administrators,  
Deputy Compact Administrators and ICPC Staff

FROM: Carla Fults,  
Project Manager

DATE: January 25, 2008

SUBJECT: Endorsement and Revisions of the New ICPC of the New Interstate  
Compact *for* Placement of Children. (ICPC)

It is with great pleasure that I inform you that the **American Academy of Adoption Attorneys (AAAA or Quad A) has agreed to full approval and support of the attached version of the New Interstate Compact *for* the Placement of Children (ICPC or New ICPC).** After careful negotiation with the American Academy of Adoption Attorneys, we have successfully negotiated new provisions which address the concerns raised by various private and independent adoption groups throughout the country. The attached document is a result of contributions from state compact administrators, state legal counsels, stakeholders and child and family welfare judges. **The Executive Committee of the National Council of State Human Services (APHSA Policy Council) has endorsed the attached revised version of the New Interstate Compact *for* the Placement of Children (ICPC) for introduction to state legislatures.** In addition, the executive committees of the **National Association of Public Child Welfare Administrators (NAPCWA) and the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) have endorsed the attached version of the New ICPC.**

You may recall, between June, 2006 and July, 2007, approximately fifteen (15) states introduced the Proposed New Compact. However, only Ohio, Missouri and Maine were successful in passing the legislation. Private and independent adoption agencies launched an effective campaign to oppose the Proposed New ICPC, asserting that the draft did not adequately address many of the problems and barriers existing under the current ICPC. Such barriers included excessive wait times for ICPC processing before prospective adoptive parents could travel or return to their home state with a child; arbitrary requests and requirements which were not an important or necessary part of the ICPC process; and conflict of laws and unclear processes where two or more states were involved in an interstate adoption. In addition, the group argued that the Proposed New Compact needed to clarify the definition and application of an assessment compared to a home study and whether these terms would represent and require a separate and

additional review when placing a child; to include language that would provide for a choice of law in the state where an adoption is finalized; and lastly, to amend language which indicated that the rules promulgated by the interstate commission would "supersede state law". State legislatures also expressed opposition to language which stipulated that the rules would "supersede state law".

The New Compact now provides for a choice of law (**Article IV**) in the state where the adoption will be finalized; clarifies the definition of assessment and home study and the application of each term (**Article II**); provides for provisional travel for prospective adoptive parents, contingent upon submission, receipt and review of required documents to verify and ensure safety (**Article V**); and clarifies that rules promulgated by the interstate commission shall have the force and effect of administrative rules (**Article XI**). A list of the revised articles is included below. In addition, please find attached the New Compact with revisions in red, the endorsement letter from the American Academy of Adoption Attorneys, a clean copy of the New Compact which does not highlight changes and may be used as enabling legislation when introducing the New ICPC in your state legislature, and the email cover memo in Word format (document).

**APHSA will hold an all-state call for questions and answers (Q&A) on Thursday, January 31, 2008 at 3 p.m. E.T.** For those states that are planning to introduce the New ICPC before the all-state call and have questions and (or) need assistance, please feel free to contact Carla Fults at (202) 682-0100, ext. 242. APHSA will continue to provide the states with the following services to support enactment of the New ICPC.

- Develop boiler-plate legislative testimony to be used during legislative committee hearings and/or other public events where the primary goal is education on the ICPC. The model testimony will be developed in such a manner as to be customizable for a variety of uses and for a variety of champions and staff.
- Respond to specific questions from the states.
- Convene meetings via teleconference with your attorney general or other state/agency officials to provide clarification of provisions contained within the Compact.
- If necessary, convene an on site briefing with key legislators, legislative staff, executive branch and agency officials and relevant stakeholder groups.
- Provide tailored assistance to individual states at your request.
- Provide expert(s) to testify with you.
- Work with your attorney general or your ICPC staff to include necessary state legislative language which does not alter or change the intent or foundation of the Compact.

On behalf of APHSA, I would like to extend a special thank you to the AAICPC, NAPCWA, and to the many state legal counsels, judicial and interstate administrators and staff who participated in producing this revised version of the New ICPC. If you have questions, please feel free to contact me by email at [cfults@aphsa.org](mailto:cfults@aphsa.org) or at (202) 682-0100, ext. 242. Thank you in advance for your continued support of the New ICPC.

**List of Articles Amended**

- Article II. Definitions (Assessment, Home Study; other definitions were added to support overall changes)
- Article IV. Jurisdiction (Choice of Law)
- Article V. Placement Evaluation (Provisional Travel/Placement)
- Article XI. Rulemaking Functions of the Interstate Commission (Interstate Commission)

**Attachments:**

- The revised copy of the New ICPC with changes in red – Entitled “ The New Compact with revisions shown 010708”
- Endorsement letter from the American Academy of Adoption Attorneys
- Clean version of the New ICPC to be used for state introduction/enactment - Entitled “The New ICPC 2008”
- Word version of the email cover memo – Cover memo for Endorsement of the New ICPC

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## REPRESENTATIVE JOHN COGHILL

### MEMORANDUM

**Date:** March 31, 2008  
**To:** Senator Bettye Davis, Chairwoman  
Senate HESS Committee  
**From:** Representative John Coghill   
**Re:** HB 50

---

I am requesting a hearing for HB 50, "An Act relating to the Interstate Compact for the Placement of Children; establishing an interstate commission for the placement of children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date." Attached is the legislation and backup for committee members.

Thank you for your consideration.