

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Koppelman

1 A BILL for an Act to provide children of military families with smooth transitions between
2 schools in different states and to ensure that children of military families are afforded the same
3 opportunities for educational success and the achievement of their educational goals as other
4 children.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. Compact on educational opportunity for military children.** The
7 compact on educational opportunity for military children is entered into with all jurisdictions
8 legally joining therein, in the form substantially as follows:

9 ARTICLE I

10 PURPOSE

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

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

17 B. Facilitating the student placement process through which children of military
18 families are not disadvantaged by variations in attendance requirements,
19 scheduling, sequencing, grading, course content or assessment.

20 C. Facilitating the qualification and eligibility for enrollment, educational programs, and
21 participation in extracurricular academic, athletic, and social activities.

22 D. Facilitating the on-time graduation of children of military families.

23 E. Providing for the promulgation and enforcement of administrative rules
24 implementing the provisions of this compact.

- 1 involvement in public performances, contests, athletic competitions,
2 demonstrations, displays, and club activities.
- 3 G. "Interstate Commission on Educational Opportunity for Military Children" means:
4 the commission that is created under Article IX of this compact, which is generally
5 referred to as Interstate Commission.
- 6 H. "Local education agency" means: a public authority legally constituted by the state
7 as an administrative agency to provide control of and direction for Kindergarten
8 through Twelfth (12th) grade public educational institutions.
- 9 I. "Member state" means: a state that has enacted this compact.
- 10 J. "Military installation" means: means a base, camp, post, station, yard, center,
11 homeport facility for any ship, or other activity under the jurisdiction of the
12 Department of Defense, including any leased facility, which is located within any of
13 the several States, the District of Columbia, the Commonwealth of Puerto Rico, the
14 U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and
15 any other U.S. Territory. Such term does not include any facility used primarily for
16 civil works, rivers and harbors projects, or flood control projects.
- 17 K. "Nonmember state" means: a state that has not enacted this compact.
- 18 L. "Receiving state" means: the state to which a child of a military family is sent,
19 brought, or caused to be sent or brought.
- 20 M. "Rule" means: a written statement by the Interstate Commission promulgated
21 pursuant to Article XII of this compact that is of general applicability, implements,
22 interprets or prescribes a policy or provision of the Compact, or an organizational,
23 procedural, or practice requirement of the Interstate Commission, and has the
24 force and effect of statutory law in a member state, and includes the amendment,
25 repeal, or suspension of an existing rule.
- 26 N. "Sending state" means: the state from which a child of a military family is sent,
27 brought, or caused to be sent or brought.
- 28 O. "State" means: a state of the United States, the District of Columbia, the
29 Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa,
30 the Northern Marianas Islands and any other U.S. Territory.

1 The member states hereby create the "Interstate Commission on Educational Opportunity for
2 Military Children." The activities of the Interstate Commission are the formation of public policy
3 and are a discretionary state function. The Interstate Commission shall:

4 A. Be a body corporate and joint agency of the member states and shall have all the
5 responsibilities, powers and duties set forth herein, and such additional powers as
6 may be conferred upon it by a subsequent concurrent action of the respective
7 legislatures of member states in accordance with the terms of this compact.

8 B. Consist of one Interstate Commission voting representative from each member
9 state who shall be that state's compact commissioner.

10 1. Each member state represented at a meeting of the Interstate Commission is
11 entitled to one vote.

12 2. A majority of the total member states shall constitute a quorum for the
13 transaction of business, unless a larger quorum is required by the bylaws of
14 the Interstate Commission.

15 3. A representative shall not delegate a vote to another member state. In the
16 event the compact commissioner is unable to attend a meeting of the
17 Interstate Commission, the Governor or State Council may delegate voting
18 authority to another person from their state for a specified meeting.

19 4. The bylaws may provide for meetings of the Interstate Commission to be
20 conducted by telecommunication or electronic communication.

21 C. Consist of ex-officio, nonvoting representatives who are members of interested
22 organizations. Such ex-officio members, as defined in the bylaws, may include but
23 not be limited to, members of the representative organizations of military family
24 advocates, local education agency officials, parent and teacher groups, the U.S.
25 Department of Defense, the Education Commission of the States, the Interstate
26 Agreement on the Qualification of Educational Personnel and other interstate
27 compacts affecting the education of children of military members.

28 D. Meet at least once each calendar year. The chairperson may call additional
29 meetings and, upon the request of a simple majority of the member states, shall
30 call additional meetings.

- 1 E. Establish an executive committee, whose members shall include the officers of the
2 Interstate Commission and such other members of the Interstate Commission as
3 determined by the bylaws. Members of the executive committee shall serve a one
4 year term. Members of the executive committee shall be entitled to one vote each.
5 The executive committee shall have the power to act on behalf of the Interstate
6 Commission, with the exception of rulemaking, during periods when the Interstate
7 Commission is not in session. The executive committee shall oversee the
8 day-to-day activities of the administration of the compact including enforcement
9 and compliance with the provisions of the compact, its bylaws and rules, and other
10 such duties as deemed necessary. The U.S. Dept. of Defense, shall serve as an
11 ex-officio, nonvoting member of the executive committee.
- 12 F. Establish bylaws and rules that provide for conditions and procedures under which
13 the Interstate Commission shall make its information and official records available
14 to the public for inspection or copying. The Interstate Commission may exempt
15 from disclosure information or official records to the extent they would adversely
16 affect personal privacy rights or proprietary interests.
- 17 G. Give public notice of all meetings and all meetings shall be open to the public,
18 except as set forth in the rules or as otherwise provided in the compact. The
19 Interstate Commission and its committees may close a meeting, or portion thereof,
20 where it determines by two-thirds vote that an open meeting would be likely to:
- 21 1. Relate solely to the Interstate Commission's internal personnel practices and
22 procedures;
 - 23 2. Disclose matters specifically exempted from disclosure by federal and state
24 statute;
 - 25 3. Disclose trade secrets or commercial or financial information which is
26 privileged or confidential;
 - 27 4. Involve accusing a person of a crime, or formally censuring a person;
 - 28 5. Disclose information of a personal nature where disclosure would constitute a
29 clearly unwarranted invasion of personal privacy;
 - 30 6. Disclose investigative records compiled for law enforcement purposes; or

- 1 effect of statutory law and shall be binding in the compact states to the extent and
2 in the manner provided in this compact.
- 3 C. To issue, upon request of a member state, advisory opinions concerning the
4 meaning or interpretation of the interstate compact, its bylaws, rules and actions.
- 5 D. To enforce compliance with the compact provisions, the rules promulgated by the
6 Interstate Commission, and the bylaws, using all necessary and proper means,
7 including but not limited to the use of judicial process.
- 8 E. To establish and maintain offices which shall be located within one or more of the
9 member states.
- 10 F. To purchase and maintain insurance and bonds.
- 11 G. To borrow, accept, hire or contract for services of personnel.
- 12 H. To establish and appoint committees including, but not limited to, an executive
13 committee as required by Article IX, Section E, which shall have the power to act
14 on behalf of the Interstate Commission in carrying out its powers and duties
15 hereunder.
- 16 I. To elect or appoint such officers, attorneys, employees, agents, or consultants, and
17 to fix their compensation, define their duties and determine their qualifications; and
18 to establish the Interstate Commission's personnel policies and programs relating
19 to conflicts of interest, rates of compensation, and qualifications of personnel.
- 20 J. To accept any and all donations and grants of money, equipment, supplies,
21 materials, and services, and to receive, utilize, and dispose of it.
- 22 K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold,
23 improve or use any property, real, personal, or mixed.
- 24 L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise
25 dispose of any property, real, personal or mixed.
- 26 M. To establish a budget and make expenditures.
- 27 N. To adopt a seal and bylaws governing the management and operation of the
28 Interstate Commission.
- 29 O. To report annually to the legislatures, governors, judiciary, and state councils of the
30 member states concerning the activities of the Interstate Commission during the

- 1 B. The Interstate Commission shall, by a majority of the members, elect annually from
2 among its members a chairperson, a vice-chairperson, and a treasurer, each of
3 whom shall have such authority and duties as may be specified in the bylaws. The
4 chairperson or, in the chairperson's absence or disability, the vice-chairperson,
5 shall preside at all meetings of the Interstate Commission. The officers so elected
6 shall serve without compensation or remuneration from the Interstate Commission;
7 provided that, subject to the availability of budgeted funds, the officers shall be
8 reimbursed for ordinary and necessary costs and expenses incurred by them in the
9 performance of their responsibilities as officers of the Interstate Commission.
- 10 C. Executive Committee, Officers and Personnel
- 11 1. The executive committee shall have such authority and duties as may be set
12 forth in the bylaws, including but not limited to:
- 13 a. Managing the affairs of the Interstate Commission in a manner
14 consistent with the bylaws and purposes of the Interstate Commission;
- 15 b. Overseeing an organizational structure within, and appropriate
16 procedures for the Interstate Commission to provide for the creation of
17 rules, operating procedures, and administrative and technical support
18 functions; and
- 19 c. Planning, implementing, and coordinating communications and
20 activities with other state, federal and local government organizations in
21 order to advance the goals of the Interstate Commission.
- 22 3. The executive committee may, subject to the approval of the Interstate
23 Commission, appoint or retain an executive director for such period, upon
24 such terms and conditions and for such compensation, as the Interstate
25 Commission may deem appropriate. The executive director shall serve as
26 secretary to the Interstate Commission, but shall not be a Member of the
27 Interstate Commission. The executive director shall hire and supervise such
28 other persons as may be authorized by the Interstate Commission.
- 29 D. The Interstate Commission's executive director and its employees shall be immune
30 from suit and liability, either personally or in their official capacity, for a claim for
31 damage to or loss of property or personal injury or other civil liability caused or

1 arising out of or relating to an actual or alleged act, error, or omission that
2 occurred, or that such person had a reasonable basis for believing occurred, within
3 the scope of Interstate Commission employment, duties, or responsibilities;
4 provided, that such person shall not be protected from suit or liability for damage,
5 loss, injury, or liability caused by the intentional or willful and wanton misconduct of
6 such person.

7 1. The liability of the Interstate Commission's executive director and employees
8 or Interstate Commission representatives, acting within the scope of such
9 person's employment or duties for acts, errors, or omissions occurring within
10 such person's state may not exceed the limits of liability set forth under the
11 Constitution and laws of that state for state officials, employees, and agents.
12 The Interstate Commission is considered to be an instrumentality of the states
13 for the purposes of any such action. Nothing in this subsection shall be
14 construed to protect such person from suit or liability for damage, loss, injury,
15 or liability caused by the intentional or willful and wanton misconduct of such
16 person.

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

28 3. To the extent not covered by the state involved, member state, or the
29 Interstate Commission, the representatives or employees of the Interstate
30 Commission shall be held harmless in the amount of a settlement or
31 judgment, including attorney's fees and costs, obtained against such persons

1 arising out of an actual or alleged act, error, or omission that occurred within
2 the scope of Interstate Commission employment, duties, or responsibilities, or
3 that such persons had a reasonable basis for believing occurred within the
4 scope of Interstate Commission employment, duties, or responsibilities,
5 provided that the actual or alleged act, error, or omission did not result from
6 intentional or willful and wanton misconduct on the part of such persons.

7 ARTICLE XII

8 RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

- 9 A. Rulemaking Authority - The Interstate Commission shall promulgate reasonable
10 rules in order to effectively and efficiently achieve the purposes of this Compact.
11 Notwithstanding the foregoing, in the event the Interstate Commission exercises its
12 rulemaking authority in a manner that is beyond the scope of the purposes of this
13 Act, or the powers granted hereunder, then such an action by the Interstate
14 Commission shall be invalid and have no force or effect.
- 15 B. Rulemaking Procedure - Rules shall be made pursuant to a rulemaking process
16 that substantially conforms to the "Model State Administrative Procedure Act," of
17 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as amended,
18 as may be appropriate to the operations of the interstate Commission.
- 19 C. Not later than thirty (30) days after a rule is promulgated, any person may file a
20 petition for judicial review of the rule; provided, that the filing of such a petition shall
21 not stay or otherwise prevent the rule from becoming effective unless the court
22 finds that the petitioner has a substantial likelihood of success. The court shall
23 give deference to the actions of the Interstate Commission consistent with
24 applicable law and shall not find the rule to be unlawful if the rule represents a
25 reasonable exercise of the Interstate Commission's authority.
- 26 D. If a majority of the legislatures of the compacting states rejects a Rule by
27 enactment of a statute or resolution in the same manner used to adopt the
28 compact, then such rule shall have no further force and effect in any compacting
29 state.

30 ARTICLE XIII

31 OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

- 1 A. Oversight
- 2 1. The executive, legislative and judicial branches of state government in each
- 3 member state shall enforce this compact and shall take all actions necessary
- 4 and appropriate to effectuate the compact's purposes and intent. The
- 5 provisions of this compact and the rules promulgated hereunder shall have
- 6 standing as statutory law.
- 7 2. All courts shall take judicial notice of the compact and the rules in any judicial
- 8 or administrative proceeding in a member state pertaining to the subject
- 9 matter of this compact which may affect the powers, responsibilities or actions
- 10 of the Interstate Commission.
- 11 3. The Interstate Commission shall be entitled to receive all service of process in
- 12 any such proceeding, and shall have standing to intervene in the proceeding
- 13 for all purposes. Failure to provide service of process to the Interstate
- 14 Commission shall render a judgment or order void as to the Interstate
- 15 Commission, this compact or promulgated rules.
- 16 B. Default, Technical Assistance, Suspension and Termination - If the Interstate
- 17 Commission determines that a member state has defaulted in the performance of
- 18 its obligations or responsibilities under this compact, or the bylaws or promulgated
- 19 rules, the Interstate Commission shall:
- 20 1. Provide written notice to the defaulting state and other member states, of the
- 21 nature of the default, the means of curing the default and any action taken by
- 22 the Interstate Commission. The Interstate Commission shall specify the
- 23 conditions by which the defaulting state must cure its default.
- 24 2. Provide remedial training and specific technical assistance regarding the
- 25 default.
- 26 3. If the defaulting state fails to cure the default, the defaulting state shall be
- 27 terminated from the compact upon an affirmative vote of a majority of the
- 28 member states and all rights, privileges and benefits conferred by this
- 29 compact shall be terminated from the effective date of termination. A cure of
- 30 the default does not relieve the offending state of obligations or liabilities
- 31 incurred during the period of the default.

- 1 4. Suspension or termination of membership in the compact shall be imposed
2 only after all other means of securing compliance have been exhausted.
3 Notice of intent to suspend or terminate shall be given by the Interstate
4 Commission to the Governor, the majority and minority leaders of the
5 defaulting state's legislature, and each of the members states.
- 6 5. The state which has been suspended or terminated is responsible for all
7 assessments, obligations and liabilities incurred through the effective date of
8 suspension or termination including obligations, the performance of which
9 extends beyond the effective date of suspension or termination.
- 10 6. The Interstate Commission shall not bear any costs relating to any state that
11 has been found to be in default or which has been suspended or terminated
12 from the compact, unless otherwise mutually agreed upon in writing between
13 the Interstate Commission and the defaulting state.
- 14 7. The defaulting state may appeal the action of the Interstate Commission by
15 petitioning the U.S. District Court for the District of Columbia or the federal
16 district where the Interstate Commission has its principal offices. The
17 prevailing party shall be awarded all costs of such litigation including
18 reasonable attorney's fees.
- 19 C. Dispute Resolution
- 20 1. The Interstate Commission shall attempt, upon the request of a member state,
21 to resolve disputes which are subject to the compact and which may arise
22 among member states and between member and nonmember states.
- 23 2. The Interstate Commission shall promulgate a rule providing for both
24 mediation and binding dispute resolution for disputes as appropriate.
- 25 D. Enforcement
- 26 1. The Interstate Commission, in the reasonable exercise of its discretion, shall
27 enforce the provisions and rules of this compact.
- 28 2. The Interstate Commission, may by majority vote of the members, initiate
29 legal action in the United States District Court for the District of Columbia or,
30 at the discretion of the Interstate Commission, in the federal district where the
31 Interstate Commission has its principal offices, to enforce compliance with the

1 ARTICLE XV

2 MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

- 3 A. Any state is eligible to become a member state.
- 4 B. The compact shall become effective and binding upon legislative enactment of the
5 compact into law by no less than ten (10) of the states. The effective date shall be
6 no earlier than December 1, 2007. Thereafter it shall become effective and binding
7 as to any other member state upon enactment of the compact into law by that
8 state. The governors of nonmember states or their designees shall be invited to
9 participate in the activities of the Interstate Commission on a nonvoting basis prior
10 to adoption of the compact by all states.
- 11 C. The Interstate Commission may propose amendments to the compact for
12 enactment by the member states. No amendment shall become effective and
13 binding upon the Interstate Commission and the member states unless and until it
14 is enacted into law by unanimous consent of the member states.

15 ARTICLE XVI

16 WITHDRAWAL AND DISSOLUTION

- 17 A. Withdrawal
- 18 1. Once effective, the compact shall continue in force and remain binding upon
19 each and every member state; provided that a member state may withdraw
20 from the compact by specifically repealing the statute, which enacted the
21 compact into law.
- 22 2. Withdrawal from this compact shall be by the enactment of a statute
23 repealing the same, but shall not take effect until one (1) year after the
24 effective date of such statute and until written notice of the withdrawal has
25 been given by the withdrawing state to the Governor of each other member
26 jurisdiction.
- 27 3. The withdrawing state shall immediately notify the chairperson of the
28 Interstate Commission in writing upon the introduction of legislation repealing
29 this compact in the withdrawing state. The Interstate Commission shall notify
30 the other member states of the withdrawing state's intent to withdraw within
31 sixty (60) days of its receipt thereof.

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

5 5. Reinstatement following withdrawal of a member state shall occur upon the
6 withdrawing state reenacting the compact or upon such later date as
7 determined by the Interstate Commission.

8 B. Dissolution of Compact

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

12 2. Upon the dissolution of this compact, the compact becomes null and void and
13 shall be of no further force or effect, and the business and affairs of the
14 Interstate Commission shall be concluded and surplus funds shall be
15 distributed in accordance with the bylaws.

16 ARTICLE XVII

17 SEVERABILITY AND CONSTRUCTION

18 A. The provisions of this compact shall be severable, and if any phrase, clause,
19 sentence or provision is deemed unenforceable, the remaining provisions of the
20 compact shall be enforceable.

21 B. The provisions of this compact shall be liberally construed to effectuate its
22 purposes.

23 C. Nothing in this compact shall be construed to prohibit the applicability of other
24 interstate compacts to which the states are members.

25 ARTICLE XVIII

26 BINDING EFFECT OF COMPACT AND OTHER LAWS

27 A. Other laws

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

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

- 1 B. Binding Effect of the Compact
- 2 1. All lawful actions of the Interstate Commission, including all rules and bylaws
- 3 promulgated by the Interstate Commission, are binding upon the member
- 4 states.
- 5 2. All agreements between the Interstate Commission and the member states
- 6 are binding in accordance with their terms.
- 7 3. In the event any provision of this compact exceeds the constitutional limits
- 8 imposed on the legislature of any member state, such provision shall be
- 9 ineffective to the extent of the conflict with the constitutional provision in
- 10 question in that member state.