

HOUSE BILL NO. 1097
With Senate Amendments
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Introduced by

Human Services Committee

(At the request of the State Board of Nursing)

1 A BILL for an Act to create and enact a new chapter to title 43 of the North Dakota Century
2 Code, relating to the nurse licensure compact; and to amend and reenact section 43-12.1-09.1
3 of the North Dakota Century Code, relating to criminal history record checks.

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

5 **SECTION 1. AMENDMENT.** Section 43-12.1-09.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **43-12.1-09.1. Nursing licensure or registration - Criminal history record checks.**

8 The board shall require each applicant for initial licensure and registration, including
9 applicants for a multistate license under section 2 of this Act, to submit to a statewide and
10 nationwide criminal history record check. The board may require any licensee or registrant who
11 is renewing a license or registration, including renewal of a multistate license under section 2 of
12 this Act, and any licensee or registrant who is the subject of a disciplinary investigation or
13 proceeding to submit to a statewide and nationwide criminal history record check. The
14 nationwide criminal history record check must be conducted in the manner provided by section
15 12-60-24. All costs associated with obtaining a background check are the responsibility of the
16 applicant, licensee, or registrant. The board may grant a nonrenewable temporary permit to an
17 applicant for initial or renewed license or registration who submits to a criminal history record
18 check as required by this chapter if the applicant has met all other licensure or registration
19 requirements in accordance with subsection 2 of section 43-12.1-09. The board may not share
20 with, or disclose to, the interstate commission of nurse licensure compact administrators any
21 contents of a nationwide criminal history record check.

22 **SECTION 2.** A new chapter to title 43 of the North Dakota Century Code is created and
23 enacted as follows:

24 **ARTICLE I - FINDINGS AND DECLARATION OF PURPOSE**

- 1 1. The party states find that:
- 2 a. The health and safety of the public are affected by the degree of compliance with
- 3 and the effectiveness of enforcement activities related to state nurse licensure
- 4 laws;
- 5 b. Violations of nurse licensure and other laws regulating the practice of nursing
- 6 may result in injury or harm to the public;
- 7 c. The expanded mobility of nurses and the use of advanced communication
- 8 technologies as part of our nation's health care delivery system require greater
- 9 coordination and cooperation among states in the areas of nurse licensure and
- 10 regulation;
- 11 d. New practice modalities and technology make compliance with individual state
- 12 nurse licensure laws difficult and complex;
- 13 e. The current system of duplicative licensure for nurses practicing in multiple states
- 14 is cumbersome and redundant for both nurses and states; and
- 15 f. Uniformity of nurse licensure requirements throughout the states promotes public
- 16 safety and public health benefits.
- 17 2. The general purposes of this compact are to:
- 18 a. Facilitate the states' responsibility to protect the public's health and safety;
- 19 b. Ensure and encourage the cooperation of party states in the areas of nurse
- 20 licensure and regulation;
- 21 c. Facilitate the exchange of information between party states in the areas of nurse
- 22 regulation, investigation, and adverse actions;
- 23 d. Promote compliance with the laws governing the practice of nursing in each
- 24 jurisdiction;
- 25 e. Invest all party states with the authority to hold a nurse accountable for meeting
- 26 all state practice laws in the state in which the patient is located at the time care
- 27 is rendered through the mutual recognition of party state licenses;
- 28 f. Decrease redundancies in the consideration and issuance of nurse licenses; and
- 29 g. Provide opportunities for interstate practice by nurses who meet uniform
- 30 licensure requirements.

ARTICLE II - DEFINITIONS

1 As used in this compact:

- 2 1. "Adverse action" means any administrative, civil, equitable, or criminal action
3 permitted by a state's laws which is imposed by a licensing board or other authority
4 against a nurse, including actions against an individual's license or multistate licensure
5 privilege such as revocation, suspension, probation, monitoring of the licensee,
6 limitation on the licensee's practice, or any other encumbrance on licensure affecting a
7 nurse's authorization to practice, including issuance of a cease and desist action.
- 8 2. "Alternative program" means a nondisciplinary monitoring program approved by a
9 licensing board.
- 10 3. "Coordinated licensure information system" means an integrated process for
11 collecting, storing, and sharing information on nurse licensure and enforcement
12 activities related to nurse licensure laws which is administered by a nonprofit
13 organization composed of and controlled by licensing boards.
- 14 4. "Current significant investigative information" means:
- 15 a. Investigative information that a licensing board, after a preliminary inquiry that
16 includes notification and an opportunity for the nurse to respond, if required by
17 state law, has reason to believe is not groundless and, if proved true, would
18 indicate more than a minor infraction; or
- 19 b. Investigative information that indicates that the nurse represents an immediate
20 threat to public health and safety regardless of whether the nurse has been
21 notified and had an opportunity to respond.
- 22 5. "Encumbrance" means a revocation or suspension of, or any limitation on, the full and
23 unrestricted practice of nursing imposed by a licensing board.
- 24 6. "Home state" means the party state that is the nurse's primary state of residence.
- 25 7. "Licensing board" means a party state's regulatory body responsible for issuing nurse
26 licenses.
- 27 8. "Multistate license" means a license to practice as a registered or a licensed
28 practical/vocational nurse issued by a home state licensing board which authorizes the
29 licensed nurse to practice in all party states under a multistate licensure privilege.

- 1 9. "Multistate licensure privilege" means a legal authorization associated with a multistate
2 license permitting the practice of nursing as either a registered nurse or licensed
3 practical/vocational nurse in a remote state.
- 4 10. "Nurse" means registered nurse or licensed practical/vocational nurse, as those terms
5 are defined by each party state's practice laws.
- 6 11. "Party state" means any state that has adopted this compact.
- 7 12. "Remote state" means a party state, other than the home state.
- 8 13. "Single-state license" means a nurse license issued by a party state which authorizes
9 practice only within the issuing state and does not include a multistate licensure
10 privilege to practice in any other party state.
- 11 14. "State" means a state, territory, or possession of the United States and the District of
12 Columbia.
- 13 15. "State practice laws" means a party state's laws, rules, and regulations that govern the
14 practice of nursing, define the scope of nursing practice, and create the methods and
15 grounds for imposing discipline. "State practice laws" do not include requirements
16 necessary to obtain and retain a license, except for qualifications or requirements of
17 the home state.

18 **ARTICLE III - GENERAL PROVISIONS AND JURISDICTION**

- 19 1. A multistate license to practice registered or licensed practical/vocational nursing
20 issued by a home state to a resident in that state will be recognized by each party
21 state as authorizing a nurse to practice as a registered nurse or as a licensed
22 practical/vocational nurse, under a multistate licensure privilege, in each party state.
- 23 2. A state shall implement procedures for considering the criminal history records of
24 applicants for initial multistate license or licensure by endorsement. Such procedures
25 shall include the submission of fingerprints or other biometric-based information by
26 applicants for the purpose of obtaining an applicant's criminal history record
27 information from the federal bureau of investigation and the agency responsible for
28 retaining that state's criminal records.
- 29 3. Each party state shall require the following for an applicant to obtain or retain a
30 multistate license in the home state:

- 1 a. Meets the home state's qualifications for licensure or renewal of licensure, as well
2 as, all other applicable state laws;
- 3 b. (1) Has graduated or is eligible to graduate from a licensing board-approved
4 registered nurse or licensed practical/vocational nurse prelicensure
5 education program; or
- 6 (2) Has graduated from a foreign registered nurse or licensed
7 practical/vocational nurse prelicensure education program that:
- 8 (a) Has been approved by the authorized accrediting body in the
9 applicable country; and
- 10 (b) Has been verified by an independent credentials review agency to be
11 comparable to a licensing board-approved prelicensure education
12 program;
- 13 c. Has, if a graduate of a foreign prelicensure education program not taught in
14 English or if English is not the individual's native language, successfully passed
15 an English proficiency examination that includes the components of reading,
16 speaking, writing, and listening;
- 17 d. Has successfully passed an NCLEX-RN® or NCLEX-PN® Examination or
18 recognized predecessor, as applicable;
- 19 e. Is eligible for or holds an active, unencumbered license;
- 20 f. Has submitted, in connection with an application for initial licensure or licensure
21 by endorsement, fingerprints or other biometric data for the purpose of obtaining
22 criminal history record information from the federal bureau of investigation and
23 the agency responsible for retaining that state's criminal records;
- 24 g. Has not been convicted or found guilty, or has entered an agreed disposition, of a
25 felony offense under applicable state or federal criminal law;
- 26 h. Has not been convicted or found guilty, or has entered an agreed disposition, of a
27 misdemeanor offense related to the practice of nursing as determined on a case-
28 by-case basis;
- 29 i. Is not currently enrolled in an alternative program;
- 30 j. Is subject to self-disclosure requirements regarding current participation in an
31 alternative program; and

- 1 k. Has a valid United States social security number.
- 2 4. All party states may, in accordance with existing state due process law, to take
3 adverse action against a nurse's multistate licensure privilege such as revocation,
4 suspension, probation, or any other action that affects a nurse's authorization to
5 practice under a multistate licensure privilege, including cease and desist actions. If a
6 party state takes such action, it promptly shall notify the administrator of the
7 coordinated licensure information system. The administrator of the coordinated
8 licensure information system promptly shall notify the home state of any such actions
9 by remote states.
- 10 5. A nurse practicing in a party state shall comply with the state practice laws of the state
11 in which the client is located at the time service is provided. The practice of nursing is
12 not limited to patient care, but includes all nursing practice as defined by the state
13 practice laws of the party state in which the client is located. The practice of nursing in
14 a party state under a multistate licensure privilege will subject a nurse to the
15 jurisdiction of the licensing board, the courts, and the laws of the party state in which
16 the client is located at the time service is provided.
- 17 6. Individuals not residing in a party state continue to be able to apply for a party state's
18 single-state license as provided under the laws of each party state. However, the
19 single-state license granted to these individuals will not be recognized as granting the
20 privilege to practice nursing in any other party state. This compact does not affect the
21 requirements established by a party state for the issuance of a single-state license.
- 22 7. Any nurse holding a home state multistate license, on the effective date of this
23 compact, may retain and renew the multistate license issued by the nurse's then-
24 current home state, provided that:
- 25 a. A nurse, who changes primary state of residence after this compact's effective
26 date, shall meet all applicable requirements of subsection 3 of article III to obtain
27 a multistate license from a new home state.
- 28 b. A nurse who fails to satisfy the multistate licensure requirements in subsection 3
29 of article III due to a disqualifying event occurring after this compact's effective
30 date is ineligible to retain or renew a multistate license, and the nurse's multistate
31 license must be revoked or deactivated in accordance with applicable rules.

1 adopted by the Interstate Commission of Nurse Licensure compact
2 Administrators ("commission").

3 **ARTICLE IV - APPLICATIONS FOR LICENSURE IN A PARTY STATE**

4 1. Upon application for a multistate license, the licensing board in the issuing party state
5 shall ascertain, through the coordinated licensure information system, whether the
6 applicant has ever held, or is the holder of, a license issued by any other state,
7 whether there are any encumbrances on any license or multistate licensure privilege
8 held by the applicant, whether any adverse action has been taken against any license
9 or multistate licensure privilege held by the applicant, and whether the applicant is
10 currently participating in an alternative program.

11 2. A nurse may hold a multistate license, issued by the home state, in only one party
12 state at a time.

13 3. If a nurse changes primary state of residence by moving between two party states, the
14 nurse shall apply for licensure in the new home state, and the multistate license issued
15 by the prior home state will be deactivated in accordance with applicable rules
16 adopted by the commission.

17 a. The nurse may apply for licensure in advance of a change in primary state of
18 residence.

19 b. A multistate license may not be issued by the new home state until the nurse
20 provides satisfactory evidence of a change in primary state of residence to the
21 new home state and satisfies all applicable requirements to obtain a multistate
22 license from the new home state.

23 4. If a nurse changes primary state of residence by moving from a party state to a
24 nonparty state, the multistate license issued by the prior home state will convert to a
25 single-state license, valid only in the former home state.

26 **ARTICLE V - ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE LICENSING**

27 **BOARDS**

28 1. In addition to the other powers conferred by state law, a licensing board may:

29 a. Take adverse action against a nurse's multistate licensure privilege to practice
30 within that party state.

- 1 (1) Only the home state has the power to take adverse action against a nurse's
2 license issued by the home state.
- 3 (2) For purposes of taking adverse action, the home state licensing board shall
4 give the same priority and effect to reported conduct received from a remote
5 state as it would if such conduct had occurred within the home state. In so
6 doing, the home state shall apply its own state laws to determine
7 appropriate action.
- 8 b. Issue cease and desist orders or impose an encumbrance on a nurse's authority
9 to practice within that party state.
- 10 c. Complete any pending investigations of a nurse who changes primary state of
11 residence during the course of such investigations. The licensing board also may
12 take any appropriate action and promptly shall report the conclusions of such
13 investigations to the administrator of the coordinated licensure information
14 system. The administrator of the coordinated licensure information system
15 promptly shall notify the new home state of any such actions.
- 16 d. Issue subpoenas for both hearings and investigations which require the
17 attendance and testimony of witnesses, as well as, the production of evidence.
18 Subpoenas issued by a licensing board in a party state for the attendance and
19 testimony of witnesses or the production of evidence from another party state
20 must be enforced in the latter state by any court of competent jurisdiction,
21 according to the practice and procedure of that court applicable to subpoenas
22 issued in proceedings pending before it. The issuing authority shall pay any
23 witness fees, travel expenses, mileage, and other fees required by the service
24 statutes of the state in which the witnesses or evidence are located.
- 25 e. Obtain and submit, for each nurse licensure applicant, fingerprint or other
26 biometric-based information to the federal bureau of investigation for criminal
27 background checks, receive the results of the federal bureau of investigation
28 record search on criminal background checks, and use the results in making
29 licensure decisions.

- 1 4. Current significant investigative information and participation in nonpublic or
2 confidential alternative programs must be transmitted through the coordinated
3 licensure information system only to party state licensing boards.
- 4 5. Notwithstanding any other provision of law, all party state licensing boards contributing
5 information to the coordinated licensure information system may designate information
6 that may not be shared with nonparty states or disclosed to other entities or individuals
7 without the express permission of the contributing state.
- 8 6. Any personally identifiable information obtained from the coordinated licensure
9 information system by a party state licensing board may not be shared with nonparty
10 states or disclosed to other entities or individuals except to the extent permitted by the
11 laws of the party state contributing the information.
- 12 7. Any information contributed to the coordinated licensure information system which is
13 subsequently required to be expunged by the laws of the party state contributing that
14 information also must be expunged from the coordinated licensure information system.
- 15 8. The compact administrator of each party state shall furnish a uniform data set to the
16 compact administrator of each other party state, which must include, at a minimum:
 - 17 a. Identifying information;
 - 18 b. Licensure data;
 - 19 c. Information related to alternative program participation; and
 - 20 d. Other information that may facilitate the administration of this compact, as
21 determined by commission rules.
- 22 9. The compact administrator of a party state shall provide all investigative documents
23 and information requested by another party state.

24 **ARTICLE VII - ESTABLISHMENT OF THE INTERSTATE COMMISSION OF NURSE**

25 **LICENSURE COMPACT ADMINISTRATORS**

- 26 1. The party states hereby create and establish a joint public entity known as the
27 Interstate Commission of Nurse Licensure Compact Administrators.
 - 28 a. The commission is an instrumentality of the party states.
 - 29 b. Venue is proper, and judicial proceedings by or against the commission must be
30 brought solely and exclusively, in a court of competent jurisdiction where the
31 principal office of the commission is located. The commission may waive venue

1 and jurisdictional defenses to the extent it adopts or consents to participate in
2 alternative dispute resolution proceedings.

3 c. This compact may not be construed to be a waiver of sovereign immunity.

4 2. Membership, voting, and meetings.

5 a. Each party state must have and be limited to one administrator. The head of the
6 state licensing board or designee is the administrator of this compact for each
7 party state. Any administrator may be removed or suspended from office as
8 provided by the law of the state from which the administrator is appointed. Any
9 vacancy occurring in the commission must be filled in accordance with the laws
10 of the party state in which the vacancy exists.

11 b. Each administrator is entitled to one vote with regard to the promulgation of rules
12 and creation of bylaws and otherwise has an opportunity to participate in the
13 business and affairs of the commission. An administrator shall vote in person or
14 by such other means as provided in the bylaws. The bylaws may provide for an
15 administrator's participation in meetings by telephone or other means of
16 communication.

17 c. The commission shall meet at least once during each calendar year. Additional
18 meetings must be held as set forth in the bylaws or rules of the commission.

19 d. All meetings are open to the public, and public notice of meetings must be given
20 in the same manner as required under the rulemaking provisions in Article VIII.

21 e. The commission may convene in a closed, nonpublic meeting if the commission
22 discusses:

23 (1) Noncompliance of a party state with its obligations under this compact;

24 (2) The employment, compensation, discipline, or other personnel matters,
25 practices, or procedures related to specific employees or other matters

26 related to the commission's internal personnel practices and procedures;

27 (3) Current, threatened, or reasonably anticipated litigation;

28 (4) Negotiation of contracts for the purchase or sale of goods, services, or real
29 estate;

30 (5) Accusing any person of a crime or formally censuring any person;

- 1 (6) Disclosure of trade secrets or commercial or financial information that is
2 privileged or confidential;
- 3 (7) Disclosure of information of a personal nature if disclosure would constitute
4 a clearly unwarranted invasion of personal privacy;
- 5 (8) Disclosure of investigatory records compiled for law enforcement purposes;
- 6 (9) Disclosure of information related to any reports prepared by or on behalf of
7 the Commission for the purpose of investigation of compliance with this
8 compact; or
- 9 (10) Matters specifically exempted from disclosure by federal or state statute.
- 10 f. If a meeting, or portion of a meeting, is closed pursuant to this provision, the
11 commission's legal counsel or designee shall certify that the meeting may be
12 closed and shall reference each relevant exempting provision. The commission
13 shall keep minutes that fully and clearly describe all matters discussed in a
14 meeting and shall provide a full and accurate summary of actions taken, and the
15 reasons or the actions taken, including a description of the views expressed. All
16 documents considered in connection with an action must be identified in such
17 minutes. All minutes and documents of a closed meeting must remain under seal,
18 subject to release by a majority vote of the commission or order of a court of
19 competent jurisdiction.
- 20 3. By a majority vote of the administrators, the commission shall prescribe bylaws or
21 rules to govern its conduct as may be necessary or appropriate to carry out the
22 purposes and exercise the powers of this compact, including:
- 23 a. Establishing the fiscal year of the commission;
- 24 b. Providing reasonable standards and procedures:
- 25 (1) For the establishment and meetings of other committees; and
- 26 (2) Governing any general or specific delegation of any authority or function of
27 the commission;
- 28 c. Providing reasonable procedures for calling and conducting meetings of the
29 commission, ensuring reasonable advance notice of all meetings and providing
30 an opportunity for attendance of such meetings by interested parties, with
31 enumerated exceptions designed to protect the public's interest, the privacy of

- 1 individuals, and proprietary information, including trade secrets. The commission
2 may meet in closed session only after a majority of the administrators vote to
3 close a meeting in whole or in part. As soon as practicable, the commission shall
4 make public a copy of the vote to close the meeting revealing the vote of each
5 administrator, with no proxy votes allowed;
- 6 d. Establishing the titles, duties, and authority and reasonable procedures for the
7 election of the officers of the commission;
- 8 e. Providing reasonable standards and procedures for the establishment of the
9 personnel policies and programs of the commission. Notwithstanding any civil
10 service or other similar laws of any party state, the bylaws exclusively must
11 govern the personnel policies and programs of the commission; and
- 12 f. Providing a mechanism for winding up the operations of the commission and the
13 equitable disposition of any surplus funds that may exist after the termination of
14 this compact after the payment or reserving of all of its debts and obligations;
- 15 4. The commission shall publish its bylaws and rules, and any amendments thereto, in a
16 convenient form on the website of the commission.
- 17 5. The commission shall maintain its financial records in accordance with the bylaws.
- 18 6. The commission shall meet and take such actions as are consistent with the
19 provisions of this compact and the bylaws.
- 20 7. The commission may:
- 21 a. Promulgate uniform rules to facilitate and coordinate implementation and
22 administration of this compact. The rules have the force and effect of law and are
23 binding in all party states;
- 24 b. Bring and prosecute legal proceedings or actions in the name of the commission,
25 provided that the standing of any licensing board to sue or be sued under
26 applicable law may not be affected;
- 27 c. Purchase and maintain insurance and bonds;
- 28 d. Borrow, accept, or contract for services of personnel, including, but not limited to,
29 employees of a party state or nonprofit organizations;

- 1 e. Cooperate with other organizations that administer state compacts related to the
2 regulation of nursing, including sharing administrative or staff expenses, office
3 space, or other resources;
- 4 f. Hire employees, elect or appoint officers, fix compensation, define duties, grant
5 such individuals appropriate authority to carry out the purposes of this compact,
6 and to establish the commission's personnel policies and programs relating to
7 conflicts of interest, qualifications of personnel, and other related personnel
8 matters;
- 9 g. Accept any and all appropriate donations, grants, and gifts of money, equipment,
10 supplies, materials, and services, and to receive, utilize, and dispose of the same
11 if at all times the commission avoids any appearance of impropriety or conflict of
12 interest;
- 13 h. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own,
14 hold, improve or use, any property, whether real, personal, or mixed if at all times
15 the commission avoids any appearance of impropriety;
- 16 i. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose
17 of any property, whether real, personal, or mixed;
- 18 j. Establish a budget and make expenditures;
- 19 k. Borrow money;
- 20 l. Appoint committees, including advisory committees comprised of administrators,
21 state nursing regulators, state legislators or their representatives, consumer
22 representatives, and other such interested persons;
- 23 m. Provide and receive information from, and to cooperate with, law enforcement
24 agencies;
- 25 n. Adopt and use an official seal; and
- 26 o. Perform such other functions as may be necessary or appropriate to achieve the
27 purposes of this compact consistent with the state regulation of nurse licensure
28 and practice.
- 29 8. Financing of the commission.
- 30 a. The commission shall pay, or provide for the payment of, the reasonable
31 expenses of its establishment, organization, and ongoing activities.

- 1 b. The commission may also levy on and collect an annual assessment from each
2 party state to cover the cost of its operations, activities, and staff in its annual
3 budget as approved each year. The aggregate annual assessment amount, if
4 any, must be allocated based upon a formula to be determined by the
5 commission, which shall promulgate a rule that is binding upon all party states.
- 6 c. The commission may not incur obligations of any kind before securing the funds
7 adequate to meet the same, nor may the commission pledge the credit of any of
8 the party states, except by, and with the authority of, such party state.
- 9 d. The commission shall keep accurate accounts of all receipts and disbursements.
10 The receipts and disbursements of the commission are subject to the audit and
11 accounting procedures established under its bylaws. However, all receipts and
12 disbursements of funds handled by the commission must be audited yearly by a
13 certified or licensed public accountant, and the report of the audit must be
14 included in and become part of the annual report of the commission.
- 15 9. Qualified immunity, defense, and indemnification.
- 16 a. The administrators, officers, executive director, employees, and representatives
17 of the commission are immune from suit and liability, either personally or in their
18 official capacity, for any claim for damage to or loss of property or personal injury
19 or other civil liability caused by or arising out of any actual or alleged act, error, or
20 omission that occurred, or that the person against which the claim is made had a
21 reasonable basis for believing occurred, within the scope of commission
22 employment, duties or responsibilities. However, this subdivision may not be
23 construed to protect any such person from suit or liability for any damage, loss,
24 injury, or liability caused by the intentional, willful, or wanton misconduct of that
25 person.
- 26 b. The commission shall defend any administrator, officer, executive director,
27 employee, or representative of the commission in any civil action seeking to
28 impose liability arising out of any actual or alleged act, error, or omission that
29 occurred within the scope of commission employment, duties, or responsibilities,
30 or that the person against which the claim is made had a reasonable basis for
31 believing occurred within the scope of commission employment, duties, or

1 responsibilities. However, this subdivision may not be construed to prohibit that
2 person from retaining that person's own counsel and provided further that the
3 actual or alleged act, error, or omission did not result from that person's
4 intentional, willful, or wanton misconduct.

5 c. The commission shall indemnify and hold harmless any administrator, officer,
6 executive director, employee, or representative of the commission for the amount
7 of any settlement or judgment obtained against that person arising out of any
8 actual or alleged act, error, or omission that occurred within the scope of
9 commission employment, duties, or responsibilities, or that such person had a
10 reasonable basis for believing occurred within the scope of commission
11 employment, duties, or responsibilities provided that the actual or alleged act,
12 error, or omission did not result from the intentional, willful, or wanton misconduct
13 of that person.

14 **ARTICLE VIII - RULEMAKING**

- 15 1. The commission shall exercise its rulemaking powers pursuant to the criteria set forth
16 in this article and the rules adopted under this article. Rules and amendments become
17 binding as of the date specified in each rule or amendment and have the same force
18 and effect as provisions of this compact.
- 19 2. Rules or amendments to the rules must be adopted at a regular or special meeting of
20 the commission.
- 21 3. Before the promulgation and adoption of a final rule or rules by the commission, and at
22 least sixty days in advance of the meeting at which the rule will be considered and
23 voted upon, the commission shall file a notice of proposed rulemaking:
- 24 a. On the website of the commission; and
- 25 b. On the website of each licensing board or the publication in which each state
26 would otherwise publish proposed rules.
- 27 4. The notice of proposed rulemaking must include:
- 28 a. The proposed time, date, and location of the meeting at which the rule will be
29 considered and voted upon;
- 30 b. The text of the proposed rule or amendment, and the reason for the proposed
31 rule;

- 1 c. A request for comments on the proposed rule from any interested person; and
2 d. The manner in which interested persons may submit notice to the commission of
3 their intention to attend the public hearing and any written comments.
- 4 5. Before adoption of a proposed rule, the commission shall allow persons to submit
5 written data, facts, opinions, and arguments, which must be made available to the
6 public.
- 7 6. The commission shall grant an opportunity for a public hearing before it adopts a rule
8 or amendment.
- 9 7. The commission shall publish the place, time, and date of the scheduled public
10 hearing.
- 11 a. Hearings must be conducted in a manner providing each person that wishes to
12 comment a fair and reasonable opportunity to comment orally or in writing. All
13 hearings will be recorded, and a copy must be made available upon request.
- 14 b. This section may not be construed as requiring a separate hearing on each rule.
15 Rules may be grouped for the convenience of the commission at hearings
16 required by this section.
- 17 8. If no one appears at the public hearing, the commission may proceed with
18 promulgation of the proposed rule.
- 19 9. Following the scheduled hearing date, or by the close of business on the scheduled
20 hearing date if the hearing was not held, the commission shall consider all written and
21 oral comments received.
- 22 10. By majority vote of all administrators, the commission shall take final action on the
23 proposed rule and shall determine the effective date of the rule, if any, based on the
24 rulemaking record and the full text of the rule.
- 25 11. Upon determination that an emergency exists, the commission may consider and
26 adopt an emergency rule without prior notice, opportunity for comment, or hearing.
27 However, the usual rulemaking procedures provided in this compact and in this section
28 must be retroactively applied to the rule as soon as reasonably possible, in no event
29 later than ninety days after the effective date of the rule. For the purposes of this
30 provision, an emergency rule is one that must be adopted immediately in order to:
31 a. Meet an imminent threat to public health, safety, or welfare;

- 1 b. Prevent a loss of commission or party state funds; or
2 c. Meet a deadline for the promulgation of an administrative rule that is required by
3 federal law or rule.

4 12. The commission may direct revisions to a previously adopted rule or amendment for
5 purposes of correcting typographical errors, errors in format, errors in consistency, or
6 grammatical errors. Public notice of any revisions must be posted on the website of
7 the commission. The revision is subject to challenge by any person for a period of
8 thirty days after posting. The revision may be challenged only on grounds that the
9 revision results in a material change to a rule. A challenge must be made in writing,
10 and delivered to the commission before the end of the notice period. If a challenge is
11 not made, the revision will take effect without further action. If the revision is
12 challenged, the revision may not take effect without the approval of the commission.

13 **ARTICLE IX - OVERSIGHT, DISPUTE, RESOLUTION AND ENFORCEMENT**

14 1. Oversight.

- 15 a. Each party state shall enforce this compact and take all actions necessary and
16 appropriate to effectuate this compact's purposes and intent.
17 b. The commission is entitled to receive service of process in any proceeding that
18 may affect the powers, responsibilities, or actions of the commission, and has
19 standing to intervene in such a proceeding for all purposes. Failure to provide
20 service of process in such proceeding to the commission renders a judgment or
21 order void as to the commission, this compact, or promulgated rules.

22 2. Default, technical assistance, and termination.

- 23 a. If the commission determines a party state has defaulted in the performance of
24 its obligations or responsibilities under this compact or the promulgated rules, the
25 commission shall:
26 (1) Provide written notice to the defaulting state and other party states of the
27 nature of the default, the proposed means of curing the default, or any other
28 action to be taken by the commission; and
29 (2) Provide remedial training and specific technical assistance regarding the
30 default.

- 1 b. If a state in default fails to cure the default, the defaulting state's membership in
2 this compact may be terminated upon an affirmative vote of a majority of the
3 administrators, and all rights, privileges, and benefits conferred by this compact
4 may be terminated on the effective date of termination. A cure of the default does
5 not relieve the offending state of obligations or liabilities incurred during the
6 period of default.
- 7 c. Termination of membership in this compact may be imposed only after all other
8 means of securing compliance have been exhausted. Notice of intent to suspend
9 or terminate must be given by the commission to the governor of the defaulting
10 state and to the executive officer of the defaulting state's licensing board and
11 each of the party states.
- 12 d. A state whose membership in this compact has been terminated is responsible
13 for all assessments, obligations, and liabilities incurred through the effective date
14 of termination, including obligations that extend beyond the effective date of
15 termination.
- 16 e. The commission may not bear any costs related to a state that is found to be in
17 default or whose membership in this compact has been terminated unless agreed
18 upon in writing between the commission and the defaulting state.
- 19 f. The defaulting state may appeal the action of the commission by petitioning the
20 United States district court for the District of Columbia or the federal district in
21 which the commission has its principal offices. The prevailing party must be
22 awarded all costs of such litigation, including reasonable attorney's fees.
- 23 3. Dispute resolution.
- 24 a. Upon request by a party state, the commission shall attempt to resolve disputes
25 related to the compact which arise among party states and between party and
26 nonparty states.
- 27 b. The commission shall promulgate a rule providing for both mediation and binding
28 dispute resolution for disputes, as appropriate.
- 29 c. If the commission cannot resolve disputes among party states arising under this
30 compact:

1 (1) The party states may submit the issues in dispute to an arbitration panel,
2 which will be comprised of individuals appointed by the compact
3 administrator in each of the affected party states and an individual mutually
4 agreed upon by the compact administrators of all the party states involved in
5 the dispute.

6 (2) The decision of a majority of the arbitrators is final and binding.

7 4. Enforcement.

8 a. The commission, in the reasonable exercise of its discretion, shall enforce the
9 provisions and rules of this compact.

10 b. By majority vote, the commission may initiate legal action in the United States
11 district court for the District of Columbia or the federal district in which the
12 commission has its principal offices against a party state that is in default to
13 enforce compliance with the provisions of this compact and its promulgated rules
14 and bylaws. The relief sought may include both injunctive relief and damages. If
15 judicial enforcement is necessary, the prevailing party must be awarded all costs
16 of such litigation, including reasonable attorney's fees.

17 c. The remedies herein are not the exclusive remedies of the commission. The
18 commission may pursue any other remedies available under federal or state law.

19 **ARTICLE X - EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT**

20 1. This compact becomes effective and binding on the earlier of the date of legislative
21 enactment of this compact into law by no less than twenty-six states or December 31,
22 2018. All party states to this compact, that also were parties to the prior nurse
23 licensure compact, superseded by this compact, ("prior compact"), are deemed to
24 have withdrawn from said prior compact within six months after the effective date of
25 this compact.

26 2. Each party state to this compact shall continue to recognize a nurse's multistate
27 licensure privilege to practice in that party state issued under the prior compact until
28 such party state has withdrawn from the prior compact.

29 3. Any party state may withdraw from this compact by enacting a statute repealing the
30 same. A party state's withdrawal does not take effect until six months after enactment
31 of the repealing statute.

- 1 4. A party state's withdrawal or termination does not affect the continuing requirement of
2 the withdrawing or terminated state's licensing board to report adverse actions and
3 significant investigations occurring prior to the effective date of such withdrawal or
4 termination.
- 5 5. This compact may not be construed to invalidate or prevent any nurse licensure
6 agreement or other cooperative arrangement between a party state and a nonparty
7 state that is made in accordance with the other provisions of this compact.
- 8 6. This compact may be amended by the party states. An amendment to this compact
9 does not become effective and binding upon the party states unless and until it is
10 enacted into the laws of all party states.
- 11 7. Representatives of nonparty states to this compact must be invited to participate in the
12 activities of the commission, on a nonvoting basis, prior to the adoption of this
13 compact by all states.

14 **ARTICLE XI - CONSTRUCTION AND SEVERABILITY**

15 This compact must be liberally construed so as to effectuate the purposes thereof. The
16 provisions of this compact are severable, and if any phrase, clause, sentence, or provision of
17 this compact is declared to be contrary to the constitution of any party state or of the United
18 States, or if the applicability thereof to any government, agency, person, or circumstance is held
19 invalid, the validity of the remainder of this compact and the applicability thereof to any
20 government, agency, person, or circumstance may not be affected thereby. If this compact is
21 held to be contrary to the constitution of any party state, this compact remains in full force and
22 effect as to the remaining party states and in full force and effect as to the party state affected
23 as to all severable matters.

24 The term "head of the state licensing board" as used to define the compact administrator in
25 subdivision a of subsection 2 of article VII means the executive director of the state board of
26 nursing.