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No. 1410

S.P. 488

In Senate, April 11, 2017

An Act To Adopt the Nurse Licensure Compact

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in black ink, reading 'Heather J.R. Priest'.

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator VOLK of Cumberland.
Cosponsored by Representative FECTEAU of Biddeford and
Senators: BELLOWS of Kennebec, LANGLEY of Hancock, Representatives: HEAD of
Bethel, LOCKMAN of Amherst, MASTRACCIO of Sanford, PERRY of Calais, VACHON of
Scarborough.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **PART A**

3 **Sec. A-1. 32 MRSA c. 31, sub-c. 2-A** is enacted to read:

4 **SUBCHAPTER 2-A**

5 **NURSE LICENSURE COMPACT**

6 **§2171. Short title; findings and declaration of purpose -- Article 1**

7 **1. Short title.** This chapter may be known and cited as "the Nurse Licensure
8 Compact," or "the compact."

9 **2. Legislative intent.** This compact is the Maine enactment of the Nurse Licensure
10 Compact as revised by the National Council of State Boards of Nursing. The form,
11 format and text of the compact have been changed minimally so as to conform to Maine
12 statutory conventions. The changes are technical in nature, and it is the intent of the
13 Legislature that this Act be interpreted as substantively the same as the Nurse Licensure
14 Compact that is enacted by other party states.

15 **3. Findings.** The party states find that:

16 A. The health and safety of the public are affected by the degree of compliance with
17 and the effectiveness of enforcement activities related to state nurse licensure laws;

18 B. Violations of nurse licensure and other laws regulating the practice of nursing
19 may result in injury or harm to the public;

20 C. The expanded mobility of nurses and the use of advanced communication
21 technologies as part of our nation's health care delivery system require greater
22 coordination and cooperation among states in the areas of nurse licensure and
23 regulation;

24 D. New practice modalities and technology make compliance with individual state
25 nurse licensure laws difficult and complex;

26 E. The system of duplicative licensure for nurses practicing in multiple states is
27 cumbersome and redundant for both nurses and states; and

28 F. Uniformity of nurse licensure requirements throughout the states promotes public
29 safety and public health benefits.

30 **4. Purpose.** The general purposes of this compact are to:

31 A. Facilitate the states' responsibility to protect the public's health and safety;

32 B. Ensure and encourage the cooperation of party states in the areas of nurse
33 licensure and regulation;

- 1 C. Facilitate the exchange of information between party states in the areas of nurse
2 regulation, investigation and adverse actions;
- 3 D. Promote compliance with the laws governing the practice of nursing in each
4 jurisdiction;
- 5 E. Invest all party states with the authority to hold a nurse accountable for meeting
6 all state practice laws in the state in which the patient is located at the time care is
7 rendered through the mutual recognition of party state licenses;
- 8 F. Decrease redundancies in the consideration and issuance of nurse licenses; and
- 9 G. Provide opportunities for interstate practice by nurses who meet uniform licensure
10 requirements.

11 **§2172. Definitions -- Article 2**

12 As used in this compact, unless the context otherwise indicates, the following terms
13 have the following meanings.

14 **1. Adverse action.** "Adverse action" means an administrative, civil, equitable or
15 criminal action permitted by a state's laws that is imposed by a licensing board or other
16 authority against a nurse, including actions against an individual's license or multistate
17 licensure privilege such as revocation, suspension, probation, monitoring of the licensee,
18 limitation on the licensee's practice or any other encumbrance on licensure affecting a
19 nurse's authorization to practice, including issuance of a cease and desist action.

20 **2. Alternative program.** "Alternative program" means a nondisciplinary
21 monitoring program approved by a licensing board.

22 **3. Commission.** "Commission" means the Interstate Commission of Nurse
23 Licensure Compact Administrators established in this compact.

24 **4. Coordinated licensure information system.** "Coordinated licensure information
25 system" means an integrated system for collecting, storing and sharing information on
26 nurse licensure and enforcement activities related to nurse licensure laws that is
27 administered by a nonprofit organization composed of and controlled by licensing boards.

28 **5. Current significant investigative information.** "Current significant
29 investigative information" means:

30 A. Investigative information that a licensing board, after a preliminary inquiry that
31 includes notification and an opportunity for a nurse to respond, if required by state
32 law, has reason to believe is not groundless and, if proved true, indicates more than a
33 minor infraction; or

34 B. Investigative information that indicates that a nurse represents an immediate
35 threat to public health and safety regardless of whether the nurse has been notified
36 and had an opportunity to respond.

37 **6. Encumbrance.** "Encumbrance" means a revocation or suspension of, or any
38 limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

1 **7. Head of the state licensing board.** "Head of the state licensing board" means the
2 executive director of the State Board of Nursing.

3 **8. Home state.** "Home state" means the party state that is a nurse's primary state of
4 residence.

5 **9. Licensing board.** "Licensing board" means a party state's regulatory body
6 responsible for issuing nurse licenses.

7 **10. Multistate license.** "Multistate license" means a license to practice as a
8 registered or a licensed practical or vocational nurse issued by a home state licensing
9 board that authorizes the licensed nurse to practice in all party states under a multistate
10 licensure privilege.

11 **11. Multistate licensure privilege.** "Multistate licensure privilege" means a legal
12 authorization associated with a multistate license permitting the practice of nursing as
13 either a registered nurse or licensed practical or vocational nurse in a remote state.

14 **12. Nurse.** "Nurse" means a registered nurse or licensed practical or vocational
15 nurse, as those terms are defined by each party state's practice laws.

16 **13. Party state.** "Party state" means a state that has adopted this compact.

17 **14. Prior compact.** "Prior compact" means the prior nurse licensure compact that is
18 superseded by this compact.

19 **15. Remote state.** "Remote state" means a party state other than the home state.

20 **16. Single-state license.** "Single-state license" means a nurse license issued by a
21 party state that authorizes practice only within the issuing state and does not include a
22 multistate licensure privilege to practice in any other party state.

23 **17. State.** "State" means a state, territory or possession of the United States and the
24 District of Columbia.

25 **18. State practice laws.** "State practice laws" means a party state's laws, rules and
26 regulations that govern the practice of nursing, define the scope of nursing practice and
27 create the methods and grounds for imposing discipline. "State practice laws" does not
28 include requirements necessary to obtain and retain a license, except for qualifications or
29 requirements of the home state.

30 **§2173. General provisions and jurisdiction -- Article 3**

31 **1. Multistate license.** A multistate license to practice registered or licensed practical
32 or vocational nursing issued by a home state to a resident in that state is recognized by
33 each party state as authorizing a nurse to practice as a registered nurse or as a licensed
34 practical or vocational nurse, under a multistate licensure privilege, in each party state.

35 **2. Criminal history records.** A party state shall implement procedures for
36 considering the criminal history records of an applicant for an initial multistate license or
37 licensure by endorsement. Such procedures must include the submission of fingerprints

1 or other biometric-based information by an applicant for the purpose of obtaining an
2 applicant's criminal history record information from the Federal Bureau of Investigation
3 and the agency responsible for retaining that state's criminal records.

4 **3. Requirements.** Each party state shall require that an applicant to obtain or retain
5 a multistate license in the home state:

6 A. Meet the home state's qualifications for licensure or renewal of licensure, as well
7 as all other applicable laws;

8 B. Have graduated or be eligible to graduate from a registered nurse or licensed
9 practical or vocational nurse prelicensure education program approved by a licensing
10 board or have graduated in a country other than the United States from a registered
11 nurse or licensed practical or vocational nurse prelicensure education program that
12 has been approved by an authorized accrediting body in the applicable country and
13 has been verified by an independent credentials review agency to be comparable to a
14 prelicensure education program approved by a licensing board;

15 C. Have, if a graduate of a prelicensure education program not taught in English or if
16 English is not the applicant's native language, successfully passed an English
17 proficiency examination that includes the components of reading, speaking, writing
18 and listening;

19 D. Have successfully passed a National Council Licensure Examination for
20 registered nurses or a National Council Licensure Examination for practical or
21 vocational nurses given by the National Council of State Boards of Nursing or an
22 exam given by a predecessor or successor organization, as applicable;

23 E. Be eligible for or hold an active, unencumbered nurse license;

24 F. Have submitted, in connection with an application for initial licensure or licensure
25 by endorsement, fingerprints or other biometric-based information for the purpose of
26 obtaining criminal history record information from the Federal Bureau of
27 Investigation and the agency responsible for retaining that state's criminal records;

28 G. Have not been convicted or found guilty, or have entered into an agreed
29 disposition, of a felony offense under applicable state or federal criminal law;

30 H. Have not been convicted or found guilty, or have entered into an agreed
31 disposition, of a misdemeanor offense related to the practice of nursing as determined
32 on a case-by-case basis;

33 I. Be not currently enrolled in an alternative program;

34 J. Be subject to self-disclosure requirements regarding current participation in an
35 alternative program; and

36 K. Have a valid social security number.

37 **4. Adverse action.** A party state is authorized, in accordance with existing state due
38 process law, to take adverse action against a nurse's multistate licensure privilege such as
39 revocation, suspension, probation or any other action that affects a nurse's authorization
40 to practice under a multistate licensure privilege, including cease and desist actions. If a
41 party state takes an action under this subsection, it shall promptly notify the administrator

1 of the coordinated licensure information system. The administrator of the coordinated
2 licensure information system shall promptly notify the home state of any action under this
3 subsection by a remote state.

4 **5. Practice of nursing.** A nurse practicing in a party state shall comply with the
5 state practice laws of the state in which the client is located at the time service is
6 provided. The practice of nursing is not limited to patient care, but includes all nursing
7 practice as defined by the state practice laws of the party state in which the client is
8 located. The practice of nursing in a party state under a multistate licensure privilege
9 subjects a nurse to the jurisdiction of the licensing board, the courts and the laws of the
10 party state in which the client is located at the time service is provided.

11 **6. Single-state license.** A person not residing in a party state may apply for a party
12 state's single-state license as provided under the laws of each party state; however, a
13 single-state license granted under this subsection is not recognized as granting the
14 privilege to practice nursing in any other party state. Nothing in this compact affects the
15 requirements established by a party state for the issuance of a single-state license.

16 **7. Licenses active on the effective date of compact.** A nurse holding a home state
17 multistate license on the effective date of this compact may retain and renew the
18 multistate license issued by the nurse's then-current home state, except that:

19 A. A nurse who changes primary state of residence after the effective date of this
20 compact must meet all applicable requirements under subsection 3 to obtain a
21 multistate license from a new home state; and

22 B. A nurse who fails to satisfy the multistate licensure requirements in subsection 3
23 due to a disqualifying event occurring after the effective date of this compact is
24 ineligible to retain or renew a multistate license, and the nurse's multistate license
25 must be revoked or deactivated in accordance with applicable rules adopted by the
26 commission.

27 **§2174. Applications for licensure in a party state -- Article 4**

28 **1. Other licenses.** Upon receiving an application for a multistate license, the
29 licensing board in the issuing party state shall ascertain, through the coordinated licensure
30 information system, whether the applicant has ever held, or is the holder of, a license
31 issued by any other state, whether there are any encumbrances on a license or multistate
32 licensure privilege held by the applicant, whether an adverse action has been taken
33 against a license or multistate licensure privilege held by the applicant and whether the
34 applicant is currently participating in an alternative program.

35 **2. Multistate license.** A nurse may hold a multistate license issued by the home
36 state in only one party state at a time.

37 **3. Change of residence.** If a nurse changes primary state of residence by moving
38 between 2 party states, the nurse shall apply for licensure in the new home state, and the
39 multistate license issued by the prior home state must be deactivated in accordance with
40 applicable rules adopted by the commission.

1 A. A nurse may apply for licensure under this compact in advance of a change in
2 primary state of residence.

3 B. A multistate license may not be issued by the new home state under this
4 subsection until the nurse provides satisfactory evidence of a change in primary state
5 of residence to the new home state and satisfies all applicable requirements to obtain
6 a multistate license from the new home state.

7 4. Change of residence to nonparty state. If a nurse changes primary state of
8 residence by moving from a party state to a nonparty state, the multistate license issued
9 by the prior home state converts to a single-state license, valid only in the former home
10 state.

11 **§2175. Additional authorities invested in party state licensing boards -- Article 5**

12 1. Authority. In addition to other powers conferred by state law, a licensing board
13 has the authority to:

14 A. Take adverse action against a nurse's multistate licensure privilege to practice
15 within that party state.

16 (1) Only the home state has the power to take adverse action against a nurse's
17 license issued by the home state.

18 (2) For purposes of taking adverse action, the home state licensing board shall
19 give the same priority and effect to a report of conduct received from a remote
20 state as it would if such conduct had occurred within the home state. In so doing,
21 the home state licensing board shall apply its own state laws to determine
22 appropriate action;

23 B. Issue cease and desist orders or impose an encumbrance on a nurse's authority to
24 practice within that party state;

25 C. Complete any pending investigation of a nurse who changes primary state of
26 residence during the course of such investigation. The licensing board also has the
27 authority to take appropriate action and shall promptly report the conclusions of an
28 investigation to the administrator of the coordinated licensure information system.
29 The administrator of the coordinated licensure information system shall promptly
30 notify the new home state of any action under this paragraph;

31 D. Issue subpoenas for both hearings and investigations that require the attendance
32 and testimony of witnesses as well as the production of evidence. A subpoena issued
33 by a licensing board in a party state for the attendance and testimony of witnesses or
34 the production of evidence from another party state may be enforced in the latter state
35 by any court of competent jurisdiction, according to the practice and procedure of
36 that court applicable to subpoenas issued in proceedings pending before it. The
37 issuing authority shall pay any witness fees, travel expenses, mileage and other fees
38 required by the service statutes of the state in which the witnesses or evidence is
39 located;

40 E. Obtain and submit, for each nurse licensure applicant, fingerprints or other
41 biometric-based information to the Federal Bureau of Investigation for criminal

1 background checks, receive the results of the Federal Bureau of Investigation record
2 search on criminal background checks and use the results in making licensure
3 decisions;

4 F. If otherwise permitted by state law, recover from the affected nurse the costs of
5 investigations and disposition of cases resulting from any adverse action taken
6 against that nurse; and

7 G. Take adverse action based on the factual findings of the remote state, as long as
8 the licensing board follows its own procedures for taking such adverse action.

9 **2. Adverse action.** If adverse action is taken by the home state against a nurse's
10 multistate license, the nurse's multistate licensure privilege to practice in all other party
11 states is deactivated until all encumbrances have been removed from the multistate
12 license. A home state disciplinary order that imposes adverse action against a nurse's
13 multistate license must include a statement that the nurse's multistate licensure privilege
14 is deactivated in all party states during the pendency of the order.

15 **3. Alternative program.** Nothing in this compact overrides a decision by a
16 licensing board of a party state that participation in an alternative program may be used in
17 lieu of adverse action. The home state licensing board shall deactivate the multistate
18 licensure privilege under the multistate license of a nurse for the duration of the nurse's
19 participation in an alternative program.

20 **§2176. Coordinated licensure information system and exchange of information --**
21 **Article 6**

22 **1. Participation.** A party state shall participate in the coordinated licensure
23 information system for all licensed registered nurses and licensed practical or vocational
24 nurses. The coordinated licensure information system includes information on the
25 licensure and disciplinary history of each nurse, as submitted by party states, to assist in
26 the coordination of nurse licensure and enforcement efforts.

27 **2. Procedures.** The commission, in consultation with the administrator of the
28 coordinated licensure information system, shall formulate necessary and proper
29 procedures for the identification, collection and exchange of information under this
30 compact.

31 **3. Reports.** A licensing board shall promptly report to the coordinated licensure
32 information system any adverse action, any current significant investigative information,
33 denials of applications, including the reasons for such denials, and nurse participation in
34 alternative programs known to the licensing board regardless of whether such
35 participation is considered nonpublic or confidential under state law.

36 **4. Information restrictions.** Current significant investigative information and
37 participation in nonpublic or confidential alternative programs may be transmitted
38 through the coordinated licensure information system only to party state licensing boards.

39 **5. Confidentiality.** Notwithstanding any other provision of law, a party state
40 licensing board contributing information to the coordinated licensure information system

1 may designate information that may not be shared with nonparty states or disclosed to
2 other entities or individuals without the express permission of the contributing state
3 licensing board.

4 **6. Personally identifiable information.** Personally identifiable information
5 obtained from the coordinated licensure information system by a party state licensing
6 board may not be shared with nonparty states or disclosed to other entities or individuals
7 except to the extent permitted by the laws of the party state contributing the information.

8 **7. Expungement.** Information contributed to the coordinated licensure information
9 system that is subsequently required to be expunged by the laws of the party state
10 contributing that information must also be expunged from the coordinated licensure
11 information system.

12 **8. Uniform data set.** The compact administrator of each party state shall furnish a
13 uniform data set to the compact administrator of each other party state, which must
14 include, at a minimum:

15 A. Identifying information;

16 B. Licensure data;

17 C. Information related to alternative program participation; and

18 D. Other information that may facilitate the administration of this compact, as
19 determined by commission rules.

20 **9. Investigative documents.** The compact administrator of a party state shall
21 provide all investigative documents and information requested by another party state.

22 **§2177. Establishment of the Interstate Commission of Nurse Licensure Compact**
23 **Administrators -- Article 7**

24 **1. Commission established.** The party states hereby create and establish a joint
25 public entity known as the Interstate Commission of Nurse Licensure Compact
26 Administrators.

27 A. The commission is an instrumentality of the party states.

28 B. Venue is proper, and judicial proceedings by or against the commission must be
29 brought solely and exclusively in a court of competent jurisdiction where the
30 principal office of the commission is located. The commission may waive venue and
31 jurisdictional defenses to the extent it adopts or consents to participate in alternative
32 dispute resolution proceedings.

33 C. Nothing in this compact may be construed to be a waiver of sovereign immunity.

34 **2. Membership, voting and meetings.** This subsection governs the membership,
35 voting and meetings of the commission.

36 A. Each party state has and is limited to one administrator. The head of the state
37 licensing board or the head of the state licensing board's designee is the administrator
38 of this compact for each party state. An administrator may be removed or suspended

1 from office as provided by the law of the state from which the administrator is
2 appointed. Any vacancy occurring in the commission must be filled in accordance
3 with the laws of the party state in which the vacancy exists.

4 B. Each administrator is entitled to one vote with regard to the promulgation of rules
5 and creation of bylaws and must otherwise have an opportunity to participate in the
6 business and affairs of the commission. An administrator shall vote in person or by
7 such other means as provided in the bylaws. The bylaws may provide for an
8 administrator's participation in meetings by telephone or other means of
9 communication.

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

12 D. All meetings must be open to the public, and public notice of meetings must be
13 given in the same manner as required under the rule-making provisions in section
14 2178.

15 E. The commission may convene in a closed, nonpublic meeting if the commission
16 must discuss:

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

18 (2) The employment, compensation, discipline or other personnel matters,
19 practices or procedures related to specific employees or other matters related to
20 the commission's internal personnel practices and procedures;

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

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

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

25 (6) Disclosure of trade secrets or commercial or financial information that is
26 privileged or confidential;

27 (7) Disclosure of information of a personal nature where disclosure would
28 constitute a clearly unwarranted invasion of personal privacy;

29 (8) Disclosure of investigatory records compiled for law enforcement purposes;

30 (9) Disclosure of information related to any reports prepared by or on behalf of
31 the commission for the purpose of investigation of compliance with this compact;

32 or

33 (10) Matters specifically exempted from disclosure by federal or state statute.

34 F. If a meeting, or portion of a meeting, is closed pursuant to paragraph E, the
35 commission's legal counsel or designee shall certify that the meeting may be closed
36 and shall reference each relevant exempting provision. The commission shall keep
37 minutes that fully and clearly describe all matters discussed in a meeting and shall
38 provide a full and accurate summary of actions taken and the reasons for those
39 actions, including a description of the views expressed. All documents considered in
40 connection with an action must be identified in the minutes. All minutes and

1 documents of a closed meeting must remain under seal, subject to release by a
2 majority vote of the commission or order of a court of competent jurisdiction.

3 **3. Bylaws and rules.** The commission shall, by a majority vote of the
4 administrators, prescribe bylaws or rules to govern its conduct as may be necessary or
5 appropriate to carry out the purposes and exercise the powers of this compact, including
6 but not limited to:

7 A. Establishing the fiscal year of the commission;

8 B. Providing reasonable standards and procedures:

9 (1) For the establishment and meetings of other committees; and

10 (2) Governing any general or specific delegation of any authority or function of
11 the commission;

12 C. Providing reasonable procedures for calling and conducting meetings of the
13 commission, ensuring reasonable advance notice of all meetings and providing an
14 opportunity for attendance of such meetings by interested parties, with enumerated
15 exceptions designed to protect the public's interest, the privacy of individuals and
16 proprietary information, including trade secrets. The commission may meet in closed
17 session only after a majority of the administrators vote to close a meeting in whole or
18 in part. As soon as practicable, the commission shall make public a copy of the vote
19 to close the meeting revealing the vote of each administrator, with no proxy votes
20 allowed;

21 D. Establishing the titles, duties and authority and reasonable procedures for the
22 election of the officers of the commission;

23 E. Providing reasonable standards and procedures for the establishment of the
24 personnel policies and programs of the commission. Notwithstanding any civil
25 service or other similar laws of any party state, the bylaws exclusively govern the
26 personnel policies and programs of the commission; and

27 F. Providing a mechanism for winding up the operations of the commission and the
28 equitable disposition of any surplus funds that may exist after the termination of this
29 compact after the payment or reserving of all of its debts and obligations.

30 **4. Publishing.** The commission shall publish its bylaws and rules, and any
31 amendments thereto, in a convenient form on the publicly accessible website of the
32 commission.

33 **5. Financial records.** The commission shall maintain its financial records in
34 accordance with the bylaws.

35 **6. Meetings.** The commission shall meet and take such actions as are consistent
36 with the provisions of this compact and the bylaws.

37 **7. Powers.** The commission has the following powers:

- 1 A. To promulgate uniform rules to facilitate and coordinate implementation and
2 administration of this compact. The rules have the force and effect of law and are
3 binding in all party states;
- 4 B. To bring and prosecute legal proceedings or actions in the name of the
5 commission; however, the standing of any licensing board to sue or be sued under
6 applicable law is not affected;
- 7 C. To purchase and maintain insurance and bonds;
- 8 D. To borrow, accept or contract for services of personnel, including, but not limited
9 to, employees of a party state or nonprofit organizations;
- 10 E. To cooperate with other organizations that administer state compacts related to the
11 regulation of nursing, including, but not limited to, sharing administrative or staff
12 expenses, office space or other resources;
- 13 F. To hire employees, elect or appoint officers, fix compensation, define duties, grant
14 appropriate authority to carry out the purposes of this compact and establish the
15 commission's personnel policies and programs relating to conflicts of interest,
16 qualifications of personnel and other related personnel matters;
- 17 G. To accept all appropriate donations, grants and gifts of money, equipment,
18 supplies, materials and services and to receive, use and dispose of the same, as long
19 as at all times the commission avoids any appearance of impropriety or conflict of
20 interest;
- 21 H. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own,
22 hold, improve or use, any property, whether real, personal or mixed, as long as at all
23 times the commission avoids any appearance of impropriety;
- 24 I. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose
25 of any property, whether real, personal or mixed;
- 26 J. To establish a budget and make expenditures;
- 27 K. To borrow money;
- 28 L. To appoint committees, including advisory committees composed of
29 administrators, state nursing regulators, state legislators or their representatives,
30 consumer representatives and other interested persons;
- 31 M. To provide and receive information from, and to cooperate with, law enforcement
32 agencies;
- 33 N. To adopt and use an official seal; and
- 34 O. To perform such other functions as may be necessary or appropriate to achieve
35 the purposes of this compact consistent with the state regulation of nurse licensure
36 and practice.
- 37 **8. Financing of commission.** This subsection governs the financial operations of
38 the commission.
- 39 A. The commission shall pay, or provide for the payment of, the reasonable expenses
40 of its establishment, organization and ongoing activities.

1 B. The commission may levy on and collect an annual assessment from each party
2 state to cover the cost of its operations, activities and staff in its annual budget as
3 approved each year. The aggregate annual assessment amount, if any, must be
4 allocated based upon a formula to be determined by the commission, which shall
5 promulgate a rule that is binding upon all party states.

6 C. The commission may not incur obligations of any kind prior to securing the funds
7 adequate to those obligations; nor may the commission pledge the credit of any of the
8 party states except by and with the authority of that 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 included in
14 and become part of the annual report of the commission.

15 **9. Qualified immunity; defense and indemnification.** This subsection governs
16 immunity provisions and defense and indemnification requirements of the commission.

17 A. An administrator, officer, executive director, employee or representative of the
18 commission is immune from suit and liability, either personally or in that person's
19 official capacity, for any claim for damage to or loss of property or personal injury or
20 other civil liability caused by or arising out of any actual or alleged act, error or
21 omission that occurred or that the person against whom the claim is made had a
22 reasonable basis for believing occurred within the scope of commission employment,
23 duties or responsibilities, except that nothing in this paragraph may be construed to
24 protect any person from suit or liability for any damage, loss, injury or liability
25 caused by the intentional, willful or wanton misconduct of that person.

26 B. The commission shall defend an administrator, officer, executive director,
27 employee or representative of the commission in any civil action seeking to impose
28 liability arising out of any actual or alleged act, error or omission that occurred within
29 the scope of commission employment, duties or responsibilities, or that the person
30 against whom the claim is made had a reasonable basis for believing occurred within
31 the scope of commission employment, duties or responsibilities, as long as the actual
32 or alleged act, error or omission did not result from that person's intentional, willful
33 or wanton misconduct. Nothing in this paragraph may be construed to prohibit that
34 person from retaining counsel.

35 C. The commission shall indemnify and hold harmless an administrator, officer,
36 executive director, employee or representative of the commission for the amount of
37 any settlement or judgment obtained against that person arising out of any actual or
38 alleged act, error or omission that occurred within the scope of commission
39 employment, duties or responsibilities, or that the person had a reasonable basis for
40 believing occurred within the scope of commission employment, duties or
41 responsibilities, as long as the actual or alleged act, error or omission did not result
42 from the intentional, willful or wanton misconduct of that person.

1 **§2178. Rulemaking -- Article 8**

2 **1. Rule-making powers.** The commission shall exercise its rule-making powers
3 pursuant to the criteria set forth in this section and the rules adopted under this section.
4 Rules and amendments to rules become binding as of the date specified in each rule or
5 amendment and have the same force and effect as provisions of this compact.

6 **2. Adoption.** Rules or amendments to rules must be adopted at a regular or special
7 meeting of the commission.

8 **3. Notice publication.** Prior to promulgation and adoption of a final rule or rules by
9 the commission, and at least 60 days in advance of the meeting at which the rule will be
10 considered and voted upon, the commission shall file a notice of proposed rulemaking:

11 A. On the publicly accessible website of the commission; and

12 B. On the publicly accessible website of each licensing board or in the publication in
13 which each party state would otherwise publish proposed rules.

14 **4. Notice contents.** The notice of proposed rulemaking under subsection 3 must
15 include:

16 A. The proposed time, date and location of the meeting in which the rule will be
17 considered and voted upon;

18 B. The text of the proposed rule or amendment and the reason for the proposed rule
19 or amendment;

20 C. A request for comments on the proposed rule from any interested person; and

21 D. The manner in which an interested person may submit notice to the commission
22 of the intention to attend the public hearing and any written comments.

23 **5. Materials submission.** Prior to adoption of a proposed rule, the commission shall
24 allow any interested person to submit written data, facts, opinions and arguments, which
25 must be made available to the public.

26 **6. Public hearing opportunity.** The commission shall grant an opportunity for a
27 public hearing before it adopts a rule or amendment.

28 **7. Public hearing procedure.** The commission shall publish the place, time and
29 date of the scheduled public hearing.

30 A. A public hearing must be conducted in a manner providing each person who
31 wishes to comment a fair and reasonable opportunity to comment orally or in writing.
32 All public hearings must be recorded, and a copy must be made available upon
33 request.

34 B. Nothing in this section may be construed as requiring a separate public hearing on
35 each rule. Rules may be grouped for the convenience of the commission at public
36 hearings required by this section.

1 **8. Attendance.** If no one appears at the public hearing, the commission may
2 proceed with promulgation of the proposed rule.

3 **9. Consideration of comments.** Following the scheduled public hearing date, or by
4 the close of business on a scheduled hearing date if the hearing was not held, the
5 commission shall consider all written and oral comments received.

6 **10. Final action.** The commission shall, by majority vote of all administrators, take
7 final action on a proposed rule and determine the effective date of the rule, if any, based
8 on the rule-making record and the full text of the rule.

9 **11. Emergency rulemaking.** Upon determination that an emergency exists, the
10 commission may consider and adopt an emergency rule without prior notice, opportunity
11 for comment or public hearing, in which case the usual rule-making procedures provided
12 in this compact and in this section must be retroactively applied to the rule as soon as
13 reasonably possible and in no event later than 90 days after the effective date of the rule.
14 For the purposes of this subsection, an emergency rule is one that must be adopted
15 immediately in order to:

16 A. Meet an imminent threat to public health, safety or welfare;

17 B. Prevent a loss of commission or party state funds; or

18 C. Meet a deadline for the promulgation of an administrative rule that is required by
19 federal law or rule.

20 **12. Revisions.** The commission may direct revisions to a previously adopted rule or
21 amendment for purposes of correcting typographical errors, errors in format, errors in
22 consistency or grammatical errors. Public notice of any revisions must be posted on the
23 publicly accessible website of the commission. The revision is subject to challenge by
24 any person for a period of 30 days after posting. The revision may be challenged only on
25 grounds that the revision results in a material change to a rule. A challenge must be made
26 in writing and delivered to the commission prior to the end of the notice period. If no
27 challenge is made, the revision takes effect without further action. If the revision is
28 challenged, the revision may not take effect without the approval of the commission.

29 **§2179. Oversight, dispute resolution and enforcement -- Article 9**

30 **1. Oversight.** This subsection governs enforcement and proceedings under the
31 compact.

32 A. Each party state shall enforce this compact and take all actions necessary and
33 appropriate to effectuate this compact's purposes and intent.

34 B. The commission is entitled to receive service of process in any proceeding that
35 may affect the powers, responsibilities or actions of the commission and has standing
36 to intervene in such a proceeding for all purposes. Failure to provide service of
37 process in a proceeding to the commission renders a judgment or order void as to the
38 commission, this compact or promulgated rules.

39 **2. Default, technical assistance and termination.** This subsection governs default,
40 technical assistance and termination under the compact.

1 A. If the commission determines that a party state has defaulted in the performance
2 of its obligations or responsibilities under this compact or the promulgated rules, the
3 commission shall:

4 (1) Provide written notice to the defaulting state and other party states of the
5 nature of the default, the proposed means of curing the default or any other action
6 to be taken by the commission; and

7 (2) Provide remedial training and specific technical assistance regarding the
8 default.

9 B. If a party state in default fails to cure the default, the defaulting state's
10 membership in this compact may be terminated upon an affirmative vote of a
11 majority of the administrators, and all rights, privileges and benefits conferred by this
12 compact may be terminated on the effective date of termination. A cure of the
13 default does not relieve the offending state of obligations or liabilities incurred during
14 the period of default.

15 C. Termination of membership in this compact may be imposed only after all other
16 means of securing compliance have been exhausted. Notice of intent to suspend or
17 terminate must be given by the commission to the governor of the defaulting state
18 and to the executive officer of the defaulting state's licensing board and each of the
19 party states.

20 D. A party state whose membership in this compact has been terminated is
21 responsible for all assessments, obligations and liabilities incurred through the
22 effective date of termination, including obligations that extend beyond the effective
23 date of termination.

24 E. The commission may not bear any costs related to a party state that is found to be
25 in default or whose membership in this compact has been terminated unless agreed
26 upon in writing between the commission and the defaulting state.

27 F. The defaulting state may appeal the action of the commission by petitioning the
28 United States District Court for the District of Columbia or the federal district in
29 which the commission has its principal offices. The prevailing party must be
30 awarded all costs of such litigation, including reasonable attorney's fees.

31 **3. Dispute resolution.** This subsection governs dispute resolution under the
32 compact.

33 A. Upon request by a party state, the commission shall attempt to resolve disputes
34 related to the compact that arise among party states and between party and nonparty
35 states.

36 B. The commission shall promulgate a rule providing for both mediation and binding
37 dispute resolution for disputes, as appropriate.

38 C. In the event the commission cannot resolve disputes among party states arising
39 under this compact:

40 (1) The party states may submit the issues in dispute to an arbitration panel
41 composed of individuals appointed by the compact administrator in each of the

1 affected party states and an individual mutually agreed upon by the compact
2 administrators of all the party states involved in the dispute; and

3 (2) The decision of a majority of the arbitrators under this paragraph is final and
4 binding.

5 **4. Enforcement.** This subsection governs enforcement under the compact.

6 A. The commission, in the reasonable exercise of its discretion, shall enforce the
7 provisions and rules of this compact.

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

15 C. The remedies provided in this section are not the exclusive remedies of the
16 commission. The commission may pursue any other remedies available under federal
17 or state law.

18 **§2180. Effective date, withdrawal and amendment -- Article 10**

19 **1. Effective date.** This compact becomes effective and binding on the earlier of the
20 date of legislative enactment of this compact into law by no fewer than 26 states or
21 December 31, 2018. All party states to this compact that were parties to the prior
22 compact are deemed to have withdrawn from the prior compact within 6 months after the
23 effective date of this compact.

24 **2. Prior compact.** Each party state shall continue to recognize a multistate licensure
25 privilege of a nurse to practice in that party state issued under the prior compact until that
26 party state has withdrawn from the prior compact.

27 **3. Withdrawal.** A party state may withdraw from this compact by enacting a statute
28 repealing the same. A party state's withdrawal does not take effect until 6 months after
29 enactment of the repealing statute.

30 **4. Continuing requirements.** A party state's withdrawal or termination does not
31 affect the continuing requirement of the withdrawing or terminated state's licensing board
32 to report adverse actions and significant investigations occurring prior to the effective
33 date of the withdrawal or termination.

34 **5. Agreements with nonparty states.** Nothing contained in this compact may be
35 construed to invalidate or prevent any nurse licensure agreement or other cooperative
36 arrangement between a party state and a nonparty state that is made in accordance with
37 the other provisions of this compact.

38 **6. Amendments to compact.** This compact may be amended by a party state. An
39 amendment to this compact does not become effective and binding upon the party states
40 until it is enacted into the laws of all party states.

1 charged by the Federal Bureau of Investigation, all money received by the board for
2 purposes of this subsection must be used in accordance with subsection 6.

3 **2. Fingerprints.** An applicant for licensure under this chapter shall submit to having
4 fingerprints taken. A law enforcement officer, upon proof of payment by the applicant of
5 the fee under subsection 1, shall take or cause to be taken the applicant's fingerprints and
6 shall forward the fingerprints to the Department of Public Safety, State Bureau of
7 Identification so that the bureau can conduct state and national criminal history record
8 checks.

9 **3. Confidentiality.** Information obtained pursuant to this section is confidential.
10 The results of criminal history record checks received by the board pursuant to this
11 section are for official use only in order to determine eligibility for licensure under this
12 chapter and may not be disseminated outside the board.

13 **4. Hearing.** A board action against an applicant for licensure under this chapter
14 based upon the criminal history record information under subsection 1 is subject to the
15 provisions of Title 5, section 5302.

16 **5. Rules.** The board may adopt rules to carry out the purposes of this section. Rules
17 adopted pursuant to this subsection are routine technical rules under Title 5, chapter 375,
18 subchapter 2-A.

19 **6. Criminal History Record Check Fund.** The Criminal History Record Check
20 Fund is created as a dedicated fund within the Department of Professional and Financial
21 Regulation, State Board of Nursing for the deposit of any fees collected pursuant to
22 subsection 1. The purpose of the fund is to reimburse the Department of Public Safety
23 for the cost of conducting the fingerprinting and state and national criminal history record
24 checks pursuant to this section. The fund may not lapse, but must be carried forward to
25 carry out the purposes of this section.

26 **7. Applicant's access to criminal history record check.** An applicant who is the
27 subject of a Federal Bureau of Investigation criminal history record check under this
28 section may obtain a copy of a criminal history record check by following the procedures
29 outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33.

30 **Sec. B-5. Appropriations and allocations.** The following appropriations and
31 allocations are made.

32 **PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF**
33 **Criminal History Record Check Fund - State Board of Nursing N125**
34 Initiative: Allocates funds to reimburse the Department of Public Safety for the cost of
35 conducting fingerprinting and state and federal criminal history record checks.

36	OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
37	All Other	\$17,250	\$23,000
38			
39	OTHER SPECIAL REVENUE FUNDS TOTAL	\$17,250	\$23,000

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SUMMARY

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This bill adopts the model act for the multistate nurse licensure compact endorsed by

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the National Council of State Boards of Nursing and adds a federal fingerprint

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background check for new licensees as required by the compact.