

NURSE LICENSURE COMPACT

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Evan J. Vickers

House Sponsor: _____

LONG TITLE**General Description:**

This bill enacts a Nurse Licensure Compact that will replace the state's current Nurse Licensure Compact if certain conditions are met.

Highlighted Provisions:

This bill:

- ▶ establishes findings for the Nurse Licensure Compact;
- ▶ defines terms;
- ▶ creates general provisions and jurisdiction for the compact;
- ▶ establishes a licensure process for party states;
- ▶ invests authority in party state licensing boards;
- ▶ coordinates licensure information systems and exchange of information;
- ▶ establishes the Interstate Commission of Nurse Licensure Compact Administrators;
- ▶ provides rulemaking to the commission;
- ▶ provides oversight and dispute resolution; and
- ▶ establishes an effective date for the compact.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

58-31e-101, Utah Code Annotated 1953

58-31e-102, Utah Code Annotated 1953

58-31e-103, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **58-31e-101** is enacted to read:

CHAPTER 31e. NURSE LICENSURE COMPACT - REVISED

58-31e-101. Title.

This chapter is known as the "Nurse Licensure Compact - Revised."

Section 2. Section **58-31e-102** is enacted to read:

58-31e-102. Nurse Licensure Compact.

The Nurse Licensure Compact is hereby enacted and entered into with all other jurisdictions that legally join in the compact, which is in form, substantially as follows:

NURSE LICENSURE COMPACT

ARTICLE I

Findings and Declaration of Purpose

a. The party states find that:

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

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

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

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

5. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and

6. Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

b. The general purposes of this Compact are to:

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

2. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

3. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

4. Promote compliance with the laws governing the practice of nursing in each jurisdiction;

5. Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;

6. Decrease redundancies in the consideration and issuance of nurse licenses; and

7. Provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

ARTICLE II

Definitions

As used in this Compact:

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

b. "Alternative program" means a non-disciplinary monitoring program approved by a licensing board.

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

d. "Current significant investigative information" means:

1. Investigative information that a licensing board, after a preliminary inquiry that

includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

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

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

f. "Home state" means the party state which is the nurse's primary state of residence.

g. "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

h. "Multistate license" means a license to practice as a registered or a licensed practical/vocational nurse (LPN/VN) issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

i. "Multistate licensure privilege" means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse (RN) or LPN/VN in a remote state.

j. "Nurse" means an RN or LPN/VN, as those terms are defined by each party state's practice laws.

k. "Party state" means any state that has adopted this Compact.

l. "Remote state" means a party state, other than the home state.

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

n. "State" means a state, territory, or possession of the United States and the District of Columbia.

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

ARTICLE III

General Provisions and Jurisdiction

a. A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse (RN) or as a licensed practical/vocational nurse (LPN/VN), under a multistate licensure privilege, in each party state.

b. A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

c. Each party state shall require the following for an applicant to obtain or retain a multistate license in the home state:

1. Meets the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws;

2. i. Has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN prelicensure education program; or

ii. Has graduated from a foreign RN or LPN/VN prelicensure education program that (a) has been approved by the authorized accrediting body in the applicable country and (b) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;

3. Has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing, and listening;

4. Has successfully passed an NCLEX-RN® or NCLEX-PN® Examination or recognized predecessor, as applicable;

5. Is eligible for or holds an active, unencumbered license;

6. Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records;

7. Has not been convicted or found guilty, or has entered into an agreed disposition, of

152 a felony offense under applicable state or federal criminal law;

153 8. Has not been convicted or found guilty, or has entered into an agreed disposition, of
154 a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;

155 9. Is not currently enrolled in an alternative program;

156 10. Is subject to self-disclosure requirements regarding current participation in an
157 alternative program; and

158 11. Has a valid United States social security number.

159 d. All party states shall be authorized, in accordance with existing state due process
160 law, to take adverse action against a nurse's multistate licensure privilege such as revocation,
161 suspension, probation, or any other action that affects a nurse's authorization to practice under a
162 multistate licensure privilege, including cease and desist actions. If a party state takes such
163 action, it shall promptly notify the administrator of the coordinated licensure information
164 system. The administrator of the coordinated licensure information system shall promptly
165 notify the home state of any such actions by remote states.

166 e. A nurse practicing in a party state must comply with the state practice laws of the
167 state in which the client is located at the time service is provided. The practice of nursing is not
168 limited to patient care, but shall include all nursing practice as defined by the state practice
169 laws of the party state in which the client is located. The practice of nursing in a party state
170 under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing
171 board, the courts, and the laws of the party state in which the client is located at the time
172 service is provided.

173 f. Individuals not residing in a party state shall continue to be able to apply for a party
174 state's single-state license as provided under the laws of each party state. However, the
175 single-state license granted to these individuals will not be recognized as granting the privilege
176 to practice nursing in any other party state. Nothing in this Compact shall affect the
177 requirements established by a party state for the issuance of a single-state license.

178 g. Any nurse holding a home state multistate license, on the effective date of this
179 Compact, may retain and renew the multistate license issued by the nurse's then-current home
180 state, provided that:

181 1. A nurse, who changes primary state of residence after this Compact's effective date,
182 must meet all applicable Article III.c. requirements to obtain a multistate license from a new

home state; and

2. A nurse who fails to satisfy the multistate licensure requirements in Article III.c. due to a disqualifying event occurring after this Compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators ("Commission").

ARTICLE IV

Applications for Licensure in a Party State

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

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

c. If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the Commission.

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

2. A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

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

ARTICLE V

Additional Authorities Invested in Party State Licensing Boards

214 a. In addition to the other powers conferred by state law, a licensing board shall have
215 the authority to:

216 1. Take adverse action against a nurse's multistate licensure privilege to practice within
217 that party state.

218 i. Only the home state shall have the power to take adverse action against a nurse's
219 license issued by the home state.

220 ii. For purposes of taking adverse action, the home state licensing board shall give the
221 same priority and effect to reported conduct received from a remote state as it would if such
222 conduct had occurred within the home state. In so doing, the home state shall apply its own
223 state laws to determine appropriate action.

224 2. Issue cease and desist orders or impose an encumbrance on a nurse's authority to
225 practice within that party state.

226 3. Complete any pending investigations of a nurse who changes primary state of
227 residence during the course of such investigations. The licensing board shall also have the
228 authority to take appropriate action(s) and shall promptly report the conclusions of such
229 investigations to the administrator of the coordinated licensure information system. The
230 administrator of the coordinated licensure information system shall promptly notify the new
231 home state of any such actions.

232 4. Issue subpoenas for both hearings and investigations that require the attendance and
233 testimony of witnesses, as well as the production of evidence. Subpoenas issued by a licensing
234 board in a party state for the attendance and testimony of witnesses or the production of
235 evidence from another party state shall be enforced in the latter state by any court of competent
236 jurisdiction, according to the practice and procedure of that court applicable to subpoenas
237 issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel
238 expenses, mileage, and other fees required by the service statutes of the state in which the
239 witnesses or evidence are located.

240 5. Obtain and submit, for each nurse licensure applicant, fingerprint or other
241 biometric-based information to the Federal Bureau of Investigation for criminal background
242 checks, receive the results of the Federal Bureau of Investigation record search on criminal
243 background checks, and use the results in making licensure decisions.

244 6. If otherwise permitted by state law, recover from the affected nurse the costs of

investigations and disposition of cases resulting from any adverse action taken against that nurse.

7. Take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

b. If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

c. Nothing in this Compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

ARTICLE VI

Coordinated Licensure Information System and Exchange of Information

a. All party states shall participate in a coordinated licensure information system of all licensed registered nurses (RNs) and licensed practical/vocational nurses (LPNs/VNs). This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

b. The Commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this Compact.

c. All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials), and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

d. Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure

information system only to party state licensing boards.

e. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

f. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

g. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

h. The Compact administrator of each party state shall furnish a uniform data set to the Compact administrator of each other party state, which shall include, at a minimum:

1. Identifying information;
2. Licensure data;
3. Information related to alternative program participation; and
4. Other information that may facilitate the administration of this Compact, as determined by Commission rules.

i. The Compact administrator of a party state shall provide all investigative documents and information requested by another party state.

ARTICLE VII

Establishment of the Interstate Commission of Nurse Licensure Compact Administrators

a. The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.

1. The Commission is an instrumentality of the party states.
2. Venue is proper, and judicial proceedings by or against the Commission shall be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

b. Membership, Voting, and Meetings

1. Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this Compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the administrator is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

2. Each administrator shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

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

4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article VIII.

5. The Commission may convene in a closed, nonpublic meeting if the Commission must discuss:

i. Noncompliance of a party state with its obligations under this Compact;

ii. The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees, or other matters related to the Commission's internal personnel practices and procedures;

iii. Current, threatened, or reasonably anticipated litigation;

iv. Negotiation of contracts for the purchase or sale of goods, services, or real estate;

v. Accusing any person of a crime or formally censuring any person;

vi. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

vii. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

viii. Disclosure of investigatory records compiled for law enforcement purposes;

ix. Disclosure of information related to any reports prepared by or on behalf of the Commission for the purpose of investigation of compliance with this Compact; or

338 x. Matters specifically exempted from disclosure by federal or state statute.

339 6. If a meeting, or portion of a meeting, is closed pursuant to this provision, the
340 Commission's legal counsel or designee shall certify that the meeting may be closed and shall
341 reference each relevant exempting provision. The Commission shall keep minutes that fully
342 and clearly describe all matters discussed in a meeting and shall provide a full and accurate
343 summary of actions taken, and the reasons therefore, including a description of the views
344 expressed. All documents considered in connection with an action shall be identified in such
345 minutes. All minutes and documents of a closed meeting shall remain under seal, subject to
346 release by a majority vote of the Commission or order of a court of competent jurisdiction.

347 c. The Commission shall, by a majority vote of the administrators, prescribe bylaws or
348 rules to govern its conduct as may be necessary or appropriate to carry out the purposes and
349 exercise the powers of this Compact, including but not limited to:

350 1. Establishing the fiscal year of the Commission;

351 2. Providing reasonable standards and procedures:

352 i. For the establishment and meetings of other committees; and

353 ii. Governing any general or specific delegation of any authority or function of the
354 Commission;

355 3. Providing reasonable procedures for calling and conducting meetings of the
356 Commission, ensuring reasonable advance notice of all meetings, and providing an opportunity
357 for attendance of such meetings by interested parties, with enumerated exceptions designed to
358 protect the public's interest, the privacy of individuals, and proprietary information, including
359 trade secrets. The Commission may meet in closed session only after a majority of the
360 administrators vote to close a meeting in whole or in part. As soon as practicable, the
361 Commission must make public a copy of the vote to close the meeting revealing the vote of
362 each administrator, with no proxy votes allowed;

363 4. Establishing the titles, duties and authority, and reasonable procedures for the
364 election of the officers of the Commission;

365 5. Providing reasonable standards and procedures for the establishment of the
366 personnel policies and programs of the Commission. Notwithstanding any civil service or other
367 similar laws of any party state, the bylaws shall exclusively govern the personnel policies and
368 programs of the Commission; and

369 6. Providing a mechanism for winding up the operations of the Commission and the
370 equitable disposition of any surplus funds that may exist after the termination of this Compact
371 after the payment or reserving of all of its debts and obligations.

372 d. The Commission shall publish its bylaws and rules, and any amendments thereto, in
373 a convenient form on the website of the Commission.

374 e. The Commission shall maintain its financial records in accordance with the bylaws.

375 f. The Commission shall meet and take such actions as are consistent with the
376 provisions of this Compact and the bylaws.

377 g. The Commission shall have the following powers:

378 1. To promulgate uniform rules to facilitate and coordinate implementation and
379 administration of this Compact. The rules shall have the force and effect of law and shall be
380 binding in all party states;

381 2. To bring and prosecute legal proceedings or actions in the name of the Commission,
382 provided that the standing of any licensing board to sue or be sued under applicable law shall
383 not be affected;

384 3. To purchase and maintain insurance and bonds;

385 4. To borrow, accept, or contract for services of personnel, including, but not limited
386 to, employees of a party state or nonprofit organizations;

387 5. To cooperate with other organizations that administer state compacts related to the
388 regulation of nursing, including but not limited to sharing administrative or staff expenses,
389 office space, or other resources;

390 6. To hire employees, elect or appoint officers, fix compensation, define duties, grant
391 such individuals appropriate authority to carry out the purposes of this Compact, and to
392 establish the Commission's personnel policies and programs relating to conflicts of interest,
393 qualifications of personnel, and other related personnel matters;

394 7. To accept any and all appropriate donations, grants, and gifts of money, equipment,
395 supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that
396 at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

397 8. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own,
398 hold, improve, or use, any property, whether real, personal, or mixed; provided that at all times
399 the Commission shall avoid any appearance of impropriety;

400 9. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of
401 any property, whether real, personal, or mixed;

402 10. To establish a budget and make expenditures;

403 11. To borrow money;

404 12. To appoint committees, including advisory committees comprised of
405 administrators, state nursing regulators, state legislators or their representatives, and consumer
406 representatives, and other such interested persons;

407 13. To provide and receive information from, and to cooperate with, law enforcement
408 agencies;

409 14. To adopt and use an official seal; and

410 15. To perform such other functions as may be necessary or appropriate to achieve the
411 purposes of this Compact consistent with the state regulation of nurse licensure and practice.

412 h. Financing of the Commission

413 1. The Commission shall pay, or provide for the payment of, the reasonable expenses
414 of its establishment, organization, and ongoing activities.

415 2. The Commission may also levy on and collect an annual assessment from each party
416 state to cover the cost of its operations, activities, and staff in its annual budget as approved
417 each year. The aggregate annual assessment amount, if any, shall be allocated based upon a
418 formula to be determined by the Commission, which shall promulgate a rule that is binding
419 upon all party states.

420 3. The Commission shall not incur obligations of any kind prior to securing the funds
421 adequate to meet the same; nor shall the Commission pledge the credit of any of the party
422 states, except by, and with the authority of, such party state.

423 4. The Commission shall keep accurate accounts of all receipts and disbursements. The
424 receipts and disbursements of the Commission shall be subject to the audit and accounting
425 procedures established under its bylaws. However, all receipts and disbursements of funds
426 handled by the Commission shall be audited yearly by a certified or licensed public accountant,
427 and the report of the audit shall be included in and become part of the annual report of the
428 Commission.

429 i. Qualified Immunity, Defense, and Indemnification

430 1. The administrators, officers, executive director, employees, and representatives of

431 the Commission shall be immune from suit and liability, either personally or in their official
432 capacity, for any claim for damage to or loss of property or personal injury or other civil
433 liability caused by or arising out of any actual or alleged act, error, or omission that occurred,
434 or that the person against whom the claim is made had a reasonable basis for believing
435 occurred, within the scope of Commission employment, duties, or responsibilities; provided
436 that nothing in this paragraph shall be construed to protect any such person from suit or liability
437 for any damage, loss, injury, or liability caused by the intentional, willful, or wanton
438 misconduct of that person.

439 2. The Commission shall defend any administrator, officer, executive director,
440 employee, or representative of the Commission in any civil action seeking to impose liability
441 arising out of any actual or alleged act, error, or omission that occurred within the scope of
442 Commission employment, duties, or responsibilities, or that the person against whom the claim
443 is made had a reasonable basis for believing occurred within the scope of Commission
444 employment, duties, or responsibilities; provided that nothing herein shall be construed to
445 prohibit that person from retaining his or her own counsel; and provided further that the actual
446 or alleged act, error, or omission did not result from that person's intentional, willful, or wanton
447 misconduct.

448 3. The Commission shall indemnify and hold harmless any administrator, officer,
449 executive director, employee, or representative of the Commission for the amount of any
450 settlement or judgment obtained against that person arising out of any actual or alleged act,
451 error, or omission that occurred within the scope of Commission employment, duties, or
452 responsibilities, or that such person had a reasonable basis for believing occurred within the
453 scope of Commission employment, duties, or responsibilities, provided that the actual or
454 alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct
455 of that person.

456 ARTICLE VIII

457 Rulemaking

458 a. The Commission shall exercise its rulemaking powers pursuant to the criteria set
459 forth in this Article and the rules adopted thereunder. Rules and amendments shall become
460 binding as of the date specified in each rule or amendment and shall have the same force and
461 effect as provisions of this Compact.

462 b. Rules or amendments to the rules shall be adopted at a regular or special meeting of
463 the Commission.

464 c. Prior to promulgation and adoption of a final rule or rules by the Commission, and at
465 least sixty (60) days in advance of the meeting at which the rule will be considered and voted
466 upon, the Commission shall file a notice of proposed rulemaking:

467 1. On the website of the Commission; and

468 2. On the website of each licensing board or the publication in which each state would
469 otherwise publish proposed rules.

470 d. The notice of proposed rulemaking shall include:

471 1. The proposed time, date, and location of the meeting in which the rule will be
472 considered and voted upon;

473 2. The text of the proposed rule or amendment, and the reason for the proposed rule;

474 3. A request for comments on the proposed rule from any interested person; and

475 4. The manner in which interested persons may submit notice to the Commission of
476 their intention to attend the public hearing and any written comments.

477 e. Prior to adoption of a proposed rule, the Commission shall allow persons to submit
478 written data, facts, opinions, and arguments, which shall be made available to the public.

479 f. The Commission shall grant an opportunity for a public hearing before it adopts a
480 rule or amendment.

481 g. The Commission shall publish the place, time, and date of the scheduled public
482 hearing.

483 1. Hearings shall be conducted in a manner providing each person who wishes to
484 comment a fair and reasonable opportunity to comment orally or in writing. All hearings will
485 be recorded, and a copy will be made available upon request.

486 2. Nothing in this section shall be construed as requiring a separate hearing on each
487 rule. Rules may be grouped for the convenience of the Commission at hearings required by this
488 section.

489 h. If no one appears at the public hearing, the Commission may proceed with
490 promulgation of the proposed rule.

491 i. Following the scheduled hearing date, or by the close of business on the scheduled
492 hearing date if the hearing was not held, the Commission shall consider all written and oral

493 comments received.

494 j. The Commission shall, by majority vote of all administrators, take final action on the
495 proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking
496 record and the full text of the rule.

497 k. Upon determination that an emergency exists, the Commission may consider and
498 adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided
499 that the usual rulemaking procedures provided in this Compact and in this section shall be
500 retroactively applied to the rule as soon as reasonably possible, in no event later than ninety
501 (90) days after the effective date of the rule. For the purposes of this provision, an emergency
502 rule is one that must be adopted immediately in order to:

- 503 1. Meet an imminent threat to public health, safety, or welfare;
504 2. Prevent a loss of Commission or party state funds; or
505 3. Meet a deadline for the promulgation of an administrative rule that is required by
506 federal law or rule.

507 l. The Commission may direct revisions to a previously adopted rule or amendment for
508 purposes of correcting typographical errors, errors in format, errors in consistency, or
509 grammatical errors. Public notice of any revisions shall be posted on the website of the
510 Commission. The revision shall be subject to challenge by any person for a period of thirty (30)
511 days after posting. The revision may be challenged only on grounds that the revision results in
512 a material change to a rule. A challenge shall be made in writing, and delivered to the
513 Commission, prior to the end of the notice period. If no challenge is made, the revision will
514 take effect without further action. If the revision is challenged, the revision may not take effect
515 without the approval of the Commission.

516 ARTICLE IX

517 Oversight, Dispute Resolution, and Enforcement

518 a. Oversight

519 1. Each party state shall enforce this Compact and take all actions necessary and
520 appropriate to effectuate this Compact's purposes and intent.

521 2. The Commission shall be entitled to receive service of process in any proceeding that
522 may affect the powers, responsibilities, or actions of the Commission, and shall have standing
523 to intervene in such a proceeding for all purposes. Failure to provide service of process in such

proceeding to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

b. Default, Technical Assistance, and Termination

1. If the Commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

i. Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the Commission; and

ii. Provide remedial training and specific technical assistance regarding the default.

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

3. Termination of membership in this Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.

4. A state whose membership in this Compact has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or whose membership in this Compact has been terminated unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

c. Dispute Resolution

1. Upon request by a party state, the Commission shall attempt to resolve disputes

related to the Compact that arise among party states and between party and non-party states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

3. In the event the Commission cannot resolve disputes among party states arising under this Compact:

i. The party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the Compact administrator in each of the affected party states and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute.

ii. The decision of a majority of the arbitrators shall be final and binding.

d. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

ARTICLE X

Effective Date, Withdrawal, and Amendment

a. This Compact, enacted in Title 58, Chapter 31e, Nurse Licensure Compact - Revised ("This Compact"), shall become effective and binding on the earlier of the date of legislative enactment of this Compact into law by no less than twenty-six (26) states or December 31, 2018. All party states to this Compact, that also were parties to the prior Nurse Licensure Compact, enacted in Title 58, Chapter 31c, Nurse Licensure Compact, superseded by this Compact, ("Prior Compact"), shall be deemed to have withdrawn from said Prior Compact within six (6) months after the effective date of this Compact.

b. Each party state to this Compact shall continue to recognize a nurse's multistate

586 licensure privilege to practice in that party state issued under the Prior Compact until such
587 party state has withdrawn from the Prior Compact.

588 c. Any party state may withdraw from this Compact by enacting a statute repealing the
589 same. A party state's withdrawal shall not take effect until six (6) months after enactment of the
590 repealing statute.

591 d. A party state's withdrawal or termination shall not affect the continuing requirement
592 of the withdrawing or terminated state's licensing board to report adverse actions and
593 significant investigations occurring prior to the effective date of such withdrawal or
594 termination.

595 e. Nothing contained in this Compact shall be construed to invalidate or prevent any
596 nurse licensure agreement or other cooperative arrangement between a party state and a
597 non-party state that is made in accordance with the other provisions of this Compact.

598 f. This Compact may be amended by the party states. No amendment to this Compact
599 shall become effective and binding upon the party states unless and until it is enacted into the
600 laws of all party states.

601 g. Representatives of non-party states to this Compact shall be invited to participate in
602 the activities of the Commission, on a nonvoting basis, prior to the adoption of this Compact
603 by all states.

604 ARTICLE XI

605 Construction and Severability

606 This Compact shall be liberally construed so as to effectuate the purposes thereof. The
607 provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision
608 of this Compact is declared to be contrary to the constitution of any party state or of the United
609 States, or if the applicability thereof to any government, agency, person, or circumstance is held
610 invalid, the validity of the remainder of this Compact and the applicability thereof to any
611 government, agency, person, or circumstance shall not be affected thereby. If this Compact
612 shall be held to be contrary to the constitution of any party state, this Compact shall remain in
613 full force and effect as to the remaining party states and in full force and effect as to the party
614 state affected as to all severable matters.

615 Section 3. Section **58-31e-103** is enacted to read:

616 **58-31e-103. Implementation and rulemaking authority.**

617 (1) The term "head of the state licensing board," as used in Article VII b(1) of the
618 Nurse Licensure Compact in Section [58-31e-102](#), means an individual who is an ex-officio
619 member of the Board of Nursing created in Section [58-31b-201](#) and is appointed by the director
620 to serve as the head of the state licensing board for purposes of Article VII b(1) of the Nurse
621 Licensure Compact.
622 (2) The division may, in accordance with Title 63G, Chapter 3, Utah Administrative
623 Rulemaking Act, make rules necessary to implement the provisions of this chapter.

Legislative Review Note
Office of Legislative Research and General Counsel