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SENATE BILL 1

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Gay G. Kernan and Stuart Ingle and Howie C. Morales

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH CARE; ENACTING THE NURSE LICENSURE COMPACT;
MAKING CONFORMING CHANGES TO THE NURSING PRACTICE ACT;
REPEALING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 61-3-24.1 NMSA 1978 (being Laws 2003, Chapter 307, Section 1) is repealed and a new Section 61-3-24.1 NMSA 1978 is enacted to read:

"61-3-24.1. [NEW MATERIAL] NURSE LICENSURE COMPACT ENTERED INTO.--The Nurse Licensure Compact is entered into law and entered into with all other jurisdictions legally joining therein in a form substantially as follows:

"Nurse Licensure Compact

ARTICLE 1 - Findings and Declaration of Purpose

A. The party states find that:

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1 (1) the health and safety of the public are
2 affected by the degree of compliance with and the effectiveness
3 of enforcement activities related to state nurse licensure
4 laws;

5 (2) violations of nurse licensure and other
6 laws regulating the practice of nursing may result in injury or
7 harm to the public;

8 (3) the expanded mobility of nurses and the
9 use of advanced communication technologies as part of our
10 nation's health care delivery system require greater
11 coordination and cooperation among states in the areas of nurse
12 licensure and regulation;

13 (4) new practice modalities and technology
14 make compliance with individual state nurse licensure laws
15 difficult and complex;

16 (5) the current system of duplicative
17 licensure for nurses practicing in multiple states is
18 cumbersome and redundant for both nurses and states; and

19 (6) uniformity of nurse licensure requirements
20 throughout the states promotes public safety and public health
21 benefits.

22 B. The general purposes of this compact are to:

23 (1) facilitate the states' responsibility to
24 protect the public's health and safety;

25 (2) ensure and encourage the cooperation of

1 party states in the areas of nurse licensure and regulation;

2 (3) facilitate the exchange of information
3 between party states in the areas of nurse regulation,
4 investigation and adverse actions;

5 (4) promote compliance with the laws governing
6 the practice of nursing in each jurisdiction;

7 (5) invest all party states with the authority
8 to hold a nurse accountable for meeting all state practice laws
9 in the state in which the patient is located at the time care
10 is rendered through the mutual recognition of party state
11 licenses;

12 (6) decrease redundancies in the consideration
13 and issuance of nurse licenses; and

14 (7) provide opportunities for interstate
15 practice by nurses who meet uniform licensure requirements.

16 ARTICLE 2 - Definitions

17 As used in this compact:

18 A. "adverse action" means any administrative,
19 civil, equitable or criminal action permitted by a state's laws
20 that is imposed by a licensing board or other authority against
21 a nurse, including actions against an individual's license or
22 multistate licensure privilege such as revocation, suspension,
23 probation, monitoring of the licensee, limitation on the
24 licensee's practice, or any other encumbrance on licensure
25 affecting a nurse's authorization to practice, including

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1 issuance of a cease and desist action;

2 B. "alternative program" means a non-disciplinary
3 monitoring program approved by a licensing board;

4 C. "commission" means the Interstate Commission of
5 Nurse Licensure Compact Administrators established in this
6 compact;

7 D. "coordinated licensure information system" means
8 an integrated process for collecting, storing and sharing
9 information on nurse licensure and enforcement activities
10 related to nurse licensure laws that is administered by a
11 nonprofit organization composed of and controlled by licensing
12 boards;

13 E. "current significant investigative information"
14 means:

15 (1) investigative information that a licensing
16 board, after a preliminary inquiry that includes notification
17 and an opportunity for the nurse to respond, if required by
18 state law, has reason to believe is not groundless and, if
19 proved true, would indicate more than a minor infraction; or

20 (2) investigative information that indicates
21 that the nurse represents an immediate threat to public health
22 and safety regardless of whether the nurse has been notified
23 and had an opportunity to respond;

24 F. "encumbrance" means a revocation or suspension
25 of, or any limitation on, the full and unrestricted practice of

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1 nursing imposed by a licensing board;

2 G. "home state" means the party state which is the
3 nurse's primary state of residence;

4 H. "licensing board" means a party state's
5 regulatory body responsible for issuing nurse licenses;

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

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

15 K. "nurse" means a registered nurse or licensed
16 practical or vocational nurse, as those terms are defined by
17 each party state's practice laws;

18 L. "party state" means any state that has adopted
19 this compact;

20 M. "prior compact" means the prior nurse licensure
21 compact that is superseded by this compact;

22 N. "remote state" means a party state, other than
23 the home state;

24 O. "single-state license" means a nurse license
25 issued by a party state that authorizes practice only within

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1 the issuing state and does not include a multistate licensure
2 privilege to practice in any other party state;

3 P. "state" means a state, territory or possession
4 of the United States and the District of Columbia; and

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

12 ARTICLE 3 - General Provisions and Jurisdiction

13 A. A multistate license to practice registered or
14 licensed practical or vocational nursing issued by a home state
15 to a resident in that state will be recognized by each party
16 state as authorizing a nurse to practice as a registered nurse
17 or as a licensed practical or vocational nurse, under a
18 multistate licensure privilege, in each party state.

19 B. A state must implement procedures for
20 considering the criminal history records of applicants for
21 initial multistate license or licensure by endorsement. Such
22 procedures shall include the submission of fingerprints or
23 other biometric-based information by applicants for the purpose
24 of obtaining an applicant's criminal history record information
25 from the federal bureau of investigation and the agency

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1 responsible for retaining that state's criminal records.

2 C. For an applicant to obtain or retain a
3 multistate license in the home state, each party state shall
4 require that the applicant:

5 (1) meets the home state's qualifications for
6 licensure or renewal of licensure as well as all other
7 applicable state laws;

8 (2) has graduated:

9 (a) or is eligible to graduate from a
10 licensing board-approved registered nurse or licensed practical
11 or vocational nurse prelicensure education program; or

12 (b) from a foreign registered nurse or
13 licensed practical or vocational nurse prelicensure education
14 program that: 1) has been approved by the authorized
15 accrediting body in the applicable country; and 2) has been
16 verified by an independent credentials review agency to be
17 comparable to a licensing board-approved prelicensure education
18 program;

19 (3) has, if a graduate of a foreign
20 prelicensure education program not taught in English or if
21 English is not the applicant's native language, successfully
22 passed an English proficiency examination that includes the
23 components of reading, speaking, writing and listening;

24 (4) has successfully passed a national council
25 licensure examination for registered nurses or a national

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1 council licensure examination for practical or vocational
2 nurses given by the national council of state boards of nursing
3 or an exam given by a recognized predecessor or successor
4 organization, as applicable;

5 (5) is eligible for or holds an active,
6 unencumbered license;

7 (6) has submitted, in connection with an
8 application for initial licensure or licensure by endorsement,
9 fingerprints or other biometric data for the purpose of
10 obtaining criminal history record information from the federal
11 bureau of investigation and the agency responsible for
12 retaining that state's criminal records;

13 (7) has not been convicted or found guilty, or
14 has entered into an agreed disposition, of a felony offense
15 under applicable state or federal criminal law;

16 (8) has not been convicted or found guilty, or
17 has entered into an agreed disposition, of a misdemeanor
18 offense related to the practice of nursing as determined on a
19 case-by-case basis;

20 (9) is not currently enrolled in an
21 alternative program;

22 (10) is subject to self-disclosure
23 requirements regarding current participation in an alternative
24 program; and

25 (11) has a valid United States social security

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1 number.

2 D. All party states shall be authorized, in
3 accordance with existing state due process law, to take adverse
4 action against a nurse's multistate licensure privilege such as
5 revocation, suspension, probation or any other action that
6 affects a nurse's authorization to practice under a multistate
7 licensure privilege, including cease and desist actions. If a
8 party state takes such action, it shall promptly notify the
9 administrator of the coordinated licensure information system.
10 The administrator of the coordinated licensure information
11 system shall promptly notify the home state of any such actions
12 by remote states.

13 E. A nurse practicing in a party state must comply
14 with the state practice laws of the state in which the client
15 is located at the time service is provided. The practice of
16 nursing is not limited to patient care, but shall include all
17 nursing practice as defined by the state practice laws of the
18 party state in which the client is located. The practice of
19 nursing in a party state under a multistate licensure privilege
20 will subject a nurse to the jurisdiction of the licensing
21 board, the courts and the laws of the party state in which the
22 client is located at the time service is provided.

23 F. Individuals not residing in a party state shall
24 continue to be able to apply for a party state's single-state
25 license as provided under the laws of each party state.

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1 However, the single-state license granted to these individuals
2 will not be recognized as granting the privilege to practice
3 nursing in any other party state. Nothing in this compact
4 shall affect the requirements established by a party state for
5 the issuance of a single-state license.

6 G. Any nurse holding a home state multistate
7 license, on the effective date of this compact, may retain and
8 renew the multistate license issued by the nurse's then-current
9 home state, provided that a nurse who:

10 (1) changes primary state of residence after
11 this compact's effective date must meet all applicable
12 requirements of Subsection C of Article 3 of the Nurse
13 Licensure Compact to obtain a multistate license from a new
14 home state; or

15 (2) fails to satisfy the multistate licensure
16 requirements in Subsection C of Article 3 of the Nurse
17 Licensure Compact due to a disqualifying event occurring after
18 this compact's effective date shall be ineligible to retain or
19 renew a multistate license, and the nurse's multistate license
20 shall be revoked or deactivated in accordance with applicable
21 rules adopted by the commission.

22 ARTICLE 4 - Applications for Licensure in a Party State

23 A. Upon application for a multistate license, the
24 licensing board in the issuing party state shall ascertain,
25 through the coordinated licensure information system, whether

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1 the applicant has ever held, or is the holder of, a license
2 issued by any other state, whether there are any encumbrances
3 on any license or multistate licensure privilege held by the
4 applicant, whether any adverse action has been taken against
5 any license or multistate licensure privilege held by the
6 applicant and whether the applicant is currently participating
7 in an alternative program.

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

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

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

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

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

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1 The administrator of the coordinated licensure information
2 system shall promptly notify the new home state of any such
3 actions;

4 (4) issue subpoenas for both hearings and
5 investigations that require the attendance and testimony of
6 witnesses as well as the production of evidence. Subpoenas
7 issued by a licensing board in a party state for the attendance
8 and testimony of witnesses or the production of evidence from
9 another party state shall be enforced in the latter state by
10 any court of competent jurisdiction, according to the practice
11 and procedure of that court applicable to subpoenas issued in
12 proceedings pending before it. The issuing authority shall pay
13 any witness fees, travel expenses, mileage and other fees
14 required by the service statutes of the state in which the
15 witnesses or evidence are located;

16 (5) obtain and submit, for each nurse
17 licensure applicant, fingerprint or other biometric-based
18 information to the federal bureau of investigation for criminal
19 background checks, receive the results of the federal bureau of
20 investigation record search on criminal background checks and
21 use the results in making licensure decisions;

22 (6) if otherwise permitted by state law,
23 recover from the affected nurse the costs of investigations and
24 disposition of cases resulting from any adverse action taken
25 against that nurse; and

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1 (7) take adverse action based on the factual
2 findings of the remote state, provided that the licensing board
3 follows its own procedures for taking such adverse action.

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

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

20 ARTICLE 6 - Coordinated Licensure Information System and
21 Exchange of Information

22 A. All party states shall participate in a
23 coordinated licensure information system of all licensed
24 registered nurses and licensed practical or vocational nurses.
25 This system will include information on the licensure and

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1 disciplinary history of each nurse, as submitted by party
2 states, to assist in the coordination of nurse licensure and
3 enforcement efforts.

4 B. The commission, in consultation with the
5 administrator of the coordinated licensure information system,
6 shall formulate necessary and proper procedures for the
7 identification, collection and exchange of information under
8 this compact.

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

16 D. Current significant investigative information
17 and participation in nonpublic or confidential alternative
18 programs shall be transmitted through the coordinated licensure
19 information system only to party state licensing boards.

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

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

7 G. Any information contributed to the coordinated
8 licensure information system that is subsequently required to
9 be expunged by the laws of the party state contributing that
10 information shall also be expunged from the coordinated
11 licensure information system.

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

- 15 (1) identifying information;
- 16 (2) licensure data;
- 17 (3) information related to alternative program
18 participation; and
- 19 (4) other information that may facilitate the
20 administration of this compact, as determined by commission
21 rules.

22 I. The compact administrator of a party state shall
23 provide all investigative documents and information requested
24 by another party state.

25 ARTICLE 7 - Establishment of the Interstate Commission of Nurse
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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

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

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

11 (4) All meetings shall be open to the public,
12 and public notice of meetings shall be given in the same manner
13 as required under the rulemaking provisions in Article 8 of the
14 Nurse Licensure Compact.

15 (5) The commission may convene in a closed,
16 nonpublic meeting if the commission must discuss:

17 (a) noncompliance of a party state with
18 its obligations under this compact;

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

23 (c) current, threatened or reasonably
24 anticipated litigation;

25 (d) negotiation of contracts for the

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1 purchase or sale of goods, services or real estate;

2 (e) accusing any person of a crime or
3 formally censuring any person;

4 (f) disclosure of trade secrets or
5 commercial or financial information that is privileged or
6 confidential;

7 (g) disclosure of information of a
8 personal nature where disclosure would constitute a clearly
9 unwarranted invasion of personal privacy;

10 (h) disclosure of investigatory records
11 compiled for law enforcement purposes;

12 (i) disclosure of information related to
13 any reports prepared by or on behalf of the commission for the
14 purpose of investigation of compliance with this compact; or

15 (j) matters specifically exempted from
16 disclosure by federal or state statute.

17 (6) If a meeting, or portion of a meeting, is
18 closed pursuant to this provision, the commission's legal
19 counsel or designee shall certify that the meeting may be
20 closed and shall reference each relevant exempting provision.
21 The commission shall keep minutes that fully and clearly
22 describe all matters discussed in a meeting and shall provide a
23 full and accurate summary of actions taken, and the reasons
24 therefor, including a description of the views expressed. All
25 documents considered in connection with an action shall be

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1 identified in such minutes. All minutes and documents of a
2 closed meeting shall remain under seal, subject to release by a
3 majority vote of the commission or order of a court of
4 competent jurisdiction.

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

10 (1) establishing the fiscal year of the
11 commission;

12 (2) providing reasonable standards and
13 procedures:

14 (a) for the establishment and meetings
15 of other committees; and

16 (b) governing any general or specific
17 delegation of any authority or function of the commission;

18 (3) providing reasonable procedures for
19 calling and conducting meetings of the commission, ensuring
20 reasonable advance notice of all meetings and providing an
21 opportunity for attendance of such meetings by interested
22 parties, with enumerated exceptions designed to protect the
23 public's interest, the privacy of individuals, and proprietary
24 information, including trade secrets. The commission may meet
25 in closed session only after a majority of the administrators

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1 vote to close a meeting in whole or in part. As soon as
2 practicable, the commission must make public a copy of the vote
3 to close the meeting revealing the vote of each administrator,
4 with no proxy votes allowed;

5 (4) establishing the titles, duties and
6 authority and reasonable procedures for the election of the
7 officers of the commission;

8 (5) providing reasonable standards and
9 procedures for the establishment of the personnel policies and
10 programs of the commission. Notwithstanding any civil service
11 or other similar laws of any party state, the bylaws shall
12 exclusively govern the personnel policies and programs of the
13 commission; and

14 (6) providing a mechanism for winding up the
15 operations of the commission and the equitable disposition of
16 any surplus funds that may exist after the termination of this
17 compact after the payment or reserving of all of its debts and
18 obligations.

19 D. The commission shall publish its bylaws and
20 rules, and any amendments thereto, in a convenient form on the
21 website of the commission.

22 E. The commission shall maintain its financial
23 records in accordance with the bylaws.

24 F. The commission shall meet and take such actions
25 as are consistent with the provisions of this compact and the

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1 bylaws.

2 G. The commission shall have the following powers:

3 (1) to promulgate uniform rules to facilitate
4 and coordinate implementation and administration of this
5 compact. The rules shall have the force and effect of law and
6 shall be binding in all party states;

7 (2) to bring and prosecute legal proceedings
8 or actions in the name of the commission, provided that the
9 standing of any licensing board to sue or be sued under
10 applicable law shall not be affected;

11 (3) to purchase and maintain insurance and
12 bonds;

13 (4) to borrow, accept or contract for services
14 of personnel, including but not limited to employees of a party
15 state or nonprofit organizations;

16 (5) to cooperate with other organizations that
17 administer state compacts related to the regulation of nursing,
18 including but not limited to sharing administrative or staff
19 expenses, office space or other resources;

20 (6) to hire employees, elect or appoint
21 officers, fix compensation, define duties, grant such
22 individuals appropriate authority to carry out the purposes of
23 this compact, and to establish the commission's personnel
24 policies and programs relating to conflicts of interest,
25 qualifications of personnel and other related personnel

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1 matters;

2 (7) to accept any and all appropriate
3 donations, grants and gifts of money, equipment, supplies,
4 materials and services, and to receive, utilize and dispose of
5 the same; provided that at all times the commission shall avoid
6 any appearance of impropriety or conflict of interest;

7 (8) to lease, purchase, accept appropriate
8 gifts or donations of, or otherwise to own, hold, improve or
9 use, any property, whether real, personal or mixed; provided
10 that at all times the commission shall avoid any appearance of
11 impropriety;

12 (9) to sell, convey, mortgage, pledge, lease,
13 exchange, abandon or otherwise dispose of any property, whether
14 real, personal or mixed;

15 (10) to establish a budget and make
16 expenditures;

17 (11) to borrow money;

18 (12) to appoint committees, including advisory
19 committees comprised of administrators, state nursing
20 regulators, state legislators or their representatives,
21 consumer representatives, and other such interested persons;

22 (13) to provide and receive information from,
23 and to cooperate with, law enforcement agencies;

24 (14) to adopt and use an official seal; and

25 (15) to perform such other functions as may be

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1 necessary or appropriate to achieve the purposes of this
2 compact consistent with the state regulation of nurse licensure
3 and practice.

4 H. Financing of the Commission

5 (1) The commission shall pay, or provide for
6 the payment of, the reasonable expenses of its establishment,
7 organization and ongoing activities.

8 (2) The commission may also levy on and
9 collect an annual assessment from each party state to cover the
10 cost of its operations, activities and staff in its annual
11 budget as approved each year. The aggregate annual assessment
12 amount, if any, shall be allocated based upon a formula to be
13 determined by the commission, which shall promulgate a rule
14 that is binding upon all party states.

15 (3) The commission shall not incur obligations
16 of any kind prior to securing the funds adequate to meet the
17 same; nor shall the commission pledge the credit of any of the
18 party states, except by, and with the authority of, such party
19 state.

20 (4) The commission shall keep accurate
21 accounts of all receipts and disbursements. The receipts and
22 disbursements of the commission shall be subject to the audit
23 and accounting procedures established under its bylaws.
24 However, all receipts and disbursements of funds handled by the
25 commission shall be audited yearly by a certified or licensed

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1 public accountant, and the report of the audit shall be
2 included in and become part of the annual report of the
3 commission.

4 I. Qualified Immunity, Defense and Indemnification

5 (1) The administrators, officers, executive
6 director, employees and representatives of the commission shall
7 be immune from suit and liability, either personally or in
8 their official capacity, for any claim for damage to or loss of
9 property or personal injury or other civil liability caused by
10 or arising out of any actual or alleged act, error or omission
11 that occurred, or that the person against whom the claim is
12 made had a reasonable basis for believing occurred, within the
13 scope of commission employment, duties or responsibilities;
14 provided that nothing in this paragraph shall be construed to
15 protect any such person from suit or liability for any damage,
16 loss, injury or liability caused by the intentional, willful or
17 wanton misconduct of that person.

18 (2) The commission shall defend any
19 administrator, officer, executive director, employee or
20 representative of the commission in any civil action seeking to
21 impose liability arising out of any actual or alleged act,
22 error or omission that occurred within the scope of commission
23 employment, duties or responsibilities, or that the person
24 against whom the claim is made had a reasonable basis for
25 believing occurred within the scope of commission employment,

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1 duties or responsibilities; provided that nothing herein shall
2 be construed to prohibit that person from retaining his or her
3 own counsel; and provided further that the actual or alleged
4 act, error or omission did not result from that person's
5 intentional, willful or wanton misconduct.

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

17 ARTICLE 8 - Rulemaking

18 A. The commission shall exercise its rulemaking
19 powers pursuant to the criteria set forth in this article and
20 the rules adopted thereunder. Rules and amendments shall
21 become binding as of the date specified in each rule or
22 amendment and shall have the same force and effect as
23 provisions of this compact.

24 B. Rules or amendments to the rules shall be
25 adopted at a regular or special meeting of the commission.

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1 C. Prior to promulgation and adoption of a final
2 rule or rules by the commission, and at least sixty days in
3 advance of the meeting at which the rule will be considered and
4 voted upon, the commission shall file a notice of proposed
5 rulemaking:

- 6 (1) on the website of the commission; and
7 (2) on the website of each licensing board or
8 the publication in which each state would otherwise publish
9 proposed rules.

10 D. The notice of proposed rulemaking shall include:

11 (1) the proposed time, date and location of
12 the meeting in which the rule will be considered and voted
13 upon;

14 (2) the text of the proposed rule or
15 amendment, and the reason for the proposed rule;

16 (3) a request for comments on the proposed
17 rule from any interested person; and

18 (4) the manner in which interested persons may
19 submit notice to the commission of their intention to attend
20 the public hearing and any written comments.

21 E. Prior to adoption of a proposed rule, the
22 commission shall allow persons to submit written data, facts,
23 opinions and arguments, which shall be made available to the
24 public.

25 F. The commission shall grant an opportunity for a

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1 public hearing before it adopts a rule or amendment.

2 G. The commission shall publish the place, time and
3 date of the scheduled public hearing.

4 (1) Hearings shall be conducted in a manner
5 providing each person who wishes to comment a fair and
6 reasonable opportunity to comment orally or in writing. All
7 hearings will be recorded, and a copy will be made available
8 upon request.

9 (2) Nothing in this section shall be construed
10 as requiring a separate hearing on each rule. Rules may be
11 grouped for the convenience of the commission at hearings
12 required by this section.

13 H. If no one appears at the public hearing, the
14 commission may proceed with promulgation of the proposed rule.

15 I. Following the scheduled hearing date, or by the
16 close of business on the scheduled hearing date if the hearing
17 was not held, the commission shall consider all written and
18 oral comments received.

19 J. The commission shall, by majority vote of all
20 administrators, take final action on the proposed rule and
21 shall determine the effective date of the rule, if any, based
22 on the rulemaking record and the full text of the rule.

23 K. Upon determination that an emergency exists, the
24 commission may consider and adopt an emergency rule without
25 prior notice, opportunity for comment or hearing, provided that

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1 the usual rulemaking procedures provided in this compact and in
2 this section shall be retroactively applied to the rule as soon
3 as reasonably possible, in no event later than ninety days
4 after the effective date of the rule. For the purposes of this
5 provision, an emergency rule is one that must be adopted
6 immediately in order to:

7 (1) meet an imminent threat to public health,
8 safety or welfare;

9 (2) prevent a loss of commission or party
10 state funds; or

11 (3) meet a deadline for the promulgation of an
12 administrative rule that is required by federal law or rule.

13 L. The commission may direct revisions to a
14 previously adopted rule or amendment for purposes of correcting
15 typographical errors, errors in format, errors in consistency
16 or grammatical errors. Public notice of any revisions shall be
17 posted on the website of the commission. The revision shall be
18 subject to challenge by any person for a period of thirty days
19 after posting. The revision may be challenged only on grounds
20 that the revision results in a material change to a rule. A
21 challenge shall be made in writing, and delivered to the
22 commission, prior to the end of the notice period. If no
23 challenge is made, the revision will take effect without
24 further action. If the revision is challenged, the revision
25 may not take effect without the approval of the commission.

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1 ARTICLE 9 - Oversight, Dispute Resolution and Enforcement

2 A. Oversight

3 (1) Each party state shall enforce this
4 compact and take all actions necessary and appropriate to
5 effectuate this compact's purposes and intent.

6 (2) The commission shall be entitled to
7 receive service of process in any proceeding that may affect
8 the powers, responsibilities or actions of the commission, and
9 shall have standing to intervene in such a proceeding for all
10 purposes. Failure to provide service of process in such
11 proceeding to the commission shall render a judgment or order
12 void as to the commission, this compact or promulgated rules.

13 B. Default, Technical Assistance and Termination

14 (1) If the commission determines that a party
15 state has defaulted in the performance of its obligations or
16 responsibilities under this compact or the promulgated rules,
17 the commission shall:

18 (a) provide written notice to the
19 defaulting state and other party states of the nature of the
20 default, the proposed means of curing the default or any other
21 action to be taken by the commission; and

22 (b) provide remedial training and
23 specific technical assistance regarding the default.

24 (2) If a state in default fails to cure the
25 default, the defaulting state's membership in this compact may

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1 be terminated upon an affirmative vote of a majority of the
2 administrators, and all rights, privileges and benefits
3 conferred by this compact may be terminated on the effective
4 date of termination. A cure of the default does not relieve
5 the offending state of obligations or liabilities incurred
6 during the period of default.

7 (3) Termination of membership in this compact
8 shall be imposed only after all other means of securing
9 compliance have been exhausted. Notice of intent to suspend or
10 terminate shall be given by the commission to the governor of
11 the defaulting state and to the executive officer of the
12 defaulting state's licensing board and each of the party
13 states.

14 (4) A state whose membership in this compact
15 has been terminated is responsible for all assessments,
16 obligations and liabilities incurred through the effective date
17 of termination, including obligations that extend beyond the
18 effective date of termination.

19 (5) The commission shall not bear any costs
20 related to a state that is found to be in default or whose
21 membership in this compact has been terminated unless agreed
22 upon in writing between the commission and the defaulting
23 state.

24 (6) The defaulting state may appeal the action
25 of the commission by petitioning the United States district

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1 court for the District of Columbia or the federal district in
2 which the commission has its principal offices. The prevailing
3 party shall be awarded all costs of such litigation, including
4 reasonable attorneys' fees.

5 C. Dispute Resolution

6 (1) Upon request by a party state, the
7 commission shall attempt to resolve disputes related to the
8 compact that arise among party states and between party and
9 non-party states.

10 (2) The commission shall promulgate a rule
11 providing for both mediation and binding dispute resolution for
12 disputes, as appropriate.

13 (3) In the event the commission cannot resolve
14 disputes among party states arising under this compact:

15 (a) the party states may submit the
16 issues in dispute to an arbitration panel, which will be
17 comprised of individuals appointed by the compact administrator
18 in each of the affected party states and an individual mutually
19 agreed upon by the compact administrators of all the party
20 states involved in the dispute; and

21 (b) the decision of a majority of the
22 arbitrators shall be final and binding.

23 D. Enforcement

24 (1) The commission, in the reasonable exercise
25 of its discretion, shall enforce the provisions and rules of

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1 this compact.

2 (2) By majority vote, the commission may
3 initiate legal action in the United States district court for
4 the District of Columbia or the federal district in which the
5 commission has its principal offices against a party state that
6 is in default to enforce compliance with the provisions of this
7 compact and its promulgated rules and bylaws. The relief
8 sought may include both injunctive relief and damages. In the
9 event judicial enforcement is necessary, the prevailing party
10 shall be awarded all costs of such litigation, including
11 reasonable attorneys' fees.

12 (3) The remedies herein shall not be the
13 exclusive remedies of the commission. The commission may
14 pursue any other remedies available under federal or state law.

15 ARTICLE 10 - Effective Date, Withdrawal and Amendment

16 A. This compact shall become effective and binding
17 on the earlier of the date of legislative enactment of this
18 compact into law by no less than twenty-six states or December
19 31, 2018. All party states to this compact that were parties
20 to the prior compact shall be deemed to have withdrawn from the
21 prior compact within six months after the effective date of
22 this compact.

23 B. Each party state to this compact shall continue
24 to recognize a nurse's multistate licensure privilege to
25 practice in that party state issued under the prior compact

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1 until such party state has withdrawn from the prior compact.

2 C. Any party state may withdraw from this compact
3 by enacting a statute repealing the same. A party state's
4 withdrawal shall not take effect until six months after
5 enactment of the repealing statute.

6 D. A party state's withdrawal or termination shall
7 not affect the continuing requirement of the withdrawing or
8 terminated state's licensing board to report adverse actions
9 and significant investigations occurring prior to the effective
10 date of such withdrawal or termination.

11 E. Nothing contained in this compact shall be
12 construed to invalidate or prevent any nurse licensure
13 agreement or other cooperative arrangement between a party
14 state and a non-party state that is made in accordance with the
15 other provisions of this compact.

16 F. This compact may be amended by the party states.
17 No amendment to this compact shall become effective and binding
18 upon the party states unless and until it is enacted into the
19 laws of all party states.

20 G. Representatives of non-party states to this
21 compact shall be invited to participate in the activities of
22 the commission, on a nonvoting basis, prior to the adoption of
23 this compact by all states.

24 ARTICLE 11 - Construction and Severability

25 This compact shall be liberally construed so as to

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1 effectuate the purposes thereof. The provisions of this
2 compact shall be severable, and if any phrase, clause, sentence
3 or provision of this compact is declared to be contrary to the
4 constitution of any party state or of the United States, or if
5 the applicability thereof to any government, agency, person or
6 circumstance is held invalid, the validity of the remainder of
7 this compact and the applicability thereof to any government,
8 agency, person or circumstance shall not be affected thereby.
9 If this compact shall be held to be contrary to the
10 constitution of any party state, this compact shall remain in
11 full force and effect as to the remaining party states and in
12 full force and effect as to the party state affected as to all
13 severable matters."."

14 SECTION 2. Section 61-3-29.1 NMSA 1978 (being Laws 1987,
15 Chapter 285, Section 1, as amended) is amended to read:

16 "61-3-29.1. DIVERSION PROGRAM CREATED--ADVISORY
17 COMMITTEE--RENEWAL FEE--REQUIREMENTS--IMMUNITY FROM CIVIL
18 ACTIONS.--

19 A. The board shall establish a diversion program to
20 rehabilitate nurses whose competencies may be impaired because
21 of the abuse of drugs or alcohol so that nurses can be treated
22 and returned to or continue the practice of nursing in a manner
23 that will benefit the public. The intent of the diversion
24 program is to develop a voluntary alternative to traditional
25 disciplinary actions and an alternative to lengthy and costly

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1 investigations and administrative proceedings against such
2 nurses, at the same time providing adequate safeguards for the
3 public.

4 B. The board shall appoint one or more evaluation
5 committees, hereinafter called "regional advisory committees",
6 each of which shall be composed of members with expertise in
7 chemical dependency. At least one member shall be a registered
8 nurse. No current member of the board shall be appointed to a
9 regional advisory committee. The executive officer of the
10 board or [~~his~~] the executive officer's designee shall be the
11 liaison between each regional advisory committee and the board.

12 C. Each regional advisory committee shall function
13 under the direction of the board and in accordance with
14 regulations of the board. The regulations shall include
15 directions to a regional advisory committee to:

16 (1) establish criteria for continuance in the
17 program;

18 (2) develop a written diversion program
19 contract to be approved by the board that sets forth the
20 requirements that shall be met by the nurse and the conditions
21 under which the diversion program may be successfully completed
22 or terminated;

23 (3) recommend to the board in favor of or
24 against each nurse's discharge from the diversion program;

25 (4) evaluate each nurse's progress in recovery

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1 and compliance with [~~his~~] the nurse's diversion program
2 contract;

3 (5) report violations to the board;
4 (6) submit an annual report to the board; and
5 (7) coordinate educational programs and
6 research related to chemically dependent nurses.

7 D. The board may increase the renewal fee for each
8 nurse in the state not to exceed twenty dollars (\$20.00) for
9 the purpose of implementing and maintaining the diversion
10 program.

11 E. Files of nurses in the diversion program shall
12 be maintained in the board office and shall be confidential
13 except as required to be disclosed pursuant to the Nurse
14 Licensure Compact, when used to make a report to the board
15 concerning a nurse who is not cooperating and complying with
16 the diversion program contract or, with written consent of a
17 nurse, when used for research purposes as long as the nurse is
18 not specifically identified. However, [~~such~~] the files shall
19 be subject to discovery or subpoena. The confidential
20 provisions of this subsection are of no effect if the nurse
21 admitted to the diversion program leaves the state prior to the
22 completion of the program.

23 F. [~~Any~~] A person making a report to the board or
24 to a regional advisory committee regarding a nurse suspected of
25 practicing nursing while habitually intemperate or addicted to

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1 the use of habit-forming drugs or making a report of a nurse's
2 progress or lack of progress in rehabilitation shall be immune
3 from civil action for defamation or other cause of action
4 resulting from such reports if the reports are made in good
5 faith and with some reasonable basis in fact.

6 G. ~~Any~~ A person admitted to the diversion program
7 for chemically dependent nurses who fails to comply with the
8 provisions of this section or with the rules and regulations
9 adopted by the board pursuant to this section or with the
10 written diversion program contract or with any amendments to
11 the written diversion program contract may be subject to
12 disciplinary action in accordance with Section 61-3-28 NMSA
13 1978."

14 SECTION 3. REPEAL.--Section 61-3-24.2 NMSA 1978 (being
15 Laws 2003, Chapter 307, Section 2) is repealed.

16 SECTION 4. EMERGENCY.--It is necessary for the public
17 peace, health and safety that this act take effect immediately.