HOUSE DOCKET, NO. 1733 FILED ON: 1/20/2011

HOUSE . . . . . No. 1493

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to nurse licensure compact in Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Kay Khan	*11th Middlesex*
Jennifer E. Benson	*37th Middlesex*
Denise Provost	*27th Middlesex*

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HOUSE . . . . . No. 1493

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 1493) of Kay Khan, Jennifer E. Benson and Denise Provost for legislation to provide for the rapid deployment of qualified nurses. Public Health.

The Commonwealth of Massachusetts

An Act relative to nurse licensure compact in Massachusetts.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Emergency Preamble

Whereas, the deferred operation of this act would tend to defeat its purpose, which is to increase public access to safe nursing care, provide for the rapid deployment of qualified nurses in response to a state of emergency, address the emerging practice of nursing through telecommunications technology, and build effective interstate communication on licensure and enforcement issues, this act is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience, and is hereby effective on its enactment.

SECTION 2. The General Laws are hereby amended by inserting after Chapter 112 the following new chapter:-

Chapter 112A. Nurse Licensure Compact

Section 1. Notwithstanding any general or special law to the contrary, the "Nurse Licensure Compact" or Compact as adopted by the National Council of State Boards of Nursing Nurse Licensure Compact in its Final Version dated November 6, 1998 is hereby enacted into law. The Massachusetts board of registration in nursing shall adopt regulations in the same manner as all other with states legally joining in the Compact as set forth in this chapter.

Section 2. General Findings

a. The party states find that:

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

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

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

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

30 5. the current system of duplicative licensure for nurses practicing in multiple states
31 is cumbersome and redundant to both nurses and states.

32 b. The general purposes of this Compact are to:

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

34 2. ensure and encourage the cooperation of party states in the areas of nurse
35 licensure and regulation;

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

38 4. promote compliance with the laws governing the practice of nursing in each
39 jurisdiction; and

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

43 Section 3. Definition

44 a. "Adverse Action" means a home or remote state action.

45 b. "Alternative program" means a voluntary, non-disciplinary monitoring program
46 approved by a nurse licensing board.

47 c. "Coordinated licensure information system" means an integrated process for
48 collecting, storing, and sharing information on nurse licensure and enforcement activities related
49 to nurse licensure laws, which is administered by a non-profit organization composed of and
50 controlled by state nurse licensing boards.

51 d. "Current significant investigative information" means:

52 investigative information that a licensing board, after a preliminary inquiry that includes
53 notification and an opportunity for the nurse to respond if required by state law, has reason to
54 believe is not groundless and, if proved true, would indicate more than a minor infraction; or

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

58 e. "Home state" means the party state which is the nurse's primary state of
59 residence.

60 f. "Home state action" means any administrative, civil, equitable or criminal action
61 permitted by the home state's laws which are imposed on a nurse by the home state's licensing
62 board or other authority including actions against an individual's license such as: revocation,
63 suspension, probation or any other action which affects a nurse's authorization to practice.

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

66 h. "Multistate licensure privilege" means current, official authority from a remote
67 state permitting the practice of nursing as either a registered nurse or a licensed
68 practical/vocational nurse in such party state. All party states have the authority, in accordance
69 with existing state due process laws, to take actions against the nurse's privilege such as:
70 revocation, suspension, probation or any other action which affects a nurse's authorization to
71 practice.

72 i. "Nurse" means a registered nurse or licensed practical/vocational nurse, as those
73 terms are defined by each party's state practice laws.

74 j. "Party state" means any state that has adopted this Compact.

75 k. "Remote state" means a party state, other than the home state, where the patient is
76 located at the time nursing care is provided or, in the case of the practice of nursing not involving
77 a patient, in such party state where the recipient of nursing practice is located.

78 l. "Remote state action" means: any administrative, civil, equitable or criminal
79 action permitted by a remote state's laws which are imposed on a nurse by the remote state's
80 licensing board or other authority including actions against an individual's multistate licensure
81 privilege to practice in the remote state; and

82 cease and desist and other injunctive or equitable orders issued by remote states or the
83 licensing boards thereof.

84 m. "State" means a state, territory, or possession of the United States, the District of
85 Columbia or the Commonwealth of Puerto Rico.

86 n. "State practice laws" means those individual party's state laws and regulations
87 that govern the practice of nursing, define the scope of nursing practice, and create the methods
88 and grounds for imposing discipline.

89 o. "State practice laws" does not include the initial qualifications for licensure or
90 requirements necessary to obtain and retain a license, except for qualifications or requirements of
91 the home state.

92 Section 4. General Provisions and Jurisdictions

93 a. A license to practice registered nursing issued by a home state to a resident in that
94 state will be recognized by each party state as authorizing a multistate licensure privilege to
95 practice as a registered nurse in such party state. A license to practice licensed
96 practical/vocational nursing issued by a home state to a resident in that state will be recognized
97 by each party state as authorizing a multistate licensure privilege to practice as a licensed
98 practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant
99 must meet the home state's qualifications for licensure and license renewal as well as all other
100 applicable state laws.

101 b. Party states may, in accordance with state due process laws, limit or revoke the
102 multistate licensure privilege of any nurse to practice in their state and may take any other
103 actions under their applicable state laws necessary to protect the health and safety of their
104 citizens. If a party state takes such action, it shall promptly notify the administrator of the
105 coordinated licensure information system. The administrator of the coordinated licensure
106 information system shall promptly notify the home state of any such actions by remote states.

107 c. Every nurse practicing in a party state must comply with the state practice laws of
108 the state in which the patient is located at the time care is rendered. In addition, the practice of
109 nursing is not limited to patient care, but shall include all nursing practice as defined by the state
110 practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of
111 the nurse licensing board and the courts, as well as the laws, in that party state.

112 d. This Compact does not affect additional requirements imposed by states for
113 advanced practice registered nursing. However, a multistate licensure privilege to practice
114 registered nursing granted by a party state shall be recognized by other party states as a license to
115 practice registered nursing if one is required by state law as a precondition for qualifying for
116 advanced practice registered nurse authorization.

117 e. Individuals not residing in a party state shall continue to be able to apply for nurse
118 licensure as provided for under the laws of each party state. However, the license granted to
119 these individuals will not be recognized as granting the privilege to practice nursing in any other
120 party state unless explicitly agreed to by that party state.

121 Section 5 Application for Licensure in a Party State

122 a. Upon application for a license, the licensing board in a party state shall ascertain,
123 through the coordinated licensure information system, whether the applicant has ever held, or is
124 the holder of, a license issued by any other state, whether there are any restrictions on the
125 multistate licensure privilege, and whether any other adverse action by any state has been taken
126 against the license.

127 b. A nurse in a party state shall hold licensure in only one party state at a time,
128 issued by the home state.

129 c. A nurse who intends to change primary state of residence may apply for licensure
130 in the new home state in advance of such change. However, new licenses will not be issued by a
131 party state until after a nurse provides evidence of change in primary state of residence
132 satisfactory to the new home state's licensing board.

133 d. When a nurse changes primary state of residence by:

134 1. moving between two party states, and obtains a license from the new home state,
135 the license from the former home state is no longer valid;

136 2. moving from a non-party state to a party state, and obtains a license from the new
137 home state, the individual state license issued by the non-party state is not affected and will
138 remain in full force if so provided by the laws of the non-party state; or

139 3. moving from a party state to a non-party state, the license issued by the prior
140 home state converts to an individual state license, valid only in the former home state, without
141 the multistate licensure privilege to practice in other party states.

142 Section 6. Adverse Actions

143 In addition to the provisions of Section 4, the following provisions shall apply:

144 a. The licensing board of a remote state shall promptly report to the administrator of
145 the coordinated licensure information system any remote state actions including the factual and
146 legal basis for such action, if known. The licensing board of a remote state shall also promptly
147 report any significant current investigative information yet to result in a remote state action. The
148 administrator of the coordinated licensure information system shall promptly notify the home
149 state of any such reports.

150 b. The licensing board of a party state shall have the authority to complete any
151 pending investigations for a nurse who changes primary state of residence during the course of
152 such investigations. It shall also have the authority to take appropriate action(s), and shall
153 promptly report the conclusions of such investigations to the administrator of the coordinated

154 licensure information system. The administrator of the coordinated licensure information system
155 shall promptly notify the new home state of any such actions.

156 c. A remote state may take adverse action affecting the multistate licensure privilege
157 to practice within that party state. However, only the home state shall have the power to impose
158 adverse action against the license issued by the home state.

159 d. For purposes of imposing adverse action, the licensing board of the home state
160 shall give the same priority and effect to reported conduct received from a remote state as it
161 would if such conduct had occurred within the home state. In so doing, it shall apply its own
162 state laws to determine appropriate action.

163 e. The home state may take adverse action based on the factual findings of the
164 remote state, so long as each state follows its own procedures for imposing such adverse action.

165 f. Nothing in this Compact shall override a party state's decision that participation
166 in an alternative program may be used in lieu of licensure action and that such participation shall
167 remain non-public if required by the party state's laws. Party states must require nurses who
168 enter any alternative programs to agree not to practice in any other party state during the term of
169 the alternative program without prior authorization from such other party state.

170 Section 7. Additional Authorities Invested in Party State Nurse Licensing Boards

171 Notwithstanding any other powers, party state nurse licensing boards shall have the
172 authority to:

173 a. if otherwise permitted by state law, recover from the affected nurse the costs of
174 investigations and disposition of cases resulting from any adverse action taken against that nurse;

175 b. issue subpoenas for both hearings and investigations which require the attendance
176 and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse
177 licensing board in a party state for the attendance and testimony of witnesses, and/or the
178 production of evidence from another party state, shall be enforced in the latter state by any court
179 of competent jurisdiction, according to the practice and procedure of that court applicable to
180 subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness
181 fees, travel expenses, mileage and other fees required by the service statutes of the state where
182 the witnesses and/or evidence are located.

183 c. issue cease and desist orders to limit or revoke a nurse's authority to practice in
184 their state; and

185 d. promulgate uniform rules and regulations as provided for in Section 9c of this
186 Chapter

187 Section 8 Coordinated Licensure Information Systems

188 a. All party states shall participate in a cooperative effort to create a coordinated
189 data base of all licensed registered nurses and licensed practical/vocational nurses. This system
190 will include information on the licensure and disciplinary history of each nurse, as contributed by
191 party states, to assist in the coordination of nurse licensure and enforcement efforts.

192 b. Notwithstanding any other provision of law, all party states' licensing boards shall
193 promptly report adverse actions, actions against multistate licensure privileges, any current
194 significant investigative information yet to result in adverse action, denials of applications, and
195 the reasons for such denials, to the coordinated licensure information system.

196 c. Current significant investigative information shall be transmitted through the
197 coordinated licensure information system only to party state licensing boards.

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

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

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

209 g. The Compact administrators, acting jointly with each other and in consultation
210 with the administrator of the coordinated licensure information system, shall formulate necessary
211 and proper procedures for the identification, collection and exchange of information under this
212 Compact.

213 Section 9. Compact Administration and Interchange of Information.

214 a. The head of the nurse licensing board, or his/her designee, of each party state
215 shall be the administrator of this Compact for his/her state.

216 b. The Compact administrator of each party state shall furnish to the Compact
217 administrator of each other party state any information and documents including, but not limited
218 to, a uniform data set of investigations, identifying information, licensure data, and disclosable
219 alternative program participation information to facilitate the administration of this Compact.

c. Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this Compact. These uniform rules shall be adopted by party states, under the authority invested under Section 7 (d) of this Chapter.

Section 10. Immunity

No party state or the officers or employees or agents of a party state's nurse licensing board who acts in accordance with the provisions of this Compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this Compact. Good faith under this section shall not include willful misconduct, gross negligence, or recklessness.

Section 11 Entry into Force, Withdrawal and Amendment

a. This Compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

b. No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the Compact of any report of adverse action occurring prior to the withdrawal.

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

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

Section 12 Construction and Severability

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

254 b. In the event party states find a need for settling disputes arising under this
255 Compact:

256 1. The party states may submit the issues in dispute to an arbitration panel which
257 will be comprised of an individual appointed by the Compact administrator in the home state; an
258 individual appointed by the Compact administrator in the remote state(s) involved; and an
259 individual mutually agreed upon by the Compact administrators of all the party states involved in
260 the dispute.

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

262 Section 13. The executive director of the board of registration in nursing, or the board
263 executive director's designee, shall be the administrator of the Nurse Licensure Compact for the
264 commonwealth.

265 Section 14. The board of registration in nursing may adopt regulations necessary to
266 implement the provisions of this chapter.

267 Section 15. The board of registration in nursing may recover from a nurse the costs of
268 investigation and disposition of cases resulting in any adverse disciplinary action taken against
269 that nurse's license or privilege to practice. Funds collected pursuant to this section shall be
270 deposited in the Quality in Health Professions Trust Fund established pursuant to section 35X of
271 chapter 10.

272 Section 16. The board of registration in nursing may take disciplinary action against the
273 practice privilege of a registered nurse or of a licensed practical/vocational nurse practicing in
274 the commonwealth under a license issued by a state that is a party to the Nurse Licensure
275 Compact. The board's disciplinary action may be based on disciplinary action against the
276 nurse's license taken by the nurse's home state.

277 Section 17. In reporting information to the coordinated licensure information system
278 under Section 8 of this chapter related to the Nurse Licensure Compact, the board of registration
279 in nursing may disclose personally identifiable information about the nurse, including social
280 security number.

281 Section 18. Enactment of the Nurse Licensure Compact shall not supersede existing
282 labor laws.

283 Section 19. The commonwealth, its officers and employees, and the board of registration
284 in nursing and its agents who act in accordance with the provisions of this chapter shall not be
285 liable on account of any act or omission in good faith while engaged in the performance of their
286 duties under this chapter. Good faith shall not include willful misconduct, gross negligence, or
287 recklessness.

288 SECTION 3. The effective date of entry into the Nurse Licensure Compact shall be one
289 year from the effective date of this Act. Prior to said effective date, the board of registration in
290 nursing may take such actions as are necessary to effectuate entry into, and implement, the
291 Compact.

292 SECTION 4. Notwithstanding any general or special law to the Contrary, the secretary of
293 administration and finance, following a public hearing, shall increase the fee for obtaining or
294 renewing a license, certificate. registration, permit or authority issued by a board within the
295 department of public health, excluding the board of registration in medicine, as necessary to
296 implement the provisions of the Nurse Licensure Compact. All of this increase shall be
297 deposited in the Quality in Health Professions Trust Fund established in section 35X of Chapter
298 10.