

SENATE No. 1162

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph A. Boncore

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 adoption of the accompanying bill:

An Act relative to nurse licensure compact in Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/24/2017</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/1/2017</i>

SENATE No. 1162

By Mr. Boncore, a petition (accompanied by bill, Senate, No. 1162) of Joseph A. Boncore, Jason M. Lewis and Richard J. Ross for legislation relative to nurse licensure compact in Massachusetts. Public Health.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to nurse licensure compact in Massachusetts.

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, support spouses of relocating military members, and build effective interstate communication on licensure and enforcement issues, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health.

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

1 SECTION 1. The General Laws, as appearing in the 2014 Official Edition, are hereby
2 amended by inserting after chapter 112 the following new chapter:-

3 Chapter 112A. Nurse Licensure Compact

4 Section 1. Notwithstanding any general or special law to the contrary, the “Nurse
5 Licensure Compact” or Compact as adopted by the National Council of State Boards of Nursing
6 Nurse Licensure Compact in its Final Version dated May 4, 2015 is hereby enacted into law.
7 The Massachusetts board of registration in nursing shall adopt regulations in the same manner as
8 all other with states legally joining in the Compact as set forth in this chapter.

9 Section 2. Findings and Declaration of Purpose

10 a. The party states find that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 Section 3. Definitions

39 As used in this Compact, the following words shall have the following meanings:

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

46 b. “Alternative program”, means a non-disciplinary monitoring program approved by a
47 licensing board.

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

52 d. “Current significant investigative information”, means:

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

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

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

62 f. “Home state”, means the party state which is the nurse’s primary state of residence.

63 g. “Licensing board”, means a party state’s regulatory body responsible for issuing nurse
64 licenses.

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

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

71 j. “Nurse”, means RN or LPN/VN, as those terms are defined by each party state’s
72 practice laws.

73 k. “Party state”, means any state that has adopted this Compact.

74 l. “Remote state”, means a party state, other than the home state.

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

78 n. “State”, means a state, territory or possession of the United States and the District of
79 Columbia.

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

84 Section 4. General Provisions and Jurisdictions

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

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

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

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

98 2. i) Has graduated or is eligible to graduate from a licensing board-approved RN or
99 LPN/VN pre-licensure education program; or ii) Has graduated from a foreign RN or LPN/VN
100 pre-licensure education program that (a) has been approved by the authorized accrediting body in
101 the applicable country and (b) has been verified by an independent credentials review agency to
102 be comparable to a licensing board-approved pre-licensure education program;

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

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

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

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

113 7. Has not been convicted or found guilty, or has entered into an agreed disposition, of a
114 felony offense under applicable state or federal criminal law;

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

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

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

120 11. Has a valid United States Social Security number.

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

128 e. A nurse practicing in a party state must comply with the state practice laws of the state
129 in which the client is located at the time service is provided. The practice of nursing is not

130 limited to patient care, but shall include all nursing practice as defined by the state practice laws
131 of the party state in which the client is located. The practice of nursing in a party state under a
132 multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the
133 courts and the laws of the party state in which the client is located at the time service is provided.

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

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

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

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

150 Section 5. Application for Licensure in a Party State

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

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

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

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

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

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

171 Section 6. Additional Authorities Invested in Party State Licensing Boards

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

174 1) Take adverse action against a nurse's multistate licensure privilege to practice within
175 that party state.

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

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

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

184 3) Complete any pending investigations of a nurse who changes primary state of
185 residence during the course of such investigations. The licensing board shall also have the
186 authority to take appropriate action(s) and shall promptly report the conclusions of such
187 investigations to the administrator of the coordinated licensure information system. The
188 administrator of the coordinated licensure information system shall promptly notify the new
189 home state of any such actions.

190 4) Issue subpoenas for both hearings and investigations that require the attendance and
191 testimony of witnesses, as well as, the production of evidence. Subpoenas issued by a licensing
192 board in a party state for the attendance and testimony of witnesses or the production of evidence

193 from another party state shall be enforced in the latter state by any court of competent
194 jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued
195 in proceedings pending before it. The issuing authority shall pay any witness fees, travel
196 expenses, mileage and other fees required by the service statutes of the state in which the
197 witnesses or evidence are located.

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

202 6) If otherwise permitted by state law, recover from the affected nurse the costs of
203 investigations and disposition of cases resulting from any adverse action taken against that nurse.

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

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

212 c. Nothing in this Compact shall override a party state's decision that participation in an
213 alternative program may be used in lieu of adverse action. The home state licensing board shall

214 deactivate the multistate licensure privilege under the multistate license of any nurse for the
215 duration of the nurse's participation in an alternative program.

216 Section 7. Coordinated Licensure Information System and Exchange of Information

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

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

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

229 d. Current significant investigative information and participation in nonpublic or
230 confidential alternative programs shall be transmitted through the coordinated licensure
231 information system only to party state licensing boards.

232 e. Notwithstanding any other provision of law, all party state licensing boards
233 contributing information to the coordinated licensure information system may designate

234 information that may not be shared with non-party states or disclosed to other entities or
235 individuals without the express permission of the contributing state.

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

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

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

245 1. Identifying information;

246 2. Licensure data;

247 3. Information related to alternative program participation; and

248 4. Other information that may facilitate the administration of this Compact, as
249 determined by Commission rules.

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

252 Section 8. Establishment of the Interstate Commission of Nurse Licensure Compact
253 Administrators

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

256 1. The Commission is an instrumentality of the party states.

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

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

262 b. Membership, Voting and Meetings

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

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

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

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

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

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

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

283 iii. Current, threatened or reasonably anticipated litigation;

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

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

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

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

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

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

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

294 6. If a meeting, or portion of a meeting, is closed pursuant to this provision, the
295 Commission’s legal counsel or designee shall certify that the meeting may be closed and shall
296 reference each relevant exempting provision. The Commission shall keep minutes that fully and
297 clearly describe all matters discussed in a meeting and shall provide a full and accurate summary
298 of actions taken, and the reasons therefor, including a description of the views expressed. All
299 documents considered in connection with an action shall be identified in such minutes. All
300 minutes and documents of a closed meeting shall remain under seal, subject to release by a
301 majority vote of the Commission or order of a court of competent jurisdiction.

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

305 1. Establishing the fiscal year of the Commission;

306 2. Providing reasonable standards and procedures:

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

308 ii. Governing any general or specific delegation of any authority or function of the
309 Commission;

310 3. Providing reasonable procedures for calling and conducting meetings of the
311 Commission, ensuring reasonable advance notice of all meetings and providing an opportunity
312 for attendance of such meetings by interested parties, with enumerated exceptions designed to
313 protect the public’s interest, the privacy of individuals, and proprietary information, including
314 trade secrets. The Commission may meet in closed session only after a majority of the

315 administrators vote to close a meeting in whole or in part. As soon as practicable, the
316 Commission must make public a copy of the vote to close the meeting revealing the vote of each
317 administrator, with no proxy votes allowed;

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

320 5. Providing reasonable standards and procedures for the establishment of the
321 personnel policies and programs of the Commission. Notwithstanding any civil service or other
322 similar laws of any party state, the bylaws shall exclusively govern the personnel policies and
323 programs of the Commission; and

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

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

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

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

333 g. The Commission shall have the following powers:

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

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

340 3. To purchase and maintain insurance and bonds;

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

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

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

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

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

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

359 10. To establish a budget and make expenditures;

360 11. To borrow money;

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

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

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

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

369 h. Financing of the Commission

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

372 2. The Commission may also levy on and collect an annual assessment from each
373 party state to cover the cost of its operations, activities and staff in its annual budget as approved

374 each year. The aggregate annual assessment amount, if any, shall be allocated based upon a
375 formula to be determined by the Commission, which shall promulgate a rule that is binding upon
376 all party states.

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

380 4. The Commission shall keep accurate accounts of all receipts and disbursements.
381 The receipts and disbursements of the Commission shall be subject to the audit and accounting
382 procedures established under its bylaws. However, all receipts and disbursements of funds
383 handled by the Commission shall be audited yearly by a certified or licensed public accountant,
384 and the report of the audit shall be included in and become part of the annual report of the
385 Commission.

386 i. Qualified Immunity, Defense and Indemnification

387 1. The administrators, officers, executive director, employees and representatives of
388 the Commission shall be immune from suit and liability, either personally or in their official
389 capacity, for any claim for damage to or loss of property or personal injury or other civil liability
390 caused by or arising out of any actual or alleged act, error or omission that occurred, or that the
391 person against whom the claim is made had a reasonable basis for believing occurred, within the
392 scope of Commission employment, duties or responsibilities; provided that nothing in this
393 paragraph shall be construed to protect any such person from suit or liability for any damage,
394 loss, injury or liability caused by the intentional, willful or wanton misconduct of that person.

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

404 3. The Commission shall indemnify and hold harmless any administrator, officer,
405 executive director, employee or representative of the Commission for the amount of any
406 settlement or judgment obtained against that person arising out of any actual or alleged act, error
407 or omission that occurred within the scope of Commission employment, duties or
408 responsibilities, or that such person had a reasonable basis for believing occurred within the
409 scope of Commission employment, duties or responsibilities, provided that the actual or alleged
410 act, error or omission did not result from the intentional, willful or wanton misconduct of that
411 person.

412 Section 9. Rulemaking

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

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

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

422 1. On the website of the Commission; and

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

425 d. The notice of proposed rulemaking shall include:

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

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

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

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

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

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

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

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

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

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

446 i. Following the scheduled hearing date, or by the close of business on the
447 scheduled hearing date if the hearing was not held, the Commission shall consider all written and
448 oral comments received.

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

452 k. Upon determination that an emergency exists, the Commission may consider and
453 adopt an emergency rule without prior notice, opportunity for comment or hearing, provided that
454 the usual rulemaking procedures provided in this Compact and in this section shall be
455 retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90)

456 days after the effective date of the rule. For the purposes of this provision, an emergency rule is
457 one that must be adopted immediately in order to:

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

462 1. The Commission may direct revisions to a previously adopted rule or amendment
463 for purposes of correcting typographical errors, errors in format, errors in consistency or
464 grammatical errors. Public notice of any revisions shall be posted on the website of the
465 Commission. The revision shall be subject to challenge by any person for a period of thirty (30)
466 days after posting. The revision may be challenged only on grounds that the revision results in a
467 material change to a rule. A challenge shall be made in writing, and delivered to the
468 Commission, prior to the end of the notice period. If no challenge is made, the revision will take
469 effect without further action. If the revision is challenged, the revision may not take effect
470 without the approval of the Commission.

471 Section 10. Oversight, Dispute Resolution and Enforcement

472 a. Oversight

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

475 2. The Commission shall be entitled to receive service of process in any proceeding
476 that may affect the powers, responsibilities or actions of the Commission, and shall have

477 standing to intervene in such a proceeding for all purposes. Failure to provide service of process
478 in such proceeding to the Commission shall render a judgment or order void as to the
479 Commission, this Compact or promulgated rules.

480 b. Default, Technical Assistance and Termination

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

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

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

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

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

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

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

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

507 c. Dispute Resolution

508 1. Upon request by a party state, the Commission shall attempt to resolve disputes
509 related to the Compact that arise among party states and between party and non-party states.

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

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

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

- 518 ii. The decision of a majority of the arbitrators shall be final and binding.
- 519 d. Enforcement
- 520 1. The Commission, in the reasonable exercise of its discretion, shall enforce the
521 provisions and rules of this Compact.
- 522 2. By majority vote, the Commission may initiate legal action in the U.S. District
523 Court for the District of Columbia or the federal district in which the Commission has its
524 principal offices against a party state that is in default to enforce compliance with the provisions
525 of this Compact and its promulgated rules and bylaws. The relief sought may include both
526 injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party
527 shall be awarded all costs of such litigation, including reasonable attorneys' fees.
- 528 3. The remedies herein shall not be the exclusive remedies of the Commission. The
529 Commission may pursue any other remedies available under federal or state law.

530 Section 11. Effective Date, Withdrawal and Amendment

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

537 b. Each party state to this Compact shall continue to recognize a nurse’s multistate
538 licensure privilege to practice in that party state issued under the Prior Compact until such party
539 state has withdrawn from the Prior Compact.

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

543 d. A party state’s withdrawal or termination shall not affect the continuing
544 requirement of the withdrawing or terminated state’s licensing board to report adverse actions
545 and significant investigations occurring prior to the effective date of such withdrawal or
546 termination.

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

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

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

556 Section 12. Construction and Severability

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

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

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

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

576 Section 16. The board of registration in nursing may take disciplinary action against the
577 practice privilege of a registered nurse or of a licensed practical/vocational nurse practicing in
578 the commonwealth under a license issued by a state that is a party to the Nurse Licensure

579 Compact. The board's disciplinary action may be based on disciplinary action against the
580 nurse's license taken by the nurse's home state.

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

585 Section 18. Enactment of the Nurse Licensure Compact shall not supersede existing
586 labor laws.

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

592 SECTION 2. The effective date of entry into the Nurse Licensure Compact for
593 Massachusetts shall be one year from the effective date of the Nurse Licensure Compact in
594 Massachusetts. Prior to said effective date, the board of registration in nursing may take such
595 actions as are necessary to effectuate entry into, and implement, the Compact.

596 SECTION 3. Notwithstanding any general or special law to the contrary, the secretary of
597 administration and finance, following a public hearing, shall increase the fee for obtaining or
598 renewing a license, certificate, registration, permit or authority issued by a board within the
599 department of public health, excluding the board of registration in medicine, as necessary to
600 implement the provisions of the Nurse Licensure Compact. The amount of the increase in fees

601 shall be deposited in the Quality in Health Professions Trust Fund established in section 35X of
602 chapter 10.

603 SECTION 4. As part of the licensure and background check process for a multistate
604 license, the Massachusetts Board of Nursing, prior to issuing any multistate license, shall
605 conduct a fingerprint-based check of the state and national criminal history databases, as
606 authorized by 28 CFR 20.33 and Public Law 92-544.

607 Fingerprints, shall be submitted to the identification section of the department of state
608 police for a state criminal history check and forwarded to the Federal Bureau of Investigation for
609 a national criminal history check, according to the policies and procedures established by the
610 state identification section and by the department of criminal justice information services.

611 All applicants, shall pay a fee to be established by the secretary of administration and
612 finance, in consultation with the secretary of public safety, to offset the costs of operating and
613 administering a fingerprint-based criminal background check system. The secretary of
614 administration and finance, in consultation with the secretary of public safety, may increase the
615 fee accordingly if the Federal Bureau of Investigation increases its fingerprint background check
616 service fee. Any fees collected from fingerprinting activity under this chapter shall be deposited
617 into the Fingerprint-Based Background Check Trust Fund, established in section 2HHHH of 133
618 chapter 29.

619 The Massachusetts Board of Nursing may receive all criminal offender record
620 information and the results of checks of state and national criminal history databases under said
621 Public Law 92-544. When the Massachusetts Board of Nursing obtains the results of checks of
622 state and national criminal history databases, it shall treat the information according to sections

623 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender
624 record information.