

HOUSE No. 1944

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 adoption of the accompanying bill:

An Act relative to nurse licensure compact in Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/17/2019</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/1/2019</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>2/1/2019</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>1/30/2019</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>	<i>2/1/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/23/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>2/1/2019</i>

HOUSE No. 1944

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 1944) of Kay Khan and others relative to participation in the national nurse licensure compact agreement. Public Health.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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

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

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

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

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

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

The deferred operation of this act would tend to defeat its purposes, which are to facilitate the states' responsibility to protect the public's health and safety, ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation; facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions, promote compliance with the laws governing the practice of nursing in each jurisdiction, invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses, decrease redundancies in the consideration and issuance of nurse licenses, and provide opportunities for interstate practice by nurses who meet uniform licensure requirements, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public, therefore it is hereby declared to be an emergency law,

necessary for the immediate preservation of the public convenience.

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. Subsection (c) of section 14 of chapter 13 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the words “chapter one hundred and twelve,” the following words:- chapter one hundred and twelve A,

SECTION 2. Section 79 of chapter 112 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by adding the following two sentences:-

The board may assess a licensed nurse a penalty of not more than \$2,000 for each violation of regulations promulgated pursuant to this section and for each violation of any general law that governs the practice of nursing. The board, through regulation, shall ensure that any fine levied is commensurate with the severity of the violation.

SECTION 3. The General Laws are hereby amended by inserting after chapter 112 the following new chapter:-

Chapter 112A. Nurse Licensure Compact

Section 1. Definitions

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

“Adverse action”, any administrative, civil, equitable or criminal action permitted by a state’s laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual’s license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee’s practice, or any

other encumbrance on licensure affecting a nurse’s authorization to practice, including issuance of a cease and desist action.

“Alternative program”, a non-disciplinary monitoring program approved by a licensing board.

“Compact” or “Nurse Licensure Compact”, the legally binding agreement between party states as adopted by the National Council of State Boards of Nursing Nurse Licensure Compact in its Final Version dated May 4, 2015, and entered into by the commonwealth in accordance with this chapter.

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

“Current significant investigative information”, (i) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction or (ii) investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

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

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

“Interstate commission”, the Interstate Commission of Nurse Licensure Compact Administrators as established in section 6 of this chapter.

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

“Multistate license”, a license to practice as a registered nurse or a licensed practical/vocational nurse issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

“Multistate licensure privilege”, a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse or as a licensed practical/vocational nurse in a remote state.

“Nurse”, registered nurse or a licensed practical/vocational nurse, as those terms are defined by each party state’s practice laws.

“Party state”, the commonwealth and any other state that has adopted this Compact.

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

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

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

“State practice laws”, a party state’s laws, rules and regulations that govern the practice of nursing, define the scope of nursing practice, and establish the methods and grounds for

imposing discipline. “State practice laws” do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

Section 2. General Provisions and Jurisdictions

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

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

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

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

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

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

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

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

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

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

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

(9) Is not currently enrolled in an alternative program;

(10) Is subject to self-disclosure requirements regarding current participation in an alternative program; and

(11) Has a valid United States Social Security number.

(d) All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation,

suspension, probation or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

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

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

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

(1) A nurse, who changes primary state of residence after this Compact's effective date, must meet all applicable requirements under section 2 to obtain a multistate license from a new home state.

(2) A nurse who fails to satisfy the multistate licensure requirements in in section 2 due to a disqualifying event occurring after this Compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the interstate commission.

Section 3. Application for Licensure in a Party State

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

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

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

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

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

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

Section 4. Additional Authorities Invested in Party State Licensing Boards

(a) In addition to the other powers conferred by state law, a licensing board shall have the authority to:

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

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

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

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

(3) Complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board shall also have the

162 authority to take appropriate action(s) and shall promptly report the conclusions of such
163 investigations to the administrator of the coordinated licensure information system. The
164 administrator of the coordinated licensure information system shall promptly notify the new
165 home state of any such actions.

166 (4) Issue subpoenas for both hearings and investigations that require the attendance and
167 testimony of witnesses, as well as, the production of evidence. Subpoenas issued by a licensing
168 board in a party state for the attendance and testimony of witnesses or the production of evidence
169 from another party state shall be enforced in the latter state by any court of competent
170 jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued
171 in proceedings pending before it. The issuing authority shall pay any witness fees, travel
172 expenses, mileage and other fees required by the service statutes of the state in which the
173 witnesses or evidence are located.

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

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

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

182 (b) If adverse action is taken by the home state against a nurse's multistate license, the
183 nurse's multistate licensure privilege to practice in all other party states shall be deactivated until

all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

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

Section 5. Coordinated Licensure Information System and Exchange of Information

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

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

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

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

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

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

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

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

(1) Identifying information;

(2) Licensure data;

(3) Information related to alternative program participation; and

(4) Other information that may facilitate the administration of this Compact, as determined by interstate commission rules.

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

Section 6. Establishment of the Interstate Commission of Nurse Licensure Compact Administrators

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

(1) The interstate commission is an instrumentality of the party states.

(2) Venue is proper, and judicial proceedings by or against the interstate commission shall be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the interstate commission is located. The interstate 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 interstate commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

(2) Each administrator shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the

business and affairs of the interstate commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

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

(4) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in section 7.

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

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

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

(iii) Current, threatened or reasonably anticipated litigation;

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

(v) Accusing any person of a crime or formally censuring any person;

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

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

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

(ix) Disclosure of information related to any reports prepared by or on behalf of the interstate commission for the purpose of investigation of compliance with this Compact; or

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

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

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

(1) Establishing the fiscal year of the interstate commission;

(2) Providing reasonable standards and procedures:

(i) For the establishment and meetings of other committees; and

(ii) Governing any general or specific delegation of any authority or function of the interstate commission;

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

(4) Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the interstate commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission; and

(6) Providing a mechanism for winding up the operations of the interstate commission and the equitable disposition of any surplus funds that may exist after the termination of this Compact after the payment or reserving of all of its debts and obligations;

(d) The interstate commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the interstate commission.

(e) The interstate commission shall maintain its financial records in accordance with the bylaws.

(f) The interstate commission shall meet and take such actions as are consistent with the provisions of this Compact and the bylaws.

(g) The interstate commission shall have the following powers:

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

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

(3) To purchase and maintain insurance and bonds;

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

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

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

(7) To accept any and all appropriate donations, grants and gifts of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at

330 all times the interstate commission shall avoid any appearance of impropriety or conflict of
331 interest;

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

335 (9) To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of
336 any property, whether real, personal or mixed;

337 (10) To establish a budget and make expenditures;

338 (11) To borrow money;

339 (12) To appoint committees, including advisory committees comprised of administrators,
340 state nursing regulators, state legislators or their representatives, and consumer representatives,
341 and other such interested persons;

342 (13) To provide and receive information from, and to cooperate with, law enforcement
343 agencies;

344 (14) To adopt and use an official seal; and

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

347 (h) Financing of the interstate commission

348 (1) The interstate commission shall pay, or provide for the payment of, the reasonable
349 expenses of its establishment, organization and ongoing activities.

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

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

(4) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the interstate commission.

(i) Qualified Immunity, Defense and Indemnification

(1) The administrators, officers, executive director, employees and representatives of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for

any damage, loss, injury or liability caused by the intentional, willful or wanton misconduct of that person.

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

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

Section 7. Rulemaking

(a) The interstate commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments shall

394 become binding as of the date specified in each rule or amendment and shall have the same force
395 and effect as provisions of this Compact.

396 (b) Rules or amendments to the rules shall be adopted at a regular or special meeting of
397 the interstate commission.

398 (c) Prior to promulgation and adoption of a final rule or rules by the interstate
399 commission, and at least sixty (60) days in advance of the meeting at which the rule will be
400 considered and voted upon, the interstate commission shall file a notice of proposed rulemaking:

401 (1) On the website of the interstate commission; and

402 (2) On the website of each licensing board or the publication in which each state would
403 otherwise publish proposed rules.

404 (d) The notice of proposed rulemaking shall include:

405 (1) The proposed time, date and location of the meeting in which the rule will be
406 considered and voted upon;

407 (2) The text of the proposed rule or amendment, and the reason for the proposed rule;

408 (3) A request for comments on the proposed rule from any interested person; and

409 (4) The manner in which interested persons may submit notice to the interstate
410 commission of their intention to attend the public hearing and any written comments.

411 (e) Prior to adoption of a proposed rule, the interstate commission shall allow persons to
412 submit written data, facts, opinions and arguments, which shall be made available to the public.

(f) The interstate commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

(g) The interstate commission shall publish the place, time and date of the scheduled public hearing.

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

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

(h) If no one appears at the public hearing, the interstate commission may proceed with promulgation of the proposed rule.

(i) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the interstate commission shall consider all written and oral comments received.

(j) The interstate commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(k) Upon determination that an emergency exists, the interstate commission may consider and adopt an emergency rule without prior notice, opportunity for comment or hearing, provided that the usual rulemaking procedures provided in this Compact and in this section shall

be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

(1) Meet an imminent threat to public health, safety or welfare;

(2) Prevent a loss of interstate commission or party state funds; or

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

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

Section 8. Oversight, Dispute Resolution and Enforcement

(a) Oversight

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

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

(b) Default, Technical Assistance and Termination

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

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

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

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

(3) Termination of membership in this Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate

shall be given by the interstate commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.

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

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

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

(c) Dispute Resolution

(1) Upon request by a party state, the interstate commission shall attempt to resolve disputes related to the Compact that arise among party states and between party and non-party states.

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

(3) In the event the interstate commission cannot resolve disputes among party states arising under this Compact:

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

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

(d) Enforcement

(1) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

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

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

Section 9. Effective Date, Withdrawal and Amendment

(a) This Compact shall become effective and binding on the earlier of the date of legislative enactment of this Compact into law by no less than twenty-six (26) states or December 31, 2018. All party states to this Compact, that also were parties to the prior Nurse

515 Licensure Compact, superseded by this Compact, ("Prior Compact"), shall be deemed to have
516 withdrawn from said Prior Compact within six (6) months after the effective date of this
517 Compact.

518 (b) Each party state to this Compact shall continue to recognize a nurse's multistate
519 licensure privilege to practice in that party state issued under the Prior Compact until such party
520 state has withdrawn from the Prior Compact.

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

524 (d) A party state's withdrawal or termination shall not affect the continuing requirement
525 of the withdrawing or terminated state's licensing board to report adverse actions and significant
526 investigations occurring prior to the effective date of such withdrawal or termination.

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

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

533 (g) Representatives of non-party states to this Compact shall be invited to participate in
534 the activities of the interstate commission, on a nonvoting basis, prior to the adoption of this
535 Compact by all states.

Section 10. Construction and Severability

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 if 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 to be contrary to the constitution of any party state, this 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.

Section 11. The executive director of the board of registration in nursing, or the board executive director's designee, shall be the administrator of the Nurse Licensure Compact for the commonwealth.

Section 12. The board of registration in nursing shall adopt regulations in the same manner as all other with states legally joining in the Compact and may adopt additional regulations as necessary to implement the provisions of this chapter.

Section 13. The board of registration in nursing may recover from a nurse the costs of investigation and disposition of cases resulting in any adverse disciplinary action taken against that nurse's license or privilege to practice. Funds collected pursuant to this section shall be deposited in the Quality in Health Professions Trust Fund established pursuant to section 35X of chapter 10.

Section 14. The board of registration in nursing may take disciplinary action against the practice privilege of a registered nurse or of a licensed practical/vocational nurse practicing in the commonwealth under a license issued by party state. The board's disciplinary action may be based on disciplinary action against the nurse's license taken by the nurse's home state.

Section 15. In reporting information to the coordinated licensure information system under Section 8 of this chapter related to the Nurse Licensure Compact, the board of registration in nursing may disclose personally identifiable information about the nurse, including social security number.

Section 16. Nothing in this chapter, nor the entrance of Massachusetts into the Nurse Licensure Compact shall be construed to supersede existing labor laws.

Section 17. The commonwealth, its officers and employees, and the board of registration in nursing and its agents who act in accordance with the provisions of this chapter shall not be liable on account of any act or omission in good faith while engaged in the performance of their duties under this chapter. Good faith shall not include willful misconduct, gross negligence, or recklessness.

Section 18. As part of the licensure and background check process for a multistate license and to determine the suitability of an applicant for multistate licensure, the board of registration in nursing, prior to issuing any multistate license, shall conduct a fingerprint-based check of the state and national criminal history databases, as authorized by 28 CFR 20.33 and Public Law 92-544.

Fingerprints shall be submitted to the identification section of the department of state police for a state criminal history check and forwarded to the Federal Bureau of Investigation for

a national criminal history check, according to the policies and procedures established by the state identification section and by the department of criminal justice information services. Fingerprint submissions may be retained by the Federal Bureau of Investigation, the state identification section and the department of criminal justice information services for requests submitted by the board of registration in nursing as authorized under this section to ensure the continued suitability of these individuals for licensure. The department of criminal justice information services may disseminate the results of the state and national criminal background checks to the executive director of the board of registration in nursing and authorized staff of the board.

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

The board of registration in nursing may receive all criminal offender record information and the results of checks of state and national criminal history databases under said Public Law 92-544. When the board of registration in nursing obtains the results of checks of state and national criminal history databases, it shall treat the information according to sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender record information.

Notwithstanding subsections 9 and 9 1/2 of section 4 of chapter 151B, if the board of registration in nursing receives criminal record information from the state or national fingerprint-based criminal background checks that includes no disposition or is otherwise incomplete, the agency head may request that an applicant for licensure provide additional information regarding the results of the criminal background checks to assist the agency head in determining the applicant's suitability for licensure.

SECTION 4. Notwithstanding any general or special law to the contrary, the secretary of administration and finance, following a public hearing, shall increase the fee for obtaining or renewing a license, certificate, registration, permit or authority issued by a board within the department of public health, excluding the board of registration in medicine, as necessary to implement the provisions of the Nurse Licensure Compact. The amount of the increase in fees shall be deposited in the Quality in Health Professions Trust Fund established in section 35X of chapter 10.

SECTION 5. The effective date of the commonwealth's entry into the Nurse Licensure Compact shall be one year from the effective date of this act. Prior to said effective date, the board of registration in nursing may take such actions as are necessary to implement chapter 112A of the General Laws and effectuate entry into the Nurse Licensure Compact