STATE OF NEW YORK

3391

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

Introduced by M. of A. O'DONNELL -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to enacting the interstate medical licensure compact and the nurse licensure compact

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The education law is amended by adding a new article 169 to read as follows:

ARTICLE 169

INTERSTATE MEDICAL LICENSURE COMPACT

Section 8860. Short title.
8861. Purpose.
8862. Definitions.
8863. Eligibility.
8864. Designation of state of principal license.
8865. Application and issuance of expedited licensure.
8866. Fees for expedited licensure.
8867. Renewal and continued participation.
8868. Coordinated information system.
8869. Joint investigations.
8870. Disciplinary actions.
8871. Interstate medical licensure compact commission.
8872. Powers and duties of the interstate commission.
8873. Finance powers.
8874. Organization and operation of the interstate commission.
8875. Rulemaking functions of the interstate commission.
8876. Oversight of interstate compact.
8877. Enforcement of interstate compact.
8878. Default procedures.
8879. Dispute resolution.
8880. Member states, effective date and amendment.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD07951-01-3

8881. Withdrawal.
8882. Dissolution.
8883. Severability and construction.
8884. Binding effect of compact and other laws.

§ 8860. Short title. This article shall be known and may be cited as the "interstate medical licensure compact".

§ 8861. Purpose. In order to strengthen access to health care, and in recognition of the advances in the delivery of health care, the member states of the interstate medical licensure compact have allied in common purpose to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards, provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients. The compact creates another pathway for licensure and does not otherwise change a state's existing medical practice act. The compact also adopts the prevailing standard for licensure and affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore, requires the physician to be under the jurisdiction of the state medical board where the patient is located. State medical boards that participate in the compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the compact.

§ 8862. Definitions. In this compact:

1. "Bylaws" means those bylaws established by the interstate commission pursuant to section eighty-eight hundred seventy-one of this article for its governance, or for directing and controlling its actions and conduct.

2. "Commissioner" means the voting representative appointed by each member board pursuant to section eighty-eight hundred seventy-one of this article.

3. "Conviction" means a finding by a court that an individual is guilty of a criminal offense through adjudication, or entry of a plea of guilt or no contest to the charge by the offender. Evidence of an entry of a conviction of a criminal offense by the court shall be considered final for purposes of disciplinary action by a member board.

4. "Expedited license" means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the compact.

5. "Interstate commission" means the interstate commission created pursuant to section eighty-eight hundred seventy-one of this article.

6. "License" means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization.

7. "Medical practice act" means laws and regulations governing the practice of allopathic and osteopathic medicine within a member state.

8. "Member board" means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government.

9. "Member state" means a state that has enacted the compact.

10. "Practice of medicine" means the clinical prevention, diagnosis, or treatment of human disease, injury, or condition requiring a physician to obtain and maintain a license in compliance with the medical practice act of a member state.

11. "Physician" means any person who:

(a) Is a graduate of a medical school accredited by the Liaison Committee on Medical Education, the Commission on Osteopathic College Accreditation, or a medical school listed in the International Medical Education Directory or its equivalent;

(b) Passed each component of the United States Medical Licensing Examination (USMLE) or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA) within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes;

(c) Successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(d) Holds specialty certification or a time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists;

(e) Possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;

(f) Has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(g) Has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to non-payment of fees related to a license;

(h) Has never had a controlled substance license or permit suspended or revoked by a state or the United States drug enforcement administration; and

(i) Is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction.

12. "Offense" means a felony, gross misdemeanor, or crime of moral turpitude.

13. "Rule" means a written statement by the interstate commission promulgated pursuant to section eighty-eight hundred seventy-two of this article that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

14. "State" means any state, commonwealth, district, or territory of the United States.

15. "State of principal license" means a member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the compact.

§ 8863. Eligibility. 1. A physician must meet the eligibility requirements as defined in subdivision eleven of section eighty-eight hundred sixty-two of this article to receive an expedited license under the terms and provisions of the compact.

2. A physician who does not meet the requirements of subdivision eleven of section eighty-eight hundred sixty-two of this article may obtain a license to practice medicine in a member state if the individual complies with all laws and requirements, other than the compact, relating to the issuance of a license to practice medicine in that state.

§ 8864. Designation of state of principal license. 1. A physician shall designate a member state as the state of principal license for

purposes of registration for expedited licensure through the compact if the physician possesses a full and unrestricted license to practice medicine in that state, and the state is:

(a) the state of primary residence for the physician, or

(b) the state where at least twenty-five percent of the practice of medicine occurs, or

(c) the location of the physician's employer, or

(d) if no state qualifies under paragraph (a), (b), or (c) of this subdivision, the state designated as state of residence for purpose of federal income tax.

2. A physician may redesignate a member state as state of principal license at any time, as long as the state meets the requirements of subdivision one of this section.

3. The interstate commission is authorized to develop rules to facilitate redesignation of another member state as the state of principal license.

§ 8865. Application and issuance of expedited licensure. 1. A physician seeking licensure through the compact shall file an application for an expedited license with the member board of the state selected by the physician as the state of principal license.

2. Upon receipt of an application for an expedited license, the member board within the state selected as the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification, verifying or denying the physician's eligibility, to the interstate commission.

(a) Static qualifications, which include verification of medical education, graduate medical education, results of any medical or licensing examination, and other qualifications as determined by the interstate commission through rule, shall not be subject to additional primary source verification where already primary source verified by the state of principal license.

(b) The member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, with the exception of federal employees who have suitability determination in accordance with U.S. C.F.R. § 731.202.

(c) Appeal on the determination of eligibility shall be made to the member state where the application was filed and shall be subject to the law of that state.

3. Upon verification under subdivision two of this section, physicians eligible for an expedited license shall complete the registration process established by the interstate commission to receive a license in a member state selected pursuant to subdivision one of this section, including the payment of any applicable fees.

4. After receiving verification of eligibility under subdivision two of this section and any fees under subdivision three of this section, a member board shall issue an expedited license to the physician. This license shall authorize the physician to practice medicine in the issuing state consistent with the medical practice act and all applicable laws and regulations of the issuing member board and member state.

5. An expedited license shall be valid for a period consistent with the licensure period in the member state and in the same manner as required for other physicians holding a full and unrestricted license within the member state.

6. An expedited license obtained though the compact shall be terminated if a physician fails to maintain a license in the state of principal licensure for a non-disciplinary reason, without redesignation of a new state of principal licensure.

7. The interstate commission is authorized to develop rules regarding the application process, including payment of any applicable fees, and the issuance of an expedited license.

§ 8866. Fees for expedited licensure. 1. A member state issuing an expedited license authorizing the practice of medicine in that state may impose a fee for a license issued or renewed through the compact.

2. The interstate commission is authorized to develop rules regarding fees for expedited licenses.

§ 8867. Renewal and continued participation. 1. A physician seeking to renew an expedited license granted in a member state shall complete a renewal process with the interstate commission if the physician:

(a) Maintains a full and unrestricted license in a state of principal license;

(b) Has not been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(c) Has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to non-payment of fees related to a license; and

(d) Has not had a controlled substance license or permit suspended or revoked by a state or the United States drug enforcement administration.

2. Physicians shall comply with all continuing professional development or continuing medical education requirements for renewal of a license issued by a member state.

3. The interstate commission shall collect any renewal fees charged for the renewal of a license and distribute the fees to the applicable member board.

4. Upon receipt of any renewal fees collected in subdivision three of this section, a member board shall renew the physician's license.

5. Physician information collected by the interstate commission during the renewal process will be distributed to all member boards.

6. The interstate commission is authorized to develop rules to address renewal of licenses obtained through the compact.

§ 8868. Coordinated information system. 1. The interstate commission shall establish a database of all physicians licensed, or who have applied for licensure, under section eighty-eight hundred sixty-five of this article.

2. Notwithstanding any other provision of law, member boards shall report to the interstate commission any public action or complaints against a licensed physician who has applied or received an expedited license through the compact.

3. Member boards shall report disciplinary or investigatory information determined as necessary and proper by rule of the interstate commission.

4. Member boards may report any non-public complaint, disciplinary, or investigatory information not required by subdivision three of this section to the interstate commission.

5. Member boards shall share complaint or disciplinary information about a physician upon request of another member board.

6. All information provided to the interstate commission or distributed by member boards shall be confidential, filed under seal, and used only for investigatory or disciplinary matters.

7. The interstate commission is authorized to develop rules for mandated or discretionary sharing of information by member boards.

§ 8869. Joint investigations. 1. Licensure and disciplinary records of physicians are deemed investigative.

2. In addition to the authority granted to a member board by its respective medical practice act or other applicable state law, a member board may participate with other member boards in joint investigations of physicians licensed by the member boards.

3. A subpoena issued by a member state shall be enforceable in other member states.

4. Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

5. Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.

§ 8870. Disciplinary actions. 1. Any disciplinary action taken by any member board against a physician licensed through the compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the medical practice act or regulations in that state.

2. If a license granted to a physician by the member board in the state of principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the medical practice act of that state.

3. If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided, and:

(a) impose the same or lesser sanction or sanctions against the physician so long as such sanctions are consistent with the medical practice act of that state; or

(b) pursue separate disciplinary action against the physician under its respective medical practice act, regardless of the action taken in other member states.

4. If a license granted to a physician by a member board is revoked, surrendered, or relinquished in lieu of discipline, or suspended, then any license or licenses issued to the physician by any other member board or boards shall be suspended, automatically and immediately without further action necessary by the other member board or boards, for ninety days upon entry of the order by the disciplining board, to permit the member board or boards to investigate the basis for the action under the medical practice act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the ninety day suspension period in a manner consistent with the medical practice act of that state.

§ 8871. Interstate medical licensure compact commission. 1. The member states hereby create the "interstate medical licensure compact commission".

2. The purpose of the interstate commission is the administration of the interstate medical licensure compact, which is a discretionary state function.

3. The interstate commission shall be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth in the compact, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of the compact.

4. The interstate commission shall consist of two voting representatives appointed by each member state who shall serve as commissioners. In states where allopathic and osteopathic physicians are regulated by separate member boards, or if the licensing and disciplinary authority is split between multiple member boards within a member state, the member state shall appoint one representative from each member board. A commissioner shall be a or an:

(a) Allopathic or osteopathic physician appointed to a member board;

(b) Executive director, executive secretary, or similar executive of a member board; or

(c) Member of the public appointed to a member board.

5. The interstate commission shall meet at least once each calendar year. A portion of this meeting shall be a business meeting to address such matters as may properly come before the commission, including the election of officers. The chairperson may call additional meetings and shall call for a meeting upon the request of a majority of the member states.

6. The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.

7. Each commissioner participating at a meeting of the interstate commission is entitled to one vote. A majority of commissioners shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission. A commissioner shall not delegate a vote to another commissioner. In the absence of its commissioner, a member state may delegate voting authority for a specified meeting to another person from that state who shall meet the requirements of subdivision four of this section.

8. The interstate commission shall provide public notice of all meetings and all meetings shall be open to the public. The interstate commission may close a meeting, in full or in portion, where it determines by a two-thirds vote of the commissioners present that an open meeting would be likely to:

(a) Relate solely to the internal personnel practices and procedures of the interstate commission;

(b) Discuss matters specifically exempted from disclosure by federal statute;

(c) Discuss trade secrets, commercial, or financial information that is privileged or confidential;

(d) Involve accusing a person of a crime, or formally censuring a person;

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

(f) Discuss investigative records compiled for law enforcement purposes; or

(g) Specifically relate to the participation in a civil action or other legal proceeding.

9. The interstate commission shall keep minutes which shall fully describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including record of any roll call votes.

10. The interstate commission shall make its information and official records, to the extent not otherwise designated in the compact or by its rules, available to the public for inspection.

11. The interstate commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. When acting on behalf of the interstate commission, the executive committee shall oversee the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as necessary.

12. The interstate commission may establish other committees for governance and administration of the compact.

§ 8872. Powers and duties of the interstate commission. The interstate commission shall have the duty and power to:

1. Oversee and maintain the administration of the compact;

2. Promulgate rules which shall be binding to the extent and in the manner provided for in the compact;

3. Issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules, and actions;

4. Enforce compliance with compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

5. Establish and appoint committees including, but not limited to, an executive committee as required by section eighty-eight hundred seventy-one of this article, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties;

6. Pay, or provide for the payment of the expenses related to the establishment, organization, and ongoing activities of the interstate commission;

7. Establish and maintain one or more offices;

8. Borrow, accept, hire, or contract for services of personnel;

9. Purchase and maintain insurance and bonds;

10. Employ an executive director who shall have such powers to employ, select or appoint employees, agents, or consultants, and to determine their qualifications, define their duties, and fix their compensation;

11. Establish personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

12. Accept donations and grants of money, equipment, supplies, materials and services, and to receive, utilize, and dispose of it in a manner consistent with the conflict of interest policies established by the interstate commission;

13. Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed;

14. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

15. Establish a budget and make expenditures;

16. Adopt a seal and bylaws governing the management and operation of the interstate commission;

17. Report annually to the legislatures and governors of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include reports of financial audits and any recommendations that may have been adopted by the interstate commission;

18. Coordinate education, training, and public awareness regarding the compact, its implementation, and its operation;

19. Maintain records in accordance with the bylaws;

20. Seek and obtain trademarks, copyrights, and patents; and

21. Perform such functions as may be necessary or appropriate to achieve the purposes of the compact.

§ 8873. Finance powers. 1. The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff. The total assessment must be sufficient to cover the annual budget approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

2. The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same.

3. The interstate commission shall not pledge the credit of any of the member states, except by, and with the authority of, the member state.

4. The interstate commission shall be subject to a yearly financial audit conducted by a certified or licensed public accountant and the report of the audit shall be included in the annual report of the interstate commission.

§ 8874. Organization and operation of the interstate commission. 1. The interstate commission shall, by a majority of commissioners present and voting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact within twelve months of the first interstate commission meeting.

2. The interstate commission shall elect or appoint annually from among its commissioners a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson, or in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission.

3. Officers selected pursuant to subdivision two of this section shall serve without remuneration from the interstate commission.

4. The officers and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of, or relating to, an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(a) The liability of the executive director and employees of the interstate commission or representatives of the interstate commission, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state, may not

exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this paragraph shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(b) The interstate commission shall defend the executive director, its employees, and subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant 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 intentional or willful and wanton misconduct on the part of such person.

(c) To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons 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 intentional or willful and wanton misconduct on the part of such persons.

§ 8875. Rulemaking functions of the interstate commission. 1. The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect.

2. Rules deemed appropriate for the operations of the interstate commission shall be made pursuant to a rulemaking process that substantially conforms to the federal Model State Administrative Procedure Act of 2010, and subsequent amendments thereto.

3. Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule in the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices, provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the authority granted to the interstate commission.

§ 8876. Oversight of interstate compact. 1. The executive, legislative, and judicial branches of state government in each member state shall enforce the compact and shall take all actions necessary and

appropriate to effectuate the compact's purposes and intent. The provisions of the compact and the rules promulgated hereunder shall have standing as statutory law but shall not override existing state authority to regulate the practice of medicine.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the compact which may affect the powers, responsibilities or actions of the interstate commission.

3. The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, the compact, or promulgated rules.

§ 8877. Enforcement of interstate compact. 1. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the compact.

2. The interstate commission may, by majority vote of the commissioners, initiate legal action in the United States District Court for the District of Columbia, or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, and its promulgated rules and bylaws, against a member state in default. 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 attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

§ 8878. Default procedures. 1. The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by the compact, or the rules and bylaws of the interstate commission promulgated under the compact.

2. If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact, or the bylaws or promulgated rules, the interstate commission shall:

(a) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default; and

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

3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the commissioners and all rights, privileges, and benefits conferred by the compact shall terminate 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 the default.

4. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

5. The interstate commission shall establish rules and procedures to address licenses and physicians that are materially impacted by the termination of a member state, or the withdrawal of a member state.

6. The member state which has been terminated is responsible for all dues, obligations, and liabilities incurred through the effective date of termination including obligations, the performance of which extends beyond the effective date of termination.

7. The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

8. The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

§ 8879. Dispute resolution. 1. The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states or member boards.

2. The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.

§ 8880. Member states, effective date and amendment. 1. Any state is eligible to become a member state of the compact.

2. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than seven states. Thereafter, it shall become effective and binding on a state upon enactment of the compact into law by that state.

3. The governors of non-member states, or their designees, shall be invited to participate in the activities of the interstate commission on a non-voting basis prior to adoption of the compact by all states.

4. The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

§ 8881. Withdrawal. 1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. Withdrawal from the compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.

3. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state.

4. The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of its receipt of notice provided under subdivision three of this section.

5. The withdrawing state is responsible for all dues, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

6. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

7. The interstate commission is authorized to develop rules to address the impact of the withdrawal of a member state on licenses granted in other member states to physicians who designated the withdrawing member state as the state of principal license.

§ 8882. Dissolution. 1. The compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

2. Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

§ 8883. Severability and construction. 1. The provisions of the compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

2. The provisions of the compact shall be liberally construed to effectuate its purposes.

3. Nothing in the compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

§ 8884. Binding effect of compact and other laws. 1. Nothing contained in this article shall prevent the enforcement of any other law of a member state that is not inconsistent with the compact.

2. All laws in a member state in conflict with the compact are superseded to the extent of the conflict.

3. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

4. All agreements between the interstate commission and the member states are binding in accordance with their terms.

5. In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

§ 2. Article 170 of the education law, as renumbered by chapter 905 of the laws of 1990, is renumbered article 171 and a new article 170 is added to title 8 of the education law to read as follows:

ARTICLE 170

NURSE LICENSURE COMPACT

Section 8900. Nurse licensure compact.

8901. Findings and declaration of purpose.
8902. Definitions.
8903. General provisions and jurisdiction.
8904. Applications for licensure in a party state.
8905. Additional authorities invested in party state licensing boards.
8906. Coordinated licensure information system and exchange of information.
8907. Establishment of the interstate commission of nurse licensure compact administrators.
8908. Rulemaking.
8909. Oversight, dispute resolution and enforcement.
8910. Effective date, withdrawal and amendment.
8911. Construction and severability.

§ 8900. Nurse licensure compact. The nurse license compact as set forth in the article is hereby adopted and entered into with all party states joining therein.

§ 8901. Findings and declaration of purpose 1. Findings. The party states find that:

a. 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;

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

c. 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;

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

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

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

2. Declaration of purpose. The general purposes of this compact are to:

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

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

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

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

e. 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;

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

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

§ 8902. Definitions. 1. Definitions. As used in this compact:

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

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

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

d. "Commission" means the interstate commission of nurse licensure compact administrators.

e. "Current significant investigative information" means:

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

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

3. Any information concerning a nurse reported to a licensing board by a health care entity, health care professional, or any other person, which indicates that the nurse demonstrated an impairment, gross incompetence, or unprofessional conduct that would present an imminent danger to a patient or the public health, safety, or welfare.

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

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

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

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

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

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

l. "Party state" means any state that has adopted this compact.

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

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

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

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

§ 8903. General provisions and jurisdiction. 1. General provisions and jurisdiction. a. A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse (RN) or as a licensed practical/vocational nurse (LPN/VN), under a multistate licensure privilege, in each party state.

b. A state shall implement procedures for considering the criminal history records of applicants for an 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 its licensing board to authorize an applicant to obtain or retain a multistate license in the home state only if the applicant:

i. Meets the home state's qualifications for licensure or renewal of licensure, and complies with all other applicable state laws;

ii. (1) Has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN prelicensure education program; or

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

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

iv. Has successfully passed an NCLEX-RN or NCLEX-PN examination or recognized predecessor, as applicable;

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

vi. 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;

vii. 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;

viii. 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;

ix. Is not currently enrolled in an alternative program;

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

xi. 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 shall 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:

i. A nurse, who changes primary state of residence after this compact's effective date, shall meet all applicable requirements set forth in this article to obtain a multistate license from a new home state.

ii. A nurse who fails to satisfy the multistate licensure requirements set forth in this article 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 commission.

§ 8904. Applications for licensure in a party state. 1. Applications for licensure in a party state. a. Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant and whether the applicant is currently participating in an alternative program.

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

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

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

ii. 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.

§ 8905. Additional authorities invested in party state licensing boards. 1. Licensing board authority. In addition to the other powers conferred by state law, a licensing board shall have the authority to:

a. 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.

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

c. 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 authority to take appropriate action or actions and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

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

e. Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the federal bureau of investigation for criminal background checks, receive the results of the federal bureau of investigation record search on criminal background checks and use the results in making licensure decisions.

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

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

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

b. 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.

§ 8906. Coordinated licensure information system and exchange of information. 1. Coordinated licensure information system and exchange of information. a. All party states shall participate in a coordinated licensure information system of all licensed registered nurses (RNs) and licensed practical/vocational nurses (LPNs/VNs). This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

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

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

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

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

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

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

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

i. Identifying information;

ii. Licensure data;

iii. Information related to alternative program participation; and

iv. Other information that may facilitate the administration of this compact, as determined by commission rules.

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

§ 8907. Establishment of the interstate commission of nurse licensure compact administrators. 1. Commission of nurse licensure compact administrators. The party states hereby create and establish a joint public entity known as the interstate commission of nurse licensure compact administrators. The commission is an instrumentality of the party states.

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

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

4. Membership, voting and meetings. a. Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this compact for each party state. Any administrator may be removed or suspended from office as

provided by the law of the state from which the administrator is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

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

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

d. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rule-making provisions in section eighty-nine hundred three of this article.

5. Closed meetings. a. The commission may convene in a closed, nonpublic meeting if the commission shall discuss:

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

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

iii. Current, threatened or reasonably anticipated litigation;

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

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

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

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

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

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

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

b. If a meeting, or portion of a meeting, is closed pursuant to this paragraph the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The 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 commission or order of a court of competent jurisdiction.

c. The 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:

i. Establishing the fiscal year of the commission;

ii. Providing reasonable standards and procedures:

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

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

iii. Providing reasonable procedures for calling and conducting meetings of the 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 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 commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed;

iv. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;

v. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the 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 commission; and

vi. Providing a mechanism for winding up the operations of the 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.

6. General provisions. a. The commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the commission.

b. The commission shall maintain its financial records in accordance with the bylaws.

c. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

7. Powers of the commission. The commission shall have the following powers:

a. 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;

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

c. To purchase and maintain insurance and bonds;

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

e. 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;

f. 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 commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters;

g. 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 all times the commission shall avoid any appearance of impropriety or conflict of interest;

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

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

j. To establish a budget and make expenditures;

k. To borrow money;

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

m. To provide and receive information from, and to cooperate with, law enforcement agencies;

n. To adopt and use an official seal; and

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

8. Financing of the commission. a. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

b. The 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 commission, which shall promulgate a rule that is binding upon all party states.

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

d. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the 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 commission.

9. Qualified immunity, defense and indemnification. a. The administrators, officers, executive director, employees and representatives of the 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 the commission's 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.

b. The commission shall defend any administrator, officer, executive director, employee or representative of the 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 the commission's 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 the commission's 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.

c. The commission shall indemnify and hold harmless any administrator, officer, executive director, employee or representative of the 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 the commission's employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of the commission's 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.

§ 8908. Rulemaking. 1. Rulemaking. a. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this compact.

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

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

i. On the website of the commission; and

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

b. The notice of proposed rulemaking shall include:

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

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

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

iv. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

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

3. Public hearings on rules. a. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

b. The commission shall publish the place, time and date of the scheduled public hearing.

i. 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.

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

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

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

4. Voting on rules. The 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.

5. Emergency rules. Upon determination that an emergency exists, the 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 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:

a. Meet an imminent threat to public health, safety or welfare;

b. Prevent a loss of the commission or party state funds; or

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

6. Revisions. The 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 commission. The revision shall be subject to challenge by any person for a period of thirty 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 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 commission.

§ 8909. Oversight, dispute resolution and enforcement. 1. Oversight. a. Each party state shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.

b. The commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities or actions of the 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 commission shall render a judgment or order void as to the commission, this compact or promulgated rules.

2. Default, technical assistance and termination. a. If the commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

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

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

b. 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 offend-

ing state of obligations or liabilities incurred during the period of default.

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

d. 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.

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

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

3. Dispute resolution. a. Upon request by a party state, the commission shall attempt to resolve disputes related to the compact that arise among party states and between party and non-party states.

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

c. In the event the commission cannot resolve disputes among party states arising under this compact:

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

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

4. Enforcement. a. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

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

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

§ 8910. Effective date, withdrawal and amendment. 1. Effective date. 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 states or the effective date of the chapter of the laws that enacted this compact. Thereafter, the compact shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. All party states to this compact, that also were parties to the prior nurse licensure compact, superseded by this compact, (herein referred to as "prior compact"), shall be deemed

to have withdrawn from said prior compact within six months after the effective date of this compact.

b. Each party state to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until such party state has withdrawn from the prior compact.

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

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

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

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

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

§ 8911. Construction and severability. 1. 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 to be 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.

§ 3. This act shall take effect immediately. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.