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SENATE BILL

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

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

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

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

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 Section 61-3-24.1 NMSA 1978 (being Laws 2003, Chapter 307, Section 1) is repealed and a new Section 61-3-24.1 NMSA 1978 is enacted to read:

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

"Nurse Licensure Compact

ARTICLE 1 - Findings and Declaration of Purpose

A. The party states find that:

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

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

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

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

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

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

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

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

25 (2) ensure and encourage the cooperation of

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

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

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

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

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

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

16 ARTICLE 2 - Definitions

17 As used in this compact:

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

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1 issuance of a cease and desist action;

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

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

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

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

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

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

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

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1 nursing imposed by a licensing board;

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

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

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

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

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

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

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

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

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

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

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

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

12 ARTICLE 3 - General Provisions and Jurisdiction

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

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

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1 responsible for retaining that state's criminal records.

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

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

8 (2) has graduated:

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

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

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

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

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

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

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

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

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

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

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

25 (11) has a valid United States social security

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1 number.

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

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

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

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

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

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

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

22               ARTICLE 4 - Applications for Licensure in a Party State

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25   ARTICLE 7 - Establishment of the Interstate Commission of Nurse  
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Licensure Compact Administrators

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

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

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

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

B. Membership, Voting and Meetings

(1) Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the administrator is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

(2) Each administrator shall be entitled to

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

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

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

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

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

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

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

25 (d) negotiation of contracts for the

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

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

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

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

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

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

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

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

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

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

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

12 (2) providing reasonable standards and  
13 procedures:

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

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

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

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

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

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

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

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

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

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

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1 bylaws.

2 G. The commission shall have the following powers:

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

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

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

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

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

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

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1 matters;

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

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

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

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

17 (11) to borrow money;

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

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

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

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

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

4 H. Financing of the Commission

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

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

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

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

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

4 I. Qualified Immunity, Defense and Indemnification

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

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

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

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

17 ARTICLE 8 - Rulemaking

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

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

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

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

10 D. The notice of proposed rulemaking shall include:

- 11 (1) the proposed time, date and location of  
12 the meeting in which the rule will be considered and voted  
13 upon;  
14 (2) the text of the proposed rule or  
15 amendment, and the reason for the proposed rule;  
16 (3) a request for comments on the proposed  
17 rule from any interested person; and  
18 (4) the manner in which interested persons may  
19 submit notice to the commission of their intention to attend  
20 the public hearing and any written comments.

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

25 F. The commission shall grant an opportunity for a

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1 public hearing before it adopts a rule or amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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1           ARTICLE 9 - Oversight, Dispute Resolution and Enforcement

2                   A. Oversight

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

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

13                   B. Default, Technical Assistance and Termination

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

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

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

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

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

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

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

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

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

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

5 C. Dispute Resolution

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

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

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

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

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

23 D. Enforcement

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

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1 this compact.

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

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

15 ARTICLE 10 - Effective Date, Withdrawal and Amendment

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

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

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

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

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

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

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

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

24 ARTICLE 11 - Construction and Severability

25 This compact shall be liberally construed so as to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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