HOUSE BILL NO. 526

INTRODUCED BY A. REGIER

A BILL FOR AN ACT ENTITLED: “AN ACT ADOPTING THE ADVANCE PRACTICE REGISTERED NURSE COMPACT; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING DEFINITIONS.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Advance practice registered nurse compact -- enactment -- provisions.** The advanced practice registered nurse compact is enacted into law and entered into with all jurisdictions legally joining in the compact, in the form substantially as set forth below.

ARTICLE I

FINDINGS AND DECLARATIONS OF PURPOSE

(1) The party states find that:

(a) the health and safety of the public are affected by the degree of compliance with APRN licensure requirements and the effectiveness of enforcement activities related to state APRN licensure laws;

(b) violations of APRN licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(c) the expanded mobility of APRNs and the use of advanced communication and intervention technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of APRN licensure and regulation;

(d) new practice modalities and technology make compliance with individual state APRN licensure laws difficult and complex;

(e) the current system of duplicative APRN licensure for APRNs practicing in multiple states is cumbersome and redundant for health care delivery systems, payors, state licensing boards, regulators, and APRNs; and

(f) uniformity of APRN licensure requirements throughout the states promotes public safety and public health benefits as well as providing a mechanism to increase access to care.

(2) 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 APRN licensure and regulation, including promotion of uniform licensure requirements;

(c) facilitate the exchange of information between party states in the areas of APRN regulation, investigation, and adverse actions;

(d) promote compliance with the laws governing APRN practice in each jurisdiction;

(e) invest all party states with the authority to hold an APRN 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 privileges to practice;

(f) decrease redundancies in the consideration and issuance of APRN licenses; and

(g) provide opportunities for interstate practice by APRNs who meet uniform licensure requirements.

ARTICLE II

DEFINITIONS

As used in this compact:

(1) "Advanced practice registered nurse" or "APRN" means a registered nurse who has gained additional specialized knowledge, skills, and experience through a program of study recognized or defined by the interstate commission of APRN compact administrators ("commission"), and who is licensed to perform advanced nursing practice. An advanced practice registered nurse is licensed in an APRN role that is congruent with an APRN educational program, certification, and commission rules.

(2) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws that is imposed by a licensing board or other authority against an APRN, 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 an APRN's authorization to practice, including the issuance of a cease and desist action.

(3) "Alternative program" means a nondisciplinary monitoring program approved by a licensing board.

(4) "APRN licensure" means the regulatory mechanism used by a party state to grant legal authority to practice as an APRN.

(5) "APRN uniform licensure requirements" means the minimum uniform licensure, education, and examination requirements set forth in subsection (2) of Article III of this compact.

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

(7) "Current significant investigatory information" means:

(a) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the APRN 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

(b) investigative information that indicates that the APRN represents an immediate threat to public health and safety regardless of whether the APRN has been notified and had an opportunity to respond.

(8) "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board in connection with a disciplinary proceeding.

(9) "Home state" means the party state that is the APRN's primary state of residence.

(10) "Licensing board" means a party state's regulatory body responsible for regulating the practice of advanced practice registered nursing.

(11) "Multistate license" means an APRN license to practice as an APRN issued by a home state licensing board that authorizes the APRN to practice as an APRN in all party states under a multistate licensure privilege in the same role and population focus as the APRN is licensed in the home state.

(12) "Multistate licensure privilege" means a legal authorization associated with an APRN multistate license that permits an APRN to practice as an APRN in a remote state, in the same role and population focus as the APRN is licensed in the home state.

(13) "Noncontrolled prescription drug" means a device or drug that is not a controlled substance and is prohibited under state or federal law from being dispensed without a prescription. The term includes a device or drug that bears or is required to bear the legend "Caution: federal law prohibits dispensing without prescription" or "prescription only" or other legend that complies with federal law.

(14) "Party state" means any state that has adopted this compact.

(15) "Population focus" means one of the six population foci of family/individual across the lifespan, adult-gerontology, pediatrics, neonatal, women's health/gender-related, and psych/mental health.

(16) "Prescriptive authority" means the legal authority to prescribe medications and devices as defined by party state laws.

(17) "Remote state" means a party state that is not the home state.

(18) "Role" means one of the four recognized roles of certified registered nurse anesthetists (CRNA), certified nurse-midwives (CNM), clinical nurse specialists (CNS), and certified nurse practitioners (CNP).

(19) "Single-state license" means an APRN 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.

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

(21) "State practice laws" means a party state's laws, rules, and regulations that govern APRN practice, define the scope of advanced nursing practice, and create the methods and grounds for imposing discipline, except that prescriptive authority must be treated in accordance with subsections (7) and (8) of Article III of this compact. "State practice laws" does not include:

(a) a party state's laws, rules, and regulations requiring supervision or collaboration with a health care professional, except for laws, rules, and regulations regarding prescribing controlled substances; or

(b) the requirements necessary to obtain and retain an APRN license, except for qualifications or requirements of the home state.

ARTICLE III

GENERAL PROVISIONS AND JURISDICTION

(1) A state shall implement procedures for considering the criminal history records of applicants for initial APRN licensure or APRN licensure by endorsement. Such procedures must include the submission of fingerprints or other biometric-based information by APRN 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 the state's criminal records.

(2) Each party state shall require an applicant to satisfy the following APRN uniform licensure requirements to obtain or retain a multistate license in the home state:

(a) meets the homes state's qualifications for licensure or renewal of licensure as well as all other applicable state laws;

(b) (i) has completed an accredited graduate-level education program that prepares the applicant for one of the four recognized roles and population foci; or

(ii) has completed a foreign APRN education program for one of the four recognized roles and population foci that has been approved by the authorized accrediting body in the applicable country and has been verified by an independent credentials review agency to be comparable to a licensing board approved APRN education program;

(c) has, if a graduate of a foreign APRN 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;

(d) has successfully passed a national certification examination that measures APRN role and population-focused competencies and maintains continued competence as evidenced by recertification in the role and population focus through the national certification program;

(e) holds an active, unencumbered license as a registered nurse and an active, unencumbered authorization to practice as an APRN;

(f) has successfully passed an NCLEX-RN® examination or recognized predecessor, as applicable;

(g) has practiced for at least 2,080 hours as an APRN in a role and population focus congruent with the applicant's education and training. For purposes of this section, practice may not include hours obtained as part of enrollment in an APRN education program.

(h) 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 or, if applicable, foreign country's criminal records;

(i) has not been convicted or found guilty, or has entered into an agreed disposition, of a felony

offense under applicable state, federal, or foreign criminal law;

(j) 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 by factors set forth in rules adopted by the commission;

(k) is not currently enrolled in an alternative program;

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

(m) has a valid United States social security number.

(3) An APRN issued a multistate license shall be licensed in an approved role and at least one approved population focus.

(4) An APRN multistate license issued by a home state to a resident in that state will be recognized by each party state as authorizing the APRN to practice as an APRN in each party state, under a multistate licensure privilege, in the same role and population focus as the APRN is licensed in the home state.

(5) Nothing in this compact may affect the requirements established by a party state for the issuance of a single-state license, except that an individual may apply for a single-state license, instead of a multistate license, even if otherwise qualified for the multistate license. However, the failure of such an individual to affirmatively opt for a single-state license may result in the issuance of a multistate license.

(6) Issuance of an APRN multistate license must include prescriptive authority for noncontrolled prescription drugs.

(7) For each state in which an APRN seeks authority to prescribe controlled substances, the APRN shall satisfy all requirements imposed by such state in granting and/or renewing such authority.

(8) An APRN issued a multistate license is authorized to assume responsibility and accountability for patient care independent of any supervisory or collaborative relationship. This authority may be exercised in the home state and in any remote state in which the APRN exercises a multistate licensure privilege.

(9) All party states must be authorized, in accordance with state due process laws, to take adverse action against an APRN's multistate licensure privilege such as revocation, suspension, probation, or any other action that affects an APRN'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.

(10) Except as otherwise expressly provided in this compact, an APRN 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. APRN practice is not limited to patient care but must include all advanced nursing practice as defined by the state practice laws of the party state in which the client is located. APRN practice in a party state under a multistate licensure privilege will subject the APRN 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.

(11) Except as otherwise expressly provided in this compact, this compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state must be recognized by other party states as satisfying any state law requirement for registered nurse licensure as a precondition for authorization to practice as an APRN in that state.

(12) Individuals not residing in a party state shall continue to be able to apply for a party state's single-state APRN 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 as an APRN in any other party state.

ARTICLE IV

APPLICATIONS FOR APRN

LICENSURE IN A PARTY STATE

(1) Upon application for an APRN 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 licensed practical/vocational nursing license, a registered nursing license, or an advanced practice registered nurse 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.

(2) An APRN may hold a multistate APRN license, issued by the home state, in only one party

state at a time.

(3) If an APRN changes primary state of residence by moving between two party states, the APRN shall apply for APRN licensure in the new home state, and the multistate license issued by the prior home state must be deactivated in accordance with applicable commission rules.

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

(5) A multistate APRN license may not be issued by the new home state until the APRN 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 APRN license from the new home state.

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

ARTICLE V

ADDITIONAL AUTHORITIES INVESTED

IN PARTY STATE LICENSING BOARDS

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

(a) take adverse action against an APRN's multistate licensure privilege to practice within that party state. Only the home state shall have power to take adverse action against an APRN's license issued by the home state. For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct that occurred outside of the home 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 an APRN's authority to practice within that party state;

(c) complete any pending investigations of an APRN 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 party state licensing board for the attendance and testimony of witnesses and/or the production of evidence from another party state must be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing licensing board shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses and/or evidence are located.

(e) obtain and submit, for an APRN licensure applicant, fingerprints 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 APRN the costs of investigations and disposition of cases resulting from any adverse action taken against that APRN; and

(g) take adverse action based on the factual findings of another party state, provided that the licensing board follow its own procedures for taking such adverse action.

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

(3) Nothing in this compact may 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 APRN for the duration of the APRN's participation in an alternative program.

ARTICLE VI

COORDINATED LICENSURE INFORMATION SYSTEM

AND EXCHANGE OF INFORMATION

(1) All party states shall participate in a coordinated licensure information system of all APRNs, licensed registered nurses, and licensed practical or vocational nurses. This system will include information on the licensure and disciplinary history of each APRN, as submitted by party states, to assist in the coordinated administration of APRN licensure and enforcement efforts.

(2) 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.

(3) 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 APRN participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic and/or confidential under state law.

(4) 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 nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

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

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

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

(a) identifying information;

(b) licensure data;

(c) information related to alternative program participation information; and

(d) other information that may facilitate the administration of this compact, as determined by commission rules.

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

ARTICLE VII

ESTABLISHMENT OF THE INTERSTATE COMMISSION

OF APRN COMPACT ADMINISTRATORS

(1) The party states hereby create and establish a joint public agency known as the interstate commission of APRN compact administrators.

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

(b) Venue is proper, and judicial proceedings by or against the commission must 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.

(c) Nothing in this compact may be construed to be a waiver of sovereign immunity.

(2) 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 must 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 must be held as set forth in the bylaws or rules of the commission.

(d) All meetings must be open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in Article VIII.

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

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

(ii) the employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the 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.

(f) If a meeting, or portion of a meeting, is closed pursuant to this provision, 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 must be identified in such minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(3) 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:

(a) establishing the fiscal year of the commission;

(b) providing reasonable standards and procedures:

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

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

(c) 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.

(d) establishing the titles, duties, and authority, and reasonable procedures for the election of the officers of the commission;

(e) 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 must exclusively govern the personnel policies and programs of the commission.

(f) 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 and/or reserving of all of its debts and obligations.

(4) The commission shall:

(a) publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the commission;

(b) maintain its financial records in accordance with the bylaws; and

(c) meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(5) The commission shall have the following powers:

(a) to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules must have the force and effect of law and must 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 may 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 strive to avoid any appearance of impropriety and/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 strive to 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 issue advisory opinions;

(n) to provide and receive information from, and to cooperate with, law enforcement agencies;

(o) to adopt and use an official seal; and

(p) to perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of APRN licensure and practice.

(6) 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, must 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 may not incur obligations of any kind prior to securing the funds adequate to meet the same; nor may 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 must be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.

(7) Qualified immunity, defense, and indemnification:

(a) the administrators, officers, executive director, employees, and representatives of the commission must 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 commission employment, duties, or responsibilities; provided that nothing in this paragraph may be construed to protect any such person from suit and/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 commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein may 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 commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

ARTICLE VIII

RULEMAKING

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

(2) Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.

(3) Prior to promulgation and adoption of a final rule or rules by the commission, and at least 60 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:

(a) on the website of the commission; and

(b) on the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

(4) The notice of proposed rulemaking must include:

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

(b) the text of the proposed rule or amendment, and the reason for the proposed rule;

(c) a request for comments on the proposed rule from any interested person; and

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

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

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

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

(a) Hearings must 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.

(b) Nothing in this section may 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.

(8) 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.

(9) 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.

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

(a) meet an imminent threat to public health, safety, or welfare;

(b) prevent a loss of commission or party state funds; or

(c) meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

(11) 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 must be posted on the website of the commission. The revision must be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must 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.

ARTICLE IX

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 to the commission must 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, and/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 offending state of obligations or liabilities incurred during the period of default.

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

board, 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 may 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 attorney 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 nonparty states.

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

(c) (i) In the event the commission cannot resolve disputes among party states arising under this compact, 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 must 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 United States 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 attorney fees.

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

ARTICLE X

EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

(1) This compact must come into limited effect at such time as this compact has been enacted into law in seven party states for the sole purpose of establishing and convening the commission to adopt rules relating to its operation.

(2) Any state that joins this compact subsequent to the commission's initial adoption of the APRN uniform licensure requirements shall be subject to all rules that have been previously adopted by the commission.

(3) Any party may withdraw from this compact by enacting a statute repealing the same. A party state's withdrawal may not take effect until 6 months after enactment of the repealing statute.

(4) A party state's withdrawal or termination may 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.

(5) Nothing contained in this compact may be construed to invalidate or prevent any APRN licensure agreement or other cooperative arrangement between a party state and a nonparty state that does not conflict with the provisions of this compact.

(6) This compact may be amended by the party states. No amendment to this compact may become effective and binding upon any party state until it is enacted into the laws of all party states.

(7) Representatives of nonparty 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.

ARTICLE XI

CONSTRUCTION AND SEVERABILITY

This compact must be liberally construed so as to effectuate the purposes thereof. The provisions of this compact must be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and

the applicability thereof to any government, agency, person, or circumstance may not be affected thereby. If this compact must be held to be contrary to the constitution of any party state, this compact must 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.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as a new part in Title 37, chapter 8, and the provisions of Title 37, chapter 8, apply to [section 1].

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