

HOUSE BILL NO. 4046

January 27, 2021, Introduced by Rep. Whiteford and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16170a, 16222, 16231, 16238, and 17201 (MCL 333.16170a, 333.16222, 333.16231, 333.16238, and 333.17201), section 16170a as amended by 2013 PA 268, section 16222 as amended by 2014 PA 97, section 16231 as amended by 2017 PA 249, section 16238 as added by 1993 PA 79, and section 17201 as amended by 2016 PA 499, and by adding sections 16190, 17225, and 17225a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16170a. (1) The identity of an individual submitting
 2 information to the committee or the department regarding the
 3 suspected impairment of a health professional is confidential.

4 (2) The identity of a health professional who participates in
 5 the health professional recovery program is confidential and is not
 6 subject to disclosure under discovery or subpoena or the freedom of
 7 information act, 1976 PA 442, MCL 15.231 to 15.246, unless the
 8 health professional fails to satisfactorily participate in and
 9 complete a treatment plan prescribed under the health professional
 10 recovery program or violates section 16170(3) **or the information is**
 11 **required to be disclosed for purposes of the nurse licensure**
 12 **compact enacted in section 16190.**

13 (3) If a health professional successfully participates in and
 14 completes a treatment plan prescribed under the health professional
 15 recovery program, as determined by the committee, the department
 16 shall destroy all records pertaining to the impairment of the
 17 health professional, including records pertaining to the health
 18 professional's participation in the treatment plan, ~~upon~~ on the
 19 expiration of 5 years after the date of the committee's
 20 determination. This subsection does not apply to records pertaining
 21 to a violation of this article, article 7, or article 8 or a rule
 22 promulgated under this article, article 7, or article 8.

23 **Sec. 16190. (1) The nurse licensure compact is enacted into**
 24 **law and entered into by this state as a party state with all other**
 25 **jurisdictions that legally join in the compact, in the form**
 26 **substantially as follows:**

27 **NURSE LICENSURE COMPACT**

28 **ARTICLE I**

29 **FINDINGS AND DECLARATION OF PURPOSE**

1 a. The party states find that:

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

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

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

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

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

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

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

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

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

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

26 4. Promote compliance with the laws governing the practice of
27 nursing in each jurisdiction;

28 5. Invest all party states with the authority to hold a nurse
29 accountable for meeting all state practice laws in the state in

1 which the patient is located at the time care is rendered through
2 the mutual recognition of party state licenses;

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

5 7. Provide opportunities for interstate practice by nurses who
6 meet uniform licensure requirements.

7 ARTICLE II

8 DEFINITIONS

9 As used in this Compact:

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

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

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

25 d. "Current significant investigative information" means:

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

1 than a minor infraction; or

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

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

9 f. "Home state" means the party state which is the nurse's
10 primary state of residence.

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

13 h. "Multistate license" means a license to practice as a
14 registered or a licensed practical/vocational nurse (LPN/VN) issued
15 by a home state licensing board that authorizes the licensed nurse
16 to practice in all party states under a multistate licensure
17 privilege.

18 i. "Multistate licensure privilege" means a legal
19 authorization associated with a multistate license permitting the
20 practice of nursing as either a registered nurse (RN) or LPN/VN in
21 a remote state.

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

24 k. "Party state" means any state that has adopted this
25 Compact.

26 l. "Remote state" means a party state, other than the home
27 state.

28 m. "Single-state license" means a nurse license issued by a
29 party state that authorizes practice only within the issuing state

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

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

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

11 ARTICLE III

12 GENERAL PROVISIONS AND JURISDICTION

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

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

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

- 1 1. Meets the home state's qualifications for licensure or
2 renewal of licensure, as well as, all other applicable state laws;
- 3 2. i. Has graduated or is eligible to graduate from a
4 licensing board-approved RN or LPN/VN prelicensure education
5 program; or
6 ii. Has graduated from a foreign RN or LPN/VN prelicensure
7 education program that (a) has been approved by the authorized
8 accrediting body in the applicable country and (b) has been
9 verified by an independent credentials review agency to be
10 comparable to a licensing board-approved prelicensure education
11 program;
- 12 3. Has, if a graduate of a foreign prelicensure education
13 program not taught in English or if English is not the individual's
14 native language, successfully passed an English proficiency
15 examination that includes the components of reading, speaking,
16 writing and listening;
- 17 4. Has successfully passed an NCLEX-RN® or NCLEX-PN®
18 Examination or recognized predecessor, as applicable;
- 19 5. Is eligible for or holds an active, unencumbered license;
- 20 6. Has submitted, in connection with an application for
21 initial licensure or licensure by endorsement, fingerprints or
22 other biometric data for the purpose of obtaining criminal history
23 record information from the Federal Bureau of Investigation and the
24 agency responsible for retaining that state's criminal records;
- 25 7. Has not been convicted or found guilty, or has entered into
26 an agreed disposition, of a felony offense under applicable state
27 or federal criminal law;
- 28 8. Has not been convicted or found guilty, or has entered into
29 an agreed disposition, of a misdemeanor offense related to the

1 practice of nursing as determined on a case-by-case basis;

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

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

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

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

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

26 f. Individuals not residing in a party state shall continue to
27 be able to apply for a party state's single-state license as
28 provided under the laws of each party state. However, the single-
29 state license granted to these individuals will not be recognized

1 as granting the privilege to practice nursing in any other party
2 state. Nothing in this Compact shall affect the requirements
3 established by a party state for the issuance of a single-state
4 license.

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

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

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

19 ARTICLE IV

20 APPLICATIONS FOR LICENSURE IN A PARTY STATE

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

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

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

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

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

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

19 ARTICLE V

20 ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE LICENSING BOARDS

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

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

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

27 ii. For purposes of taking adverse action, the home state
28 licensing board shall give the same priority and effect to reported
29 conduct received from a remote state as it would if such conduct

1 had occurred within the home state. In so doing, the home state
2 shall apply its own state laws to determine appropriate action.

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

5 3. Complete any pending investigations of a nurse who changes
6 primary state of residence during the course of such
7 investigations. The licensing board shall also have the authority
8 to take appropriate action(s) and shall promptly report the
9 conclusions of such investigations to the administrator of the
10 coordinated licensure information system. The administrator of the
11 coordinated licensure information system shall promptly notify the
12 new home state of any such actions.

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

24 5. Obtain and submit, for each nurse licensure applicant,
25 fingerprint or other biometric-based information to the Federal
26 Bureau of Investigation for criminal background checks, receive the
27 results of the Federal Bureau of Investigation record search on
28 criminal background checks and use the results in making licensure
29 decisions.

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

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

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

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

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

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

1 also be expunged from the coordinated licensure information system.

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

- 5 1. Identifying information;
- 6 2. Licensure data;
- 7 3. Information related to alternative program participation;

8 and

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

11 i. The Compact administrator of a party state shall provide
12 all investigative documents and information requested by another
13 party state.

14 ARTICLE VII

15 ESTABLISHMENT OF THE INTERSTATE COMMISSION OF NURSE LICENSURE
16 COMPACT ADMINISTRATORS

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

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

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

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

29 b. Membership, Voting and Meetings

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

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

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

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

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

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

26 ii. The employment, compensation, discipline or other
27 personnel matters, practices or procedures related to specific
28 employees or other matters related to the Commission's internal
29 personnel practices and procedures;

1 iii. Current, threatened or reasonably anticipated litigation;

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

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

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

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

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

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

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

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

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

5 1. Establishing the fiscal year of the Commission;

6 2. Providing reasonable standards and procedures:

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

8 ii. Governing any general or specific delegation of any
9 authority or function of the Commission;

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

21 4. Establishing the titles, duties and authority and
22 reasonable procedures for the election of the officers of the
23 Commission;

24 5. Providing reasonable standards and procedures for the
25 establishment of the personnel policies and programs of the
26 Commission. Notwithstanding any civil service or other similar laws
27 of any party state, the bylaws shall exclusively govern the
28 personnel policies and programs of the Commission; and

29 6. Providing a mechanism for winding up the operations of the

1 Commission and the equitable disposition of any surplus funds that
2 may exist after the termination of this Compact after the payment
3 or reserving of all of its debts and obligations;

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

7 e. The Commission shall maintain its financial records in
8 accordance with the bylaws.

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

11 g. The Commission shall have the following powers:

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

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

19 3. To purchase and maintain insurance and bonds;

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

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

27 6. To hire employees, elect or appoint officers, fix
28 compensation, define duties, grant such individuals appropriate
29 authority to carry out the purposes of this Compact, and to

1 establish the Commission's personnel policies and programs relating
2 to conflicts of interest, qualifications of personnel and other
3 related personnel matters;

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

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

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

16 10. To establish a budget and make expenditures;

17 11. To borrow money;

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

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

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

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

28 h. Financing of the Commission

29 1. The Commission shall pay, or provide for the payment of,

1 the reasonable expenses of its establishment, organization and
2 ongoing activities.

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

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

14 4. The Commission shall keep accurate accounts of all receipts
15 and disbursements. The receipts and disbursements of the Commission
16 shall be subject to the audit and accounting procedures established
17 under its bylaws. However, all receipts and disbursements of funds
18 handled by the Commission shall be audited yearly by a certified or
19 licensed public accountant, and the report of the audit shall be
20 included in and become part of the annual report of the Commission.

21 i. Qualified Immunity, Defense and Indemnification

22 1. The administrators, officers, executive director, employees
23 and representatives of the Commission shall be immune from suit and
24 liability, either personally or in their official capacity, for any
25 claim for damage to or loss of property or personal injury or other
26 civil liability caused by or arising out of any actual or alleged
27 act, error or omission that occurred, or that the person against
28 whom the claim is made had a reasonable basis for believing
29 occurred, within the scope of Commission employment, duties or

1 responsibilities; provided that nothing in this paragraph shall be
 2 construed to protect any such person from suit or liability for any
 3 damage, loss, injury or liability caused by the intentional,
 4 willful or wanton misconduct of that person.

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

17 3. The Commission shall indemnify and hold harmless any
 18 administrator, officer, executive director, employee or
 19 representative of the Commission for the amount of any settlement
 20 or judgment obtained against that person arising out of any actual
 21 or alleged act, error or omission that occurred within the scope of
 22 Commission employment, duties or responsibilities, or that such
 23 person had a reasonable basis for believing occurred within the
 24 scope of Commission employment, duties or responsibilities,
 25 provided that the actual or alleged act, error or omission did not
 26 result from the intentional, willful or wanton misconduct of that
 27 person.

28 ARTICLE VIII

29 RULEMAKING

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

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

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

12 1. On the website of the Commission; and

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

15 d. The notice of proposed rulemaking shall include:

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

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

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

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

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

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

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

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

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

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

12 i. Following the scheduled hearing date, or by the close of
13 business on the scheduled hearing date if the hearing was not held,
14 the Commission shall consider all written and oral comments
15 received.

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

20 k. Upon determination that an emergency exists, the Commission
21 may consider and adopt an emergency rule without prior notice,
22 opportunity for comment or hearing, provided that the usual
23 rulemaking procedures provided in this Compact and in this section
24 shall be retroactively applied to the rule as soon as reasonably
25 possible, in no event later than ninety (90) days after the
26 effective date of the rule. For the purposes of this provision, an
27 emergency rule is one that must be adopted immediately in order to:

28 1. Meet an imminent threat to public health, safety or
29 welfare;

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

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

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

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

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

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

28 5. The Commission shall not bear any costs related to a state
29 that is found to be in default or whose membership in this Compact

1 has been terminated unless agreed upon in writing between the
2 Commission and the defaulting state.

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

8 c. Dispute Resolution

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

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

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

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

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

24 d. Enforcement

25 1. The Commission, in the reasonable exercise of its
26 discretion, shall enforce the provisions and rules of this Compact.

27 2. By majority vote, the Commission may initiate legal action
28 in the U.S. District Court for the District of Columbia or the
29 federal district in which the Commission has its principal offices

1 against a party state that is in default to enforce compliance with
2 the provisions of this Compact and its promulgated rules and
3 bylaws. The relief sought may include both injunctive relief and
4 damages. In the event judicial enforcement is necessary, the
5 prevailing party shall be awarded all costs of such litigation,
6 including reasonable attorneys' fees.

7 3. The remedies herein shall not be the exclusive remedies of
8 the Commission. The Commission may pursue any other remedies
9 available under federal or state law.

10 ARTICLE X

11 EFFECTIVE DATE, WITHDRAWAL AND AMENDMENT

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

20 b. Each party state to this Compact shall continue to
21 recognize a nurse's multistate licensure privilege to practice in
22 that party state issued under the Prior Compact until such party
23 state has withdrawn from the Prior Compact.

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

28 d. A party state's withdrawal or termination shall not affect
29 the continuing requirement of the withdrawing or terminated state's

1 licensing board to report adverse actions and significant
2 investigations occurring prior to the effective date of such
3 withdrawal or termination.

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

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

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

17 ARTICLE XI

18 CONSTRUCTION AND SEVERABILITY

19 This Compact shall be liberally construed so as to effectuate
20 the purposes thereof. The provisions of this Compact shall be
21 severable, and if any phrase, clause, sentence or provision of this
22 Compact is declared to be contrary to the constitution of any party
23 state or of the United States, or if the applicability thereof to
24 any government, agency, person or circumstance is held invalid, the
25 validity of the remainder of this Compact and the applicability
26 thereof to any government, agency, person or circumstance shall not
27 be affected thereby. If this Compact shall be held to be contrary
28 to the constitution of any party state, this Compact shall remain
29 in full force and effect as to the remaining party states and in

1 full force and effect as to the party state affected as to all
2 severable matters.

3 (2) Subsection (1) shall be known as the "nurse licensure
4 compact".

5 Sec. 16222. (1) A licensee or registrant who has knowledge
6 that another licensee or registrant has committed a violation under
7 section 16221, article 7, or article 8 or a rule promulgated under
8 article 7 or article 8 shall report the conduct and the name of the
9 subject of the report to the department. ~~Information~~ **Subject to**
10 **sections 16238 and 16244, information** obtained by the department
11 under this subsection is confidential. ~~and is subject to sections~~
12 ~~16238 and 16244.~~ Failure of a licensee or registrant to make a
13 report under this subsection does not give rise to a civil cause of
14 action for damages against the licensee or registrant, but the
15 licensee or registrant is subject to administrative action under
16 sections 16221 and 16226. This subsection does not apply to a
17 licensee or registrant who obtains the knowledge of a violation
18 while providing professional services to the licensee or registrant
19 to whom the knowledge applies, who is serving on a duly constituted
20 ethics or peer review committee of a professional association, or
21 who is serving on a committee assigned a professional review
22 function in a health facility or agency.

23 (2) ~~Unless the licensee or registrant making a report under~~
24 ~~subsection (1) otherwise agrees in writing, the~~ **The** identity of the
25 licensee or registrant making a report under subsection (1) ~~shall~~
26 ~~remain~~ **is** confidential unless ~~disciplinary~~ **any of the following**
27 **apply:**

28 (a) **Disciplinary** proceedings under this part are initiated
29 against the subject of the report and the licensee or registrant

1 making the report is required to testify in the proceedings.

2 **(b) The licensee or registrant making the report under**
 3 **subsection (1) otherwise agrees in writing.**

4 **(c) The information is required to be disclosed for purposes**
 5 **of the nurse licensure compact enacted in section 16190.**

6 (3) A licensee or registrant shall notify the department of
 7 any criminal conviction within 30 days after the date of the
 8 conviction. Failure of a licensee or registrant to notify the
 9 department under this subsection shall result in administrative
 10 action under sections 16221 and 16226.

11 (4) A licensee or registrant shall notify the department of
 12 any disciplinary licensing or registration action taken by another
 13 state against the licensee or registrant within 30 days after the
 14 date of the action. This subsection includes, but is not limited
 15 to, a disciplinary action that is stayed pending appeal. Failure of
 16 a licensee or registrant to notify the department under this
 17 subsection shall result in administrative action under sections
 18 16221 and 16226.

19 Sec. 16231. (1) A person or governmental entity that believes
 20 that a violation of this article, article 7, or article 8 or a rule
 21 promulgated under this article, article 7, or article 8 exists may
 22 submit an allegation of that fact to the department in writing.

23 (2) Subject to subsection (3) and section 16221b, if the
 24 department determines after reviewing an application or an
 25 allegation or a licensee's or registrant's file under section
 26 16211(4) that there is a reasonable basis to believe that a
 27 violation of this article, article 7, or article 8 or a rule
 28 promulgated under this article, article 7, or article 8 exists, 1
 29 of the following applies:

1 (a) Unless subdivision (b) applies, subject to subsection
2 (10), with the authorization of a panel of at least 3 board members
3 that includes the chair and at least 2 other members of the
4 appropriate board or task force designated by the chair, the
5 department shall investigate the alleged violation. Subject to
6 subsection (10), if the panel fails to grant or deny authorization
7 within 7 days after the board or task force receives a request for
8 authorization, the department shall investigate. If the department
9 believes that immediate jeopardy exists, the director or his or her
10 designee shall authorize an investigation and notify the board
11 chair of that investigation within 2 business days.

12 (b) If it reviews an allegation in writing under subsection
13 (1) that concerns a licensee or registrant whose record created
14 under section 16211 includes 1 substantiated allegation, or 2 or
15 more written investigated allegations, from 2 or more different
16 individuals or entities, received in the preceding 4 years, the
17 department shall investigate the alleged violation. Authorization
18 by a panel described in subdivision (a) is not required for an
19 investigation by the department under this subdivision.

20 (3) If a person or governmental entity submits a written
21 allegation under subsection (1) more than 4 years after the date of
22 the incident or activity that is the basis of the alleged
23 violation, the department may investigate the alleged violation in
24 the manner described in subsection (2) (a) or (b), as applicable,
25 but is not required to conduct an investigation under subsection
26 (2) (a) or (b).

27 (4) If it receives information reported under section 16243(2)
28 that indicates 3 or more malpractice settlements, awards, or
29 judgments against a licensee in a period of 5 consecutive years or

1 1 or more malpractice settlements, awards, or judgments against a
2 licensee totaling more than \$200,000.00 in a period of 5
3 consecutive years, whether or not a judgment or award is stayed
4 pending appeal, the department shall investigate.

5 (5) At any time during an investigation or following the
6 issuance of a complaint, the department may schedule a compliance
7 conference under section 92 of the administrative procedures act of
8 1969, MCL 24.292. The conference may include the applicant,
9 licensee, registrant, or individual, the applicant's, licensee's,
10 registrant's, or individual's attorney, 1 member of the
11 department's staff, and any other individuals approved by the
12 department. One member of the appropriate board or task force who
13 is not a member of the disciplinary subcommittee with jurisdiction
14 over the matter may attend the conference and provide any
15 assistance that is needed. At the compliance conference, the
16 department shall attempt to reach agreement. If an agreement is
17 reached, the department shall submit a written statement outlining
18 the terms of the agreement, or a stipulation and final order, if
19 applicable, or a request for dismissal to the appropriate
20 disciplinary subcommittee for approval. If the agreement or
21 stipulation and final order or request for dismissal is rejected by
22 the disciplinary subcommittee, or if no agreement is reached, the
23 department shall schedule a hearing before an administrative law
24 judge. A party shall not make a transcript of the compliance
25 conference. All records and documents of a compliance conference
26 held before a complaint is issued are subject to section 16238.

27 (6) Within 90 days after an investigation is initiated under
28 subsection (2), (3), or (4), the department shall do 1 or more of
29 the following:

- 1 (a) Issue a formal complaint.
- 2 (b) Conduct a compliance conference under subsection (5).
- 3 (c) Issue a summary suspension.
- 4 (d) Issue a cease and desist order.
- 5 (e) Dismiss the allegation.
- 6 (f) Place in the complaint file not more than 1 written
7 extension of not more than 30 days to take action under this
8 subsection.
- 9 (7) Unless the person submitting an allegation under
10 subsection (1) otherwise agrees in writing **or the information is**
11 **required to be disclosed for purposes of the nurse licensure**
12 **compact enacted in section 16190**, the department shall keep the
13 identity of a person that submitted the allegation confidential
14 until disciplinary proceedings under this part are initiated
15 against the subject of the allegation and the person that made the
16 allegation is required to testify in the proceedings.
- 17 (8) The department shall serve a complaint under section
18 16192. The department shall include in the complaint a notice that
19 the applicant, licensee, registrant, or individual who is the
20 subject of the complaint has 30 days from the date of receipt to
21 respond in writing to the complaint.
- 22 (9) The department shall treat the failure of an applicant,
23 licensee, registrant, or individual to respond to a complaint
24 within the 30-day period set forth in subsection (8) as an
25 admission of the allegations contained in the complaint. The
26 department shall notify the appropriate disciplinary subcommittee
27 of the individual's failure to respond and shall forward a copy of
28 the complaint to that disciplinary subcommittee. The disciplinary
29 subcommittee may then impose an appropriate sanction under this

1 article, article 7, or article 8.

2 (10) All of the following apply for purposes of subsection
3 (2) (a):

4 (a) If the chair of the board or task force has a conflict of
5 interest, he or she shall appoint another member of the board or
6 task force as his or her designee and shall not participate in the
7 panel's decision to grant or deny authorization to the department
8 to investigate an individual.

9 (b) A member of the board or task force shall not participate
10 in the panel's decision to grant or deny authorization to the
11 department to investigate an individual if that member has a
12 conflict of interest. If the chair of the board or task force is
13 notified that a member of the panel has a conflict of interest, the
14 chair shall remove him or her from the panel and appoint another
15 member of the board or task force to serve on the panel.

16 (c) A member of the board or task force who participates in or
17 is requested to participate in the panel's decision to grant or
18 deny authorization to the department to investigate an individual
19 shall disclose to the department, to the chair of the board or task
20 force, and to the other member of the panel a potential conflict of
21 interest before those participants make that decision.

22 (11) As used in subsection (10), "conflict of interest" means
23 any of the following:

24 (a) Has a personal or financial interest in the outcome of the
25 investigation of or the imposition of disciplinary sanctions on the
26 licensee, registrant, or applicant for licensure or registration.

27 (b) Had a past or has a present business or professional
28 relationship with the individual that the department is
29 investigating or requesting authorization to investigate.

1 (c) Has given expert testimony in a medical malpractice action
 2 against or on behalf of the individual that the department is
 3 seeking authorization to investigate.

4 (d) Any other interest or relationship designated as a
 5 conflict of interest in a rule promulgated or order issued under
 6 this act.

7 Sec. 16238. (1) Except as otherwise provided in section
 8 ~~13(1)(u) (i)~~ **13(1)(t)(i)** and (ii) of the freedom of information act,
 9 ~~Act No. 442 of the Public Acts of 1976, being section 15.243 of the~~
 10 ~~Michigan Compiled Laws, 1976 PA 442, MCL 15.243, or for purposes of~~
 11 **complying with the nurse licensure compact enacted in section**
 12 **16190**, the information including, but not limited to, patient
 13 names, obtained in an investigation or a compliance conference
 14 before a complaint is issued, is confidential and ~~shall~~**must** not be
 15 disclosed except to the extent necessary for the proper functioning
 16 of a hearings examiner, a disciplinary subcommittee, or the
 17 department.

18 (2) A compliance conference conducted under this part before a
 19 complaint is issued ~~shall~~**must** be closed to the public.

20 Sec. 17201. (1) As used in this part:

21 (a) "Advanced practice registered nurse" or "a.p.r.n." means a
 22 registered professional nurse who has been granted a specialty
 23 certification under section 17210 in 1 of the following health
 24 profession specialty fields:

25 (i) Nurse midwifery.

26 (ii) Nurse practitioner.

27 (iii) Clinical nurse specialist.

28 (b) **"Nurse licensure compact" means the nurse licensure**
 29 **compact as enacted in section 16190.**

1 (c) ~~(b)~~—"Physician" means a physician who is licensed under
2 part 170 or part 175.

3 (d) ~~(c)~~—"Practice of nursing" means the systematic application
4 of substantial specialized knowledge and skill, derived from the
5 biological, physical, and behavioral sciences, to the care,
6 treatment, counsel, and health teaching of individuals who are
7 experiencing changes in the normal health processes or who require
8 assistance in the maintenance of health and the prevention or
9 management of illness, injury, or disability.

10 (e) ~~(d)~~—"Practice of nursing as a licensed practical nurse" or
11 "l.p.n." means the practice of nursing based on less comprehensive
12 knowledge and skill than that required of a registered professional
13 nurse and performed under the supervision of a registered
14 professional nurse, physician, or dentist.

15 (f) ~~(e)~~—"Registered professional nurse" or "r.n." means an
16 individual who is licensed under this ~~part~~**article or authorized**
17 **under section 17225** to engage in the practice of nursing ~~which~~**and**
18 **whose** scope of practice includes the teaching, direction, and
19 supervision of less skilled personnel in the performance of
20 delegated nursing activities.

21 (2) In addition to the definitions in this part, article 1
22 contains general definitions and principles of construction
23 applicable to all articles in the code and part 161 contains
24 definitions applicable to this part.

25 **Sec. 17225. (1) An individual who holds a multistate license**
26 **to practice registered nursing under the nurse licensure compact is**
27 **authorized to engage in the practice of nursing under this article.**

28 **(2) For purposes of this article, including the obligations of**
29 **an individual who is licensed as a registered professional nurse**

1 except for the requirements necessary to obtain and retain a
2 license in this state, an individual who holds a multistate license
3 to practice registered nursing under the nurse licensure compact is
4 considered a registered professional nurse who is licensed under
5 this part.

6 Sec. 17225a. (1) An individual who holds a multistate license
7 to practice licensed practical/vocational nursing under the nurse
8 licensure compact is authorized to engage in the practice of
9 nursing as a licensed practical nurse under this article.

10 (2) For purposes of this article, including the obligations of
11 an individual who is licensed as a licensed practical nurse except
12 for the requirements necessary to obtain and retain a license in
13 this state, an individual who holds a multistate license to
14 practice licensed practical/vocational nursing under the nurse
15 licensure compact is considered a licensed practical nurse who is
16 licensed under this part.

17 Enacting section 1. This amendatory act takes effect 90 days
18 after the date it is enacted into law.