

**Sixty-fifth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1096  
(Human Services Committee)  
(At the request of the State Board of Nursing)

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the advanced practice registered nurse licensure compact; and to amend and reenact section 43-12.1-09.1 of the North Dakota Century Code, relating to criminal history record checks.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 43-12.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-09.1. Nursing licensure or registration - Criminal history record checks.**

The board shall require each applicant for initial licensure and registration, including applicants for a multistate license under section 2 of this Act, to submit to a statewide and nationwide criminal history record check. The board may require any licensee or registrant who is renewing a license or registration, including renewal of a multistate license under section 2 of this Act, and any licensee or registrant who is the subject of a disciplinary investigation or proceeding to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant, licensee, or registrant. The board may grant a nonrenewable temporary permit to an applicant for initial or renewed license or registration who submits to a criminal history record check as required by this chapter if the applicant has met all other licensure or registration requirements in accordance with subsection 2 of section 43-12.1-09. The board may not share with, or disclose to, the interstate commission of nurse licensure compact administrators any contents of a nationwide criminal history record check.

**SECTION 2.** A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

**ARTICLE I - FINDINGS AND DECLARATION OF PURPOSE**

1. The party states find that:
  - a. The health and safety of the public are affected by the degree of compliance with advanced practice registered nurse licensure requirements and the effectiveness of enforcement activities related to state advanced practice registered nurse licensure laws;
  - b. Violations of advanced practice registered nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;
  - c. The expanded mobility of advanced practice registered nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of advanced practice registered nurse licensure and regulation;
  - d. New practice modalities and technology make compliance with individual state advanced practice registered nurse licensure laws difficult and complex;
  - e. The current system of duplicative advanced practice registered nurse licensure for advanced practice registered nurses practicing in multiple states is cumbersome and redundant for both advanced practice registered nurses and states; and

- f. Uniformity of advanced practice registered nurse licensure requirements throughout the states promotes public safety and public health benefits.
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 advanced practice registered nurse licensure and regulation, including promotion of uniform licensure requirements;
    - c. Facilitate the exchange of information between party states in the areas of advanced practice registered nurse regulation, investigation, and adverse actions;
    - d. Promote compliance with the laws governing advanced practice registered nurse practice in each jurisdiction;
    - e. Invest all party states with the authority to hold an advanced practice registered nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;
    - f. Decrease redundancies in the consideration and issuance of advanced practice registered nurse licenses; and
    - g. Provide opportunities for interstate practice by advanced practice registered nurses who meet uniform licensure requirements.

## **ARTICLE II - DEFINITIONS**

As used in this compact:

1. "Advanced practice registered nurse" 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 Advanced Practice Registered Nurse Compact Administrators ("commission"), and who is licensed to perform advanced nursing practice. An advanced practice registered nurse is licensed in an advanced practice registered nurse role that is congruent with an advanced practice registered nurse educational program, certification, and commission rules.
2. "Advanced practice registered nurse licensure" means the regulatory mechanism used by a party state to grant legal authority to practice as an advanced practice registered nurse.
3. "Advanced practice registered nurse uniform licensure requirements" means minimum uniform licensure, education, and examination requirements as adopted by the commission.
4. "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against an advanced practice registered nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting an advanced practice registered nurse's authorization to practice, including the issuance of a cease and desist action.
5. "Alternative program" means a non-disciplinary monitoring program approved by a licensing board.
6. "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on advanced practice registered nurse licensure and

enforcement activities related to advanced practice registered nurse licensure laws which 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 advanced practice registered nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
  - b. Investigative information that indicates that the advanced practice registered nurse represents an immediate threat to public health and safety regardless of whether the advanced practice registered nurse 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.
9. "Home state" means the party state that is the advanced practice registered nurse'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 advanced practice registered nurse license to practice as an advanced practice registered nurse issued by a home state licensing board which authorizes the advanced practice registered nurse to practice as an advanced practice registered nurse in all party states under a multistate licensure privilege, in the same role and population focus as the advanced practice registered nurse is licensed in the home state.
12. "Multistate licensure privilege" means a legal authorization associated with an advanced practice registered nurse multistate license which permits an advanced practice registered nurse to practice as an advanced practice registered nurse in a remote state, in the same role and population focus as the advanced practice registered nurse 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 a specific patient population that is congruent with the advanced practice registered nurse educational program, certification, and commission rules.
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. "Single-state license" means an advanced practice registered nurse license issued by a party state which authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.
19. "State" means a state, territory, or possession of the United States and the District of Columbia.
20. "State practice laws" means a party state's laws, rules, and regulations that govern advanced practice registered nurse practice, define the scope of advanced nursing practice, including

prescriptive authority, and create the methods and grounds for imposing discipline. State practice laws do not include the requirements necessary to obtain and retain an advanced practice registered nurse license, except for qualifications or requirements of the home state.

### **ARTICLE III - GENERAL PROVISIONS AND JURISDICTION**

1. A state must implement procedures for considering the criminal history records of applicants for initial advanced practice registered nurse licensure or advanced practice registered nurse licensure by endorsement. Such procedures must include the submission of fingerprints or other biometric-based information by advanced practice registered nurse applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.
2. By rule, the commission shall adopt the advanced practice registered nurse uniform licensure requirements. The uniform licensure requirements must provide the minimum requirements for advanced practice registered nurse multistate licensure in party states, if the commission may adopt rules whereby an advanced practice registered nurse, with an unencumbered license on the effective date of this compact, may obtain, by endorsement or otherwise, and retain a multistate license in a party state.
3. In order to obtain or retain a multistate license, an advanced practice registered nurse shall meet, in addition to the uniform licensure requirements, the home state's qualifications for licensure or renewal of licensure, as well as, all other applicable home state laws.
4. By rule, the commission shall identify the approved advanced practice registered nurse roles and population foci for licensure as an advanced practice registered nurse. An advanced practice registered nurse issued a multistate license must be licensed in an approved advanced practice registered nurse role and at least one approved population focus.
5. An advanced practice registered nurse multistate license issued by a home state to a resident in that state will be recognized by each party state as authorizing the advanced practice registered nurse to practice as an advanced practice registered nurse in each party state, under a multistate licensure privilege, in the same role and population focus as the advanced practice registered nurse is licensed in the home state. If an applicant does not qualify for a multistate license, a single-state license may be issued by a home state.
6. Issuance of an advanced practice registered nurse multistate license must include prescriptive authority for noncontrolled prescription drugs, unless the advanced practice registered nurse was licensed by the home state before the home state's adoption of this compact and has not previously held prescriptive authority.
  - a. An advanced practice registered nurse granted prescriptive authority for noncontrolled prescription drugs in the home state may exercise prescriptive authority for noncontrolled prescription drugs in any remote state while exercising a multistate licensure privilege under an advanced practice registered nurse multistate license; the advanced practice registered nurse may not be required to meet any additional eligibility requirements imposed by the remote state in exercising prescriptive authority for noncontrolled prescription drugs.
  - b. Prescriptive authority in the home state for an advanced practice registered nurse who was not granted prescriptive authority at the time of initial licensure by the home state, before the adoption of this compact, must be determined under home state law.
  - c. Prescriptive authority eligibility for an advanced practice registered nurse holding a single-state license must be determined under the law of the licensing state.

7. For each state in which an advanced practice registered nurse seeks authority to prescribe controlled substances, the advanced practice registered nurse shall satisfy all requirements imposed by such state in granting and/or renewing such authority.
8. An advanced practice registered nurse issued a multistate license may assume responsibility and accountability for patient care independent of a supervisory or collaborative relationship with a physician. This authority may be exercised in the home state and in any remote state in which the advanced practice registered nurse exercises a multistate licensure privilege. For an advanced practice registered nurse issued a single-state license in a party state, the requirement for a supervisory or collaborative relationship with a physician must be determined under applicable party state law.
9. All party states are authorized, in accordance with state due process laws, to take adverse action against an advanced practice registered nurse's multistate licensure privilege such as revocation, suspension, probation, or any other action that affects an advanced practice registered nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it promptly shall notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system promptly shall notify the home state of any such actions by remote states.
10. An advanced practice registered nurse practicing in a party state shall comply with the state practice laws of the state in which the client is located at the time service is provided. Advanced practice registered nurse practice is not limited to patient care, but includes all advanced nursing practice as defined by the state practice laws of the party state in which the client is located. Advanced practice registered nurse practice in a party state under a multistate licensure privilege subjects the advanced practice registered nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the client is located at the time service is provided.
11. 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 advanced practice registered nurse 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 advanced practice registered nurse 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 advanced practice registered nurse in any other party state.

#### **ARTICLE IV - APPLICATIONS FOR ADVANCED PRACTICE REGISTERED NURSE LICENSURE IN A PARTY STATE**

1. Upon application for an advanced practice registered nurse 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 advanced practice registered nurse may hold a multistate advanced practice registered nurse license, issued by the home state, in only one party state at a time.

3. If an advanced practice registered nurse changes primary state of residence by moving between two party states, the advanced practice registered nurse shall apply for advanced practice registered nurse 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.
  - a. The advanced practice registered nurse may apply for licensure in advance of a change in primary state of residence.
  - b. A multistate advanced practice registered nurse license may not be issued by the new home state until the advanced practice registered nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate advanced practice registered nurse license from the new home state.
4. If an advanced practice registered nurse changes primary state of residence by moving from a party state to a nonparty state, the advanced practice registered nurse multistate license issued by the prior home state converts 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 may:
  - a. Take adverse action against an advanced practice registered nurse's multistate licensure privilege to practice within that party state.
    - (1) Only the home state may take adverse action against an advanced practice registered nurse's license issued by the home state.
    - (2) 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 advanced practice registered nurse's authority to practice within that party state.
  - c. Complete any pending investigations of an advanced practice registered nurse who changes primary state of residence during the course of such investigations. The licensing board also may take any appropriate action and promptly shall report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system promptly shall notify the new home state of any such actions.
  - d. Issue subpoenas for both hearings and investigations which 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 advanced practice registered nurse 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 advanced practice registered nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that advanced practice registered nurse.
- g. Take adverse action based on the factual findings of another party state, if the licensing board follows its own procedures for taking such adverse action.
2. If adverse action is taken by a home state against an advanced practice registered nurse'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 advanced practice registered nurse's multistate license. All home state disciplinary orders that impose adverse action against an advanced practice registered nurse's multistate license must include a statement that the advanced practice registered nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.
3. This compact does not 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 advanced practice registered nurse for the duration of the advanced practice registered nurse's participation in an alternative program.

#### **ARTICLE VI - COORDINATED LICENSURE INFORMATION SYSTEM AND EXCHANGE INFORMATION**

1. All party states shall participate in a coordinated licensure information system of all advanced practice registered nurses, licensed registered nurses, and licensed practical/vocational nurses. This system includes information on the licensure and disciplinary history of each advanced practice registered nurse, as submitted by party states, to assist in the coordinated administration of advanced practice registered nurse 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 promptly shall 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 advanced practice registered nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic and/or confidential under state law.
4. Current significant investigative information and participation in nonpublic or confidential alternative programs must be transmitted through the coordinated licensure information system only to party state licensing boards.
5. 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.
6. 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.
7. Any information contributed to the coordinated licensure information system which 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.

8. 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.
9. 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 ADVANCED PRACTICE REGISTERED NURSE COMPACT ADMINISTRATORS**

1. The party states hereby create and establish a joint public agency known as the interstate commission of advanced practice registered nurse 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. This compact may not be construed to be a waiver of sovereign immunity.
2. Membership, voting, and meetings.
  - a. Each party state must have and be limited to one administrator. The head of the state licensing board or designee is 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 is entitled to one vote with regard to the promulgation of rules and creation of bylaws and otherwise must 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 are 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:
    - (1) Noncompliance of a party state with its obligations under this compact;



- (2) 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;
  - (3) Current, threatened, or reasonably anticipated litigation;
  - (4) Negotiation of contracts for the purchase or sale of goods, services, or real estate;
  - (5) Accusing any person of a crime or formally censuring any person;
  - (6) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
  - (7) Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;
  - (8) Disclosure of investigatory records compiled for law enforcement purposes;
  - (9) 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
  - (10) 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 for those actions, 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. By a majority vote of the administrators, the commission shall 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:
- a. Establishing the fiscal year of the commission;
  - b. Providing reasonable standards and procedures:
    - (1) For the establishment and meetings of other committees; and
    - (2) Governing any general or specific delegation of any authority or function of the commission;
  - 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 shall 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 exclusively govern the personnel policies and programs of the commission; and
- 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 publish its bylaws and rules, and any amendments to the bylaws and rules, in a convenient form on the website of the commission.
- 5. The commission shall maintain its financial records in accordance with the bylaws.
- 6. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
- 7. The commission may:
  - a. Promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules have the force and effect of law and are binding in all party states;
  - b. Bring and prosecute legal proceedings or actions in the name of the commission. However, the standing of any licensing board to sue or be sued under applicable law may not be affected;
  - c. Purchase and maintain insurance and bonds;
  - d. Borrow, accept, or contract for services of personnel, including employees of a party state or nonprofit organizations;
  - e. Cooperate with other organizations that administer state compacts related to the regulation of nursing, including sharing administrative or staff expenses, office space, or other resources;
  - f. 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. 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. However, at all times the commission shall strive to avoid any appearance of impropriety and/or conflict of interest;
  - h. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, whether real, personal, or mixed. However, at all times the commission shall strive to avoid any appearance of impropriety;
  - i. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;
  - j. Establish a budget and make expenditures;
  - k. Borrow money;

- l. 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. Provide and receive information from, and to cooperate with, law enforcement agencies;
  - n. Adopt and use an official seal; and
  - o. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of advanced practice registered nurse licensure and practice.
8. Financing of the commission.
- a. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
  - b. The commission may levy on and collect an annual assessment from each party state to cover the cost of the operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year. The aggregate annual assessment amount 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 before 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 are 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.
9. Qualified immunity, defense, and indemnification.
- a. The administrators, officers, executive director, employees, and representatives of the commission are 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 which the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. However, this subdivision may not 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 which 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 that person's own counsel and the actual or alleged act, error, or omission may 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, if 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 become binding as of the date specified in each rule or amendment and 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. Before promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:
  - 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 at 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. Before 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 that wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings must be recorded, and a copy must be made available upon request.
  - b. This section may not 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.
8. If no one appears at the public hearing, the commission may proceed with promulgation of the proposed rule.

9. 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.
10. By majority vote of all administrators, the commission shall 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.
11. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing. However, 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 ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:
  - a. Meet an imminent threat to public health, safety, or welfare;
  - b. Prevent a loss of 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.
12. 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 may be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing, and delivered to the commission, before 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 is entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the commission, and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission renders 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:
    - (1) 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
    - (2) 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 United States district court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party must be awarded all costs of such litigation, including reasonable attorneys' fees.

3. Dispute resolution.

- a. Upon request by a party state, the commission shall attempt to resolve disputes related to the compact that arise among party states and between party and nonparty states.
- b. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.
- c. If the commission cannot resolve disputes among party states arising under this compact:
  - (1) 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.
  - (2) The decision of a majority of the arbitrators is 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. If judicial enforcement is necessary, the prevailing party must be awarded all costs of such litigation, including reasonable attorneys' fees.
- c. The remedies herein are not 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 comes into limited effect at such time as this compact has been enacted into law in ten party states for the sole purpose of establishing and convening the commission to adopt rules relating to its operation and the advanced practice registered nurse uniform licensure requirements.
2. On the date of the commission's adoption of the advanced practice registered nurse uniform licensure requirements, all remaining provisions of this compact, and rules adopted by the commission, come into full force and effect in all party states.
3. Any state that joins this compact after the commission's initial adoption of the advanced practice registered nurse uniform licensure requirements are subject to all rules that have been previously adopted by the commission.
4. Any party state may withdraw from this compact by enacting a statute repealing the same. A party state's withdrawal does not take effect until six months after enactment of the repealing statute.
5. A party state's withdrawal or termination does not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring before the effective date of such withdrawal or termination.
6. This compact may not be construed to invalidate or prevent any advanced practice registered nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that does not conflict with the provisions of this compact.
7. This compact may be amended by the party states. An amendment to this compact does not become effective and binding upon any party state until it is enacted into the laws of all party states.
8. Representatives of nonparty states to this compact must be invited to participate in the activities of the commission, on a nonvoting basis, before 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 of this compact. The provisions of this compact are 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 is not affected thereby. If this compact is held to be contrary to the constitution of any party state, this compact remains 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.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1096.

House Vote:    Yeas 87            Nays 0            Absent 7

Senate Vote:    Yeas 47            Nays 0            Absent 0

\_\_\_\_\_  
Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2017.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2017,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State