

LEGISLATIVE BILL 523

Approved by the Governor February 15, 2000

Introduced by Suttle, 10

AN ACT relating to nursing; to amend sections 71-1,132.01, 71-1,132.05, 71-1,132.17, and 71-1,132.31, Reissue Revised Statutes of Nebraska, and section 71-1,132.11, Revised Statutes Supplement, 1999; to adopt the Nurse Licensure Compact; to define a term; to change powers and duties of the Board of Nursing; to change provisions relating to the use of certain titles; to provide for a compact administrator; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. The Nurse Licensure Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I. Findings and Declaration of Purpose

(a) The party states find that:

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

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

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

(4) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

(5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(b) The general purposes of this compact are to:

(1) Facilitate the states' responsibility to protect the public's health and safety;

(2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

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

(4) Promote compliance with the laws governing the practice of nursing in each jurisdiction;

(5) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II. Definitions

As used in this compact:

(a) Adverse action means a home or remote state action.

(b) Alternative program means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

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

(d) Current significant investigative information means:

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

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

(e) Home state means the party state which is the nurse's primary state of residence.

(f) Home state action means any administrative, civil, equitable, or criminal action permitted by the home state's laws which is imposed on a nurse

by the home state's licensing board or other authority including actions against an individual's license such as revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(g) Licensing board means a party state's regulatory body responsible for issuing nurse licenses.

(h) Multistate licensure privilege means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical or vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(i) Nurse means a registered nurse or licensed practical or vocational nurse, as those terms are defined by each party state's state practice laws.

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

(k) Remote state means a party state, other than the home state:

(1) Where the patient is located at the time nursing care is provided; or

(2) In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

(l) Remote state action means:

(1) Any administrative, civil, equitable, or criminal action permitted by a remote state's laws which is imposed on a nurse by the remote state's licensing board or other authority, including actions against an individual's multistate licensure privilege to practice in the remote state; and

(2) Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

(m) State means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(n) State practice laws means those individual party states' laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. State practice laws does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III. General Provisions and Jurisdiction

(a) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical or vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical or vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(b) Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(c) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(d) 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 shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(e) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be

recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV. Applications for Licensure in a Party State

(a) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(b) A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

(c) A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in the primary state of residence satisfactory to the new home state's licensing board.

(d) When a nurse changes primary state of residence by:

(1) Moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

(2) Moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state;

(3) Moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V. Adverse Actions

In addition to the general provisions described in Article III, the following provisions apply:

(a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state action, including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any current significant investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such report.

(b) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate actions and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(c) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

(d) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

(e) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

(f) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI. Additional Authorities Invested in Party State Nurse Licensing Boards

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

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

(b) Issue subpoenas for both hearings and investigations which

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

(c) Issue cease and desist orders to limit or revoke a nurse's authority to practice in their state;

(d) Promulgate uniform rules and regulations as provided for in Article VIII(c).

ARTICLE VII. Coordinated Licensure Information System

(a) All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical or vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials to the coordinated licensure information system.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' 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.

(e) Any personally identifiable information obtained by a party state's licensing board from the coordinated licensure information system 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.

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

(g) The compact administrators, acting jointly with each other and 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.

ARTICLE VIII. Compact Administration and Interchange of Information

(a) The head of the nurse licensing board or his or her designee of each party state shall be the administrator of this compact for his or her state.

(b) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents, including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

(c) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under Article VI(d).

ARTICLE IX. Immunity

No party state or the officers or employees or agents of a party state's nurse licensing board who act in accordance with the provisions of this compact shall be liable except as provided in the State Tort Claims Act.

ARTICLE X. Entry into Force, Withdrawal, and Amendment

(a) This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(b) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

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

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

ARTICLE XI. Construction and Severability

(a) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or 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 shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

(b) In the event party states find a need for settling disputes arising under this compact:

(1) The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the compact administrator in the home state, an individual appointed by the compact administrator in the remote state or states involved, 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 shall be final and binding.

Sec. 2. Section 71-1,132.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,132.01. Sections 71-1,132.01 to 71-1,132.53 and sections 3 and 4 of this act shall be known and may be cited as the Nurse Practice Act.

Sec. 3. (1) In order to effectuate the transition into compact administration, the board shall require all licensees entering into or becoming subject to an order of probation or other disciplinary action that limits practice or requires monitoring to agree, as of the date of the order, not to practice in any other state which is a party to the Nurse Licensure Compact during the term of such probation or disciplinary action without prior authorization from the other party state.

(2) Any licensee subject to disciplinary action, such as revocation, suspension, probation, or any other action which affects a licensee's authorization to practice, on the effective date of entering the compact, is not entitled to a multistate license privilege while such disciplinary action is in effect unless practice in another state is authorized by this state and any other state in which the licensee wishes to practice.

Sec. 4. Before recognizing a home state license to practice nursing issued by a state which is a party to the Nurse Licensure Compact, the board shall determine that such state's qualifications for a nursing license are substantially equivalent to or more stringent than the minimum qualifications for issuance of a Nebraska license under the Nurse Practice Act.

Sec. 5. Section 71-1,132.05, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,132.05. For purposes of the Nurse Practice Act, unless the context otherwise requires:

(1) Executive director means the executive director of the Board of Nursing;

(2) Board means the Board of Nursing;

(3) License by endorsement means the granting of active status and the authority to practice to an individual who has been licensed in another jurisdiction;

(4) License by examination means the authority to practice is based on an assessment of minimum competency by such means as the board may determine;

(5) License, for purposes of discipline, includes the multistate licensure privilege to practice granted by the Nurse Licensure Compact. If the multistate licensure privilege is restricted due to disciplinary action by the home state, the department may, upon request by the individual, grant the authority to practice in this state;

(6) Licensed practitioner means a person lawfully authorized to prescribe medications or treatments;

~~(6)~~ (7) The practice of nursing means the performance for compensation or gratuitously of any act expressing judgment or skill based upon a systematized body of nursing knowledge. Such acts include the identification of and intervention in actual or potential health problems of individuals, families, or groups, which acts are directed toward maintaining health status, preventing illness, injury, or infirmity, improving health status, and providing care supportive to or restorative of life and well-being through nursing assessment and through the execution of nursing care and of diagnostic or therapeutic regimens prescribed by any person lawfully authorized to prescribe. Each nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. Licensed nurses may use the services of unlicensed individuals to provide assistance with personal care and activities of daily living;

~~(7)~~ (8) The practice of nursing by a registered nurse means assuming responsibility and accountability for nursing actions which include, but are not limited to:

(a) Assessing human responses to actual or potential health conditions;

(b) Establishing nursing diagnoses;

(c) Establishing goals and outcomes to meet identified health care needs;

(d) Establishing and maintaining a plan of care;

(e) Prescribing nursing interventions to implement the plan of care;

(f) Implementing the plan of care;

(g) Teaching health care practices;

(h) Delegating, directing, or assigning nursing interventions that may be performed by others and that do not conflict with the act;

(i) Maintaining safe and effective nursing care rendered directly or indirectly;

(j) Evaluating responses to interventions;

(k) Teaching theory and practice of nursing;

(l) Conducting, evaluating, and utilizing nursing research;

(m) Administering, managing, and supervising the practice of nursing; and

(n) Collaborating with other health professionals in the management of health care;

~~(8)~~ (9) The practice of nursing by a licensed practical nurse means the assumption of responsibilities and accountability for nursing practice in accordance with knowledge and skills acquired through an approved program of practical nursing. A licensed practical nurse may function at the direction of a licensed practitioner or a registered nurse. Such responsibilities and performances of acts must utilize procedures leading to predictable outcomes and must include, but not be limited to:

(a) Contributing to the assessment of the health status of individuals and groups;

(b) Participating in the development and modification of a plan of care;

(c) Implementing the appropriate aspects of the plan of care;

(d) Maintaining safe and effective nursing care rendered directly or indirectly;

(e) Participating in the evaluation of response to interventions; and

(f) Assigning and directing nursing interventions that may be performed by others and that do not conflict with the act;

~~(9)~~ (10) Department means the Department of Health and Human Services Regulation and Licensure;

~~(10)~~ (11) Director means the Director of Regulation and Licensure;

~~(11)~~ (12) Clinical nurse specialist means a registered nurse licensed in Nebraska who holds a master's degree or a doctoral degree in a nursing clinical specialty area;

~~(12)~~ (13) Inactive status means the designation given to a licensee who requests this status and pays the fee. A licensee on inactive status is issued a card indicating inactive status but shall not practice;

~~(13)~~ (14) Lapsed status means the designation given to a licensee who requests this status. A licensee on lapsed status shall not practice;

~~(14)~~ (15) Expiration date means the date on which the license expires has passed. The licensee whose license has expired shall not practice;

~~(15)~~ (16) Suspended means the licensee's authority to practice has been temporarily removed as a result of disciplinary action;

~~(16)~~ (17) Revoked means the licensee's authority to practice has been removed as a result of disciplinary action. The licensee may apply for reinstatement of his or her license two years or more after the date of revocation;

~~(17)~~ (18) Reinstatement means the return to active status and the restoration of the authority to practice to a licensee who was previously licensed in this state;

~~(18)~~ (19) Verification means attesting to the current status of an individual's license;

~~(19)~~ (20) Certification means attesting to the current status of an individual's license, any disciplinary action taken, and the means by which the individual was licensed;

~~(20)~~ (21) Probation means that the individual's authority to practice is contingent on the licensee meeting specified conditions imposed as a result of disciplinary action;

~~(21)~~ (22) Limited license means that certain restrictions have been imposed on the individual's authority to practice as a result of disciplinary action;

~~(22)~~ (23) Assignment means appointing or designating another individual the responsibility for the performance of nursing interventions;

~~(23)~~ (24) Delegation means transferring to another individual the authority, responsibility, and accountability to perform nursing interventions; and

~~(24)~~ (25) Direction means managing, guiding, and supervising the nursing interventions performed by another individual.

Sec. 6. Section 71-1,132.11, Revised Statutes Supplement, 1999, is amended to read:

71-1,132.11. The board may adopt, promulgate, and revise, with the approval of the department, such rules and regulations consistent with the Nurse Practice Act as may be necessary to carry the act into effect. All such rules and regulations shall be published and distributed. The board shall:

(1) Adopt reasonable and uniform standards for nursing practice and nursing education;

(2) If requested, issue or decline to issue advisory opinions defining acts which in the opinion of the board are or are not permitted in the practice of nursing as defined in section 71-1,132.05. Such opinions shall be considered informational only and are nonbinding. Practice-related information provided by the board to registered or licensed practical nurses licensed under the act shall be made available by the board on request to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact;

(3) Establish rules and regulations for approving and classifying programs preparing practical and professional nurses, taking into consideration administrative and organizational patterns, the curriculum, students, student services, faculty, and instructional resources and facilities, and provide surveys for each educational program as determined by the board;

(4) Approve educational programs which meet the requirements of the act;

(5) Examine, license, and renew the licenses of duly qualified applicants;

(6) Keep a record of all its proceedings and compile an annual report for distribution;

(7) Develop standards for continued competency of licensees continuing in or returning to practice;

(8) Adopt rules and regulations establishing standards for delegation of nursing activities, including training or experience requirements, competency determination, and nursing supervision;

(9) Make recommendations in accordance with section 71-168.01 regarding licensure and disciplinary dispositions for individuals who have violated the act and upon the grounds provided in the Uniform Licensing Law;

(10) Collect data regarding nursing;

(11) Provide consultation and conduct conferences, forums, studies, and research on nursing practice and education;

(12) Join organizations that develop and regulate the national nursing licensure examinations and exclusively promote the improvement of the legal standards of the practice of nursing for the protection of the public health, safety, and welfare;

(13) Appoint special purpose groups or ad hoc groups to advise the board; and

(14) Administer the provisions of the Advanced Registered Nurse Practitioner Act as it applies to certified registered nurse anesthetists, ~~and~~

the Nebraska Certified Nurse Midwifery Practice Act, and the Nurse Licensure Compact. In reporting information to the coordinated licensure information system under Article VII of the compact, the department may disclose personal identifying information about a nurse, including his or her social security number.

Sec. 7. Section 71-1,132.17, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,132.17. (1) In the interest of public safety and consumer awareness, it is unlawful for any person to use the title nurse in reference to himself or herself in any capacity, except individuals who are or have been licensed as a registered nurse or a licensed practical nurse. A Christian Science nurse may refer to himself or herself only as a Christian Science nurse.

(2) The terms "nurse", "registered nurse", and "licensed practical nurse" include persons licensed as registered nurses or licensed practical nurses by a state that is a party to the Nurse Licensure Compact. Unless the context otherwise indicates or unless doing so would be inconsistent with the compact, nurses practicing in this state under a license issued by a state that is a party to the compact have the same rights and obligations as imposed by the laws of this state on licensees licensed under the Nurse Practice Act. The department has the authority to determine whether a right or obligation imposed on licensees applies to nurses practicing in this state under a license issued by a state that is a party to the compact, unless that determination is inconsistent with the compact.

Sec. 8. Section 71-1,132.31, Reissue Revised Statutes of Nebraska, is amended to read:

71-1,132.31. The board shall appoint an executive director who is a registered nurse currently licensed in this state and who has a graduate degree in nursing. The executive director shall have a minimum of five years' experience within the last ten years in the areas of administration, teaching, or consultation in the field of nursing. The salary of the executive director shall be fixed by the department and be competitive with salaries for similar positions of responsibility which require similar education and experience. The executive director shall not be a member of the board. The executive director shall be administrator of the Nurse Licensure Compact. As administrator, the executive director shall give notice of withdrawal to the executive heads of all other party states within thirty days after the effective date of any statute repealing the compact enacted by the Legislature pursuant to Article X of the compact.

The department shall appoint a practice consultant and an education consultant, each of whom is a registered nurse currently licensed in this state and has a minimum of five years' experience. On and after January 1, 1995, any person newly appointed to these positions shall also have a graduate degree in nursing. The salaries for these positions shall be fixed by the department and be competitive with salaries for similar positions of responsibility which require similar education. The nursing education consultant and nursing practice consultant shall not be members of the board.

The department shall appoint one or more nurse investigators to conduct investigations of violations of the Nurse Practice Act. Each nurse investigator shall be a registered nurse currently licensed in this state and have a minimum of five years' experience in nursing practice. The nurse investigators shall not be members of the board.

Sec. 9. This act becomes operative January 1, 2001.

Sec. 10. Original sections 71-1,132.01, 71-1,132.05, 71-1,132.17, and 71-1,132.31, Reissue Revised Statutes of Nebraska, and section 71-1,132.11, Revised Statutes Supplement, 1999, are repealed.