

## BILL ANALYSIS

Senate Research Center  
85R29664 JG-D

C.S.H.B. 2950  
By: Burkett et al. (Hinojosa)  
Health & Human Services  
5/15/2017  
Committee Report (Substituted)

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Board of Nursing (BON) safeguards public health and safety by regulating nurses and nursing education programs in Texas. BON is subject to the Sunset Act and will be abolished on September 1, 2017, unless continued by the legislature. The Sunset Advisory Commission found that in most respects BON performs well and recommends continuing the agency for 12 years.

Major Provisions in H.B. 2950:

- Establishes requirements for clinical competency programs, such as Excelsior College, to continue to operate in Texas.
- Continues the exception to initial licensure standards for graduates of certain out-of-state nursing programs, namely Excelsior College.
- Creates a process, similar to steps for an in-state program, for program improvement if a program's national exam passage rate falls below BON's standard for consecutive years.
- A program's failure to meet these standards would require its graduates to meet additional conditions for Texas licensure.
- Requires BON to develop a path to initial licensure for graduates of out-of-state programs that are not substantially equivalent to Texas standards.
- Limits the use of subjective standards for licensure decisions by requiring BON to demonstrate a connection between a nurse's conduct and the practice of nursing.
- Increases flexibility and oversight of the peer assistance program for impaired nurses.
- Requires BON's peer assistance program to develop and use flexible program requirements in line with nurses' needs and diagnoses.
- Requires BON to create a formal process to allow students an opportunity for re-evaluation of participation in peer assistance upon initial licensure.
- Requires BON to adequately measure the effectiveness of its peer assistance program.
- Adopts the new Nurse Licensure Compact to ensure continued mobility for nurses.
- Requires BON to remove a nurse's disciplinary action from BON's website in certain circumstances.
- Prohibits BON from charging a nurse for the administrative costs of conducting an administrative hearing, as well as from changing a finding of fact or conclusion of law of an administrative law judge.
- Continues BON for 12 years. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 2950 amends current law relating to the continuation and functions of the Texas Board of Nursing and to the regulation of the practice of nursing.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Board of Nursing (BON) in SECTION 3 (Section 301.157, Occupations Code), SECTION 6 (Section 301.257, Occupations Code), and SECTION 9 (Section 301.452, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Interstate Commission of Nurse Licensure Compact Administrators in SECTION 12 (Section 304.0015, Occupations Code) of this bill.

Rulemaking authority previously granted to BON is modified in SECTION 8 (Section 301.4106, Occupations Code) of this bill.

Rulemaking authority previously granted to party state nurse licensing boards, Nurse Licensure Compact administrators, and party states is rescinded in SECTION 16 (Section 304.001, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 301.003, Occupations Code, as follows:

Sec. 301.003. APPLICATION OF SUNSET ACT. Provides that the Texas Board of Nursing (BON) is subject to Chapter 325 (Sunset Law), Government Code (Texas Sunset Act). Provides that unless continued in existence as provided by that chapter BON is abolished September 1, 2029, rather than 2017.

SECTION 2. Amends Section 301.059, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires the training program to provide the person appointed to or qualifying for office as a BON member with information regarding:

- (1) the law governing BON's operations, rather than the legislation that created BON;
- (2) the programs, functions, rules, and budget of BON;
- (3) the scope of and limitations on BON's rulemaking authority;
- (4) redesignates existing Subdivision (2) as Subdivision (4);
- (5) redesignates existing Subdivision (3) as Subdivision (5). The requirements of:
  - (A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and
  - (B) other laws applicable to members of BON in performing their duties; and
- (6) redesignates existing Subdivision (4) as Subdivision (6).

(d) Requires the executive director of BON (executive director) to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each BON member. Requires each BON member, on the receipt of the training manual, to sign and submit to the executive director a statement acknowledging receipt of the training manual.

SECTION 3. Amends Section 301.157, Occupations Code, by amending Subsections (d-4), (d-8), (d-9), and (d-11) and adding Subsection (d-12), as follows:

(d-4) Authorizes BON to recognize and accept as approved under this section a school of nursing or educational program operated in another state and approved by a state board of nursing or other regulatory body of that state. Requires BON to adopt rules, rather than develop policies, to ensure that the other state's standards are substantially equivalent to BON's standards. Requires BON by rule to develop a process for students enrolled in a school of nursing or educational program operated in another state that does not meet standards substantially equivalent to BON's standards to apply for an initial license under this chapter (Nurses).

(d-8) Provides that for purposes of Subsection (d-4), a nursing program is considered to meet standards substantially equivalent to BON's standards if the program:

(1) and (2) makes no changes to these subdivisions;

(3) deletes existing text including the National League for Nursing Accrediting Commission among certain accrediting entities;

(4) makes no changes to this subdivision;

(5) graduate students who:

(A) and (B) makes no changes to these paragraphs; and

(C) pass the National Council Licensure Examination for Registered Nurses at a rate equivalent to BON's required passage rate for students of approved in-state programs.

(d-9) Provides that a graduate of a clinical competency assessment program operated in another state and approved by a state board of nursing or other regulatory body of another state is eligible to apply for an initial license under this chapter if:

(1) deletes text of existing Subdivision (1) (relating to BON allowing program graduates to apply for an initial license) and redesignates existing Subdivision (2) as Subdivision (1); and

(2) redesignates existing Subdivision (3) as Subdivision (2) and deletes existing Subdivision (4) (relating to the program participating in a certain research study).

(d-11) Requires a clinical competency assessment program, if a clinical competency assessment program operated in another state graduates students who pass the National Council Licensure Examination for Registered Nurses at a rate lower than BON's required passage rate for graduating students of approved in-state programs, not later than May 31 of the next school year, to:

(1) for the first year the student passage rate is lower than BON's required passage rate for students of approved in-state programs, complete and submit to BON for review and comment a self-study of the program in accordance with BON's guidelines;

(2) for the second consecutive year the student passage rate is lower than BON's required passage rate for students of approved in-state programs, allow BON to conduct a desk review to evaluate the program using the criteria typically used in an on-site visit and make recommendations to improve the program; and

(3) for the third consecutive year the student passage rate is lower than BON's required passage rate for students of approved in-state programs, provide notice on the program's Internet website that prospective students of the program may

need to complete additional requirements to apply for an initial license in this state because the program has failed to meet BON's standards related to the required passage rate on the National Council Licensure Examination for Registered Nurses. Deletes existing text providing that Subsections (d-8), (d-9), (d-10), and (d-11) expire December 31, 2017. Deletes existing text requiring the Sunset Advisory Commission, as part of the first review conducted under Section 301.003 after September 1, 2009, to make certain recommendations.

(d-12) Provides that a clinical competency assessment program operated in another state is not considered to meet standards substantially equivalent to BON's standards if the program fails to meet the applicable requirements under Subsection (d-11) or if the program's graduating student passage rate on the National Council Licensure Examination for Registered Nurses is lower than BON's required passage rate for graduating students of approved in-state programs for four consecutive years. Provides that a student enrolled in a program described by this subsection before December 31 of the fourth consecutive year is eligible to apply for an initial license under this chapter. Requires the program to notify a student who enrolls in a the program after December 31 of the fourth consecutive year that the student is required to complete additional requirements established by BON under Subsection (d-4) to apply for an initial license under this chapter.

SECTION 4. Amends Subchapter D, Chapter 301, Occupations Code, by adding Section 301.1583, as follows:

Sec. 301.1583. DISCIPLINARY RECORD. Requires BON to remove a disciplinary action from a nurse's record on BON's Internet website under certain conditions.

SECTION 5. Amends Section 301.252, Occupations Code, by amending Subsection (a) and adding Subsection (a-2), as follows:

(a) Requires each applicant for a registered nurse license or a vocational nurse license to submit to BON a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant:

- (1) has good professional character related to the practice of nursing;
- (2) and (3) makes no changes to these subdivisions.

(a-2) Provides that an applicant who provides satisfactory evidence that the applicant has not committed a violation of this chapter or a rule adopted under this chapter is considered to have good professional character related to the practice of nursing. Requires a determination by BON that an applicant does not have good professional character related to the practice of nursing to be based on a showing by BON of a clear and rational connection between a violation of this chapter or a rule adopted under this chapter and the applicant's ability to effectively practice nursing.

SECTION 6. Amends Section 301.257, Occupations Code, by adding Subsections (l) and (m), as follows:

(l) Authorizes BON to require in a declaratory order under this section that a person begin participation in a peer assistance program at the time of receipt of an initial license under this chapter. Requires BON to notify the person that, on issuance of the person's initial license, the person may request reevaluation of the person's required participation in the peer assistance program.

(m) Requires BON by rule to develop a process to determine whether a person should continue to be required to participate in a peer assistance program. Requires BON, in making the determination, to review the person's criminal history record information and, if applicable, determine whether participation in the program is warranted based on the time that has elapsed since the conviction or end of community supervision, reevaluate or

require a contractor administering a peer assistance program to reevaluate the treatment plan or the time the person is required to participate in the peer assistance program based on the person's individualized needs, and authorize, as appropriate, a waiver of peer assistance program completion if BON is satisfied the person has achieved a satisfactory period of treatment or documented sobriety, as defined by BON rules, and continued participation is not necessary.

SECTION 7. Amends Section 301.301(b), Occupations Code, to delete existing text including payment to BON of any costs assessed under Section 301.461 (Assessment of Costs) among requirements for a person to renew an unexpired license issued under this chapter.

SECTION 8. Amends Section 301.4106, Occupations Code, as follows:

Sec. 301.4106. PEER ASSISTANCE PROGRAMS. Requires BON by rule to develop certain guidelines, including guidelines to establish a clear procedure based on meaningful performance goals for evaluating the success of a certain peer assistance program; establish individualized requirements for participants in a peer assistance program, including the duration of participation in a peer assistance program for substance use, based on the individual's diagnosis and needs; and ensure that participation requirements and treatment plans for peer assistance program participants who are referred to peer assistance for similar reasons are administered consistently.

SECTION 9. Amends Section 301.452, Occupations Code, by amending Subsection (b) and adding Subsection (e), as follows:

(b) Provides that a person is subject to denial of a license or to disciplinary action under this subchapter (Prohibited Practices and Disciplinary Actions) for unprofessional, rather than unprofessional or dishonorable, conduct in the practice of nursing that, rather than that in the BON's opinion, is likely to deceive, defraud, or injure a patient or the public.

(e) Requires BON to adopt rules to ensure that license denials and disciplinary action under Subsection (b)(10) are based on the application of objective criteria that are clearly and rationally connected to the applicant's or license holder's conduct and that any negative outcome resulting from that conduct is determined to affect the person's ability to effectively practice nursing.

SECTION 10. Amends Section 301.459, Occupations Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires an administrative law judge (ALJ) employed by the State Office of Administrative Hearings (SOAH), rather than SOAH, to conduct a formal hearing. Requires BON, after receiving the ALJ's findings of fact and conclusions of law for a contested case, to dispose of the case by issuing a final order based on the ALJ's findings of fact and conclusions of law.

(a-1) Prohibits BON in a contested case, notwithstanding Section 2001.058(e) (relating to a state agency changing a finding of fact or conclusion of law or vacating or modifying an order if the agency makes certain determinations), Government Code, from changing a finding of fact or conclusion of law or vacating or modifying an order of the ALJ. Authorizes BON to obtain judicial review of any finding of fact or conclusion of law issued by the ALJ as provided by Section 2001.058(f)(5) (relating to an occupations licensing agency and any other party to the contested case being entitled to obtain judicial review of the final decision), Government Code. Authorizes the ALJ, for each case, to make a recommendation regarding an appropriate action or sanction. Provides that BON has the sole authority and discretion to determine the appropriate action or sanction.

SECTION 11. Amends Section 301.461, Occupations Code, as follows:

Sec. 301.461. New heading: ASSESSMENT OF COSTS PROHIBITED. Prohibits, rather than authorizes, BON from assessing a person who is found to have violated this chapter the administrative costs of conducting a hearing to determine the violation.

SECTION 12. Amends Chapter 304, Occupations Code, by adding Section 304.0015, as follows:

Sec. 304.0015. NURSE LICENSURE COMPACT. Provides that the Nurse Licensure Compact is enacted and entered into with all other jurisdictions that legally join in the compact, which reads as follows:

## NURSE LICENSURE COMPACT

### ARTICLE I. FINDINGS AND DECLARATION OF PURPOSE

- (a) Sets forth the findings of the party states.
- (b) Sets forth the purposes of the Nurse Licensure Compact (compact).

### ARTICLE II. DEFINITIONS

Defines "adverse action," "alternative program," "coordinated licensure information system," "current significant investigative information," "encumbrance," "home state," "licensing board," "multistate license," "multistate licensure privilege," "nurse," "party state," "remote state," "single-state license," "state," and "state practice laws."

### ARTICLE III. GENERAL PROVISIONS AND JURISDICTION

- (a) Provides that a multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse (RN) or as a licensed practical/vocational nurse (LPN/VN), under a multistate licensure privilege, in each party state.
- (b) Requires a state to implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Requires such procedure to include the submission of fingerprints or other biometric-based information by 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.
- (c) Requires each party state to require certain criteria for an applicant to obtain or retain a multistate license in the home state.
- (d) Requires all party states to be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. Requires a party state, if a party state takes such action, to promptly notify the administrator of the coordinated licensure information system (administrator; system). Requires the administrator to promptly notify the home state of any such actions by remote states.
- (e) Requires a nurse practicing in a party state to comply with the state practice laws of the state in which the client is located at the time service is provided. Provides that the practice of nursing is not limited to patient care, but is required to include all nursing practice as defined by the state practice laws of the party state in which the client is located. Provides that the practice of nursing in a party state under a multistate licensure privilege will subject a 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.

(f) Requires individuals not residing in a party state to continue to be able to apply for a party state's single-state license as provided under the laws of each party state. Provides that the single-state license granted to these individuals, however, will not be recognized as granting the privilege to practice nursing in any other party state. Requires nothing in this compact to affect the requirements established by a party state for the issuance of a single-state license.

(g) Authorizes any nurse holding a home state multistate license, on the effective date of this compact, to retain and renew the multistate license issued by the nurse's then-current home state, provided that a nurse meets certain criteria.

#### ARTICLE IV. APPLICATIONS FOR LICENSURE IN A PARTY STATE

(a) Requires the licensing board in the issuing party state, upon application for a multistate license, to ascertain, through the system, whether the applicant has ever held, or is the holder of, a 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.

(b) Authorizes a nurse to hold a multistate license, issued by the home state, in only one party state at a time.

(c) Requires the nurse, if a nurse changes primary state of residence by moving between two party states, to apply for licensure in the new home state, and provides that the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators (commission).

(1) Authorizes the nurse to apply for licensure in advance of a change in primary state of residence.

(2) Requires that a multistate license not be issued by the new home state until the 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 license from the new home state.

(d) Provides that if a nurse changes primary state of residence by moving from a party state to a nonparty state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

#### ARTICLE V. ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE LICENSING BOARDS

(a) Requires a licensing board, in addition to other powers conferred by state law, to have the authority to take certain actions.

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

(c) Requires nothing in this compact to override a party state's decision that participation in an alternative program may be used in lieu or adverse action. Requires the home state licensing board to deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

#### ARTICLE VI. COORDINATED LICENSURE INFORMATION SYSTEM AND EXCHANGE OF INFORMATION

(a) Requires all party states to participate in a system of all licensed RNs and LPNs/VNs. Provides that this system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Requires the commission, in consultation with the administrator, to formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

(c) Requires all licensing boards to promptly report to the system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials), and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

(d) Requires current significant investigative information and participation in nonpublic or confidential alternative programs to be transmitted through the system only to party state licensing boards.

(e) Authorizes all party state licensing boards contributing information to the system, notwithstanding any other provision of law, to 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.

(f) Requires any personally identifiable information obtained from the system by a party state licensing board to 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.

(g) Requires any information contributed to the system that is subsequently required to be expunged by the laws of the party state contributing that information to also be expunged from the system.

(h) Requires the compact administrator of each party state to furnish a uniform data set to the compact administrator of each other party state, which is to include, at a minimum, identifying information, licensure data, information related to alternative program participation, and other information that may facilitate the administration of this compact, as determined by commission rules.

(i) Requires the compact administrator of a party state to provide all investigative documents and information requested by another party state.

#### ARTICLE VII. ESTABLISHMENT OF INTERSTATE COMMISSION OF NURSE LICENSURE COMPACT ADMINISTRATORS

(a) Establishes the commission.

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

(2) Provides that venue is proper and requires judicial proceedings by or against the commission to be brought solely and exclusively in a court of



competent jurisdiction where the principal office of the commission is located. Authorizes the commission to waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(3) Requires nothing in this compact to be construed to be a waiver of sovereign immunity.

(b) Membership, Voting, and Meetings

Sets forth the criteria and procedures for membership, voting, and meetings.

(c) Requires the commission to, by a majority vote of the administrators, prescribe certain bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including, but not limited to, certain bylaws and rules.

(d) Requires the commission to publish its bylaws and rules, and any amendments thereto, in a convenient form on the commission's website.

(e) Requires the commission to maintain its financial records in accordance with the bylaws.

(f) Requires the commission to meet and take such actions as are consistent with the provisions of this compact and bylaws.

(g) Sets forth the powers of the commission.

(h) Financing of the Commission

(1) Requires the commission to pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

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

(3) Prohibits the commission from incurring an obligation of any kind prior to securing the funds adequate to meet the same. Prohibits the commission from pledging the credit of any the party states, except by and with the authority of such party state.

(4) Requires the commission to keep accurate accounts of all receipts and disbursements. Requires the commission's receipts and disbursements to be subject to the audit and accounting procedures established under its bylaws. Requires all receipts and disbursements of funds handled by the commission, however, to be audited yearly by a certified or licensed public accountant, and the report of the audit to be included in and become part of the annual report of the commission.

(i) Qualified Immunity, Defense, and Indemnification

(1) Requires the compact administrators, officers, executive directors, employees, and representatives of the commission to be immune from suit and liability, either personally or in their official capacity, for any claim

for damage to or loss of property, or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of the commission employment, duties, or responsibilities; provided that nothing in this subdivision is required to be construed to protect any such person from suit or liability for any damages, loss, injury, or liability caused by the intentional, wilful, or wanton misconduct of that person.

(2) Requires the commission to 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 the commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein is required to be construed to prohibit the person from retaining counsel; and provided further that the actual or alleged act, error, or omission did not result from that person's intentional, wilful, or wanton misconduct.

(3) Requires the commission to 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 the commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of the commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from the intentional, wilful, or wanton misconduct of that person.

#### ARTICLE VIII. RULEMAKING

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

(b) Requires rules or amendments to the rules to be adopted at a regular or special meeting of the commission.

(c) Requires the commission, prior to the promulgation and adoption of a final rule or rules by the commission, and at least 60 days in advance of the meeting at which the rule will be considered and voted upon, to file a notice of proposed rulemaking on the website of the commission and on the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

(d) Requires the notice of proposed rulemaking to include certain information.

(e) Requires the commission, prior to adoption of a proposed rule, to allow persons to submit written data, facts, opinions, and arguments, to be made available to the public.

(f) Requires the commission to grant an opportunity for a public hearing before it adopts a rule or amendment.

(g) Requires the commission to publish the place, time, and date of the scheduled public hearing.

(1) Requires hearings to be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. Provides that all hearings will be recorded, and a copy will be made available upon request.

(2) Requires nothing in this section to be construed as requiring a separate hearing on each rule. Authorizes rule to be grouped for the convenience of the commission at hearings required by this section.

(h) Authorizes the commission, if no one appears at the public hearing, to proceed with promulgation of the proposed rule.

(i) Requires the commission, following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, to consider all written and oral comments received.

(j) Requires the commission to, by majority vote of all administrators, take final action on the proposed rule and to determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(k) Authorizes the commission, upon determination that an emergency exists, to consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing; provided that the usual rulemaking procedures provided in this compact and in this section are required to be retroactively applied to the rule as soon as reasonably possible, and in no event later than 90 days after the effective date of the rule. Defines emergency rule.

(l) Authorizes the commission to direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Requires public notice of any revisions to be posted on the commission's website. Requires the revision to be subject to challenge by any person for a period of 30 days after posting. Authorizes the revision to be challenged only on grounds that the revision results in a material change to a rule. Requires a challenge to be made in writing, and delivered to the commission, prior to the end of the notice period. Provides that, if no challenge is made, the revision will take effect without further action. Prohibits the revision, if the revision is challenged, to take effect without the approval of the commission.

## ARTICLE IX. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

### (a) Oversight

(1) Requires each party state to enforce this compact and take all actions necessary and appropriate to effectuate this compact's purpose and intent.

(2) Requires the commission to be entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the commission and to have standing to intervene in such a proceeding for all purposes. Requires that failure to provide service of process in such proceeding to the commission render a judgment of order void as to the commission, this compact, or promulgated rules.

### (b) Default, Technical Assistance, and Termination.

(1) Requires the commission, 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, to take certain actions.

(2) Authorizes the defaulting state's membership in this compact, if a state in default fails to cure the default, to be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by the compact to be terminated on the effective date of termination. Provides that a cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(3) Requires termination of membership in this compact to be imposed only after all other means of securing compliance have been exhausted. Requires notice of intent to suspend or terminate to be given by the commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.

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

(5) Requires the commission to 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.

(6) Authorizes the defaulting state to appeal the commission's action by petitioning the U.S. District Court for the District of Columbia or the federal district in which the commission has its principal offices. Requires the prevailing party to be awarded all costs of such litigation, including attorney's fees.

#### (c) Dispute Resolution

(1) Requires the commission, upon request by a party state, to attempt to resolve disputes related to the compact that arise among party states and between party and nonparty states.

(2) Requires the commission to promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

(3) Provides that in the event the commission cannot resolve disputes among party state arising under this compact the party states are authorized to submit the issues in dispute to an arbitration panel, which will be comprised of certain individuals and requires the decision of a majority of the arbitrators to be final and binding.

#### (d) Enforcement

(1) Requires the commission, in the reasonable exercise of its discretion, to enforce the provisions and rules of this compact.

(2) Authorizes the commission, by majority vote, to initiate legal action in the U.S. District Court for the District of Columbia or in 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. Authorizes the relief sought to include both injunctive relief and damages. Requires the prevailing party, in the event judicial enforcement is necessary, to be awarded all costs of such litigation, including reasonable attorney's fees.

- (3) Requires the remedies to not be the exclusive remedies of the commission. Authorizes the commission to pursue any other remedies available under federal or state law.

#### ARTICLE X. EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENTS

- (a) Requires this compact to become effective and binding on the earlier of the date of legislative enactment of this compact into law by no less than 26 states on December 31, 2018. Requires all party states to this compact that also were parties to the prior Nurse Licensure Compact, superseded by this compact ("prior compact"), to be deemed to have withdrawn from said prior compact within six months after the effective date of this compact.
- (b) Requires each party state to this compact to continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until the party state has withdrawn from the prior compact.
- (c) Authorizes any party state to withdraw from this compact by enacting a statute repealing the same. Requires a party state's withdrawal to not take effect until six months after enactment of the repealing statute.
- (d) Requires a party state's withdrawal or termination to not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.
- (e) Requires that nothing in this compact 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.
- (f) Authorizes this compact to be amended by the party states. Requires no amendment to this compact to become effective and binding upon the party states unless and until it is enacted into the laws of all party states.
- (g) Requires representatives of nonparty states to this compact to be invited to participate in the activities of the commission, on a nonvoting basis, prior to the adoption of this compact by all states.

#### ARTICLE XI. CONSTRUCTION AND SEVERABILITY

Requires this compact to be liberally construed so as to effectuate the purposes thereof. Requires the provision of this compact to be severable, and requires, if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or 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 applicability thereof to any government, agency, person, or circumstance to not be affected thereby. Requires this compact, if this compact is to be held to be contrary to the constitution of any party state, to 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.

SECTION 13. Amends Chapter 304, Occupations Code, by adding Section 304.0025, as follows:

Sec. 304.0025. RULES ADOPTED UNDER COMPACT. Prohibits the commission established under the compact under Section 304.0015 from adopting rules that alter the requirements or scope of practice of a license issued under Chapter 301. Provides that any rule adopted by the commission that purports to alter the requirements or scope of practice of a license issued under Chapter 301 is not enforceable.

SECTION 14. Amends Section 304.006(a), Occupations Code, by changing a reference of Article 7 of the Nurse Licensure Compact to Article VI of the Nurse Licensure Compact.

SECTION 15. Amends Section 304.008(a), Occupations Code, to authorize BON, in reporting information to the system under Article VI, rather than 7, of the Nurse Licensure Compact, to disclose personally identifiable information about the nurse, including the nurse's social security number.

SECTION 16. (a) Repealers: Sections 301.160 (Pilot Programs) and 301.163 (Record of Proceedings; Report), Occupations Code.

(b) Repealers, effective December 31, 2018: Sections 304.001 (Nurse Licensure Compact) and 304.009 (Withdrawal from Compact), Occupations Code.

SECTION 17. (a) Provides that, except as provided by Subsection (b) of this section, Section 301.059, Occupations Code, as amended by this Act, applies to a member of BON appointed before, on, or after the effective date of this Act.

(b) Requires that a member of BON who, before the effective date of this Act, completed the training program required by Section 301.059, Occupations Code, as that law existed before the effective date of this Act, to complete additional training only on subjects added to the training program required by Section 301.059, Occupations Code, as amended by this Act. Prohibits a BON member described by this subsection to vote, deliberate, or be counted as a member in attendance at a BON meeting held on or after December 1, 2017, until the member completes the additional training.

SECTION 18. (a) Requires BON, not later than May 31, 2018, to adopt the rules necessary to implement the changes in law made by this Act to Section 301.157, Occupations Code. Requires BON, in adopting rules under this subsection, to provide an opportunity for public comment and, through BON's Advisory Committee on Education, seek comment from interested parties. Requires the rules to meet certain criteria.

(b) Requires BON, not later than March 1, 2018, to adopt the rules necessary to implement the changes in law made by this Act to Sections 301.252 and 301.452, Occupations Code. Requires BON, in adopting rules under this subsection, to seek comments from relevant interested parties.

(c) Provides that Section 301.157(d-11), Occupations Code, as amended by this Act, applies beginning with the passage rates available in January 2018, reflecting the passage rates for the preceding year. Requires the clinical competency assessment program, if the passage rate for a clinical competency assessment program available in January 2018 does not meet BON's required passage rate for students of approved in-state program, to complete the self-study required under Section 301.157(d-11)(1), Occupations Code, as amended by this Act, not later than May 31, 2018.

(d) Makes application of Sections 301.301(b) and 301.461, Occupations Code, as amended by this Act, prospective.

(e) Makes application of Section 301.459, Occupations Code, as amended by this Act, prospective.

SECTION 19. Effective date, except as otherwise provided by this Act: September 1, 2017.