

ADVANCED PRACTICE REGISTERED NURSE

MODIFICATIONS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill enacts the Advanced Practice Registered Nurse Compact and makes modifications to related provisions dealing with advanced practice registered nurses.

Highlighted Provisions:

This bill:

- ▶ enacts a compact that ensures and encourages the cooperation of party states in the areas of APRN licensure/authority to practice and regulation, including promotion of uniform licensure requirements;
- ▶ provides, under the compact, for the recognition, limitation, and revoking of multistate advanced practice privileges;
- ▶ provides an application process, under the compact, for APRN licensure/authority to practice in a party state;
- ▶ provides, under the compact, for adverse action affecting the multistate advanced practice privilege;
- ▶ grants authority to the Division of Occupational and Professional Licensing, under the compact, to recover costs resulting from adverse actions taken against an APRN and issue cease and desist orders;
- ▶ provides, under the compact, for participation in a cooperative effort to create a coordinated licensure information system of all APRNs; and
- ▶ repeals licensure by endorsement as an advanced practice registered nurse.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2004.

Utah Code Sections Affected:

AMENDS:

58-31b-302, as last amended by Chapter 290, Laws of Utah 2002

ENACTS:

58-31d-101, Utah Code Annotated 1953

58-31d-102, Utah Code Annotated 1953

58-31d-103, Utah Code Annotated 1953

REPEALS:

58-31b-307, as enacted by Chapter 288, Laws of Utah 1998

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **58-31b-302** is amended to read:

58-31b-302. Qualifications for licensure or registration -- Criminal background checks.

- (1) An applicant for licensure as a licensed practical nurse shall:
 - (a) submit to the division an application in a form prescribed by the division;
 - (b) pay to the division a fee determined under Section 63-38-3.2;
 - (c) have a high school diploma or its equivalent;
 - (d) be in a condition of physical and mental health that will permit the applicant to practice safely as a licensed practical nurse;
 - (e) have completed an approved practical nursing education program or an equivalent as determined by the board;
 - (f) have passed the examinations as required by division rule made in collaboration with the board; and
 - (g) meet with the board, if requested, to determine the applicant's qualifications for licensure.

- (2) An applicant for licensure as a registered nurse shall:
 - (a) submit to the division an application form prescribed by the division;
 - (b) pay to the division a fee determined under Section 63-38-3.2;
 - (c) have a high school diploma or its equivalent;
 - (d) be in a condition of physical and mental health that will allow the applicant to practice safely as a registered nurse;
 - (e) have completed an approved registered nursing education program;
 - (f) have passed the examinations as required by division rule made in collaboration with the board; and
 - (g) meet with the board, if requested, to determine the applicant's qualifications for licensure.
- (3) Applicants for licensure as an advanced practice registered nurse shall:
 - (a) submit to the division an application on a form prescribed by the division;
 - (b) pay to the division a fee determined under Section 63-38-3.2;
 - (c) be in a condition of physical and mental health which will allow the applicant to practice safely as an advanced practice registered nurse;
 - (d) hold a current registered nurse license in good standing issued by the state or be qualified at the time for licensure as a registered nurse;
 - (e) have earned a graduate degree in an advanced practice registered nurse nursing education program or a related area of specialized knowledge as determined appropriate by the division in collaboration with the board;
 - (f) have completed course work in patient assessment, diagnosis and treatment, and pharmacotherapeutics from an education program approved by the division in collaboration with the board;
 - (g) have successfully completed clinical practice in psychiatric and mental health nursing, including psychotherapy as defined by division rule, after completion of the masters degree required for licensure, to practice within the psychiatric and mental health nursing specialty;
 - (h) have passed the examinations as required by division rule made in collaboration with

the board;

(i) be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the certification; and

(j) meet with the board, if requested, to determine the applicant's qualifications for licensure.

(4) An applicant for licensure as a certified registered nurse anesthetist shall:

(a) submit to the division an application on a form prescribed by the division;

(b) pay to the division a fee determined under Section 63-38-3.2;

(c) be in a condition of physical and mental health which will allow the applicant to practice safely as a certified registered nurse anesthetist;

(d) hold a current registered nurse license in good standing issued by the state or be qualified at the time for licensure as a registered nurse;

(e) complete a nurse anesthesia program which is approved by the Council on Accreditation of Nurse Anesthesia Educational Programs;

(f) be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the certification; and

(g) meet with the board, if requested, to determine the applicant's qualifications for licensure.

(5) An applicant for registration as a health care assistant shall:

(a) submit an application in a form prescribed by the division;

(b) pay a fee determined by the department under Section 63-38-3.2;

(c) certify in writing that he is free from any physical, mental, or emotional condition that will or may reasonably be expected to prevent the applicant from practicing as a health care assistant in compliance with this chapter; and

(d) may not, within five years immediately prior to application, have any substantiated allegations of abuse, neglect, or misappropriation of client property listed against him on the certified nurse assistant registry maintained by the State Office of Education or on a similar registry maintained in another state in compliance with 42 CFR 483.156.

(6) An applicant for licensure or registration under this chapter:

(a) (i) shall submit fingerprint cards in a form acceptable to the division at the time the license application is filed and shall consent to a fingerprint background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application; and

(ii) the division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each applicant through the national criminal history system (NCIC) or any successor system; and

(b) if convicted of one or more felonies, must receive an absolute discharge from the sentences for all felony convictions five or more years prior to the date of filing an application for licensure or registration under this chapter.

(7) For purposes of conducting the criminal background checks required in Subsection (6), the division shall have direct access to criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

(8) (a) (i) Any new nurse license or health care assistant registration issued under this section shall be conditional, pending completion of the criminal background check.

(ii) If the criminal background check discloses the applicant has failed to accurately disclose a criminal history, the license or registration shall be immediately and automatically revoked.

(b) (i) Any person whose conditional license or registration has been revoked under Subsection (8)(a) shall be entitled to a postrevocation hearing to challenge the revocation.

(ii) The hearing shall be conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

Section 2. Section **58-31d-101** is enacted to read:

CHAPTER 31d. ADVANCED PRACTICE REGISTERED NURSE COMPACT

58-31d-101. Title.

This chapter is known as the "Advanced Practice Registered Nurse Compact."

Section 3. Section **58-31d-102** is enacted to read:

58-31d-102. Advanced Practice Registered Nurse Compact.

The Advanced Practice Registered Nurse Compact is hereby enacted and entered into with all other jurisdictions that legally join in the compact, which is, in form, substantially as follows:

Advanced Practice Registered Nurse Compact

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 APRN licensure/authority to practice requirements and the effectiveness of enforcement activities related to state APRN licensure/authority to practice laws;

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

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

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

(e) the current system of duplicative APRN licensure/authority to practice for APRNs practicing in multiple states is cumbersome and redundant to both APRNs and states;

(f) uniformity of APRN requirements throughout the states promotes public safety and public health benefits; and

(g) access to APRN services increases the public's access to health care, particularly in rural and underserved areas.

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

(a) facilitate the states' responsibilities to protect the public's health and safety;

(b) ensure and encourage the cooperation of party states in the areas of APRN licensure/authority to practice and regulation, including promotion of uniform licensure requirements;

(c) facilitate the exchange of information between party states in the areas of APRN

regulation, investigation, and adverse actions;

(d) promote compliance with the laws governing APRN practice in each jurisdiction; and
(e) invest all party states with the authority to hold an APRN accountable for meeting all
state practice laws in the state in which the patient is located at the time care is rendered through
the mutual recognition of party state licenses.

ARTICLE II

Definitions

As used in this compact:

(1) "Advanced practice registered nurse" or "APRN" means a nurse anesthetist, nurse
practitioner, nurse midwife, or clinical nurse specialist to the extent a party state licenses or grants
authority to practice in that APRN role and title.

(2) "Adverse action" means a home or remote state disciplinary action.

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

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

(5) "APRN Uniform Licensure/Authority to Practice Requirements" means those
minimum uniform licensure, education, and examination requirements as agreed to by the compact
administrators and adopted by licensing boards for the recognized APRN role and title.

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

(7) "Current significant investigative information" means:

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

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

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

(9) "Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws which are imposed on an APRN by the home state's licensing board or other authority including actions against an individual's license/authority to practice such as: revocation, suspension, probation, or any other action which affects an APRN's authorization to practice.

(10) "Licensing board" means a party state's regulatory body responsible for issuing APRN licensure/authority to practice.

(11) (a) "Multistate advanced practice privilege" means current authority from a remote state permitting an APRN to practice in that state in the same role and title as the APRN is licensed/authorized to practice in the home state to the extent that the remote state laws recognize such APRN role and title.

(b) A remote state has the authority, in accordance with existing state due process laws, to take actions against the APRN's privilege, including revocation, suspension, probation, or any other action that affects an APRN's multistate privilege to practice.

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

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

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

(a) where the patient is located at the time APRN care is provided; or

(b) in the case of APRN practice not involving a patient, in the party state where the recipient of APRN practice is located.

(15) "Remote state action" means:

(a) any administrative, civil, equitable, or criminal action permitted by a remote state's laws which are imposed on an APRN by the remote state's licensing board or other authority,

including actions against an individual's multistate advanced practice privilege in the remote state; and

(b) cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards of those states.

(16) "State" means a state, territory, or possession of the United States.

(17) (a) "State practice laws" means a party state's laws and regulations that govern APRN practice, define the scope of advanced nursing practice including prescriptive authority, and create the methods and grounds for imposing discipline.

(b) State practice laws do not include the requirements necessary to obtain and retain APRN licensure/authority to practice as an APRN, except for qualifications or requirements of the home state.

(18) "Unencumbered" means that a state has no current disciplinary action against an APRN's license/authority to practice.

ARTICLE III

General Provisions and Jurisdiction

(1) All party states shall participate in the Nurse Licensure Compact for registered nurses and licensed practical/vocational nurses in order to enter into the APRN Compact.

(2) No state shall enter the APRN Compact until the state adopts, at a minimum, the APRN Uniform Licensure/Authority to Practice Requirements for each APRN role and title recognized by the state seeking to enter the APRN Compact.

(3) (a) APRN Licensure/Authority to practice issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate advanced practice privilege to the extent that the role and title are recognized by each party state.

(b) To obtain or retain APRN licensure/authority to practice as an APRN, an applicant must meet the home state's qualifications for authority or renewal of authority as well as all other applicable state laws.

(4) (a) The APRN multistate advanced practice privilege does not include prescriptive authority, and does not affect any requirements imposed by states to grant to an APRN initial and

continuing prescriptive authority according to state practice laws.

(b) A party state may grant prescriptive authority to an individual on the basis of a multistate advanced practice privilege to the extent permitted by state practice laws.

(5) (a) A party state may, in accordance with state due process laws, limit or revoke the multistate advanced practice privilege in the party state and may take any other necessary actions under the party state's applicable laws to protect the health and safety of the party state's citizens.

(b) If a party state takes action, the party state shall promptly notify the administrator of the coordinated licensure information system.

(c) The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(6) (a) An APRN 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 provided.

(b) The APRN practice includes patient care and all advanced nursing practice defined by the party state's practice laws.

(c) The APRN practice will subject an APRN to the jurisdiction of the licensing board, the courts, and the laws of the party state.

(7) (a) Individuals not residing in a party state may apply for APRN licensure/authority to practice as an APRN under the laws of a party state.

(b) The authority to practice granted to these individuals will not be recognized as granting the privilege to practice as an APRN in any other party state unless explicitly agreed to by that party state.

ARTICLE IV

Applications for APRN Licensure/Authority to Practice in a Party State

(1) (a) Once an application for APRN licensure/authority to practice is submitted, a party state shall ascertain, through the Coordinated Licensure Information System, whether:

(i) the applicant has held or is the holder of a nursing license/authority to practice issued by another state;

(ii) the applicant has had a history of previous disciplinary action by any state;

(iii) an encumbrance exists on any license/authority to practice; and
(iv) any other adverse action by any other state has been taken against a license/authority to practice.

(b) This information may be used in approving or denying an application for APRN licensure/authority to practice.

(2) An APRN in a party state shall hold APRN licensure/authority to practice in only one party state at a time, issued by the home state.

(3) (a) An APRN who intends to change primary state of residence may apply for APRN licensure/authority to practice in the new home state in advance of the change.

(b) New licensure/authority to practice will not be issued by a party state until after an APRN provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

(4) When an APRN changes primary state of residence by:

(a) moving between two party states, and obtains APRN licensure/authority to practice from the new home state, the APRN licensure/authority to practice from the former home state is no longer valid;

(b) moving from a nonparty state to a party state, and obtains APRN licensure/authority to practice 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;

(c) moving from a party state to a nonparty state, the APRN licensure/authority to practice 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:

(1) (a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and

legal basis for the action, if known.

(b) The licensing board of a remote state shall also promptly report any significant, current investigative information yet to result in a remote state action.

(c) The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(2) (a) The licensing board of a party state shall have the authority to complete any pending investigations for an APRN who changes primary state of residence during the course of those investigations.

(b) It shall also have the authority to take appropriate action, and shall promptly report the conclusions of the investigations to the administrator of the coordinated licensure information system.

(c) The administrator of the coordinated licensure information system shall promptly notify the new home state of the actions.

(3) (a) A remote state may take adverse action affecting the multistate advanced practice privilege to practice within that party state.

(b) Only the home state shall have the power to impose adverse action against the APRN licensure/authority to practice issued by the home state.

(4) (a) 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 that conduct had occurred within the home state.

(b) In so doing, it shall apply its own state laws to determine appropriate action.

(5) 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 the adverse action.

(6) (a) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action and that the participation shall remain nonpublic if required by the party state's laws.

(b) Party states must require APRNs 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 the other party state.

(7) (a) All home state licensing board disciplinary orders, agreed or otherwise, which limit the scope of the APRN's practice or require monitoring of the APRN as a condition of the order, shall include the requirements that the APRN will limit the APRN's practice to the home state during the pendency of the order.

(b) This requirement may allow the APRN to practice in other party states with prior written authorization from both the home state and party state licensing boards.

ARTICLE VI

Additional Authorities Invested in Party State Licensing Boards

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

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

(2) (a) issue subpoenas for both hearings and investigations, which require the attendance and testimony of witnesses, and the production of evidence;

(b) subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses, and/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;

(c) 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 or both are located;

(3) issue cease and desist orders to limit or revoke an APRN's privilege or licensure/authority to practice in their state; and

(4) promulgate uniform rules and regulations as provided for in Article VIII (3).

ARTICLE VII

Coordinated Licensure Information System

(1) (a) All party states shall participate in a cooperative effort to create a coordinated database of all APRNs.

(b) This system will include information on the APRN licensure/authority to practice and disciplinary history of each APRN, as contributed by party states, to assist in the coordination of APRN licensure/authority to practice and enforcement efforts.

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

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

(4) 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.

(5) 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.

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

(7) 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

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

(2) 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.

(3) (a) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact.

(b) These uniform rules shall be adopted by party states, under the authority invested under Article VI (4).

ARTICLE IX

Immunity

(1) No party state or the officers or employees or agents of a party state's licensing board who acts in accordance with the provisions of this compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact.

(2) Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE X

Entry into Force, Withdrawal, and Amendment

(1) (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.

(b) Any party state may withdraw from this compact by enacting a statute repealing the compact, but no 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.

(2) 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.

(3) Nothing contained in this compact shall be construed to invalidate or prevent any APRN licensure/authority to practice 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.

(4) (a) This compact may be amended by the party states.

(b) 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

(1) (a) This compact shall be liberally construed so as to effectuate its purposes.

(b) 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 its applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person, or circumstance shall not be affected thereby.

(c) If this compact shall be held contrary to the constitution of any state party to the compact, 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.

(2) (a) In the event party states find a need for settling disputes arising under this compact, 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 involved, and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute.

(b) The decision of a majority of the arbitrators shall be final and binding.

Section 4. Section **58-31d-103** is enacted to read:

58-31d-103. Rulemaking authority -- Enabling provisions.

(1) The division may adopt rules necessary to implement Section 58-31d-102.

(2) As used in Article VIII (1) of the Advanced Practice Registered Nurse Compact, "head of the licensing board" means the executive administrator of the Utah Board of Nursing.

(3) For purposes of the Advanced Practice Registered Nurse Compact, "APRN" as defined in Article II (1) of the compact includes an individual who is licensed to practice under Subsection 58-31b-302(2)(d) as an advanced practice registered nurse.

(4) An APRN practicing in this state under a multistate licensure privilege may only be granted prescriptive authority if that individual can document completion of graduate level course work in the following areas:

- (a) advanced health assessment;
- (b) pharmacotherapeutics; and
- (c) diagnosis and treatment.

(5) (a) An APRN practicing in this state under a multistate privilege who seeks to obtain prescriptive authority must:

- (i) meet all the requirements of Subsection (4) and this Subsection (5); and
- (ii) be placed on a registry with the division.

(b) To be placed on a registry under Subsection (5)(a)(ii), an APRN must:

- (i) submit a form prescribed by the division;
- (ii) pay a fee; and
- (iii) if prescribing a controlled substance:

(A) obtain a controlled substance license as required under Section 58-37-6; and

(B) if prescribing a Schedule II or III controlled substance, have a consultation and referral plan with a physician licensed in Utah as required under Subsection 58-31b-102(16)(c)(iii).

Section 5. Repealer.

This bill repeals:

Section 58-31b-307, Licensure by endorsement.

Section 6. Effective date.

This bill takes effect on July 1, 2004.