

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: SB 926

INTRODUCER: Senator Harrell

SUBJECT: Health Care Practitioner Licensure

DATE: January 27, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kibbey	Brown	HP	<b>Pre-meeting</b>
2.			AHS	
3.			AP	

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**I. Summary:**

SB 926 authorizes Florida to participate in the Interstate Medical Licensure Compact (IMLC or Compact) for the licensure of physicians and osteopathic physicians. The bill allows a physician who is licensed through the Compact and whose licensed is suspended or revoked through the Compact as a result of disciplinary action taken against the physician’s license in another state, to have a formal hearing before the Florida Division of Administrative Hearings.

The bill also amends health care practitioner licensure, certification, and registration provisions in chapter 456 to remove prohibitions and penalties for applicants and practitioners who have failed to repay their student loans or who are listed on the listed on the U.S. Department of Health and Human Services Office of Inspector General’s List of Excluded Individuals and Entities.

The bill has an indeterminate fiscal impact on state revenues and state expenditures.

The bill takes effect on July 1, 2021.

**II. Present Situation:**

***Occupational Licensure Compacts***

Interstate compacts are authorized under the U.S. Constitution, Article I, Section 10, cl. 3.<sup>1</sup> Compacts that affect a power delegated to the federal government or that affect or alter the

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<sup>1</sup> “No state shall, without the Consent of Congress...enter into any Agreement or Compact with another State, or with a foreign Power[.]” *see* U.S. CONST. art. I, s. 10, cl. 3. While the language of the provision says congressional approval is required, not all compacts require congressional approval.

political balance within the federal system require the consent of Congress.<sup>2</sup> There are currently more than 200 compacts between the states, including 50 national compacts, of which six are for health professions.<sup>3,4</sup>

The licensing of professions is predominantly a state responsibility as each state has developed its own regulations, oversight boards, and requirements for dozens of professions and occupations. More than 25 percent of individuals within the American workforce are currently in a profession that requires a professional license.<sup>5</sup>

In September 2018, the Federal Trade Commission (FTC) looked at the issue of state-by-state occupational licensure and its unintended consequences. In particular, the FTC noted that state-by-state licensing can have a particularly hard effect on those in the military and their spouses who are required to move frequently, those who provide services across state lines, or deliver services through telehealth.<sup>6</sup> The FTC also suggested that improved licensed portability would enhance competition, choice, and access for consumers, especially where services may be in short supply.<sup>7</sup>

### ***Interstate Medical Licensure Compact***

The Interstate Medical Licensure Compact provides an expedited pathway for medical and osteopathic physicians to qualify to practice medicine across state lines within a Licensure Compact. Currently, 29 states, the District of Columbia and the Territory of Guam which cover 43 medical and osteopathic boards participate in the Compact.<sup>8</sup>

The Interstate Medical Licensure Compact Commission (Commission) is created in Section 11 of the Compact and serves as the administrative arm of the Compact and member states. Each member state of the Compact has two voting representatives on the Commission. If a state has

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<sup>2</sup> This issue was settled in *Virginia v. Tennessee*, 148 U.S. 503 (1893). See also *Interstate Compacts & Agencies* (1998), William Kevin Voit, Sr. Editor and Gary Nitting, Council of State Governments, pg. 7, available at <http://www.csg.org/knowledgecenter/docs/ncic/CompactsAgencies98.pdf> (last visited Jan. 22, 2020)

<sup>3</sup> Ann O'M. Bowman and Neal D. Woods, *Why States Join Interstate Compacts*, The Council of State Governments (March 2017) p. 19 and 20, <http://knowledgecenter.csg.org/kc/system/files/Bowman%202017.pdf>, (last visited Jan. 22, 2020).

<sup>4</sup> Federal Trade Commission, *Policy Perspectives: Options to Enhance Occupational License Portability* (September 2018), p. 9, available at [https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license\\_portability\\_policy\\_paper.pdf](https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license_portability_policy_paper.pdf) (last visited Jan. 22, 2020). The six health professions are nurses, medical, emergency medical services, physical therapy, psychology, and advanced registered nurse practitioners. The only two compacts currently operational are the Enhanced Nurse Compact and the physicians compacts as the others are awaiting the completion of an administrative structure.

<sup>5</sup> Albert Downs and Iris Hentze, *License Overload? Lawmakers are questioning whether we've gone too far with occupational and professional licensing* (April 1, 2018), STATE LEGISLATURES MAGAZINE, [ncsl.org, http://www.ncsl.org/bookstore/state-legislatures-magazine/occupational-licensing-can-balance-safety-and-employment-opportunities.aspx](http://www.ncsl.org/bookstore/state-legislatures-magazine/occupational-licensing-can-balance-safety-and-employment-opportunities.aspx) (last visited Jan. 22, 2020).

<sup>6</sup> Federal Trade Commission, *Policy Perspectives, Options to Enhance Occupational License Portability* (September 2018), available at [https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license\\_portability\\_policy\\_paper.pdf](https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license_portability_policy_paper.pdf) (last visited Jan. 22, 2020).

<sup>7</sup> *Id.*

<sup>8</sup> Interstate Medical Licensure Compact, *The IMLC*, <https://imlcc.org/> (last visited Jan. 22, 2020).

separate regulatory boards for allopathic and osteopathic, then the representation is split between the two boards.<sup>9</sup>

Approximately 80 percent of physicians meet the eligibility guidelines for licensure through the Compact.<sup>10</sup> The providers' applications are expedited by using the information previously submitted in their State of Principal Licensure (SPL). The physician can then select in which states to practice in after a fresh background check is completed.

To qualify for consideration, the physician must:

- Hold a full, unrestricted medical license from a Compact member state and meet one of the following additional qualifications:
  - The physician's primary residence is in the SPL.
  - The physician's practice of medicine occurs in the SPL for at least 25 percent of the time.
  - The physician's employer is located in the SPL.
  - The physician uses the SPL as his or her state of residence for U.S. federal income tax purposes.

Additionally, the physician must maintain his or her licensure from the SPL at all times. A physician may change his or her SPL after the original qualification. Other requirements for eligibility for a Compact license include:

- Graduation from an accredited medical school, or a school listed in the International Medical Education Directory.
- Successful completion of graduate medical education from a school which has received accreditation from Accreditation Council for Graduate Medical Education (ACGME) or American Osteopathic Association (AOA).
- Passage – in no more than three attempts – of each component of the U.S. Medical Licensing Exam (USMLE) or the Comprehensive Osteopathic Medical Licensing Exam (COMLEX-USA) or equivalent.
- Holding a current specialty certification or time-unlimited certification by an American Board of Medical Specialties (ABMS) or American Osteopathic Association/Bureau of Osteopathic Specialists (AOABOS) board.
- Not having any history of disciplinary actions as to their medical license.
- Not having a criminal history.
- Not having any history of controlled substance actions as to their medical license.
- Not currently under investigation.<sup>11</sup>

The Commission charges an application fee of \$700, which an applicant pays directly to the Commission. Each state's fee for licensure is separate from the Commission's application fee. The individual state fees currently vary from a low of \$75 in Alabama and Wisconsin to a high of \$790 in Maryland.<sup>12</sup>

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<sup>9</sup> Interstate Medical Licensure Compact, Section 11, (d), p. 11, <https://imlcc.org/wp-content/uploads/2018/04/IMLC-Compact-Law.pdf> (last visited Jan. 22, 2020).

<sup>10</sup> Interstate Medical Licensure Compact, *The IMLC*, <https://imlcc.org/> (last visited Jan. 22, 2020).

<sup>11</sup> Interstate Medical Licensure Compact, *Do I Qualify*, <https://imlcc.org/do-i-qualify/> (last visited Jan. 22, 2020).

<sup>12</sup> Interstate Medical Licensure Compact, *What Does It Cost?* <https://imlcc.org/what-does-it-cost/> (last visited Jan. 22, 2020).

## *Regulation of Physicians in Florida*

### Licensing of Florida Physicians

The regulation of the practices of medicine and osteopathic medicine in Florida fall under chapters 458 and 459, F.S., respectively. The practice acts for both professions establish the regulatory boards, a variety of licenses, the application process with eligibility requirements, and financial responsibilities for the practicing physicians.

The boards have the authority to establish, by rule, standards of practice and standards of care for particular settings.<sup>13</sup> Such standards may include education and training, medication including anesthetics, assistance of and delegation to other personnel, sterilization, performance of complex or multiple procedures, records, informed consent, and policy and procedures manuals.<sup>14</sup>

The current licensure application fee for a medical doctor is \$350 and is non-refundable.<sup>15</sup> Applications must be completed within one year. If a license is approved, the initial license fee is \$355.<sup>16</sup> The entire process typically takes from two to six months from the time the application is received.<sup>17</sup>

For osteopathic physicians, the current application fee is non-refundable at \$200, and if approved, the initial licensure fee is \$305.<sup>18</sup> The same application validity provision of one year applies and the processing time of two to six months is the range of time that applicants should anticipate for a decision.<sup>19</sup> If an applicant is licensed in another state, the applicant may request that Florida “endorse” those exam scores and demonstrate that the license was issued based on those exam scores. The applicant must also show that the exam was substantially similar to any exam that Florida allows for licensure.<sup>20</sup>

The general requirements for licensure under both practice acts are very similar with the obvious differences found in the educational backgrounds of the applicants. However, the practice acts are not identical in their licensure offerings as shown in the table below, which compares some of the contents of the two practice acts. Where the practice acts share the most similarities are the qualifications for licensure. Both the Board of Medicine and the Board of Osteopathic Medicine require their respective applicants to meet these minimum qualifications:

- Complete an application form as designated by the appropriate regulatory board.
- Be at least 21 years of age.

<sup>13</sup> Sections 458.331(1)(v) and 459.015(1)(z), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Florida Board of Medicine, *Medical Doctor - Fees*, <https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted> (last visited Jan. 22, 2020).

<sup>16</sup> *Id.*

<sup>17</sup> Florida Board of Medicine, *Medical Doctor Unrestricted - Process*, <https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted/> (last visited Jan. 22, 2020).

<sup>18</sup> Florida Board of Osteopathic Medicine, *Osteopathic Medicine Full Licensure - Fees*, <https://floridasosteopathicmedicine.gov/licensing/osteopathic-medicine-full-licensure/> (last visited Jan. 22, 2020).

<sup>19</sup> Florida Board of Osteopathic Medicine, *Osteopathic Medicine Full Licensure - Process*, <https://floridasosteopathicmedicine.gov/licensing/osteopathic-medicine-full-licensure/> (last visited Jan. 22, 2020).

<sup>20</sup> Florida Board of Osteopathic Medicine, *Osteopathic Medicine Full Licensure - Requirements*, <https://floridasosteopathicmedicine.gov/licensing/osteopathic-medicine-full-licensure/> (last visited Jan. 22, 2020).

- Be of good moral character.
- Have completed at least two years (medical) or three years (osteopathic) of pre-professional post-secondary education.
- Have not previously committed any act that would constitute a violation of chapter 458 or chapter 459, as applicable, or lead to regulatory discipline.
- Have not had an application for a license to practice medicine or osteopathic medicine denied or a license revoked, suspended or otherwise acted upon in another jurisdiction by another licensing authority.
- Must submit a set of fingerprints to the DOH for a criminal background check.
- Demonstrate that he or she is a graduate of a medical college recognized and approved by the applicant’s respective professional association.
- Demonstrate that she or he has successfully completed a resident internship (osteopathic medicine) or supervised clinical training (medical) of not less than 12 months in a hospital approved for this purpose by the applicant’s respective professional association.
- Demonstrate that he or she has obtained a passing score, as established by the applicant’s appropriate regulatory board, on all parts of the designated professional examination conducted by the regulatory board’s approved medical examiners, no more than five years before making application to this state; or, if holding a valid active license in another state, that the initial licensure in the other state occurred no more than five years after the applicant obtained a passing score on the required examination.<sup>21</sup>

Statutory References for Practice Acts - Licensure Medical and Osteopathic Physicians: Ch. 458 and 459, F.S.		
Issue	Medical Physicians	Osteopathic Physicians
Regulatory Board	Board of Medicine s. 458.307, F.S.	Board of Osteopathic Medicine s. 459.004, F.S.
Rulemaking Authority	s. 458.309., F.S.	s. 459.005, F.S.
General Requirements for Licensure	s. 458.311, F.S.	s. 459.0055, F.S.
Licensure Types		
<i>Restricted License</i>	s. 458.310, F.S.	No provision
<i>Restricted License Certain foreign physicians</i>	s. 458.3115, F.S.	No provision
<i>Licensure by Endorsement</i>	s. 458.313, F.S.	No provision
<i>Temporary Certificate (Approved Cancer Centers)</i>	s. 458.3135, F.S.	No provision
<i>Temporary Certificate (Training Programs)</i>	s. 458.3137, F.S.	No provision
<i>Medical Faculty Certificate</i>	s. 458.3145, F.S.	s. 459.0077, F.S.
<i>Temporary Certificate Areas of Critical Need</i>	s. 458.315, F.S.	s. 459.0076, F.S.

<sup>21</sup> See ss. 458.311, F.S. and 459.0055, F.S.

Statutory References for Practice Acts - Licensure Medical and Osteopathic Physicians: Ch. 458 and 459, F.S.		
Issue	Medical Physicians	Osteopathic Physicians
<i>Temporary Certificate Areas of Critical Need – Active Duty Military &amp; Veterans</i>	s. 458.3151, F.S.	s. 459.00761, F.S.
<i>Public Health Certificate</i>	s. 458.316, F.S.	No provision
<i>Public Psychiatry Certificate</i>	s. 458.3165, F.S.	No provision
<i>Limited Licenses</i>	s. 458.317, F.S.	s. 459.0075, F.S.
<i>Expert Witness</i>	s. 458.3175, F.S.	s. 459.0066, F.S.
License Renewal	s. 458.319, F.S. \$500/max/biennial renewal	s. 459.008, F.S.
Financial Responsibility <i>Condition of Licensure</i>	s. 458.320, F.S.	s. 459.0085, F.S.
Penalty for Violations	s. 458.327, F.S.	s. 459.013, F.S.

In Florida, to practice medicine an individual must become a licensed medical doctor through licensure by examination<sup>22</sup> or licensure by endorsement.<sup>23</sup> Florida does not recognize another state’s medical license or provide licensure reciprocity.<sup>24</sup> Licensure by endorsement requires the medical physician to meet the following requirements:

- Be a graduate of an allopathic U.S. medical school recognized and approved by the U.S. Office of Education and completed at least one year of residency training;
- Be a graduate of an allopathic international medical school and have a valid Educational Commission for Foreign Medical Graduates (ECFMG) certificate and completed an approved residency of at least two years in one specialty area; or
- Be a graduate who has completed the formal requirements of an international medical school except the internship or social service requirements, passed parts I and II of the National Board of Medical Examiners (NBME) or ECFMG equivalent examination, and completed an academic year of supervised clinical training (5<sup>th</sup> pathway) and completed an approved residency of at least two years in one specialty area.
- And both of the following:
  - Passed all parts of a national examination (the NBME; the Federation Licensing Examination offered by the Federation of State Medical Boards of the United States, Inc.; or the United States Medical Licensing Exam); and
  - Be licensed in another jurisdiction and actively practiced medicine in another jurisdiction for at least two of the immediately preceding four years; or passed a board-approved clinical competency examination within the year preceding filing of the application or;

<sup>22</sup> Section 458.311, F.S.

<sup>23</sup> Section 458.313, F.S.

<sup>24</sup> Notwithstanding this lack of reciprocity, physicians and other health care practitioners licensed out-of-state who meet certain requirements may register with the DOH under s. 456.47(4), F.S., and provide services to patients within Florida via telehealth, which is defined as “the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration.” The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

successfully completed a board approved postgraduate training program within two years preceding filing of the application.<sup>25</sup>

### Financial Responsibility

Florida-licensed allopathic physicians are required to maintain professional liability insurance or other financial responsibility to cover potential claims for medical malpractice as a condition of licensure, with specified exemptions.<sup>26</sup> Physicians who perform surgeries in a certain setting or have hospital privileges must maintain professional liability insurance or other financial responsibility to cover an amount not less than \$250,000 per claim.<sup>27</sup> Physicians without hospital privileges must carry sufficient insurance or other financial responsibility in coverage amounts of not less than \$100,000 per claim.<sup>28</sup> Certain physicians who are exempted from the requirement to carry professional liability insurance or other financial responsibility must provide notice to their patients.<sup>29</sup>

Florida-licensed osteopathic physicians have similar financial responsibility requirements as allopathic physicians<sup>30</sup>. With specified exceptions, the DOH must suspend, on an emergency basis, any licensed allopathic or osteopathic physician who fails to satisfy a medical malpractice claim against him or her within specified time frames.<sup>31</sup>

### Disciplinary Process: Fines and Sanctions

Chapter 456, F.S., contains the general regulatory provisions for health care professions and occupations under the Division of Medical Quality Assurance (MQA) in the DOH. Section 456.072, F.S., specifies acts that constitute grounds for which disciplinary actions may be taken against a health care practitioner. Section 458.331, F.S., identifies acts that constitute grounds for which disciplinary actions may be taken against a medical physician and s. 459.015, F.S., identifies acts specific to an osteopathic physician. Some parts of the review process are public and some are confidential.<sup>32</sup>

Complaints and allegations are received by the MQA unit for determination of legal sufficiency and investigation. A determination of legal sufficiency is made if the ultimate facts show that a violation has occurred.<sup>33</sup> The complainant is notified by letter as to the whether the complaint will be investigated and if any additional information is needed. Complaints which involve an immediate threat to public safety are given the highest priority.

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<sup>25</sup> Florida Board of Medicine, *Medical Doctor-Unrestricted; Licensure by Endorsement*, <https://flboardofmedicine.gov/licensing/medical-doctor-unrestricted/> (last visited Jan. 22, 2020).

<sup>26</sup> Section 458.320, F.S.

<sup>27</sup> Section 458.320(2), F.S.

<sup>28</sup> Section 458.320(1), F.S.

<sup>29</sup> Section 458.320(5)(f) and (g), F.S.

<sup>30</sup> Section 459.0085, F.S.

<sup>31</sup> Sections 458.320(8) and 459.0085(9), F.S.

<sup>32</sup> Fla. Department of Health, Division of Medical Quality Assurance, *Enforcement Process*, (last updated Nov. 2019) <http://www.floridahealth.gov/licensing-and-regulation/enforcement/documents/enforcement-process-chart.pdf>. (last visited Jan. 23, 2020).

<sup>33</sup> Fla. Department of Health, *Consumer Services – Administrative Complaint Process*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/consumer-services.html> (last visited Jan. 23, 2020).



The DOH is responsible for reviewing each report to determine if discipline against the provider is warranted.<sup>34</sup> Authorization for the discipline of allopathic and osteopathic physicians can be found in state law and administrative rule.<sup>35</sup> If held liable for one of the offenses, the fines and sanctions by category and by offense are based on whether it is the physician's first, second, or third offense.<sup>36</sup> The boards may issue a written notice of noncompliance for the first occurrence of a single minor violation.<sup>37</sup> The amount of fines assessed can vary depending on the severity of the situation, such as improper use of a substance to concealment of a material fact. A penalty may come in the form of a reprimand, a licensure suspension, or revocation followed by some designated period of probation if there is an opportunity for licensure reinstatement. Other sanctions may include supplemental continuing education requirements and require proof of completion before the license can be reinstated.

### ***Health Care Practitioners – Defaults on Student Loans***

Section 456.072(1)(k), F.S., requires the suspension of a health care practitioner's license when the licensee is in default on a student loan that is guaranteed by the state or federal government. The suspension remains in effect until the licensee enters into a new payment agreement. That agreement is followed by a mandatory probation for the duration of the student loan and a fine in the amount of 10 percent of the defaulted loan amount. These fines are deposited into the Medical Quality Assurance Trust Fund.

Section 456.0721, F.S., requires the DOH to obtain information from the federal government on health care practitioners who are in default on guaranteed student loans. The DOH must annually report to the Legislature data on licensees in default.

Section 456.074 (4), F.S., requires the DOH to issue an emergency order suspending the license of any licensee who, after notice from the DOH, fails to provide proof within 45 days that new payment terms have been agreed to by parties to the loan.

In State Fiscal Year 2017-2018, the DOH reported 850 student loan defaults.<sup>38</sup> During this same time, 76 investigations were completed, and 26 emergency suspension orders were filed.<sup>39</sup> In State Fiscal Year 2018-2019, the DOH reported 87 student loan defaults.<sup>40</sup> During this same time, 250 investigations were completed, and 121 emergency suspension orders were filed.<sup>41</sup>

### ***The Office of Inspector General's List of Excluded Individuals and Entities***

Paragraphs 456.0635(2)(e) and (3)(e), F.S. require the DOH to refuse to issue or renew a license, registration, or certification to a candidate or applicant if the candidate or licensee is currently

<sup>34</sup> See ss. 458.351(5) and 459.026(5), F.S.

<sup>35</sup> See ss. 458.307 and 459.004, F.S., for the regulatory boards, and ss. 64B8-8 and 64B15-19, F.A.C., for administrative rules relating to disciplinary procedures.

<sup>36</sup> *Id.*

<sup>37</sup> Sections 64B8-8.011 and 64B15-19.0065, F.A.C. A minor violation is deemed to not endanger the public health, safety, and welfare and does not demonstrate a serious inability to practice.

<sup>38</sup> Department of Health, *House Bill 77 Agency Analysis* (on file with the Senate Committee on Health Policy).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*



listed on the U.S. Department of Health and Human Services Office of the Inspector General's List of Excluded Individuals and Entities (LEIE).

The Office of Inspector General (OIG) has the authority to exclude individuals and entities from federally funded health care under the authority of sections 1128 and 1156 of the Social Security Act. Exclusions are imposed for a number of reasons:<sup>42</sup>

- **Mandatory exclusions:** OIG is required by law to exclude from participation in all federal health care programs individuals and entities convicted of the following types of criminal offenses: Medicare or Medicaid fraud, as well as any other offenses related to the delivery of items or services under Medicare, Medicaid, SCHIP, or other State health care programs; patient abuse or neglect; felony convictions for other health care-related fraud, theft, or other financial misconduct; and felony convictions relating to unlawful manufacture, distribution, prescription, or dispensing of controlled substances.
- **Permissive exclusions:** OIG has discretion to exclude individuals and entities on a number of grounds, including (but not limited to) misdemeanor convictions related to health care fraud other than Medicare or a state health program, fraud in a program (other than a health care program) funded by any federal, state or local government agency; misdemeanor convictions relating to the unlawful manufacture, distribution, prescription, or dispensing of controlled substances; suspension, revocation, or surrender of a license to provide health care for reasons bearing on professional competence, professional performance, or financial integrity; provision of unnecessary or substandard services; submission of false or fraudulent claims to a Federal health care program; engaging in unlawful kickback arrangements; defaulting on health education loan or scholarship obligations; and controlling a sanctioned entity as an owner, officer, or managing employee. [emphasis added]

Section 1128(b)(14) of the Social Security Act and 42 U.S.C. s. 1320a-7(b)(14), provide that a default on a health education loan or scholarship obligation is permissive grounds for being placed on the LEIE and that such exclusion shall last until the default or obligation is resolved. If a candidate or applicant is placed on the LEIE for a default on such a loan, the DOH would be obligated to deny that person's application for initial license or renewal of an existing license.

### ***Sovereign Immunity***

Sovereign immunity generally bars lawsuits against the state or its political subdivisions for torts committed by an officer, employee, or agent of such governments unless the immunity is expressly waived. The Florida Constitution recognizes that the concept of sovereign immunity applies to the state, although the state may waive its immunity through an enactment of general law.<sup>43</sup>

In 1973, the Legislature enacted s. 768.28, F.S., a partial waiver of sovereign immunity, allowing individuals to sue state government and its subdivisions.<sup>44</sup> According to subsection (1), individuals may sue the government under circumstances where a private person "would be liable to the claimant, in accordance with the general laws of [the] state . . ." Section 768.28(5),

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<sup>42</sup>Office of Inspector General, *Background Information*, <https://oig.hhs.gov/exclusions/background.asp> (last visited Jan. 23, 2020).

<sup>43</sup>FLA. CONST. art. X, s. 13.

<sup>44</sup>Chapter 73-313, L.O.F., codified at s. 768.28, F.S.

F.S., imposes a \$200,000 limit on the government's liability to a single person, and a \$300,000 total limit on liability for claims arising out of a single incident.

### ***OPPAGA Report 19-07<sup>45</sup>***

Chapter 2019-138, Law of Florida, directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to analyze the Interstate Medical Licensure Compact (which is reflected in SB 926 as section 7) and develop recommendations addressing Florida's prospective entrance into the Compact. On October 1, 2019, OPPAGA published Report No. 19-07. To avoid legal conflicts, the OPPAGA recommended in the report that the Legislature:

- Repeal Florida's initial licensure provisions that fall outside of the Compact's licensure provisions. Florida does not license persons who are listed on the LEIE. The Compact has no comparable requirement. (Addressed in sections 3-6 of SB 926.)
- Enact statutory language providing physicians who practice in Florida whose licenses were revoked in their State of Principal License (SPL) an opportunity to challenge the reason for the revocation or suspension in Florida. (Addressed in section 8 of SB 926.)
- Enact statutory language clarifying that the Compact pays claims or judgments arising from the Commission's employment-related actions in the state. (Addressed in section 10 of SB 926.)
- Provide an exception from public meeting requirements to allow closed meetings of the Commission. (Addressed in linked SB 928.)
- Provide an exception from public records requirements to exempt application records received by the Commission from disclosure. (Addressed in linked SB 928.)
- Set a Compact implementation date to ensure that the DOH would have adequate time to make required changes to rule, forms, and technological infrastructure in order to process licenses through the Compact. (SB 926 has an effective date of July 1, 2021.)

### **III. Effect of Proposed Changes:**

**Section 1** creates section 458.3129, F.S., to provide that an allopathic physician licensed to practice medicine through the Interstate Medical Licensure Compact (Compact) is deemed to be licensed under chapter 458, F.S.

**Section 2** creates section 459.3074, F.S., to provide that an osteopathic physician licensed to practice medicine through the Compact is deemed to be licensed under chapter 459, F.S. (The bill's first two sections are needed to authorize physicians licensed through the Compact to practice in Florida under the Florida Statutes.)

### **Federal List of Excluded Individuals and Entities / Student Loans**

**Section 3** amends section 456.0635, F.S., to remove the requirement that each board within the jurisdiction of the DOH, or the DOH itself if there is no board, prohibit a candidate from being examined for or issued, or having renewed a license, certificate, or registration to practice a health care profession if he or she is listed on the U.S. Department of Health and Human

<sup>45</sup> Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Florida's Participation in the Interstate Medical Licensure Compact Would Require Statutory Changes to Avoid Legal Conflicts*, Report No. 19-07, (Oct. 1, 2019) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1907rpt.pdf> (last visited Jan. 23, 2020).

Services Office of Inspector General’s List of Excluded Individuals and Entities. Many of the mandatory and permissive exclusions included on the List of Excluded Individuals and Entities are banned from the initial licensure, certification, or registration or renewal of licensure, certification, or registration in other provisions of the Florida Statutes.<sup>46</sup>

**Section 4** amends section 456.072, F.S. to remove a provision classifying the failure to repay a student loan issued or guaranteed by the state or federal government in accordance with the terms of the loan as a failure to perform a statutory or legal obligation and removes penalties.

**Section 5** repeals section 456.0721, F.S. to remove provisions requiring the DOH to obtain information from the federal government on health care practitioners who are in default on guaranteed student loans. This also removes a provision requiring the DOH to annually report to the Legislature data on licensees in default.

**Section 6** amends section 456.074, F.S. to remove the requirement, and related provisions, that the DOH immediately suspend the licenses of certain health care practitioners for failing to provide proof of new payment terms for defaulted student loans within a specified timeframe.

**Interstate Medical Licensure Compact**

**Section 7** creates the Compact as s. 456.4501, F.S., which enters Florida into the Compact. The Compact has 24 sections that establish the Compact’s administration and components and prescribe how the Commission will oversee the Compact and conduct its business. The table below describes new statutory language, by Compact section, which creates the components of the Compact.

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
1	Provides the purpose of the Compact  Establishes prevailing standard of care	The purpose of the Interstate Medical Licensure Compact (compact) is to provide a streamlined, comprehensive process that allows physicians to become licensed in multiple states. It allows physicians to become licensed without changing a state’s Medical Practice Act(s).  The Compact also adopts the prevailing standard of care based on where the patient is located at the time of the patient-provider encounter. Jurisdiction for disciplinary action or any other adverse actions against a physician’s license is retained in the jurisdiction where the license is issued to the physician.
2	Definitions  Establishes standard definitions for	Definitions are provided for: - Bylaws: means those Bylaws established by the Commission pursuant to Section 11 for governance, direction, and control of its action and conduct. - Commissioner: means the voting representative appointed by each member board pursuant to Section 11 whereby each member state

<sup>46</sup> See s. 456.0635, F.S. See also Office of Inspector General, *Exclusion Authorities*, <https://oig.hhs.gov/exclusions/authorities.asp> (last visited Jan. 23, 2020).

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
	operation of the Compact and the Commission.	<p>appoints two members to the Commission. If the member state has two medical boards, the two representatives should be split between the two boards.</p> <ul style="list-style-type: none"> <li>- Conviction: means a finding by a court that an individual is guilty of a criminal offense through adjudication, or entry of a plea of guilt or no contest to the charge by the offender. A conviction also means evidence of an entry of a conviction of a criminal offense by the court shall be considered final for the purposes of disciplinary action by a member board.</li> <li>- Expedited license: means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the Compact.</li> <li>- Interstate Commission: means the interstate commission created pursuant to Section 11.</li> <li>- License: means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization.</li> <li>- Medical Practice Act: means laws and regulations governing the practice of allopathic and osteopathic medicine within a member state. (In Florida, the Medical Practice Act for allopathic medicine is under ch. 458, F.S., and for osteopathic medicine, under ch. 459, F.S.)</li> <li>- Member Board: means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government. (The Florida Board of Medicine and the Florida Board of Osteopathic Medicine are responsible for the licensure, regulation, and education of physicians in Florida.)</li> <li>- Member State: means a state that has enacted the Compact.</li> <li>- Practice of medicine: means the diagnosis, treatment, prevention, cure, or relieving of a human disease, ailment, defect, complaint, or other physical, or mental condition, by attendance, advise, device, diagnostic test, or other means, or offering, undertaking, attempting to do, or holding oneself out as able to do, any of these acts.</li> <li>- Physician means: any persons who is a graduate of medical school accredited by the Liaison Committee on Medical Education, the Commission on Osteopathic College Accreditation, or a medical school listed in the International Medical Education Directory or its equivalent; passed each component of the USMLE or the COMPLEX-USA within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes; successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association; holds specialty certification or time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Board of Osteopathic Specialties; however, the times unlimited specialty certificate does not have to be maintained once the physician is initially determined through the expedited Compact process; possess a full and unrestricted license to engage in the practice</li> </ul>

<b>Provisions of the Interstate Medical Licensure Compact</b>		
<b>Section</b>	<b>Title</b>	<b>Description</b>
		<p>of medicine issued by a member board; has never been convicted received adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction; has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to non-payment of fees related to a license; has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration; and is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction.</p> <ul style="list-style-type: none"> <li>- Offense means: A felony, high court misdemeanor, or crime of moral turpitude.</li> <li>- Rule means: A written statement by the Commission promulgated pursuant to Section 12 of the Compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a member state, if the rule is not inconsistent with the laws of the member state. The term includes the amendment, repeal, or suspension of an existing rule.</li> <li>- State means: Any state, commonwealth, district, or territory of the United States.</li> <li>- State of Principal License means: A member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the Compact.</li> </ul>
3	<p>Eligibility</p> <p>Provides minimum requirements to receive an expedited license</p>	<p>To be eligible to participate and receive an expedited license, a physician must meet the requirements of Section 2 (definition of physician).</p> <p>A physician who does not meet the requirements of Section 2 may obtain a license to practice medicine in a member state outside of the Compact if the individual complies with all of the laws and requirements to practice medicine in that state.</p>
4	<p>State of Principal License (SPL)</p> <p>Defines a SPL</p>	<p>The Compact requires participating physicians to designate a State of Principal License (SPL) for purposes of registration for expedited licensure if the physician possesses a full and unrestricted license to practice medicine in that state. The SPL must be a state where:</p> <ul style="list-style-type: none"> <li>- The physician has his/her primary residence, or</li> <li>- The physician has at least 25 percent of his/her practice, or</li> <li>- The state where the physician’s employer is located.</li> </ul> <p>If no state qualifies for one of the above options, then the state of residence as designated on physician’s federal income taxes. A SPL may be re-designated at any time as long as the physician possesses a full and unrestricted license to practice medicine in that state. The Commission is authorized to develop rules to facilitate the re-designation process.</p>

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
5	<p>Application and Issuance of Expedited Licensure</p> <p><i>Qualifications</i></p> <p><i>Commission rulemaking provisions</i></p>	<p>Section 5 of the Compact establishes the process for the issuance of the expedited license.</p> <p>A physician must file an application with the member of the state selected as the SPL. The SPL will evaluate the application to determine whether the physician is eligible for the expedited licensure process and issue a letter of qualification, either verifying or denying eligibility, to the Commission.</p> <ul style="list-style-type: none"> <li>- Static Qualifications: Include verification of medical education, graduate medical education, results of any medical or licensing examinations and any other qualifications set by the Commission through rule.</li> <li>- Performance of Criminal Background Checks by the member board through FBI, with the exception of federal employees who have suitability determined in accordance with U.S. 5 CFR section 731.202.</li> <li>- Appeals on eligibility determinations are handled through the member state.</li> <li>- Upon completion of eligibility verification process with member state, applicants suitable for an expedited license are directed to complete the registration process with the Commission, including the payment of any fees.</li> <li>- After receipt of registration and payment of fees, the physician receives his/her expedited license. The license authorizes the physician to practice medicine in the issuing state consistent with the Medical Practice Act and all applicable laws and regulations of the issuing member board and member state.</li> <li>- An expedited license shall be valid for a period consistent with the member state licensure period and in the same manner as required for other physicians holding a full and unrestricted license.</li> <li>- An expedited license obtained through the Compact shall be terminated if a physician fails to monitor a license in the SPL for a non-disciplinary reason, without re-designation of a new SPL.</li> <li>- The Commission is authorized to develop rules relating to the application process, including fees and issuing the expedited license.</li> </ul>
6	<p>Fees for Expedited Licensure</p> <p><i>Rulemaking authority</i></p>	<p>A member state is authorized to charge a fee for an expedited license that is issued or renewed through the Compact. (In Florida, DOH is already authorized under current law to charge fees for physician licensure.)</p> <p>The Commission is authorized is develop rules relating to fees for expedited licenses. The rules are not permitted to limit the authority of the member states, the regulating authority of the member states, or to impose and determine the amount of the fee charged by the member states.</p>



Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
7	<p>Renewal and Continued Participation</p> <p><i>Renewal license process created</i></p> <p><i>Continuing education required for renewal with member state</i></p> <p><i>Fees collected, if any, by member state.</i></p> <p><i>Rulemaking authority.</i></p>	<p>A physician with an expedited license in a member state must complete a renewal process with the Commission if the physician:</p> <ul style="list-style-type: none"> <li>- Maintains a full and unrestricted license in a SPL.</li> <li>- Has not been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction.</li> <li>- Has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action relating to non-payment of fees related to a license.</li> <li>- Has not had a controlled substance license or permit suspended or revoked by a state or the United State Drug Enforcement Administration.</li> </ul> <p>Physicians are required to comply with all continuing education and professional development requirements for renewal of a license issued by a member state.</p> <p>The Commission shall collect any renewal fees charged for the renewal of a license and distribute the fees to the appropriate member board. Upon payment of fees, a physician’s license shall be renewed. Any information collected during the renewal process shall also be shared with all member boards.</p> <p>The Commission is authorized to develop rules to address the renewal of licenses.</p>
8	<p>Coordinated Information Systems</p> <p><i>Authorized to create database of all applicants</i></p> <p><i>By request, may share data</i></p> <p><i>Rulemaking authority</i></p>	<p>The Commission is required to establish a database of all licensed physicians who have applied for licensure. Member boards are required to report disciplinary or investigatory actions as required by Commission rule. Member boards may also report any non-public complaint, disciplinary, or investigatory information not required to be reported to the Commission.</p> <p>Upon request, member boards shall share complaint or disciplinary information about physicians to another member board. All information provided to the Commission or distributed by the member boards shall be confidential, filed under seal, and used only for investigatory or disciplinary matters.</p> <p>The Commission is authorized to develop rules for mandated or discretionary sharing of information by member boards.</p>
9	<p>Joint Investigations</p> <p><i>Permits joint investigations between the</i></p>	<p>Licensure and disciplinary records of physicians are deemed investigative.</p> <p>A member board may participate with other member boards in joint investigations of physicians licensed by the member boards in</p>



Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
	<i>state and the member boards</i>	<p>addition to the authority granted by the member board and its respective Medical Practice Act or other respective state law.</p> <p>Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact. Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.</p>
10	<p>Disciplinary Actions</p> <p><i>Discipline by a member state has reciprocal actions</i></p> <p><i>Licensure actions specific actions to reinstate</i></p>	<p>Any disciplinary action taken by any member board against a physician licensed through the Compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the Medical Practice Act or regulations in that State.</p> <p>If the physician’s license is revoked, surrendered, or relinquished in lieu of discipline in the SPL, or suspended, then all licenses issued to that physician by member boards shall be automatically placed, without any further action necessary by any member board, on the same status. If the SPL subsequently reinstates the physician’s license, a license issued to the physician by any other member board shall remain encumbered until that respective board takes action to specifically reinstate the license in a manner consistent with the Medical Practice Act in that state.</p> <p>If a disciplinary action is taken against the physician in a member state that is the physician’s SPL, any other member state may deem the action conclusive as to matter of law and fact decided, and:</p> <ul style="list-style-type: none"> <li>- Impose the same or lesser sanction or sanctions against the physician so long as such sanctions are consistent with the Medical Practice Act of that state; or</li> <li>- Pursue separate disciplinary action against the physician under the Medical Practice Act, regardless of the action taken in other member states.</li> </ul> <p>If a license granted to a physician by a member board is revoked, surrendered, or relinquished in lieu of discipline, or suspended, then any license issued to the physician by any other member board or boards shall be suspended, automatically, and without further action necessary by the other board(s), for ninety (90) days upon entry of the order by the disciplining board, to permit the member board(s) to investigate the basis for the action under the Medical Practice Act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the 90-day suspension period in a manner consistent with the Medical Practice Act of that state.</p>

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
11	<p>Interstate Medical Licensure Compact Commission</p> <p><i>Recognizes creation of Commission and state's representative with 2 Commissioners, one from each regulatory board</i></p> <p><i>Availability of Commission meetings, except for certain topics</i></p> <p><i>Availability of public data from the Commission</i></p> <p><i>Public notice required</i></p> <p><i>Creates an executive committee to act on behalf of the Commission</i></p>	<p>The member states create the Interstate Medical Licensure Compact Commission as a joint agency of the member states and administration of the Compact. The Commission has all the duties, powers, and responsibilities set forth in the Compact, plus any other powers conferred upon it by the member states through the Compact.</p> <p>Each member state has two (2) two voting representatives appointed by each member state to serve as Commissioners. For states with separate regulatory boards for allopathic and osteopathic regulatory boards, the member state shall appoint one representative from each member board.</p> <p>A Commissioner shall be:</p> <ul style="list-style-type: none"> <li>- An allopathic or osteopathic physician appointed to a member board.</li> <li>- Executive director, executive secretary, or similar executive or a member board, or</li> <li>- Member of the public appointed to a member board.</li> </ul> <p>The Commission shall meet at least once per calendar year and at least a portion of the meeting shall be a business meeting that includes the election of officers. The Chair may call additional meeting and shall call for all meeting upon the request of a majority of the member states.</p> <p>Meetings are permitted via telecommunication according to the Bylaws.</p> <p>Each Commissioner is entitled to one vote. A majority of Commissioners shall constitute a quorum, unless a larger quorum is required by the Bylaws of the Commission. A Commissioner shall not delegate a vote to another Commissioner. In the absence of its Commissioner, a member state may delegate voting authority for a specified meeting to another person from that state who meets the requirements of being a Commissioner.</p> <p>The Commission shall provide public notice of all meetings and all meetings shall be open to the public. A meeting may be closed to the public, in full or in portion, when it determines by a 2/3 vote of the Commissioners present, that an issue or matter would likely to:</p> <ul style="list-style-type: none"> <li>- Relate solely to the internal personnel practices and procedures of the Interstate Commission.</li> <li>- Discuss matters specifically exempted from disclosure by federal statute;</li> <li>- Discuss trade secrets, commercial, or financial information that is privileged or confidential;</li> <li>- Involve accusing a person of a crime, or formally censuring a person;</li> </ul>

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
		<ul style="list-style-type: none"> <li>- Discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;</li> <li>- Discuss investigative records compiled for law enforcement purposes; or</li> <li>- Specifically relate to the participation in a civil action or other legal proceeding.</li> </ul> <p>The Commission shall make its information and official records, to the extent, not otherwise designated in the Compact or by its rules, available to the public for inspection.</p> <p>An executive committee is established which has the authority to act on behalf of the Commission, with the exception of rulemaking, when the Commission is not in session. The executive committee shall oversee the administration of the Compact, including enforcement and compliance with the Compact, its bylaws and rules, and other such duties as necessary.</p> <p>The Commission may establish other committees for governance and administration of the Compact.</p>
12	<p>Powers and Duties of the Interstate Commission</p> <p><i>Recognizes creation of the Commission</i></p>	<p>The Commission shall have the duties and the powers to:</p> <ul style="list-style-type: none"> <li>- Oversee and administer the Compact.</li> <li>- Promulgate rules, which are binding.</li> <li>- Issue advisory opinions upon the request of member states concerning the meaning or interpretation of the Compact or its bylaws, rules, and actions.</li> <li>- Enforce compliance with the Compact, provisions, the rules, and the bylaws.</li> <li>- Establish and appoint committees, including the executive committee, which has the power to act on behalf of the Interstate Commission.</li> <li>- Pay, or provide for the payment of Commission expenses.</li> <li>- Establish and maintain one or more offices.</li> <li>- Borrow, accept, hire, or contract for services of personnel.</li> <li>- Purchase and maintain insurance and bonds.</li> <li>- Employ an executive director with power to employ, select, or appoint employees, agents, or consultants, determine their duties, and fix their compensation.</li> <li>- Establish personnel policies and programs.</li> <li>- Accept donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize and dispose of it consistent with conflict of interest policies as established by the Commission.</li> <li>- Lease, purchase, accept contributions, or donation of, or otherwise own, hold, improve or use, any property, real, personal, or mixed.</li> <li>- Establish a budget and make expenditures.</li> <li>- Adopt a seal and bylaws governing the management and operation of the Commission.</li> <li>- Report annually to the legislatures and governors of the members concerning the activities of the Commission during the preceding year,</li> </ul>

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
		<p>including reports of financial audits and any recommendations that may have been adopted by the Commission.</p> <ul style="list-style-type: none"> <li>- Coordinate education, training, and public awareness regarding the Compact, its implementation and operation.</li> <li>- Maintain records in accordance with bylaws.</li> <li>- Seek and obtain trademarks, copyrights, and patents.</li> <li>- Perform such functions as may be necessary or appropriate to achieve the purpose of the Compact.</li> </ul>
13	<p>Finance Powers</p> <p><i>Provides for annual assessment</i></p> <p><i>Requires rule for any assessment</i></p> <p><i>No pledging credit without authorization</i></p> <p><i>Yearly audits</i></p>	<p>The Compact authorizes an annual assessment levied on each member state to cover the costs of operations and activities of the Commission and its staff. The assessment must be sufficient to cover the amount not provided by other sources and needed to cover the annual budget approved each year by the Commission.</p> <p>The Compact requires that the assessment be memorialized by rule binding all the member states.</p> <p>The Commission is not authorized to pledge the credit of any of the member states, except by, and with the authority of, the member states.</p> <p>The Compact requires yearly financial audits conducted by a certified or licensed public accountant and the report is to be included in the Commission’s annual report.</p>
14	<p>Organization and Operation of the Interstate Commission</p> <p><i>Annual officer election</i></p> <p><i>No officer remuneration</i></p> <p><i>Liability protection for actions within scope of duties and responsibilities only for officers,</i></p>	<p>The Compact creates a requirement for the Commission to adopt bylaws by a two-thirds (2/3) vote within twelve months of the first meeting which has already occurred. The first Bylaws were adopted in October 2015.<sup>47</sup></p> <p>A Chair, Vice Chair, and Treasurer shall be elected or appointed each year by the Commission.</p> <p>Officers serve without remuneration. Officers and employees are immune from suit and liability, either personally or in their professional capacity, for a claim for damage to or loss of property or personal injury or other civil liability cause or arising out of, or relating to, an actual or alleged act, error or omission that occurred with the scope of Commission employment, duties, or responsibilities, provided such person should not be protected from suit or liability for damage or loss, injury or liability caused by the intentional or willful and wanton conduct of such a person.</p>

<sup>47</sup> Interstate Medical Licensure Compact, *Annual Report 2017*, <https://imlcc.org/wp-content/uploads/2018/03/IMLCC-Annual-Report-2017-1.pdf> (last visited Jan. 22, 2020).

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
	<i>employees, and agents</i>	<p>The liability of the executive director and Commission employees or representatives of the Commission, acting within the scope of their employment, may not exceed the limits set forth under the state’s Constitution and laws for state officials, employees, and agents. The Compact provides that the Commission is considered an instrumentality of the state for this purpose.</p> <p>The Compact provides that the Commission shall defend the executive director, its employees, and subject to the approval of the state’s attorney general or other appropriate legal counsel, shall defend in any civil action seeking to impose liability within scope of duties.</p> <p>The Compact provides that employees and representatives of the Commission shall be held harmless in the amount of any settlement or fees, including attorney fees and costs, that occurred within the scope of employment or responsibilities and not a result of willful or wanton misconduct.</p>
15	<p>Rulemaking Functions of the Interstate Commission</p> <p><i>Promulgate reasonable rules</i></p> <p><i>Judicial review at U.S. Federal District Court</i></p>	<p>The Commission is required to promulgate reasonable rules in order to implement and operate the Compact and the Commission. The Compact adds that any attempt to exercise rulemaking beyond the scope of the Compact renders the action invalid. The rules should substantially conform to the “Model State Administrative Procedures Act” of 2010 and subsequent amendments thereto.</p> <p>The Compact allows for judicial review of any promulgated rule. A petition may be filed thirty (30) days after a rule has been promulgated in the U.S. District Court in Washington, D.C., or the federal court where the Commission is located.<sup>48</sup> The Compact requests deference to the Commission’s action consistent with state law.</p>
16	<p>Oversight of Interstate Contract</p> <p><i>Enforcement</i></p> <p><i>Service of process</i></p>	<p>The Compact is the responsibility of each state’s own executive, legislative, and judicial branch to oversee and enforce. All courts are to take judicial notice of the Compact and any adopted administrative rules in a proceeding involving Compact subject matter.</p> <p>The Compact provides that the Commission is entitled to receive service of process in any proceeding and shall have standing in any proceeding. Failure to serve the Commission shall render a judgment null and void as to the Commission, the Compact, or promulgated rule.</p>

<sup>48</sup> The Interstate Medical Licensure Compact Commission is currently headquartered in Littleton, Colorado. See Interstate Medical License Commission, Facts about the IMLCC, <https://imlcc.org/facts-about-the-implcc/> (last visited Jan. 22, 2020).

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
17	Enforcement of Interstate Contract	The Compact provides the Commission reasonable discretion to enforce the provisions and rules of the Compact, including when and where to initiate legal action. The Commission is permitted to seek a range of remedies.
18	Default Procedures	<p>The Compact provides a number of reasons a member state may default on the Compact, including failure to perform required duties and responsibilities and the options available to the Commission.</p> <p>The Compact requires the Commission to promulgate rules to address how physician licenses are affected by the termination of a member state from the Compact. The rules must also ensure that a member state does not bear any costs when a state has been found to be in default.</p> <p>The Compact provides an appeal process for the terminating state and procedures for attorney’s fees and costs.</p>
19	Dispute Resolution	The Compact authorizes the Commission to use dispute resolution tools to resolve disputes between states, such as mediation and binding dispute resolution. The Commission shall promulgate rules for the dispute resolution process.
20	Member States, Effective Date and Amendment	The Compact allows any state to become a member state and that the Compact is binding upon the legislative enactment of the Compact by no less than seven (7) states. <sup>49</sup>
21	Withdrawal	<p>A member state may withdraw from the Compact through repeal of this section of law which inserted the Compact into state statute. Any repeal of the Compact through repeal of the state law cannot take effect until one (1) year after the effective date of such an action and written notice has been given by the withdrawing state to the governor of each other member state.</p> <p>The Compact provision also requires that upon introduction of any repeal legislation, that the withdrawing state immediately notify the Chairperson of the Commission of the legislation.</p> <p>The Compact provides that it is the Commission’s responsibility to notify the other member states within 60 (sixty) days of its receipt of information about legislation that would repeal that state’s participation in the Compact. The withdrawing state would be responsible for any dues, obligations, or liabilities incurred through</p>

<sup>49</sup> The Compact is in force now. The Commission was seated for the first time in October 2015 and issued its first letters of qualification to physicians in April 2017. *See* Interstate Medical Licensure Compact, <https://imlcc.org/faqs/> (last visited Jan. 22, 2020).

Provisions of the Interstate Medical Licensure Compact		
Section	Title	Description
		<p>the date of withdrawal. Reinstatement is an option under the Compact.</p> <p>The Compact authorizes the Commission to develop rules to address the impact of the withdrawal of a member state on licenses.</p>
22	Dissolution	<p>When the membership of the Compact is reduced to one, the Compact shall be dissolved. Once dissolved, the Compact shall be null and void.</p> <p>Once concluded, any surplus funds of the Commission shall be distributed in accordance with the bylaws.</p>
23	Severability and Construction	<p>If any part of this Compact is not enforceable, the remaining provisions are still enforceable.</p> <p>The provisions of the Compact are to be liberally construed, and nothing is to be construed so as to prohibit the applicability of other interstate compacts to which states might be members.</p>
24	Binding Effect of Compact and Other Laws	<p>This Compact does not prohibit the enforcement of other laws which are not in conflict with this Compact. All laws which are in a member state which are inconsistent with this Compact are superseded to the point of the contact.</p> <p>The actions of the Commission are binding on the member states, including all promulgated rules and the adopted bylaws of the Commission. All agreements between the Commission and the member state are binding in accordance with their terms.</p> <p>In the event that any provision of this Compact exceeds Florida’s constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent that the conflict of the constitutional provision in question in that member state.</p>

**Section 8** creates section 456.4502, F.S. to require a formal hearing be held before the Division of Administrative Hearings if there are any disputed issues of material fact when the licenses of certain physicians and osteopathic physicians are suspended or revoked by this state under the Compact; requiring the DOH to notify the division of a petition for a formal hearing within a specified timeframe; requiring the administrative law judge to issue a recommended order; requiring the Board of Medicine or the Board of Osteopathic Medicine, as applicable, to determine and issue final orders in certain cases; providing the DOH with standing to seek judicial review of any final order of the boards;

**Section 9** creates section 456.4504, F.S., to authorize the DOH to adopt rules to implement the Compact.



**Section 10** creates section 456.4502, F.S., to designate the representative appointed from the Board of Medicine and the representative appointed from the Board of Osteopathic Medicine, when serving as commissioners of the Commission and any administrator, officer, executive director, employee, or representative of the Commission, when acting within the scope of their employment, duties, or responsibilities in this state, are considered agents of the state, for the purpose of applying sovereign immunity and waivers of sovereign immunity. This section also requires the Commission to pay certain claims or judgments and authorizes the Commission to maintain insurance coverage to pay such claims or judgments.

**Section 11** provides an effective date of July 1, 2021.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

The Interstate Commission requires most of its meetings to be open to the public. The notice requirements vary depending on the purpose of the meeting, however. Rulemaking hearings, where rules are proposed in a manner substantially similar to the model state administrative procedure act of 2010, are submitted to the Bylaws and Rules Committee for review and action. Prior to final consideration by the Commission, the final proposed rule must be publicly noticed on the Commission's website or other agreed upon distribution site at least 30 days prior to the meeting at which the vote is scheduled.<sup>50</sup> A reason for the proposed rule action will also be posted.<sup>51</sup> The public must also be provided a reasonable opportunity to provide public comment, orally or in writing, for proposed rules. A committee of the Commission may propose a rule at any time by a majority vote of that committee.

The written procedure states for every proposed rule action that there will also be instruction on how interested parties may attend the scheduled public hearing, may submit their intent to attend the public hearing and submit any written comments.<sup>52</sup> A transcript of these meetings are not made unless one is specifically requested and then the requestor is responsible for the cost the transcription.<sup>53</sup>

Not later than 30 days after its adoption, any interested party may petition for judicial review of the rule in the United States District Court for the District of Columbia or in the

<sup>50</sup> Interstate Medical Licensure Commission, *Rule on Rulemaking* (Adopted June 24, 2016), *Rule 1.4(c)*, <https://imlcc.org/wp-content/uploads/2018/02/IMLCC-Rule-Chapter-1-Rule-on-Rulemaking-Adopted-June-24-2016.pdf> (last visited Jan. 23, 2020).

<sup>51</sup> *Id.*, Rule 1.4(b).

<sup>52</sup> *Id.*, Rule 1.4(d).

<sup>53</sup> *Id.*, Rule 1.4(e).

federal court where the Commission's headquarters are currently located. The Commission's mailing address currently is in Littleton, Colorado.<sup>54</sup>

The Compact also permits the Commission, with a two-thirds vote of the Commissioners present, to meet in closed, nonpublic meetings if the Commission must address any matters that:

- Relate solely to the internal personnel practices and procedures of the Interstate Commission.
- Specifically exempted from disclosure by federal statute;
- Discuss trade secrets, commercial, or financial information that is privileged or confidential;
- Involve accusing a person of a crime, or formally censuring a person;
- Discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Discuss investigative records compiled for law enforcement purposes; or
- Specifically relate to the participation in a civil action or other legal proceeding.<sup>55</sup>

The rulemaking process, its timelines and public involvement process, plus the closure of public meetings for some of these detailed reasons, may be inconsistent with Florida law on public meetings.

While the provisions of the Compact and its administrative rules and corporate bylaws require minutes to be kept of some of these closed sessions, it is not clear that it is applicable to all closed sessions and it does require an interested party to request a transcriber in some cases to be present and to expend personal funds to ensure the availability of minutes. A third party may or may not be as likely either to fully describe all matters discussed and provide an accurate summary of actions taken, including a record of any roll call votes.<sup>56</sup>

According to the Commission's Bylaws, the public notice for a regular meeting of the Commission is at least 10 days prior to the meeting according to the Compact and the notice will be posted on the Commission's website or distributed through another website designated by the Commission for interested parties to receive notice who have requested to receive such notices.<sup>57</sup>

### C. Trust Funds Restrictions:

None.

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<sup>54</sup> Interstate Medical License Commission, Facts about the IMLCC, <https://imlcc.org/facts-about-the-imlcc/> (last visited Jan. 22, 2020).

<sup>55</sup> Interstate Medical License Compact Bylaws, *Section 11 – Interstate Medical License Compact Commission, Section (h)-(l)*, <https://imlcc.org/wp-content/uploads/2018/04/IMLC-Compact-Law.pdf> (last visited Jan. 22, 2020).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

D. State Tax or Fee Increases:

Article VII, Section 19, of the State Constitution requires that a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, Section 19(d)(1) of the State Constitution defines “fee” to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”

The bill authorizes the Compact to assess and collect fees from allopathic and osteopathic physicians who elect to participate in the expedited licensure process.

For physicians who elect this license, a non-refundable service fee of \$700 for the letter of qualification is charged to the applicant by the Commission when the initial application is submitted to the Commission. Of that \$700, \$300 is remitted to the applicant’s home state or state of principal licensure and the remaining \$400 is sent to the Commission’s general fund.

Every time the applicant requests that a letter of qualification be disseminated to one or more of the member states that participate in the Compact after the initial dissemination of the letter for the expedited license, the cost to the registrant is \$100. Of this amount, one hundred percent is sent to the Commission’s General Fund.

For each expedited license that is renewed through the Compact, a non-refundable fee of \$25 shall be assessed to the physician and paid to the Commission General Fund. The Commission receives 100 percent of these funds.

E. Other Constitutional Issues:

The Compact authorizes Compact administrators to develop rules that member states must adopt, which is potentially an unlawful delegation of legislative authority. If enacted into law, the state will bind itself to rules not yet promulgated and adopted by the Commission. The Florida Supreme Court has held that while it is within the province of the Legislature to adopt federal statutes enacted by Congress and rules promulgated by federal administrative bodies that are in existence at the time the Legislature acts, it is an unconstitutional delegation of legislative authority to prospectively adopt federal statutes not yet enacted by Congress and rules not yet promulgated by federal administrative bodies.<sup>58,59</sup> Under this holding, the constitutionality of the bill’s adoption of prospective rules might be questioned, and there does not appear to be Florida case law that squarely addresses this issue in the context of interstate compacts.

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<sup>58</sup> *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972) (quoting *Fla. Ind. Comm’n v. State ex rel Orange State Oil Co.*, 155 Fla. 772 (1945)).

<sup>59</sup> This prohibition is based on the separation of powers doctrine, set forth in Article II, Section 3 of the Florida Constitution, which has been construed in Florida to require the Legislature, when delegating the administration of legislative programs, to establish the minimum standards and guidelines ascertainable by reference to the enactment creating the program. See *Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).

The most recent case Florida courts have had to address this issue was in *Department of Children and Family Services v. L.G.*, involving the Interstate Compact for the Placement of Children (ICPC).<sup>60</sup> The First District Court of Appeal considered an argument that the regulations adopted by the Association of Administrators of the ICPC were binding and that the lower court's order permitting a mother and child to relocate to another state was in violation of the ICPC. The court denied the appeal and held that the Association's regulations did not apply as they conflicted with the ICPC and the regulations did not apply to the facts of the case.

The court also references language in the ICPC that confers to its compact administrators the "power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact."<sup>61</sup> The court states that "the precise legal effect of the ICPC administrators' regulations in Florida is unclear," but noted that it did not need to address the question to decide the case.<sup>62</sup> However, in a footnote, the court said:

Any regulations promulgated before Florida adopted the ICPC did not, of course, reflect the vote of a Florida compact administrator, and no such regulations were ever themselves enacted into law in Florida. When the Legislature did adopt the ICPC, it did not (and could not) enact as the law of Florida or adopt prospectively regulations then yet to be promulgated by an entity not even covered by the Florida Administrative Procedure Act. *See Freimuth v. State*, 272 So.2d 473, 476 (Fla.1972); *Fla. Indus. Comm'n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772, 21 So.2d 599, 603 (1945) ("[I]t is within the province of the legislature to approve and adopt the provisions of federal statutes, and all of the administrative rules made by a federal administrative body, that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future."); *Brazil v. Div. of Admin.*, 347 So.2d 755, 757–58 (Fla. 1st DCA 1977), *disapproved on other grounds by LaPointe Outdoor Adver. v. Fla. Dep't of Transp.*, 398 So.2d 1370, 1370 (Fla.1981). The ICPC compact administrators stand on the same footing as federal government administrators in this regard.<sup>63</sup>

In accordance with that footnote, the bill's delegation of rule-making authority to the Commission is similar to the delegation to the ICPC administrators, and thus could constitute an unlawful delegation of legislative authority. The referenced case, however, does not appear to be binding as precedent since the court's footnote discussion is dicta.<sup>64</sup>

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<sup>60</sup> 801 So.2d 1047 (Fla. 1st DCA 2001).

<sup>61</sup> *Id.* at 1052.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Dicta are statements of a court that are not essential to the determination of the case before it and are not a part of the law of the case. Dicta has no binding legal effect and is without force as judicial precedent. 12A FLA JUR. 2D *Courts and Judges* s. 191 (2015).

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

SB 926 could lead to more licensed allopathic physicians and osteopathic physicians practicing in Florida. The fiscal result to the private sector is indeterminate.

### C. Government Sector Impact:

The DOH Division of Medical Quality Assurance (MQA) will see a recurring decrease in revenue due to the loss of the mandated 10 percent fine on student loan default cases that is removed under the bill.<sup>65</sup> The MQA will also experience a recurring reduction in workload and cost due to fewer investigations and prosecutions to conduct from student loan default cases.<sup>66</sup> The MQA will incur non-recurring costs associated with rulemaking, which current budget authority is adequate to absorb.<sup>67</sup>

As a member state of the Compact, the state will see an increased volume in the number of licensure applications at the MQA, Board of Medicine, and Board of Osteopathic Medicine. Applicants for the expedited licensure process must have a designated State of Principal License (SPL) where the physician has acquired his full and unrestricted license to practice medicine, is in good standing, practices medicine at least 25 percent of the time, is the physician's primary state of residence or is the location of the physician's employer. Applications for an expedited license with a member board through the Commission would first go through a Florida eligibility vetting process to issue a letter of qualification or to deny a letter of qualification.

The DOH could experience an indeterminate increase in administrative costs from:

- Processing applications from out-of-state physicians for expedited licensure under the Compact;
- Conducting a fresh background screening for Florida physicians wishing to apply for licensure in other member Compact states;
- Participation in joint investigations and disciplinary actions related to physicians located within member states of the Commission; and
- Information technology costs related to information sharing between the DOH and the Commission.

The Commission is authorized to levy an annual assessment on member states to offset the Commission's administrative and information technology costs. The cost of the annual assessment is indeterminate because the amount of the assessment is contingent

<sup>65</sup> Department of Health, *House Bill 77 Agency Analysis* (on file with the Senate Committee on Health Policy).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

on the formula developed by the Commission and is proportional to the number of participating member states.

The state could experience a need for additional resources at the DOH to handle an increase in physician applications for expedited licensure under the Compact, as well as additional revenue from application fees. The resulting overall impact is indeterminate.

The DOH may incur non-recurring costs associated with rulemaking to implement the Compact if rulemaking is necessary.

The Florida Department of Law Enforcement (FDLE) may also experience an indeterminate negative fiscal impact from criminal history records checks and fingerprint retention that could result from the passage of the Compact.<sup>68</sup> The FDLE has indicated that the impact of this bill alone does not necessitate additional FTE or other resources.<sup>69</sup>

The bill may somewhat increase the caseload at the Division of Administrative Hearings. The number of disciplined physicians who would pursue this legal path to recover their licenses is indeterminate.

Overall, the bill has an indeterminate fiscal impact on state revenues and state expenditures.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 456.0653, 456.072, and 768.28.

This bill creates the following sections of the Florida Statutes: 458.3129, 459.074, 456.4501, 456.4502, and 456.4504.

This bill repeals section 456.0721 of the Florida Statutes.

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<sup>68</sup> Florida Department of Law Enforcement *Senate Bill 926 Agency Analysis* (Nov. 25, 2019) (on file with Senate Committee on Health Policy).

<sup>69</sup> *Id.*

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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