

**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 Education

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BILL: SB 356

INTRODUCER: Senator Hutson

SUBJECT: Keep Our Graduates Working Act

DATE: November 8, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bouck</u>	<u>Sikes</u>	<u>ED</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>IT</u>	_____
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 356 removes the state authority to take disciplinary action against a healthcare practitioner who defaults on a federal- or state-guaranteed student loan or who fails to comply with the terms of a service scholarship. The effect is that such practitioners may not have their licenses suspended or revoked by the Department of Health solely because of a loan default or failure to complete service scholarship obligations.

The bill takes effect on July 1, 2020.

**II. Present Situation:**

**Student Loans**

Student loans help to cover the education expenses at a university, college, or technical school, and may originate from the federal government or from other sources, such as a bank, credit union, state agency, or school.<sup>1</sup>

**Federal Loans**

The United States Department of Education (USDOE) federal student loan program is the William D. Ford Federal Direct Loan (Direct Loan) Program, under which eligible students and parents borrow directly from the USDOE at participating schools.<sup>2</sup>

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<sup>1</sup> USA.gov, *Financial Aid for Students*, <https://www.usa.gov/financial-aid#item-206091> (last visited Oct. 31, 2019).

<sup>2</sup> United States Department of Education, Federal Student Aid, *Federal student loans for college or career school are an investment in your future*, <https://studentaid.ed.gov/sa/types/loans#types> (last visited Oct. 31, 2019). Direct subsidized and unsubsidized loans are also called federal Stafford Loans. Loans under the Health Education Assistance Loan (HEAL) program were discontinued on Sept. 30, 1998; loans under the Federal Family Education Loan (FFEL) program were discontinued on July 1, 2010.

The Florida Department of Education (DOE), Office of Student Financial Assistance (OSFA) serves as a guarantor for the Federal Family Education Loan (FFEL) Program<sup>3</sup> and the administrator of Florida's scholarship and grant programs.<sup>4</sup>

### ***Federal Student Loan Default***

Nationally, about 65 percent of college seniors who graduated from public and private nonprofit colleges in 2018 had student loan debt. Baccalaureate degree recipients graduating in 2018 owed an average of \$29,200.<sup>5</sup> The average debt of 2018 Florida graduates was \$24,428.<sup>6</sup>

In a 2016 cohort of 4,533,276 borrowers who entered repayment on a direct federal loan or guaranteed federal loan, 458,687 borrowers defaulted<sup>7</sup> on the loan, which is a student loan cohort default rate<sup>8</sup> of 10.1 percent.<sup>9</sup> State default rates ranged from 5.8 percent in Massachusetts to 18.1 percent in Nevada. Florida's 2016 default rate was 7.3 percent (of the 250,615 borrowers in Florida who entered repayment in 2016, 18,378 borrowers defaulted on the loan).

The DOE is directed to exert every lawful and reasonable effort to collect all delinquent unpaid student loan notes and defaulted guaranteed loan notes.<sup>10</sup> State penalties for borrowers in default include a prohibition on that borrower from receiving his or her academic transcripts or other student records until such time as the loan is paid in full or the default status has been removed,<sup>11</sup> or being charged the maximum interest rate authorized by law.<sup>12</sup>

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<sup>3</sup> Rule 6A-20.099, F.A.C. Under the Federal Family Education Loan (FFEL) Program, private lenders made federal student loans to students, and guaranty agencies insured these funds, which were, in turn, reinsured by the federal government. As a result of the Health Care and Education Reconciliation Act of 2010, no new FFEL Program loans were made, beginning July 1, 2010. United States Department of Education, Federal Student Aid, *FFEL Program Lender and Guaranty Agency Reports*, <https://studentaid.ed.gov/sa/about/data-center/lender-guaranty> (last visited Oct. 31, 2019). However, guaranty agencies continue to service outstanding FFEL program loans.

<sup>4</sup> Florida Department of Education, Office of Student Financial Assistance, [http://www.floridastudentfinancialaid.org/FFELP/mission\\_statement/mission\\_statement\\_052606.html](http://www.floridastudentfinancialaid.org/FFELP/mission_statement/mission_statement_052606.html) (last visited Oct. 31, 2019).

<sup>5</sup> The Institute for College Access & Success, *Student Debt and the Class of 2018* (Sept. 2019), available at <https://ticas.org/wp-content/uploads/2019/09/classof2018.pdf>, at 4.

<sup>6</sup> *Id.* at 10.

<sup>7</sup> For a loan made under the William D. Ford Federal Direct Loan Program or the Federal Family Education Loan Program, a borrower is considered to be in default if the borrower fails to make scheduled student loan payments for a period of at least 270 days (about nine months). United States Department of Education, Federal Student Aid, *Don't ignore your student loan payments or you'll risk going into default*, <https://studentaid.ed.gov/sa/repay-loans/default> (last visited Oct. 31, 2019).

<sup>8</sup> For schools having 30 or more borrowers entering repayment in a fiscal year, a school's cohort default rate is the percentage of a school's borrowers who enter repayment on Federal Stafford Loans and Direct Stafford/Ford Loans during that fiscal year and default within the cohort default period (a school with 29 or few borrowers is assigned an average default rate). The 2016 cohort includes borrowers who entered repayment in 2016 and defaulted in 2016-2018, and is reported in 2019. United States Department of Education, Federal Student Aid, 2.1 *How the Cohort Default Rates are Calculated*, available at <https://ifap.ed.gov/DefaultManagement/guide/attachments/CDRGuideCh2Pt1CDRCalculation.pdf>, at 2.

<sup>9</sup> United States Department of Education, Federal Student Aid, *National Student Loan Cohort Default Rates*, available at <https://ifap.ed.gov/eannouncements/attachments/FY16OfficialNationalRates.pdf>.

<sup>10</sup> Section 1009.95, F.S. For accounts determined to be severely delinquent, the Commissioner is authorized to contract for commercial collection services to assist in collecting the amount due. Rule 6A-20.024, F.A.C.

<sup>11</sup> Section 1009.95(5), F.S.

<sup>12</sup> Section 1009.95(6), F.S.

## Health-Related Federal and State Service Scholarships

A service scholarship is an award to a student to further his or her education which imposes an obligation on the student to complete certain work-related requirements. Examples of health-related service scholarship programs administered by the United States Department of Health and Human Services (USDHHS) include:<sup>13</sup>

- The National Health Service Corps (NHSC), which requires a commitment of at least two years at an NHSC-approved site;
- Primary Care Loans, which have a residency requirement and a requirement to practice primary care for 10 years or until the loan is paid in full; and the
- The Nurse Corps Scholarship Program, which upon graduation requires employment at an eligible facility with a critical shortage of nurses.

In 1992, the Legislature created the Florida Health Services Corps, administered by the Department of Health (DOH), which required a student who received a scholarship to accept an assignment in a public health care program or work in a medically underserved area upon completion of primary care training. Noncompliance with participation requirements would result in ineligibility for professional licensure or renewal of licensure.<sup>14</sup>

## Professional Licensure

A professional or occupational license is a credential that demonstrates a level of skill or knowledge needed to perform a specific job. The credential is awarded by a governmental licensing agency based on pre-determined criteria, which may include some combination of degree attainment, certifications, educational certificates, assessments, apprenticeship programs, or work experience. The license is a legal authority to work in an occupation.<sup>15</sup>

More than 25 percent of United States workers now require a license to practice their professions, compared with 5 percent who needed a license in the 1950s.<sup>16</sup>

## *Licensure Action for Default on Student Loans*

In the 1990s, urged by the USDOE,<sup>17</sup> states began adopting laws requiring regulatory boards to suspend professional licenses if the board received notice from an education commission

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<sup>13</sup> United States Health and Human Services, Health Resources and Services Administration, *Loans & Scholarships*, <https://bhwhrsa.gov/loans-scholarships> (last visited Nov. 4, 2019).

<sup>14</sup> Section 111, ch. 1992-33, L.O.F., creating s. 381.0302, F.S., repealed by s. 45, ch. 2012-184, L.O.F.

<sup>15</sup> United States Department of Labor, *Labor Force Statistics from the Current Population Survey*, <https://www.bls.gov/cps/certifications-and-licenses-faqs.htm#whatare> (last visited Oct. 31, 2019).

<sup>16</sup> National Conference of State Legislatures, *License Suspension for Student Loan Defaulters*, <http://www.ncsl.org/research/labor-and-employment/license-suspension-for-student-loan-defaulters.aspx> (last visited Oct. 31, 2019).

<sup>17</sup> The USDOE recommended that Governors and state legislators send a strong message to students, postsecondary institutions, and lenders that high default rates will not be tolerated. The DOE specifically recommended that states enact legislation to deny professional licenses to defaulters until they make adequate repayment arrangements. United States Department of Education, *Reducing Student Loan Defaults: A Plan for Action* (1990), available at <https://files.eric.ed.gov/fulltext/ED323879.pdf>, at 63.

informing them that an applicant held outstanding student loans. Around 2010, at the height of this legislative trend, roughly half of the states had some form of license suspension for default.<sup>18</sup>

In 2002,<sup>19</sup> the DOH was authorized to take disciplinary action against a healthcare practitioner for failing to repay a federal or state loan or comply with service scholarship obligations. At the time, the USDHHS reported that Florida had 556 healthcare providers in default on student loans or service obligations, which totaled \$45.6 million.

Supporters of laws requiring license suspension for default maintain that the threat of losing a license is a powerful incentive to stay current on loan payments and decreases defaults. Also, such laws are not as harsh as they seem, allowing defaulters to avoid license suspension by simply entering into a repayment plan.<sup>20</sup>

Proponents of repealing license suspension laws for loan defaults argue that:<sup>21</sup>

- States should not use licensing authority as a tool of punitive debt collection. The core purpose of licensing should be to protect public safety and certify professional competency.
- Such laws force state professional boards to operate as de facto debt collectors for education loans, the vast majority of which are held by the federal government.
- Suspending licenses decreases the likelihood that the defaulter will repay the loan, since licensed occupations often pay higher wages than unlicensed jobs.

From 2015 to 2019, Alaska, Illinois, Kentucky, Montana, New Jersey, North Dakota, Oklahoma, Texas, and Washington repealed state laws regarding license suspension for default.<sup>22</sup>

In February 2019, Senators Marco Rubio and Elizabeth Warren reintroduced the Protecting JOBS Act to prohibit states from suspending, revoking, or denying state-issued professional licenses or issuing penalties due to student default on a federal education or health education loan, which would include the FFEL Program, Direct Loan program, and HEAL program loans.<sup>23</sup>

### ***Department of Health Licensure***

The Division of Medical Quality Assurance (MQA) in the DOH licenses and regulates more than 200 license types in over 40 professions, while partnering with 22 boards and four councils.<sup>24</sup>

<sup>18</sup> National Conference of State Legislatures, *License Suspension for Student Loan Defaulters*, <http://www.ncsl.org/research/labor-and-employment/license-suspension-for-student-loan-defaulters.aspx> (last visited Oct. 31, 2019). License suspension for default varies in scope—some states include all licenses and all types of loans, some states include driver’s licenses or education loans. Florida and four other states apply the penalty only to health care professionals.

<sup>19</sup> Section 2, ch. 2002-254, L.O.F.

<sup>20</sup> National Conference of State Legislatures, *License Suspension for Student Loan Defaulters*, <http://www.ncsl.org/research/labor-and-employment/license-suspension-for-student-loan-defaulters.aspx> (last visited Oct. 31, 2019).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Congress.Gov, *S.609-Protecting Jobs Act*, <https://www.congress.gov/bill/116th-congress/senate-bill/609/text> (last visited Oct. 31, 2019). An identical bill (H.R. 3689) was introduced in the House of Representatives by Rep. Donna Shalala.

<sup>24</sup> Florida Department of Health, *Annual Report and Long-range Plan Fiscal Year 2018-2019*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1819.pdf>, at 6. MQA regulatory boards include acupuncture, athletic trainers, medicine, nursing, osteopathic medicine, pharmacy, and speech-language pathology and audiology. Councils, which serve an advisory function, are Dietetics and Nutrition Practice,

The MQA currently licenses 998,513 active-in-state practitioners,<sup>25</sup> and regulates 59 healthcare professions, including:<sup>26</sup>

- Acupuncture;
- Athletic Trainer;
- Certified Nursing Assistant;
- Dentist;
- Emergency Medical Technician;
- Medical Doctor;
- Mental Health Counselor;
- Physical Therapist;
- Psychologist;
- Registered Nurse;
- School Psychologist; and
- Septic Tank Contractor

### ***Florida Department of Health Licensure Disciplinary Actions***

The DOH is authorized to take disciplinary action on persons licensees who commit offenses or violations specified in law.<sup>27</sup> Such violations include:<sup>28</sup>

- Failure to repay a federal- or state-guaranteed student loan in accordance with the terms of the loan; or
- Failure to comply with service scholarship obligations, which is considered a failure to perform a statutory or legal obligation.

The minimum disciplinary action imposed must be a suspension of the license until new payment terms are agreed upon or the scholarship obligation is resumed, followed by probation for the duration of the student loan or remaining scholarship obligation period, and a fine equal to 10 percent of the defaulted loan amount.

To implement this requirement, the DOH is required to:

- Obtain from the USDHHS information necessary to investigate and prosecute health care practitioners for failing to repay a student loan or comply with scholarship service obligations, and include related information in its annual report to the Legislature.<sup>29</sup>
- Notify the licensee in default that he or she is subject to immediate license suspension unless, within 45 days after notification, the licensee provides proof that new payment terms have been agreed upon by all parties to the loan. After 45 days the DOH must immediately suspend the license if the licensee fails to provide such proof.<sup>30</sup>

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Electrolysis, Licensed Midwifery, and Physician Assistants. *Id.* at 7. Chapter 456, F.S., provides for the regulation of health professions and occupations.

<sup>25</sup> Florida Department of Health, *Annual Report and Long-range Plan Fiscal Year 2018-2019*, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1819.pdf>, at 17.

<sup>26</sup> Florida Department of Health, *Licensing and Regulation*, <http://www.floridahealth.gov/licensing-and-regulation/index.html> (last visited Oct. 29, 2019).

<sup>27</sup> Section 456.072(1), F.S.

<sup>28</sup> Section 456.072(1)(k), F.S.

<sup>29</sup> Section 456.0721, F.S.

<sup>30</sup> Section 456.074(4), F.S.

In the 2017-2018 fiscal year, the DOH reported 850 student loan defaults, 76 completed investigations, and 26 emergency suspension orders filed. In the 2018-2019 fiscal year, the DOH reported 87 student loan defaults, 250 completed investigations, 121 emergency suspension orders filed, and further disciplinary action taken on 29 licensees.<sup>31</sup> In 2018-2019, the most affected licensed professions were Certified Nursing Assistant (43 suspension orders) and Registered Nurse (18 suspension orders).<sup>32</sup>

### *Licensure in Additional State Agencies*

Other agencies provide professional and occupational licensing and certification, such as the:

- Department of Agriculture and Consumer Services;<sup>33</sup>
- Department of Business and Professional Regulation;<sup>34</sup>
- Department of Education;<sup>35</sup>
- Department of Environmental Protection;<sup>36</sup>
- Department of Financial Services;<sup>37</sup> or
- Department of Highway Safety and Motor Vehicles.<sup>38</sup>

Each agency or affiliated board or commission is authorized to take action against a license or certificate based on violations of law or professional practice. However, no state law specifically authorizes such agencies to take disciplinary action against a license resulting from default on a student loan.

<sup>31</sup> Florida Department of Health, *2019 Agency Analysis for SB 356* (Oct. 31, 2019), see also Florida Department of Health, *Annual Report and Long-range Plan Fiscal Year 2018-2019*, Table 14: Student Loan Defaults, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1819.pdf>, at 43.

<sup>32</sup> Florida Department of Health, *Annual Report and Long-range Plan Fiscal Year 2018-2019*, Table 14: Student Loan Defaults, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1819.pdf>, at 43.

<sup>33</sup> The Florida Department of Agriculture and Consumer Services licenses such professions as dealers in agricultural products, pest control operators, professional surveyors and mappers, recovery agents, private investigators and private security, and liquefied propane dealers or installers.

<sup>34</sup> The Florida Department of Business and Professional Regulation is charged with licensing and regulating businesses and professionals such as cosmetologists, veterinarians, real estate agents and pari-mutuel wagering facilities. Florida Department of Business and Professional Regulation, *Department Overview*, <http://www.myfloridalicense.com/DBPR/about-us/department-overview/> (last visited Oct. 29, 2019).

<sup>35</sup> Florida educators must be certified to teach in public schools. Educators include classroom teachers, school administrators, and other support professionals, such as guidance counselors and media specialists. Florida Department of Education, *Educator Certification*, <http://www.fldoe.org/teaching/certification/> (last visited Oct. 29, 2019).

<sup>36</sup> The Florida Department of Environmental Protection is responsible for a professional licensure program for water and wastewater treatment plant operators along with water distribution system operators. Florida Department of Environmental Protection, *Certification and Restoration Program*, <https://floridadep.gov/water/certification-restoration> (last visited Oct. 29, 2019).

<sup>37</sup> The Florida Department of Financial Services licenses professions related to fire safety, funeral and cemetery services, and insurance. Florida Department of Financial Services, *Business and Professional*, <https://www.myfloridacfo.com/sitePages/services/display.aspx?a=Business%20and%20Professional> (last visited Oct. 29, 2019).

<sup>38</sup> The Florida Department of Highway Safety and Motor Vehicles licenses motor vehicle dealers, mobile home dealers, and recreational vehicle dealers. Florida Department of Highway Safety and Motor Vehicles, *Florida Motor Vehicle, Mobile Home, and Recreational Vehicle Dealers' Handbook* (2015), available at <https://www.flhsmv.gov/pdf/dealerservices/dealerhandbook.pdf>.

### III. Effect of Proposed Changes:

SB 356 removes the state authority to take disciplinary action against a healthcare practitioner who defaults on a student loan or who fails to comply with the terms of a service scholarship. The effect is that such practitioners may not have their licenses suspended or revoked by the Department of Health (DOH) solely because of a loan default or failure to complete service scholarship obligations.

The bill creates s. 1009.951, F.S., to specify that a state authority may not suspend or revoke a license that it has issued to a person who is in default on or delinquent in the payment of his or her student loans solely on the basis of such default or delinquency.<sup>39</sup> The bill does not, however, forgive any student debt or remove the ability to suspend or revoke a health care practitioner's license for other violations specified in law.

The bill modifies s. 1009.95, F.S., to require that the Department of Education (DOE) comply with the requirements in s. 1009.951, F.S., in its efforts to collect delinquent loans. However, compliance with s. 1009.951, F.S., only applies to disciplinary actions on a license, and does not remove the authority of the DOE to engage a collection agency for delinquent loans, or to follow disciplinary actions specified in law related to academic transcripts or maximum interest rates.

The bill modifies DOH requirements to ensure that health care practitioners' licenses cannot be suspended or revoked because of default on a student loan or failure to comply with service scholarship obligations. Specifically, the bill:

- Modifies s. 456.072, F.S., to remove failure to repay a federal- or state-guaranteed student loan or failure to comply with service scholarship obligations from the list of violations for which the DOH may take disciplinary action.
- Modifies s. 456.074, F.S., to remove the requirement that the DOH notify a health care practitioner in default on a student loan that he or she is subject to suspension of a license unless the practitioner provide proof of repayment terms within 45 days of the notification.
- Repeals s. 456.0721, F.S., to remove the requirement that the DOH obtain monthly reports from the United States Department of Health and Human Services (USDHHS) regarding health care practitioners who have failed to repay a student loan or comply with scholarship service obligations.

The bill removes the authority to take disciplinary action against health care practitioners who are in default on a student loan guaranteed by the state or federal government. However, the bill may not remove all DOH requirements relating to student loan default, specifically relating to initial award or renewal of a license. The DOH, or licensing board within the jurisdiction of the DOH, must refuse to issue or renew a license to an individual that is currently listed on the

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<sup>39</sup> The bill provides the following definitions:

- "Default" means the failure to repay a student loan according to the terms agreed to in the promissory note.
- "Delinquency" means the failure to make a student loan payment when it is due.
- "License" means any professional license, certificate, registration, or permit granted by the applicable state authority.
- "State authority" means any department, board, or agency with the authority to grant a license to any person in this state.
- "Student loan" means a federal-guaranteed or state-guaranteed loan for the purposes of postsecondary education.

USDHHS Office of Inspector General's List of Excluded Individuals and Entities (LEIE).<sup>40</sup> Federal law<sup>41</sup> provides that a default on a health education loan or scholarship obligation is permissive grounds for being placed on the LEIE and that such exclusion lasts 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.<sup>42</sup>

The bill takes effect on July 1, 2020.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

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<sup>40</sup> Section 456.0635(2)(e) and (3)(e), F.S. The LEIE provides information to the health care industry, patients and the public regarding individuals and entities currently excluded from participation in Medicare, Medicaid and all other Federal health care programs. USDHHS, Office of Inspector General, *Exclusions FAQ*, <https://oig.hhs.gov/faqs/exclusions-faq.asp>, (last visited Nov. 4, 2019). Individuals must be excluded (placed on the LEIE) for a conviction of specified crimes, including patient abuse, fraud, or actions related to a controlled substance. Individuals may be placed on the LEIE for acts including convictions relating to audits, specified misdemeanors, claims of unnecessary services, kickbacks, or default on health education loans or scholarship obligations. 42 U.S.C. s. 1320a-7.

<sup>41</sup> Section 1128(b)(14) of the Social Security Act and 42 U.S.C. 1320a-7(b)(14).

<sup>42</sup> Florida Department of Health, *2019 Agency Analysis of SB 356* (Oct. 31, 2019).



**B. Private Sector Impact:**

Healthcare practitioners will no longer be subject to discipline solely because of defaulting on a student loan or failure to comply with the terms of a service scholarship. This may assist such practitioners in paying off student loans by allowing them to continue to work in the field. In addition, the health care workforce would no longer be subject to the mandatory 10 percent fine for student loans in default.<sup>43</sup>

**C. Government Sector Impact:**

The Department of Health (DOH) and Division of Medical Quality Assurance (MQA) may experience a recurring decrease in revenue due to the loss of the mandated 10 percent fine imposed on student loan default cases. However, the DOH and MQA will experience a recurring reduction in workload and cost due to fewer investigations and prosecutions to conduct. The Compliance Management Unit in the MQA would no longer have to track licensees on probation due to board-imposed discipline.<sup>44</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 456.072, 456.074, 1009.95, and 1009.951.

This bill repeals section 456.0721 of the Florida Statutes.

**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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<sup>43</sup> Florida Department of Health 2019 Agency Analysis of SB 356 (Oct. 31, 2019).

<sup>44</sup> *Id.*