

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 861

PRINTER NO. 1072

AMOUNT

See Fiscal Impact

FUND

General Fund

DATE INTRODUCED

September 14, 2021

PRIME SPONSOR

Senator Stefano

DESCRIPTION

Senate Bill 861 enacts the Recognition of Emergency Medical Services Personnel Licensure Interstate Compact Act (compact) and enters the Commonwealth into the compact with all other states as follows:

Section 1 – Purpose

The bill sets forth the purposes of the compact, which include increasing access to EMS personnel; enhancing the states' ability to protect the public's health and safety especially patient safety; encouraging cooperation among member states with regard to EMS licensure and regulation; supporting the licensing of military members and their spouses; and giving member states the ability to hold EMS personnel accountable through mutual recognition of member state licenses.

Section 2 – Definitions

The bill defines the following terms: Advanced Emergency Medical Technician, Adverse Action, Alternative program, Certification, Commission, Emergency Medical Technician, Home State, License, Medical Director, Member State, Privilege to Practice, Paramedic, Remote State, Restricted, Rule, Scope of Practice, Significant Investigatory Information, State, and State EMS Authority.

Section 3 – Home State Licensure

Any member state in which an individual holds a current license shall be deemed a home state for purposes of the compact. Any member state may require an individual to obtain and retain a license to be authorized to practice in the member state under circumstances not authorized under the terms of the compact. A home state's license authorizes an individual to practice in a remote state under the privilege to practice only if the home state satisfies specified criteria, such as using the National Registry of Emergency Medical Technicians examination; having a mechanism in place for receiving and investigating complaints about individuals; notifying the commission of any adverse action or significant investigatory information regarding an individual; requiring a criminal background check of all applicants for initial licensure, including fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation; and complying with the rules of the commission.

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Section 4 – Compact Privilege to Practice

The bill provides that member states shall recognize the privilege to practice of an individual licensed in another member state that is in conformance with Section 3. To exercise the privilege to practice an individual must:

- (1) Be at least 18 years of age;
- (2) Possess a current unrestricted license in a member state as an EMT, AEMT, paramedic, or state-recognized and licensed level with a scope of practice and authority between EMT and paramedic; and
- (3) Practice under the supervision of a medical director.

Except as provided in Section 4, an individual practicing in a remote state will be subject to the remote state's authority and laws. A remote state may, in accordance with due process and that state's laws, restrict, suspend, or revoke an individual's privilege to practice in the remote state and may take any other necessary actions to protect the health and safety of its citizens. If a remote state takes action, it must notify the home state and the commission. If an individual's license in any home state is restricted or suspended, the individual is not eligible to practice in a remote state until the individual's home state license is restored. If an individual's privilege to practice in any remote state is restricted, suspended, or revoked the individual shall not be eligible to practice in any remote state until the individual's privilege to practice is restored.

Section 5 – Conditions of Practice in a Remote State

An individual may practice in a remote state under a privilege to practice only in the performance of the individual's EMS duties as assigned by an appropriate authority, as defined in the rules of the commission and under the following circumstances:

- (1) The individual originates a patient transport in a home state and transports the patient to a remote state;
- (2) The individual originates in the home state and enters a remote state to pick up a patient and provide care and transport of the patient to the home state;
- (3) The individual enters a remote state to provide patient care and/or transport within that remote state;
- (4) The individual enters a remote state to pick up a patient and provide care and transport to a third member state; and
- (5) Other conditions as determined by rules promulgated by the commission.

Section 6 – Relationship to Emergency Management Assistance Compact

Upon a member state's gubernatorial declaration of a state of emergency or disaster that activates the Emergency Management Assistance Compact (EMAC), all relevant terms and provisions of EMAC shall apply and to the extent any terms or provisions of this compact conflict with EMAC, the terms of EMAC shall prevail with respect to any individual practicing in the remote state in response to such declaration.

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Section 7 – Veterans, Service Members Separating from Active-Duty Military, and Their Spouses

The bill provides that member states shall consider a veteran, active military service member and member of the National Guard and Reserves separating from an active-duty tour, and a spouse thereof, who holds a current valid and unrestricted NREMT certification at or above the level of the state license being sought as satisfying the minimum training and examination requirements for such licensure. Member states shall expedite the processing of licensure applications submitted by veterans, active military service members and members of the National Guard and Reserves separating from an active-duty tour and their spouses. All individuals functioning with a privilege to practice under this section remain subject to the adverse actions provisions of Section 8.

Section 8 – Adverse Actions

Senate Bill 861 provides that a home state shall have exclusive power to impose adverse action against an individual's license issued by the home state. If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored. An individual currently subject to adverse action in the home state shall not practice in any remote state without prior written authorization from both the home state and remote state's EMS authority. A member state shall report adverse actions and any occurrences that the individual's compact privileges are restricted, suspended, or revoked to the commission in accordance with the rules of the commission. A remote state may take adverse action on an individual's privilege to practice within that state. Any member state may take adverse action against an individual's privilege to practice in that state based on the factual findings of another member state, so long as each state follows its own procedures for imposing such adverse action. A home state's EMS authority shall investigate and take appropriate action with respect to reported conduct in a remote state as it would if such conduct had occurred within the home state. In such cases, the home state's law shall control in determining the appropriate adverse action.

Section 9 – Additional Powers Invested in a Member State's EMS Authority

A member state's EMS authority, in addition to any other powers granted under state law, is authorized under the compact to issue:

- (1) Subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. The issuing state EMS authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and
- (2) Cease and desist orders to restrict, suspend, or revoke an individual's privilege to practice in the state.

Section 10 – Establishment of the Interstate Commission for EMS Personnel Practice

The bill creates and establishes a joint public agency known as the Interstate Commission for EMS Personnel Practice (commission) as an instrumentality of the member states. The legislation provides that venue is proper and judicial proceedings

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by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located, though the commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. Nothing in the compact shall be construed to be a waiver of sovereign immunity.

Each member state shall have one delegate to the commission, and the delegate shall be the responsible official of the state EMS authority or his designee. If more than one board, office, or other agency with the legislative mandate to license EMS personnel at and above the level of EMT exists, the governor of the state will determine which entity will be responsible for assigning the delegate. Each delegate is entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall have an opportunity to participate in the business of the commission. A delegate shall vote in person or by such other means as provided in the bylaws.

The commission must meet at least once each calendar year, and additional meetings shall be held as set forth in the bylaws. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Section 12. The commission may convene in a closed, non-public meeting to discuss certain topics, such as non-compliance of a member state with its obligations under the compact, personnel matters, litigation, negotiation of contracts, disclosure of privileged or confidential information, disclosure of personal information, disclosure of investigatory records compiled for law enforcement purposes or matters specifically exempted from disclosure by federal or member state statute. If a meeting is closed, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

The commission shall, by a majority vote, prescribe bylaws/rules to govern its conduct as necessary to carry out the purposes and exercise the powers of the compact.

Senate Bill 861 enumerates the powers of the commission and requires the commission to pay the reasonable expenses of its establishment, organization and ongoing activities. The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials and services. The commission may levy and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations of the commission and its staff, which must be in an amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources.

The members, officers, executive directors, employees and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any civil liability caused by or arising out of any acts, errors or omissions that occurred, or that the person against whom the claim is made had a reasonable basis for believing it occurred within the scope of commission employment, duties or responsibilities, provided that this immunity does not protect any such person from

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suit and/or liability for any liability caused by the intentional or willful or wanton misconduct of that person.

Section 11 – Coordinated Database

The commission shall provide for the development and maintenance of a coordinated database and reporting system containing licensure, adverse action and significant investigatory information on all licensed individuals in member states. Each member state must submit a uniform data set to the coordinated database on all individuals to whom the compact is applicable as required by the rules of the commission, including specified data items. The coordinated database administrator shall promptly notify all member states of any adverse action taken against, or significant investigative information on, any individual in a member state.

Section 12 – Rulemaking

Rules and amendments shall become binding as of the date specified in each rule or amendment. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force or effect in any member state.

Prior to promulgation and adoption of a final rule or rules by the commission, and at least 60 days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a Notice of Proposed Rulemaking: (1) on the website of the commission and (2) on the website of each member state EMS authority or the publication in which each state would otherwise publish proposed rules. The Notice of Proposed Rulemaking shall include:

- (1) The proposed time, date and location of the meeting in which the rule will be considered and voted upon;
- (2) The text of the proposed rule or amendment and the reason for the proposed rule;
- (3) A request for comments on the proposed rule from any interested person; and
- (4) The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

Section 13 – Oversight, Dispute Resolution & Enforcement

The executive, legislative, and judicial branches of state government in each member state shall enforce the compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent.

If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities, the commission shall provide written notice and an opportunity to cure and provide remedial training and specific technical assistance regarding the default. If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by the compact

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may be terminated on the effective date of termination. The defaulting state may appeal the action of the commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the commission has its principal offices.

Section 14 – Date of Implementation of the Interstate Commission for EMS Personnel Practice and Associated Rule, Withdrawal and Amendment

The compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration. Any state that joins the compact after the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state. Any member state may withdraw from the compact by enacting a statute repealing the same. A member state's withdrawal shall not take effect until six months after enactment of the repealing statute. The compact may be amended by the member states. No amendment to the compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

Section 15 – Construction & Severability

The compact shall be liberally construed to effectuate its purposes. If the compact is determined to be contrary to the constitution of any state member, the compact shall remain in full force and effect as to the remaining member states. Nothing in this compact supersedes state law or rules related to licensure of EMS agencies.

This act shall take effect immediately.

FISCAL IMPACT:

On March 10, 2020, the EMS Compact Commission officially activated the EMS Compact, and to date 21 states have enacted compact legislation.

The commission has the authority to levy and collect an assessment from each compact member state or impose fees to cover the cost of operations and activities of the commission. Currently, the annual assessment is not charged to any of the compact member states. The EMS Compact is funded by a grant provided by the National Registry of EMTs. In the future, the Commonwealth may be required to pay for the assessment if the National Registry of EMTs no longer funds the EMS Compact.