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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
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The Committee on Rules (Gruters) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (a) of subsection (5) of section  
464.019, Florida Statutes, is amended to read:

464.019 Approval of nursing education programs.—

(5) ACCOUNTABILITY.—

(a)1. An approved program must achieve a graduate passage  
rate for first-time test takers which is not more than 10  
percentage points lower than the average passage rate during the



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12 same calendar year for graduates of comparable degree programs  
13 who are United States educated, first-time test takers on the  
14 National Council of State Boards of Nursing Licensing  
15 Examination, as calculated by the contract testing service of  
16 the National Council of State Boards of Nursing. For purposes of  
17 this subparagraph, an approved program is comparable to all  
18 degree programs of the same program type from among the  
19 following program types:

20 a. Professional nursing education programs that terminate  
21 in a bachelor's degree.

22 b. Professional nursing education programs that terminate  
23 in an associate degree.

24 c. Professional nursing education programs that terminate  
25 in a diploma.

26 d. Practical nursing education programs.

27 2. If an approved program's graduate passage rates do not  
28 equal or exceed the required passage rates for 2 consecutive  
29 calendar years, the board shall place the program on  
30 probationary status pursuant to chapter 120 and the program  
31 director shall appear before the board to present a plan for  
32 remediation, which shall include specific benchmarks to identify  
33 progress toward a graduate passage rate goal. The program must  
34 remain on probationary status until it achieves a graduate  
35 passage rate that equals or exceeds the required passage rate  
36 for any 1 calendar year. The board shall deny a program  
37 application for a new prelicensure nursing education program  
38 submitted by an educational institution if the institution has  
39 an existing program that is already on probationary status.

40 3. Upon the program's achievement of a graduate passage



41 rate that equals or exceeds the required passage rate, the  
42 board, at its next regularly scheduled meeting following release  
43 of the program's graduate passage rate by the National Council  
44 of State Boards of Nursing, shall remove the program's  
45 probationary status. If the program, during the 2 calendar years  
46 following its placement on probationary status, does not achieve  
47 the required passage rate for any 1 calendar year, the board may  
48 extend the program's probationary status for 1 additional year,  
49 provided the program has demonstrated adequate progress toward  
50 the graduate passage rate goal by meeting a majority of the  
51 benchmarks established in the remediation plan. If the program  
52 is not granted the 1-year extension or fails to achieve the  
53 required passage rate by the end of such extension, the board  
54 shall terminate the program pursuant to chapter 120. If a  
55 program on probationary status fails to achieve the required  
56 passage rate for the 2020 calendar year, including a program  
57 subject to termination during the 2021 calendar year, the board  
58 shall extend the program's probationary status for 1 additional  
59 year. The board shall grant such extension at a regularly  
60 scheduled meeting during the 2021 calendar year.

61 Section 2. Section 768.39, Florida Statutes, is created to  
62 read:

63 768.39 Immunity for educational institutions for actions  
64 related to the COVID-19 pandemic.-

65 (1) The Legislature finds that during the COVID-19  
66 pandemic, educational institutions had little choice but to  
67 close or restrict access to their campuses in an effort to  
68 protect the health of their students, educators, staff, and  
69 communities. Despite these efforts, more than 120,000 cases of



70 COVID-19 have been linked to colleges and universities  
71 nationwide, and the deaths of more than 100 college students  
72 have been attributed to the disease. The Legislature further  
73 finds that lawsuits against educational institutions based on  
74 their efforts to provide educational services while keeping  
75 students, faculty, staff, and communities safe during the COVID-  
76 19 public health emergency are without legal precedent. One  
77 court has even acknowledged that the "legal system is now  
78 feeling COVID-19's havoc with the current wave of class action  
79 lawsuits that seek tuition reimbursement related to forced  
80 online tutelage." Under these circumstances, the Legislature  
81 finds that there is an overpowering public necessity for, and no  
82 reasonable alternative to, providing educational institutions  
83 with liability protections against lawsuits seeking tuition or  
84 fee reimbursements or related damages resulting from the  
85 institutions changing the delivery of educational services,  
86 limiting access to facilities, or closing campuses during the  
87 COVID-19 public health emergency.

88 (2) For the purposes of this section, the term "educational  
89 institution" means a school, including a preschool, elementary  
90 school, middle school, junior high school, secondary school,  
91 career center, or postsecondary school, whether public or  
92 nonpublic, and also includes the Board of Governors of the State  
93 University System and the State Board of Education.

94 (3) (a) An educational institution that has taken reasonably  
95 necessary actions in compliance with federal, state, or local  
96 guidance to diminish the impact or the spread of COVID-19 may  
97 not be held liable for, and shall be immune from, any civil  
98 damages, equitable relief, or other remedies relating to such



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99 actions. Reasonably necessary actions taken while a state of  
100 emergency was declared for this state for the COVID-19 pandemic  
101 include, but are not limited to, any of the following:

102 1. Shifting in-person instruction to online or remote  
103 instruction for any period of time.

104 2. Closing or modifying the provision of facilities, other  
105 than housing or dining facilities, on the campus of the  
106 educational institution.

107 3. Pausing or modifying ancillary student activities and  
108 services available through the educational institution.

109 (b) The provision of in-person or on-campus education and  
110 related services is deemed to have been impossible for  
111 educational institutions during any period of time in which such  
112 institutions took reasonably necessary actions described in  
113 paragraph (a) to protect students, staff, and educators in  
114 response to the COVID-19 public health emergency.

115 (c) As a result of the various governmental orders and the  
116 need for educational institutions to protect their communities,  
117 the reasonably necessary actions described in paragraph (a) are  
118 deemed justified.

119 (4) In any action against an educational institution for  
120 the reimbursement of tuition or fees, general publications of  
121 the institution are not evidence of an implied contract to  
122 provide in-person or on-campus education and related services or  
123 access to facilities during the COVID-19 public health  
124 emergency.

125 (5) (a) This section does not apply to losses or damages  
126 that resulted solely from a breach of an express contractual  
127 provision allocating liability in the event of a pandemic event.



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128       (b) This section does not apply to losses or damages caused  
129 by an act or omission of a college or university which was in  
130 bad faith or malicious.

131       (6) If any aspect of the immunity under subsection (3) is  
132 limited by a court or by operation of law from applying to  
133 certain types of claims or causes of action, the immunity under  
134 this section must still be provided to the fullest extent  
135 authorized by law to any other types of claims or causes of  
136 action.

137       (7) If an educational institution is required by federal,  
138 state, or local order issued in response to the COVID-19 public  
139 health emergency to alter instruction, the burden of proof for  
140 any plaintiff bringing an action against the educational  
141 institution for such change shall be by clear and convincing  
142 evidence to prevail for damages against the institution.

143       Section 3. This act is effective upon becoming a law.

144 ===== T I T L E   A M E N D M E N T =====

145 And the title is amended as follows:

146       Delete everything before the enacting clause  
147 and insert:

148                               A bill to be entitled

149       An act relating to the impact of COVID-19 on  
150       educational institutions; amending s. 464.019, F.S.;  
151       requiring the Board of Nursing to extend an approved  
152       program's probationary status under certain  
153       circumstances; creating s. 768.39, F.S.; providing  
154       legislative findings; defining the term "educational  
155       institution"; prohibiting an educational institution  
156       that has taken certain reasonably necessary actions to



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157       diminish the impact or spread of COVID-19 from being  
158       civilly liable for such actions; specifying that the  
159       provision of certain services by educational  
160       institutions was impossible during certain periods of  
161       time; providing that certain reasonably necessary  
162       actions are deemed justified; providing that general  
163       publications of educational institutions are not  
164       evidence of an implied contract to provide specified  
165       services during the COVID-19 public health emergency;  
166       providing exceptions; providing severability;  
167       specifying conditions for an action against an  
168       educational institution; providing an effective date.