

By the Committees on Rules; and Education

595-04573-21

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1                   A bill to be entitled  
2           An act relating to the impact of COVID-19 on  
3           educational institutions; amending s. 464.019, F.S.;  
4           requiring the Board of Nursing to extend an approved  
5           program's probationary status under certain  
6           circumstances; creating s. 768.39, F.S.; providing  
7           legislative findings; defining the term "educational  
8           institution"; prohibiting an educational institution  
9           that has taken certain reasonably necessary actions to  
10          diminish the impact or spread of COVID-19 from being  
11          civilly liable for such actions; specifying that the  
12          provision of certain services by educational  
13          institutions was impossible during certain periods of  
14          time; providing that certain reasonably necessary  
15          actions are deemed justified; providing that certain  
16          publications of educational institutions are not  
17          evidence of an express or implied contract to provide  
18          specified services during the COVID-19 public health  
19          emergency; providing exceptions; providing  
20          severability; specifying conditions for an action  
21          against an educational institution; providing an  
22          effective date.

23  
24 Be It Enacted by the Legislature of the State of Florida:

25  
26           Section 1. Paragraph (a) of subsection (5) of section  
27           464.019, Florida Statutes, is amended to read:

28           464.019 Approval of nursing education programs.—

29           (5) ACCOUNTABILITY.—

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30 (a)1. An approved program must achieve a graduate passage  
31 rate for first-time test takers which is not more than 10  
32 percentage points lower than the average passage rate during the  
33 same calendar year for graduates of comparable degree programs  
34 who are United States educated, first-time test takers on the  
35 National Council of State Boards of Nursing Licensing  
36 Examination, as calculated by the contract testing service of  
37 the National Council of State Boards of Nursing. For purposes of  
38 this subparagraph, an approved program is comparable to all  
39 degree programs of the same program type from among the  
40 following program types:

41 a. Professional nursing education programs that terminate  
42 in a bachelor's degree.

43 b. Professional nursing education programs that terminate  
44 in an associate degree.

45 c. Professional nursing education programs that terminate  
46 in a diploma.

47 d. Practical nursing education programs.

48 2. If an approved program's graduate passage rates do not  
49 equal or exceed the required passage rates for 2 consecutive  
50 calendar years, the board shall place the program on  
51 probationary status pursuant to chapter 120 and the program  
52 director shall appear before the board to present a plan for  
53 remediation, which shall include specific benchmarks to identify  
54 progress toward a graduate passage rate goal. The program must  
55 remain on probationary status until it achieves a graduate  
56 passage rate that equals or exceeds the required passage rate  
57 for any 1 calendar year. The board shall deny a program  
58 application for a new prelicensure nursing education program

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59 submitted by an educational institution if the institution has  
60 an existing program that is already on probationary status.

61 3. Upon the program's achievement of a graduate passage  
62 rate that equals or exceeds the required passage rate, the  
63 board, at its next regularly scheduled meeting following release  
64 of the program's graduate passage rate by the National Council  
65 of State Boards of Nursing, shall remove the program's  
66 probationary status. If the program, during the 2 calendar years  
67 following its placement on probationary status, does not achieve  
68 the required passage rate for any 1 calendar year, the board may  
69 extend the program's probationary status for 1 additional year,  
70 provided the program has demonstrated adequate progress toward  
71 the graduate passage rate goal by meeting a majority of the  
72 benchmarks established in the remediation plan. If the program  
73 is not granted the 1-year extension or fails to achieve the  
74 required passage rate by the end of such extension, the board  
75 shall terminate the program pursuant to chapter 120. If a  
76 program on probationary status fails to achieve the required  
77 passage rate for the 2020 calendar year, including a program  
78 subject to termination during the 2021 calendar year, the board  
79 shall extend the program's probationary status for 1 additional  
80 year. The board shall grant such extension at a regularly  
81 scheduled meeting during the 2021 calendar year.

82 Section 2. Section 768.39, Florida Statutes, is created to  
83 read:

84 768.39 Immunity for educational institutions for actions  
85 related to the COVID-19 pandemic.-

86 (1) The Legislature finds that during the COVID-19 public  
87 health emergency, educational institutions had little choice but

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88 to close or restrict access to their campuses in an effort to  
89 protect the health of their students, educators, staff, and  
90 communities. Despite these efforts, more than 120,000 cases of  
91 COVID-19 have been linked to colleges and universities  
92 nationwide, and the deaths of more than 100 college students  
93 have been attributed to the disease. The Legislature further  
94 finds that lawsuits against educational institutions based on  
95 their efforts to provide educational services while keeping  
96 students, faculty, staff, and communities safe during the COVID-  
97 19 public health emergency are without legal precedent. One  
98 court has even acknowledged that the "legal system is now  
99 feeling COVID-19's havoc with the current wave of class action  
100 lawsuits that seek tuition reimbursement related to forced  
101 online tutelage." Under these circumstances, the Legislature  
102 finds that there is an overpowering public necessity for, and no  
103 reasonable alternative to, providing educational institutions  
104 with liability protections against lawsuits seeking tuition or  
105 fee reimbursements or related damages resulting from the  
106 institutions changing the delivery of educational services,  
107 limiting access to facilities, or closing campuses during the  
108 COVID-19 public health emergency.

109 (2) For the purposes of this section, the term "educational  
110 institution" means a school, including a preschool, elementary  
111 school, middle school, junior high school, secondary school,  
112 career center, or postsecondary school, whether public or  
113 nonpublic. The Board of Governors of the State University System  
114 and the State Board of Education are also included within the  
115 immunity protections afforded by this section.

116 (3) (a) An educational institution that has taken reasonably

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117 necessary actions in compliance with federal, state, or local  
118 guidance to diminish the impact or the spread of COVID-19 may  
119 not be held liable for, and shall be immune from, any civil  
120 damages, equitable relief, or other remedies relating to such  
121 actions. Reasonably necessary actions taken while a state of  
122 emergency was declared for this state for the COVID-19 pandemic  
123 include, but are not limited to, any of the following:

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

126 2. Closing or modifying the provision of facilities, other  
127 than housing or dining facilities, on the campus of the  
128 educational institution.

129 3. Pausing or modifying ancillary student activities and  
130 services available through the educational institution.

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

137 (c) As a result of the various governmental orders and the  
138 need for educational institutions to protect their communities,  
139 the reasonably necessary actions described in paragraph (a) are  
140 deemed justified.

141 (4) In any action against an educational institution, the  
142 Board of Governors of the State University System, or the State  
143 Board of Education for the reimbursement of tuition or fees,  
144 invoices, catalogs, and general publications of an educational  
145 institution are not evidence of an express or implied contract

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146 to provide in-person or on-campus education and related services  
147 or access to facilities during the COVID-19 public health  
148 emergency.

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

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

155 (6) If any aspect of the immunity under subsection (3) is  
156 limited by a court or by operation of law from applying to  
157 certain types of claims or causes of action, the immunity under  
158 this section must still be provided to the fullest extent  
159 authorized by law to any other types of claims or causes of  
160 action.

161 (7) If an educational institution is required by federal,  
162 state, or local order or a directive of the Board of Governors  
163 of the State University System or the State Board of Education  
164 issued in response to the COVID-19 public health emergency to  
165 alter the mode of delivery of instruction and related services  
166 or access to facilities, the burden of proof for any plaintiff  
167 bringing an action against the educational institution for such  
168 change shall be by clear and convincing evidence to prevail for  
169 damages against the institution.

170 Section 3. This act shall take effect upon becoming a law.