

FOR CONSIDERATION By the Committee on Education

581-03381-21

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1 A bill to be entitled
2 An act relating to the impact of COVID-19 on
3 educational institutions; creating s. 768.39, F.S.;
4 providing legislative findings; defining the term
5 "educational institution"; prohibiting an educational
6 institution that has taken certain reasonably
7 necessary actions to diminish the impact or spread of
8 COVID-19 from being civilly liable for such actions;
9 specifying that the provision of certain services by
10 educational institutions was impossible during certain
11 periods of time; providing that certain reasonably
12 necessary actions are deemed justified; providing that
13 general publications of educational institutions are
14 not evidence of an implied contract to provide
15 specified services during the COVID-19 public health
16 emergency; providing exceptions; providing
17 severability; providing for retroactive applicability;
18 authorizing school grades calculated during a certain
19 school year to be used for eligibility for the Florida
20 School Recognition Program; authorizing a school in
21 turnaround status to exit turnaround status if the
22 school receives a grade of "C" or better; exempting
23 certain schools or approved providers from being
24 subject to sanctions or penalties as a result of
25 school grade or school improvement ratings earned
26 during a certain school year; prohibiting a high-
27 performing charter school system or school district
28 from losing such designation based on school grades
29 earned during a certain school year; encouraging

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30 specified persons to jointly make student promotion
31 decisions based on certain data; prohibiting results
32 from statewide, standardized assessments taken during
33 a certain school year from being used for the purposes
34 of grade 3 retention; authorizing a parent or guardian
35 who wishes for his or her grade 3 student to be
36 retained to submit, in writing, a retention request to
37 the school principal; providing that only requests
38 received by the principal on or before a certain date
39 must be considered; authorizing a principal to
40 consider a late request; requiring a principal who
41 considers a retention request to inform the student's
42 teachers of the retention request and collaboratively
43 discuss with the parent or guardian any basis for
44 agreement or disagreement with the request; providing
45 that the parent or guardian's decision to promote or
46 retain his or her grade 3 student after discussing the
47 retention request with the principal shall control;
48 authorizing certain students to graduate; prohibiting
49 certain performance results from being used for
50 calculating student performance measurement and for
51 evaluating personnel; waiving a provision requiring
52 summer prekindergarten programs to consist of at least
53 300 hours; waiving a requirement that no more than 22
54 percent of certain funds provided to an early learning
55 coalition be used for certain purposes; providing an
56 effective date.

57
58 Be It Enacted by the Legislature of the State of Florida:

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59
60 Section 1. Section 768.39, Florida Statutes, is created to
61 read:

62 768.39 Immunity for educational institutions for actions
63 related to the COVID-19 pandemic.-

64 (1) The Legislature finds that during the COVID-19
65 pandemic, educational institutions had little choice but to
66 close or restrict access to their campuses in an effort to
67 protect the health of their students, educators, staff, and
68 communities. Despite these efforts, more than 120,000 cases of
69 COVID-19 have been linked to colleges and universities
70 nationwide, and the deaths of more than 100 college students
71 have been attributed to the disease. The Legislature further
72 finds that lawsuits against educational institutions based on
73 their efforts to provide educational services while keeping
74 students, faculty, staff, and communities safe during the COVID-
75 19 public health emergency are without legal precedent. One
76 court has even acknowledged that the "legal system is now
77 feeling COVID-19's havoc with the current wave of class action
78 lawsuits that seek tuition reimbursement related to forced
79 online tutelage." Under these circumstances, the Legislature
80 finds that there is an overpowering public necessity for, and no
81 reasonable alternative to, providing educational institutions
82 with liability protections against lawsuits seeking tuition or
83 fee reimbursements or related damages resulting from the
84 institutions changing the delivery of educational services,
85 limiting access to facilities, or closing campuses during the
86 COVID-19 public health emergency.

87 (2) For the purposes of this section, the term "educational

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88 institution" has the same meaning as in s. 768.38(2).

89 (3)(a) An educational institution that has taken reasonably
90 necessary actions in compliance with federal, state, or local
91 guidance to diminish the impact or the spread of COVID-19 may
92 not be held liable for, and shall be immune from, any civil
93 damages, equitable relief, or other remedies relating to such
94 actions. Reasonably necessary actions taken while a state of
95 emergency was declared for this state for the COVID-19 pandemic
96 include, but are not limited to, any of the following:

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

99 2. Closing or modifying the provision of residential
100 housing, dining, or other facilities on the campus of the
101 educational institution.

102 3. Pausing or modifying ancillary student activities and
103 services available through the educational institution.

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

110 (c) As a result of the various governmental orders and the
111 need for educational institutions to protect their communities,
112 the reasonably necessary actions described in paragraph (a) are
113 deemed justified.

114 (4) In any action against an educational institution for
115 the reimbursement of tuition or fees, general publications of
116 the institution are not evidence of an implied contract to

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117 provide in-person or on-campus education and related services or
118 access to facilities during the COVID-19 public health
119 emergency.

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

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

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

132 (7) This section shall apply retroactively to causes of
133 actions accruing on or after March 1, 2020, the date of the
134 declaration of the COVID-19 public health emergency by the State
135 Surgeon General, and shall apply prospectively to causes of
136 action that accrue before the end of the academic term during
137 which the emergency declaration expires or is terminated.

138 Section 2. In recognition of the public health emergency
139 caused by the COVID-19 pandemic, and notwithstanding any other
140 provision in law:

141 (1) School grades calculated for the 2020-2021 school year
142 may be used for eligibility for the Florida School Recognition
143 Program established under s. 1008.36, Florida Statutes, as
144 provided in the General Appropriations Act.

145 (2) A school currently in turnaround status pursuant to s.

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146 1008.33, Florida Statutes, may exit turnaround status if the
147 school receives a grade of "C" or better.

148 (3) A school or approved provider under s. 1002.45, Florida
149 Statutes, which receives the same or a lower school grade or
150 school improvement rating for the 2020-2021 school year compared
151 to the 2018-2019 school year is not subject to sanctions or
152 penalties that would otherwise occur as a result of the 2020-
153 2021 school grade or school improvement rating. A charter school
154 system or a school district designated as high-performing may
155 not lose the designation based on the 2020-2021 school grade of
156 any of the schools within the charter school system or school
157 district, as applicable.

158 (4) (a) School leaders, teachers, and parents are encouraged
159 to jointly make promotion decisions based on their students'
160 classroom performance and progress monitoring data. Student
161 performance results from the 2020-2021 statewide, standardized
162 assessments may not be used for purposes of determining grade 3
163 retention pursuant to s. 1008.25(5), Florida Statutes.

164 (b) A parent or guardian may request that his or her grade
165 3 public school student in the 2020-2021 school year be retained
166 in grade 3 for the 2021-2022 school year.

167 (c) A parent or guardian who wishes for his or her grade 3
168 student to be retained must submit, in writing, a retention
169 request to the school principal. Only requests received by the
170 principal on or before June 30, 2021, must be considered. A
171 principal may consider a request received after that date at his
172 or her discretion.

173 (d) A principal who considers a retention request submitted
174 pursuant to subparagraph 2. shall inform the student's teachers

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175 of the retention request and collaboratively discuss with the
176 parent or guardian any basis for agreement or disagreement with
177 the request. The parent or guardian's decision to promote or
178 retain his or her grade 3 student after discussing the retention
179 request with the principal shall control.

180 (5) A student who meets all of the requirements for
181 graduation at the end of the 2020-2021 school year except for
182 passing either or both statewide, standardized assessments
183 required pursuant to s. 1003.4282(3) (a) and (b), Florida
184 Statutes, will be deemed to have met all of the requirements for
185 graduation.

186 (6) Student performance results from the 2020-2021
187 statewide, standardized assessments may not be used for
188 calculating student performance measurement and evaluating
189 personnel pursuant to s. 1012.34, Florida Statutes.

190 (7) The provision in s. 1002.61(2) (a), Florida Statutes,
191 that requires a summer prekindergarten program delivered by a
192 public school or private prekindergarten provider to consist of
193 at least 300 hours is waived. The 2021 summer prekindergarten
194 program must consist of at least 200 hours. The full-time
195 equivalent calculation for a student in a summer 2021
196 prekindergarten program delivered by a public school or private
197 prekindergarten provider under s. 1002.71(2) (b), Florida
198 Statutes, shall be prorated for the number of instructional
199 hours reported.

200 (8) The requirement in s. 1002.89(6), Florida Statutes,
201 that no more than 22 percent of the state, federal, and local
202 matching funds provided to an early learning coalition to
203 implement its approved school readiness program plan be used for

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204 any combination of administrative costs, quality activities, and
205 nondirect services is waived for the 2020-2021 and 2021-2022
206 school years, provided that the funds are used for purposes of
207 emergency recovery and direct support to providers.

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