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LEGISLATIVE ACTION

Senate

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House

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



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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.