

By the Committee on Education

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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 general
16 publications of educational institutions are not
17 evidence of an implied contract to provide specified
18 services during the COVID-19 public health emergency;
19 providing exceptions; providing severability;
20 providing for retroactive applicability; authorizing
21 school grades calculated during a certain school year
22 to be used for eligibility for the Florida School
23 Recognition Program; authorizing a school in
24 turnaround status to exit turnaround status if the
25 school receives a grade of "C" or better; exempting
26 certain schools or approved providers from being
27 subject to sanctions or penalties as a result of
28 school grade or school improvement ratings earned
29 during a certain school year; prohibiting a high-

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30 performing charter school system or school district
31 from losing such designation based on school grades
32 earned during a certain school year; authorizing a
33 parent or guardian to request that his or her K-5
34 student be retained in a grade level for academic
35 reasons for a specified school year; requiring that
36 such a request be submitted in a specified manner;
37 requiring school principals to consider such requests
38 if they are timely received; authorizing school
39 principals to consider requests that are not timely
40 received; requiring a school principal who considers a
41 request for retention to inform the student's teachers
42 of the request and collaboratively discuss with the
43 parent or guardian any basis for agreement or
44 disagreement with the request; requiring such
45 discussion to disclose that retention may impact the
46 student's eligibility to participate in high school
47 interscholastic or intrascholastic sports; authorizing
48 the principal, teachers, and parent or guardian to
49 collaborate to develop a customized 1-year education
50 plan for the student in lieu of retaining the student;
51 requiring a parent's or guardian's decision regarding
52 retention to control; requiring the individual
53 education plan (IEP) team for a retained student to
54 review and revise the student's IEP, as appropriate;
55 requiring school districts to report certain data to
56 the Department of Education by a specified date;
57 authorizing certain students to graduate; prohibiting
58 certain performance results from being used for

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59 calculating student performance measurement and for
60 evaluating personnel; waiving a provision requiring
61 summer prekindergarten programs to consist of at least
62 300 hours; waiving a requirement that no more than 22
63 percent of certain funds provided to an early learning
64 coalition be used for certain purposes; providing an
65 effective date.

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67 Be It Enacted by the Legislature of the State of Florida:

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69 Section 1. Paragraph (a) of subsection (5) of section
70 464.019, Florida Statutes, is amended to read:

71 464.019 Approval of nursing education programs.—

72 (5) ACCOUNTABILITY.—

73 (a)1. An approved program must achieve a graduate passage
74 rate for first-time test takers which is not more than 10
75 percentage points lower than the average passage rate during the
76 same calendar year for graduates of comparable degree programs
77 who are United States educated, first-time test takers on the
78 National Council of State Boards of Nursing Licensing
79 Examination, as calculated by the contract testing service of
80 the National Council of State Boards of Nursing. For purposes of
81 this subparagraph, an approved program is comparable to all
82 degree programs of the same program type from among the
83 following program types:

84 a. Professional nursing education programs that terminate
85 in a bachelor's degree.

86 b. Professional nursing education programs that terminate
87 in an associate degree.

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88 c. Professional nursing education programs that terminate
89 in a diploma.

90 d. Practical nursing education programs.

91 2. If an approved program's graduate passage rates do not
92 equal or exceed the required passage rates for 2 consecutive
93 calendar years, the board shall place the program on
94 probationary status pursuant to chapter 120 and the program
95 director shall appear before the board to present a plan for
96 remediation, which shall include specific benchmarks to identify
97 progress toward a graduate passage rate goal. The program must
98 remain on probationary status until it achieves a graduate
99 passage rate that equals or exceeds the required passage rate
100 for any 1 calendar year. The board shall deny a program
101 application for a new prelicensure nursing education program
102 submitted by an educational institution if the institution has
103 an existing program that is already on probationary status.

104 3. Upon the program's achievement of a graduate passage
105 rate that equals or exceeds the required passage rate, the
106 board, at its next regularly scheduled meeting following release
107 of the program's graduate passage rate by the National Council
108 of State Boards of Nursing, shall remove the program's
109 probationary status. If the program, during the 2 calendar years
110 following its placement on probationary status, does not achieve
111 the required passage rate for any 1 calendar year, the board may
112 extend the program's probationary status for 1 additional year,
113 provided the program has demonstrated adequate progress toward
114 the graduate passage rate goal by meeting a majority of the
115 benchmarks established in the remediation plan. If the program
116 is not granted the 1-year extension or fails to achieve the

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117 required passage rate by the end of such extension, the board
118 shall terminate the program pursuant to chapter 120. If a
119 program on probationary status fails to achieve the required
120 passage rate for the 2020 calendar year, including a program
121 subject to termination during the 2021 calendar year, the board
122 shall extend the program's probationary status for 1 additional
123 year. The board shall grant such extension at a regularly
124 scheduled meeting during the 2021 calendar year.

125 Section 2. Section 768.39, Florida Statutes, is created to
126 read:

127 768.39 Immunity for educational institutions for actions
128 related to the COVID-19 pandemic.—

129 (1) The Legislature finds that during the COVID-19
130 pandemic, educational institutions had little choice but to
131 close or restrict access to their campuses in an effort to
132 protect the health of their students, educators, staff, and
133 communities. Despite these efforts, more than 120,000 cases of
134 COVID-19 have been linked to colleges and universities
135 nationwide, and the deaths of more than 100 college students
136 have been attributed to the disease. The Legislature further
137 finds that lawsuits against educational institutions based on
138 their efforts to provide educational services while keeping
139 students, faculty, staff, and communities safe during the COVID-
140 19 public health emergency are without legal precedent. One
141 court has even acknowledged that the "legal system is now
142 feeling COVID-19's havoc with the current wave of class action
143 lawsuits that seek tuition reimbursement related to forced
144 online tutelage." Under these circumstances, the Legislature
145 finds that there is an overpowering public necessity for, and no

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146 reasonable alternative to, providing educational institutions
147 with liability protections against lawsuits seeking tuition or
148 fee reimbursements or related damages resulting from the
149 institutions changing the delivery of educational services,
150 limiting access to facilities, or closing campuses during the
151 COVID-19 public health emergency.

152 (2) For the purposes of this section, the term "educational
153 institution" has the same meaning as in s. 768.38(2).

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

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

164 2. Closing or modifying the provision of residential
165 housing, dining, or other facilities on the campus of the
166 educational institution.

167 3. Pausing or modifying ancillary student activities and
168 services available through the educational institution.

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

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175 (c) As a result of the various governmental orders and the
176 need for educational institutions to protect their communities,
177 the reasonably necessary actions described in paragraph (a) are
178 deemed justified.

179 (4) In any action against an educational institution for
180 the reimbursement of tuition or fees, general publications of
181 the institution are not evidence of an implied contract to
182 provide in-person or on-campus education and related services or
183 access to facilities during the COVID-19 public health
184 emergency.

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

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

191 (6) If any aspect of the immunity under subsection (3) is
192 limited by a court or by operation of law from applying to
193 certain types of claims or causes of action, the immunity under
194 this section must still be provided to the fullest extent
195 authorized by law to any other types of claims or causes of
196 action.

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

203 Section 3. In recognition of the public health emergency

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204 caused by the COVID-19 pandemic, and notwithstanding any other
205 provision in law:

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

210 (2) A school currently in turnaround status pursuant to s.
211 1008.33, Florida Statutes, may exit turnaround status if the
212 school receives a grade of "C" or better.

213 (3) A school or approved provider under s. 1002.45, Florida
214 Statutes, which receives the same or a lower school grade or
215 school improvement rating for the 2020-2021 school year compared
216 to the 2018-2019 school year is not subject to sanctions or
217 penalties that would otherwise occur as a result of the 2020-
218 2021 school grade or school improvement rating. A charter school
219 system or a school district designated as high-performing may
220 not lose the designation based on the 2020-2021 school grade of
221 any of the schools within the charter school system or school
222 district, as applicable.

223 (4) Notwithstanding s. 1008.25, Florida Statutes, a parent
224 or guardian may request that his or her K-5 public school
225 student be retained for the 2021-2022 school year in the grade
226 level to which the student was assigned at the beginning of the
227 2020-2021 school year, provided that such request is made for
228 academic reasons.

229 (a) A parent or guardian who wishes for his or her student
230 to be retained as provided by this act must submit, in writing,
231 to the school principal a retention request that specifies the
232 academic reasons for the retention. Only requests received by

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233 the principal on or before June 30, 2021, must be considered. A
234 principal may consider a request received after that date at his
235 or her discretion.

236 (b)1. A principal who considers a retention request
237 submitted pursuant to this subsection shall inform the student's
238 teachers of the retention request and collaboratively discuss
239 with the parent or guardian any basis for agreement or
240 disagreement with the request. As part of the discussion with
241 the parent or guardian, the principal shall disclose that
242 retention may impact the student's eligibility to participate in
243 high school interscholastic or intrascholastic sports due to the
244 student's age.

245 2. In lieu of retention, the principal, teachers, and
246 parent or guardian may collaborate to develop a customized 1-
247 year education plan for the student with the intent of helping
248 the student return to grade level readiness by the end of the
249 next academic year. Such plan may include, but need not be
250 limited to, supplemental educational support, services, and
251 interventions; summer education; promotion in some, but not all,
252 courses; and midyear promotion.

253 3. The parent's or guardian's decision to promote or retain
254 his or her student after discussing the retention request with
255 the principal shall control.

256 (c) If a student retained under this subsection has an
257 individual education plan (IEP) in effect, the student's IEP
258 team shall convene to review and revise the student's IEP, as
259 appropriate.

260 (d) By June 30, 2022, school districts shall report to the
261 Department of Education the number of students retained pursuant

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262 to this act for all or part of the 2021-2022 school year.

263 (5) A student who meets all of the requirements for
264 graduation at the end of the 2020-2021 school year except for
265 passing either or both statewide, standardized assessments
266 required pursuant to s. 1003.4282(3)(a) and (b), Florida
267 Statutes, will be deemed to have met all of the requirements for
268 graduation.

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

273 (7) The provision in s. 1002.61(2)(a), Florida Statutes,
274 that requires a summer prekindergarten program delivered by a
275 public school or private prekindergarten provider to consist of
276 at least 300 hours is waived. The 2021 summer prekindergarten
277 program must consist of at least 200 hours. The full-time
278 equivalent calculation for a student in a summer 2021
279 prekindergarten program delivered by a public school or private
280 prekindergarten provider under s. 1002.71(2)(b), Florida
281 Statutes, shall be prorated for the number of instructional
282 hours reported.

283 (8) The requirement in s. 1002.89(6), Florida Statutes,
284 that no more than 22 percent of the state, federal, and local
285 matching funds provided to an early learning coalition to
286 implement its approved school readiness program plan be used for
287 any combination of administrative costs, quality activities, and
288 nondirect services is waived for the 2020-2021 and 2021-2022
289 school years, provided that the funds are used for purposes of
290 emergency recovery and direct support to providers.

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Section 4. This act is effective upon becoming a law.