

CHAPTER 2021-232

Committee Substitute for House Bill No. 1261

An act relating to higher education; creating s. 768.39, F.S.; providing legislative findings; defining the term “educational institution”; providing that the Board of Governors and the State Board of Education are afforded certain immunity protections; prohibiting an educational institution that has taken certain reasonably necessary actions to diminish the impact or spread of COVID-19 from being civilly liable for such actions; specifying that the provision of certain services by educational institutions was impossible during certain periods of time; providing that certain reasonably necessary actions are deemed justified; providing exceptions; providing severability; providing for a burden of proof; amending s. 1006.75, F.S.; requiring the Board of Governors to publish an online dashboard containing specified data; requiring that such dashboard be made available by a specified date; requiring that each state university board of trustees adopt procedures to connect undergraduate students to certain programs; requiring that the Board of Governors approve such procedures by a specified date; requiring that such procedures include placing a hold on certain student registration under certain circumstances; providing that the Board of Governors review and approve certain procedures by a specified date; amending s. 1009.25, F.S.; revising provisions relating to certain fee exemptions; amending s. 1009.26, F.S.; requiring a state university to waive the tuition and fees for certain courses in which certain resident students are enrolled; providing applicability; providing specified criteria for such waiver; requiring the reporting of tuition and fees waived for state funding purposes; requiring disbursement to the student upon his or her enrollment in a program of strategic emphasis; requiring each state university to report certain information regarding such waiver to the Board of Governors, annually; authorizing a state university in compliance with the waiver provisions to earn incentive funding, subject to appropriation; requiring the board to adopt regulations; creating the State University Free Seat Program; providing a purpose; providing a limitation on fee waivers under the program; providing an exemption from tuition and fees for one online course at a state university for certain resident students; prohibiting a state university from charging such students more than a specified percentage of the tuition rate and the tuition differential under certain circumstances; providing a limitation on the application of such tuition discount; requiring each state university to annually report to the Board of Governors certain information regarding waivers under the program; requiring the board to adopt regulations; requiring a state university to waive the out-of-state fee for a nonresident student who meets certain requirements; defining the term “grandparent”; providing applicability; requiring a student or his or her parent to provide specified documentation before a state university waives the out-of-state fee; providing that a state university is not required to independently verify certain statements;

authorizing the state university to refer specified documentation to law enforcement under certain circumstances; requiring each state university to annually report to the Board of Governors specified information regarding such out-of-state fee waivers; requiring a state university, within the nonresident student enrollment systemwide, to prioritize the enrollment of a student granted such fee waiver over a certain out-of-state student under certain conditions; providing a limitation on the number of fee waivers granted per academic year; requiring the Board of Governors to adopt regulations; amending s. 1009.40, F.S.; conforming cross-references; creating s. 1009.46, F.S.; providing duties for certain postsecondary educational institutions relating to state financial aid and tuition assistance programs; requiring that an institution that fails to perform its duties be placed on probation by the Department of Education; providing duties for the department; amending s. 1009.50, F.S.; revising provisions relating to funds appropriated for the Florida Public Assistance Grant Program; removing provisions authorizing that certain funds be deposited into a specified trust fund; amending s. 1009.505, F.S.; revising provisions relating to the Florida Public Postsecondary Career Education Student Assistance Grant Program; amending s. 1009.51, F.S.; revising provisions relating to the Florida Private Student Assistance Grant Program; amending s. 1009.52, F.S.; revising provisions relating to the Florida Postsecondary Student Assistance Grant Program; amending s. 1009.893, F.S.; providing that the 2021-2022 academic year is the last year for an out-of-state student to be eligible to receive an initial Benacquisto Scholarship award; providing an effective date.

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

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

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

(1) The Legislature finds that during the COVID-19 public health emergency, educational institutions had little choice but to close or restrict access to their campuses in an effort to protect the health of their students, educators, staff, and communities. Despite these efforts, more than 120,000 cases of COVID-19 have been linked to colleges and universities nationwide, and the deaths of more than 100 college students have been attributed to the disease. The Legislature further finds that lawsuits against educational institutions based on their efforts to provide educational services while keeping students, faculty, staff, and communities safe during the COVID-19 public health emergency are without legal precedent. One court has even acknowledged that the “legal system is now feeling COVID-19’s havoc with the current wave of class action lawsuits that seek tuition reimbursement related to forced online tutelage.” Under these circumstances, the Legislature finds that there is an overpowering public necessity for, and no reasonable alternative to, providing educational institutions with liability protections against lawsuits seeking tuition or fee reimbursements or

related damages resulting from the institutions changing the delivery of educational services, limiting access to facilities, or closing campuses during the COVID-19 public health emergency.

(2) For the purposes of this section, the term “educational institution” means any postsecondary institution, whether public or nonpublic. The Board of Governors of the State University System and the State Board of Education are also included within the immunity protections afforded by this section.

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

- 1. Shifting in-person instruction to online or remote instruction for any period of time;
- 2. Closing or modifying the provision of facilities, other than housing or dining facilities, on the campus of the educational institution; or
- 3. Pausing or modifying ancillary student activities and services available through the educational institution.

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

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

(4) In any action against an educational institution, the Board of Governors of the State University System, or the State Board of Education for the reimbursement of tuition or fees, invoices, catalogs, and general publications of an educational institution are not evidence of an express or implied contract to provide in-person or on-campus education and related services or access to facilities during the COVID-19 public health emergency.

(5)(a) This section does not apply to losses or damages that resulted solely from a breach of an express contractual provision allocating liability.

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

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

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

Section 2. Section 1006.75, Florida Statutes, is created to read:

1006.75 State university career planning and information.—

(1) To assist students and families in making better-informed decisions about educational options and future employment opportunities, the Board of Governors of the State University System shall publicly publish an online dashboard. The dashboard must present data, by academic discipline, of graduates of state universities, including at least the following information:

- (a) Post-graduation median salary 1, 5, and 10 years after graduation.
- (b) Median student loan debt.
- (c) Debt-to-income ratio.
- (d) Estimated monthly loan payment as a percentage of gross monthly income.
- (e) The percentage of graduates who have continued their education beyond the baccalaureate level.

(2) The online dashboard must be available by January 1, 2022. A link to the dashboard shall be prominently displayed on each state university's office of admissions website.

(3)(a) Each state university board of trustees shall adopt procedures to connect undergraduate students to career planning, coaching, and related programs during the first academic year of the student's enrollment. Such procedures must be approved by the Board of Governors and include placing a hold on student registration before the end of the first year of each student's enrollment. To lift the hold and register for classes, each student must:

1. Register with the university's career center.

2. Complete a career readiness training module provided by the career center.

3. Be directed to the dashboard established in subsection (1).

4. Affirmatively indicate that he or she has been provided with the information required under this paragraph and is aware of the employment and wage prospects for his or her declared major.

(b) The Board of Governors of the State University System shall review and approve each university’s procedures by March 1, 2022.

Section 3. Paragraphs (c) and (d) of subsection (1) of Section 1009.25, Florida Statutes, are amended:

1009.25 Fee exemptions.—

(1) The following students are exempt from the payment of tuition and fees, including lab fees, at a school district that provides workforce education programs, Florida College System institution, or state university:

(c) A student who is, or was at the time he or she reached 18 years of age, in the custody of the Department of Children and Families or who, after spending at least 6 months in the custody of the department after reaching 16 years of age, was placed in a guardianship by the court. Such exemption includes fees associated with enrollment in applied academics for adult education instruction. The exemption remains valid until the student reaches 28 years of age.

(d) A student who is, or was at the time he or she reached 18 years of age, in the custody of a relative or nonrelative under s. 39.5085 or s. 39.6225 or who was adopted from the Department of Children and Families after May 5, 1997. Such exemption includes fees associated with enrollment in applied academics for adult education instruction. The exemption remains valid until the student reaches 28 years of age.

Section 4. Subsections (18), (19), and (20) are added to section 1009.26, Florida Statutes, to read:

1009.26 Fee waivers.—

(18)(a) Beginning with the 2021-2022 academic year, for every course in a Program of Strategic Emphasis, as identified in subparagraph 3., in which a student is enrolled, a state university shall waive 100 percent of the tuition and fees for an equivalent course in such program for a student who:

1. Is a resident for tuition purposes under s. 1009.21.

2. Has earned at least 60 semester credit hours towards a baccalaureate degree within 2 academic years after initial enrollment at a Florida public postsecondary institution.

3. Enrolls in one of eight Programs of Strategic Emphasis as adopted by the Board of Governors. The Board of Governors shall adopt eight Programs of Strategic Emphasis in science, technology, engineering, or math for which a student may be eligible to receive the tuition and fee waiver authorized by this subsection. The programs identified by the board must reflect the priorities of the state and be offered at a majority of state universities.

(b) A waiver granted under this subsection is applicable only for upper-level courses and up to 110 percent of the number of required credit hours of the baccalaureate degree program for which the student is enrolled.

(c) Upon enrollment in a program of strategic emphasis, the tuition and fees waived under this subsection must be reported for state funding purposes under ss. 1009.534 and 1009.535 and must be disbursed to the student. The amount disbursed to the student shall be equal to the award amount the student has received under s. 1009.534(2) or s. 1009.535(2).

(d) Each state university shall report to the Board of Governors the number and value of all waivers granted annually under this subsection. A state university in compliance with this subsection may earn incentive funding, subject to appropriation, in addition to the funding provided under s. 1001.92.

(e) The Board of Governors shall adopt regulations to administer this subsection.

(19) The State University Free Seat Program is created to encourage veterans, active duty members of the United States Armed Forces, active drilling members of the Florida National Guard, and nontraditional students to enroll in an online baccalaureate degree program at a state university. Fee waivers granted pursuant to this subsection may not exceed 1,000 students systemwide each academic year.

(a) A state university shall waive the tuition and fees for one online course for a student who is a resident for tuition purposes under s. 1009.21, has not previously earned a bachelor's degree, and is enrolled in an online baccalaureate degree program, provided the student meets one of the following eligibility requirements:

1. Is a veteran as defined in s. 1.01(14);
2. Is an active duty member of the United States Armed Forces;
3. Is an active drilling member of the Florida National Guard; or
4. Has not been enrolled in a postsecondary institution for more than 5 years.

(b) For all other courses in the program, a state university may not charge a student described in paragraph (a) more than 75 percent of the tuition rate as specified in s. 1009.24(4) and 75 percent of the tuition

differential pursuant to s. 1009.24(16), if the student remains enrolled at least part-time in the program during each academic year.

(c) A student who qualifies for the tuition discount under paragraph (b) is eligible to receive the discount for up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled.

(d) Each state university shall report annually to the Board of Governors the number and value of all fee waivers granted under this subsection during the previous 12-month period.

(e) The Board of Governors shall adopt regulations to administer this subsection.

(20)(a) Beginning with the 2022-2023 academic year, a state university shall waive the out-of-state fee for a student who:

1. Has a grandparent who is a legal resident as defined in s. 1009.21(1). For purposes of this subsection, the term “grandparent” means a person who has a legal relationship to a student’s parent as the natural or adoptive parent or legal guardian of the student’s parent.

2. Earns a high school diploma comparable to a Florida standard high school diploma, or its equivalent, or completes a home education program.

3.a. Achieves an SAT combined score no lower than the 89th national percentile on the SAT;

b. Achieves an ACT score concordant to the required SAT score in sub-paragraph a., using the latest published national concordance table developed jointly by the College Board and ACT, Inc.; or

c. If a state university accepts the Classic Learning Test (CLT) for admission purposes, achieves a CLT score concordant to the required SAT score specified in sub-paragraph a., using the latest published scoring comparison developed by Classic Learning Initiatives.

4. Beginning with students who initially enroll in the 2022 fall academic term and thereafter, enrolls as a full-time undergraduate student at a state university in the fall academic term immediately following high school graduation.

(b) The waiver under this subsection is applicable for up to 110 percent of the number of required credit hours of the degree program for which the student is enrolled.

(c) Before waiving the out-of-state fee, the state university shall require the student or the student’s parent, if the student is a dependent child, to provide a written declaration pursuant to s. 92.525(2) attesting to the student’s familial relationship to a grandparent who is a legal resident and

any other corroborating documentation required by regulation of the Board of Governors. A state university is not required to independently verify the statements contained in each declaration if the signatory declares it to be true under the penalties of perjury as required by s. 92.525(2). However, the state university may refer any signed declaration suspected of containing fraudulent representations to law enforcement.

(d) Each state university annually shall report to the Board of Governors the number and value of all fee waivers granted under this subsection during the previous 12-month period.

(e) Beginning with students who initially enroll for the 2022-2023 academic year or thereafter, a state university shall, within the nonresident student enrollment systemwide, prioritize the enrollment of a student who is granted a fee waiver under this subsection over an out-of-state student who is not eligible for an out-of-state fee waiver if the students have substantially similar academic and other credentials used in determining admission to the state university.

(f) Fee waivers granted pursuant to this subsection may not exceed 350 students systemwide each academic year.

(g) The Board of Governors shall adopt regulations to administer this subsection.

Section 5. Paragraph (a) of subsection (1) of section 1009.40, Florida Statutes, is amended to read:

1009.40 General requirements for student eligibility for state financial aid awards and tuition assistance grants.—

(1)(a) The general requirements for eligibility of students for state financial aid awards and tuition assistance grants consist of the following:

1. Achievement of the academic requirements of and acceptance at a state university or Florida College System institution; a nursing diploma school approved by the Florida Board of Nursing; a Florida college or university which is accredited by an accrediting agency recognized by the State Board of Education; a Florida institution the credits of which are acceptable for transfer to state universities; a career center; or a private career institution accredited by an accrediting agency recognized by the State Board of Education.

2. Residency in this state for no less than 1 year preceding the award of aid or a tuition assistance grant for a program established pursuant to s. 1009.50, s. 1009.505, s. 1009.51, s. 1009.52, s. 1009.53, s. 1009.60, s. 1009.62, s. 1009.72, s. 1009.73, s. 1009.75, s. 1009.77, s. 1009.89, ~~or~~ s. 1009.891, or s. 1009.894. Residency in this state must be for purposes other than to obtain an education. Resident status for purposes of receiving state financial aid awards shall be determined in the same manner as resident status for tuition purposes pursuant to s. 1009.21.

3. Submission of certification attesting to the accuracy, completeness, and correctness of information provided to demonstrate a student’s eligibility to receive state financial aid awards or tuition assistance grants. Falsification of such information shall result in the denial of a pending application and revocation of an award or grant currently held to the extent that no further payments shall be made. Additionally, students who knowingly make false statements in order to receive state financial aid awards or tuition assistance grants commit a misdemeanor of the second degree subject to the provisions of s. 837.06 and shall be required to return all state financial aid awards or tuition assistance grants wrongfully obtained.

Section 6. Section 1009.46, Florida Statutes, is created to read:

1009.46 Duties relating to state financial aid and tuition assistance programs.—

(1)(a) Each postsecondary educational institution that receives state funds for state financial aid and tuition assistance programs shall:

1. Complete and return the annual application for state aid funds in the format and by the date established by the Department of Education.

2. Maintain complete, accurate, and auditable student records documenting the institution’s administration of state financial aid and tuition assistance funds.

3. Verify eligibility of enrolled students with the department each academic term.

4. Report each student’s program of study to the department using the most recent classification of instructional programs taxonomy for the certificate or degree level as developed by the United States Department of Education’s National Center for Education Statistics.

5. Disburse state financial aid and tuition assistance to eligible students.

6. Notify students annually regarding the renewal requirements for each state-funded award for which they are eligible.

7. Complete and return to the department all reports for the administration of state funds in the format and by the date established by the department.

8. Complete and return to the department all legislatively required reports in the format and by the date established by the department.

9. Retain required records for the later of 5 years or until such records are audited and any audit exceptions are resolved.

10. Refund to the department any undisbursed advances within 60 days after the end of the regular registration period each fall and spring term, within 30 days after the end of the summer term, or within 60 days after the date a student's ineligibility is determined.

(b) The requirements in paragraph (a) do not preclude higher standards specified in other sections of this part or the rules of the State Board of Education.

(c) An institution that fails to perform its duties in administering state financial aid or tuition assistance programs must be placed on probation by the department.

1. The department shall provide allocations on a reimbursement basis to a participating institution that fails to timely remit undisbursed funds for the previous academic year.

2. The department may suspend or revoke an institution's eligibility to participate in state-funded programs if the institution fails to provide the required audits, fails to resolve audit findings, or fails to timely provide statutorily required reports by established deadlines.

Section 7. Subsection (6) of section 1009.50, Florida Statutes, is renumbered as subsection (5), and paragraph (a) of subsection (4) and subsection (5) of that section are amended to read:

1009.50 Florida Public Student Assistance Grant Program; eligibility for grants.—

(4)(a) The funds appropriated for the Florida Public Student Assistance Grant Program shall be distributed to eligible institutions in accordance with a formula approved by the State Board of Education. The formula must consider at least the prior year's distribution of funds and, the number of eligible applicants who did not receive awards, ~~the standardization of the expected family contribution, and provisions for unused funds.~~ The formula must account for changes in the number of eligible students across all student assistance grant programs established pursuant to this section and ss. 1009.505, 1009.51, and 1009.52.

~~(5) Funds appropriated by the Legislature for state student assistance grants may be deposited in the State Student Financial Assistance Trust Fund. Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year which has been allocated to the Florida Public Student Assistance Grant Program shall remain therein and shall be available for carrying out the purposes of this section.~~

Section 8. Subsection (5) of section 1009.505, Florida Statutes, is amended to read:

1009.505 Florida Public Postsecondary Career Education Student Assistance Grant Program.—

~~(5) Funds appropriated by the Legislature for state student assistance grants may be deposited in the State Student Financial Assistance Trust Fund. Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year which has been allocated to the Florida Public Postsecondary Career Education Student Assistance Grant Program shall remain therein and shall be available for carrying out the purposes of this section.~~

Section 9. Paragraph (a) of subsection (4) and subsection (5) of section 1009.51, Florida Statutes, are amended to read:

1009.51 Florida Private Student Assistance Grant Program; eligibility for grants.—

(4)(a) The funds appropriated for the Florida Private Student Assistance Grant Program shall be distributed to eligible institutions in accordance with a formula approved by the State Board of Education. The formula must consider at least the prior year's distribution of funds and, the number of eligible applicants who did not receive awards, ~~the standardization of the expected family contribution, and provisions for unused funds.~~ The formula must account for changes in the number of eligible students across all student assistance grant programs established pursuant to this section and ss. 1009.50, 1009.505, and 1009.52.

~~(5) Funds appropriated by the Legislature for Florida private student assistance grants may be deposited in the State Student Financial Assistance Trust Fund. Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year which has been allocated to the Florida Private Student Assistance Grant Program shall remain therein and shall be available for carrying out the purposes of this section and as otherwise provided by law.~~

Section 10. Paragraph (a) of subsection (4) and subsection (6) of section 1009.52, Florida Statutes, are amended to read:

1009.52 Florida Postsecondary Student Assistance Grant Program; eligibility for grants.—

(4)(a) The funds appropriated for the Florida Postsecondary Student Assistance Grant Program shall be distributed to eligible institutions in accordance with a formula approved by the State Board of Education. The formula must consider at least the prior year's distribution of funds and, the number of eligible applicants who did not receive awards, ~~the standardization of the expected family contribution, and provisions for unused funds.~~ The formula must account for changes in the number of eligible students across all student assistance grant programs established pursuant to this section and ss. 1009.50, 1009.505, and 1009.51.

~~(6) Funds appropriated by the Legislature for Florida postsecondary student assistance grants may be deposited in the State Student Financial~~

~~Assistance Trust Fund. Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year which has been allocated to the Florida Postsecondary Student Assistance Grant Program shall remain therein and shall be available for carrying out the purposes of this section and as otherwise provided by law.~~

Section 11. Paragraph (b) of subsection (4) of section 1009.893, Florida Statutes, is amended to read:

1009.893 Benacquisto Scholarship Program.—

(4) In order to be eligible for an initial award under the scholarship program, a student must meet the requirements of paragraph (a) or paragraph (b).

(b) A student who initially enrolls in a baccalaureate degree program in the 2018-2019 through 2021-2022 academic years ~~year or later~~ and who is not a resident of this state, as determined in s. 1009.40 and rules of the State Board of Education, must:

1. Physically reside in this state on or near the campus of the postsecondary educational institution in which the student is enrolled;

2. Earn a high school diploma from a school outside Florida which is comparable to a standard Florida high school diploma or its equivalent pursuant to s. 1002.3105, s. 1003.4281, s. 1003.4282, or s. 1003.435 or must complete a home education program in another state; and

3. Be accepted by and enrolled full-time in a baccalaureate degree program at an eligible regionally accredited Florida public or independent postsecondary educational institution during the fall academic term following high school graduation.

Section 12. This act shall take effect July 1, 2021.

Approved by the Governor June 29, 2021.

Filed in Office Secretary of State June 29, 2021.