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AB-1759 Institutions of higher education: liability for COVID-19-related injuries. (2019-2020)

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CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

ASSEMBLY BILL

NO. 1759

Introduced by Assembly Member Salas

~~(Coauthors: Assembly Members Bigelow and Gonzalez)~~

February 22, 2019

~~An act relating to health care.~~ *An act to add Chapter 7 (commencing with Section 99400) to Part 65 of Division 14 of Title 3 of the Education Code, relating to institutions of higher education.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1759, as amended, Salas. ~~Health care workers: rural and underserved areas.~~ *Institutions of higher education: liability for COVID-19-related injuries.*

Under existing law, the segments of public higher education in this state consists of (1) the California Community Colleges, (2) the California State University, and each campus, branch, and function thereof, and (3) each campus, branch, and function of the University of California. Existing law establishes as a segment of higher education in this state the independent institutions of higher education, which are those nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both, and that are formed as nonprofit corporations in this state and are accredited by an agency recognized by the United States Department of Education.

Existing law provides that no monetary liability and no cause of action arises against specified entities for certain conduct, including, except for specified damages, for a hospital for any action taken upon the recommendation of its medical staff, or against any other person or organization for any action taken, or restriction imposed, which is required to be reported, if that action or restriction is reported, as specified.

This bill would exempt the public and independent institutions of higher education, and their officers, employees, and governing bodies from monetary liability and damages for injury relating to COVID-19 infection, any condition in existence because of the COVID-19 pandemic, or any act or omission by those institutions, their officers, their employees, or their governing bodies in response to the COVID-19 pandemic, as provided.

~~Existing law requires the Office of Statewide Health Planning and Development to act as the coordinating agency to develop a strategic plan that would assist rural California to prepare for health care reform.~~

~~Existing law, the Health Education and Academic Loan Act, also authorizes the California Healthcare Workforce Policy Commission to provide assistance for the repayment of a student loan for medical education received by a medical student in an institution of higher education in California and requires the director to make loan assumption payments in connection with this program. Existing law requires the commission to give priority for loan assumption assistance to applicants who agree to provide primary care medical services for a minimum of 3 years in a medically underserved designated shortage area.~~

~~This bill would require the Office of Statewide Health Planning and Development, upon an express appropriation for the purpose of increasing the health care workforce in rural and underserved areas, to allocate the appropriated funds to support programs that effect that purpose, including programs to recruit and train students from areas with a large disparity in patient to doctor ratios to practice in community health centers in the area from which each student was recruited and to expand and strengthen programs to recruit and prepare students from underrepresented and low income backgrounds for health careers. The bill would also include a statement of legislative findings and declarations.~~

Vote: majority Appropriation: no Fiscal Committee: **yes**~~no~~ Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *It is the intent of the Legislature in enacting this chapter to clarify the legal standard of liability for institutions of higher education, designated as part of the critical infrastructure, related to COVID-19 as they plan to return to campuses.*

SEC. 2. *Chapter 7 (commencing with Section 99400) is added to Part 65 of Division 14 of Title 3 of the Education Code, to read:*

CHAPTER 7. Limitation of Liability for COVID-19-Related Injuries

99400. *(a) As used in this chapter, the following definitions apply:*

(1) "COVID-19 guidance" means any of the following issued in connection with the COVID-19 pandemic:

(A) Federal or state regulations, orders, or guidance.

(B) Presidential or gubernatorial executive orders.

(C) Orders or guidance provided by applicable local public health agencies, cities, or counties.

(2) "Institution of higher education" means an institution of public higher education or an independent institution of higher education as defined in Section 66010.

(b) There shall be no monetary liability on the part of, and no cause of action for damage shall arise against, an institution of higher education, or its officers, employees, or governing bodies for injury relating to COVID-19 infection, any condition in existence because of the COVID-19 pandemic, or any act or omission by the institution of higher education, its officers, its employees, or its governing bodies in response to the COVID-19 pandemic, notwithstanding any law that might impose that liability, including, but not limited to, any provision contained in Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, and Section 1708 of, and subdivision (a) of Section 1714 of, the Civil Code. The limitation of liability applies, but is not limited to, all of the following claims or causes of action:

(1) For recovery for injury, emotional distress, damage, death of a person, or economic loss.

(2) For breach of contract, an action brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of, or Article 1 (commencing with Section 17500) of Chapter 1 of Part 3 of Division 7 of, the Business and Professions Code, an action based on any of the grounds in Section 1689 of the Civil Code, or an action brought pursuant to Title 1.5 (commencing with Section 1750) of Part 4 of Division 3 of, including Section 1781 of, the Civil Code.

(3) For a claim for injury, damage, or economic loss for a cancellation or modification of a program or activity of the institution of higher education, if the change was due in part to COVID-19, including public health orders that restricted the activities of the institution of higher education, including allowing only online education.

(c) (1) Subdivision (b) does not apply to a claim for damages caused by intentional misconduct, wanton or reckless misconduct, gross negligence, or willful and wanton negligence committed by an institution of higher education, its officers, its employees, or its governing bodies if both of the following conditions exists:

(A) The alleged negligence or misconduct is proven by clear and convincing evidence to have resulted in the transmission of COVID-19 that led to the injury, emotional distress, damage, death of a person, or economic loss.

(B) The action is not brought pursuant to Section 382 of the Code of Civil Procedure.

(2) Notwithstanding paragraph (1), subdivision (b) shall apply in a civil action for gross negligence, willful and wanton negligence for injury, emotional distress, damage, death of a person, or economic loss related to COVID-19 if the alleged act or omission of the institution of higher education complied substantially with or was consistent with COVID-19 guidance applicable to the institution of higher education at the time of the alleged act or omission. If two or more sources of COVID-19 guidance are applicable to the same alleged act or omission, this paragraph shall apply if the act or omission at issue by the institution of higher education complied or was consistent with any COVID-19 guidance in effect at the time of the act or omission.

(d) This section shall apply to a cause of action for injury or claim alleged to have been sustained or to have occurred on or after the Governor's March 4, 2020 Proclamation of a State of Emergency, during any stage of the COVID-19 pandemic.

(e) (1) This section shall not modify or affect a claim by an employee, including a student employee, of an institution of higher education pursuant to Division 4 (commencing with Section 3200) of the Labor Code, which establishes the sole and exclusive remedial scheme for employees of a higher educational institution who have incurred an injury that arose out of and in the course of employment.

(2) This section applies to a claim by an employee of an institution of higher education, including a student employee, that did not arise out of and in the course of the employment.

~~SECTION 1.-(a)The Legislature finds and declares as follows:~~

~~(1)The health and well-being of Californians is compromised by both a significant health care workforce shortage and a growing mismatch between population needs and available services:~~

~~(2)These shortages are most severe in some of California's largest and fastest-growing regions, particularly in underserved, rural, and ethnically and linguistically diverse communities:~~

~~(3)The state must make significant investments in our health care workforce to overcome the growing gap between its existing workforce and the state's growing population and increasing diversity to ensure access to quality, affordable health care:~~

~~(4)Californians who currently live in federally designated Health Professional Shortage Areas (HPSAs) will be hit hardest by the health care workforce shortage:~~

~~(5)Health care workforce challenges may result in individuals going without needed care, including preventive services, experiencing delays in receiving appropriate care, enduring financial burdens, and undergoing preventable hospitalizations:~~

~~(6)It is the intent of the Legislature in enacting this act to increase the supply of health care professionals in rural and other underserved communities:~~

~~(b)Upon an express appropriation for the purpose of increasing the health care workforce in rural and underserved areas, the Office of Statewide Health Planning and Development shall allocate those appropriated funds for the support of programs that effect that purpose, including, but not limited to, the following programs:~~

~~(1)A program to expand the number of primary care physician and psychiatry residency positions, including universities, hospitals, and clinics that have not previously operated residency programs, and to prioritize the allocation of funds to residency programs in HPSAs:~~

~~(2)A program to recruit and train students from areas with a large disparity in patient to doctor ratios to practice in community health centers in the area from which each student was recruited:~~

~~(3)A program to expand and strengthen loan repayment programs for primary care physicians and clinicians that agree to serve in HPSAs:~~

~~(4)A program to expand and strengthen programs to recruit and prepare students from underrepresented and low-income backgrounds for health careers.~~