

1 **ENROLLED**

2 **Senate Bill No. 238**

3 (By Senators D. Hall, Nohe and Stollings)

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5 [Passed February 25, 2015; in effect ninety days from passage..]
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10 AN ACT to amend and reenact §18-5-19 and §18-5-19d of the Code of West Virginia, 1931, as
11 amended, all relating to limiting the liability of county boards of education for loss or injury from
12 the use of school property made available for unorganized recreation.

13 *Be it enacted by the Legislature of West Virginia:*

14 That §18-5-19 and §18-5-19d of the Code of West Virginia, 1931, as amended, be amended
15 and reenacted, all to read as follows:

16 **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

17 **§18-5-19. Night schools and other school extension activities; use of school property for**
18 **public meetings, etc.**

19 County boards may establish and maintain evening classes or night schools, continuation or
20 part-time day schools, alternative schools and vocational schools, wherever practicable to do so, and
21 shall admit adult persons and all other persons, including persons of foreign birth. County boards
22 may admit school-age children and youth to these classes or schools under the circumstances
23 prescribed by a State Board of Education policy governing alternative education programs. County

1 boards may use school funds for the financial support of such schools and to use the schoolhouses
2 and their equipment for these purposes. Any such classes of schools shall be conducted in
3 accordance with the rules of the state board.

4 County boards may provide for the free, comfortable and convenient use of any school
5 property to promote and facilitate frequent meetings and associations of the people for discussion,
6 study, recreation and other community activities, and may secure, assemble and house material for
7 use in the study of farm, home and community problems, and may provide facilities for the
8 dissemination of information useful on the farm, in the home or in the community.

9 In addition to the liability protection for organized use outlined in section nineteen-d of this
10 article, county boards are not liable for any loss or injury arising from the use of school property
11 made available for unorganized recreation. County boards are liable for their acts or omissions
12 which constitute gross negligence or willful and wanton conduct which is the proximate cause of
13 injury or property damage.

14 **§18-5-19d. Conditional immunity from liability for community**
15 **activities; liability insurance; authority of State**
16 **Board of Risk and Insurance Management.**

17 (a)(1) If the requirements of this subsection are met, the board of education is not liable under
18 any theory of vicarious or imputed liability for the acts or omissions of:

19 (A) Any person, organization or association using school property for a community activity
20 described in section nineteen of this article;

21 (B) Any member, employee or agent of such person, organization or association; or

22 (C) Any person attending or participating in the community activity other than an employee
23 of the board while acting within the scope of employment.

1 (2) The limitation of liability extended the board of education pursuant to this subsection
2 does not apply unless:

3 (A) The person, organization or association using school property for a community activity
4 has in effect, at the time of the act or omission described in subdivision (1) of this subsection, a
5 contract of insurance which provides general comprehensive liability coverage of any claim, demand,
6 action, suit or judgment by reason of alleged negligence or other acts resulting in bodily injury or
7 property damage to any person arising out of the use of school property for a community activity
8 described in subdivision (1) of this subsection;

9 (B) The contract of insurance provides for the payment of any attorney fees, court costs and
10 other litigation expenses incurred by the board in connection with any claim, demand, action, suit
11 or judgment arising from such alleged negligence or other act; and

12 (C) The insurance coverage is in the amounts specified in the provisions of section five-a,
13 article twelve, chapter twenty-nine of this code.

14 (3)(A) The insurance described in subdivision (2) of this subsection may be obtained
15 privately or may be obtained pursuant to the provisions of this subdivision. If requested by any
16 person, organization or association seeking such insurance coverage, the State Board of Risk and
17 Insurance Management is authorized to provide such insurance and to enter into any necessary
18 contract of insurance to further the intent of this subdivision.

19 (B) Where provided by the State Board of Risk and Insurance Management, the cost of the
20 insurance, as determined by the such board, shall be paid by the person, organization or association
21 and may include administrative expenses. All funds received by such board shall be deposited with
22 the West Virginia Board of Investments for investment purposes.

23 (C) The State Board of Risk and Insurance Management is hereby authorized and empowered

1 to negotiate and effect settlement of any and all claims covered by the insurance provided by such
2 board pursuant to this subdivision to the extent the board is authorized and empowered to negotiate
3 and effect settlement of claims described in section five, article twelve, chapter twenty-nine of this
4 code.

5 (4) As used in this subsection, "organization" or "association" means a bona fide, not for
6 profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, eleemosynary,
7 incorporated or unincorporated association or organization or a rescue unit or other similar volunteer
8 community service organization or association, but does not include any nonprofit association or
9 organization, whether incorporated or not, which is organized primarily for the purposes of
10 influencing legislation or advocating or opposing the nomination, election or defeat of any candidate,
11 or the passage or defeat of any issue, thing or item to be voted upon.

12 (b) In addition to the liability protection for organized use outlined in this section, county
13 boards are not liable for any loss or injury arising from the use of school property made available for
14 unorganized recreation. County boards are liable for their acts or omissions which constitute gross
15 negligence or willful and wanton conduct which is the proximate cause of injury or property damage.

16 (c) Nothing in this section shall affect the rights, duties, defenses, immunities or causes of
17 action under other statutes or the common law of this state which may be applicable to boards of
18 education.