

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2021**

BY DELEGATES HANSHAW (MR. SPEAKER) AND

SKAFF

[BY REQUEST OF THE EXECUTIVE]

[Introduced February 12, 2021; Referred to the

Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §29-12E-1, §29-12E-2, §29-12E-3, and §29-12E-4, all related to the creation  
3 of and the enactment and operation of the “West Virginia COVID-19 Immunity Act;” to  
4 provide for certain immunities from liability for claims regarding COVID-19; to provide for  
5 definitions; to provide for exceptions; to provide for a retroactive effective date; and to  
6 provide for severability.

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

## **ARTICLE 12E. WEST VIRGINIA COVID-19 IMMUNITY ACT.**

### **§29-12E-1. Short Title.**

1 This article may be cited as the “West Virginia COVID-19 Immunity Act.”

### **§29-12E-2. Purpose.**

1 The purpose of this article is to provide certain civil immunity from liability claims regarding  
2 COVID-19, also known as the novel coronavirus identified as SARS-CoV-2, for injuries or  
3 damages for an injury resulting from exposure of an individual to COVID-19.

### **§29-12E-3. Definitions.**

1 As used in this article:

2 “COVID-19” means the novel coronavirus identified as SARS-CoV-2, the disease caused  
3 by SARS-CoV-2, and conditions associated with the disease;

4 “Guidance” means written guidelines, bulletins or orders related to COVID-19 issued by  
5 the Centers for Disease Control and Prevention, Occupational Safety and Health Administration  
6 of the United States Department of Labor, West Virginia Department of Health and Human  
7 Resources, or any other state agency, board or commission; and

8 “Person” means an individual, association, institution, corporation, company, firm, trust,  
9 limited liability company, partnership, political subdivision, government office, department,  
10 division, bureau, or other body of government, school or board of education, healthcare institution,  
11 hospital or facility, or any other organization or entity.

12 “Premises” means real property and any appurtenant building or structure.

**§29-12E-3. Immunity related to COVID-19.**

1 (a) Subject to the other provisions of this article, a person is immune from civil liability for  
2 damages for an injury resulting from exposure of an individual to COVID-19 on the premises  
3 owned or operated by the person, or during an activity supervised, sponsored, or managed by  
4 the person, so long as the person was acting in compliance or consistent with applicable federal  
5 or state regulations, an Executive Order of the Governor, or other guidance applicable at the time  
6 of the alleged exposure or injury. If two or more sources of guidance are applicable to the conduct  
7 or risk at the time of the alleged exposure, the person or agent shall not be liable if the conduct is  
8 consistent with any applicable guidance.

9 (b) Immunity does not apply to:

10 (1) Willful or wanton misconduct;

11 (2) Reckless infliction of harm;

12 (3) Intentional infliction of harm; or

13 (4) Gross negligence.

14 (c) This article does not modify the application of any applicable workers’ compensation  
15 laws in this state, any applicable state or federal occupational safety or health laws, or any  
16 applicable criminal laws of this state.

17 (d) The immunity created in this article is in addition to any other immunity protections that  
18 may apply in state or federal law and does not modify the “Governmental Tort Claims and  
19 Insurance Reform Act” as set forth in §29-12A-1 et seq. of this code.

20 (e) The immunity created in this article does not modify any general or emergency power  
21 of the Governor as set forth in §15-5-1 et seq. of this code or any other state agency, board or  
22 commission.

23 (f) It is the intention of the Legislature that the immunity created in this article is to be  
24 given retroactive force and effect and that immunity shall thereby be applied retroactively to the

25 date that the State of Emergency was declared in West Virginia by the Governor due to the  
26 COVID-19 pandemic.

**§29-12E-4. Severability.**

1 In the event any provision of this article, or the application of such provision to any person  
2 or circumstance, is held unconstitutional or otherwise invalid by any court of competent  
3 jurisdiction, the remainder of this article or the application of the provision to other persons or  
4 circumstances shall not be affected thereby.

NOTE: The purpose of this bill is to create the West Virginia COVID-19 Immunity Act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.