

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3414

By Delegate Westfall

[Introduced February 13, 2023; Referred to the
Committee on Education then the Judiciary]

1 A BILL to amend and reenact §29-12-1, §29-12-2, §29-12-4, §29-12-5a, and §29-12-7 of the Code
 2 of West Virginia, 1931, as amended; and to amend and reenact §29-12A-5 of said code, all
 3 relating to the state’s procurement of insurance protection and the limitation of damages
 4 available for claims against schools related to abuse.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. STATE INSURANCE.

§29-12-1. Intent and objects.

1 Recognition is given to the fact that the State of West Virginia owns extensive properties of
 2 varied types and descriptions representing the investment of vast sums of money; that the State
 3 and its officials, agents and employees engage in many governmental activities and services and
 4 incur and undertake numerous governmental responsibilities and obligations; that such properties
 5 are subject to losses, damage, destruction, risks and hazards and such activities and
 6 responsibilities are subject to liabilities which can and should be covered by a sound and adequate
 7 insurance program; and that good business and insurance practices and principles necessitate
 8 the centralization of responsibility for the purchase, control and supervision of insurance coverage
 9 on all state properties, activities and responsibilities and the cooperation and coordination of all
 10 state officials, departments and employees in the development and success of such a centralized
 11 state insurance program.

12 Moreover, the Legislature finds and declares that the continued viability of the state’s
 13 public education system may be compromised by the cost of liability insurance and the cost of
 14 defending liability claims;

15 That the state concurrently has an interest in providing a system that makes available
 16 adequate and fair compensation to those who suffer damages while at school;

17 That it is the duty and responsibility of the Legislature to balance the rights of individuals to
 18 obtain adequate and fair compensation, with the substantial and compelling state interests set
 19 forth herein supporting the need for a financially viable system of public schools;

20 That, in conjunction with the provision of public education it is a common practice to
 21 procure insurance coverage for educational institutions and that the cost of this insurance is
 22 affected by the payouts for claims made;

23 That any moneys the educational institutions expend for the defense, settlement, and
 24 satisfaction of liability claims inevitably result in a shortfall of funds available to the educational
 25 institutions for faculty compensation and other operational purposes;

26 That, given the substantial and compelling state interests being served, it is therefore
 27 reasonable and appropriate for the Legislature to provide to educational institutions, and their
 28 respective directors, officers, employees, and agents, limits on recovery from civil liability; and

29 That it is further reasonable and appropriate to require the state's public schools to
 30 maintain a level of liability insurance to adequately and fairly compensate students who are
 31 injured.

32 Wherefore, in order to accomplish these desired ends and objectives, the provisions of this
 33 article are hereby enacted into law in response to manifest needs and requirements therefor and in
 34 the interest of the establishment and development of an adequate, economical and sound state
 35 insurance and bonding service on all state property, activities and responsibilities.

§29-12-2.

Definitions.

1 As used in this article, unless the context otherwise clearly requires:

2 (a) "Abuse" means any kind of negative or purposeful mistreatment of a child, student or
 3 other attendee or participant at an institution of learning, whether based upon physical or mental
 4 abuse, or whether based upon sexual orientation, gender, race, or any other purpose or
 5 motivation. Abuse specifically includes mental and physical abuse, sexual abuse, assault,
 6 discrimination, and includes communications via written media, electronic media, social media,
 7 and any other forms of communication.

8 (a)(b) "Board" means the state Board of Risk and Insurance Management.

9 (b)(c) "Company" means and includes corporations, associations, partnerships and

10 individuals.

11 (d) "Institution of Learning" means any and all public educational institutions in the State of
12 West Virginia, specifically including Pre-K programs and K-12 public schools. A single institution
13 of learning, as discussed in this article, refers to a single entity, such as an elementary school or
14 secondary school, whether or not multiple institutions may be involved in similar qualifying claims
15 within the same county.

16 ~~(e)~~(e) "Insurance" means all forms of insurance and bonding services available for
17 protection and indemnification of the state, boards of education, municipalities, county
18 commissions, and other entities that participate in insurance programs administered by the board,
19 and its ~~the~~ officials, employees, properties, activities and responsibilities against loss or damage
20 or liability, including fire, marine, casualty, and surety insurance.

21 ~~(d)~~(f) "Insurance company" means ~~all insurers or insurance carriers, including, but not~~
22 ~~limited to, stock insurance companies, mutual insurance companies, reciprocal and interinsurance~~
23 ~~exchanges, and all other types of insurers and insurance carriers, including life, accident, health,~~
24 ~~fidelity, indemnity, casualty, hospitalization and other types and kinds of insurance companies,~~
25 ~~organizations and associations, but~~ any person, corporation, association, partnership, reciprocal
26 exchange, interinsurer, Lloyds insurer, insurance exchange syndicate, fraternal benefit society,
27 and any other legal entity engaged in the business of making contracts of insurance under section
28 § 33-1-2 of this code, excepting and excluding workers' compensation coverage.

29 (g) "Qualifying Claim" means any claim asserted on behalf of a person or persons
30 stemming from a single claim of abuse or a series of claims of abuse from a single institution of
31 learning. "Qualifying Claim" specifically includes claims which arise from any venue or service
32 related to the institution of learning including buses, other forms of transportation, and any claims
33 arising from curricular or extracurricular activities of the institution of learning, whether based in
34 tort, contract, common law, statutory law, regulatory law, constitutional law, or any other theory of
35 recovery. "Qualifying Claim" is specifically meant to include any and all claims arising from a series

36 of multiple acts of abuse occurring within a single school year.

37 (e)(h) "State property activities" and "state responsibilities" means and includes all
 38 operations, boards, commissions, works, projects and functions of the state, its properties,
 39 officials, agents and employees which, within the scope and in the course of governmental
 40 employment, may be subject to liability, loss, damage, risks and hazards recognized to be and
 41 normally included within insurance and bond coverages.

42 (f) (i) "State property" means all property belonging to the State of West Virginia and any
 43 boards or commissions thereof wherever situated and which is the subject of risk or reasonably
 44 considered to be subject to loss or damage or liability by any single occurrence of any event
 45 insured against.

§29-12-4. Organization, meetings, records and reports of board.

46 The board shall select one of its members as chairman and shall meet ~~in the office of the~~
 47 ~~Insurance Commissioner~~ upon call of the chairman. The board shall keep records of all of its
 48 proceedings which shall be public and open to inspection, shall adopt a seal and shall exercise
 49 and perform the duties prescribed by this article.

50 The board shall report in writing to the Governor, Legislative Auditor and Budget Director
 51 on or before the thirty-first day of August of each year. Such report shall contain a summary of the
 52 board's proceedings during the preceding fiscal year including a detailed and itemized statement
 53 and summary of all state insurance procured by the board during such fiscal year.

**§29-12-5a. Liability insurance for county boards of education, their employees and
 members, the county superintendent of schools, and public charter schools
 electing to obtain coverage; written notice of coverage to insureds; limitations on
 recovery for claims of abuse.**

1 (a) In accordance with the provisions of this article, the State Board of Risk and Insurance
 2 Management shall provide appropriate professional or other liability insurance for all county
 3 boards of education, teachers, supervisory and administrative staff members, service personnel,

4 county superintendents of schools, and school board members: *Provided*, That the Board of Risk
5 and Insurance Management is not required to provide insurance for every property, activity, or
6 responsibility of county boards of education, teachers, supervisory, and administrative staff
7 members, service personnel, county superintendents of schools, and school board members.

8 (b) Insurance provided by the Board of Risk and Insurance Management pursuant to the
9 provisions of subsection (a) of this section shall cover claims, demands, actions, suits, or
10 judgments by reason of alleged negligence or other acts resulting in bodily injury or property
11 damage to any person within or without any school building if, at the time of the alleged injury, the
12 teacher, supervisor, administrator, service personnel employee, county superintendent, or school
13 board member was acting in the discharge of his or her duties, within the scope of his or her office,
14 position or employment, under the direction of the county board of education, or in an official
15 capacity as a county superintendent or as a school board member.

16 (c) Insurance coverage provided by the Board of Risk and Insurance Management
17 pursuant to subsection (a) of this section shall be in an amount to be determined by the State
18 Board of Risk and Insurance Management, but in no event less than ~~\$1,250,000 for each~~
19 ~~occurrence. In addition, each county board of education shall purchase, through the Board of Risk~~
20 ~~and Insurance Management, excess coverage of at least \$5 million for each occurrence. The cost~~
21 ~~of this excess coverage will be paid by the respective county boards of education. Any insurance~~
22 ~~purchased under this section shall be obtained from a company licensed to do business in this~~
23 ~~state \$1 million.~~

24 (d) ~~The insurance policy provided by the Board of Risk and Insurance Management~~
25 ~~pursuant to subsection (a) of this section shall include comprehensive coverage, personal injury~~
26 ~~coverage, malpractice coverage, corporal punishment coverage, legal liability coverage, as well~~
27 ~~as a provision for the payment of the cost of attorney's fees in connection with any claim, demand,~~
28 ~~action, suit, or judgment arising from such alleged negligence or other act resulting in bodily injury~~
29 ~~under the conditions specified in this section.~~

30 ~~(e) The county superintendent and other school personnel shall be defended by the county~~
31 ~~board or an insurer in the case of suit, unless the act or omission shall not have been within the~~
32 ~~course or scope of employment or official responsibility or was motivated by malicious or criminal~~
33 ~~intent~~

34 ~~(f)~~(d) At least annually, beginning with the 2019-2020 school year, county boards shall
35 provide written notice of insurance coverage to each of its insureds, including teachers,
36 supervisors, administrators, service personnel employees, county superintendent, and school
37 board members. The notice shall identify the coverages, monetary limits of insurance, and duty to
38 defend for each occurrence as provided to insureds by the Board of Risk and Insurance
39 Management under this section. The written notice may be sent via email, or via first-class mail to
40 the insured's last mailing address known to the county board. The written notice shall also include
41 contact information for the Board of Risk and Insurance Management.

42 ~~(g)~~(e) The provisions of this section apply to public charter schools that have been
43 authorized pursuant to §18-5G-1 et seq. of this code and have included in their charter contract
44 entered into pursuant to §18-5G-7 of this code a determination to obtain insurance coverage from
45 the Board of Risk and Insurance Management pursuant to this section. If a public charter school
46 elects to obtain coverage pursuant to this section:

47 (1) Any provision in this section applicable to a county board also applies to a charter
48 school governing board;

49 (2) Any provision in this section applicable to a school board member also applies to a
50 member of a charter school governing board; and

51 (3) Any provision of this section applicable to teachers, supervisory and administrative staff
52 members, and service personnel employed by a county board also applies to teachers,
53 supervisory or administrative staff members, and service personnel employed by a public charter
54 school.

55 ~~(h)~~(f) The amendments to this section during the 2019 First Extraordinary Session of the

56 Legislature shall be effective for fiscal years beginning on or after July 1, 2019: Provided, That the
 57 amendment to subsection (c) of this section during the 2019 First Extraordinary Session of the
 58 Legislature shall be effective for fiscal years beginning on or after July 1, 2020.

59 (g) Notwithstanding any other provision of this code, in all qualifying claims made against
 60 institutions of learning based on allegations of abuse, recovery shall be limited to \$500,000 for any
 61 and all damages recoverable, including damages recoverable by other family members stemming
 62 from the alleged abusive conduct: *Provided*, That this limit shall not apply to the recovery of
 63 reasonable and necessary medical expenses actually incurred, in an amount not to exceed
 64 \$500,000. These medical expenses shall not include expenses incurred or expected for
 65 psychiatric or psychological treatment or other counseling. In no event, may recovery be had in
 66 excess of \$1,000,000 for any qualifying claim alleging abuse against institutions of learning or its
 67 employees or agents. These limits apply to any and all qualifying claims arising from alleged
 68 abusive conduct, including claims of inadequate supervision or improper hiring, respondeat
 69 superior, or any other theory of recovery.

§29-12-7. Placement of insurance on state property, activities and responsibilities.

1 (a) No officer, department or employee of the State having control or custody of any state
 2 property, or being in charge of any state activities, or being charged with any state responsibilities
 3 as herein contemplated, shall pay out any state money for the purpose of insurance against loss,
 4 damage or liability to any such state property or on account of any such state activity or
 5 responsibility or incur any obligation or indebtedness against the State for such insurance, except
 6 (1) upon the board's prior approval and placement of such insurance coverage and (2) its
 7 subsequent approval of invoices and charges therefor.

8 (b) All state insurance shall be placed only with solvent insurance companies licensed or
 9 deemed eligible by the Insurance Commissioner, ~~to transact insurance in West Virginia.~~

10 ~~(c) All state insurance shall be placed only through agents duly licensed by the Insurance~~
 11 ~~Commissioner of West Virginia and no more than five percent of the total premium volume of state~~

12 ~~insurance shall be placed through any one agent or agency. For the purpose of this paragraph,~~
 13 ~~agent or agency shall include all employees, relatives, partners or affiliates out of the agency with~~
 14 ~~whom such insurance is placed. In addition thereto no more than fifteen percent of the total~~
 15 ~~premium volume of state insurance shall be placed in agencies in any one county~~

16 (c) No insurance shall be placed with any member of the board, the state Insurance
 17 Commissioner, official, officer or employee of the State of West Virginia, member of the
 18 Legislature, member or officer of any state or county political party executive committee, nor with
 19 the spouse, parent or child of any such person, nor with any corporation, any stockholder of which
 20 falls within the classes herein enumerated.

ARTICLE 12A. GOVERNMENTAL TORT CLAIMS AND INSURANCE REFORM ACT.

§29-12A-5. Immunities from liability.

- 1 (a) A political subdivision is immune from liability if a loss or claim results from:
- 2 (1) Legislative or quasi-legislative functions;
 - 3 (2) Judicial, quasi-judicial or prosecutorial functions;
 - 4 (3) Execution or enforcement of the lawful orders of any court;
 - 5 (4) Adoption or failure to adopt a law, including, but not limited to, any statute, charter
 - 6 provision, ordinance, resolution, rule, regulation or written policy;
 - 7 (5) Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method
 - 8 of providing, police, law enforcement or fire protection;
 - 9 (6) Snow or ice conditions or temporary or natural conditions on any public way or other
 - 10 public place due to weather conditions, unless the condition is affirmatively caused by the
 - 11 negligent act of a political subdivision;
 - 12 (7) Natural conditions of unimproved property of the political subdivision;
 - 13 (8) Assessment or collection of taxes lawfully imposed or special assessments, license or
 - 14 registration fees or other fees or charges imposed by law;
 - 15 (9) Licensing powers or functions including, but not limited to, the issuance, denial,

16 suspension or revocation of or failure or refusal to issue, deny, suspend or revoke any permit,
17 license, certificate, approval, order or similar authority;

18 (10) Inspection powers or functions, including failure to make an inspection, or making an
19 inadequate inspection, of any property, real or personal, to determine whether the property
20 complies with or violates any law or contains a hazard to health or safety;

21 (11) Any claim covered by any workers' compensation law or any employer's liability law;

22 (12) Misrepresentation, if unintentional;

23 (13) Any court-ordered or administratively approved work release or treatment or
24 rehabilitation program;

25 (14) Provision, equipping, lawful operation or maintenance of any prison, jail or
26 correctional facility, or injuries resulting from the parole or escape of a prisoner;

27 (15) Any claim or action based on the theory of manufacturer's products liability or breach
28 of warranty or merchantability or fitness for a specific purpose, either expressed or implied;

29 (16) The operation of dumps, sanitary landfills, and facilities where conducted directly by a
30 political subdivision; or

31 (17) The issuance of revenue bonds or the refusal to issue revenue bonds.

32 (b) An employee of a political subdivision is immune from liability unless one of the
33 following applies:

34 (1) His or her acts or omissions were manifestly outside the scope of employment or official
35 responsibilities;

36 (2) His or her acts or omissions were with malicious purpose, in bad faith, or in a wanton or
37 reckless manner; or

38 (3) Liability is expressly imposed upon the employee by a provision of this code; or.

39 (4) His or her acts or omissions are found to be criminal in nature, whether by judgment or
40 admission.

41 (c) The immunity conferred upon an employee by subsection (b) of this section does not

42 affect or limit any liability of a political subdivision for an act or omission of the employee.

NOTE: The purpose of this bill is to limit recovery on claims for abuse in the state's school system to secure the ongoing financial solvency of the state's public and private school system.

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