WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

ENROLLED

HOUSE BILL No. 2036

(By Mr. Sattler and Mrs. Bletnick)

Passed March 13, 1982

In Effect from Passage
AN ACT to amend and reenact section five-a, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to liability insurance for county boards of education, their employees, members, administrative staff and county superintendent, and employees and officers of the state department of corrections; requiring that the state board of risk and insurance management provide coverage in an amount not less than one million dollars for each occurrence; requiring that each county board of education purchase excess coverage of at least five million for each occurrence; requiring such insurance be purchased from a company licensed to do business in this state; and providing for defense in the case of suit.

Be it enacted by the Legislature of West Virginia:

That section five-a, article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, and for employees and officers of the state department of corrections.

1 In accordance with the provisions of this article, the state board of risk and insurance management shall provide appro-
priate professional or other liability insurance for all county
boards of education, teachers, supervisory and administrative
staff members, service personnel, county superintendents of
schools and school board members and for all employees and
officers of the state department of corrections. Said in-
surance shall cover any claim, demand, action, suit or judg-
ment by reason of alleged negligence or other acts resulting
in bodily injury or property damage to any person within or
without any school building or correctional institution if, at
the time of the alleged injury, the teacher, supervisor, ad-
ministrator, service personnel employee, county superintendent,
school board member, or employee or officer of the depart-
ment of corrections was acting in the discharge of his duties,
within the scope of his office, position or employment, under
the direction of the board of education or commissioner of
corrections or in an official capacity as a county superintendent
or as a school board member or as commissioner of corrections.
Such insurance coverage shall be in an amount to be deter-
mined by the state board of risk and insurance management,
but in no event less than one million dollars for each oc-
currence. In addition, each county board of education shall
purchase, through the board of risk and insurance manage-
ment, excess coverage of at least five million dollars for each
occurrence. The cost of this excess coverage will be paid by
the respective county boards of education. Any insurance
purchased under this section shall be obtained from a company
licensed to do business in this state.

The insurance policy shall include comprehensive coverage,
personal injury coverage, malpractice coverage, corporal pun-
ishment coverage, legal liability coverage as well as a pro-
vision for the payment of the cost of attorney's fees in con-
nection with any claim, demand, action, suit or judgment
arising from such alleged negligence or other act resulting in
bodily injury under the conditions specified in this section.
The county superintendent and other school personnel shall
be defended by the county board or an insurer in the case of
suit, unless the act or omission shall not have been within the
course or scope of employment or official responsibility or
was motivated by malicious or criminal intent.
No policy or contract of liability insurance shall be purchased as provided herein, unless it shall contain a provision or endorsement whereby the company issuing such policy waives, or agrees not to assert as a defense to any claim covered by the terms of such policy, the defense of governmental immunity. In any action against a person covered by insurance furnished pursuant to this section, when there is in effect liability insurance for such person in an amount equal to or greater than the amount sued for, the attorney for such person, the attorney for such insurance company, or any other attorney who may appear on behalf of such person or insurance company shall not set up the defense of governmental immunity in any such action.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. BAYLIN
Chairman Senate Committee

Terry E. Whitlow
Chairman House Committee

Originating in the House.

Takes effect from passage.

Judd C. Wells
Clerk of the Senate

C.A. Blankenship
Clerk of the House of Delegates

Vance R. McGraw
President of the Senate

Speaker House of Delegates

The within ______ approved ______ this the ______

day of ______, 1982.

[Signature]
Governor