

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-29-82

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982

— ● —

# ENROLLED

HOUSE BILL No. 2036

(By Mr. Sattles & Mrs. Blatrak)

— ● —

Passed March 13, 1982

In Effect from Passage



**ENROLLED**

**H. B. 2036**

(By MR. SATTES and MRS. BLATNIK)

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[Passed March 13, 1982; in effect from passage.]

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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
- 2 board of risk and insurance management shall provide appro-

3 puate professional or other liability insurance for all county  
4 boards of education, teachers, supervisory and administrative  
5 staff members, service personnel, county superintendents of  
6 schools and school board members and for all employees and  
7 officers of the state department of corrections. Said in-  
8 surance shall cover any claim, demand, action, suit or judg-  
9 ment by reason of alleged negligence or other acts resulting  
10 in bodily injury or property damage to any person within or  
11 without any school building or correctional institution if, at  
12 the time of the alleged injury, the teacher, supervisor, ad-  
13 ministrator, service personnel employee, county superintendent,  
14 school board member, or employee or officer of the depart-  
15 ment of corrections was acting in the discharge of his duties,  
16 within the scope of his office, position or employment, under  
17 the direction of the board of education or commissioner of  
18 corrections or in an official capacity as a county superintendent  
19 or as a school board member or as commissioner of corrections.  
20 Such insurance coverage shall be in an amount to be deter-  
21 mined by the state board of risk and insurance management,  
22 but in no event less than one million dollars for each oc-  
23 currence. In addition, each county board of education shall  
24 purchase, through the board of risk and insurance manage-  
25 ment, excess coverage of at least five million dollars for each  
26 occurrence. The cost of this excess coverage will be paid by  
27 the respective county boards of education. Any insurance  
28 purchased under this section shall be obtained from a company  
29 licensed to do business in this state.

30 The insurance policy shall include comprehensive coverage,  
31 personal injury coverage, malpractice coverage, corporal pun-  
32 ishment coverage, legal liability coverage as well as a pro-  
33 vision for the payment of the cost of attorney's fees in con-  
34 nection with any claim, demand, action, suit or judgment  
35 arising from such alleged negligence or other act resulting in  
36 bodily injury under the conditions specified in this section.  
37 The county superintendent and other school personnel shall  
38 be defended by the county board or an insurer in the case of  
39 suit, unless the act or omission shall not have been within the  
40 course or scope of employment or official responsibility or  
41 was motivated by malicious or criminal intent.

42 No policy or contract of liability insurance shall be pur-  
43 chased as provided herein, unless it shall contain a provision or  
44 endorsement whereby the company issuing such policy waives,  
45 or agrees not to assert as a defense to any claim covered by the  
46 terms of such policy, the defense of governmental immunity.  
47 In any action against a person covered by insurance furnished  
48 pursuant to this section, when there is in effect liability in-  
49 surance for such person in an amount equal to or greater than  
50 the amount sued for, the attorney for such person, the at-  
51 torney for such insurance company, or any other attorney  
52 who may appear on behalf of such person or insurance com-  
53 pany shall not set up the defense of governmental immunity  
54 in any such action.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*R. P. Baylor*  
 Chairman Senate Committee

*Jonny E. Whitlow*  
 Chairman House Committee

Originating in the House.

Takes effect from passage.

*Lois C. Wilks*  
 Clerk of the Senate

*C. Blankenship*  
 Clerk of the House of Delegates  
*Walter R. McShaw*  
 President of the Senate  
*Wm. H. Lee, Jr.*  
 Speaker House of Delegates

The within *is approved* this the *22*  
 day of *March*, 1982.

*Paul J. Dwyer*  
 Governor

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SECY. OF STATE