WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1986

ENROLLED

Committee Substitute for
SENATE BILL NO. 3

(By Senator...)
AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five and five-a, article twelve, chapter twenty-nine of said code; to amend and reenact section fourteen-a, article six, chapter thirty-three of said code; and to further amend said chapter twenty-nine of said code by adding thereto a new article, designated article twelve-a, all relating generally to the liability of the political subdivisions of the state and certain other entities and providing for insurance coverage therefor; the authority of the several county boards of education with respect to such insurance; removing the requirement of waiving the defense of governmental immunities by insurers; setting forth the powers and duties of the state board of risk and insurance management; permitting insurers of political subdivisions to assert certain statutory immunities as defenses to claims or suits; authorizing such board to provide property and liability insurance to political subdivisions and certain charitable, quasi-governmental or public service organizations; setting forth the definition of certain terms used with respect
establishing the governmental tort claims and insurance reform act and a short title and the purposes therefor and certain legislative findings with respect thereto; providing certain definitions for terms used within said act; prescribing the various instances or areas of tort liability of certain political subdivisions and other entities and the employees thereof; specifying and establishing certain immunities from tort liability for such political subdivisions and their employees; limiting the amount of recovery by plaintiffs in certain cases involving noneconomic losses or damages; providing for time limits during which certain actions are to be brought; prohibiting specifying the amount of damages sought in the ad damnum clause of certain complaints; prohibiting recovery of punitive damages in certain cases; providing for relief in addition to relief authorized by said article; authorizing the settlement of claims by political subdivisions; restricting the amount of recovery for amounts paid through contracts of insurance; authorizing subrogation for the benefit of political subdivisions in certain cases; establishing certain rules with respect to joint or several liability in cases of multiple defendants and the amount of recovery for each; establishing certain rules with respect to determining the amount of economic loss in such cases; exempting the property of political subdivisions from execution and providing for the manner of payment of certain judgments by such political subdivisions; providing for the defense of employees of political subdivisions; requiring that such employees be indemnified and held harmless in certain instances; permitting political subdivisions to recover from their employees for the cost of defense and other costs and judgments in certain cases; providing for certain rules with respect to venue in actions against political subdivisions and for service of process; requiring that such actions be maintained in the name of the real party or parties in interest; establishing certain rules with respect to the applicability of other laws and statutes of this state and of certain rules of procedure; establishing rules for prospective applicability only; authorizing political subdivisions to enter into certain consent judgments or settlements and establishing certain rules and procedures with respect thereto; authorizing such political subdivisions to expend
public funds for the procurement of liability insurance or to become self-insured with respect to certain hazards or risks; providing certain limitations upon liability insurance rates and upon the amounts by which such insurance premiums or rates may be increased; restricting the right of insurance carriers to cancel the liability insurance coverage of certain political subdivisions; requiring the filing of certain information by the carriers of liability insurance when application is made to the insurance commissioner for rate or premium increases; the authority of such commissioner to approve or disapprove such request for rate or premium increase; requiring such commissioner to promulgate rules and regulations with respect to such rate filings, rates, cancellations and the establishment of associations or groups or pools for the purpose of purchasing such insurance; authorizing the establishment of such groups, pools or associations; providing certain rules for the construction, applicability and severability of the provisions of said article twelve-a; and repealing the requirement that public liability insurance policies issued to governmental entities or political subdivisions waive the immunities applicable to such entities or subdivisions.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections five and five-a, article twelve, chapter twenty-nine of said code be amended and reenacted; that section fourteen-a, article six, chapter thirty-three of said code be amended and reenacted; and that chapter twenty-nine of said code be amended and reenacted by adding thereto a new article, designated article twelve-a, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.


1 The boards, subject to the provisions of this chapter and 
2 the rules and regulations of the state board, shall have 
3 authority:


(1) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection therewith, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit such records and to conserve such funds, which shall be deemed quasi-public moneys, including securing surety bonds by expenditure of board moneys;

(2) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools and programs, or both, for post high school instruction, subject to approval of the state board of education;

(3) To close any school which is unnecessary and to assign the pupils thereof to other schools: Provided, That such closing shall be officially acted upon and teachers and services personnel involved notified on or before the first Monday in April, in the same manner as provided in section four of this article, except in an emergency, subject to the approval of the state superintendent, or under subdivision (5) of this section;

(4) To consolidate schools;

(5) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession and send the pupils to other schools in the district or to schools in adjoining districts. If the teachers in the school so closed are not transferred or reassigned to other schools, they shall receive one month's salary;

(6) (a) To provide at public expense adequate means of transportation, including transportation across county lines, for all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense and according to such regulations as the board may establish, adequate means of transportation for school children participating in board-approved curricular and extracurricular activities; and to provide in addition thereto, at public expense, by rules and
regulations and within the available revenues, transportation for those within two miles distance; to provide in addition thereto, at no cost to the board and according to rules and regulations established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging: Provided, That all costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by such commission, or the local or county chapter thereof: Provided, however, That in all cases the buses or other transportation facilities owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education: Provided further, That buses shall be used for extracurricular activities as herein provided only when the insurance provided for by this section shall have been affected; (b) To enter into agreements with one another to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of subdivisions (6) and (8) of this section; (7) To lease school buses operated only by drivers regularly employed by the board to public and private nonprofit organizations or private corporations to transport school-age children to and from camps or educational activities in accordance with rules and regulations established by the board. All costs and expenses incurred by or incidental to the transportation of such children shall be borne by the lessee; (8) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils be contracted, then the contract therefor shall provide that the contractor shall carry insurance against negligence in such an amount as the board shall specify; (9) To provide solely from county funds for all regular full-time employees of the board all or any part of the cost of a group plan or plans of insurance coverage not provided or available under the West Virginia public employees insurance act;
(10) To employ teacher aides, to provide in-service training for teacher aides, the training to be in accordance with rules and regulations of the state board and, in the case of service personnel assuming duties as teacher aides in exceptional children's programs, to provide a four-clock-hour program of training prior to such assignment which shall, in accordance with rules and regulations of the state board, consist of training in areas specifically related to the education of exceptional children;

(11) To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school program and of persons employed to teach therein;

(12) To employ legal counsel;

(13) To provide appropriate uniforms for school service personnel;

(14) To provide at public expense and under regulations as established by any county board of education for the payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by such county board of education;

(15) To allow or disallow their designated employees to use publicly provided carriage to travel from their residences to their workplace and return: Provided, That such usage is subject to the supervision of such board and is directly connected with and required by the nature and in the performance of such employee's duties and responsibilities; and

(16) To provide, at public expense, adequate public liability insurance, including professional liability insurance for board employees.

"Quasi-public fund" as used herein means any money received by any principal, teacher, student or other person for the benefit of the school system as a result of curricular or noncurricular activities.

The board of each county shall expend under such regulations as it establishes for each child an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.
CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12. STATE INSURANCE.

§29-12-5. Powers and duties of board.

(a) The board shall have general supervision and control over the insurance of all state property, activities and responsibilities, including the acquisition and cancellation thereof; determination of amount and kind of coverage, including, but not limited to, deductible forms of insurance coverage, inspections or examinations relating thereto, reinsurance, and any and all matters, factors and considerations entering into negotiations for advantageous rates on and coverage of all such state property, activities and responsibilities. Any policy of insurance purchased or contracted for by the board shall provide that the insurer shall be barred and estopped from relying upon the constitutional immunity of the state of West Virginia against claims or suits: Provided, That nothing herein shall bar the insurer of political subdivisions from relying upon any statutory immunity granted such political subdivisions against claims or suits. The board may enter into any contracts necessary to the execution of the powers granted to it by this article. It shall endeavor to secure the maximum of protection against loss, damage or liability to state property and on account of state activities and responsibilities by proper and adequate insurance coverage through the introduction and employment of sound and accepted methods of protection and principles of insurance. It is empowered and directed to make a complete survey of all presently owned and subsequently acquired state property subject to insurance coverage by any form of insurance, which survey shall include and reflect inspections, appraisals, exposures, fire hazards, construction, and any other objectives or factors affecting or which might affect the insurance protection and coverage required. It shall keep itself currently informed on new and continuing state activities and responsibilities within the insurance coverage herein contemplated. The board shall work closely in cooperation with the state fire marshal's office in applying the rules and regulations of that office insofar as the appropriations and other factors peculiar to state property will permit. The board is given
power and authority to make rules and regulations governing its functions and operations and the procurement of state insurance, but shall not make or promulgate any rules or regulations in contravention of or inconsistent with the laws or rules and regulations governing the office of insurance commissioner of West Virginia.

The board is hereby authorized and empowered to negotiate and effect settlement of any and all insurance claims arising on or incident to losses of and damages to state properties, activities and responsibilities hereunder and shall have authority to execute and deliver proper releases of all such claims when settled. The board may adopt rules and procedures for handling, negotiating and settlement of all such claims. All such settlements and releases shall be effected with the knowledge and consent of the attorney general.

(b) If requested by a political subdivision or by a charitable or public service organization, the board is authorized to provide property and liability insurance to the political subdivisions or such organizations to insure their property, activities and responsibilities. Such board is authorized to enter into any necessary contract of insurance to further the intent of this subsection.

The property insurance provided by the board, pursuant to this subsection, may also include insurance on property leased to or loaned to the political subdivision or such organization which is required to be insured under a written agreement.

The cost of this insurance, as determined by the board, shall be paid by the political subdivision or the organization and may include administrative expenses. All funds received by the board shall be deposited in the West Virginia consolidated investment pool with the interest income a proper credit to such property insurance trust fund or liability insurance trust fund, as applicable.

Political subdivision as used in this subsection shall have the same meaning as in section three, article twelve-a of this chapter.

Charitable or public service organization as used in this subsection means a bona fide, not for profit, tax-exempt benevolent, educational, philanthropic, humane, patriotic,
civic, religious, eleemosynary, incorporated or unincorporated association or organization or a rescue unit or other similar volunteer community service organization or association, but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office.

§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.

In accordance with the provisions of this article, the state board of risk and insurance management shall provide appropriate 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 insurance shall cover any claim, demand, action, suit or judgment 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, administrator, service personnel employee, county superintendent, school board member, or employee or officer of the department 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 determined by the state board of risk and insurance management, but in no event less than one million dollars for each occurrence. In addition, each county board of education shall purchase, through the board of risk and insurance management, 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 punishment coverage, legal liability coverage as well as a provision for the payment of the cost of attorney's fees in connection 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.

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

§29-12A-1. Short title; purposes.

This article shall be known and may be cited as “The Governmental Tort Claims and Insurance Reform Act.”

Its purposes are to limit liability of political subdivisions and provide immunity to political subdivisions in certain instances and to regulate the costs and coverage of insurance available to political subdivisions for such liability.

§29-12A-2. Legislative findings.

The Legislature finds and declares that the political subdivisions of this state are unable to procure adequate liability insurance coverage at a reasonable cost due to: the high cost in defending such claims, the risk of liability beyond the affordable coverage, and the inability of political subdivisions to raise sufficient revenues for the procurement of such coverage without reducing the quantity and quality of traditional governmental services. Therefore, it is necessary to establish certain immunities and limitations with regard to the liability of political subdivisions and their employees, to regulate the insurance industry providing liability insurance to them, and thereby permit such political subdivisions to provide necessary and needed governmental services to its citizens within the limits of their available revenues.

1 As used in this article:
2 (a) "Employee" means an officer, agent, employee, or
3 servant, whether compensated or not, whether full-time or
4 not, who is authorized to act and is acting within the scope
5 of his or her employment for a political subdivision.
6 "Employee" includes any elected or appointed official of a
7 political subdivision. "Employee" does not include an
8 independent contractor of a political subdivision.
9 (b) "Municipality" means any incorporated city, town
10 or village and all institutions, agencies or instrumentalities
11 of a municipality.
12 (c) "Political subdivision" means any county
13 commission, municipality and county board of education;
14 any separate corporation or instrumentality established by
15 one or more counties or municipalities, as permitted by law;
16 any instrumentality supported in most part by
17 municipalities; any public body charged by law with the
18 performance of a government function and whose
19 jurisdiction is coextensive with one or more counties, cities
20 or towns; a combined city-county health department
21 created pursuant to article two, chapter sixteen of this code;
22 public service districts; and other instrumentalities
23 including, but not limited to, volunteer fire departments
24 and emergency service organizations as recognized by an
25 appropriate public body and authorized by law to perform a
26 government function: Provided, That hospitals of a
27 political subdivision and their employees are expressly
28 excluded from the provisions of this article.
29 (d) "Scope of employment" means performance by an
30 employee acting in good faith within the duties of his or her
31 office or employment or tasks lawfully assigned by a
32 competent authority but does not include corruption or
33 fraud.
34 (e) "State" means the state of West Virginia, including,
35 but not limited to, the Legislature, the supreme court of
36 appeals, the offices of all elected state officers, and all
37 departments, boards, offices, commissions, agencies,
38 colleges, and universities, institutions, and other
39 instrumentalities of the state of West Virginia. "State" does
40 not include political subdivisions.
§29-12A-4. Governmental and proprietary functions of political subdivisions; liability for damages.

(a) The distinction existing between governmental functions and proprietary functions of political subdivisions is not affected by the provisions of this article; however, the provisions of this article shall apply to both governmental and proprietary functions.

(b) (1) Except as provided in subsection (c) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to persons or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function: Provided, That this article shall not restrict the availability of mandamus, injunction, prohibition, and other extraordinary remedies.

(2) Subject to statutory limitations upon their venue and jurisdiction, the circuit courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this article.

(c) Subject to sections five and six of this article, a political subdivision is liable in damages in a civil action for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

(1) Except as otherwise provided in this article, political subdivisions are liable for injury, death, or loss to persons or property caused by the negligent operation of any vehicle by their employees when the employees are engaged within the scope of their employment and authority.

(2) Political subdivisions are liable for injury, death, or loss to persons or property caused by the negligent performance of acts by their employees while acting within the scope of employment.

(3) Political subdivisions are liable for injury, death, or loss to persons or property caused by their negligent failure to keep public roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, or public grounds within the political subdivisions open, in repair, or free from nuisance, except that it is a full defense to such liability, when a bridge within a municipality is involved,
that the municipality does not have the responsibility for maintain or inspecting the bridge. (4) Political subdivisions are liable for injury, death, or loss to persons or property that is caused by the negligence of their employees and that occurs within or on the grounds of buildings that are used by such political subdivisions, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility. (5) In addition to the circumstances described in subsection (c) (1) to (4) of this section, a political subdivision is liable for injury, death, or loss to persons or property when liability is expressly imposed upon the political subdivision by a provision of this code. Liability shall not be construed to exist under another section of this code merely because a responsibility is imposed upon a political subdivision or because of a general authorization that a political subdivision may sue and be sued.

§29-12A-5. Immunities from liability.

(a) A political subdivision is immune from liability if a loss or claim results from:

(1) Legislative or quasi-legislative functions;

(2) Judicial, quasi-judicial or prosecutorial functions;

(3) Execution or enforcement of the lawful orders of any court;

(4) Adoption or failure to adopt a law, including, but not limited to, any statute, charter provision, ordinance, resolution, rule, regulation or written policy;

(5) Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method of providing, police, law enforcement or fire protection;

(6) Snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions, unless the condition is affirmatively caused by the negligent act of a political subdivision;

(7) Natural conditions of unimproved property of the political subdivision;

(8) Assessment or collection of taxes lawfully imposed or special assessments, license or registration fees or other fees or charges imposed by law;

(9) Licensing powers or functions including, but not
limited to, the issuance, denial, suspension or revocation of
or failure or refusal to issue, deny, suspend or revoke any
permit, license, certificate, approval, order or similar
authority;
(10) Inspection powers or functions, including failure to
make an inspection, or making an inadequate inspection, of
any property, real or personal, to determine whether the
property complies with or violates any law or contains a
hazard to health or safety;
(11) Any claim covered by any workers' compensation
law or any employer's liability law;
(12) Misrepresentation, if unintentional;
(13) Any court-ordered or administratively approved
work release or treatment or rehabilitation program;
(14) Provision, equipping, lawful operation or
maintenance of any prison, jail or correctional facility, or
injuries resulting from the parole or escape of a prisoner;
(15) Any claim or action based on the theory of
manufacturer's products liability or breach of warranty or
merchantability or fitness for a specific purpose, either
expressed or implied;
(16) The operation of dumps, sanitary landfills, and
facilities where conducted directly by a political
subdivision; or
(17) The issuance of revenue bonds or the refusal to
issue revenue bonds.
(b) An employee of a political subdivision is immune
from liability unless one of the following applies:
(1) His or her acts or omissions were manifestly outside
the scope of employment or official responsibilities;
(2) His or her acts or omissions were with malicious
purpose, in bad faith, or in a wanton or reckless manner; or
(3) Liability is expressly imposed upon the employee by
a provision of this code.
(c) The immunity conferred upon an employee by
subsection (b) of this section does not affect or limit any
liability of a political subdivision for an act or omission of
the employee.
§29-12A-6. Limitation of actions; specification of amount of
damages not allowed.
(a) An action against a political subdivision to recover
damages for injury, death, or loss to persons or property
allegedly caused by any act or omission in connection with a
governmental or proprietary function, except as provided
in subsection (b) of this section, shall be brought within two
years after the cause of action arose or after the injury,
death or loss was discovered or reasonably should have
been discovered, whichever last occurs or within any
applicable shorter period of time for bringing the action
provided by this code. This section applies to actions
brought against political subdivisions by all persons,
governmental entities, and the state.
(b) An action against a political subdivision to recover
damages for injury, death, or loss to a minor, brought by or
on behalf of a minor who was under the age of ten years at
the time of such injury, shall be commenced within two
years after the cause of action arose or after the injury,
death or loss was discovered or reasonably should have
been discovered, whichever last occurs, or prior to the
minor's twelfth birthday, whichever provides the longer
period.
(c) The periods of limitations set forth in this section
shall be tolled for any period during which the political
subdivision or its representative has committed fraud or
collusion by concealing or misrepresenting material facts
about the injury.
(d) In the complaint filed in a civil action against a
political subdivision or an employee of a political
subdivision to recover damages for injury, death, or loss to
persons or property allegedly caused by an act or omission
of such political subdivision or employee, whether filed in
an original action, cross-claim, counterclaim, third-party
claim, or claim for subrogation, the complainant shall
include a demand for a judgment for the damages that the
judge in a nonjury trial or the jury in a jury trial finds that
the complainant is entitled to be awarded, but shall not
specify in the demand any monetary amount for damages
sought.
§29-12A-7. Punitive damages not allowed; limitation on non-
economic loss; joint and several liability.
Notwithstanding any other provisions of this code or
rules of a court to the contrary, in an action against a
political subdivision or its employee to recover damages for
injury, death, or loss to persons or property for injury,
death, or loss to persons or property caused by an act or
omission of such political subdivision or employee:
(a) In any civil action involving a political subdivision
or any of its employees as a party defendant, an award of
punitive or exemplary damages against such political
subdivision is prohibited.
(b) There shall not be any limitation on compensatory
damages that represent the economic loss of the person who
is awarded the damages. However, damages awarded that
arise from the same cause of action, transaction or
occurrence, or series of transactions or occurrences that
represent noneconomic loss shall not exceed five hundred
thousand dollars in favor of any one person. The limitation
on damages that do not represent the economic loss of the
person who is awarded the damages provided in this
subsection does not apply to court costs that are awarded to
a plaintiff or to interest on a judgment rendered in favor of a
plaintiff in an action against a political subdivision or its
employees.
(c) In the trial of an action covered by the provisions of
this article involving multiple defendants, the jury shall be
required to report its findings to the court on a form
provided by the court which contains each of the possible
verdicts as determined by the court.
(d) In every such action, the court shall make findings as
to the total dollar amount awarded as damages to each
plaintiff. The court shall enter judgment of joint and several
liability against every defendant who bears twenty-five
percent or more of the negligence attributable to all
defendants. The court shall enter judgment of several, but
not joint, liability against and among all defendants who
bear less than twenty-five percent of the negligence
attributable to all defendants.
(e) Each defendant against whom a judgment of joint
and several liability is entered in an action pursuant to
subsection (d) of this section is liable to each plaintiff for all
or any part of the total dollar amount awarded regardless of
the percentage of negligence attributable to him. A right of
contribution exists in favor of each defendant who has paid
to a plaintiff more than the percentage of the dollar amount
awarded attributable to him relative to the percentage of
negligence attributable to him. The total amount of
recovery for contribution is limited to the amount paid by
the defendant to a plaintiff in excess of the percentage of the
total dollar amount awarded attributable to him relative to
the percentage of negligence attributable to him. No right of
contribution exists against any defendant who entered into
a good faith settlement with the plaintiff prior to the jury's
report of its findings to the court or the court's findings as to
the total dollar amount awarded as damages.
(f) Where a right of contribution exists in an action
pursuant to subsection (e) of this section, the findings of the
court or jury as to the percentage of negligence and liability
of the several defendants to the plaintiff shall be binding
among such defendants as determining their rights of
contribution.
1 Any person having a claim against a political subdivision
within the scope of this article may sue such political
subdivision for any appropriate relief including the award
of money damages within the liability limitations
established in section seven of this article.
§29-12A-9. Settlement or defense of suit; effect of liability
insurance.
1 (a) If a policy or contract of liability insurance covering
a political subdivision or its employees is applicable, the
terms of the policy govern the rights and obligations of the
political subdivision and the insurer with respect to the
investigation, settlement, payment and defense of suits
against the political subdivision, or its employees, covered
by the policy. The insurer may not enter into a settlement
for an amount which exceeds the insurance coverage.
(b) A political subdivision, or its employees, are not
liable for any costs, judgments or settlements paid through
an applicable contract or policy of insurance.
(c) A political subdivision has the right of indemnity
against the insurer issuing any applicable contract or policy
of insurance to the monetary limit of the contract or policy
of insurance.
§29-12A-10. Enforcement of judgment.
  1 (a) Real or personal property, and moneys, accounts, deposits, or investments of a political subdivision are not subject to execution, judicial sale, garnishment, or attachment to satisfy a judgment rendered against a political subdivision in a civil action to recover damages for injury, death, or loss to persons or property caused by an act or omission of the political subdivision or any of its employees.
  9 (b) Such judgments shall be paid from funds of the political subdivisions that have been appropriated for that purpose. However, if sufficient funds are not currently appropriated for the payment of judgments, the fiscal officer of a political subdivision shall certify the amount of any unpaid judgments to the taxing authority of the political subdivision for inclusion in the next succeeding budget and annual appropriation measure and payment in the next succeeding fiscal year.
  18 (c) If the judgment is obtained against a political subdivision that has procured a contract or policy of liability or indemnity insurance protection, the holder of the judgment may use the methods of collecting the judgment which are provided by the policy or contract or law to the extent of the limits of coverage provided.

  1 (a) (1) Except as otherwise provided in this section, a political subdivision shall provide for the defense of an employee, in any state or federal court, in any civil action or proceeding to recover damages for injury, death, or loss to persons or property allegedly caused by an act or omission of the employee if the act or omission occurred or is alleged to have occurred while the employee was acting in good faith and not manifestly outside the scope of his employment or official responsibilities. Amounts expended by a political subdivision in the defense of its employees shall be from funds appropriated for this purpose or pursuant to the contractual agreement between the insurer and the political subdivision. The duty to provide for the defense of an employee specified in this subsection does not
apply in a civil action or proceeding that is commenced by
or on behalf of a political subdivision.

(2) Except as otherwise provided in this section, a
political subdivision shall indemnify and hold harmless an
employee in the amount of any judgment that is obtained
against the employee in a state or federal court or as a result
of a law of a foreign jurisdiction and that is for damages for
injury, death, or loss to persons or property caused by an act
or omission of such employee, if at the time of the act or
omission the employee was acting in good faith and within
the scope of his employment or official responsibilities.

(b) (1) A political subdivision may enter into a consent
judgment or settlement and may secure releases from
liability for itself or an employee, with respect to any claim
for injury, death, or loss to persons or property caused by an
act or omission of such political subdivision or employee.

(2) No action or appeal of any kind shall be brought by
any person, including any employee or a taxpayer, with
respect to the decision of a political subdivision pursuant to
subsection (b) (1) of this section whether to enter into a
consent judgment or settlement or to secure releases, or
concerning the amount and circumstances of a consent
judgment or settlement. Amounts expended for any
settlement shall be from funds appropriated for this
purpose or pursuant to the contractual agreement between
the insurer and the political subdivision.

(c) If a political subdivision refuses to provide an
employee with a defense in a civil action or proceeding as
described in subsection (a) (1) of this section, the employee
may file, in the circuit court of the county in which the
political subdivision is located, an action seeking a
determination as to the appropriateness of the refusal of the
political subdivision to provide him or her with a defense
under that subsection.

§29-12A-12. Recovery of payments from employees.

A political subdivision has the right to recover from an
employee for any claim or action under this article, or any
other claim or action, any payments made by it for any
judgment or settlement, or portion thereof, and costs or fees
by or on behalf of an employee’s defense if it is shown that
the conduct of the employee which gave rise to the claim or
action was outside the scope of his employment or if the employee fails to cooperate in good faith in the defense of the claim or action. A judgment or settlement in an action or claim under this article constitutes a complete bar to any action by a claimant against an employee whose conduct gave rise to the claim resulting in such judgment or settlement.

§29-12A-13. Venue; parties; real party in interest; service of process.

(a) Actions against all political subdivisions within the scope of this article shall be brought in the county in which the situs of the political subdivision is located or in the county in which the cause of action arose.

(b) Suits instituted pursuant to the provisions of this article shall name as defendant the political subdivision against which liability is sought to be established. In no instance may an employee of a political subdivision acting within the scope of his employment be named as defendant.

(c) All actions filed against a political subdivision shall be filed in the name of the real party or parties in interest and in no event may any claim be presented or recovery be had under the right of subrogation.

(d) In suits against political subdivisions, the complaint and summons shall be served in the manner prescribed by law for the rules of civil procedure.


The laws and statutes of this state and the rules of civil procedure, as promulgated and adopted by the supreme court of appeals, insofar as applicable and to the extent that such rules are not inconsistent with the provisions of this article, apply to and govern all actions brought under the provisions of this article.


This article does not apply to any claim against any political subdivision or its employees arising before the effective date of this article. Any such claim may be presented and enforced to the same extent and subject to the same procedures and restrictions as if this article had not been adopted.

(a) A political subdivision may use public funds to secure insurance with respect to its potential liability and that of its employees in damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees, including insurance coverage procured through the state board of risk and insurance management. The insurance may be at the limits, for the circumstances and subject to the terms and conditions that are determined by the political subdivision in its discretion.

The insurance may be for the period of time that is set forth in specifications for competitive bids or, when competitive bidding is not required, for the period of time that is mutually agreed upon by the political subdivision and insurance company. The period of time does not have to be, but can be, limited to the fiscal cycle under which the political subdivision is funded and operates.

(b) Regardless of whether a political subdivision procures a policy or policies of liability insurance pursuant to subsection (a) of this section or otherwise, the political subdivision may establish and maintain a self-insurance program relative to its potential liability and that of its employees in damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees. If it so chooses, the political subdivision may contract with any person, other political subdivision, or regional council of governments for purposes of the administration of such a program.

(c) Political subdivisions that have established self-insurance programs relative to their potential liability and that of their employees as described in subsection (b) of this section may mutually agree that their self-insurance programs will be jointly administered in a specified manner.

(d) The purchase of liability insurance, or the establishment and maintenance of a self-insurance program, by a political subdivision does not constitute a waiver of any immunity it may have pursuant to this article.
or any defense of the political subdivision or its employees.

(e) The authorization for political subdivisions to secure insurance and to establish and maintain self-insurance programs as set out in subsections (a) and (b) in this section are in addition to any other authority to secure insurance or to establish and maintain self-insurance that is granted pursuant to this code or the constitution of this state, and they are not in derogation of any other authorization.

(f) The commissioner of insurance shall promulgate legislative rules or regulations pursuant to chapter twenty-nine-a of this code, setting forth guidelines relating to self-insurance programs for political subdivisions.

§29-12A-17. Liability insurance rates; rate filings; cancellations; group insurance.

(a) Liability insurance coverage for political subdivisions in effect on the effective date of this article shall not be reduced without the written consent of the insured and the policy premiums for such coverage shall not be increased by more than ten percent per annum. Such coverage shall not be cancelled except for:

(1) Failure to make premium payments in accordance with the policy requirements;
(2) Fraud or substantial misrepresentation by the insured in the procurement of the policy; or
(3) Substantial increase in the risk of loss to which the insurer is exposed under the policy.

(b) Each casualty insurance rate filing relating to liability insurance for political subdivisions shall be accompanied by such information as the insurance commissioner requires to determine claims payouts, premium income, investment income, loss reserves, federal and state credits, administrative and operating expenses, profits, losses, and such other information deemed necessary by the commissioner to determine the profitability of such insurance business engaged in by the company. Based upon such information, the commissioner may approve or disapprove an increase in premiums charged to the political subdivisions for such coverage or may require that such premiums charged be decreased. The
commissioner shall have authority to disapprove any casualty insurance rate filing which includes such coverage to political subdivisions for failure to provide the information prescribed herein.

(c) Any two or more political subdivisions shall have authority to form an organization or association for the purpose of purchasing casualty insurance on a group or pooling basis. Any insurer licensed to transact casualty insurance in this state may issue group casualty insurance policies to any organization, association or pool which is organized and maintained under this section.

(d) The insurance commissioner shall promulgate legislative rules or regulations pursuant to chapter twenty-nine-a of this code setting forth guidelines relating to rate filings, rates and cancellations with respect to insurance companies transacting policies of casualty insurance with political subdivisions and relating to establishment of associations or pools for the purchase of group insurance and the setting of group rates.


This article does not apply to, and shall not be construed to apply to, the following:

(a) Civil actions that seek to recover damages from a political subdivision or any of its employees for contractual liability;

(b) Civil actions by an employee, or the collective bargaining representative of an employee, against his or her political subdivision relative to any matter that arises out of the employment relationship between the employee and the political subdivision;

(c) Civil actions by an employee of a political subdivision against the political subdivision relative to wages, hours, conditions, or other terms of his or her employment;

(d) Civil actions by sureties, and the rights of sureties, under fidelity or surety bonds;

(e) Civil claims based upon alleged violations of the constitution or statutes of the United States except that the provisions of section eleven of this article shall apply to such claims or related civil actions.
CHAPTER 33. INSURANCE.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-14a. Public liability insurance policies issued to charitable associations to contain provision for waiving of charitable immunity defense.

Any policy or contract of public liability insurance providing coverage for public liability sold, issued, or delivered in this state to any religious or charitable corporation or association, either directly or to the trustees of such associations, shall be read so as to contain a provision of endorsement whereby the company issuing such policy waives, or agrees not to assert as a defense, on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of such insured's charitable status, unless such provision or endorsement is rejected in writing by the named insured.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce A. Williams
Chairman Senate Committee

Floyd Fulcher
Chairman House Committee

Originated in the Senate.

To take effect June 1, 1986.

Judy C. Wills
Clerk of the Senate

Donald D. Kopp
Clerk of the House of Delegates

Dan Tonover
President of the Senate

Joseph P. Albright
Speaker House of Delegates

The within appeared this the 25th day of May, 1986.

[Signature]
Governor
I, DONALD L. KOPP, Clerk of the House of Delegates, and as such Clerk, Keeper of the Rolls of the Legislature of West Virginia, hereby certify that the foregoing bill, Enrolled Committee Substitute for S. B. 3, disapproved by the Governor on the 28th day of May, 1986, was subsequently repassed by the Legislature, notwithstanding the objections of the Governor, on the 30th day of May, 1986.

Given under my hand this the 2nd day of June, 1986.

Donald L. Kopp
Clerk of the House of Delegates
and Keeper of the Rolls of the Legislature.