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WEST VIRGINIA LEGISLATURE



FIRST EXTRAORDINARY SESSION, 1986



ENROLLED

Committee Substitute for
SENATE BILL NO. 3

(By Senator *Tom Kovich, Mr. President, et al*)



PASSED May 22, 1986

In Effect JUNE 1, 1986 Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 3

(BY SENATORS TONKOVICH, MR. PRESIDENT, TUCKER, HOLMES, B.
WILLIAMS, LOEHR, SHAW, TOMBLIN, WHITACRE, R. WILLIAMS, JONES,
STACY, ASH, ROGERS, CHAFIN AND FANNING)

[Passed May 22, 1986; to take effect June 1, 1986.]

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

thereto; 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.

§18-5-13. Authority of boards generally.

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

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

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

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

29 (4) To consolidate schools;

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

36 (6) (a) To provide at public expense adequate means of
37 transportation, including transportation across county
38 lines, for all children of school age who live more than two
39 miles distance from school by the nearest available road; to
40 provide at public expense and according to such regulations
41 as the board may establish, adequate means of
42 transportation for school children participating in board-
43 approved curricular and extracurricular activities; and to
44 provide in addition thereto, at public expense, by rules and

45 regulations and within the available revenues,
46 transportation for those within two miles distance; to
47 provide in addition thereto, at no cost to the board and
48 according to rules and regulations established by the board,
49 transportation for participants in projects operated,
50 financed, sponsored or approved by the commission on
51 aging: *Provided*, That all costs and expenses incident in any
52 way to transportation for projects connected with the
53 commission on aging shall be borne by such commission, or
54 the local or county chapter thereof: *Provided, however*,
55 That in all cases the buses or other transportation facilities
56 owned by the board of education shall be driven or operated
57 only by drivers regularly employed by the board of
58 education: *Provided further*, That buses shall be used for
59 extracurricular activities as herein provided only when the
60 insurance provided for by this section shall have been
61 affected;

62 (b) To enter into agreements with one another to
63 provide, on a cooperative basis, adequate means of
64 transportation across county lines for children of school age
65 subject to the conditions and restrictions of subdivisions (6)
66 and (8) of this section;

67 (7) To lease school buses operated only by drivers
68 regularly employed by the board to public and private
69 nonprofit organizations or private corporations to
70 transport school-age children to and from camps or
71 educational activities in accordance with rules and
72 regulations established by the board. All costs and expenses
73 incurred by or incidental to the transportation of such
74 children shall be borne by the lessee;

75 (8) To provide at public expense for insurance against
76 the negligence of the drivers of school buses, trucks or other
77 vehicles operated by the board; and if the transportation of
78 pupils be contracted, then the contract therefor shall
79 provide that the contractor shall carry insurance against
80 negligence in such an amount as the board shall specify;

81 (9) To provide solely from county funds for all regular
82 full-time employees of the board all or any part of the cost of
83 a group plan or plans of insurance coverage not provided or
84 available under the West Virginia public employees
85 insurance act;

86 (10) To employ teacher aides, to provide in-service
87 training for teacher aides, the training to be in accordance
88 with rules and regulations of the state board and, in the case
89 of service personnel assuming duties as teacher aides in
90 exceptional children's programs, to provide a four-clock-
91 hour program of training prior to such assignment which
92 shall, in accordance with rules and regulations of the state
93 board, consist of training in areas specifically related to the
94 education of exceptional children;

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

99 (12) To employ legal counsel;

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

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

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

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

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

121 The board of each county shall expend under such
122 regulations as it establishes for each child an amount not to
123 exceed the proportion of all school funds of the district that
124 each child would be entitled to receive if all the funds were
125 distributed equally among all the children of school age in
126 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.

1 (a) The board shall have general supervision and control
2 over the insurance of all state property, activities and
3 responsibilities, including the acquisition and cancellation
4 thereof; determination of amount and kind of coverage,
5 including, but not limited to, deductible forms of insurance
6 coverage, inspections or examinations relating thereto,
7 reinsurance, and any and all matters, factors and
8 considerations entering into negotiations for advantageous
9 rates on and coverage of all such state property, activities
10 and responsibilities. Any policy of insurance purchased or
11 contracted for by the board shall provide that the insurer
12 shall be barred and estopped from relying upon the
13 constitutional immunity of the state of West Virginia
14 against claims or suits: *Provided*, That nothing herein shall
15 bar the insurer of political subdivisions from relying upon
16 any statutory immunity granted such political subdivisions
17 against claims or suits. The board may enter into any
18 contracts necessary to the execution of the powers granted
19 to it by this article. It shall endeavor to secure the maximum
20 of protection against loss, damage or liability to state
21 property and on account of state activities and
22 responsibilities by proper and adequate insurance coverage
23 through the introduction and employment of sound and
24 accepted methods of protection and principles of insurance.
25 It is empowered and directed to make a complete survey of
26 all presently owned and subsequently acquired state
27 property subject to insurance coverage by any form of
28 insurance, which survey shall include and reflect
29 inspections, appraisals, exposures, fire hazards,
30 construction, and any other objectives or factors affecting
31 or which might affect the insurance protection and
32 coverage required. It shall keep itself currently informed on
33 new and continuing state activities and responsibilities
34 within the insurance coverage herein contemplated. The
35 board shall work closely in cooperation with the state fire
36 marshal's office in applying the rules and regulations of
37 that office insofar as the appropriations and other factors
38 peculiar to state property will permit. The board is given

39 power and authority to make rules and regulations
40 governing its functions and operations and the
41 procurement of state insurance, but shall not make or
42 promulgate any rules or regulations in contravention of or
43 inconsistent with the laws or rules and regulations
44 governing the office of insurance commissioner of West
45 Virginia.

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

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

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

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

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

78 Charitable or public service organization as used in this
79 subsection means a bona fide, not for profit, tax-exempt
80 benevolent, educational, philanthropic, humane, patriotic,

81 civic, religious, eleemosynary, incorporated or
82 unincorporated association or organization or a rescue unit
83 or other similar volunteer community service organization
84 or association, but does not include any nonprofit
85 association or organization, whether incorporated or not,
86 which is organized primarily for the purposes of
87 influencing legislation or supporting or promoting the
88 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.**

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

30 company licensed to do business in this state.

31 The insurance policy shall include comprehensive
32 coverage, personal injury coverage, malpractice coverage,
33 corporal punishment coverage, legal liability coverage as
34 well as a provision for the payment of the cost of attorney's
35 fees in connection with any claim, demand, action, suit or
36 judgment arising from such alleged negligence or other act
37 resulting in bodily injury under the conditions specified in
38 this section.

39 The county superintendent and other school personnel
40 shall be defended by the county board or an insurer in the
41 case of suit, unless the act or omission shall not have been
42 within the course or scope of employment or official
43 responsibility or was motivated by malicious or criminal
44 intent.

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

§29-12A-1. Short title; purposes.

1 This article shall be known and may be cited as "The
2 Governmental Tort Claims and Insurance Reform Act."

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

§29-12A-2. Legislative findings.

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

§29-12A-3. Definitions.

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.

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

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

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

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

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

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

34 (3) Political subdivisions are liable for injury, death, or
35 loss to persons or property caused by their negligent failure
36 to keep public roads, highways, streets, avenues, alleys,
37 sidewalks, bridges, aqueducts, viaducts, or public grounds
38 within the political subdivisions open, in repair, or free
39 from nuisance, except that it is a full defense to such
40 liability, when a bridge within a municipality is involved,

41 that the municipality does not have the responsibility for
42 maintain or inspecting the bridge.

43 (4) Political subdivisions are liable for injury, death, or
44 loss to persons or property that is caused by the negligence
45 of their employees and that occurs within or on the grounds
46 of buildings that are used by such political subdivisions,
47 including, but not limited to, office buildings and
48 courthouses, but not including jails, places of juvenile
49 detention, workhouses, or any other detention facility.

50 (5) In addition to the circumstances described in
51 subsection (c) (1) to (4) of this section, a political subdivision
52 is liable for injury, death, or loss to persons or property
53 when liability is expressly imposed upon the political
54 subdivision by a provision of this code. Liability shall not be
55 construed to exist under another section of this code merely
56 because a responsibility is imposed upon a political
57 subdivision or because of a general authorization that a
58 political subdivision may sue and be sued.

§29-12A-5. Immunities from liability.

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

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

23 limited to, the issuance, denial, suspension or revocation of
24 or failure or refusal to issue, deny, suspend or revoke any
25 permit, license, certificate, approval, order or similar
26 authority;

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

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

34 (12) Misrepresentation, if unintentional;

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

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

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

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

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

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

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

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

55 (3) Liability is expressly imposed upon the employee by
56 a provision of this code.

57 (c) The immunity conferred upon an employee by
58 subsection (b) of this section does not affect or limit any
59 liability of a political subdivision for an act or omission of
60 the employee.

**§29-12A-6. Limitation of actions; specification of amount of
damages not allowed.**

1 (a) An action against a political subdivision to recover

2 damages for injury, death, or loss to persons or property
3 allegedly caused by any act or omission in connection with a
4 governmental or proprietary function, except as provided
5 in subsection (b) of this section, shall be brought within two
6 years after the cause of action arose or after the injury,
7 death or loss was discovered or reasonably should have
8 been discovered, whichever last occurs or within any
9 applicable shorter period of time for bringing the action
10 provided by this code. This section applies to actions
11 brought against political subdivisions by all persons,
12 governmental entities, and the state.

13 (b) An action against a political subdivision to recover
14 damages for injury, death, or loss to a minor, brought by or
15 on behalf of a minor who was under the age of ten years at
16 the time of such injury, shall be commenced within two
17 years after the cause of action arose or after the injury,
18 death or loss was discovered or reasonably should have
19 been discovered, whichever last occurs, or prior to the
20 minor's twelfth birthday, whichever provides the longer
21 period.

22 (c) The periods of limitations set forth in this section
23 shall be tolled for any period during which the political
24 subdivision or its representative has committed fraud or
25 collusion by concealing or misrepresenting material facts
26 about the injury.

27 (d) In the complaint filed in a civil action against a
28 political subdivision or an employee of a political
29 subdivision to recover damages for injury, death, or loss to
30 persons or property allegedly caused by an act or omission
31 of such political subdivision or employee, whether filed in
32 an original action, cross-claim, counterclaim, third-party
33 claim, or claim for subrogation, the complainant shall
34 include a demand for a judgment for the damages that the
35 judge in a nonjury trial or the jury in a jury trial finds that
36 the complainant is entitled to be awarded, but shall not
37 specify in the demand any monetary amount for damages
38 sought.

§29-12A-7. Punitive damages not allowed; limitation on non-economic loss; joint and several liability.

1 Notwithstanding any other provisions of this code or
2 rules of a court to the contrary, in an action against a

3 political subdivision or its employee to recover damages for
4 injury, death, or loss to persons or property for injury,
5 death, or loss to persons or property caused by an act or
6 omission of such political subdivision or employee:

7 (a) In any civil action involving a political subdivision
8 or any of its employees as a party defendant, an award of
9 punitive or exemplary damages against such political
10 subdivision is prohibited.

11 (b) There shall not be any limitation on compensatory
12 damages that represent the economic loss of the person who
13 is awarded the damages. However, damages awarded that
14 arise from the same cause of action, transaction or
15 occurrence, or series of transactions or occurrences that
16 represent noneconomic loss shall not exceed five hundred
17 thousand dollars in favor of any one person. The limitation
18 on damages that do not represent the economic loss of the
19 person who is awarded the damages provided in this
20 subsection does not apply to court costs that are awarded to
21 a plaintiff or to interest on a judgment rendered in favor of a
22 plaintiff in an action against a political subdivision or its
23 employees.

24 (c) In the trial of an action covered by the provisions of
25 this article involving multiple defendants, the jury shall be
26 required to report its findings to the court on a form
27 provided by the court which contains each of the possible
28 verdicts as determined by the court.

29 (d) In every such action, the court shall make findings as
30 to the total dollar amount awarded as damages to each
31 plaintiff. The court shall enter judgment of joint and several
32 liability against every defendant who bears twenty-five
33 percent or more of the negligence attributable to all
34 defendants. The court shall enter judgment of several, but
35 not joint, liability against and among all defendants who
36 bear less than twenty-five percent of the negligence
37 attributable to all defendants.

38 (e) Each defendant against whom a judgment of joint
39 and several liability is entered in an action pursuant to
40 subsection (d) of this section is liable to each plaintiff for all
41 or any part of the total dollar amount awarded regardless of
42 the percentage of negligence attributable to him. A right of
43 contribution exists in favor of each defendant who has paid
44 to a plaintiff more than the percentage of the dollar amount

45 awarded attributable to him relative to the percentage of
46 negligence attributable to him. The total amount of
47 recovery for contribution is limited to the amount paid by
48 the defendant to a plaintiff in excess of the percentage of the
49 total dollar amount awarded attributable to him relative to
50 the percentage of negligence attributable to him. No right of
51 contribution exists against any defendant who entered into
52 a good faith settlement with the plaintiff prior to the jury's
53 report of its findings to the court or the court's findings as to
54 the total dollar amount awarded as damages.

55 (f) Where a right of contribution exists in an action
56 pursuant to subsection (e) of this section, the findings of the
57 court or jury as to the percentage of negligence and liability
58 of the several defendants to the plaintiff shall be binding
59 among such defendants as determining their rights of
60 contribution.

§29-12A-8. Suits.

1 Any person having a claim against a political subdivision
2 within the scope of this article may sue such political
3 subdivision for any appropriate relief including the award
4 of money damages within the liability limitations
5 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
2 a political subdivision or its employees is applicable, the
3 terms of the policy govern the rights and obligations of the
4 political subdivision and the insurer with respect to the
5 investigation, settlement, payment and defense of suits
6 against the political subdivision, or its employees, covered
7 by the policy. The insurer may not enter into a settlement
8 for an amount which exceeds the insurance coverage.

9 (b) A political subdivision, or its employees, are not
10 liable for any costs, judgments or settlements paid through
11 an applicable contract or policy of insurance.

12 (c) A political subdivision has the right of indemnity
13 against the insurer issuing any applicable contract or policy
14 of insurance to the monetary limit of the contract or policy
15 of insurance.

§29-12A-10. Enforcement of judgment.

1 (a) Real or personal property, and moneys, accounts,
2 deposits, or investments of a political subdivision are not
3 subject to execution, judicial sale, garnishment, or
4 attachment to satisfy a judgment rendered against a
5 political subdivision in a civil action to recover damages for
6 injury, death, or loss to persons or property caused by an act
7 or omission of the political subdivision or any of its
8 employees.

9 (b) Such judgments shall be paid from funds of the
10 political subdivisions that have been appropriated for that
11 purpose. However, if sufficient funds are not currently
12 appropriated for the payment of judgments, the fiscal
13 officer of a political subdivision shall certify the amount of
14 any unpaid judgments to the taxing authority of the
15 political subdivision for inclusion in the next succeeding
16 budget and annual appropriation measure and payment in
17 the next succeeding fiscal year.

18 (c) If the judgment is obtained against a political
19 subdivision that has procured a contract or policy of
20 liability or indemnity insurance protection, the holder of
21 the judgment may use the methods of collecting the
22 judgment which are provided by the policy or contract or
23 law to the extent of the limits of coverage provided.

**§29-12A-11. Defense and indemnification of employees;
settlement.**

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

15 apply in a civil action or proceeding that is commenced by
16 or on behalf of a political subdivision.

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

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

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

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

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

1 A political subdivision has the right to recover from an
2 employee for any claim or action under this article, or any
3 other claim or action, any payments made by it for any
4 judgment or settlement, or portion thereof, and costs or fees
5 by or on behalf of an employee's defense if it is shown that
6 the conduct of the employee which gave rise to the claim or

7 action was outside the scope of his employment or if the
8 employee fails to cooperate in good faith in the defense of
9 the claim or action. A judgment or settlement in an action or
10 claim under this article constitutes a complete bar to any
11 action by a claimant against an employee whose conduct
12 gave rise to the claim resulting in such judgment or
13 settlement.

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

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

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

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

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

§29-12A-14. Application of West Virginia laws and statutes and rules of procedure.

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

§29-12A-15. Exempt claim.

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

§29-12A-16. Procurement of liability insurance and self-insurance.

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

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

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

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

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

40 or any defense of the political subdivision or its employees.
41 (e) The authorization for political subdivisions to secure
42 insurance and to establish and maintain self-insurance
43 programs as set out in subsections (a) and (b) in this section
44 are in addition to any other authority to secure insurance or
45 to establish and maintain self-insurance that is granted
46 pursuant to this code or the constitution of this state, and
47 they are not in derogation of any other authorization.
48 (f) The commissioner of insurance shall promulgate
49 legislative rules or regulations pursuant to chapter twenty-
50 nine-a of this code, setting forth guidelines relating to
51 self-insurance programs for political subdivisions.

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

1 (a) Liability insurance coverage for political
2 subdivisions in effect on the effective date of this article
3 shall not be reduced without the written consent of the
4 insured and the policy premiums for such coverage shall not
5 be increased by more than ten percent per annum. Such
6 coverage shall not be cancelled except for:
7 (1) Failure to make premium payments in accordance
8 with the policy requirements;
9 (2) Fraud or substantial misrepresentation by the
10 insured in the procurement of the policy; or
11 (3) Substantial increase in the risk of loss to which the
12 insurer is exposed under the policy.
13 (b) Each casualty insurance rate filing relating to
14 liability insurance for political subdivisions shall be
15 accompanied by such information as the insurance
16 commissioner requires to determine claims payouts,
17 premium income, investment income, loss reserves, federal
18 and state credits, administrative and operating expenses,
19 profits, losses, and such other information deemed
20 necessary by the commissioner to determine the
21 profitability of such insurance business engaged in by the
22 company. Based upon such information, the commissioner
23 may approve or disapprove an increase in premiums
24 charged to the political subdivisions for such coverage or
25 may require that such premiums charged be decreased. The

26 commissioner shall have authority to disapprove any
27 casualty insurance rate filing which includes such coverage
28 to political subdivisions for failure to provide the
29 information prescribed herein.

30 (c) Any two or more political subdivisions shall have
31 authority to form an organization or association for the
32 purpose of purchasing casualty insurance on a group or
33 pooling basis.

34 Any insurer licensed to transact casualty insurance in
35 this state may issue group casualty insurance policies to any
36 organization, association or pool which is organized and
37 maintained under this section.

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

§29-12A-18. Applicability.

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

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

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

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

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

17 (e) Civil claims based upon alleged violations of the
18 constitution or statutes of the United States except that the
19 provisions of section eleven of this article shall apply to
20 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.

1 Any policy or contract of public liability insurance
2 providing coverage for public liability sold, issued, or
3 delivered in this state to any religious or charitable
4 corporation or association, either directly or to the trustees
5 of such associations, shall be read so as to contain a
6 provision of endorsement whereby the company issuing
7 such policy waives, or agrees not to assert as a defense, on
8 behalf of the policyholder or any beneficiary thereof, to any
9 claim covered by the terms of such policy within the policy
10 limits, the immunity from liability of the insured by reason
11 of such insured's charitable status, unless such provision or
12 endorsement is rejected in writing by the named insured.

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

Greene A. Williams
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

To take effect June 1, 1986.

Judd C. Wells
.....
Clerk of the Senate

Donald J. Kopp
.....
Clerk of the House of Delegates

Sam Tombarino
.....
President of the Senate

Joseph P. Albright
.....
Speaker House of Delegates

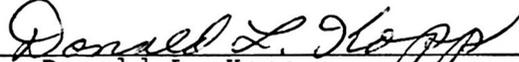
The within *disapproved* this the *25th*
day of *May* 1986.

Hubert H. Hanes Jr.
.....
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.

PRESENTED TO THE
GOVERNOR

Date 5/23/86

Time 4:42 p.m.