

HB 4064

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

Com. Sub. for
HOUSE BILL No. 4064

(By Delegate Ms. Speaker Mrs. Chambers,
and Delegate Ashley)
[By Request of the Executive]

Passed March 9, 1996

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4064

(BY MR. SPEAKER, MR. CHAMBERS, AND DELEGATE ASHLEY)
[By Request of the Executive].

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen-d, relating to limiting the liability of boards of education generally.

Be it enacted by the Legislature of West Virginia:

That article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nineteen-d, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-19d. Conditional immunity from liability for community activities; liability insurance; authority of state board of risk and insurance management.

- 1 (a)(1) If the requirements of this subsection are met,
- 2 the board of education is not liable under any theory of
- 3 vicarious or imputed liability for the acts or omissions of:

4 (A) Any person, organization or association using
5 school property for a community activity described in
6 section nineteen of this article;

7 (B) Any member, employee or agent of such person,
8 organization or association; or

9 (C) Any person attending or participating in the com-
10 munity activity other than an employee of the board while
11 acting within the scope of employment.

12 (2) The limitation of liability extended the board of
13 education pursuant to this subsection does not apply un-
14 less:

15 (A) The person, organization or association using
16 school property for a community activity has in effect, at
17 the time of the act or omission described in subdivision
18 (1) of this subsection, a contract of insurance which pro-
19 vides general comprehensive liability coverage of any
20 claim, demand, action, suit or judgment by reason of al-
21 leged negligence or other acts resulting in bodily injury or
22 property damage to any person arising out of the use of
23 school property for a community activity described in
24 subdivision (1) of this subsection;

25 (B) The contract of insurance provides for the pay-
26 ment of any attorney fees, court costs and other litigation
27 expenses incurred by the board in connection with any
28 claim, demand, action, suit or judgment arising from such
29 alleged negligence or other act; and

30 (C) The insurance coverage is in the amounts speci-
31 fied in the provisions of section five-a, article twelve, chap-
32 ter twenty-nine of this code.

33 (3)(A) The insurance described in subdivision (2) of
34 this subsection may be obtained privately or may be ob-
35 tained pursuant to the provisions of this subdivision. If
36 requested by any person, organization or association seek-
37 ing such insurance coverage, the state board of risk and
38 insurance management is authorized to provide such in-
39 surance and to enter into any necessary contract of insur-

40 ance to further the intent of this subdivision.

41 (B) Where provided by the state board of risk and
42 insurance management, the cost of the insurance, as deter-
43 mined by the such board, shall be paid by the person,
44 organization or association and may include administra-
45 tive expenses. All funds received by such board shall be
46 deposited with the West Virginia board of investments for
47 investment purposes.

48 (C) The state board of risk and insurance manage-
49 ment is hereby authorized and empowered to negotiate
50 and effect settlement of any and all claims covered by the
51 insurance provided by such board pursuant to this subdivi-
52 sion to the extent the board is authorized and empow-
53 ered to negotiate and effect settlement of claims described
54 in section five, article twelve, chapter twenty-nine of this
55 code.

56 (4) As used in this subsection, "organization" or "asso-
57 ciation" means a bona fide, not for profit, tax-exempt,
58 benevolent, educational, philanthropic, humane, patriotic,
59 civic, eleemosynary, incorporated or unincorporated asso-
60 ciation or organization or a rescue unit or other similar
61 volunteer community service organization or association,
62 but does not include any nonprofit association or organi-
63 zation, whether incorporated or not, which is organized
64 primarily for the purposes of influencing legislation or
65 advocating or opposing the nomination, election or defeat
66 of any candidate, or the passage or defeat of any issue,
67 thing or item to be voted upon.

68 (b) Nothing in this section shall affect the rights, du-
69 ties, defenses, immunities or causes of action under other
70 statutes or the common law of this state which may be
71 applicable to boards of education.

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

Randy Schramm
Chairman Senate Committee

Randy Seacrest
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll Robinson
Clerk of the Senate

Gregory M. Brown
Clerk of the House of Delegates

Carl Byrd
President of the Senate

Robert C. Calvert
Speaker of the House of Delegates

The within is approved this the 20th
day of March, 1996.

Mark V. Meade
Governor

PRESENTED TO THE

GOVERNOR

Date 3/19/96

Time 3:53 pm