Senate Bill No. 238

(By Senators D. Hall, Nohe and Stollings)

[Passed February 25, 2015; in effect ninety days from passage.]
AN ACT to amend and reenact §18-5-19 and §18-5-19d of the Code of West Virginia, 1931, as amended, all relating to limiting the liability of county boards of education for loss or injury from the use of school property made available for unorganized recreation.

Be it enacted by the Legislature of West Virginia:

That §18-5-19 and §18-5-19d of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-19. Night schools and other school extension activities; use of school property for public meetings, etc.

County boards may establish and maintain evening classes or night schools, continuation or part-time day schools, alternative schools and vocational schools, wherever practicable to do so, and shall admit adult persons and all other persons, including persons of foreign birth. County boards may admit school-age children and youth to these classes or schools under the circumstances prescribed by a State Board of Education policy governing alternative
education programs. County boards may use school funds for the financial support of such schools and to use the schoolhouses and their equipment for these purposes. Any such classes of schools shall be conducted in accordance with the rules of the state board.

County boards may provide for the free, comfortable and convenient use of any school property to promote and facilitate frequent meetings and associations of the people for discussion, study, recreation and other community activities, and may secure, assemble and house material for use in the study of farm, home and community problems, and may provide facilities for the dissemination of information useful on the farm, in the home or in the community.

In addition to the liability protection for organized use outlined in section nineteen-d of this article, county boards are not liable for any loss or injury arising from the use of school property made available for unorganized recreation. County boards are liable for their acts or omissions which constitute gross negligence or willful and wanton conduct which is the proximate cause of injury or property damage.

§18-5-19d. Conditional immunity from liability for community activities; liability insurance; authority of State Board of Risk and Insurance Management.

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

(A) Any person, organization or association using school property for a community activity described in section nineteen of this article;
Any member, employee or agent of such person, organization or association; or

Any person attending or participating in the community activity other than an employee of the board while acting within the scope of employment.

The limitation of liability extended the board of education pursuant to this subsection does not apply unless:

(A) The person, organization or association using school property for a community activity has in effect, at the time of the act or omission described in subdivision (1) of this subsection, a contract of insurance which provides general comprehensive liability coverage of 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 arising out of the use of school property for a community activity described in subdivision (1) of this subsection;

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

(C) The insurance coverage is in the amounts specified in the provisions of section five-a, article twelve, chapter twenty-nine of this code.

The insurance described in subdivision (2) of this subsection may be obtained privately or may be obtained pursuant to the provisions of this subdivision. If requested by any person, organization or association seeking such
insurance coverage, the State Board of Risk and Insurance
Management is authorized to provide such insurance and to
enter into any necessary contract of insurance to further the
intent of this subdivision.

(B) Where provided by the State Board of Risk and
Insurance Management, the cost of the insurance, as
determined by the such board, shall be paid by the person,
organization or association and may include administrative
expenses. All funds received by such board shall be
deposited with the West Virginia Board of Investments for
investment purposes.

(C) The State Board of Risk and Insurance Management
is hereby authorized and empowered to negotiate and effect
settlement of any and all claims covered by the insurance
provided by such board pursuant to this subdivision to the
extent the board is authorized and empowered to negotiate
and effect settlement of claims described in section five,
article twelve, chapter twenty-nine of this code.

(4) As used in this subsection, "organization" or
"association" means a bona fide, not for profit, tax-exempt,
benevolent, educational, philanthropic, humane, patriotic,
civic, 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 advocating or
opposing the nomination, election or defeat of any candidate,
or the passage or defeat of any issue, thing or item to be
voted upon.

(b) In addition to the liability protection for organized use
outlined in this section, county boards are not liable for any
loss or injury arising from the use of school property made available for unorganized recreation. County boards are liable for their acts or omissions which constitute gross negligence or willful and wanton conduct which is the proximate cause of injury or property damage.

(c) Nothing in this section shall affect the rights, duties, defenses, immunities or causes of action under other statutes or the common law of this state which may be applicable to boards of education.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 5th Day of March, 2015.

Governor
PRESENTED TO THE GOVERNOR

MAR 03 2015

Time 3:00 PM