

SB 238

**WEST VIRGINIA LEGISLATURE**

**EIGHTY-SECOND LEGISLATURE**

**REGULAR SESSION, 2015**



**ENROLLED**

**Senate Bill No. 238**

(BY SENATORS D. HALL, NOHE AND STOLLINGS)

[PASSED FEBRUARY 25, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2015 MAR -5 P 12:15

**FILED**

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[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.**

1 County boards may establish and maintain evening classes  
2 or night schools, continuation or part-time day schools,  
3 alternative schools and vocational schools, wherever  
4 practicable to do so, and shall admit adult persons and all  
5 other persons, including persons of foreign birth. County  
6 boards may admit school-age children and youth to these  
7 classes or schools under the circumstances prescribed by a  
8 State Board of Education policy governing alternative

9 education programs. County boards may use school funds  
10 for the financial support of such schools and to use the  
11 schoolhouses and their equipment for these purposes. Any  
12 such classes of schools shall be conducted in accordance with  
13 the rules of the state board.

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

22 In addition to the liability protection for organized use  
23 outlined in section nineteen-d of this article, county boards  
24 are not liable for any loss or injury arising from the use of  
25 school property made available for unorganized recreation.  
26 County boards are liable for their acts or omissions which  
27 constitute gross negligence or willful and wanton conduct  
28 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.**

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

4 (A) Any person, organization or association using school  
5 property for a community activity described in section  
6 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  
10 community activity other than an employee of the board  
11 while 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 unless:

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

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

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

32 (3)(A) The insurance described in subdivision (2) of this  
33 subsection may be obtained privately or may be obtained  
34 pursuant to the provisions of this subdivision. If requested by  
35 any person, organization or association seeking such

36 insurance coverage, the State Board of Risk and Insurance  
37 Management is authorized to provide such insurance and to  
38 enter into any necessary contract of insurance to further the  
39 intent of this subdivision.

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

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

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

66 (b) In addition to the liability protection for organized use  
67 outlined in this section, county boards are not liable for any

68 loss or injury arising from the use of school property made  
69 available for unorganized recreation. County boards are  
70 liable for their acts or omissions which constitute gross  
71 negligence or willful and wanton conduct which is the  
72 proximate cause of injury or property damage.

73 (c) Nothing in this section shall affect the rights, duties,  
74 defenses, immunities or causes of action under other statutes  
75 or the common law of this state which may be applicable to  
76 boards of education.

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

*Paul J. Hayward*  
.....  
Chairman Senate Committee

*John B. W.*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Clark B. ...*  
.....  
Clerk of the Senate

*Stephen J. ...*  
.....  
Clerk of the House of Delegates

*Phil ...*  
.....  
President of the Senate

*... ..*  
.....  
Speaker of the House of Delegates

The within *is approved* ..... this the *5<sup>th</sup>* .....  
Day of *March* ....., 2015.

*Carl Key Tomblin*  
.....  
Governor

**PRESENTED TO THE GOVERNOR**

MAR 03 2015

Time 3:00 pm