

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2887

BY DELEGATE HIGGINBOTHAM

[Introduced March 03, 2021; Referred to the Committee on
the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §18-5-19e, relating to providing guidelines for school systems regarding their
 3 legal liability for exposure to COVID-19; and providing for immunity to school systems from
 4 lawsuits in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-19e. Liability of school systems for COVID-19 exposure.

1 (a) In any civil action where a plaintiff alleges a personal injury or death as a result of
 2 exposure to COVID-19 while on a premises owned or operated by a school system, or during an
 3 activity conducted or managed by a school system:

4 (1) The complaint must be pled with particularity.

5 (2) If the school system was in substantial compliance with controlling health standards,
 6 the school system is immune from liability unless the plaintiff pleads sufficient facts and proves
 7 that:

8 (A) The school system violated controlling health standards with gross negligence; and

9 (B) The gross negligence was the proximate cause of the plaintiff’s personal injury or
 10 death.

11 (3) If the school system was not in substantial compliance with controlling health
 12 standards:

13 (A) The plaintiff may pursue any claim recognized at common law or by statute; and

14 (B) The immunity described in paragraph (b) does not apply to the school system.

15 (b) The court shall determine as a matter of law whether a school system was in
 16 substantial compliance with controlling health standards at the time of an alleged exposure to
 17 COVID-19. The plaintiff has the burden of establishing the school system was not in substantial
 18 compliance with controlling health standards.

19 (c) As used in this section:

20 (1) “Controlling health standards” means any of the following that are clearly and
21 conspicuously related to COVID-19 and that prescribed the manner in which an entity must
22 operate at the time of the alleged exposure:

23 (A) A federal, state or local law, regulation or ordinance; or

24 (B) A written order or other document published by a federal, state or local government or
25 regulatory body having direct oversight over or authority to regulate the school system.

26 (2) “Premises” means any real property located in this state or the property where a school
27 activity is being conducted.

28 (3) “School system” means a county board of education, a nonpublic school or the West
29 Virginia Department of Education.

30 (4) “Substantial compliance” means the good faith efforts of an entity to help control the
31 spread of COVID-19 in conformity with controlling health standards. The school system may
32 demonstrate substantial compliance by establishing policies and procedures to enforce and
33 implement the controlling health standards in a reasonable manner. Isolated or unforeseen events
34 of noncompliance with the controlling health standards do not demonstrate noncompliance by the
35 school system.

NOTE: The purpose of this bill is to set in place guidelines for school systems regarding their legal liability for exposure to COVID-19; and to provide immunity to school systems from lawsuits in certain circumstances.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.