
HOUSE BILL 1338

State of Washington

67th Legislature

2021 Regular Session

By Representatives Harris, Walen, and Eslick

Read first time 01/21/21. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to preserving public school resources during the
2 COVID-19 emergency; adding a new section to chapter 28A.320 RCW;
3 creating a new section; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that Article IX,
6 section 1 of the state Constitution provides that "It is the
7 paramount duty of the state to make ample provision for the education
8 of all children residing within its borders, without distinction or
9 preference on account of race, color, caste, or sex."

10 (2) On February 29, 2020, the governor issued proclamation 20-05
11 declaring a state of emergency for the state of Washington due to
12 illness and death resulting from the COVID-19 pandemic.

13 (3) In March 2020, the governor ordered an emergency closure of
14 all Washington public schools due to the COVID-19 pandemic. Schools
15 remained closed for the remainder of the 2019-20 school year.

16 (4) Washington public schools stepped up to provide extraordinary
17 services during the COVID-19 related shutdown, including setting up
18 day care centers to allow first responders and health care workers to
19 continue going to work saving lives, and distributing essential meals
20 not only to students but directly to families in need.

1 (5) Federal, state, and local regulations and public health
2 guidelines have been continuously updated due to the uncertainty,
3 developing knowledge, and the everchanging nature of the COVID-19
4 pandemic.

5 (6) The COVID-19 pandemic has placed extraordinary burdens on
6 students, families, educators, and schools. There is no fully
7 equitable manner to deliver all of the educational and other
8 essential services schools provide without some in-person services.
9 Yet, as shown by the COVID-19 infection rate in even the most highly
10 controlled adult-only environments, there is no way to make a school
11 or any in-person environment completely safe during a pandemic. As
12 schools restart and expand in-person services during this health
13 emergency, they are once again asked to do the extraordinary —
14 increase equity in education while also adding expansive new safety
15 protections so that any in-person services can be delivered more
16 safely. Both goals require additional financial resources, at a time
17 when state resources have been substantially depleted due to the
18 impact of the COVID-19 pandemic.

19 (7) Public schools operating during the COVID-19 pandemic must
20 focus their time and limited resources on fulfilling their paramount
21 duty to educate the children of Washington. Doing so requires
22 thoughtful planning on how to use scarce financial resources to
23 further equitable access and delivery of essential educational
24 services while also increasing training and implementing costly
25 safety precautions. Limited public funds allocated to schools during
26 the COVID-19 pandemic should not be diverted to costly new litigation
27 and liability exposure arising from the COVID-19 pandemic.

28 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.320
29 RCW to read as follows:

30 (1) The definitions in this subsection apply throughout this
31 section unless the context clearly requires otherwise.

32 (a) "COVID-19" means a respiratory disease caused by the severe
33 acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

34 (b) "COVID-19 pandemic" means the state of emergency relating to
35 the outbreak and spread of COVID-19 declared in the governor's
36 proclamation 20-05 on February 29, 2020, and any renewals thereof.

37 (c) "Reopening plan" means the school reopening plan developed by
38 a school during the COVID-19 pandemic and approved by its governing
39 body. A reopening plan must be based on the Washington schools 2020

1 reopening plan template developed by the office of the superintendent
2 of public instruction in consultation with the state board of
3 education.

4 (d) "School" means a school district, an educational service
5 district, a charter school established under chapter 28A.710 RCW, a
6 state-tribal compact school established under chapter 28A.715 RCW,
7 the center for deaf and hard of hearing youth, or the Washington
8 school for the blind. The term includes a school's officers,
9 employees, and members of the governing body acting in their official
10 capacity.

11 (2) Except as provided in subsection (4) of this section, there
12 is no liability on the part of a school for claims of damage, loss,
13 injury, or death relating to COVID-19 infection if the school:

14 (a) Adopts a reopening plan;

15 (b) Files the reopening plan with the office of the
16 superintendent of public instruction and the state board of
17 education; and

18 (c) Makes reasonable efforts to implement the reopening plan.

19 (3) Except as provided in subsection (4) of this section, a
20 person or a person's representative may not bring suit or recover
21 from a school for damage, loss, injury, or death relating to COVID-19
22 infection if the school:

23 (a) Adopts a reopening plan;

24 (b) Files the reopening plan with the office of the
25 superintendent of public instruction and the state board of
26 education; and

27 (c) Makes reasonable efforts to implement the reopening plan.

28 (4) This section does not protect a school from suit or liability
29 for damage, loss, injury, or death relating to COVID-19 infection
30 caused by the willful and wanton misconduct of the school.

31 (5) This section applies to claims of damage, loss, injury, or
32 death alleged to have been sustained or suffered during the COVID-19
33 pandemic or during the 12 months following the end of the COVID-19
34 pandemic.

35 (6) This section does not apply to employee claims for injuries
36 sustained in the course and scope of employment pursuant to Title 51
37 RCW.

38 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
39 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes
2 effect immediately.

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