



# SENATE BILL 208: COVID-19 Immunity/IHEs.

2019-2020 General Assembly

<b>Committee:</b>		<b>Date:</b>	November 3, 2020
<b>Introduced by:</b>		<b>Prepared by:</b>	Samantha Yarborough Staff Attorney
<b>Analysis of:</b>	S.L. 2020-70		

**OVERVIEW:** *S.L. 2020-70 creates a new Article in the General Statutes granting limited immunity for institutions of higher education (IHEs) for claims related to tuition and fees paid for the spring 2020 semester that arise from alleged acts or omissions by the IHE in response to COVID-19. IHEs can assert this immunity if the alleged acts or omissions were reasonably related to protecting the public health, safety, or welfare in response to COVID-19 executive orders or guidance from the Centers for Disease Control and Prevention, and if the IHE offered remote learning options for students to complete spring semester coursework.*

*IHEs cannot assert this immunity for losses or damages resulting solely from the breach of an express contractual provision that allocated liability in the event of a pandemic, or if the losses or damages were caused by an act or omission that was in bad faith or malicious.*

*This Article is limited to alleged acts or omissions occurring between March 10, 2020, and June 1, 2020. Additionally, provisions in the Article are severable if a court invalidates certain sections.*

*This act became effective July 1, 2020, and applies to all actions commenced on or after March 27, 2020.*

**BILL ANALYSIS:** This act creates a new Article granting limited immunity for institutions of higher education (IHE) for claims related to tuition and fees paid for the spring 2020 semester that arise from alleged acts or omissions taken by the IHE in response to COVID-19. IHEs can assert this immunity if the alleged acts or omissions were reasonably related to protecting the public health, safety, or welfare in response to COVID-19 executive orders or guidance from the Centers for Disease Control and Prevention, and if the IHE offered remote learning options for students to complete spring semester coursework.

IHEs cannot assert this immunity for losses or damages resulting solely from breach of an express contractual provision that allocated liability in the event of a pandemic, or if the losses or damages were caused by an act or omission that was in bad faith or malicious.

The Article is limited to alleged acts or omission occurring between March 10, 2020, to June 1, 2020.

Provisions of the Article are severable if a court invalidated certain sections.

**EFFECTIVE DATE:** This act became effective July 1, 2020, and applies to actions commenced on or after March 27, 2020.

**BACKGROUND:** The effective date of this act applies retroactively to actions commenced prior to the effective date of the law. The due process clause of the United States Constitution and the corresponding Law of the Land clause of the North Carolina Constitution (Article 1, Section 19) generally protect individuals from laws that retroactively deprive them of vested rights. A "statute may be applied retroactively only insofar as it does not impinge upon a right which is otherwise secured, established, and

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immune from further legal metamorphosis." Gardner v. Gardner, 300 N.C. 715, 719 (1980). However, courts have also recognized that the right to make contracts is subject to the power of the General Assembly to impose restrictions for the benefit of the general public in areas of public interest. Mazda Motors of Am., Inc. v. Sw. Motors, Inc., 36 N.C. App. 1, 6–7, (1978), aff'd in part, rev'd in part, 296 N.C. 357 (1979). Ultimately, a determination of whether the retroactive application of this law would deprive any individual of vested rights would be made by the courts.

Five claims have been filed against HIS in North Carolina in State and federal courts related to tuition and fees for spring 2020 due to actions taken in response to the pandemic.