



SENATE BILL 208: COVID-19 Immunity/IHEs.

2019-2020 General Assembly

Committee:		Date:	June 24, 2020
Introduced by:	Sens. McInnis, Daniel, Hise	Prepared by:	Kara McCraw Staff Attorney
Analysis of:	Third Edition		

OVERVIEW: *SB 208 would remove the prior contents of the bill and would replace it with a new Article providing that, for the spring 2020 semester, an institution of higher education (IHE) would have immunity for claims related to tuition and fees based in alleged acts or omissions related to COVID-19, if the IHE meets certain requirements.*

BILL ANALYSIS: SB 208 would create 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 would be able to 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 would not be able to 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 would be limited to alleged acts or omission occurring between March 10, 2020, to June 1, 2020.

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

EFFECTIVE DATE: SB 208 would become effective when it becomes law, and would apply to actions commenced on or after March 27, 2020.

BACKGROUND: The effective date of SB 208 would apply 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 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.

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