

**2019 DRAFTING REQUEST****Bill**

For: **Legislative Fiscal Bureau** Drafter: **tdodge**  
 By: **Morgan** Secondary Drafters:  
 Date: **4/5/2020** May Contact:

Same as LRB:

Submit via email: **YES**  
 Requester's email: **Charlie.morgan@legis.wisconsin.gov**  
 Carbon copy (CC) to: **jon.dyck@legis.wisconsin.gov**  
**Becky.hannah@legis.wisconsin.gov**  
**tamara.dodge@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Health care provider immunity during COVID-19

**Instructions:**

04/06/20 Update per Tad and Heather: limit the immunity to COVID emergency; limit to guidance published by DHS or CMS  
 Update: Limit to public emergencies declared by governor and extend for 60 days after termination; applies to professionals licensed by medical examining board and board of nursing.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 4/6/2020				
/P1	tdodge 4/6/2020	swinder 4/6/2020	mbarman 4/6/2020		
/P2	tdodge 4/6/2020	aernstr 4/6/2020	wjackson 4/6/2020		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P3	tdodge 4/10/2020	aernstr 4/6/2020	wjackson 4/6/2020		
/P4		anienaja 4/10/2020	wjackson 4/10/2020		

FE Sent For:

<END>

## Barman, Mike

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**From:** Champagne, Rick  
**Sent:** Sunday, April 05, 2020 2:39 PM  
**To:** Dodge, Tamara; Duchek, Michael; Paczuski, Konrad  
**Cc:** Hanaman, Cathlene  
**Subject:** Fwd: new addition - doctor liability  
**Attachments:** Ch 323 amendment - Providers of health care services.pdf; ATT00001.htm

Needed for LFB package.

Begin forwarded message:

**From:** "Lang, Bob" <Bob.Lang@legis.wisconsin.gov>  
**Date:** April 5, 2020 at 2:24:46 PM CDT  
**To:** "Dyck, Jon" <Jon.Dyck@legis.wisconsin.gov>, "Morgan, Charlie" <Charlie.Morgan@legis.wisconsin.gov>, "Champagne, Rick" <Rick.Champagne@legis.wisconsin.gov>  
**Subject:** FW: new addition - doctor liability

I assume that this from the Medical Society.

**From:** Romportl, Dan <Dan.Romportl@legis.wisconsin.gov>  
**Sent:** Sunday, April 05, 2020 2:15 PM  
**To:** Lang, Bob <Bob.Lang@legis.wisconsin.gov>  
**Cc:** Smith, Heather <Heather.Smith@legis.wisconsin.gov>  
**Subject:** new addition - doctor liability

Bob,

Attached is suggested language for the doctor liability provision we discussed on the call.

Thanks,

Dan // Fitzgerald office  
cell 608-386-4867

**Create new s. 323.46:**

**323.46 Providers of health services.** (1) Except as provided in sub. (3), no person who is a provider of health care services or the provider's employees, agents, or contractors are liable for the death of or injury to any individual or damage to any property caused by actions or omissions of the person if the person did so under all of the following conditions:

- (a) The health services are provided during a federally declared emergency under the Stafford Act or National Emergencies Act, a public health emergency under Section 319 of the Public Health Service Act, or a state of emergency or a public health emergency declared by the governor.
- (b) Such acts or omissions are substantially consistent with any direction, guidance, recommendation or other statement made by any of the following:
  1. A federal, state, or local official to address the emergency or in response to the emergency.
  2. Other published guidance upon which the person relied upon in good faith.
- (2) This section does not apply if the person's act or omission involved reckless, wanton, or intentional misconduct.
- (3)
  - (a) This section does not apply to a person's provision of services if s. 257.03 or 323.41 applies.
  - (b) This section does not apply to a person's provision of facilities if s. 257.04 or 323.44 applies.



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to create* 655.0095 of the statutes; **relating to:** immunity for health care  
2           providers during public health emergency.

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*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

***Immunity from civil liability for health care workers during emergencies***

This bill provides immunity from civil liability for health care professionals and facilities and employees, agents, or contractors of those professionals or facilities for death, injury, or damages caused by actions or omissions taken during a national emergency or disaster declared by the U.S. president, a public health emergency declared by the federal secretary of health and human services, or a state of emergency declared by the governor. To be immune from civil liability, the actions or omissions must not involve reckless or wanton conduct or intentional misconduct and must be substantially consistent with either a direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or in response to the emergency or disaster or any published guidance relied upon in good faith.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

3           **SECTION 1.** 655.0095 of the statutes is created to read:

1           **655.0095 Immunity for health care providers during declared**  
2 **emergencies. (1) DEFINITION.** “Health care professional” has the meaning given  
3 in s. 180.1901 (1m).

4           **(2) IMMUNITY.** Subject to sub. (3), any health care professional, health care  
5 provider or employee, agent, or contractor of a health care provider or health care  
6 professional is immune from civil liability for the death of or injury to any individual  
7 or any damages caused by actions or omissions taken under circumstances that  
8 satisfy all of the following:

9           (a) The professional, provider, employee, agent, or contractor is providing  
10 services during any of the following:

11           1. A national emergency declared by the U.S. president under 50 USC 1621.

12           2. An emergency or disaster declared under the federal Stafford act, 42 USC  
13 5121 to 5207.

14           3. A public health emergency declared under 42 USC 247d by the secretary of  
15 the federal department of health and human services.

16           4. A state of emergency declared under s. 323.10.

17           (b) The actions or omissions are substantially consistent with any of the  
18 following:

19           1. Any direction, guidance, recommendation, or other statement made by a  
20 federal, state, or local official to address or in response to the emergency or disaster  
21 declared as described under par. (a).

22           2. Any published guidance relied upon in good faith.

23           (c) The actions or omissions do not involve reckless or wanton conduct or  
24 intentional misconduct.





State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-6120/P2  
TJD:skw&ahe

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to create* 655.0095 of the statutes; **relating to:** immunity for health care  
2             providers during public health emergency.

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*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

***Immunity from civil liability for health care workers during COVID-19 emergency***

This bill provides immunity from civil liability for health care professionals and facilities and employees, agents, or contractors of those professionals or facilities for death, injury, or damages caused by actions or omissions taken in providing services to address or in response to a 2019 novel coronavirus outbreak during an emergency or disaster declared relating to the 2019 novel coronavirus pandemic. To be immune from civil liability, the actions or omissions must not involve reckless or wanton conduct or intentional misconduct and must be substantially consistent with either a direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or in response to the emergency or disaster or any published guidance of the Department of Health Services or the federal Department of Health and Human Services relied upon in good faith.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

3             **SECTION 1.** 655.0095 of the statutes is created to read:

1           **655.0095 Immunity for health care providers during COVID-19**  
2 **emergency. (1) DEFINITION.** “Health care professional” has the meaning given in  
3 s. 180.1901 (1m).

4           **(2) IMMUNITY.** Subject to sub. (3), any health care professional, health care  
5 provider or employee, agent, or contractor of a health care provider or health care  
6 professional is immune from civil liability for the death of or injury to any individual  
7 or any damages caused by actions or omissions taken in providing services to address  
8 or in response to a 2019 novel coronavirus outbreak under circumstances that satisfy  
9 all of the following:

10           (a) The action or omission is committed while the professional, provider,  
11 employee, agent, or contractor is providing services during any of the following that  
12 are declared relating to the 2019 novel coronavirus pandemic:

13           1. A national emergency declared by the U.S. president under 50 USC 1621.

14           2. An emergency or disaster declared under the federal Stafford act, 42 USC  
15 5121 to 5207.

16           3. A public health emergency declared under 42 USC 247d by the secretary of  
17 the federal department of health and human services.

18           4. A state of emergency declared under s. 323.10.

19           (b) The actions or omissions are substantially consistent with any of the  
20 following:

21           1. Any direction, guidance, recommendation, or other statement made by a  
22 federal, state, or local official to address or in response to the emergency or disaster  
23 declared as described under par. (a).





**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 **AN ACT** *to create* 655.0095 of the statutes; **relating to:** immunity for health care  
2 professionals and health care providers during public health emergency.

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*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

***Immunity from civil liability for health care workers during COVID-19 emergency***

This bill provides immunity from civil liability for health care professionals and facilities and employees, agents, or contractors of those professionals for death, injury, or damages caused by actions or omissions taken in providing services to address or in response to a 2019 novel coronavirus outbreak during an emergency or disaster declared relating to the 2019 novel coronavirus pandemic. To be immune from civil liability, the actions or omissions must not involve reckless or wanton conduct or intentional misconduct and must be substantially consistent with either a direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or in response to the emergency or disaster or any published guidance of the Department of Health Services or the federal Department of Health and Human Services relied upon in good faith.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

3 **SECTION 1.** 655.0095 of the statutes is created to read:

1           **655.0095 Immunity for health care providers during COVID-19**  
2 **emergency. (1) DEFINITION.** “Health care professional” means an individual  
3 licensed, registered, or certified by the medical examining board under subch. II of  
4 ch. 448 or the board of nursing under ch. 441.

5           **(2) IMMUNITY.** Subject to sub. (3), any health care professional, health care  
6 provider, or employee, agent, or contractor of a health care professional is immune  
7 from civil liability for the death of or injury to any individual or any damages caused  
8 by actions or omissions taken in providing services to address or in response to a 2019  
9 novel coronavirus outbreak under circumstances that satisfy all of the following:

10           (a) The action or omission is committed while the professional, provider,  
11 employee, agent, or contractor is providing services during the state of emergency  
12 declared under s. 323.10 relating to the 2019 novel coronavirus pandemic and for the  
13 60 days following the date that the state of emergency terminates.

14           (b) The actions or omissions are substantially consistent with any of the  
15 following:

16           1. Any direction, guidance, recommendation, or other statement made by a  
17 federal, state, or local official to address or in response to the emergency or disaster  
18 declared as described under par. (a).

19           2. Any guidance published by the department of health services, the federal  
20 department of health and human services, or any divisions or agencies of the federal  
21 department of health and human services relied upon in good faith.

22           (c) The actions or omissions do not involve reckless or wanton conduct or  
23 intentional misconduct.



## Parisi, Lori

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**From:** Dyck, Jon  
**Sent:** Friday, April 10, 2020 1:53 PM  
**To:** Dodge, Tamara  
**Cc:** Morgan, Charlie  
**Subject:** FW: language/Instructions  
**Attachments:** 19-5918\_1 (002).pdf

Tami,

The leaders have agreed to change the provider liability provision. Heather has shared some language that I'm sending to you. But, if you think should be drafted differently, please feel free to do that.

### Jon Dyck

Supervising Analyst  
Legislative Fiscal Bureau  
1 East Main, Suite 301  
Madison, WI 53703  
(608) 504-5767  
jon.dyck@legis.wisconsin.gov

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**From:** Lang, Bob <Bob.Lang@legis.wisconsin.gov>  
**Sent:** Friday, April 10, 2020 1:26 PM  
**To:** Morgan, Charlie <Charlie.Morgan@legis.wisconsin.gov>; Dyck, Jon <Jon.Dyck@legis.wisconsin.gov>; Loppnow, Dave <Dave.Loppnow@legis.wisconsin.gov>; Pugh, Christa <Christa.Pugh@legis.wisconsin.gov>  
**Subject:** FW: language/Instructions

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**From:** Smith, Heather <Heather.Smith@legis.wisconsin.gov>  
**Sent:** Friday, April 10, 2020 1:25 PM  
**To:** Lang, Bob <Bob.Lang@legis.wisconsin.gov>  
**Subject:** language/Instructions

This is what we have on the liability protections for people, the coroner stuff, and the DPI agreed language is attached. I think I have sent the rest of the suggestions we have had.

### INSURANCE

Item 5 Make sure that the definition for health care provider includes all health care providers during the state emergency – and make sure group home workers would be covered as well. Also add language about acts of omission. (below in red)

- 1) *Specify that any health care professional, health care provider or employee, agent, or contractor of a health care professional or health care provider...is immune...*

- a. *The draft summary language says the section relates to: “any health care professional, health care provider or employee, agent, or contractor of a health care professional.” The proposed addition we include in the above sentence would ensure the section relates to employees, agents, or contractors of health care professionals or of health care providers.*

- 2) *Ensure the statutory definition for “health care provider” in this section include all providers that are serving patients/residents during this emergency.*

*We would recommend a reference to two statutes to define “health care provider” in this section: Wis. Stat. 146.38(1)(b) and Wis. Stat. 50.01(1). We believe the statutory definition at 146.38(1)(b) includes all necessary health care providers, including health care facilities and individuals, except for Adult Family Homes. We would also ask that Adult Family Homes, both licensed and certified, as defined in Wis. Stat. 50.01(1) be included in this section on immunity as it relates to the section’s definition of “health care provider.”*

*(Insert language in red below to the current language)*

- (b) Such acts or omissions occur during the person’s good faith response to the emergency or are substantially consistent with any direction, guidance, recommendation or other statement made by any of the following:*

DSPS

- *If a physician, medical examiner or coroner has signed the death certificate of a deceased person and listed COVID- 19 as the underlying cause of death, a coroner or medical examiner ~~may~~ must issue a cremation permit to cremate the corpse of that deceased person without viewing the corpse;*
- *If a physician, medical examiner or coroner has signed the death certificate of a deceased person and listed COVID- 19 as the underlying cause of death, a coroner or medical examiner must issue, within 48 hours after the time of death, a cremation permit for the cremation of a corpse of a deceased person;*



\* attached to e-mail for 19-6120

State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-5918/1  
FFK:skw/kjf/ahe

## 2019 BILL

1     **AN ACT to amend** 115.385 (1) (intro.), 115.415 (1) (b), 115.999 (1) (d) 1., 115.999  
2           (2m) (b) 1. a., 118.38 (2) (am) (intro.), 118.38 (3), 118.60 (7) (an) 1., 119.23 (7) (an)  
3           1., 119.33 (2) (b) 3. b., 119.33 (2) (b) 3. c., 119.33 (5) (b) 2., 119.9002 (2) (d) 2. a.,  
4           119.9002 (2) (d) 2. b., 119.9002 (2) (d) 3. a., 119.9002 (2) (d) 3. b. and 119.9004  
5           (3) (b) 2.; and **to create** 115.385 (6), 115.7915 (8m), 118.38 (4), 118.60 (12) and  
6           119.23 (12) of the statutes; **relating to:** private school hours of instruction  
7           requirements in the 2019-20 school year, 2020-21 applications for the  
8           statewide parental choice program, requirements to administer pupil  
9           assessments in the 2019-20 school year, the 2019-20 school and school district  
10          accountability report, waiver authority for private schools in parental choice  
11          programs, the Special Needs Scholarship Program, and independent charter  
12          schools in a public health emergency, and public health emergency exceptions  
13          in parental choice programs and the Special Needs Scholarship Program.

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*Analysis by the Legislative Reference Bureau*

**BILL*****Pupil examinations; public health emergency exception for the 2019-20 school year.***

Under current law, school boards, independent charter schools, private schools participating in the Milwaukee Parental Choice Program, Racine Parental Choice Program or Wisconsin Parental Choice Program and, under some circumstances, a private school participating in the Special Needs Scholarship Program are required to annually administer examinations adopted by the state superintendent of public instruction to pupils in the fourth, eighth, ninth, tenth, and eleventh grades. These examinations are commonly referred to as the Wisconsin Student Assessment System, which include The Forward Exam, ACT ASPIRE, the ACT, and Dynamic Learning Maps. Under the bill, the requirements to administer the WSAS do not apply in the 2019-20 school year.

Current law also requires school boards, independent charter schools, and private schools participating in a parental choice program to annually administer a standardized reading test developed by the Department of Public Instruction to third grade pupils. Under the bill, requirements to administer the third grade standardized reading test do not apply in the 2019-20 school year.

Under current law, school boards and independent charter schools are required to evaluate teachers and principals using an educator effectiveness evaluation system that considers pupil performance on statewide assessments. Under the bill, school boards and independent charter schools are prohibited from considering pupil performance on statewide assessments in evaluating teachers and principals in the 2019-20 school year.

***School and school district accountability report for the 2019-20 school year.***

The bill prohibits DPI from publishing a school and school district accountability report in the 2020-21 school year.

Under current law, DPI is required to publish a school and school district accountability report each year by November 30. To measure school performance and school district improvement, particularly measures related to pupil achievement in reading and math, DPI uses data derived from pupil performance on statewide assessments administered in the prior school year. The bill also changes references to accountability reports published in a specific school year or years to the most recently published accountability report or reports to account for the fact that, under the bill, DPI will not publish an accountability report in the 2020-21 school year.

***Waiver of laws and rules related to parental choice programs, the Special Needs Scholarship Program, and independent charter schools; schools closed by the Department of Health Services or a local health officer.***

Under the bill, if the Department of Health Services or a local health officer closes schools for ten or more school days during a school year, DPI may waive state education statutes, or rules promulgated under those statutes, related to 1) a parental choice program or the SNSP, 2) private schools participating in a parental choice program or the SNSP, or 3) independent charter schools. Under the bill, DPI may also establish alternate deadlines for requirements in education laws or rules if the original deadline occurs between the date the schools are closed and 120 days

**BILL**

after the day schools are reopened or the original deadline relates to another event that occurs during that same period.

Under current law, upon request from a school board and a public hearing, DPI may waive school district and school board requirements in a state education statute or rule. However, under current law, a school board may not request, and DPI may not grant, a waiver from state education statutes and rules related to certain topics, including the health or safety of pupils, confidentiality of pupil records, and pupil assessments.

***Exceptions in parental choice programs and the Special Needs Scholarship Program; schools closed by the Department of Health Services or a local health officer.***

Current law allows DPI to bar a private school from participating in a parental choice program or the SNSP in the current school year if the private school fails to comply with specified program requirements. For certain program violations, current law allows DPI to bar a private school from participating in the following school year. Current law also allows DPI to withhold program payments if a participating private school fails to comply with program requirements.

Under the bill, if a participating private school is closed by DHS or a local health officer for ten or more school days during a school year, DPI may not withhold program payments or bar the private school from participating in the parental choice program or the SNSP in the current or following school year if the private school demonstrates to DPI that the failure to comply with the program requirement was due to the school closure.

Under current law, a private school participating in a parental choice program must maintain a cash and investment balance that is at least equal to its reserve balance. Under the bill, this requirement does not apply in a school year during which the private school is closed by DHS or a local health officer for ten or more school days.

***Private schools; waiver for hours of instruction in the 2019-20 school year.***

Under the bill, in the 2019-20 school year, upon request from a private school, DPI may waive any requirement related to a private school providing hours of instruction.

***Wisconsin Parental Choice Program; application deadlines for the 2020-21 school year.***

Finally, the bill extends two deadlines related to pupil applications to attend a private school in the Wisconsin Parental Choice Program in the 2020-21 school year. First, under the bill, a private school participating in the WPCP may accept WPCP applications for the 2020-21 school year from pupils until May 14, 2020, rather than April 16, 2020, under current law. Second, under the bill, private schools participating in the WPCP have until May 29, 2020, to submit information to DPI about the number of WPCP applications the private school received from pupils for the 2020-21 school year. Under current law, private schools participating in the WPCP are required to submit this information to DPI by May 1, 2020.

**BILL**

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 115.385 (1) (intro.) of the statutes is amended to read:

2           115.385 (1) (intro.) ~~Annually~~ Except as provided in sub. (6), annually by  
3 November 30, the department shall publish a school and school district  
4 accountability report that includes all of the following components:

5           **SECTION 2.** 115.385 (6) of the statutes is created to read:

6           115.385 (6) The department shall not publish a school and school district  
7 accountability report under this section in the 2020-21 school year.

8           **SECTION 3.** 115.415 (1) (b) of the statutes is amended to read:

9           115.415 (1) (b) For the evaluation of teachers and principals in the 2014-15  
10 2019-20 school year, the school board and the operator of a charter school established  
11 under s. 118.40 (2r) may not consider pupil performance on statewide assessments  
12 administered under s. 118.30 in the ~~2014-15~~ 2019-20 school year and may not  
13 include pupil performance on those assessments in the evaluation score assigned to  
14 a teacher or principal under the educator effectiveness evaluation system developed  
15 under this section.

16           **SECTION 4.** 115.7915 (8m) of the statutes is created to read:

17           115.7915 (8m) PUBLIC HEALTH EXCEPTION. If a private school participating in the  
18 program under this section is closed for at least 10 school days in a school year by a  
19 local health officer, as defined in s. 250.01 (5), or the department of health services,  
20 in the school year during which the school is closed and the following school year, the  
21 department may not withhold payment from the private school under sub. (8) (c) or

**BILL**

1 bar the private school from participating in the program under sub. (8) (a) for failing  
2 to comply with a requirement under this section or a rule promulgated under this  
3 section if all of the following occur:

4 (a) The private school submits information to the department that explains  
5 how the school closure impacted the private school's ability to comply with the  
6 requirement and any action the private school took to mitigate the consequences of  
7 not complying with the requirement.

8 (b) The department determines that the private school's failure to comply with  
9 the requirement was caused by the closure.

10 **SECTION 5.** 115.999 (1) (d) 1. of the statutes is amended to read:

11 115.999 (1) (d) 1. The school district was assigned to the lowest performance  
12 category on the 2 most recent accountability reports published for the district under  
13 s. 115.385 (1) ~~in the 2 most recent school years.~~

14 **SECTION 6.** 115.999 (2m) (b) 1. a. of the statutes is amended to read:

15 115.999 (2m) (b) 1. a. The unified school district was assigned to the lowest  
16 performance category on the 3 most recent accountability reports published for the  
17 district under s. 115.385 (1) ~~in the 3 most recent school years.~~

18 **SECTION 7.** 118.38 (2) (am) (intro.) of the statutes is amended to read:

19 118.38 (2) (am) (intro.) In determining whether to grant ~~the~~ a waiver under  
20 sub. (1), the department shall consider all of the following factors and may consider  
21 additional factors:

22 **SECTION 8.** 118.38 (3) of the statutes is amended to read:

23 118.38 (3) A waiver granted under sub. (2) is effective for 4 years. The  
24 department shall renew the waiver for additional 4-year periods if the school board  
25 has evaluated the educational and financial effects of the waiver over the previous

**BILL****SECTION 8**

1 4-year period, except that the department is not required to renew a waiver if the  
2 department determines that the school district is not making adequate progress  
3 toward improving pupil academic performance.

4 **SECTION 9.** 118.38 (4) of the statutes is created to read:

5 118.38 (4) (a) If schools are closed for at least 10 school days in a school year  
6 by a local health officer, as defined in s. 250.01 (5), or the department of health  
7 services, the department may do all of the following:

8 1. Waive any requirement in chs. 115 to 121 or the administrative rules  
9 promulgated by the department under the authority of those chapters related to any  
10 of the following:

11 a. A program under s. 115.7915, 118.60, or 119.23.

12 b. A private school participating in a program under s. 115.7915, 118.60, or  
13 119.23.

14 c. A charter school under s. 118.40 (2r) or (2x), including any requirement  
15 related to an authorizer, governing board, or operator of a charter school under s.  
16 118.40 (2r) or (2x).

17 2. Establish an alternate deadline for any requirement related to a program  
18 under s. 115.7915, 118.60, or 119.23 in chs. 115 to 121 and any requirement related  
19 to a program under s. 115.7915, 118.60, or 119.23 in the administrative rules  
20 promulgated by the department under the authority of chs. 115 to 121 if the original  
21 deadline is any of the following:

22 a. A deadline that occurs during the period beginning on the first day schools  
23 are closed by the local health officer or department of health services and ending 120  
24 days after the last day schools are closed by the local health officer or department of  
25 health services.

**BILL**

1           b. A deadline for a requirement that impacts a date during the period beginning  
2           on the first day schools are closed by the local health officer or department of health  
3           services and ending 120 days after the last day schools are closed by the local health  
4           officer or department of health services.

5           (b) 1. The department shall notify the legislative reference bureau of each  
6           waiver under par. (a) 1. and alternate deadline established under par. (a) 2. The  
7           legislative reference bureau shall publish a notice in the Wisconsin Administrative  
8           Register of the waiver or alternate deadline.

9           2. The department shall post each waiver under par. (a) 1. and alternate  
10          deadline established under par. (a) 2. on the department's Internet site.

11          (c) A waiver under par. (a) 1. applies only to the school year in which schools  
12          are closed by the local health officer or the department of health services.

13          **SECTION 10.** 118.60 (7) (an) 1. of the statutes is amended to read:

14          118.60 (7) (an) 1. A private school participating in the program under this  
15          section shall maintain a cash and investment balance that is at least equal to its  
16          reserve balance. If a private school does not maintain a cash and investment balance  
17          that is at least equal to its reserve balance, the private school shall refund the reserve  
18          balance to the department. This subdivision does not apply to a school year in which  
19          the private school participating in the program was closed for at least 10 days by a  
20          local health officer, as defined in s. 250.01 (5), or the department of health services.

21          3. If a private school ceases to participate in or is barred from the program  
22          under this section and s. 119.23 and the private school's reserve balance is positive,  
23          the private school shall refund the reserve balance to the department.

24          **SECTION 11.** 118.60 (12) of the statutes is created to read:

**BILL****SECTION 11**

1           118.60 (12) If a private school participating in the program under this section  
2 is closed for at least 10 school days in a school year by a local health officer, as defined  
3 in s. 250.01 (5), or the department of health services, in the school year during which  
4 the school is closed and the following school year, the department may not withhold  
5 payment from the private school under sub. (10) (d) or bar the private school from  
6 participating in the program under sub. (10) (a), (am), or (ar) for failing to comply  
7 with a requirement under this section or a rule promulgated under this section if all  
8 of the following occur:

9           (a) The private school submits information to the department that explains  
10 how the school closure impacted the private school's ability to comply with the  
11 requirement and any action the private school took to mitigate the consequences of  
12 not complying with the requirement.

13           (b) The department determines that the private school's failure to comply with  
14 the requirement was caused by the closure.

15           **SECTION 12.** 119.23 (7) (an) 1. of the statutes is amended to read:

16           119.23 (7) (an) 1. A private school participating in the program under this  
17 section shall maintain a cash and investment balance that is at least equal to its  
18 reserve balance. If a private school does not maintain a cash and investment balance  
19 that is at least equal to its reserve balance, the private school shall refund the reserve  
20 balance to the department. This subdivision does not apply to a school year in which  
21 the private school participating in the program was closed for at least 10 days by a  
22 local health officer, as defined in s. 250.01 (5), or the department of health services.

23           3. If a private school ceases to participate in or is barred from the program  
24 under this section and s. 118.60 and the private school's reserve balance is positive,  
25 the private school shall refund the reserve balance to the department.

**BILL**

1           **SECTION 13.** 119.23 (12) of the statutes is created to read:

2           119.23 (12) If a private school participating in the program under this section  
3 is closed for at least 10 school days in a school year by a local health officer, as defined  
4 in s. 250.01 (5), or the department of health services, in the school year during which  
5 the school is closed and the following school year, the department may not withhold  
6 payment from the private school under sub. (10) (d) or bar the private school from  
7 participating in the program under sub. (10) (a), (am), or (ar) for failing to comply  
8 with a requirement under this section or a rule promulgated under this section if all  
9 of the following occur:

10           (a) The private school submits information to the department that explains  
11 how the school closure impacted the private school's ability to comply with the  
12 requirement and any action the private school took to mitigate the consequences of  
13 not complying with the requirement.

14           (b) The department determines that the private school's failure to comply with  
15 the requirement was caused by the closure.

16           **SECTION 14.** 119.33 (2) (b) 3. b. of the statutes is amended to read:

17           119.33 (2) (b) 3. b. A person who is operating a charter school. The  
18 superintendent of schools may proceed under this subd. 3. b. only if one of the  
19 following applies: the performance on the most recent examinations administered  
20 under s. 118.30 (1r) of pupils attending a school operated by the person exceeds the  
21 performance on the most recent examinations administered under s. 118.30 (1) of  
22 pupils attending the school being transferred to the person under this subdivision;  
23 or, in each of the 3 preceding consecutive accountability reports published under s.  
24 115.385 (1), the performance category assigned to a school operated by the person on  
25 ~~accountability reports published under s. 115.385 (1) for the school in each of the 3~~

**BILL****SECTION 14**

1 ~~preceding consecutive school years~~ exceeds the performance category assigned to the  
2 school being transferred to the person under this subdivision ~~in each of the 3~~  
3 ~~preceding consecutive school years~~. If fewer than 3 accountability reports have been  
4 published for a charter school described in this subd. 3. b., the superintendent of  
5 schools shall determine an alternative method for comparing the school's  
6 performance.

7 **SECTION 15.** 119.33 (2) (b) 3. c. of the statutes is amended to read:

8 119.33 (2) (b) 3. c. The governing body of a nonsectarian private school  
9 participating in a program under s. 118.60 or 119.23. The superintendent of schools  
10 may proceed under this subd. 3. c. only if one of the following applies: the  
11 performance on the most recent examinations administered under s. 118.30 (1s) or  
12 (1t) of pupils attending a school operated by the governing body exceeds the  
13 performance on the most recent examinations administered under s. 118.30 (1) of  
14 pupils attending the school being transferred to the governing body under this  
15 subdivision; or, in each of the 3 preceding consecutive accountability reports  
16 published under s. 115.385 (1), the performance category assigned to a school  
17 operated by the governing body ~~on accountability reports published under s. 115.385~~  
18 ~~(1) for the school in each of the 3 preceding consecutive school years~~ exceeds the  
19 performance category assigned to the school being transferred to the governing body  
20 under this subdivision ~~in each of the 3 preceding consecutive school years~~. If fewer  
21 than 3 accountability reports have been published for a private school described in  
22 this subd. 3. c., the superintendent of schools shall determine an alternative method  
23 for comparing the school's performance.

24 **SECTION 16.** 119.33 (5) (b) 2. of the statutes is amended to read:

**BILL**

1           119.33 (5) (b) 2. The school district operating under this chapter has been  
2 assigned ~~in the 3 most recent school years~~ a performance category of “fails to meet  
3 expectations” on the 3 most recent accountability ~~report~~ reports published under s.  
4 115.385 (1).

5           **SECTION 17.** 119.9002 (2) (d) 2. a. of the statutes is amended to read:

6           119.9002 (2) (d) 2. a. The performance, on the most recent examinations  
7 administered under s. 118.30 (1r), of pupils attending a school operated by the person  
8 exceeds the performance, on the most recent examinations administered under s.  
9 118.30 (1), of pupils attending the school being transferred to the person under this  
10 subdivision.

11           **SECTION 18.** 119.9002 (2) (d) 2. b. of the statutes is amended to read:

12           119.9002 (2) (d) 2. b. ~~The~~ In each of the 3 preceding consecutive accountability  
13 reports published under s. 115.385 (1), the performance category assigned to a school  
14 operated by the person on accountability reports published under s. 115.385 (1) for  
15 the school in each of the 3 preceding consecutive school years exceeds the  
16 performance category assigned to the school being transferred to the person under  
17 this subdivision ~~in each of the 3 preceding consecutive school years~~. If fewer than  
18 3 accountability reports have been published for a school described in this subd. 2.  
19 b., the commissioner shall determine an alternative method for comparing the  
20 school’s performance.

21           **SECTION 19.** 119.9002 (2) (d) 3. a. of the statutes is amended to read:

22           119.9002 (2) (d) 3. a. The performance, on the most recent examinations  
23 administered under s. 118.30 (1s) or (1t), of pupils attending a school operated by the  
24 governing body exceeds the performance, on the most recent examinations

**BILL****SECTION 19**

1 administered under s. 118.30 (1), of pupils attending the school being transferred to  
2 the governing body under this subdivision.

3 **SECTION 20.** 119.9002 (2) (d) 3. b. of the statutes is amended to read:

4 119.9002 (2) (d) 3. b. The In each of the 3 preceding consecutive accountability  
5 reports published under s. 115.385 (1), the performance category assigned to a school  
6 operated by the governing body on accountability reports published under s. 115.385  
7 (1) for the school in each of the 3 preceding consecutive school years exceeds the  
8 performance category assigned to the school being transferred to the governing body  
9 under this subdivision in each of the 3 preceding consecutive school years. If fewer  
10 than 3 accountability reports have been published for a private school described in  
11 this subd. 3. b., the commissioner shall determine an alternative method for  
12 comparing the school's performance.

13 **SECTION 21.** 119.9004 (3) (b) 2. of the statutes is amended to read:

14 119.9004 (3) (b) 2. The school district operating under this chapter has been  
15 assigned in the 3 most recent school years a performance category of "fails to meet  
16 expectations" on the 3 most recent accountability ~~report~~ reports published under s.  
17 115.385 (1).

18 **SECTION 22. Nonstatutory provisions.**

19 (1) PUPIL ASSESSMENTS; PUBLIC HEALTH EMERGENCY EXCEPTION FOR THE 2019-20  
20 SCHOOL YEAR. Sections 115.7915 (5) (b) and (6) (j), 118.30 (1m), (1r), (1s), and (1t),  
21 118.40 (2r) (d) 2. and (2x) (d) 2., 118.60 (7) (b) 1., 119.23 (7) (b) 1., and 121.02 (1) (r)  
22 and (s) do not apply in the 2019-20 school year.

23 (2) DIRECT HOURS OF INSTRUCTION; WAIVER FOR PRIVATE SCHOOLS. In the 2019-20  
24 school year, the governing body of a private school may request the department to  
25 waive any requirement related to providing hours of instruction in chs. 115 to 121,

**BILL**

1 including the requirements in ss. 118.165 (1) (c), 118.60 (2) (a) 8., and 119.23 (2) (a)  
2 8., or in administrative rules promulgated by the department under the authority of  
3 those chapters.

4 (3) STATEWIDE PARENTAL CHOICE PROGRAM; APPLICATIONS FOR THE 2020-21 SCHOOL  
5 YEAR.

6 (a) Notwithstanding s. 118.60 (3) (ar) 1., a private school that submitted a  
7 notice of intent to participate under s. 118.60 (2) (a) 3. a. by January 10, 2020, may  
8 accept applications for the 2020-21 school year until May 14, 2020, from pupils who  
9 reside in a school district, other than an eligible school district, as defined in s. 118.60  
10 (1) (am), or a 1st class city school district.

11 (b) Notwithstanding s. 118.60 (3) (ar) 2., each private school that receives  
12 applications under s. 118.60 (3) (ar) 1. for the 2020-21 school year by the deadline  
13 under par. (a), shall report the information required under s. 118.60 (3) (ar) 2. to the  
14 department of public instruction by May 29, 2020.

15

**(END)**



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-6120/P4  
TJD:skw/ahe/amn

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 **AN ACT** *to create* 895.4801 of the statutes; **relating to:** immunity for health care  
2 professionals and health care providers during public health emergency.

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*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

***Immunity from civil liability for health care providers during COVID-19 emergency***

This bill provides immunity from civil liability for health care professionals and providers and employees, agents, or contractors of those professionals or providers for death, injury, or damages caused by actions or omissions taken in providing services to address or in response to a 2019 novel coronavirus outbreak during an emergency or disaster declared relating to the 2019 novel coronavirus pandemic. To be immune from civil liability, the actions or omissions must not involve reckless or wanton conduct or intentional misconduct and must occur during a good faith response to the emergency or be substantially consistent with either a direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or in response to the emergency or disaster or any published guidance of the Department of Health Services or the federal Department of Health and Human Services relied upon in good faith.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 895.4801 of the statutes is created to read:

2           **895.4801 Immunity for health care providers during COVID-19**  
3 **emergency. (1) DEFINITIONS.** In this section:

4           (a) "Health care professional" means an individual licensed, registered, or  
5 certified by the medical examining board under subch. II of ch. 448 or the board of  
6 nursing under ch. 441.

7           (b) "Health care provider" has the meaning given in s. 146.38 (1) (b) and  
8 includes an adult family home, as defined in s. 50.01 (1).

9           **(2) IMMUNITY.** Subject to sub. (3), any health care professional, health care  
10 provider, or employee, agent, or contractor of a health care professional or health care  
11 provider is immune from civil liability for the death of or injury to any individual or  
12 any damages caused by actions or omissions taken in providing services to address  
13 or in response to a 2019 novel coronavirus outbreak under circumstances that satisfy  
14 all of the following:

15           (a) The action or omission is committed while the professional, provider,  
16 employee, agent, or contractor is providing services during the state of emergency  
17 declared under s. 323.10 relating to the 2019 novel coronavirus pandemic and for the  
18 60 days following the date that the state of emergency terminates.

19           (b) The actions or omissions occur during the person's good faith response to  
20 the emergency described under par. (a) or are substantially consistent with any of  
21 the following:

22           1. Any direction, guidance, recommendation, or other statement made by a  
23 federal, state, or local official to address or in response to the emergency or disaster  
24 declared as described under par. (a).

