

**2021 SENATE JUDICIARY**

**SB 2278**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Judiciary Committee Peace Garden Room, State Capitol

SB 2278  
2/2/2021

A BILL for an Act to create and enact a new section to chapter 15.1-19 of the North Dakota Century Code, relating to school district and employee immunity regarding COVID-19; to provide for application; and to declare an emergency.

### Discussion Topics:

- Providing immunity to teachers and school district employees
- The exclusion of negligence
- Purpose of the emergency clause

Senator David Rust provided testimony in favor #4750 [9:30]

Russell Ziegler NDCEL, Assistant Director Testified in Favor #4730 [9:47]

Senator Myrdal moved to adopt the amendment [LC 21.0152.02001] [9:50]  
Senator Luick seconded the motion [9:50]  
Motion Carries 6-1-0

Vote to amend SB 2278	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	N
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Senator Myrdal moved to make a DO PASS AS AMENDED recommendation [9:51]  
Senator Luick seconded the motion [9:51] Motion Carries 6-1-0

Vote for DO PASS AS AMENDED on SB 2278	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	N
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Senator Myrdal carried

### Additional written testimony:

Alexis Baxley, North Dakota School Board Association provided testimony in favor #4827

Hearing adjourned [9:51]

*Jamal Omar, Committee Clerk*

February 2, 2021

CS  
212  
1041

PROPOSED AMENDMENTS TO SENATE BILL NO. 2278

Page 1, line 22, replace the first underscored comma with "or"

Page 1, line 22, remove ", or infliction of harm"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2278: Judiciary Committee (Sen. Larson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2278 was placed on the Sixth order on the calendar.

Page 1, line 22, replace the first underscored comma with "or"

Page 1, line 22, remove ", or infliction of harm"

Renumber accordingly

## **Introduction SB 2278**

Madam Chair and Members of the Senate Judiciary Committee:

Good morning! For the record I am David Rust, Senator from District 2 which encompasses all of Divide and Burke Counties, Williams County with the exception of most of Williston, and parts of Mountrail County, including the city of Stanley.

Allow me to introduce SB 2278. This bill grants limited immunity to school districts, school board members, administrators, teachers, and other school district personnel from any civil liability from students or other individuals being exposed to COVID-19 in a school, school owned vehicle, or sanctioned events.

The immunity does not apply in cases of gross negligence or willful misconduct. The bill also contains an emergency clause.

The knowledge base of the coronavirus has been an evolving subject with government agencies and health organizations reversing their views and recommendations on a frequent basis.

In March, 2020 schools across the nation were closed to in-person instruction and students were forced to obtain their education either on-line or through other means. Much has been debated about the negative effects of that educational approach. There have been outcries from parents, government officials, and psychologists for schools to re-open.

As you know, the results are varied across the nation, states, and localities ranging from delayed openings, to on-line instruction only, to face-to-face in-person instruction, or to hybrids—part on-line, part in-person.

Schools have been apprehensive with regards to in-person instruction keeping the safety of students and staff as their priority. Using the best information at the time, many did make the decision to re-open either full or part time.

School boards and school officials don't know which decision is right. They may never know. This bill seeks to remove those making such a tenuous decision from being in limbo concerning possible litigation.

Numerous times a day we are inundated with ads on radio and TV that go something like this. "Have you been unnecessarily exposed to.." (You can fill in the blank with the name of the product of your choice). "Call this number. You may be entitled to substantial compensation." I believe it's altogether probable similar ads could become a reality for schools with regards to COVID.

School board members and officials should not have the possibility of litigation hanging over their heads for doing what they believe is best for students and staff in a world with few good answers.

This concludes my testimony. I ask for your support of SB 2278 and will try to answer any questions you may have for me.

Madam Chair.



**SB 2278 – School District Immunity Regarding COVID-19**

**February 2, 2021**

Chairwoman Larson and members of the Senate Judiciary Committee. Thank you for the opportunity to testify in support of SB 2278. I am Dr. Russ Ziegler, assistant director for the North Dakota Council of Educational Leaders. NDCEL is a non-profit agency that represents school leaders in the state of North Dakota. Our membership includes, superintendents, elementary and secondary school principals, athletic directors, business officials, technology leaders and other school personal.

I am here today to support SB 2278. The COVID-19 Pandemic has certainly challenged schools, students, and the individuals who work in them. The schools did their very best in trying to keep everyone safe and healthy. They did this by following the guidelines put forth from the national CDC, state and local health departments, and from the Governor's Office. It is our belief that a school should not be held liable for any damages that resulted from COVID when following the guidelines that were set. This bill will protect the schools from civil liability for damage, loss, or injury that results from a student or any other individual contracting, being exposed to, or potentially being exposed to COVID-19 while in a public school, or other areas designated in the bill. We also agree that this protection would not apply if the damage, loss, or injury was caused by an individual's gross negligence, willful misconduct, or infliction of harm, as the bill states.

We appreciate the legislature in all that you do and would also like to thank the sponsors of SB 2278 for bringing it forward.

I would also like to state that the North Dakota School Boards Association fully supports this bill and Alexis Baxley, Executive Director, wanted me to let you know she did submit her testimony online but regrettably is unable to make it in person.

Thank you and we ask for a Do Pass on SB 2278 and I can stand for any questions.



**NDSBA**  
NORTH DAKOTA SCHOOL  
BOARDS ASSOCIATION

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Bismarck ND 58507-7128  
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**SB 2278**  
**Senate Judiciary Committee**  
**February 2, 2021**  
**Testimony of Alexis Baxley**

Good morning Madame Chair Larson and members of the Senate Judiciary Committee. My name is Alexis Baxley, and I serve as the executive director of the North Dakota School Boards Association. NDSBA represents the elected school boards of all 175 public school districts and several special education units in North Dakota.

NDSBA stands in support of SB 2278. North Dakota school districts and school boards are tasked by Article VIII of the North Dakota Constitution and Chapter 15.1 of North Dakota Century Code to provide a free education for all children of legal school age within their districts. School boards, their administrators, and their staff fulfill this obligation to the best of their abilities every single day.

When the COVID-19 pandemic created a new and particularly daunting set of challenges in executing this duty, school districts found new ways to continue education students. In good faith, they adjusted their delivery model, adjusted their employee leave and student absence policies, adjusted their food services, among a multitude of other things. Beginning in March 2020, districts did their best to protect their students and staff while adhering to continually changing federal and state regulations, directives, and guidance. They did so in order to continue fulfilling their mission while simultaneously doing their best to protect their students and staff from a new virus that not much was known about. The idea that districts, their board members, or their staff might be held liable for damage, loss, or injury as a result of COVID-19 is disheartening.

We struggle to find school board members in many of our communities. As you know, being an elected official is often a thankless job, but you show up every day because you care about the state and its citizens. School board members often have full-time jobs and families, from which they sacrifice time for their local school district because they care. I worry that without the type of liability-protection included in SB 2278, fewer North Dakotans will be willing to step up and serve.

We appreciate Senator Rust and the bill sponsors who have brought this bill forward and believe that protecting our school districts from liability related to the COVID-19 pandemic is necessary to continue operating public schools without interruption.

NDSBA supports SB 2278 for these reasons and asks that the committee give it a Do Pass recommendation.



**2021 HOUSE JUDICIARY**

**SB 2278**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Judiciary

Room JW327B, State Capitol

SB 2278  
3/23/2021

Relating to school district and employee immunity regarding COVID-19; to provide for application; and to declare an emergency.

**Vice Chairmanb Karls** called the hearing at 8:30 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter. Absent: Christensen

### Discussion Topics:

- Gross negligence
- Emergency clause
- Emotional implications for parents , students and teachers

**Senator Rust:** Introduced the bill. Testimony # 10232

**Russell Zingler, Ass't Director, NDCEL:** Testimony #10395 8:39

**Alexis Baxley, Executive Director, School Board Association:** Testified in favor 8:43

**Rep. Karls** closed the hearing at 8:48.

**Rep. T. Jones:** Do Pass Motion

**Rep. Roers Jones:** Seconded

Roll call vote;

<b>Representatives</b>	<b>Vote</b>
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	A
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	N
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	A
Rep Vetter	Y
Rep Buffalo	Y
Rep K. Hanson	Y

Motion carried 11-1-2 Carrier; Rep. Karls

Stopped 8:55

DeLores D. Shimek  
Committee Clerk

**REPORT OF STANDING COMMITTEE**

**SB 2278, as engrossed: Judiciary Committee (Rep. Klemin, Chairman)** recommends **DO PASS** (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2278 was placed on the Fourteenth order on the calendar.

## **SB 2278 Introduction**

Chairman Klemin and Members of the House Judiciary Committee:

Good morning! For the record I am David Rust, Senator from District 2 which encompasses all of Divide and Burke Counties, all of Williams County with the exception of most of Williston, and parts of Mountrail County, including the city of Stanley.

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The immunity does not apply in cases of gross negligence or willful misconduct. The bill also contains an emergency clause.

The knowledge base of the coronavirus has been an evolving subject with government agencies and health organizations reversing their views and recommendations on a frequent basis.

A year ago schools across the nation were closed to in-person instruction and students were forced to obtain their education either on-line or through other means. Much has been debated about the negative effects of that educational approach. There have been outcries from parents, government officials, and psychologists for schools to re-open.

As you know, the results are varied across the nation, states, and localities ranging from delayed openings, to on-line instruction only, to face-to-face in-person instruction, or to hybrids—part on-line, part in-person.

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School boards and school officials don't know which decision is right. They may never know. This bill seeks to remove those making such a tenuous decision from being in limbo concerning possible litigation.

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School board members and officials should not have the possibility of litigation hanging over their heads for doing what they believe is best for students and staff in a world with few good answers.

This concludes my testimony. I ask for your support of SB 2278 and will try to answer any questions you may have for me.

Mr. Chairman.



**SB 2278 – School District Immunity Regarding COVID-19**

**March 23, 2021**

Chairman Klemm and members of the House Judiciary Committee. Thank you for the opportunity to testify in support of SB 2278. I am Dr. Russ Ziegler, assistant director for the North Dakota Council of Educational Leaders. NDCEL is a non-profit agency that represents school leaders in the state of North Dakota.

I am here today to support SB 2278. The COVID-19 Pandemic has certainly challenged schools, students, and the individuals who work in them. The schools did their very best in trying to keep everyone safe and healthy. They did this by following the guidelines put forth from the national CDC, state and local health departments, and from the Governor's Office. It is our belief that a school should not be held liable for any damages that resulted from COVID when following the guidelines that were set. This bill will protect the schools from civil liability for damage, loss, or injury that results from a student or any other individual contracting, being exposed to, or potentially being exposed to COVID-19 while in a public school, or other areas designated in the bill. We also agree that this protection would not apply if the damage, loss, or injury was caused by an individual's gross negligence, willful misconduct, or infliction of harm, as the bill states.

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