

117TH CONGRESS  
1ST SESSION

# H. R. 5079

To provide liability protection for elementary schools, secondary schools, and institutions of higher education during the COVID–19 public health emergency, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 23, 2021

Mr. MURPHY of North Carolina (for himself, Mr. WEBER of Texas, Mr. BARR, Mr. NORMAN, Mr. HUDSON, Mr. LAMBORN, Mr. CLINE, Mr. BISHOP of North Carolina, Ms. LETLOW, Mr. TIFFANY, Mrs. MILLER-MEEKS, Mr. ALLEN, and Mr. OBERNOLTE) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To provide liability protection for elementary schools, secondary schools, and institutions of higher education during the COVID–19 public health emergency, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Open Schools Respon-  
5 sibly Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) In December 2019, a novel (new)  
2 coronavirus known as SARS-CoV-2 was first de-  
3 tected in Wuhan, Hubei Province, People’s Republic  
4 of China, causing outbreaks of the coronavirus dis-  
5 ease COVID-19 that has now spread globally.

6           (2) Secretary Azar declared a Public Health  
7 Emergency under section 319 of the Public Health  
8 Service Act (42 U.S.C. 247d) for the United States  
9 for the transmission of the 2019 novel coronavirus,  
10 originating out of Wuhan, Hubei Province China, on  
11 January 31, 2020.

12           (3) President Donald J. Trump proclaimed, on  
13 March 13, 2020, that the COVID-19 outbreak in  
14 the United States constitutes a national emergency,  
15 beginning March 1, 2020.

16           (4) In order to catalyze and stabilize consistent  
17 growth in the economy, schools must be protected  
18 from liability of persons on campus (including stu-  
19 dents, employees, and visitors) who assume the risk  
20 of contracting the virus upon return to the 2021-  
21 2022 academic school year. There is a strong desire  
22 from Congress to make sure academic institutions  
23 re-open as swiftly and safely as possible, without  
24 threat of economic penalties from assumed risk.

1 **SEC. 3. LIMITATION ON LIABILITY FOR ELEMENTARY**  
2 **SCHOOLS, SECONDARY SCHOOLS, AND INSTI-**  
3 **TUTIONS OF HIGHER EDUCATION DURING**  
4 **THE COVID-19 PUBLIC HEALTH EMERGENCY.**

5 (a) **LIMITATION ON LIABILITY.**—Except as provided  
6 in subsection (b), an elementary school, secondary school,  
7 or institution of higher education shall not be liable under  
8 Federal or State law to a covered individual for any harm  
9 caused by an act or omission of the school or institution  
10 with respect to any harm arising from that individual’s  
11 exposure to, or infection by, the virus that causes COVID–  
12 19 during the public health emergency with respect to  
13 COVID–19 declared by the Secretary of Health and  
14 Human Services (referred to in this section as the “Sec-  
15 retary”) under section 319 of the Public Health Service  
16 Act (42 U.S.C. 247d) on January 31, 2020, if the school  
17 or institution was in compliance with applicable require-  
18 ments issued by the applicable State.

19 (b) **EXCEPTIONS.**—Subsection (a) does not apply if  
20 the harm was caused by an act or omission constituting  
21 willful or criminal misconduct, gross negligence, reckless  
22 misconduct, or a conscious flagrant indifference to the  
23 rights or safety of the covered individual harmed by the  
24 school or institution.

25 (c) **PREEMPTION.**—This section preempts the laws of  
26 a State or any political subdivision of a State to the extent

1 that such laws are inconsistent with this section, unless  
2 such laws provide greater protection from liability.

3 (d) EFFECTIVE DATE.—This section shall take effect  
4 as if enacted on January 31, 2022, and applies with re-  
5 spect to a claim for harm if the act or omission that  
6 caused such harm occurred on or after such date.

7 (e) SUNSET.—This section shall sunset on January  
8 31, 2025.

9 (f) DEFINITIONS.—In this Act:

10 (1) The terms “elementary school” and “sec-  
11 ondary school” have the meanings given such terms  
12 in section 8101 of the Elementary and Secondary  
13 Education Act of 1965 (20 U.S.C. 7801).

14 (2) The term “institution of higher education”  
15 has the meaning given such term in section 102 of  
16 the Higher Education Act of 1965 (20 U.S.C.  
17 1002).

18 (3) The term “covered individual” means, with  
19 respect to an elementary school, secondary school, or  
20 institution of higher education—

21 (A) a student at the school or institution;

22 (B) an individual who is employed at the  
23 school or institution; or

24 (C) a visitor at the school or institution.

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