

BILL ANALYSIS

S.B. 930
By: Shapiro
Civil Practices
Committee Report (Amended)

BACKGROUND AND PURPOSE

According to the Texas Classroom Teachers Association, teachers have been sued for special education techniques, student injuries in the classroom and on the playground, and for other reasons. The United States Department of Education states that fear of litigation is one of the top three concerns among teachers. S.B. 930 maintains the current broad immunities that Texas law provides for teachers; incorporates the No Child Left Behind Coverdell Provision; adds specific protections from disciplinary proceedings for school professionals who use reasonable force to maintain order and discipline; caps the liability of a school professional at \$100,000 for acts within the scope of duty; requires the exhaustion of district level remedies before suit and 90 day notice of suit; allows courts to refer cases to alternative dispute resolution; and provides recovery of attorney's fees if the professional employee substantially prevails.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Chapter 22B, Education Code, by amending Section 22.051 and adding Sections 22.0511- 22.0517, as follows:

Sec. 22.051. DEFINITION. Defines "professional employee of a school district."

Sec. 22.0511. New heading: IMMUNITY FROM LIABILITY. Redesignated from Section 22.051. (c) Establishes that in addition to the immunity provided under this section and under other provision of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.), as amended. Requires nothing in this subsection to be construed to limit or abridge any immunity or protection afforded an individual under state law. Provides, for the purposes of this subsection, "individual" includes a person who provides services to private schools, to the extent provided by federal law. Deletes the definition of "professional employee."

Sec. 22.0512. IMMUNITY FROM DISCIPLINARY PROCEEDINGS FOR PROFESSIONAL EMPLOYEES. (a) Prohibits a professional employee of a school district from being subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Section 9.62 (Educator-Student) Penal Code.

(b) Defines "disciplinary proceeding."

(c) Requires that nothing in this section prohibit a school district from enforcing a policy relating to corporal punishment.

Sec. 22.0513. NOTICE OF CLAIM. (a) Requires a person, by the 90th day before the date

a person files a suit against a professional employee of a school district, to give a written notice to the employee of the claim, reasonably describing the incident from which the claim arose.

(b) Authorizes a professional employee of a school district against whom a suit is pending who does not receive a written notice, to file a plea in abatement by the 30th day after the date the person files an original answer in the court in which the suit is pending.

(c) Requires the court to abate suit, if after the hearing, it finds that the person is entitled to abatement because notice was not provided as required by this section.

(d) Provides that an abatement under Subsection (c) continues until the 90th day after the date that a written notice is given to the professional employee of a school district as provided by Subsection (a).

Sec. 22.0514. EXHAUSTION OF REMEDIES. Prohibits a person from filing suit against a professional employee of a school district unless the person has exhausted the remedies provided by the school district for resolving the complaint.

Sec. 22.0515. LIMITATION ON DAMAGES. (a) Prohibits the liability of a professional employee of a school district for an act incident to or within the scope of duties of the employee's position of employment from exceeding \$100,000, subject to Subsection (b). Provides that the limitation on liability provided by this subsection does not apply to any attorney's fee or court costs that may be awarded against the professional employee under Section 22.0517.

(b) Provides that the limitation on liability provided by Subsection (a) does not apply if the actions of the professional employee of a school district constitute gross negligence.

Sec. 22.0516. ALTERNATIVE DISPUTE RESOLUTION. Authorizes a court in which a judicial proceeding is being brought against a professional employee of a school district to refer the case to an alternative dispute resolution procedure as described by Chapter 154 (Alternative Dispute Resolution Procedures), Civil Practice and Remedies Code.

Sec. 22.0517. RECOVERY OF ATTORNEY'S FEES IN ACTION AGAINST PROFESSIONAL EMPLOYEE. Provides that in an action against a professional employee of a school district based on an allegation that the employee physically abused a student, the employee is entitled to recover attorney's fees and court costs from the plaintiff if the employee substantially prevails.

SECTIONS 2 through 5 make conforming changes.

EFFECTIVE DATE

September 1, 2003

EXPLANATION OF AMENDMENTS

The committee amendment adds "a member of the board of trustees of an independent school district" to the definition of "professional employee of a school district".