

By: Hope

H.B. No. 2173

A BILL TO BE ENTITLED

AN ACT

relating to the liability of school employees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 22, Education Code, is amended by amending Section 22.051 and adding Sections 22.0511 through 22.0517 to read as follows:

Sec. 22.051. DEFINITION. In this subchapter, "professional employee of a school district" includes:

(1) a superintendent, principal, teacher, supervisor, social worker, counselor, nurse, and teacher's aide employed by a school district;

(2) a teacher employed by a company that contracts with a school district to provide the teacher's services to the district;

(3) a student in an education preparation program participating in a field experience or internship;

(4) a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety of the State of Texas;

(5) a member of the board of trustees of an independent school district; and

(6) any other person employed by a school district whose employment requires certification and the exercise of discretion.

1        Sec. 22.0511. IMMUNITY FROM LIABILITY [~~FOR PROFESSIONAL~~  
2 ~~EMPLOYEES~~]. (a) A professional employee of a school district is  
3 not personally liable for any act that is incident to or within the  
4 scope of the duties of the employee's position of employment and  
5 that involves the exercise of judgment or discretion on the part of  
6 the employee, except in circumstances in which a professional  
7 employee uses excessive force in the discipline of students or  
8 negligence resulting in bodily injury to students.

9        (b) This section does not apply to the operation, use, or  
10 maintenance of any motor vehicle.

11        (c) In addition to the immunity provided under this section  
12 and under other provisions of state law, an individual is entitled  
13 to any immunity and any other protections afforded under the Paul D.  
14 Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et  
15 seq.), as amended. Nothing in this subsection shall be construed to  
16 limit or abridge any immunity or protection afforded an individual  
17 under state law. For purposes of this subsection, "individual"  
18 includes a person who provides services to private schools, to the  
19 extent provided by federal law [~~this section, "professional~~  
20 ~~employee" includes:~~

21                [~~(1) a superintendent, principal, teacher,~~  
22 ~~supervisor, social worker, counselor, nurse, and teacher's aide,~~

23                [~~(2) a student in an education preparation program~~  
24 ~~participating in a field experience or internship,~~

25                [~~(3) a school bus driver certified in accordance with~~  
26 ~~standards and qualifications adopted by the Department of Public~~  
27 ~~Safety, and~~

1           ~~[(4) any other person whose employment requires~~  
2 ~~certification and the exercise of discretion].~~

3           Sec. 22.0513. NOTICE OF CLAIM. (a) Not later than the 90th  
4 day before the date a person files a suit against a professional  
5 employee of a school district, the person must give written notice  
6 to the employee of the claim, reasonably describing the incident  
7 from which the claim arose.

8           (b) A professional employee of a school district against  
9 whom a suit is pending who does not receive written notice, as  
10 required by Subsection (a), may file a plea in abatement not later  
11 than the 30th day after the date the person files an original answer  
12 in the court in which the suit is pending.

13           (c) The court shall abate the suit if the court, after a  
14 hearing, finds that the person is entitled to an abatement because  
15 notice was not provided as required by this section.

16           (d) An abatement under Subsection (c) continues until the  
17 90th day after the date that written notice is given to the  
18 professional employee of a school district as provided by  
19 Subsection (a).

20           Sec. 22.0514. EXHAUSTION OF REMEDIES. A person may not file  
21 suit against a professional employee of a school district unless  
22 the person has exhausted the remedies provided by the school  
23 district for resolving the complaint.

24           Sec. 22.0515. LIMITATION ON DAMAGES. (a) Subject to  
25 Subsection (b), the liability of a professional employee of a  
26 school district for an act incident to or within the scope of duties  
27 of the employee's position of employment may not exceed \$100,000.

1 The limitation on liability provided by this subsection does not  
2 apply to any attorney's fees or court costs that may be awarded  
3 against the professional employee under Section 22.0517.

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

7 Sec. 22.0516. ALTERNATIVE DISPUTE RESOLUTION. A court in  
8 which a judicial proceeding is being brought against a professional  
9 employee of a school district may refer the case to an alternative  
10 dispute resolution procedure as described by Chapter 154, Civil  
11 Practice and Remedies Code.

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

18 SECTION 2. Subsection (a), Section 22.053, Education Code,  
19 is amended to read as follows:

20 (a) A volunteer who is serving as a direct service volunteer  
21 of a school district is immune from civil liability to the same  
22 extent as a professional employee of a school district under  
23 Section 22.0511 [~~22.051~~].

24 SECTION 3. Subsection (c), Section 30.024, Education Code,  
25 is amended to read as follows:

26 (c) In addition to any other federal and state statutes  
27 limiting the liability of employees at the school, Sections

1 22.0511, 22.0512 [~~22.051~~], 22.052, and 22.053, respectively, apply  
2 to professional employees and volunteers of the school.

3 SECTION 4. Subsection (c), Section 30.055, Education Code,  
4 is amended to read as follows:

5 (c) In addition to any other federal and state statutes  
6 limiting the liability of employees at the school, Sections  
7 22.0511, 22.0512 [~~22.051~~], 22.052, and 22.053, respectively, apply  
8 to professional employees and volunteers of the school.

9 SECTION 5. Subsection (e), Section 105.301, Education Code,  
10 is amended to read as follows:

11 (e) The academy is not subject to the provisions of this  
12 code, or to the rules of the Texas Education Agency, regulating  
13 public schools, except that:

14 (1) professional employees of the academy are entitled  
15 to the limited liability of an employee under Section 22.0511,  
16 22.0512, [~~22.051~~] or 22.052;

17 (2) a student's attendance at the academy satisfies  
18 compulsory school attendance requirements; and

19 (3) for each student enrolled, the academy is entitled  
20 to allotments from the foundation school program under Chapter 42  
21 as if the academy were a school district, except that the academy  
22 has a local share applied that is equivalent to the local fund  
23 assignment of the Denton Independent School District.

24 SECTION 6. The change in law made by this Act applies only  
25 to a suit for damages or a school employee disciplinary proceeding  
26 involving conduct that occurs on or after September 1, 2003. A suit  
27 for damages or a school employee disciplinary proceeding involving

1   conduct that occurs before September 1, 2003, is governed by the law  
2   in effect on the date the conduct occurs, and the former law is  
3   continued in effect for that purpose.

4           SECTION 7.   If any provision of this Act or its application  
5   to any person or circumstance is held invalid, the invalidity does  
6   not affect other provisions or applications of this Act that can be  
7   given effect without the invalid provision or application, and to  
8   this end the provisions of this Act are declared to be severable.

9           SECTION 8.   This Act takes effect September 1, 2003.