

AN ACT

relating to the liability of school districts, school employees,
and school board members.

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; OTHER IMMUNITY. (a) In this
subchapter, "professional employee of a school district" includes:

(1) a superintendent, principal, teacher, including a
substitute 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

1 discretion.

2 (b) The statutory immunity provided by this subchapter is in
3 addition to and does not preempt the common law doctrine of official
4 and governmental immunity.

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

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

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

25 [(1) a superintendent, principal, teacher,
26 supervisor, social worker, counselor, nurse, and teacher's aide,

27 [(2) a student in an education preparation program

~~participating in a field experience or internship;~~

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

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

Sec. 22.0512. IMMUNITY FROM DISCIPLINARY PROCEEDINGS FOR PROFESSIONAL EMPLOYEES. (a) A professional employee of a school district may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under Section 9.62, Penal Code.

(b) In this section, "disciplinary proceeding" means:

(1) an action brought by the school district employing a professional employee of a school district to discharge or suspend the employee or terminate or not renew the employee's term contract; or

(2) an action brought by the State Board for Educator Certification to enforce the educator's code of ethics adopted under Section 21.041(b)(8).

(c) This section does not prohibit a school district from:

(1) enforcing a policy relating to corporal punishment; or

(2) notwithstanding Subsection (a), bringing a disciplinary proceeding against a professional employee of the district who violates the district policy relating to corporal punishment.

Sec. 22.0513. NOTICE OF CLAIM. (a) Not later than the 90th

1 day before the date a person files a suit against a professional
2 employee of a school district, the person must give written notice
3 to the employee of the claim, reasonably describing the incident
4 from which the claim arose.

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

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

13 (d) An abatement under Subsection (c) continues until the
14 90th day after the date that written notice is given to the
15 professional employee of a school district as provided by
16 Subsection (a).

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

21 Sec. 22.0515. LIMITATION ON DAMAGES. The liability of a
22 professional employee of a school district or of an individual that
23 is entitled to any immunity and other protections afforded under
24 the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C.
25 Section 6731 et seq.), as amended, for an act incident to or within
26 the scope of duties of the employee's position of employment may not
27 exceed \$100,000. The limitation on liability provided by this

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

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

9 Sec. 22.0517. RECOVERY OF ATTORNEY'S FEES IN ACTION AGAINST
10 PROFESSIONAL EMPLOYEE. In an action against a professional
11 employee of a school district involving an act that is incidental to
12 or within the scope of duties of the employee's position of
13 employment and brought against the employee in the employee's
14 individual capacity, the employee is entitled to recover attorney's
15 fees and court costs from the plaintiff if the employee is found
16 immune from liability under this subchapter.

17 SECTION 2. Subsection (a), Section 22.052, Education Code,
18 is amended to read as follows:

19 (a) On the adoption of policies concerning the
20 administration of medication to students by school district
21 employees, the school district, its board of trustees, and its
22 employees are immune from civil liability from damages or injuries
23 resulting from the administration of medication to a student if:

24 (1) the school district has received a written request
25 to administer the medication from the parent, legal guardian, or
26 other person having legal control of the student; and

27 (2) when administering prescription medication, the

medication is administered either:

(A) from a container that appears to be:

(i) [in] the original container; and

(ii) [to be] properly labeled; or

(B) from a properly labeled unit dosage container filled by a registered nurse or another qualified district employee, as determined by district policy, from a container described by Paragraph (A).

SECTION 3. Subsection (a), Section 22.053, Education Code, is amended to read as follows:

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

SECTION 4. Subsection (c), Section 30.024, Education Code, is amended to read as follows:

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

SECTION 5. Subsection (c), Section 30.055, Education Code, is amended to read as follows:

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

SECTION 6. Subsection (e), Section 105.301, Education Code,

1 is amended to read as follows:

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

5 (1) professional employees of the academy are entitled
6 to the limited liability of an employee under Section 22.0511,
7 22.0512, [~~22.051~~] or 22.052;

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

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

15 SECTION 7. The change in law made by this Act applies only
16 to a suit for damages or a school employee disciplinary proceeding
17 involving conduct that occurs on or after September 1, 2003. A suit
18 for damages or a school employee disciplinary proceeding involving
19 conduct that occurs before September 1, 2003, is governed by the law
20 in effect on the date the conduct occurs, and the former law is
21 continued in effect for that purpose.

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

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

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 930 passed the Senate on April 25, 2003, by a viva-voce vote; and that the Senate concurred in House amendments on May 29, 2003, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 930 passed the House, with amendments, on May 25, 2003, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor