

By: Shapiro

S.B. No. 930

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, 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; and

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

Sec. 22.0511. IMMUNITY FROM LIABILITY [~~FOR PROFESSIONAL EMPLOYEES~~]. (a) A professional employee of a school district is

1 not personally liable for any act that is incident to or within the
2 scope of the duties of the employee's position of employment and
3 that involves the exercise of judgment or discretion on the part of
4 the employee, except in circumstances in which a professional
5 employee uses excessive force in the discipline of students or
6 negligence resulting in bodily injury to students.

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

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

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

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

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

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

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

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

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

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

14 (c) Nothing in this section shall prohibit a school district
15 from enforcing a policy relating to corporal punishment.

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

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

26 (c) The court shall abate the suit if the court, after a
27 hearing, finds that the person is entitled to an abatement because

1 notice was not provided as required by this section.

2 (d) An abatement under Subsection (c) continues until the
3 90th day after the date that written notice is given to the
4 professional employee of a school district as provided by
5 Subsection (a).

6 Sec. 22.0514. EXHAUSTION OF REMEDIES. A person may not file
7 suit against a professional employee of a school district unless
8 the person has exhausted the remedies provided by the school
9 district for resolving the complaint.

10 Sec. 22.0515. LIMITATION ON DAMAGES. (a) Subject to
11 Subsection (b), the liability of a professional employee of a
12 school district for an act incident to or within the scope of duties
13 of the employee's position of employment may not exceed \$100,000.
14 The limitation on liability provided by this subsection does not
15 apply to any attorney's fees or court costs that may be awarded
16 against the professional employee under Section 22.0517.

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

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

25 Sec. 22.0517. RECOVERY OF ATTORNEY'S FEES IN ACTION AGAINST
26 PROFESSIONAL EMPLOYEE. In an action against a professional
27 employee of a school district based on an allegation that the

1 employee physically abused a student, the employee is entitled to
2 recover attorney's fees and court costs from the plaintiff if the
3 employee substantially prevails.

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

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

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

12 (c) In addition to any other federal and state statutes
13 limiting the liability of employees at the school, Sections
14 22.0511, 22.0512 [~~22.051~~], 22.052, and 22.053, respectively, apply
15 to professional employees and volunteers of the school.

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

18 (c) In addition to any other federal and state statutes
19 limiting the liability of employees at the school, Sections
20 22.0511, 22.0512 [~~22.051~~], 22.052, and 22.053, respectively, apply
21 to professional employees and volunteers of the school.

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

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

27 (1) professional employees of the academy are entitled

1 to the limited liability of an employee under Section 22.0511,
2 22.0512, [~~22.051~~] or 22.052;

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

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

10 SECTION 6. The change in law made by this Act applies only
11 to a suit for damages or a school employee disciplinary proceeding
12 involving conduct that occurs on or after September 1, 2003. A suit
13 for damages or a school employee disciplinary proceeding involving
14 conduct that occurs before September 1, 2003, is governed by the law
15 in effect on the date the conduct occurs, and the former law is
16 continued in effect for that purpose.

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

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

1 COMMITTEE AMENDMENT NO. 1

2 Amend SB 930 on page one by striking lines 7-22 and
3 substituting the following:

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

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

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

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

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

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

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

22 King