

1-1 By: Shapiro S.B. No. 930
1-2 (In the Senate - Filed March 6, 2003; March 11, 2003, read
1-3 first time and referred to Committee on Education; April 7, 2003,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 6, Nays 0, 1 present not voting;
1-6 April 7, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 930 By: Shapiro

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the liability of school employees.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subchapter B, Chapter 22, Education Code, is
1-13 amended by amending Section 22.051 and adding Sections 22.0511
1-14 through 22.0517 to read as follows:

1-15 Sec. 22.051. DEFINITION. In this subchapter, "professional
1-16 employee of a school district" includes:

1-17 (1) a superintendent, principal, teacher, including a
1-18 substitute teacher, supervisor, social worker, counselor, nurse,
1-19 and teacher's aide employed by a school district;

1-20 (2) a teacher employed by a company that contracts
1-21 with a school district to provide the teacher's services to the
1-22 district;

1-23 (3) a student in an education preparation program
1-24 participating in a field experience or internship;

1-25 (4) a school bus driver certified in accordance with
1-26 standards and qualifications adopted by the Department of Public
1-27 Safety of the State of Texas; and

1-28 (5) any other person employed by a school district
1-29 whose employment requires certification and the exercise of
1-30 discretion.

1-31 Sec. 22.0511. IMMUNITY FROM LIABILITY [FOR PROFESSIONAL
1-32 EMPLOYEES]. (a) A professional employee of a school district is
1-33 not personally liable for any act that is incident to or within the
1-34 scope of the duties of the employee's position of employment and
1-35 that involves the exercise of judgment or discretion on the part of
1-36 the employee, except in circumstances in which a professional
1-37 employee uses excessive force in the discipline of students or
1-38 negligence resulting in bodily injury to students.

1-39 (b) This section does not apply to the operation, use, or
1-40 maintenance of any motor vehicle.

1-41 (c) In addition to the immunity provided under this section
1-42 and under other provisions of state law, an individual is entitled
1-43 to any immunity and any other protections afforded under the Paul D.
1-44 Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et
1-45 seq.), as amended. Nothing in this subsection shall be construed to
1-46 limit or abridge any immunity or protection afforded an individual
1-47 under state law. For purposes of this subsection, "individual"
1-48 includes a person who provides services to private schools, to the
1-49 extent provided by federal law [this section, "professional
1-50 employee" includes:

1-51 [(1) a superintendent, principal, teacher,
1-52 supervisor, social worker, counselor, nurse, and teacher's aide;

1-53 [(2) a student in an education preparation program
1-54 participating in a field experience or internship;

1-55 [(3) a school bus driver certified in accordance with
1-56 standards and qualifications adopted by the Department of Public
1-57 Safety; and

1-58 [(4) any other person whose employment requires
1-59 certification and the exercise of discretion].

1-60 Sec. 22.0512. IMMUNITY FROM DISCIPLINARY PROCEEDINGS FOR
1-61 PROFESSIONAL EMPLOYEES. (a) A professional employee of a school
1-62 district may not be subject to disciplinary proceedings for the
1-63 employee's use of physical force against a student to the extent

2-1 justified under Section 9.62, Penal Code.

2-2 (b) In this section, "disciplinary proceeding" means:

2-3 (1) an action brought by the school district employing
2-4 a professional employee of a school district to discharge or
2-5 suspend the employee or terminate or not renew the employee's term
2-6 contract; or

2-7 (2) an action brought by the State Board for Educator
2-8 Certification to enforce the educator's code of ethics adopted
2-9 under Section 21.041(b)(8).

2-10 (c) Nothing in this section shall prohibit a school district
2-11 from enforcing a policy relating to corporal punishment.

2-12 Sec. 22.0513. NOTICE OF CLAIM. (a) Not later than the 90th
2-13 day before the date a person files a suit against a professional
2-14 employee of a school district, the person must give written notice
2-15 to the employee of the claim, reasonably describing the incident
2-16 from which the claim arose.

2-17 (b) A professional employee of a school district against
2-18 whom a suit is pending who does not receive written notice, as
2-19 required by Subsection (a), may file a plea in abatement not later
2-20 than the 30th day after the date the person files an original answer
2-21 in the court in which the suit is pending.

2-22 (c) The court shall abate the suit if the court, after a
2-23 hearing, finds that the person is entitled to an abatement because
2-24 notice was not provided as required by this section.

2-25 (d) An abatement under Subsection (c) continues until the
2-26 90th day after the date that written notice is given to the
2-27 professional employee of a school district as provided by
2-28 Subsection (a).

2-29 Sec. 22.0514. EXHAUSTION OF REMEDIES. A person may not file
2-30 suit against a professional employee of a school district unless
2-31 the person has exhausted the remedies provided by the school
2-32 district for resolving the complaint.

2-33 Sec. 22.0515. LIMITATION ON DAMAGES. (a) Subject to
2-34 Subsection (b), the liability of a professional employee of a
2-35 school district for an act incident to or within the scope of duties
2-36 of the employee's position of employment may not exceed \$100,000.
2-37 The limitation on liability provided by this subsection does not
2-38 apply to any attorney's fees or court costs that may be awarded
2-39 against the professional employee under Section 22.0517.

2-40 (b) The limitation on liability provided by Subsection (a)
2-41 does not apply if the actions of the professional employee of a
2-42 school district constitute gross negligence.

2-43 Sec. 22.0516. ALTERNATIVE DISPUTE RESOLUTION. A court in
2-44 which a judicial proceeding is being brought against a professional
2-45 employee of a school district may refer the case to an alternative
2-46 dispute resolution procedure as described by Chapter 154, Civil
2-47 Practice and Remedies Code.

2-48 Sec. 22.0517. RECOVERY OF ATTORNEY'S FEES IN ACTION AGAINST
2-49 PROFESSIONAL EMPLOYEE. In an action against a professional
2-50 employee of a school district based on an allegation that the
2-51 employee physically abused a student, the employee is entitled to
2-52 recover attorney's fees and court costs from the plaintiff if the
2-53 employee substantially prevails.

2-54 SECTION 2. Subsection (a), Section 22.053, Education Code,
2-55 is amended to read as follows:

2-56 (a) A volunteer who is serving as a direct service volunteer
2-57 of a school district is immune from civil liability to the same
2-58 extent as a professional employee of a school district under
2-59 Section 22.0511 [~~22.051~~].

2-60 SECTION 3. Subsection (c), Section 30.024, Education Code,
2-61 is amended to read as follows:

2-62 (c) In addition to any other federal and state statutes
2-63 limiting the liability of employees at the school, Sections
2-64 22.0511, 22.0512 [~~22.051~~], 22.052, and 22.053, respectively, apply
2-65 to professional employees and volunteers of the school.

2-66 SECTION 4. Subsection (c), Section 30.055, Education Code,
2-67 is amended to read as follows:

2-68 (c) In addition to any other federal and state statutes
2-69 limiting the liability of employees at the school, Sections

3-1 22.0511, 22.0512 [~~22.051~~], 22.052, and 22.053, respectively, apply
3-2 to professional employees and volunteers of the school.

3-3 SECTION 5. Subsection (e), Section 105.301, Education Code,
3-4 is amended to read as follows:

3-5 (e) The academy is not subject to the provisions of this
3-6 code, or to the rules of the Texas Education Agency, regulating
3-7 public schools, except that:

3-8 (1) professional employees of the academy are entitled
3-9 to the limited liability of an employee under Section 22.0511,
3-10 22.0512, [~~22.051~~] or 22.052;

3-11 (2) a student's attendance at the academy satisfies
3-12 compulsory school attendance requirements; and

3-13 (3) for each student enrolled, the academy is entitled
3-14 to allotments from the foundation school program under Chapter 42
3-15 as if the academy were a school district, except that the academy
3-16 has a local share applied that is equivalent to the local fund
3-17 assignment of the Denton Independent School District.

3-18 SECTION 6. The change in law made by this Act applies only
3-19 to a suit for damages or a school employee disciplinary proceeding
3-20 involving conduct that occurs on or after September 1, 2003. A suit
3-21 for damages or a school employee disciplinary proceeding involving
3-22 conduct that occurs before September 1, 2003, is governed by the law
3-23 in effect on the date the conduct occurs, and the former law is
3-24 continued in effect for that purpose.

3-25 SECTION 7. If any provision of this Act or its application
3-26 to any person or circumstance is held invalid, the invalidity does
3-27 not affect other provisions or applications of this Act that can be
3-28 given effect without the invalid provision or application, and to
3-29 this end the provisions of this Act are declared to be severable.

3-30 SECTION 8. This Act takes effect September 1, 2003.

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