

SUBJECT: School district liability for employee sexual misconduct with children

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 6 ayes — Gray, Hilbert, Bosse, Goodman, Nixon, Roman

0 nays

1 present, not voting — Zbranek

2 absent — Alvarado, Dutton

WITNESSES: For — None

Against — Shellie Hoffman, Texas Association of School Boards; Richard Powell, Texas Association of School Administrators

On — None

DIGEST: HB 2911 would allow a school district to be held liable for personal injury or death if:

- the personal injury or death were caused by the sexual misconduct of an employee with a student of the district;
- the employee came into contact with students in the scope of the employee's employment with the district, and
- the district knew or should have known the employee posed a risk to students because of specific facts known to the district.

A district found liable would not have such damages limited by the Texas Tort Claims Act. There would be no restriction on receiving punitive damages and the employee could be liable for the same conduct.

Sexual misconduct would include any conduct in violation of Chapter 21 of the Penal Code, sexual offenses, if the victim was younger than 18, regardless of whether or not the employee was actually convicted of the offense. HB 2911 would make conforming changes to the Texas Tort

Claims Act to allow a district to be held liable for such actions by its employees.

The bill would apply only to causes of action accruing on or after the effective date, September 1, 1997.

**SUPPORTERS
SAY:**

The potential for school district employees to harm children through sexual misconduct is one of the most serious threats to children of this state. If a school district possessed information that should have led them to believe an employee could be a threat to children, that district should take all steps necessary to ensure that such an employee does not come into contact with students. While policies and regulations mandate that districts take precautions that such employees do not come into contact with children, the only way to ensure that a district will take all precautions available is to allow the threat of litigation if the district fails to remove the risk to students.

The purpose of HB 2911 is not to allow a cause of action against districts, but to allow that threat of litigation to spur districts into action to remove any potential risks to students from employees. Any cases filed under this action would have to prove that the district knew specific facts about the employee and that those facts should have led the district to know that the employee would present a risk to students. This is a very narrowly tailored standard designed to create liability only when the district failed to act on specific facts known to the district. A general allegation that certain types of individuals pose a threat would not be sufficient to warrant liability.

**OPPONENTS
SAY:**

HB 2911 would allow virtually unlimited liability against already financially burdened school districts for actions taken by the employees of the district. In order to prevent litigation, a district would be required to conduct thorough background checks of any employees and remove any employee who the district should know poses a risk. This is a very broad standard that could allow liability in numerous circumstances.

Society's tension regarding sexual offenses with children can increase the

possibility of an individual being presumed to be guilty when accused. This legislation could also increase the possibility that a jury would award damages against a school district whether or not liability would be proper under the standards expressed in the bill.