

- SUBJECT:** Limiting liability for professional employees of school districts
- COMMITTEE:** Civil Practices — favorable, with amendment
- VOTE:** 5 ayes — Gattis, Hartnett, King, Krusee, Woolley
0 nays
4 absent — Nixon, Capelo, Y. Davis, Rose
- SENATE VOTE:** On final passage, April 25 — voice vote
- WITNESSES:** For — Lonnie F. Hollingsworth, Jr., Texas Classroom Teachers Association;
David Pore, Association of Texas Professional Educators
Against — R.C. Crawford
- BACKGROUND:** Education Code, ch. 22, subch. B governs civil immunity for school district employees and volunteers. Sec. 22.051 defines the professional employees of a school district to include a superintendent, principal, teacher, supervisor, social worker, counselor, nurse, teacher's aide, student teacher or intern, certified school bus driver, and any other person whose employment requires certification and the exercise of discretion. Such employees are immune from personal liability for any act that is incidental to or within the scope of their duties and that involves the exercise of judgment or discretion, except when they use excessive force in the discipline of students or cause bodily injury to students through negligence. This provision does not apply to the operation, use, or maintenance of any motor vehicle.
- DIGEST:** SB 930, as amended, would include substitute teachers, teachers employed by a company that contracts with a school district to provide the teacher's services to the district, and a member of the board of trustees of an independent school district in the definition of professional employees whose liability is limited under Education Code, ch. 22, subch. B.

The bill would incorporate immunity granted to individuals under the federal No Child Left Behind Act to include persons providing services to private schools.

The bill would require a person to exhaust all administrative remedies before filing suit against a professional employee of a school district. Following that, a person who wished to sue a professional employee would have to provide that employee with written notice reasonably describing the incident from which the claim arose at least 90 days before suit was filed. If the professional employee did not receive timely notice, the employee could have the suit abated for 90 days after receiving proper notice.

SB 930 would limit the liability of a professional employee for an act that occurred within the scope of duties to \$100,000. This limitation on liability would not apply to attorney's fees or court costs, nor would it apply if the actions of the professional employee constituted gross negligence.

The bill would permit a court in which a suit against a professional employee was brought to refer the case to an alternative dispute resolution procedure, such as mediation.

SB 930 would permit a professional employee to recover attorney's fees and costs if that employee substantially prevailed in an action based on an allegation that the employee physically abused a student.

SB 930 also would prevent a professional employee of a school district from being subject to disciplinary proceedings for the employee's use of necessary physical force against a student to maintain discipline. Disciplinary proceedings would include action by the employing school district to discharge or suspend the employee or to terminate or not renew the employee's contract and action by the State Board for Educator Certification to enforce the educator's code of ethics. The bill would not prohibit a school district from enforcing a policy related to corporal punishment.

The bill would take effect on September 1, 2003 and would apply to suits involving conduct occurring on or after that date. If any of the provisions of this bill were held invalid, the invalidity would not affect the other provisions or applications of this bill.

**SUPPORTERS
SAY:**

Teachers perform valuable services and deserve more protection from liability. They are being sued for all sorts of things that occur within their normal scope of duties, such as special education techniques and student injuries in the classroom and on the playground. SB 930 would enable teachers to be able to do their jobs and maintain discipline without worrying about being sued.

The bill would improve upon current civil liability protections and immunities for professional employees. It would clarify, for example, that if a teacher or other professional employee used appropriate force to break up a fight, the employee would be immune from liability for any injuries that resulted. It also would protect professional employees from district disciplinary actions from the use of appropriate force. School district professional employees have a duty to protect children and the liability limitations would not apply if a professional employee committed an egregious act, such as molesting a child.

**OPPONENTS
SAY:**

SB 930 could put our children in danger. Professional employees of school districts are supposed to protect our children and reducing the ability of parents to sue them for their bad acts could remove the consequences that prevent abuse from occurring.

NOTES:

The committee amendment would add school board trustees to the definition of professional educator.

A provision almost identical to SB 930 is included in HB 4 by Nixon, et al., revising the civil liability system, which currently is in conference committee.