

SUBJECT: Prohibiting school employee liability waiver for lost or damaged property

COMMITTEE: Public Education — committee substitute recommended

VOTE: 6 ayes — Eissler, Zedler, Branch, Hochberg, Olivo, Patrick

0 nays

3 absent — Delisi, Dutton, Mowery

WITNESSES: For — Holly Eaton, Texas Classroom Teachers Association; Ted Melina Raab, Texas Federation of Teachers; (*Registered, but did not testify*: Portia Bosse, Texas State Teachers Association; Elena Lincoln, Association of Texas Professional Educators)

Against — None

On — Jackie Lain, Texas Association of School Boards

BACKGROUND: Under Education Code, sec. 31.104, a school district may not require an employee to pay for a textbook or instructional technology that is stolen, misplaced, or not returned by a student.

Under Education Code, sec. 22.0511, a professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involved the exercise of judgment on the part of the employee, except in cases in which the employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.

DIGEST: CSHB 974 would amend Education Code, sec. 22.0511 to specify that a school district could not by policy, contract, or administrative directive require an employee to waive immunity from liability or to pay for or replace textbooks, electronic textbooks or technological equipment that were damaged, stolen, misplaced or not returned.

School districts also could not require an employee who acted in good faith to pay for or replace property belonging to a student or other person

that was or had been in the employee's possession because of an act within the scope of the employee's job duties.

A school district could enter into a written agreement with a school employee in which the employee assumed financial responsibility for the off-site use of electronic textbooks or technological equipment for personal business. A written agreement in such a case, which would have to be separate from the employment contract, would need clearly to inform the employee of the amount of financial responsibility and suggest that the employee obtain appropriate insurance. An employee would not have to enter into such an agreement as a condition of employment.

CSHB 974 would invalidate any existing assumption of liability or waiver of immunity from liability entered into before the bill's effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 974 would make it clear that teachers and other school employees acting in good faith were not liable for textbooks, instructional materials, or other equipment that was lost, damaged, stolen or confiscated from a student as part of the employee's job duties. This statutory protection is needed because some school administrators have indicated that teachers could be asked to pay for or replace cell phones, pagers, computers or other equipment if the equipment were damaged after a teacher had confiscated it from a student. The bill would clarify that no school district could hold a teacher liable in such situations if the teacher or another school employee acted in good faith.

The committee substitute would address concerns about when school employees contracted independently with school districts to use certain equipment at home. In these cases, employees could be held responsible for the value of the equipment because they were directly involved in its use. The bill would not create an exemption for criminal liability. If an employee stole computer equipment or engaged in other criminal activity, the employee still could be held liable under criminal laws.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The companion bill, SB 370 by Shapiro, passed the Senate by 30-0 on the Local and Uncontested Calendar on March 28 and was reported favorably, as substituted, by House Public Education Committee on April 17, making it eligible to be considered in lieu of HB 974.