

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 316  
By: Hughes  
Education  
3/27/2019  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Chapter 22 of the Education Code deals with various matters related to public school employees, including civil immunity in Subchapter B. Specifically, Section 22.0511 states, "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 involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students."

The rest of the subchapter goes on to discuss other immunities, proper notice of claims, and limitation on damages. These statutory provisions give public school teachers and other professional staff important protections as they go about their duties of educating students. Still, unfounded or frivolous claims will be made against teachers, and S.B. 316 directs the Texas attorney general (attorney general) to defend teachers in civil actions when the attorney general determines that the teacher was acting in good faith within the scope of the teacher's duties. This legislation applies to retired teachers sued for an action during their earlier employment and does not prevent either active or retired teachers from obtaining counsel of their own choosing. It only gives them an additional option when facing civil litigation against their competent acts. The Office of the Attorney General has been consulted on this legislation and is prepared to take on this responsibility.

### **COMMITTEE SUBSTITUTE**

The committee substitute includes a new Section 1, which states that it is in the policy interests of the state for the attorney general to defend teachers in civil actions in which the attorney general determines the teacher was acting within the scope of employment and in good faith. Section 2 is restructured to give the attorney general more discretion in evaluating cases. The attorney general is directed to defend a teacher if the attorney general determines that the teacher was acting within the scope of employment and in good faith.

As in the original bill, the attorney general's defense can be extended to teachers who have since left service but still face a lawsuit for an act during active employment. Finally, Subsection (d) in Section 2 is restated to make it clear that a teacher is not obligated to take the attorney general's offer of defense. The teacher retains the right to select counsel of the teacher's choosing.

C.S.S.B. 316 amends current law relating to the attorney general's duty to defend public school teachers.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Provides that the legislature finds that it is in the best interest of this state for the Texas attorney general (attorney general) to defend a public school teacher in a civil action brought against the teacher if the attorney general determines that the civil action arose as a

result of an act that was within the scope of the teacher's duties and that the teacher acted in good faith.

SECTION 2. Amends Subchapter B, Chapter 22, Education Code, by adding Section 22.0518, as follows:

Sec. 22.0518. DEFENSE BY ATTORNEY GENERAL. (a) Requires the Texas attorney general (attorney general) to defend a civil action brought against a teacher employed by a school district or open-enrollment charter school if the attorney general determines that the civil action arose as result of an act that was within the scope of the teacher's duties, the teacher acted in good faith, and representation of the teacher would not be a conflict of interest.

(b) Provides that Subsection (a) applies regardless of whether at the time the civil action is filed the teacher has terminated service with the school district or open-enrollment charter school.

(c) Prohibits a determination made by the attorney general under Subsection (a) from being admitted as evidence in a civil court proceeding.

(d) Provides that nothing in this section may be construed to deprive a teacher of the teacher's right to select legal counsel of the teacher's choosing at the teacher's own expense or require the teacher to accept that attorney general's offer to represent the teacher.

SECTION 3. Makes application of Section 22.0518, as added by this Act, prospective.

SECTION 4. Effective date: upon passage or September 1, 2019.