

By: Senator(s) Hewes, Lee (35th), Pickering,
Morgan, Davis, Nunnelee, Doxey, Flowers,
Brown, Clarke

To: Education; Judiciary,
Division A

SENATE BILL NO. 2708

1 AN ACT TO CREATE THE QUALITY EDUCATION AND TEACHER AND
2 PRINCIPAL PROTECTION ACT; TO PROVIDE LIMITED IMMUNITY FOR TEACHERS
3 FOR TAKING CERTAIN DISCIPLINARY ACTIONS; TO PROVIDE IMMUNITY FOR
4 TEACHERS MAKING REPORTS CONSISTENT WITH FEDERAL LAW REGARDING USE
5 OF CONTROLLED SUBSTANCES OR FIREARMS BY STUDENTS; TO PROVIDE A
6 PENALTY FOR MAKING FALSE ACCUSATIONS OF CRIMINAL ACTIVITY AGAINST
7 TEACHERS; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 SECTION 1. This act may be known as the "Quality Education
10 and Teacher and Principal Protection Act."

11 SECTION 2. The Legislature finds that ensuring the quality
12 of primary and secondary public education is a compelling state
13 interest. The educational environment of students is often not
14 conducive to learning. Violence is sometimes a threat, while
15 other times educators may lack the authority to maintain safety
16 and discipline in the public schools. The filing of meritless
17 lawsuits against school districts, teachers and administrators,
18 and other school employees interferes with attempts to ensure the
19 quality of public education, particularly where such lawsuits
20 arise out of the good-faith efforts of educators to maintain
21 classroom discipline or address threats to student safety.
22 Meritless litigation also diverts financial and personnel
23 resources to litigation defense activities, and reduces the
24 availability of such resources for educational opportunities for
25 students. The Legislature finds that legislation to deter
26 meritless lawsuits and sanction deliberately false reports against
27 educators is a rational and appropriate method to address this
28 compelling public interest.

29 SECTION 3. As used in this act:

30 (a) "Educational entity" means the State Board of
31 Education or any other local school board that governs a public
32 primary or secondary school.

33 (b) "Employee" means any individual elected or
34 appointed to an educational entity and any individual who is an
35 employee of an educational entity or who provides student-related
36 services to that educational entity on a contractual basis. The
37 term "employee" also means an authorized volunteer who provides
38 student-related services to the educational entity.

39 **SECTION 4.** (1) An educational entity or its employees shall
40 not be subject to liability taking any action regarding the
41 supervision, grading, suspension, expulsion or discipline of
42 students while such students are on the property of the
43 educational entity or are under the supervision of the educational
44 entity or its employees. However, this immunity shall not apply
45 if such action violated an express statute, rule, regulation or
46 clearly articulated policy of the state or educational entity.
47 The burden of proof of such a violation shall rest with the
48 plaintiff and must be established by clear and convincing evidence
49 to the court as part of a summary proceeding.

50 (2) An educational entity and its employees shall not be
51 subject to liability for making a report consistent with federal
52 law to the appropriate law enforcement authorities or officials of
53 an educational entity if the individual making the report has
54 reasonable grounds to suspect that a student is:

55 (a) Under the influence of alcoholic beverages or a
56 controlled substance not lawfully prescribed to that individual;

57 (b) In possession of a firearm, alcoholic beverages or
58 a controlled substance not lawfully prescribed to that individual;

59 (c) Involved in the illegal solicitation, sale or
60 distribution of firearms, alcoholic beverages or a controlled
61 substance not lawfully prescribed to that individual.

62 **SECTION 5.** (1) An educational entity shall not be liable
63 for punitive or exemplary damages. An employee shall not be
64 liable for punitive or exemplary damages for acts or omissions
65 within the course and scope of employment.

66 (2) For the purposes of this act, an employee who acts with
67 specific intent to cause harm shall not be considered as acting
68 within the course and scope of employment.

69 **SECTION 6.** (1) Except as otherwise provided in this act,
70 any person eighteen (18) years of age or older who acts with
71 specific intent in making a false accusation of criminal activity
72 against an employee of an educational entity to law enforcement
73 authorities, school district officials or personnel, or both,
74 shall be fined up to Two Thousand Dollars (\$2,000.00).

75 (2) Except as otherwise provided in this act, any public
76 school student between the ages of seven (7) and seventeen (17)
77 who acts with specific intent in making a false accusation of
78 criminal activity against an employee of an educational entity to
79 law enforcement authorities, school district officials or
80 personnel, or both, may, at the discretion of the court, and in
81 accordance with the provisions of the federal Individuals with
82 Disabilities Education Act, 20 USCA Section 1400 et seq., be
83 subject to any of the following:

84 (a) Expulsion;

85 (b) Suspension for a period of time to be determined by
86 the court;

87 (c) Community service of a type and for a period of
88 time to be determined by the court;

89 (d) Any other sanction as the court in its discretion
90 may deem appropriate.

91 (3) The provisions of this act do not apply to statements
92 regarding individuals elected or appointed to a school board.

93 (4) This act is in addition to and does not limit the civil
94 or criminal liability of those persons who make false statements
95 alleging criminal activity by others.

96 **SECTION 7.** (1) In any civil action or proceeding against an
97 educational entity or its employee in which the educational entity
98 or its employee prevails, the court shall award costs and
99 reasonable attorney's fees to the prevailing defendant or
100 defendants. The court in its discretion may determine whether
101 such fees and costs are to be borne by the plaintiff's attorney,
102 the plaintiff, or both.

103 (2) Expert witness fees may be included as part of the costs
104 awarded under this section.

105 (3) The provisions of this act shall be deemed to be
106 substantive state law.

107 **SECTION 8.** (1) No attorney shall charge, demand, receive or
108 collect for services rendered, fees in excess of twenty-five
109 percent (25%) of any civil judgment rendered against an
110 educational entity or its employee, or of any settlement made.

111 (2) Any interested person may file a civil action or
112 petition the appropriate court to rescind any provision of the
113 attorney fee contract inconsistent with this act and to compel the
114 disgorgement of any fees paid in excess of the amounts allowed
115 under this act. In addition, a court with jurisdiction over the
116 matter shall impose a fine against the attorney that is equal to
117 or less than the amount of money sought by the attorney in excess
118 of the amount permitted by this act, but in any event not less
119 than Two Thousand Dollars (\$2,000.00).

120 **SECTION 9.** Unless otherwise provided by statute, the
121 existence of any policy of insurance indemnifying an educational
122 entity against liability for damages is not a waiver of any
123 defense otherwise available to the educational entity or its
124 employees in the defense of the claim.

125 **SECTION 10.** This act shall be supplemental to the
126 Mississippi Tort Claims Act.

127 **SECTION 11.** This act shall not infringe on any right
128 provided under the federal Individuals with Disabilities Education
129 Act, 20 USCA Section 1400 et seq.

130 **SECTION 12.** This act shall take effect and be in force from
131 and after July 1, 2005.