

By: Representative Lott

To: Education

HOUSE BILL NO. 730

1 AN ACT TO CREATE THE "QUALITY EDUCATION AND TEACHER AND
2 PRINCIPAL PROTECTION ACT"; TO PROVIDE LIMITED IMMUNITY FOR SCHOOL
3 EMPLOYEES TAKING CERTAIN DISCIPLINARY ACTIONS; TO PROVIDE IMMUNITY
4 FOR SCHOOL EMPLOYEES MAKING REPORTS CONSISTENT WITH FEDERAL LAW
5 REGARDING THE USE OF CONTROLLED SUBSTANCES OR FIREARMS BY
6 STUDENTS; TO PROHIBIT THE IMPOSITION OF PUNITIVE OR EXEMPLARY
7 DAMAGES AGAINST EDUCATIONAL ENTITIES AND EMPLOYEES ACTING WITHIN
8 THE COURSE AND SCOPE OF EMPLOYMENT; TO PROVIDE A PENALTY FOR
9 MAKING FALSE ACCUSATIONS OF CRIMINAL ACTIVITY AGAINST SCHOOL
10 EMPLOYEES; TO LIMIT THE FEES AN ATTORNEY MAY CHARGE IN DEFENDING
11 AN EDUCATIONAL ENTITY THAT HAS A CIVIL JUDGMENT RENDERED AGAINST
12 IT; TO BRING FORWARD SECTION 37-11-57, MISSISSIPPI CODE OF 1972,
13 WHICH PROVIDES IMMUNITY TO TEACHERS, ASSISTANT TEACHERS,
14 PRINCIPALS AND ASSISTANT PRINCIPALS FOR TAKING REASONABLE ACTION
15 TO MAINTAIN STUDENT DISCIPLINE; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** This act may be known as the "Quality Education
18 and Teacher and Principal Protection Act."

19 **SECTION 2.** The Legislature finds that: ensuring the quality
20 of primary and secondary public education is a compelling state
21 interest; the educational environment of students is often not
22 conducive to learning; violence is sometimes a threat, while other
23 times, educators may lack the authority to maintain safety and
24 discipline in the public schools; the filing of meritless lawsuits
25 against school districts, teachers and administrators, and other
26 school employees interferes with attempts to ensure the quality of
27 public education, particularly where such lawsuits arise out of
28 the good-faith efforts of educators to maintain classroom
29 discipline or address threats to student safety; and meritless
30 litigation also diverts financial and personnel resources to
31 litigation defense activities and reduces the availability of such
32 resources for educational opportunities for students. The
33 Legislature further finds that legislation to deter meritless

34 lawsuits and sanction deliberately false reports against educators
35 is a rational and appropriate method to address this compelling
36 public interest.

37 **SECTION 3.** As used in this act:

38 (a) "Educational entity" means the State Board of
39 Education or a local school board.

40 (b) "Employee" means any individual elected or
41 appointed to an educational entity and any individual who is an
42 employee of an educational entity or who provides student-related
43 services to that educational entity on a contractual basis. The
44 term "employee" also means an authorized volunteer who provides
45 student-related services to the educational entity.

46 **SECTION 4.** (1) An educational entity or its employees is
47 not subject to liability for an employee taking any action
48 regarding the supervision, grading, suspension, expulsion or
49 discipline of students while the students are on the property of
50 the educational entity or are under the supervision of the
51 educational entity or its employees. However, this immunity does
52 not apply if the employee's action violates a statute, rule,
53 regulation or clearly articulated policy of the state or
54 educational entity. The burden of proof of a violation rests with
55 the plaintiff and must be established by clear and convincing
56 evidence to the court as part of a summary proceeding.

57 (2) An educational entity and its employees are not subject
58 to liability for an employee making a report consistent with
59 federal law to the appropriate law enforcement authorities or
60 officials of an educational entity if the individual making the
61 report has reasonable grounds to suspect that a student is:

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

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

66 or

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

70 **SECTION 5.** (1) An educational entity is not liable for
71 punitive or exemplary damages. An employee is not liable for
72 punitive or exemplary damages for acts or omissions within the
73 course and scope of employment.

74 (2) For the purposes of this act, an employee who acts with
75 specific intent to cause harm may not be considered as acting
76 within the course and scope of employment.

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

83 (2) Except as otherwise provided in this act, any public
84 school student between the ages of seven (7) and seventeen (17)
85 who acts with specific intent in making a false accusation of
86 criminal activity against an employee of an educational entity to
87 law enforcement authorities, school district officials or
88 personnel, or both, at the discretion of the court and in
89 accordance with the provisions of the federal Individuals with
90 Disabilities Education Act, 20 USCS Section 1400 et seq., may be
91 subject to any of the following:

92 (a) Expulsion;

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

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

97 (d) Any other sanction as the court, in its discretion,
98 may deem appropriate.

99 (3) This section does not apply to statements regarding
100 individuals elected or appointed to a school board.

101 (4) This section is in addition to and does not limit the
102 civil or criminal liability of those persons who make false
103 statements alleging criminal activity by others.

104 **SECTION 7.** (1) In any civil action or proceeding against an
105 educational entity or its employee in which the educational entity
106 or its employee prevails, the court shall award costs and
107 reasonable attorney's fees to the prevailing defendant or
108 defendants. The court, in its discretion, may determine whether
109 such fees and costs are to be borne by the plaintiff's attorney,
110 the plaintiff, or both.

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

113 **SECTION 8.** (1) An attorney may not charge, demand, receive
114 or collect for services rendered fees in excess of twenty-five
115 percent (25%) of any civil judgment rendered against an
116 educational entity or its employee or of any settlement made.

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

126 **SECTION 9.** Unless otherwise provided by statute, the
127 existence of any policy of insurance indemnifying an educational
128 entity against liability for damages is not a waiver of any
129 defense otherwise available to the educational entity or its
130 employees in the defense of the claim.

131 **SECTION 10.** This act shall be supplemental to the
132 Mississippi Tort Claims Act.

133 **SECTION 11.** This act shall not infringe on any right
134 provided under the federal Individuals with Disabilities Education
135 Act, 20 USCS Section 1400 et seq.

136 **SECTION 12.** Section 37-11-57, Mississippi Code of 1972, is
137 brought forward as follows:

138 37-11-57. (1) Except in the case of excessive force or
139 cruel and unusual punishment, a teacher, assistant teacher,
140 principal, or an assistant principal acting within the course and
141 scope of his employment shall not be liable for any action carried
142 out in conformity with state or federal law or rules or
143 regulations of the State Board of Education or the local school
144 board regarding the control, discipline, suspension and expulsion
145 of students. The local school board shall provide any necessary
146 legal defense to a teacher, assistant teacher, principal, or
147 assistant principal acting within the course and scope of his
148 employment in any action which may be filed against such school
149 personnel. A school district shall be entitled to reimbursement
150 for legal fees and expenses from its employee if a court finds
151 that the act of the employee was outside the course and scope of
152 his employment, or that the employee was acting with criminal
153 intent. Any action by a school district against its employee and
154 any action by the employee against the school district for
155 necessary legal fees and expenses shall be tried to the court in
156 the same suit brought against the school employee.

157 (2) Corporal punishment administered in a reasonable manner,
158 or any reasonable action to maintain control and discipline of
159 students taken by a teacher, assistant teacher, principal or
160 assistant principal acting within the scope of his employment or
161 function and in accordance with any state or federal laws or rules
162 or regulations of the State Board of Education or the local school
163 board does not constitute negligence or child abuse. No teacher,

164 assistant teacher, principal or assistant principal so acting
165 shall be held liable in a suit for civil damages alleged to have
166 been suffered by a student as a result of the administration of
167 corporal punishment, or the taking of action to maintain control
168 and discipline of a student, unless the court determines that the
169 teacher, assistant teacher, principal or assistant principal acted
170 in bad faith or with malicious purpose or in a manner exhibiting a
171 wanton and willful disregard of human rights or safety. For the
172 purposes of this subsection, "corporal punishment" means the
173 reasonable use of physical force or physical contact by a teacher,
174 assistant teacher, principal or assistant principal, as may be
175 necessary to maintain discipline, to enforce a school rule, for
176 self-protection or for the protection of other students from
177 disruptive students.

178 **SECTION 13.** This act shall take effect and be in force from
179 and after July 1, 2007.