

By: Senator(s) King

To: Judiciary

SENATE BILL NO. 2771

1 AN ACT TO AMEND SECTION 37-11-57, MISSISSIPPI CODE OF 1972,
 2 TO CLARIFY THE IMMUNITY OF LICENSED SCHOOL PERSONNEL FROM
 3 LIABILITY FOR CARRYING OUT RESPONSIBILITIES WITHIN THE COURSE AND
 4 SCOPE OF THEIR EMPLOYMENT, AND TO PROVIDE FOR THE ASSESSMENT OF
 5 ATTORNEY'S FEES AND COSTS AGAINST AN ATTORNEY OR PARTY FOR
 6 BRINGING A MERITLESS ACTION, CLAIM, DEFENSE OR OTHER PROCEEDING
 7 AGAINST A TEACHER OR OTHER SUCH LICENSED SCHOOL PERSONNEL; AND FOR
 8 RELATED PURPOSES.

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

10 **SECTION 1.** Section 37-11-57, Mississippi Code of 1972, is
 11 amended as follows:

12 37-11-57. (1) Except in the case of excessive force or
 13 cruel and unusual punishment, a teacher, assistant teacher,
 14 principal, or an assistant principal acting within the course and
 15 scope of his employment shall not be liable for any action carried
 16 out in conformity with state or federal law or rules or
 17 regulations of the State Board of Education or the local school
 18 board regarding the control, discipline, suspension and expulsion
 19 of students. The local school board shall provide any necessary
 20 legal defense to a teacher, assistant teacher, principal, or
 21 assistant principal acting within the course and scope of his
 22 employment in any action which may be filed against such school
 23 personnel. A school district shall be entitled to reimbursement
 24 for legal fees and expenses from its employee if a court finds
 25 that the act of the employee was outside the course and scope of
 26 his employment, or that the employee was acting with criminal
 27 intent. Any action by a school district against its employee and
 28 any action by the employee against the school district for
 29 necessary legal fees and expenses shall be tried to the court in
 30 the same suit brought against the school employee.



31 (2) Corporal punishment administered in a reasonable manner,
32 or any reasonable action to maintain control and discipline of
33 students taken by a teacher, assistant teacher, principal or
34 assistant principal acting within the scope of his employment or
35 function and in accordance with any state or federal laws or rules
36 or regulations of the State Board of Education or the local school
37 board does not constitute negligence or child abuse. No teacher,
38 assistant teacher, principal or assistant principal so acting
39 shall be held liable in a suit for civil damages alleged to have
40 been suffered by a student as a result of the administration of
41 corporal punishment, or the taking of action to maintain control
42 and discipline of a student, unless the court determines that the
43 teacher, assistant teacher, principal or assistant principal acted
44 in bad faith or with malicious purpose or in a manner exhibiting a
45 wanton and willful disregard of human rights or safety. For the
46 purposes of this subsection, "corporal punishment" means the
47 reasonable use of physical force or physical contact by a teacher,
48 assistant teacher, principal or assistant principal, as may be
49 necessary to maintain discipline, to enforce a school rule, for
50 self-protection or for the protection of other students from
51 disruptive students.

52 (3) Except in the case of an intentional tort, a teacher,
53 assistant teacher, principal or an assistant principal, acting
54 within the course and scope of his employment, shall not be liable
55 for any action carried out in conformity with state or federal
56 law, rules or regulations of the State Board of Education, or the
57 local school board regarding his employment. The local school
58 board shall provide any necessary legal defense to a teacher,
59 assistant teacher, principal or assistant principal acting within
60 the course and scope of his employment in any action which may be
61 filed against such school personnel. Except as otherwise provided
62 in this section, in any civil action commenced or appealed in any
63 court of record in this state, the court shall award, as part of



64 its judgment and in addition to any other costs otherwise
65 assessed, reasonable attorney's fees and costs against any party
66 or attorney of the court, upon the motion of any party or on its
67 own motion, if the court finds that an attorney or party brought
68 an action, or asserted any claim or defense, that is without
69 substantial justification, or that the action, or any claim or
70 defense asserted, was interposed for delay or harassment, or if it
71 finds that an attorney or party unnecessarily expanded the
72 proceedings by other improper conduct including, but not limited
73 to, abuse of discovery procedures available under the Mississippi
74 Rules of Civil Procedure. No attorney's fees or costs shall be
75 assessed if a voluntary dismissal is filed as to any action, claim
76 or defense within a reasonable time after the attorney or party
77 filing the action, claim or defense knows or reasonably should
78 have known that it would not prevail on the action, claim or
79 defense. When a court determines reasonable attorney's fees or
80 costs should be assessed, it shall assess the payment against the
81 offending attorneys or parties, or both, and in its discretion may
82 allocate the payment among them, as it determines most just, and
83 may assess the full amount or any portion to any offending
84 attorney or party. No party, except an attorney licensed to
85 practice law in this state, who is appearing without an attorney
86 shall be assessed attorney's fees unless the court finds that the
87 party clearly knew or reasonably should have known that such
88 party's action, claim or defense or any part of it was without
89 substantial justification. The following words and phrases as
90 used in this subsection (3) have the meaning ascribed to them
91 herein, unless the context clearly requires otherwise:

92 (a) "Without substantial justification," when used with
93 reference to any action, claim, defense or appeal, including
94 without limitation any motion, means that it is frivolous,
95 groundless in fact or in law, or vexatious, as determined by the
96 court.



97 (b) "Person" means any individual, corporation,
98 company, association, firm, partnership, society, joint stock
99 company or any other entity, including any governmental entity or
100 unincorporated association or persons.

101 (c) "Action" means a civil action that contains one or
102 more claims for relief, defense or an appeal of such civil action.
103 For the purposes of this subsection (3), an "action" also means
104 any separate count, claim, defense or request for relief contained
105 in any such civil action.

106 This subsection (3) shall apply to any suit, claim, defense
107 or appeal filed or perfected subsequent to July 1, 2002, and shall
108 also apply to any suit, claim, defense or appeal which has been
109 filed or perfected prior to July 1, 2002, and which is not
110 dismissed within one hundred eighty (180) days after July 1, 2002.

111 **SECTION 2.** This act shall take effect and be in force from
112 and after July 1, 2002.

