

1 HB282
2 208429-1
3 By Representative Daniels
4 RFD: Education Policy
5 First Read: 02-FEB-21

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8 SYNOPSIS: Under existing law, local boards of
9 education, administrators, teachers, and staff are
10 granted limited immunity for their actions in
11 maintaining safe classrooms and certain public
12 education employees are granted sovereign immunity
13 from civil liability pursuant to the Constitution
14 of Alabama of 1901, when performing certain
15 work-related duties. Additionally, the Educators
16 Liability Trust Fund is a program of self-insurance
17 that provides liability coverage for those
18 individuals for claims made against them in the
19 performance of their work-related duties.

20 This bill would provide the same limited and
21 sovereign immunity, and ability to participate in
22 the Educators Liability Trust Fund, to the Board of
23 Trustees of the Alabama School of Cyber Technology
24 and Engineering and the administrative staff,
25 teachers, and employees of that school.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

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4 Relating to public K-12 education; to amend Sections
5 16-22-4.1 and 36-1-12, Code of Alabama 1975, and add Section
6 16-28A-6 to the Code of Alabama 1975; to grant the same
7 limited and sovereign immunity, and ability to participate in
8 the Educators Liability Trust Fund, provided for local boards
9 of education, administrators, teachers, and staff to the Board
10 of Trustees of the Alabama School of Cyber Technology and
11 Engineering and the administrative staff, teachers, and
12 employees of that school.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 16-22-4.1 and 36-1-12 of the
15 Code of Alabama 1975, are amended to read as follows:

16 "§16-22-4.1.

17 "(a) For the purposes of this section, the following
18 terms shall have the following meanings:

19 "(1) CERTIFICATED PERSONNEL. Full-time teachers,
20 principals, and other education employees employed by a local
21 board of education and required to hold a certificate issued
22 by the State Superintendent of Education.

23 "(2) LOCAL BOARD OF EDUCATION. A city or county
24 board of education, the Board of Trustees of the Alabama
25 Institute for Deaf and Blind, the Alabama Youth Services Board
26 in its capacity as the Board of Education for the Youth
27 Services School District, the Board of Directors of the

1 Alabama School of Fine Arts, the Alabama School of Cyber
2 Technology and Engineering, and the Board of Directors of the
3 Alabama School of Mathematics and Science.

4 "(3) STUDENT TEACHER. A college or university
5 student in an education degree program who, as part of the
6 degree program, is assigned to teach in a local public school
7 classroom, is providing instruction to students, and is being
8 mentored by a teacher.

9 "(4) SUPPORT PERSONNEL or SUPPORT EMPLOYEE.
10 Full-time maids, custodians, adult bus drivers, lunchroom or
11 cafeteria workers, secretaries, clerks, clerical assistants,
12 maintenance workers, or other non-certificated employees.

13 "(b) The Department of Finance, in consultation with
14 the State Department of Education, shall establish a program
15 of self-insurance or purchase or provide a policy or policies
16 of education employee liability insurance from appropriations
17 to the State Department of Education insuring certificated
18 personnel and support personnel who are employed by a local
19 board of education and student teachers. Such policy or
20 policies shall protect against damages for claims arising out
21 of the performance of their duties or in any way connected
22 therewith. The amount of the insurance and the appropriate
23 coverage shall be in the discretion of the Director of
24 Finance. Appropriations by the Legislature to fund the program
25 shall be included in the annual Education Trust Fund
26 Appropriations Act. An insurance carrier providing any portion
27 of the education employee liability coverage under the program

1 shall be selected by a competitive process. Any amount of the
2 appropriation for purchase of liability insurance remaining
3 after liability insurance is provided shall not revert to the
4 Education Trust Fund, but shall be retained to cover the costs
5 of this program and is to be accounted for in future
6 appropriations.

7 "(c) Insurance coverage provided by this section
8 shall automatically cover all full-time and part-time
9 certificated personnel and support personnel who are employed
10 by a local board of education, and student teachers who are
11 assigned to a classroom under the purview of a local board of
12 education, and shall be at no cost to the certificated
13 personnel, support personnel, or student teachers.

14 "(d) The program of insurance established by this
15 section shall be administered by the Department of Finance.
16 The State Department of Education shall be the administrator
17 of this program for the school systems and in furtherance of
18 that duty shall pay the annual cost of the program to the
19 Department of Finance upon receipt of a statement of that
20 cost, and require the school systems to provide such
21 information as the Finance Director may specify to determine
22 the costs of the program and to adjust and defend claims.

23 "(e) The administrators and all personnel of the
24 local school systems shall participate in the program in
25 accordance with the policies, procedures, and rules
26 established by the Department of Finance.

1 ~~"(f) The program of insurance shall be effective for~~
2 ~~insurance coverage of certificated personnel, support~~
3 ~~personnel, and student teachers not later than July 1, 2013.~~

4 "§36-1-12.

5 "(a) For the purposes of this section, "education
6 employee" means a certified or noncertified employee of the
7 State Board of Education or any local board of education and
8 an employee of the Alabama Institute for Deaf and Blind, the
9 Alabama School of Fine Arts, the Department of Youth Services,
10 the Alabama School of Cyber Technology and Engineering, or the
11 Alabama School of Mathematics and Science.

12 "(b) An officer, employee, or agent of the state,
13 including, but not limited to, an education employee, acting
14 in his or her official capacity is immune from civil liability
15 in any suit pursuant to Article I, Section 14, of the
16 Constitution of Alabama of 1901.

17 "(c) An officer, employee, or agent of the state,
18 including, but not limited to, an education employee, is
19 immune from civil liability in his or her personal capacity
20 when the conduct made the basis of the claim is based upon the
21 agent's doing any of the following:

22 "(1) Formulating plans, policies, or designs.

23 "(2) Exercising his or her judgment in the
24 administration of a department or agency of government,
25 including, but not limited to, examples such as:

26 "a. Making administrative adjudications.

27 "b. Allocating resources.

1 "c. Negotiating contracts.

2 "d. Hiring, firing, transferring, assigning, or
3 supervising personnel.

4 "(3) Discharging duties imposed on a department or
5 agency by statute, rule, or regulation, insofar as the
6 statute, rule, or regulation prescribes the manner for
7 performing the duties and the state agent performs the duties
8 in that manner.

9 "(4) Exercising judgment in the enforcement of the
10 criminal laws of the state, including, but not limited to, law
11 enforcement officers' arresting or attempting to arrest
12 persons.

13 "(5) Exercising judgment in the discharge of duties
14 imposed by statute, rule, or regulation in releasing
15 prisoners, counseling or releasing persons of unsound mind, or
16 educating students.

17 "(d) Notwithstanding subsection (c), an education
18 employee, officer, employee, or agent of the state is not
19 immune from civil liability in his or her personal capacity
20 if:

21 "(1) The Constitution or laws of the United States,
22 or the Constitution of this state, or laws, rules, or
23 regulations of this state enacted or ~~promulgated~~ adopted for
24 the purpose of regulating the activities of a governmental
25 agency require otherwise; or

26 "(2) The education employee, officer, employee, or
27 agent acts willfully, maliciously, fraudulently, in bad faith,

1 beyond his or her authority, or under a mistaken
2 interpretation of the law.

3 "(e) This section shall not be construed to
4 eliminate, alter, or otherwise modify any other immunity
5 regarding officers, employees, or agents of the state
6 established under the Constitution and laws of this state."

7 Section 2. Section 16-28A-6 is added to the Code of
8 Alabama 1975, to read as follows:

9 §16-28A-6.

10 Any reference in this chapter to a local board of
11 education, school administrator, teacher, or employee shall
12 also refer to the Board of Trustees of the Alabama School of
13 Cyber Technology and Engineering and the administrative staff,
14 teachers, and employees of that school, respectively.

15 Section 3. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.