

HOUSE BILL No. 2928

By Representative Landwehr

2-13

AN ACT concerning civil procedure; relating to liability of school district employees.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Educational entity" means the state board of education or any other body, board or agency that governs one or more public elementary or secondary schools.

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

Sec. 2. (a) An educational entity or its employees shall not be subject to liability for taking any action regarding the supervision, grading, suspension, expulsion or discipline of students while such students are on the property of the educational entity or are under the supervision of the educational entity or its employees. This immunity shall not apply if such action violated an express statute or rule and regulations, or a clearly articulated policy of the state or educational entity. The burden of proof of such a violation shall rest with the plaintiff and shall be established by clear and convincing evidence to the court as part of a summary proceeding.

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

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

(2) in possession of a firearm, alcoholic beverages or a controlled substance not lawfully prescribed to that individual; or

(3) involved in the illegal solicitation, sale or distribution of firearms, alcoholic beverages or a controlled substance not lawfully prescribed to that individual.

1 Sec. 3. (a) An educational entity shall not be liable for punitive or
2 exemplary damages. An employee shall not be liable for punitive or ex-
3 emplary damages for acts or omissions within the course and scope of
4 employment.

5 (b) For the purposes of this section, an employee who acts with spe-
6 cific intent to cause harm shall not be considered as acting within the
7 course and scope of employment.

8 Sec. 4. (a) Except as otherwise provided in this section, any person
9 18 years of age or older who acts with specific intent in making a false
10 accusation of criminal activity against an employee of an educational en-
11 tity to law enforcement authorities, school district officials or personnel,
12 or both, shall be fined up to \$2,000.

13 (b) Except as otherwise provided in this section, any public school
14 student between the ages of 7 and 17 who acts with specific intent in
15 making a false accusation of criminal activity against an employee of an
16 educational entity to law enforcement authorities, school district officials
17 or personnel, or both, at the discretion of the court, and in accordance
18 with the provisions of the federal Individuals with Disabilities Education
19 Act, 20 U.S.C. 1400 et seq., may be subject to any of the following:

- 20 (1) Expulsion;
- 21 (2) suspension for a period of time to be determined by the court;
- 22 (3) community service of a type and for a period of time to be de-
23 termined by the court; and
- 24 (4) any other sanction as the court in the court's discretion may deem
25 appropriate.

26 (c) The provisions of this section do not apply to statements regarding
27 individuals elected or appointed to a school board.

28 (d) This section is in addition to and does not limit the civil or criminal
29 liability of those persons who make false statements alleging criminal
30 activity by others.

31 Sec. 5. (a) In any civil action or proceeding against an educational
32 entity or its employee in which the educational entity or its employee
33 prevails, the court shall award costs and reasonable attorney's fees to the
34 prevailing defendant or defendants. The court in the court's discretion
35 may determine whether such fees and costs are to be borne by the plain-
36 tiff's attorney, the plaintiff, or both.

37 (b) Expert witness fees may be included as part of the costs awarded
38 under this section.

39 Sec. 6. (a) No attorney shall charge, demand, receive or collect for
40 services rendered, fees in excess of 25% of any civil judgment rendered
41 against an educational entity or its employee, or of any settlement made
42 pursuant to this act.

43 (b) Any interested person may file a civil action or petition the ap-

1 appropriate court to rescind any provision of the attorney fee contract in-
2 consistent with this section and to compel the disgorgement of any fees
3 paid in excess of the amounts allowed under this section. In addition, a
4 court with jurisdiction over the matter shall impose a fine against the
5 attorney that is equal to or less than the amount of money sought by the
6 attorney in excess of the amount permitted by this section, but in any
7 event not less than \$2,000.

8 Sec. 7. Unless otherwise provided by statute, the existence of any
9 policy of insurance indemnifying an educational entity against liability for
10 damages is not a waiver of any defense otherwise available to the edu-
11 cational entity or its employees in the defense of the claim.

12 Sec. 8. This act shall be supplemental to the Kansas tort claims act.

13 Sec. 9. This act shall not infringe on any right provided under the
14 federal individuals with disabilities education act, 20 U.S.C. 1400 et seq.

15 Sec. 10. This act shall take effect and be in force from and after its
16 publication in the statute book.

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