

106TH CONGRESS
1ST SESSION

S. 1721

To provide protection for teachers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 13, 1999

Mr. COVERDELL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide protection for teachers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Teacher Liability Pro-
5 tection Act of 1999”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

9 (1) The ability of teachers, principals and other
10 school professionals to teach, inspire and shape the
11 intellect of our Nation’s elementary and secondary

1 school students is deterred and hindered by frivolous
2 lawsuits and litigation.

3 (2) Each year more and more teachers, prin-
4 cipals and other school professionals face lawsuits
5 for actions undertaken as part of their duties to pro-
6 vide millions of school children quality educational
7 opportunities.

8 (3) Too many teachers, principals and other
9 school professionals face increasingly severe and ran-
10 dom acts of violence in the classroom and in schools.

11 (4) Providing teachers, principals and other
12 school professionals a safe and secure environment is
13 an important part of the effort to improve and ex-
14 pand educational opportunities.

15 (5) Clarifying and limiting the liability of teach-
16 ers, principals and other school professionals who
17 undertake reasonable actions to maintain order, dis-
18 cipline and an appropriate educational environment
19 is an appropriate subject of Federal legislation
20 because—

21 (A) the national scope of the problems cre-
22 ated by the legitimate fears of teachers, prin-
23 cipals and other school professionals about friv-
24 olous, arbitrary or capricious lawsuits against
25 teachers; and

1 (B) millions of children and their families
2 across the Nation depend on teachers, prin-
3 cipals and other school professionals for the in-
4 tellectual development of the children.

5 (b) PURPOSE.—The purpose of this Act is to provide
6 teachers, principals and other school professionals the
7 tools they need to undertake reasonable actions to main-
8 tain order, discipline and an appropriate educational envi-
9 ronment.

10 **SEC. 3. PREEMPTION AND ELECTION OF STATE NON-**
11 **APPLICABILITY.**

12 (a) PREEMPTION.—This Act preempts the laws of
13 any State to the extent that such laws are inconsistent
14 with this Act, except that this Act shall not preempt any
15 State law that provides additional protection from liability
16 relating to teachers.

17 (b) ELECTION OF STATE REGARDING NONAPPLICA-
18 BILITY.—This Act shall not apply to any civil action in
19 a State court against a teacher in which all parties are
20 citizens of the State if such State enacts a statute in ac-
21 cordance with State requirements for enacting
22 legislation—

23 (1) citing the authority of this subsection;

1 (2) declaring the election of such State that this
2 Act shall not apply, as of a date certain, to such civil
3 action in the State; and

4 (3) containing no other provisions.

5 **SEC. 4. LIMITATION ON LIABILITY FOR TEACHERS.**

6 (a) **LIABILITY PROTECTION FOR TEACHERS.**—Ex-
7 cept as provided in subsections (b) and (c), no teacher in
8 a school shall be liable for harm caused by an act or omis-
9 sion of the teacher on behalf of the school if—

10 (1) the teacher was acting within the scope of
11 the teacher’s employment or responsibilities related
12 to providing educational services;

13 (2) the actions of the teacher were carried out
14 in conformity with local, State, or Federal laws,
15 rules or regulations in furtherance of efforts to con-
16 trol, discipline, expel, or suspend a student or main-
17 tain order or control in the classroom or school;

18 (3) if appropriate or required, the teacher was
19 properly licensed, certified, or authorized by the ap-
20 propriate authorities for the activities or practice in
21 the State in which the harm occurred, where the ac-
22 tivities were or practice was undertaken within the
23 scope of the teacher’s responsibilities;

24 (4) the harm was not caused by willful or crimi-
25 nal misconduct, gross negligence, reckless mis-

1 conduct, or a conscious, flagrant indifference to the
2 rights or safety of the individual harmed by the
3 teacher; and

4 (5) the harm was not caused by the teacher op-
5 erating a motor vehicle, vessel, aircraft, or other ve-
6 hicle for which the State requires the operator or the
7 owner of the vehicle, craft, or vessel to—

8 (A) possess an operator’s license; or

9 (B) maintain insurance.

10 (b) CONCERNING RESPONSIBILITY OF TEACHERS TO
11 SCHOOLS AND GOVERNMENTAL ENTITIES.—Nothing in
12 this section shall be construed to affect any civil action
13 brought by any school or any governmental entity against
14 any teacher of such school.

15 (c) EXCEPTIONS TO TEACHER LIABILITY PROTEC-
16 TION.—If the laws of a State limit teacher liability subject
17 to one or more of the following conditions, such conditions
18 shall not be construed as inconsistent with this section:

19 (1) A State law that requires a school or gov-
20 ernmental entity to adhere to risk management pro-
21 cedures, including mandatory training of teachers.

22 (2) A State law that makes the school or gov-
23 ernmental entity liable for the acts or omissions of
24 its teachers to the same extent as an employer is lia-
25 ble for the acts or omissions of its employees.

1 (3) A State law that makes a limitation of li-
 2 ability inapplicable if the civil action was brought by
 3 an officer of a State or local government pursuant
 4 to State or local law.

5 (d) LIMITATION ON PUNITIVE DAMAGES BASED ON
 6 THE ACTIONS OF TEACHERS.—

7 (1) GENERAL RULE.—Punitive damages may
 8 not be awarded against a teacher in an action
 9 brought for harm based on the action of a teacher
 10 acting within the scope of the teacher’s responsibil-
 11 ities to a school or governmental entity unless the
 12 claimant establishes by clear and convincing evidence
 13 that the harm was proximately caused by an action
 14 of such teacher which constitutes willful or criminal
 15 misconduct, or a conscious, flagrant indifference to
 16 the rights or safety of the individual harmed.

17 (2) CONSTRUCTION.—Paragraph (1) does not
 18 create a cause of action for punitive damages and
 19 does not preempt or supersede any Federal or State
 20 law to the extent that such law would further limit
 21 the award of punitive damages.

22 (e) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—

23 (1) IN GENERAL.—The limitations on the liabil-
 24 ity of a teacher under this Act shall not apply to any
 25 misconduct that—

1 (A) constitutes a crime of violence (as that
2 term is defined in section 16 of title 18, United
3 States Code) or act of international terrorism
4 (as that term is defined in section 2331 of title
5 18, United States Code) for which the defend-
6 ant has been convicted in any court;

7 (B) involves a sexual offense, as defined by
8 applicable State law, for which the defendant
9 has been convicted in any court;

10 (C) involves misconduct for which the de-
11 fendant has been found to have violated a Fed-
12 eral or State civil rights law; or

13 (D) where the defendant was under the in-
14 fluence (as determined pursuant to applicable
15 State law) of intoxicating alcohol or any drug at
16 the time of the misconduct.

17 (2) RULE OF CONSTRUCTION.—Nothing in this
18 subsection shall be construed to affect subsection
19 (a)(3) or (d).

20 **SEC. 5. LIABILITY FOR NONECONOMIC LOSS.**

21 (a) GENERAL RULE.—In any civil action against a
22 teacher, based on an action of a teacher acting within the
23 scope of the teacher's responsibilities to a school or gov-
24 ernmental entity, the liability of the teacher for non-

1 economic loss shall be determined in accordance with sub-
2 section (b).

3 (b) AMOUNT OF LIABILITY.—

4 (1) IN GENERAL.—Each defendant who is a
5 teacher, shall be liable only for the amount of non-
6 economic loss allocated to that defendant in direct
7 proportion to the percentage of responsibility of that
8 defendant (determined in accordance with paragraph
9 (2)) for the harm to the claimant with respect to
10 which that defendant is liable. The court shall
11 render a separate judgment against each defendant
12 in an amount determined pursuant to the preceding
13 sentence.

14 (2) PERCENTAGE OF RESPONSIBILITY.—For
15 purposes of determining the amount of noneconomic
16 loss allocated to a defendant who is a teacher under
17 this section, the trier of fact shall determine the per-
18 centage of responsibility of that defendant for the
19 claimant's harm.

20 **SEC. 6. DEFINITIONS.**

21 For purposes of this Act:

22 (1) ECONOMIC LOSS.—The term “economic
23 loss” means any pecuniary loss resulting from harm
24 (including the loss of earnings or other benefits re-
25 lated to employment, medical expense loss, replace-

1 ment services loss, loss due to death, burial costs,
2 and loss of business or employment opportunities) to
3 the extent recovery for such loss is allowed under ap-
4 plicable State law.

5 (2) HARM.—The term “harm” includes phys-
6 ical, nonphysical, economic, and noneconomic losses.

7 (3) NONECONOMIC LOSSES.—The term “non-
8 economic losses” means losses for physical and emo-
9 tional pain, suffering, inconvenience, physical im-
10 pairment, mental anguish, disfigurement, loss of en-
11 joyment of life, loss of society and companionship,
12 loss of consortium (other than loss of domestic serv-
13 ice), hedonic damages, injury to reputation and all
14 other nonpecuniary losses of any kind or nature.

15 (4) SCHOOL.—The term “school” means a pub-
16 lic or private kindergarten, a public or private ele-
17 mentary school or secondary school (as defined in
18 section 14101 of the Elementary and Secondary
19 Education Act of 1965 (20 U.S.C. 8801)), or a
20 home school.

21 (5) STATE.—The term “State” means each of
22 the several States of the United States, the District
23 of Columbia, the Commonwealth of Puerto Rico, the
24 United States Virgin Islands, Guam, American
25 Samoa, the Commonwealth of the Northern Mariana

1 Islands, any other territory or possession of the
2 United States, or any political subdivision of any
3 such State, territory, or possession.

4 (6) **TEACHER.**—The term “teacher” means a
5 teacher, instructor, principal, administrator, or other
6 educational professional, that works in a school.

7 **SEC. 7. EFFECTIVE DATE.**

8 (a) **IN GENERAL.**—This Act shall take effect 90 days
9 after the date of enactment of this Act.

10 (b) **APPLICATION.**—This Act applies to any claim for
11 harm caused by an act or omission of a teacher where
12 that claim is filed on or after the effective date of this
13 Act, without regard to whether the harm that is the sub-
14 ject of the claim or the conduct that caused the harm oc-
15 curred before such effective date.

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