

ENGROSSED HOUSE
BILL NO. 2033

By: Morgan (Fred), Duncan,
Adkins, Brannon, Calvey,
Cox, Dank, DeWitt, Johnson,
Jones, Nance, Peters,
Peterson (Pam), Smaligo,
Smithson, Wilt and
Winchester of the House

and

Coffee of the Senate

An Act relating to schools; amending 70 O.S. 2001, Sections 24-132 and 24-138, which relate to immunity for reporting certain student actions and conditions; creating the Oklahoma Educator Protection Act; providing short title; stating legislative findings; providing definitions; making certain educational entities, employees and governing board members immune from liability for certain actions; providing exceptions; providing immunity for reporting certain student actions and conditions; requiring adoption of certain policies related to reporting certain student actions and conditions; stating minimum contents of certain policy; requiring filing of certain policy with State Superintendent of Public Instruction; providing for suspension of accreditation; providing for suspension of ability to operate certain schools; deleting redundant language; prohibiting liability of certain educational entities, employees and governing board members for punitive or exemplary damages; providing exception; requiring award of court costs and attorney fees to certain parties in certain actions; authorizing expert witness fees to be awarded certain parties; prohibiting waiver of governmental immunity; providing for codification; providing for recodification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-210.1 of Title 70, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Educator Protection Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-210.2 of Title 70, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that ensuring the quality of public education is a compelling state interest. The educational environment of students is often not conducive to learning. Violence is sometimes a threat, while other times educators may lack the authority to maintain safety and discipline in the public schools. The filing of meritless lawsuits against school districts, teachers, administrators, and other school employees interferes with attempts to ensure the quality of public education, particularly where such lawsuits arise out of the good-faith efforts of educators to maintain classroom discipline or address threats to student safety. Meritless litigation also diverts financial and personnel resources to litigation defense activities and reduces the availability of such resources for educational opportunities for students. The Legislature finds that legislation to deter meritless lawsuits and sanction deliberately false reports against educators is a rational and appropriate method to address this compelling public interest.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-210.3 of Title 70, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Educational entity" means any:
 - a. public school district, charter school, or other school operated pursuant to contract with a district board of education, or
 - b. body, board or agency that governs one or more public elementary or secondary schools, including charter schools and other schools operated pursuant to contract with a district board of education; and

2. "Employee" means any individual elected or appointed to an educational entity and any individual who is employed by such entity, but shall not include independent contractors.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-210.4 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. No educational entity, employee of an educational entity, or member of a governing board of an educational entity shall be subject to liability for any of the following:

1. Taking any action regarding the control, 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; or

2. Using corporal punishment when and to the extent that the employee reasonably believes it necessary and appropriate to maintain discipline or to promote student welfare.

B. The immunity provided by subsection A of this section shall not apply if the action violated an express law, rule, regulation or clearly articulated policy of the state or educational entity or constituted gross negligence. The burden of proof of such violation shall rest with the plaintiff and must be established by clear and convincing evidence.

SECTION 5. AMENDATORY 70 O.S. 2001, Section 24-132, is amended to read as follows:

Section 24-132. A. ~~Any public school administrator, teacher or counselor having~~ No educational entity, employee of an educational entity, or member of a governing board of an educational entity shall be subject to liability for making a report consistent with state and federal law to the appropriate law enforcement authorities or school officials if the individual making the report has reasonable cause to suspect that a student is ~~under~~

1. Under the influence of low-point beer as defined in Section 163.2 of Title 37 of the Oklahoma Statutes, alcoholic beverages as defined in Section 506 of Title 37 of the Oklahoma Statutes or a controlled dangerous substance as defined in Section 2-101 of Title 63 of the Oklahoma Statutes ~~or has in the student's;~~

2. In possession of low-point beer, alcoholic beverages ~~or, a controlled dangerous substance, who reports such information to the appropriate school official, court personnel, community substance abuse prevention and treatment personnel or any law enforcement agency, pursuant to the school's policy shall have immunity from any civil liability that might otherwise be incurred or imposed as a result of the making of such a report not lawfully prescribed to that student, or a firearm; or~~

3. Involved in the illegal sale or distribution of firearms, alcoholic beverages, or a controlled dangerous substance.

B. Every school authority shall immediately deliver any controlled dangerous substance, removed or otherwise seized from any minor or other person, to a law enforcement authority for appropriate disposition.

SECTION 6. AMENDATORY 70 O.S. 2001, Section 24-138, is amended to read as follows:

Section 24-138. A. Every district board of education and governing board of any other educational entity shall develop and adopt a written policy that teachers shall follow if a student appears to be under the influence of low-point beer, alcoholic beverages, or a controlled dangerous substance. The written policy shall be delivered to every teacher. The provisions of subsection B of this section shall be the minimum requirements of such written policy. The written policy shall be filed with the Office of the State Superintendent of Public Instruction. The accreditation of any public school district that fails to file such policy within fifteen (15) days of notification of its failure to file by the

State Department of Education shall be suspended until the written policy is filed. Any other educational entity that fails to timely file such policy with the State Superintendent shall not be allowed to continue operating if it fails to file the policy within fifteen (15) days of notification of its failure to file by the State Department of Education.

B. Whenever it appears to any ~~public school~~ teacher employed by an educational entity that a student may be under the influence of low-point beer as defined in Section 163.2 of Title 37 of the Oklahoma Statutes, alcoholic beverages as defined in Section 506 of Title 37 of the Oklahoma Statutes or a controlled dangerous substance, as defined in Section 2-101 of Title 63 of the Oklahoma Statutes, ~~that~~ the teacher shall report the matter, ~~upon recognition,~~ to the school principal or ~~his or her~~ designee. The principal or designee shall immediately notify the superintendent of schools or designee and a parent or legal guardian of the student ~~of the matter.~~

C. No ~~officer or~~ educational entity, employee of any ~~public school district~~ educational entity or member of any ~~school governing board of an educational entity~~ shall be subject to any civil liability for any statement, report, or action taken in assisting or referring for assistance to any medical treatment, social service agency or facility or any substance abuse prevention and treatment program any student reasonably believed to be abusing or incapacitated by the use of low-point beer, alcoholic beverages or a controlled dangerous substance unless such assistance or referral was made in bad faith or with malicious purpose. No ~~such officer or educational entity,~~ employee of any ~~public school district educational entity,~~ or member of any ~~school governing board,~~ school or school district of an educational entity shall be responsible for any treatment costs incurred by a student as a result of any such assistance or referral to any medical treatment, social service

agency or facility, or substance abuse prevention and treatment program.

~~B.~~ D. Every school district shall have and deliver to each classroom teacher a written policy that such teachers shall follow if they have a student who appears to be under the influence of low-point beer, alcoholic beverages or a controlled dangerous substance in their classroom. The written policy shall be developed by the ~~local~~ district superintendent of schools and adopted by the ~~local~~ district board of education. The provisions of ~~subsection~~ subsections A and B of this section shall be the minimum requirements of such written policy. The written policy shall be filed with the office of the State Superintendent of Public Instruction within ninety (90) days of the effective date of this act. If such filing is not timely made, the public schools in such school district shall lose their accreditation until the written policy is filed.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-210.7 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. No educational entity shall be liable for punitive or exemplary damages.

B. No member of a governing board of an educational entity or employee of an educational entity shall be held personally liable for punitive or exemplary damages, except that such personal immunity shall not extend for acts personal to the member or employee that constitute gross negligence or intentional torts.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-210.8 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. In any civil action or proceeding against an educational entity, an employee of an educational entity, or member of a governing board of an educational entity in which the educational

entity or its employee or governing board member prevails, the court shall award costs and reasonable attorney fees to the prevailing defendant or defendants. The court in its discretion may determine whether such fees and costs are to be borne by the plaintiff's attorney, the plaintiff, or both.

B. Expert witness fees may be included as part of the costs awarded under this section.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-210.9 of Title 70, unless there is created a duplication in numbering, reads as follows:

Unless otherwise provided by statute, the existence of any policy of insurance indemnifying an educational entity, employee of an educational entity, or member of a governing board of an educational entity against liability for damages is not a waiver of any defense otherwise available to the educational entity or its employees or governing board members in the defense of the claim.

SECTION 10. RECODIFICATION 70 O.S. 2001, Sections 24-132 and 24-138, as amended by Sections 5 and 6 of this act, shall be recodified as Sections 6-210.5 and 6-210.6 of Title 70 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 11. This act shall become effective July 1, 2005.

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 28th day of February,
2005.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2005.

Presiding Officer of the Senate