

1 SB70  
2 208429-1  
3 By Senators Livingston, Orr, Givhan, Butler, Allen, Whatley  
4 and Scofield  
5 RFD: Judiciary  
6 First Read: 02-FEB-21  
7 PFD: 01/26/2021



1 TO BE ENTITLED

2 AN ACT

3  
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.