

107TH CONGRESS  
1ST SESSION

# S. 316

To provide for teacher liability protection.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2001

Mr. McCONNELL (for himself, Mr. GREGG, Mr. FRIST, Mr. MILLER, Mr. LOTT, Mr. DEWINE, Mr. ENZI, Mr. HUTCHINSON, Mr. SESSIONS, and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide for teacher liability protection.

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. TEACHER LIABILITY PROTECTION.**

4 The Elementary and Secondary Education Act of  
5 1965 (20 U.S.C 6301 et seq.) is amended by adding at  
6 the end the following:

7 **“TITLE XV—TEACHER LIABILITY**  
8 **PROTECTION**

9 **“SEC. 15001. SHORT TITLE.**

10 “This title may be cited as the ‘Paul D. Coverdell  
11 Teacher Liability Protection Act of 2001’.

1 **“SEC. 15002. FINDINGS AND PURPOSE.**

2 “(a) FINDINGS.—Congress makes the following find-  
3 ings:

4 “(1) The ability of teachers, principals and  
5 other school professionals to teach, inspire and  
6 shape the intellect of our Nation’s elementary and  
7 secondary school students is deterred and hindered  
8 by frivolous lawsuits and litigation.

9 “(2) Each year more and more teachers, prin-  
10 cipals and other school professionals face lawsuits  
11 for actions undertaken as part of their duties to pro-  
12 vide millions of school children quality educational  
13 opportunities.

14 “(3) Too many teachers, principals and other  
15 school professionals face increasingly severe and ran-  
16 dom acts of violence in the classroom and in schools.

17 “(4) Providing teachers, principals and other  
18 school professionals a safe and secure environment is  
19 an important part of the effort to improve and ex-  
20 pand educational opportunities.

21 “(5) Clarifying and limiting the liability of  
22 teachers, principals and other school professionals  
23 who undertake reasonable actions to maintain order,  
24 discipline and an appropriate educational environ-  
25 ment is an appropriate subject of Federal legislation  
26 because—

1           “(A) the scope of the problems created by  
 2           the legitimate fears of teachers, principals and  
 3           other school professionals about frivolous, arbi-  
 4           trary or capricious lawsuits against teachers is  
 5           of national importance; and

6           “(B) millions of children and their families  
 7           across the Nation depend on teachers, prin-  
 8           cipals and other school professionals for the in-  
 9           tellectual development of children.

10          “(b) PURPOSE.—The purpose of this title is to pro-  
 11         vide teachers, principals and other school professionals the  
 12         tools they need to undertake reasonable actions to main-  
 13         tain order, discipline and an appropriate educational envi-  
 14         ronment.

15         **“SEC. 15003. PREEMPTION AND ELECTION OF STATE NON-**  
 16                 **APPLICABILITY.**

17          “(a) PREEMPTION.—This title preempts the laws of  
 18         any State to the extent that such laws are inconsistent  
 19         with this title, except that this title shall not preempt any  
 20         State law that provides additional protection from liability  
 21         relating to teachers.

22          “(b) ELECTION OF STATE REGARDING NONAPPLICA-  
 23         BILITY.—This title shall not apply to any civil action in  
 24         a State court against a teacher with respect to claims aris-  
 25         ing within that State if such State enacts a statute in ac-

1 cordance with State requirements for enacting  
2 legislation—

3 “(1) citing the authority of this subsection;

4 “(2) declaring the election of such State that  
5 this title shall not apply, as of a date certain, to  
6 such civil action in the State; and

7 “(3) containing no other provisions.

8 **“SEC. 15004. LIMITATION ON LIABILITY FOR TEACHERS.**

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

13 “(1) the teacher was acting within the scope of  
14 the teacher’s employment or responsibilities related  
15 to providing educational services;

16 “(2) the actions of the teacher were carried out  
17 in conformity with local, State, and Federal laws,  
18 rules and regulations in furtherance of efforts to  
19 control, discipline, expel, or suspend a student or  
20 maintain order or control in the classroom or school;

21 “(3) if appropriate or required, the teacher was  
22 properly licensed, certified, or authorized by the ap-  
23 propriate authorities for the activities or practice in  
24 the State in which the harm occurred, where the ac-

1       tivities were or practice was undertaken within the  
2       scope of the teacher’s responsibilities;

3               “(4) the harm was not caused by willful or  
4       criminal misconduct, gross negligence, reckless mis-  
5       conduct, or a conscious, flagrant indifference to the  
6       rights or safety of the individual harmed by the  
7       teacher; and

8               “(5) the harm was not caused by the teacher  
9       operating a motor vehicle, vessel, aircraft, or other  
10      vehicle for which the State requires the operator or  
11      the owner of the vehicle, craft, or vessel to—

12                       “(A) possess an operator’s license; or

13                       “(B) maintain insurance.

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

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

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

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

5           “(3) A State law that makes a limitation of li-  
 6           ability inapplicable if the civil action was brought by  
 7           an officer of a State or local government pursuant  
 8           to State or local law.

9           “(d) LIMITATION ON PUNITIVE DAMAGES BASED ON  
 10          THE ACTIONS OF TEACHERS.—

11           “(1) GENERAL RULE.—Punitive damages may  
 12           not be awarded against a teacher in an action  
 13           brought for harm based on the action or omission of  
 14           a teacher acting within the scope of the teacher’s re-  
 15           sponsibilities to a school or governmental entity un-  
 16           less the claimant establishes by clear and convincing  
 17           evidence that the harm was proximately caused by  
 18           an action or omission of such teacher which con-  
 19           stitutes willful or criminal misconduct, or a con-  
 20           scious, flagrant indifference to the rights or safety of  
 21           the individual harmed.

22           “(2) CONSTRUCTION.—Paragraph (1) does not  
 23           create a cause of action for punitive damages and  
 24           does not preempt or supersede any Federal or State

1 law to the extent that such law would further limit  
2 the award of punitive damages.

3 “(e) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—

4 “(1) IN GENERAL.—The limitations on the li-  
5 ability of a teacher under this title shall not apply  
6 to any misconduct that—

7 “(A) constitutes a crime of violence (as  
8 that term is defined in section 16 of title 18,  
9 United States Code) or act of international ter-  
10 rorism (as that term is defined in section 2331  
11 of title 18, United States Code) for which the  
12 defendant has been convicted in any court;

13 “(B) involves a sexual offense, as defined  
14 by applicable State law, for which the defendant  
15 has been convicted in any court;

16 “(C) involves misconduct for which the de-  
17 fendant has been found to have violated a Fed-  
18 eral or State civil rights law; or

19 “(D) where the defendant was under the  
20 influence (as determined pursuant to applicable  
21 State law) of intoxicating alcohol or any drug at  
22 the time of the misconduct.

23 “(2) RULE OF CONSTRUCTION.—Nothing in  
24 this subsection shall be construed to effect sub-  
25 section (a)(3) or (d).

1 **“SEC. 15005. LIABILITY FOR NONECONOMIC LOSS.**

2       “(a) GENERAL RULE.—In any civil action against a  
3 teacher, based on an action or omission of a teacher acting  
4 within the scope of the teacher’s responsibilities to a  
5 school or governmental entity, the liability of the teacher  
6 for noneconomic loss shall be determined in accordance  
7 with subsection (b).

8       “(b) AMOUNT OF LIABILITY.—

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

19           “(2) PERCENTAGE OF RESPONSIBILITY.—For  
20 purposes of determining the amount of noneconomic  
21 loss allocated to a defendant who is a teacher under  
22 this section, the trier of fact shall determine the per-  
23 centage of responsibility of each person responsible  
24 for the claimant’s harm, whether or not such person  
25 is a party to the action.

1 **“SEC. 15006. DEFINITIONS.**

2 For purposes of this title:

3 “(1) **ECONOMIC LOSS.**—The term ‘economic  
4 loss’ means any pecuniary loss resulting from harm  
5 (including the loss of earnings or other benefits re-  
6 lated to employment, medical expense loss, replace-  
7 ment services loss, loss due to death, burial costs,  
8 and loss of business or employment opportunities) to  
9 the extent recovery for such loss is allowed under ap-  
10 plicable State law.

11 “(2) **HARM.**—The term ‘harm’ includes phys-  
12 ical, nonphysical, economic, and noneconomic losses.

13 “(3) **NONECONOMIC LOSSES.**—The term ‘non-  
14 economic losses’ means losses for physical and emo-  
15 tional pain, suffering, inconvenience, physical im-  
16 pairment, mental anguish, disfigurement, loss of en-  
17 joyment of life, loss of society and companionship,  
18 loss of consortium (other than loss of domestic serv-  
19 ice), hedonic damages, injury to reputation and all  
20 other nonpecuniary losses of any kind or nature.

21 “(4) **SCHOOL.**—The term ‘school’ means a pub-  
22 lic or private kindergarten, a public or private ele-  
23 mentary school or secondary school (as defined in  
24 section 14101, or a home school.

25 “(5) **STATE.**—The term ‘State’ means each of  
26 the several States of the United States, the District

1 of Columbia, the Commonwealth of Puerto Rico, the  
2 United States Virgin Islands, Guam, American  
3 Samoa, the Commonwealth of the Northern Mariana  
4 Islands, any other territory or possession of the  
5 United States, or any political subdivision of any  
6 such State, territory, or possession.

7 “(6) **TEACHER.**—The term ‘teacher’ means a  
8 teacher, instructor, principal, administrator, or other  
9 educational professional that works in a school.

10 **“SEC. 15007. EFFECTIVE DATE.**

11 “(a) **IN GENERAL.**—This title shall take effect 90  
12 days after the date of the enactment of the Paul D. Cover-  
13 dell Teacher Liability Protection Act of 2001.

14 “(b) **APPLICATION.**—This title applies to any claim  
15 for harm caused by an act or omission of a teacher if that  
16 claim is filed on or after the effective date of the Paul  
17 D. Coverdell Teacher Liability Protection Act of 2001,  
18 without regard to whether the harm that is the subject  
19 of the claim or the conduct that caused the harm occurred  
20 before such effective date.”.

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