

BILL ANALYSIS

Senate Research Center
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H.B. 1788
By: Hefner (Hughes)
Education
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law provides several options for the placement of security personnel on school campuses: (1) a school resource officer (commissioned peace officers in the employ of another governmental entity but assigned to the school district, with the district covering salary expenses in proportion to the services rendered); (2) a school district police force (Texas Education Code 37.081(a)); (3) security personnel in the employ of the school district (for these personnel to carry firearms on campus, they must be commissioned peace officers (Texas Education Code 37.081(a)); (4) retention of a security company; (5) appointment of school marshals licensed by the Texas Commission on Law Enforcement (TCOLE) (Texas Education Code 37.0811); and (6) the "guardian plan," or granting "written permission for anyone, including designated employees, to carry firearms on campus" (Texas Penal Code 46.03(a)(1)).

Liability is a concern for public schools as they contemplate school safety programs. Current state law provides school districts immunity from liability for personal injury (tort) claims (Texas Civil Practice and Remedies Code 101.051). School district employees are immune from liability "for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students" (Texas Education Code 22.0511).

While these statutory provisions provide some degree of liability protection for school districts acting to protect their students, H.B. 1788 applies immunity from liability specifically to school safety programs, extending immunity to school district peace officers, school marshals, school resource officers, retired peace officers (employed by or volunteering for a school district), and any person to whom the school board has given written permission to carry a firearm on campus (referencing security arrangements such as the Guardian Plan). In addition, these liability protections for school safety are extended to open-enrollment charter schools and private schools.

¹Texas Association of School Boards, "School Marshals and Other School District Personnel Carrying Firearms," June 2018. Accessed at https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Business/documents/sch_marshalls_and_other_personnel_carrying_firearms.aspx.

H.B. 1788 amends current law relating to immunity from liability of public and private schools and security personnel employed by those schools for certain actions of security personnel.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter C, Chapter 37, Education Code, by adding Section 37.087, as follows:

Sec. 37.087. IMMUNITY FROM LIABILITY. (a) Defines "retired peace officer" and "security personnel."

(b) Provides that a school district, open-enrollment charter school, or private school is immune from liability for any damages resulting from any reasonable action taken by security personnel to maintain the safety of the school campus, including action relating to possession or use of a firearm.

(c) Provides that a school district, open-enrollment charter school, or private school is immune from liability as provided by Subsection (b) for any damages resulting from any reasonable action taken by a school district, open-enrollment charter school, or private school employee who has written permission from the board of trustees of the school district or the governing body of the open-enrollment charter school or the private school to carry a firearm on campus.

(d) Provides that any security personnel employed by a school district, open-enrollment charter school, or private school is immune from liability for any damages resulting from any reasonable action taken by the security personnel to maintain the safety of the school campus, including action relating to possession or use of a firearm.

(e) Provides that the statutory immunity provided by this section is in addition to and does not preempt the common law doctrine of official and governmental immunity. Provides that to the extent another statute provides greater immunity to a school district, open-enrollment charter school, or private school than this section, that statute prevails.

SECTION 2. Provides that this Act applies beginning with the 2021-2022 school year.

SECTION 3. Effective date: upon passage or September 1, 2021.