

AMENDMENT TO H.R. 1, AS REPORTED
OFFERED BY MR. BRADY OF TEXAS

Strike part D of title II of the Elementary and Secondary Education Act of 1965, as proposed to be added by section 203 of the bill, and insert the following:

1 **“PART D—TEACHER LIABILITY PROTECTION**

2 **“SEC. 2301. SHORT TITLE.**

3 “‘This part may be cited as the ‘Paul Coverdell Teach-
4 er Liability Protection Act of 2001’.

5 **“SEC. 2302. FINDINGS AND PURPOSE.**

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

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

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

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

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

8 “(5) Clarifying and limiting the liability of
9 teachers, principals and other school professionals
10 who undertake reasonable actions to maintain order,
11 discipline and an appropriate educational environ-
12 ment is an appropriate subject of Federal legislation
13 because—

14 “(A) the scope of the problems created by
15 the legitimate fears of teachers, principals and
16 other school professionals about frivolous, arbi-
17 trary or capricious lawsuits against teachers is
18 of national importance; and

19 “(B) millions of children and their families
20 across the Nation depend on teachers, prin-
21 cipals and other school professionals for the in-
22 tellectual development of children.

23 “(b) PURPOSE.—The purpose of this part is to pro-
24 vide teachers, principals and other school professionals the
25 tools they need to undertake reasonable actions to main-

1 tain order, discipline and an appropriate educational envi-
2 ronment.

3 **“SEC. 2303. PREEMPTION AND ELECTION OF STATE NON-**
4 **APPLICABILITY.**

5 “(a) PREEMPTION.—This part preempts the laws of
6 any State to the extent that such laws are inconsistent
7 with this part, except that this part shall not preempt any
8 State law that provides additional protection from liability
9 relating to teachers.

10 “(b) ELECTION OF STATE REGARDING NONAPPLICA-
11 BILITY.—This part shall not apply to any civil action in
12 a State court against a teacher with respect to claims aris-
13 ing within that State if such State enacts a statute in ac-
14 cordance with State requirements for enacting
15 legislation—

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

17 “(2) declaring the election of such State that
18 this part shall not apply, as of a date certain, to
19 such civil action in the State; and

20 “(3) containing no other provisions.

21 **“SEC. 2304. LIMITATION ON LIABILITY FOR TEACHERS.**

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

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

4 “(2) the actions of the teacher were carried out
5 in conformity with local, State, and Federal laws,
6 rules and regulations in furtherance of efforts to
7 control, discipline, expel, or suspend a student or
8 maintain order or control in the classroom or school;

9 “(3) if appropriate or required, the teacher was
10 properly licensed, certified, or authorized by the ap-
11 propriate authorities for the activities or practice in
12 the State in which the harm occurred, where the ac-
13 tivities were or practice was undertaken within the
14 scope of the teacher’s responsibilities;

15 “(4) the harm was not caused by willful or
16 criminal misconduct, gross negligence, reckless mis-
17 conduct, or a conscious, flagrant indifference to the
18 rights or safety of the individual harmed by the
19 teacher; and

20 “(5) the harm was not caused by the teacher
21 operating a motor vehicle, vessel, aircraft, or other
22 vehicle for which the State requires the operator or
23 the owner of the vehicle, craft, or vessel to—

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

25 “(B) maintain insurance.

1 “(b) CONCERNING RESPONSIBILITY OF TEACHERS
2 TO SCHOOLS AND GOVERNMENTAL ENTITIES.—Nothing
3 in this section shall be construed to affect any civil action
4 brought by any school or any governmental entity against
5 any teacher of such school.

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

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

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

17 “(3) A State law that makes a limitation of li-
18 ability inapplicable if the civil action was brought by
19 an officer of a State or local government pursuant
20 to State or local law.

21 “(d) LIMITATION ON PUNITIVE DAMAGES BASED ON
22 THE ACTIONS OF TEACHERS.—

23 “(1) GENERAL RULE.—Punitive damages may
24 not be awarded against a teacher in an action
25 brought for harm based on the action of a teacher

1 acting within the scope of the teacher's responsibil-
2 ities to a school or governmental entity unless the
3 claimant establishes by clear and convincing evidence
4 that the harm was proximately caused by an action
5 of such teacher which constitutes willful or criminal
6 misconduct, or a conscious, flagrant indifference to
7 the rights or safety of the individual harmed.

8 “(2) CONSTRUCTION.—Paragraph (1) does not
9 create a cause of action for punitive damages and
10 does not preempt or supersede any Federal or State
11 law to the extent that such law would further limit
12 the award of punitive damages.

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

14 “(1) IN GENERAL.—The limitations on the li-
15 ability of a teacher under this part shall not apply
16 to any misconduct that—

17 “(A) constitutes a crime of violence (as
18 that term is defined in section 16 of title 18,
19 United States Code) or act of international ter-
20 rorism (as that term is defined in section 2331
21 of title 18, United States Code) for which the
22 defendant has been convicted in any court;

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

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

4 “(D) where the defendant was under the
5 influence (as determined pursuant to applicable
6 State law) of intoxicating alcohol or any drug at
7 the time of the misconduct.

8 “(2) RULE OF CONSTRUCTION.—Nothing in
9 this subsection shall be construed to affect sub-
10 section (a)(3) or (d).

11 **“SEC. 2305. LIABILITY FOR NONECONOMIC LOSS.**

12 “(a) GENERAL RULE.—In any civil action against a
13 teacher, based on an action of a teacher acting within the
14 scope of the teacher’s responsibilities to a school or gov-
15 ernmental entity, the liability of the teacher for non-
16 economic loss shall be determined in accordance with sub-
17 section (b).

18 “(b) AMOUNT OF LIABILITY.—

19 “(1) IN GENERAL.—Each defendant who is a
20 teacher, shall be liable only for the amount of non-
21 economic loss allocated to that defendant in direct
22 proportion to the percentage of responsibility of that
23 defendant (determined in accordance with paragraph
24 (2)) for the harm to the claimant with respect to
25 which that defendant is liable. The court shall

1 render a separate judgment against each defendant
2 in an amount determined pursuant to the preceding
3 sentence.

4 “(2) PERCENTAGE OF RESPONSIBILITY.—For
5 purposes of determining the amount of noneconomic
6 loss allocated to a defendant who is a teacher under
7 this section, the trier of fact shall determine the per-
8 centage of responsibility of that defendant for the
9 claimant’s harm.

10 **“SEC. 2306. RULE OF CONSTRUCTION.**

11 “Nothing in this part shall be construed to affect any
12 State or local law (including a rule or regulation) or policy
13 pertaining to the use of corporal punishment.

14 **“SEC. 2307. DEFINITIONS.**

15 “For purposes of this part:

16 “(1) ECONOMIC LOSS.—The term ‘economic
17 loss’ means any pecuniary loss resulting from harm
18 (including the loss of earnings or other benefits re-
19 lated to employment, medical expense loss, replace-
20 ment services loss, loss due to death, burial costs,
21 and loss of business or employment opportunities) to
22 the extent recovery for such loss is allowed under ap-
23 plicable State law.

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

1 “(3) NONECONOMIC LOSSES.—The term ‘non-
2 economic losses’ means losses for physical and emo-
3 tional pain, suffering, inconvenience, physical im-
4 pairment, mental anguish, disfigurement, loss of en-
5 joyment of life, loss of society and companionship,
6 loss of consortium (other than loss of domestic serv-
7 ice), hedonic damages, injury to reputation and all
8 other nonpecuniary losses of any kind or nature.

9 “(4) SCHOOL.—The term ‘school’ means a pub-
10 lic or private kindergarten, a public or private ele-
11 mentary school or secondary school (as defined in
12 section 14101, or a home school.

13 “(5) STATE.—The term ‘State’ means each of
14 the several States of the United States, the District
15 of Columbia, the Commonwealth of Puerto Rico, the
16 United States Virgin Islands, Guam, American
17 Samoa, the Commonwealth of the Northern Mariana
18 Islands, any other territory or possession of the
19 United States, or any political subdivision of any
20 such State, territory, or possession.

21 “(6) TEACHER.—The term ‘teacher’ means a
22 teacher, instructor, principal, administrator, or other
23 educational professional that works in a school, a
24 local school board and any member of such board,

1 and a local educational agency and any employee of
2 such agency.

3 **“SEC. 2308. APPLICABILITY.**

4 “‘This part applies to any claim for harm caused by
5 an act or omission of a teacher if that claim is filed on
6 or after the effective date of the No Child Left Behind
7 Act of 2001 without regard to whether the harm that is
8 the subject of the claim or the conduct that caused the
9 harm occurred before such effective date.’”.