~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

January 28, 2009

**S. 4**

Introduced by Senators McConnell, Campsen, Rose, Bryant, Elliott, Peeler, Bright, Campbell, Ford and Knotts

S. Printed 1/28/09--S.

Read the first time January 13, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 4) to amend the Code of Laws of South Carolina, 1976, to enact the “South Carolina Teacher Protection Act of 2009”, by adding Section 59‑25‑900, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

JOHN M. KNOTTS, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA TEACHER PROTECTION ACT OF 2009”, BY ADDING SECTION 59‑25‑900, SO AS TO PROVIDE THAT A TEACHER MAY BRING A CIVIL ACTION AGAINST A STUDENT WHO COMMITS A CRIMINAL OFFENSE AGAINST THE TEACHER IF THE OFFENSE OCCURS ON SCHOOL GROUNDS OR AT A SCHOOL‑RELATED EVENT, OR IF THE OFFENSE IS DIRECTLY RELATED TO THE TEACHER’S PROFESSIONAL RESPONSIBILITIES, AND TO PROVIDE THAT NO TEACHER HAS CIVIL LIABILITY TO A STUDENT OR TO A PARTY ACTING IN THE INTEREST OF THE STUDENT FOR AN ACT OR OMISSION BY THE TEACHER THAT OCCURS WHILE THE TEACHER IS ACTING ON BEHALF OF THE SCHOOL; AND TO AMEND SECTION 16‑3‑612, RELATING TO THE OFFENSE OF A STUDENT COMMITTING ASSAULT AND BATTERY AGAINST A PERSON AFFILIATED WITH A SCHOOL IN AN OFFICIAL CAPACITY, SO AS TO REDEFINE INTO THREE OFFENSES WITH SEPARATE PENALTIES FOR EACH, INCLUDING ESTABLISHING THE MOST SERIOUS OFFENSE AS A FELONY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “South Carolina Teacher Protection Act of 2009”.

SECTION 2. Chapter 25, Title 59 of the 1976 Code is amended by adding:

“Section 59‑25‑900. (A) As used in this section:

(1) ‘Teacher’ means a:

(a) licensed teacher, principal, administrator, home school educator, or other educational professional who works on school grounds;

(b) professional or non‑professional employee who works on school grounds and has responsibility for maintaining order, discipline, or ensuring safety; or

(c) school employee who, in an emergency, is called upon to maintain order, discipline, or to ensure safety.

(2) ‘School’ means a public or private kindergarten, a public or private elementary school, a public or private middle school or junior high, a public or private high school, a secondary school, an adult education school, a home school that includes students not related by blood to the operator, a public or private college or university, and any vocational, technical, or occupational school.

(3) ‘Student’ means a person:

(a) enrolled in a school, whether the person is suspended or not suspended; or

(b) expelled from a school within one year of enrollment.

(B) In addition to the protections granted under the South Carolina Tort Claims Act, no teacher has civil liability to a student or to a party acting in the interest of a student for an act or omission by the teacher if the:

(1) teacher was acting within the scope of the teacher’s employment;

(2) actions of the teacher violated no state, local, or federal law including regulations set forth by the individual district or school;

(3) acts or omissions were not the result of wilful or intentional conduct or gross negligence;

(4) acts or omissions were not the result of the teacher operating a motor vehicle or watercraft; and

(5) actions of the teacher do not constitute a violation of the student’s civil rights.

(C) This section does not affect the provisions of the South Carolina Tort Claims Act.”

SECTION 3. Section 16‑3‑612 of the 1976 Code is amended to read:

“Section 16‑3‑612. (A) For purposes of this section:

(1) ‘Student’ means a person ~~currently~~:

(a) enrolled in ~~any~~ a school, whether the person is suspended or not suspended; or

(b) expelled from a school within one year of enrollment.

(2) ‘School’ ~~includes, but is not limited to,~~ means a public or private kindergarten, a public or private elementary school ~~that contains any grades of kindergarten through twelfth grade~~, a public or private middle school or junior high, a public or private high school, a secondary school, an adult education school, a home school that includes students not related by blood to the operator, a public or private ~~colleges, universities~~ college or university, and any vocational, technical, or occupational school.

(3) ‘Person affiliated with a school in an official capacity’ includes, but is not limited to, administrators, teachers, faculty, substitute teachers, teachers’ assistants, student teachers, custodial staff, food service staff, volunteers, law enforcement officers, school bus drivers, school crossing guards, or other regularly assigned school‑contracted persons.

(B) ~~A student who commits an assault and battery, other than one that is aggravated, on school grounds or at a school‑sponsored event against any person affiliated with the school in an official capacity including, but not limited to, administrators, teachers, faculty, substitute teachers, teachers’ assistants, student teachers, custodial staff, food service staff, volunteers, law enforcement officers, school bus drivers, school crossing guards, or other regularly assigned school‑contracted persons is guilty of assault and battery against school personnel which is a misdemeanor and, upon conviction, must be fined not more than one thousand dollars, or imprisoned not more than one year, or both.~~ A student who commits simple assault and battery against a person affiliated with a school in an official capacity when the offense occurs on school grounds or at a school‑related event, or when the offense is directly related to the school official’s professional responsibilities, is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(C) A student who commits assault and battery, other than one that is aggravated, against a person affiliated with a school in an official capacity when the offense occurs on school grounds or at a school-related event, or when the offense is directly related to the school official’s professional responsibilities, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(D) A student who commits assault and battery of a high and aggravated nature against a person affiliated with a school in an official capacity when the offense occurs on school grounds or at a school-related event, or when the offense is directly related to the school official’s professional responsibilities, is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than ten years, or both. A person is guilty of assault and battery of a high and aggravated nature pursuant to the provisions of this subsection if the person intentionally commits an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim.

(E) Sentencing pursuant to this section must comply with the requirements of Article 15, Chapter 3, Title 16.

(F) A person affiliated with a school in an official capacity who is:

(1) the victim of a violation of this section for which a student was convicted, adjudicated delinquent, or pled guilty or nolo contendere; and

(2) injured as a result of the violation of this section to the extent that his injury prevents him from returning to his former position within the school district, must be allowed to continue to participate in all retirement, insurance, and deferred compensation programs he was enrolled in at the time of the injury. The district shall continue to make the employer contributions on behalf of the injured school official.

(G) If a school official reports an incident pursuant to this section to any school principal, vice principal, assistant principal, or other school administrator, the school administrator shall report the incident to law enforcement for investigation.”

SECTION 4. This act takes effect upon approval by the Governor.

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