

1 HB119  
2 162366-3  
3 By Representative McMillan  
4 RFD: Judiciary  
5 First Read: 03-MAR-15

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8 SYNOPSIS: Under existing law, an officer, employee, or  
9 agent of the state, including an education  
10 employee, is immune from liability when acting in  
11 his or her official capacity and is immune from  
12 civil liability in his or her personal capacity  
13 under certain conditions.

14 This bill would further provide for the  
15 immunity and would specify that the term "officer,  
16 employee, or agent of the state" in the law  
17 includes an officer, employee, or agent of a  
18 governmental entity as that term is defined in  
19 Section 11-93-1 of the Code of Alabama 1975, which  
20 generally includes municipalities and counties and  
21 their instrumentalities.

22  
23 A BILL  
24 TO BE ENTITLED  
25 AN ACT  
26

1           To amend Act 2014-124 of the 2014 Regular Session,  
2 now appearing as Section 36-1-12, Code of Alabama 1975,  
3 relating to the immunity of an officer, employee, or agent of  
4 the state, including an education employee under certain  
5 conditions; to further provide for the immunity and that the  
6 immunity applies to an officer, employee, or agent of a  
7 governmental entity as that term is defined in Section  
8 11-93-1, Code of Alabama 1975.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10           Section 1. Act 2014-124 of the 2014 Regular Session,  
11 now appearing as Section 36-1-12, Code of Alabama 1975, is  
12 amended to read as follows:

13           "§36-1-12.

14           "(a) For the purposes of this section, "education  
15 employee" means a certified or noncertified employee of the  
16 State Board of Education or any local board of education and  
17 an employee of the Alabama Institute for Deaf and Blind, the  
18 Alabama School of Fine Arts, the Department of Youth Services,  
19 or the Alabama School of Mathematics and Science. The term  
20 "officer, employee, or agent of the state" includes an  
21 officer, employee, or agent of a governmental entity as that  
22 term is defined in Section 11-93-1.

23           "(b) An officer, employee, or agent of the state,  
24 including, but not limited to, an education employee, acting  
25 in his or her official capacity is immune from civil liability  
26 in any suit pursuant to Article I, Section 14, of the  
27 Constitution of Alabama of 1901.

1           "(c) An officer, employee, or agent of the state,  
2 including, but not limited to, an education employee, is  
3 immune from civil liability in his or her personal capacity  
4 when the conduct made the basis of the claim is based upon the  
5 agent's doing any of the following:

6           "(1) Formulating plans, policies, or designs.

7           "(2) Exercising his or her judgment in the  
8 administration of a department or agency of government,  
9 including, but not limited to, examples such as:

10          "a. Making administrative adjudications.

11          "b. Allocating resources.

12          "c. Negotiating contracts.

13          "d. Hiring, firing, transferring, assigning, or  
14 supervising personnel.

15           "(3) Discharging duties imposed on a department or  
16 agency by statute, rule, or regulation, insofar as the  
17 statute, rule, or regulation prescribes the manner for  
18 performing the duties and the officer, employee, or agent of  
19 the state agent performs the duties in that manner.

20           "(4) Exercising judgment in the enforcement of the  
21 criminal laws of the state, including, but not limited to, law  
22 enforcement officers' arresting or attempting to arrest  
23 persons.

24           "(5) Exercising judgment ~~in the discharge of~~ within  
25 the line and scope of his or her official duties imposed by  
26 ~~statute, rule, or regulation in~~ including, but not limited to,

1 releasing prisoners, counseling or releasing persons of  
2 unsound mind, ~~or~~ educating students, or providing services.

3 "(d) Notwithstanding subsection (c), an education  
4 employee, officer, employee, or agent of the state is not  
5 immune from civil liability in his or her personal capacity  
6 if:

7 "(1) The Constitution or laws of the United States,  
8 or the Constitution of this state, or laws, rules, or  
9 regulations of this state enacted or promulgated for the  
10 purpose of regulating the activities of a governmental agency  
11 require otherwise; or

12 "(2) The education employee, officer, employee, or  
13 agent of the state acts willfully, maliciously, fraudulently,  
14 in bad faith, beyond his or her authority, or under a mistaken  
15 interpretation of the law.

16 "(e) This section shall not be construed to  
17 eliminate, alter, or otherwise modify any other immunity  
18 regarding officers, employees, or agents of the state  
19 established under the constitution and laws of this state."

20 Section 2. This act shall become effective  
21 immediately following its passage and approval by the  
22 Governor, or its otherwise becoming law.