

38

**AMENDMENT OFFERED BY MR. MCINTOSH
TO THE AMENDMENT IN THE NATURE OF A
SUBSTITUTE OFFERED BY MR. GOODLING**

At the end of the bill, add the following:

1 **TITLE VII—TEACHER LIABILITY**
2 **PROTECTION**

3 **SEC. 710. 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 “Teacher Liability Pro-
11 tection Act of 1999”.

12 **SEC. 15002. FINDINGS AND PURPOSE.**

13 (a) FINDINGS.—Congress makes the following find-
14 ings:

15 (1) The ability of teachers, principals and other
16 school professionals to teach, inspire and shape the
17 intellect of our Nation’s elementary and secondary
18 school students is deterred and hindered by frivolous
19 lawsuits and litigation.



1 (2) Each year more and more teachers, prin-
2 ciples and other school professionals face lawsuits
3 for actions undertaken as part of their duties to pro-
4 vide millions of school children quality educational
5 opportunities.

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

9 (4) Providing teachers, principals and other
10 school professionals a safe and secure environment is
11 an important part of the effort to improve and ex-
12 pand educational opportunities.

13 (5) Clarifying and limiting the liability of teach-
14 ers, principals and other school professionals who
15 undertake reasonable actions to maintain order, dis-
16 cipline and an appropriate educational environment
17 is an appropriate subject of Federal legislation
18 because—

19 (A) the scope of the problems created by
20 the legitimate fears of teachers, principals and
21 other school professionals about frivolous, arbi-
22 trary or capricious lawsuits against teachers is
23 of national importance; and

24 (B) millions of children and their families
25 across the Nation depend on teachers, prin-

1 principals and other school professionals for the in-
2 tellectual development of children.

3 (b) PURPOSE.—The purpose of this title is to provide
4 teachers, principals and other school professionals the
5 tools they need to undertake reasonable actions to main-
6 tain order, discipline and an appropriate educational envi-
7 ronment.

8 **SEC. 15003. PREEMPTION AND ELECTION OF STATE NON-**
9 **APPLICABILITY.**

10 (a) PREEMPTION.—This title preempts the laws of
11 any State to the extent that such laws are inconsistent
12 with this title, except that this title shall not preempt any
13 State law that provides additional protection from liability
14 relating to teachers.

15 (b) ELECTION OF STATE REGARDING NONAPPLICA-
16 BILITY.—This title shall not apply to any civil action in
17 a State court against a teacher in which all parties are
18 citizens of the State if such State enacts a statute in ac-
19 cordance with State requirements for enacting
20 legislation—

- 21 (1) citing the authority of this subsection;
- 22 (2) declaring the election of such State that this
23 title shall not apply, as of a date certain, to such
24 civil action in the State; and
- 25 (3) containing no other provisions.

1 **SEC. 15004. LIMITATION ON LIABILITY FOR TEACHERS.**

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

6 (1) the teacher was acting within the scope of
7 the teacher's employment or responsibilities related
8 to providing educational services;

9 (2) the actions of the teacher were carried out
10 in conformity with local, state, or federal laws, rules
11 or regulations in furtherance of efforts to control,
12 discipline, expel, or suspend a student or maintain
13 order or control in the classroom or school;

14 (3) if appropriate or required, the teacher was
15 properly licensed, certified, or authorized by the ap-
16 propriate authorities for the activities or practice in
17 the State in which the harm occurred, where the ac-
18 tivities were or practice was undertaken within the
19 scope of the teacher's responsibilities;

20 (4) the harm was not caused by willful or crimi-
21 nal misconduct, gross negligence, reckless mis-
22 conduct, or a conscious, flagrant indifference to the
23 rights or safety of the individual harmed by the
24 teacher; and

25 (5) the harm was not caused by the teacher op-
26 erating a motor vehicle, vessel, aircraft, or other ve-

1 hicle for which the State requires the operator or the
2 owner of the vehicle, craft, or vessel to—

3 (A) possess an operator's license; or

4 (B) maintain insurance.

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

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

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

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

21 (3) A State law that makes a limitation of li-
22 ability inapplicable if the civil action was brought by
23 an officer of a State or local government pursuant
24 to State or local law.



1 (d) LIMITATION ON PUNITIVE DAMAGES BASED ON
2 THE ACTIONS OF TEACHERS.—

3 (1) GENERAL RULE.—Punitive damages may
4 not be awarded against a teacher in an action
5 brought for harm based on the action of a teacher
6 acting within the scope of the teacher’s responsibil-
7 ities to a school or governmental entity unless the
8 claimant establishes by clear and convincing evidence
9 that the harm was proximately caused by an action
10 of such teacher which constitutes willful or criminal
11 misconduct, or a conscious, flagrant indifference to
12 the rights or safety of the individual harmed.

13 (2) CONSTRUCTION.—Paragraph (1) does not
14 create a cause of action for punitive damages and
15 does not preempt or supersede any Federal or State
16 law to the extent that such law would further limit
17 the award of punitive damages.

18 (e) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—

19 (1) IN GENERAL.—The limitations on the liabil-
20 ity of a teacher under this title shall not apply to
21 any misconduct that—

22 (A) constitutes a crime of violence (as that
23 term is defined in section 16 of title 18, United
24 States Code) or act of international terrorism
25 (as that term is defined in section 2331 of title



1 18, United States Code) for which the defend-
2 ant has been convicted in any court;

3 (B) involves a sexual offense, as defined by
4 applicable State law, for which the defendant
5 has been convicted in any court;

6 (C) involves misconduct for which the de-
7 fendant has been found to have violated a Fed-
8 eral or State civil rights law; or

9 (D) where the defendant was under the in-
10 fluence (as determined pursuant to applicable
11 State law) of intoxicating alcohol or any drug at
12 the time of the misconduct.

13 (2) RULE OF CONSTRUCTION.—Nothing in this
14 subsection shall be construed to effect subsection
15 (a)(3) or (d).

16 **SEC. 15005. LIABILITY FOR NONECONOMIC LOSS.**

17 (a) GENERAL RULE.—In any civil action against a
18 teacher, based on an action of a teacher acting within the
19 scope of the teacher's responsibilities to a school or gov-
20 ernmental entity, the liability of the teacher for non-
21 economic loss shall be determined in accordance with sub-
22 section (b).

23 (b) AMOUNT OF LIABILITY.—

24 (1) IN GENERAL.—Each defendant who is a
25 teacher, shall be liable only for the amount of non-



1 economic loss allocated to that defendant in direct
2 proportion to the percentage of responsibility of that
3 defendant (determined in accordance with paragraph
4 (2)) for the harm to the claimant with respect to
5 which that defendant is liable. The court shall
6 render a separate judgment against each defendant
7 in an amount determined pursuant to the preceding
8 sentence.

9 (2) PERCENTAGE OF RESPONSIBILITY.—For
10 purposes of determining the amount of noneconomic
11 loss allocated to a defendant who is a teacher under
12 this section, the trier of fact shall determine the per-
13 centage of responsibility of that defendant for the
14 claimant's harm.

15 **SEC. 15006. DEFINITIONS.**

16 For purposes of this title:

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



1 (2) HARM.—The term “harm” includes phys-
2 ical, nonphysical, economic, and noneconomic losses.

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

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

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

23 (6) TEACHER.—The term “teacher” means a
24 teacher, instructor, principal, administrator, or other
25 educational professional that works in a school, a



1 local school board and any member of such board,
2 and a local educational agency and any employee of
3 such agency.

4 **SEC. 15007. EFFECTIVE DATE.**

5 (a) IN GENERAL.—This title shall take effect 90 days
6 after the date of enactment of the Student Results Act
7 of 1999.

8 (b) APPLICATION.—This title applies to any claim for
9 harm caused by an act or omission of a teacher if that
10 claim is filed on or after the effective date of the Student
11 Results Act of 1999, without regard to whether the harm
12 that is the subject of the claim or the conduct that caused
13 the harm occurred before such effective date.

