

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 414
HOUSE BILL 848

AN ACT AUTHORIZING THE GOVERNING BODY OF THE CITY OF DURHAM
TO WAIVE ITS GOVERNMENTAL IMMUNITY TO THE EXTENT OF
LIABILITY INSURANCE PURCHASED.

The General Assembly of North Carolina enacts:

Section 1. The City Council of the City of Durham is authorized and empowered, but not required, to waive its governmental immunity from liability for wrongful death or injury to person or property arising from negligent acts of its officers, agents or employees when acting within the scope of their authority or within the course of their employment. Waiver of immunity shall be accomplished by purchasing liability insurance as provided in this act, and the immunity shall be waived only to the extent of the amount of insurance so obtained and only to the extent of coverage provided by said policy of liability insurance. No affirmative action of the Council shall be required to retain immunity not waived by the purchase of insurance, and no affirmative action or resolution of the Council beyond the act of purchasing liability insurance shall be required to accomplish waiver of immunity to extent of insurance coverage.

Sec. 2. Contracts of insurance purchased pursuant to this act must be issued by insurers duly licensed and authorized to execute insurance contracts in this State, and must by their terms adequately insure the City of Durham against any and all liability for wrongful death or injury to person or property proximately caused by the negligent act of any officer, agent or employee of the City of Durham when acting within the scope of his authority or within the course of his employment. Any company entering into a contract of insurance with the City of Durham pursuant to this act thereby waives any defense based on the governmental immunity of the City.

The City of Durham is authorized to pay the lawful premiums of liability insurance policies out of the general tax revenues or other funds of the City.

Sec. 3. Any person sustaining damages, or in case of death, his personal representative, may sue the City of Durham as insured as provided in this act, for the recovery of his damages in any court of competent jurisdiction in this State, and it shall be no defense to any such action that the negligent act alleged was in pursuance of a governmental function of the City of Durham, to the extent that the City of Durham has insurance coverage as provided in this act.

Except as expressly provided herein, nothing in this act shall be construed to deprive the City of Durham of any defense whatsoever to any action for damages, or to restrict, limit, or otherwise affect any defense that the City of Durham may have at common law or by virtue of any statute (whether general, special, private, or local); and

nothing in this act shall be construed to relieve any person sustaining damages, or any personal representative of any decedent, from any duty to give notice of his claim to the City of Durham or to begin his action within the time prescribed by the applicable statute of limitations.

Sec. 4. The City of Durham may incur liability pursuant to this act only with respect to a claim arising after the City has procured liability insurance pursuant to this act and during the time that the insurance is in effect.

Sec. 5. No part of the pleadings that relates to or alleges facts as to the City of Durham's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this act. No liability shall attach in any case unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury. The jury shall be absent during any motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance unless the City of Durham asks for a jury trial thereon.

No plaintiff in an action brought pursuant to this act, nor counsel, nor witness therefor, shall make any statement, ask any question, read any pleadings, or do any other act in the presence of the trial jury that indicates to any member of the jury that the City of Durham's liability would be covered by insurance. If any such act is done, the judge shall immediately order a mistrial of the action.

Sec. 6. This act shall apply only to the City of Durham.

Sec. 7. This act shall be in full force and effect upon ratification.

In the General Assembly read three times and ratified, this the 9th day of May, 1973.