

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1534*

Short Title: Amend State Tort Claims Law.

(Public)

Sponsors: Representatives Nesbitt; Baddour, Barefoot, Cansler, Capps, Davis, Ellis, Gardner, Goodwin, Hackney, Haire, Horn, Insko, Jarrell, Kiser, McCombs, Mitchell, Russell, Setzer, Sherrill, Starnes, Sutton, Wainwright, Walend, Warner, and West.

Referred to: Ways and Means, if favorable, Appropriations.

May 16, 2000

A BILL TO BE ENTITLED

1 AN ACT TO INCREASE THE STATE TORT CLAIM LIMIT AND STATE
2 LIABILITY UNDER THE DUTY TO DEFEND STATE EMPLOYEES LIABILITY
3 AND TO PROVIDE FOR THE FUNDING OF STATE TORT LIABILITY CLAIMS
4 IN EXCESS OF ONE HUNDRED FIFTY THOUSAND DOLLARS, AS
5 RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.
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7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 143-291(a) reads as rewritten:

9 "(a) The North Carolina Industrial Commission is hereby constituted a court for the
10 purpose of hearing and passing upon tort claims against the State Board of Education, the
11 Board of Transportation, and all other departments, institutions and agencies of the State.
12 The Industrial Commission shall determine whether or not each individual claim arose as
13 a result of the negligence of any officer, employee, involuntary servant or agent of the
14 State while acting within the scope of his office, employment, service, agency or
15 authority, under circumstances where the State of North Carolina, if a private person,
16 would be liable to the claimant in accordance with the laws of North Carolina. If the
17 Commission finds that there was ~~such~~ negligence on the part of an officer, employee,
18 involuntary servant or agent of the State while acting within the scope of his office,

1 employment, service, agency or authority, ~~which that~~ was the proximate cause of the
2 injury and that there was no contributory negligence on the part of the claimant or the
3 person in whose behalf the claim is asserted, the Commission shall determine the amount
4 of damages ~~which that~~ the claimant is entitled to be paid, including medical and other
5 expenses, and by appropriate order direct the payment of such damages ~~by the department,~~
6 ~~institution or agency concerned,~~ as set forth in subsection (a1) of this section, but in no
7 event shall the amount of damages awarded exceed the ~~sum of one hundred fifty thousand~~
8 ~~dollars (\$150,000)~~ amounts authorized in G.S. 143-299.2 cumulatively to all claimants on
9 account of injury and damage to any one ~~person,~~ person arising out of a single occurrence.
10 Community colleges and technical colleges shall be deemed State agencies for purposes
11 of this Article. The fact that a claim may be brought under more than one Article under
12 this Chapter shall not increase the foregoing maximum liability of the State."

13 Section 2. G.S. 143-291 is amended by adding a new subsection to read:

14 "(a1) The unit of State government by which the employee was employed at the time
15 the cause of action arose shall make the payment of the first one hundred fifty thousand
16 dollars (\$150,000) of liability, and the balance of any payment owed shall be paid from
17 the State Excess Liability Fund in accordance with G.S. 143-299.4."

18 Section 3. G.S. 143-291.3 reads as rewritten:

19 **"§ 143-291.3. Counterclaims by State.**

20 The filing of a claim under this Article shall constitute consent by the plaintiff(s)
21 to the jurisdiction of the Industrial Commission to hear and determine any
22 counterclaim of ~~one hundred fifty thousand dollars (\$150,000)~~ the maximum amount
23 authorized for a claim in G.S. 143-299.2 or less which that may be filed on behalf of a
24 State department, ~~institution, or agency~~ institution or agency, or a county or city board of
25 education. A final award of the Industrial Commission awarding damages on a
26 counterclaim shall be filed with the Clerk of the Superior Court of the county wherein the
27 case was heard. These awards shall be docketed and shall be enforceable in the same
28 manner as judgments of the General Court of Justice. Notwithstanding the provisions of
29 Rule 12 of the Rules of Civil Procedure, nothing in this section shall require the filing of
30 ~~such a~~ counterclaim."

31 Section 4. G.S. 143-299.2 reads as rewritten:

32 **"§ 143-299.2. Limitation on payments by the State.**

33 (a) The maximum amount which the State may pay cumulatively to all claimants
34 on account of injury and damage to any one ~~person,~~ person arising out of any one
35 occurrence, whether the claim or claims are brought under this ~~Article~~ Article, or Article
36 31A or ~~Article 31B,~~ shall be one hundred fifty thousand dollars (\$150,000), Article 31B of this
37 Chapter, less any commercial liability insurance purchased by the State and applicable to
38 the claim or claims under G.S. 143-291(b), 143-300.6(c), or ~~143-300.16(e).~~ 143-300.16(c),
39 shall be five hundred thousand dollars (\$500,000) in total damages.

40 (b) The fact that a claim or claims may be brought under more than one Article
41 under this Chapter shall not increase the above maximum liability of the State."

42 Section 5. Article 31 of Chapter 143 of the General Statutes is amended by
43 adding a new section to read:

1 **"§ 143-299.4. State Excess Liability Fund.**

2 (a) Fund Established. – There is established the State Excess Liability Fund as a
3 nonreverting restricted reserve fund in the Office of State Budget and Management.

4 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the
5 Fund separate and apart from all other moneys, funds, and accounts. Investment earnings
6 credited to the assets of the Fund shall become part of the Fund. Any balance remaining
7 in the Fund at the end of any fiscal year shall not revert but shall be carried forward in the
8 Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the
9 warrant of the Attorney General.

10 (c) Fund Purposes. – Moneys from the Fund may be used only for the purpose of
11 paying the balance of claims in excess of one hundred fifty thousand dollars (\$150,000)
12 per claim arising under this Article, or Article 31A or 31B of this Chapter, on account of
13 injury or damage to any one person.

14 (d) Definition. – For purposes of this section, the term 'Fund' means the State
15 Excess Liability Fund."

16 Section 6. G.S. 143-300.1(c) reads as rewritten:

17 "(c) In the event that the Industrial Commission shall make award of
18 damages against any county or city board of education pursuant to this section, the
19 Attorney General shall draw a voucher for the amount required to pay such award. The
20 funds necessary to cover the first one hundred fifty thousand dollars (\$150,000) of
21 liability per claim ~~vouchers written by the Attorney General~~ for claims against county and
22 city boards of education for accidents involving school buses and school transportation
23 service vehicles shall be made available from funds appropriated to the ~~Department of~~
24 ~~Public Instruction.~~ State Board of Education. The balance of any liability owed shall be
25 paid from the State Excess Liability Fund in accordance with G.S. 143-299.4. Neither the
26 county or city boards of education, or the county or city administrative unit shall be liable
27 for the payment of any award made pursuant to the provisions of this section in excess of
28 the amount paid upon ~~such a~~ voucher by the Attorney General. Settlement and payment
29 may be made by the Attorney General as provided in G.S. 143-295."

30 Section 7. G.S. 143-300.6(a) reads as rewritten:

31 "(a) Payment of Judgments and Settlements. In an action to which this Article
32 applies, the State shall pay (i) a final judgment awarded in a court of competent
33 jurisdiction against a State employee or (ii) the amount due under a settlement of the
34 action under this section. The unit of State government by which the employee was
35 employed shall make the ~~payment.~~ payment of the first one hundred fifty thousand dollars
36 (\$150,000) of liability, and the balance of any payment owed shall be paid from the State
37 Excess Liability Fund in accordance with G.S. 143-299.4. This section does not waive
38 the sovereign immunity of the State with respect to any claim. A payment of a judgment
39 or settlement of a claim against a State employee or several State employees as joint tort-
40 feors may not exceed the amount payable for one claim under the Tort Claims Act."

41 Section 8. G.S. 143-300.16(a) reads as rewritten:

42 "(a) Any final judgment awarded against an employee in an action which meets the
43 requirements of G.S. 143-300.14, or any amount payable under a settlement of such an

1 action, shall be paid by the State. The first one hundred fifty thousand dollars (\$150,000)
2 of liability shall be paid from funds appropriated to the State Board of Education for the
3 payment of State Tort Claims. The balance of any payment owed shall be paid from the
4 State Excess Liability Fund in accordance with G.S. 143-299.4. ~~from the appropriation for~~
5 ~~the payment of State Tort Claims, except that no~~ No payment shall be made from ~~that~~
6 ~~appropriation~~ either funds appropriated to the State Board of Education or the State Excess
7 Liability Fund for any judgment for punitive damages. Nothing in this section shall be
8 deemed to waive the sovereign immunity of the State with respect to a claim covered
9 under this section or authorize the payment of any judgment or settlement against a
10 public school employee in excess of the limit provided in the Tort Claims Act."

11 Section 9. There is appropriated from the General Fund to the State Excess
12 Liability Fund the sum of two million six hundred forty thousand dollars (\$2,640,000) for
13 fiscal year 2000-2001.

14 Section 10. This act becomes effective July 1, 2000. Sections 1, 2, 4, 5, 6, 7,
15 and 8 apply to claims or actions pending on after the effective date. Section 3 applies to
16 claims filed on or after the effective date.