

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

2

HOUSE BILL 1534*
Committee Substitute Favorable 5/31/00

Short Title: Amend State Tort Claims Law.

(Public)

Sponsors:

Referred to:

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.
6

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,
19 employment, service, agency or authority, ~~which~~ that was the proximate cause of the

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

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

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

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

18 **"§ 143-291.3. Counterclaims by State.**

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

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

31 **"§ 143-299.2. Limitation on payments by the State.**

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

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

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

43 **"§ 143-299.4. State Excess Liability Fund.**

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

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

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

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

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

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

29 Section 7. G.S. 143-300.1(d) reads as rewritten:

30 "(d) The Attorney General may defend any civil action ~~which may be brought~~
31 against the driver, transportation safety assistant, or monitor of a public school bus or
32 school transportation service vehicle or school bus maintenance mechanic when such the
33 driver or mechanic is employed and paid by the local school administrative unit, when
34 the monitor is acting in accordance with G.S. 115C-245(d), when the transportation
35 safety assistant is acting in accordance with G.S. 115C-245(e), or when the driver is an
36 unpaid school bus driver trainee under the supervision of an authorized employee of the
37 Department of Transportation, Division of Motor Vehicles, or an authorized employee of
38 a county or city board of education or administrative unit thereof. unit. The Attorney
39 General may afford this defense through the use of a member of his staff or, in his
40 discretion, employ private counsel. The Attorney General is authorized to pay any
41 judgment rendered in such the civil action not to exceed the limit provided under the Tort
42 Claims Act. The funds necessary to cover the first one hundred fifty thousand dollars
43 (\$150,000) of liability per claim shall be made available from funds appropriated to the

1 State Board of Education. The balance of any liability owed shall be paid from the State
2 Excess Liability Fund under G.S. 143-299.4. The Attorney General may compromise
3 and settle any claim covered by this section to the extent that he finds the same to be
4 valid, up to the limit provided in the Tort Claims Act, provided that the authority granted
5 in this subsection shall be limited to only those claims ~~which~~that would be within the
6 jurisdiction of the Industrial Commission under the Tort Claims Act."

7 Section 8. G.S. 143-300.6(a) reads as rewritten:

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

18 Section 9. G.S. 143-300.16(a) reads as rewritten:

19 "(a) Any final judgment awarded against an employee in an action ~~which~~that meets
20 the requirements of G.S. 143-300.14, or any amount payable under a settlement of ~~such an~~
21 the action, shall be paid by the State. The first one hundred fifty thousand dollars
22 (\$150,000) of liability shall be paid from funds appropriated to the State Board of
23 Education for the payment of State Tort Claims. The balance of any payment owed shall
24 be paid from the State Excess Liability Fund under G.S. 143-299.4. ~~from the appropriation~~
25 ~~for the payment of State Tort Claims, except that no~~No payment shall be made from ~~that~~
26 ~~appropriation~~either funds appropriated to the State Board of Education or the State Excess
27 Liability Fund for any judgment for punitive damages. Nothing in this section shall be
28 deemed to waive the sovereign immunity of the State with respect to a claim covered
29 under this section or authorize the payment of any judgment or settlement against a
30 public school employee in excess of the limit provided in the Tort Claims Act."

31 Section 10. Notwithstanding the limitations of G.S. 143-291.3, for claims
32 pending on the effective date of this act, any counterclaim made by the State under G.S.
33 143-291.3 shall not exceed the greater of one hundred fifty thousand dollars (\$150,000)
34 or the amount of the plaintiff's claim.

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

38 Section 12. This act becomes effective July 1, 2000. Sections 1, 2, 4, 5, 6, 7,
39 8, 9, and 10 apply to claims or actions pending on or after the effective date. Section 3
40 applies to claims filed on or after the effective date.