

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2008-170
HOUSE BILL 1113

AN ACT TO LIMIT THE USE OF THE PUBLIC DUTY DOCTRINE AS AN AFFIRMATIVE DEFENSE FOR CLAIMS UNDER THE STATE TORT CLAIMS ACT IN WHICH THE INJURIES OF THE CLAIMANT ARE THE RESULT OF THE ALLEGED NEGLIGENT FAILURE OF CERTAIN PARTIES TO PROTECT CLAIMANTS FROM THE ACTION OF OTHERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-299.1A. Limit use of public duty doctrine as an affirmative defense.

(a) Except as provided in subsection (b) of this section, the public duty doctrine is an affirmative defense on the part of the State department, institution, or agency against which a claim is asserted if and only if the injury of the claimant is the result of any of the following:

- (1) The alleged negligent failure to protect the claimant from the action of others or from an act of God by a law enforcement officer as defined in subsection (d) of this section.
- (2) The alleged negligent failure of an officer, employee, involuntary servant or agent of the State to perform a health or safety inspection required by statute.

(b) Notwithstanding subsection (a) of this section, the affirmative defense of the public duty doctrine may not be asserted in any of the following instances:

- (1) Where there is a special relationship between the claimant and the officer, employee, involuntary servant or agent of the State.
- (2) When the State, through its officers, employees, involuntary servants or agents, has created a special duty owed to the claimant and the claimant's reliance on that duty is causally related to the injury suffered by the claimant.
- (3) Where the alleged failure to perform a health or safety inspection required by statute was the result of gross negligence.

(c) Nothing in this section shall limit the assertion of the public duty doctrine as a defense on the part of a unit of local government or its officers, employees, or agents.

(d) For purposes of this section, "law enforcement officer" means a full-time or part-time employee or agent of a State department, institution, or agency or an agent of the State operating under an agreement with a State department, institution, or agency of the State who is any of the following:

- (1) Actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes.
- (2) Possesses the power of arrest by virtue of an oath administered under the authority of the State.
- (3) Is a juvenile justice officer, chief court counselor, or juvenile court counselor.
- (4) Is a correctional officer performing duties of custody, supervision, and treatment to control and rehabilitate criminal offenders.
- (5) Is a firefighter as defined in G.S. 113-60.32(1).
- (6) Is a probation officer appointed under Article 20 of Chapter 15 of the General Statutes."

SECTION 2. This act becomes effective October 1, 2008, and applies to claims arising on or after that date.

In the General Assembly read three times and ratified this the 9th day of July, 2008.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:48 p.m. this 4th day of August, 2008