Article 31A.

Defense of State Employees, Medical Contractors and Local Sanitarians.

§ 143-300.2. Definitions.

Unless the context otherwise requires, the definitions contained in this section govern the construction of this Article.

(1) "Civil or criminal action or proceeding" includes any case, prosecution, special proceedings, or administrative proceeding in or before any court or agency of this State or any other state or the United States.

(2) "Employee" includes an officer, agent, or employee but does not include an independent contractor.

(3) "Employment" includes office, agency, or employment.

(4) "The State" includes all departments, agencies, boards, commissions, institutions, bureaus, and authorities of the State. Community colleges, technical colleges, and occupational licensing boards regulated by Chapter 93B of the General Statutes shall be deemed State agencies for purposes of this Article. (1967, c. 1092, s. 1; 1987, c. 684, s. 2; 2002-168, s. 2.)

§ 143-300.3. Defense of State employees.

Except as otherwise provided in G.S. 143-300.4, upon request of an employee or former employee, the State may provide for the defense of any civil or criminal action or proceeding brought against him in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of his employment as a State employee. (1967, c. 1092, s. 1.)

§ 143-300.4. Grounds for refusal of defense.

(a) The State shall refuse to provide for the defense of a civil or criminal action or proceeding brought against an employee or former employee if the State determines that:

(1) The act or omission was not within the scope and course of his employment as a State employee; or

(2) The employee or former employee acted or failed to act because of actual fraud, corruption, or actual malice on his part; or

(3) Defense of the action or proceeding by the State would create a conflict of interest between the State and the employee or former employee; or

(4) Defense of the action or proceeding would not be in the best interests of the State.

(b) The determinations required by subsection (a) of this section shall be made by the Attorney General. The Attorney General may delegate his authority to make these determinations to the chief administrative authority of any agency, institution, board, or commission whose employees are to be defended as provided by subdivision (3) or (4) of G.S. 143-300.5. Approval of the request by an employee or former employee for provision of defense shall raise a presumption that the determination required by this section had been made and that no grounds for refusal to defend were discovered. (1967, c. 1092, s. 1.)

§ 143-300.5. Regulations for providing defense counsel.

The Governor may issue regulations for the defense of employees or former employees of the State pursuant to this Article through one or more of the following methods as may be appropriate to the employee or class of employees in question:

(1) By the Attorney General;
(2) By employing other counsel for this purpose as provided in G.S. 147-17;
(3) By authorizing the purchase of insurance which requires that the insurer provide or underwrite the cost of the defense; or
(4) By authorizing defense by counsel assigned to or employed by the department, agency, board, commission, institution, bureau, or authority which employed the person requesting the defense. (1967, c. 1092, s. 1.)

§ 143-300.6. Payments of judgments; compromise and settlement of claims.

(a) Payment of Judgments and Settlements. In an action to which this Article applies, the State shall pay (i) a final judgment awarded in a court of competent jurisdiction against a State employee or (ii) the amount due under a settlement of the action under this section. The unit of State government that employed the employee shall pay the first one hundred fifty thousand dollars ($150,000) of liability, and the balance of any payment owed shall be paid in accordance with G.S. 143-299.4. This section does not waive the sovereign immunity of the State with respect to any claim. A payment of a judgment or settlement of a claim against a State employee or several State employees as joint tort-feasors may not exceed the amount payable for one claim under the Tort Claims Act.

(b) Settlement of Claims. The Attorney General may compromise and settle any claim covered by this section to the extent he finds the claim valid. A settlement in excess of the limit provided in subsection (a) must be approved by the employee. In an action in which the Attorney General has stated in writing that private counsel should be provided the employee because of a conflict of interest between the employee and the State, a settlement in excess of the limit provided in subsection (a) must be approved by the private counsel.

(c) Other Insurance. The coverage afforded employees and former employees under this Article shall be excess coverage over any commercial liability insurance, other than insurance written under G.S. 58-32-15, up to the limit provided in subsection (a). (1973, c. 1372; 1975, c. 209, ss. 1, 2; 1979, c. 886; 1981, c. 1109, s. 2; 1991, c. 674, s. 2; 2000-67, s. 7A(h).)

§ 143-300.7. Defense of medical contractors.

Notwithstanding any other provisions of this Article, any person or professional association who at the request of the Division of Prisons of the Department of Adult Correction provides medical and dental services to inmates in the custody of the Division of Prisons of the Department of Adult Correction and who is sued pursuant to the Federal Civil Rights Act of 1871 may be defended by the Attorney General and shall be protected from liability for violations of civil rights in accordance with the provisions of this Article. (1979, c. 1053, s. 2; 2011-145, s. 19.1(h); 2017-186, s. 2(dddddd); 2021-180, s. 19C.9(p).)

§ 143-300.8. Defense of registered environmental health specialists, registered environmental health specialist interns, and registered environmental health associates.

(a) The following definitions apply in this section:
(1) Department. – The Department of Health and Human Services.

(2) Local health department. – Defined in G.S. 130A-2(5).
(3) Registered environmental health associate. – Defined in G.S. 90A-51(2d).
(4) Registered environmental health specialist. – Defined in G.S. 90A-51(4).
(5) Registered environmental health specialist intern. – Defined in G.S. 90A-51(5).

(b) All local health departments shall enter into an annual agreement with the Department to provide environmental health services in accordance with Chapter 130A of the General Statutes. The annual agreement shall include a requirement for quality assurance for all environmental health services.

(c) Except as provided in subsections (d) and (e) of this section, any registered environmental health specialist, registered environmental health specialist intern, or registered environmental health associate enforcing rules of the Commission for Public Health under the authority of the Department pursuant to G.S. 130A-4 shall be defended by the Attorney General, subject to the provisions of G.S. 143-300.4, and shall be protected from liability in accordance with the provisions of this Article in any civil or criminal action or proceeding brought against the registered environmental health specialist, registered environmental health specialist intern, or registered environmental health associate in their official or individual capacity, or both, on account of an act done or omission made in the scope and course of enforcing the rules of the Commission for Public Health. The Department shall pay half of any judgment against the registered environmental health specialist, registered environmental health specialist intern, or registered environmental health associate, or any settlement made on their behalf, subject to the provisions of G.S. 143-300.6. The local health department employing or contracting with the registered environmental health specialist, registered environmental health specialist intern, or registered environmental health associate at the time of the underlying act or omission giving rise to the judgment or settlement shall pay half of the judgment or settlement. The Department may agree, in its sole discretion, to an alternate arrangement with the local health department wherein the Department pays more than half of the judgment or settlement depending on the individual circumstances of the case.

(d) Any registered environmental health specialist, registered environmental health specialist intern, or registered environmental health associate employed by or contracted to work for a local health department that has not entered into an annual agreement or fails to abide by the annual agreement, as determined by the Department, as required by subsection (b) of this section shall not be defended by the Attorney General or have their judgement or settlement paid by the Department. The local health department shall be required to pay any judgement against the registered environmental health specialist, registered environmental health specialist intern, or registered environmental health associate or any settlement on their behalf for any act or omission made in the scope and course of enforcing the rules of the Commission for Public Health.

(e) A registered environmental health specialist, registered environmental health specialist intern, or registered environmental health associate shall not be defended by the Attorney General or protected from liability for any claim arising from an act or omission made in the scope and course of enforcing a local rule adopted pursuant to G.S. 130A-335(c).

(f) This section shall apply to actions in which the registered environmental health specialist, registered environmental health intern, or registered environmental health associate, is named individually as a party, as well as contested cases brought in the Office of Administrative Hearings, pursuant to Chapter 150B of the General Statutes, arising from the alleged acts or omissions of an authorized agent of the Department, during which the Department determines that the best course of action is to resolve the matter with a settlement payment to the petitioner to

conclude the contested case and avoid any future litigation. (1987, c. 654, s. 2; 1989, c. 727, s. 219(36); 1997-443, s. 11A.96; 2006-202, s. 7; 2007-182, s. 2; 2011-145, s. 13.3(k); 2011-391, s. 27(b); 2024-49, s. 4.7.)

§ 143-300.9. Payment of excess damages relating to unconstitutional taxes.

In an action to which this Article applies, the State shall pay the excess amount of a judgment or settlement under G.S. 143-300.6 for damages against a State employee for collecting or administering a tax that is held unconstitutional. The excess amount is the amount of the judgment or settlement over (i) the limit provided in G.S. 143-300.6(a) and (ii) any coverage under G.S. 58-32-15. This section does not waive the sovereign immunity of the State with respect to any claim. (1991, c. 674, s. 1.)

§ 143-300.10. Payment of excess damages relating to unconstitutional goals program.

In an action to which this Article applies, the State shall pay the excess amount of a judgment or settlement under G.S. 143-300.6 for damages against a State employee or member of a State board or commission for enforcing or administering a goals program promoting participation by disadvantaged businesses, minority businesses, and women businesses, in contracts let by a State department or agency that is held unconstitutional. The excess amount is the amount of the judgment or settlement over (i) the limit provided in G.S. 143-300.6(a) and (ii) any coverage under G.S. 58-32-15. This section does not waive the sovereign immunity of the State with respect to any claim. (1991 (Reg. Sess. 1992), c. 1044, s. 39(a).)

§ 143-300.11. Reserved for future codification purposes.

§ 143-300.12. Reserved for future codification purposes.