

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 933

Short Title: Immunity/Certain Public Officers/Individuals.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II.

March 24, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT CERTAIN PUBLIC OFFICERS AND EMPLOYEES FROM
3 LIABILITY IN THEIR INDIVIDUAL CAPACITIES FOR GOOD FAITH OR
4 REASONABLE REPORTING OF CRIMINAL ACTIVITY.

5 Whereas, the General Assembly has enacted numerous laws requiring public
6 employees to protect the public's property; and

7 Whereas, public employees acting to protect the public's property or public
8 safety ought to be protected from monetary liability as the result of lawsuits against
9 them in their individual capacities so long as they are acting reasonably and not
10 maliciously; and

11 Whereas, a recent decision by the Court of Appeals of North Carolina has
12 exposed public officers and employees to liability in their individual capacities for
13 reporting suspected criminal activity to law enforcement authorities (Beatenhead v.
14 Lincoln County Board of Election, 162 N.C. App. 547, 591 S.E.2d 599 (2004), which
15 holding was affirmed by the Supreme Court of North Carolina in December 2004);
16 Now, therefore,

17 The General Assembly of North Carolina enacts:

18 **SECTION 1.** Article 5 of Chapter 115C of the General Statutes is amended
19 by adding a new section to read:

20 "**§ 115C-43.1. Immunity for public school officers and employees for good faith or**
21 **reasonable reporting of suspected criminal activity.**

22 (a) Officers and employees of local boards of education shall not be liable in
23 their individual capacities on any State law claim against them for reporting information
24 or evidence to their immediate supervisors or to any law enforcement agency regarding
25 suspected criminal activity on school grounds, at school activities, or at any other place
26 where the conduct may result in the destruction or misappropriation of school property
27 or adversely impact public safety or the orderly and efficient operation of the schools,
28 except upon proof by clear and convincing evidence of both of the following:

29 (1) That the officer or employee acted maliciously.

1 (2) That the officer or employee had no objectively reasonable basis for
2 making a report.

3 (b) Any claim against an individual public officer or employee of a local board of
4 education brought on the basis of a report of suspected criminal conduct or prosecution
5 of a criminal matter shall be accompanied by a proffer of the evidence to support such a
6 claim, which shall be in the form of sworn affidavits. Claims that are not submitted with
7 such a proffer shall be summarily dismissed. Claims based on proffers that do not on
8 their face establish a prima facie case shall be summarily dismissed."

9 **SECTION 2.** Part 4 of Article 5 of Chapter 153A of the General Statutes is
10 amended by adding a new section to read:

11 **"§ 153A-97.1. Immunity for county officers and employees for good faith or**
12 **reasonable reporting of suspected criminal activity.**

13 (a) County officers and employees shall not be liable in their individual
14 capacities on any State law claim against them for reporting information or evidence to
15 their immediate supervisors or to any law enforcement agency regarding suspected
16 criminal activity on county property, at county-sponsored activities, or at any other
17 place where the conduct may result in the destruction or misappropriation of county
18 property or may adversely impact public safety, except upon proof by clear and
19 convincing evidence of both of the following:

20 (1) That the officer or employee acted maliciously.

21 (2) That the officer or employee had no objectively reasonable basis for
22 making a report.

23 (b) Any claim against an individual county officer or employee brought on the
24 basis of a report of suspected criminal conduct or prosecution of a criminal matter shall
25 be accompanied by a proffer of the evidence to support such a claim, which shall be in
26 the form of sworn affidavits. Claims that are not submitted with such a proffer shall be
27 summarily dismissed. Claims based on proffers that do not on their face establish a
28 prima facie case shall be summarily dismissed."

29 **SECTION 3.** Part 4 of Article 7 of Chapter 160A of the General Statutes is
30 amended by adding a new section to read:

31 **"§ 160A-167.1. Immunity for city officers and employees for good faith or**
32 **reasonable reporting of suspected criminal activity.**

33 (a) City officers and employees shall not be liable in their individual capacities
34 on any State law claim against them for reporting information or evidence to their
35 immediate supervisors or to any law enforcement agency regarding suspected criminal
36 activity on city property, at activities sponsored by the municipalities, or at any other
37 place where the conduct may result in the destruction or misappropriation of city
38 property or may adversely impact public safety, except upon proof by clear and
39 convincing evidence:

40 (1) That the officer or employee acted maliciously.

41 (2) That the officer or employee had no objectively reasonable basis for
42 making a report.

43 (b) Any claim against an individual city officer or employee brought on the basis
44 of a report of suspected criminal conduct or prosecution of a criminal matter shall be

1 accompanied by a proffer of the evidence to support such a claim, which shall be in the
2 form of sworn affidavits. Claims that are not submitted with such a proffer shall be
3 summarily dismissed. Claims based on proffers that do not on their face establish a
4 prima facie case shall be summarily dismissed."

5 **SECTION 4.** Article 31A of Chapter 143 of the General Statutes is amended
6 by adding a new section to read:

7 **"§ 143-300.11. Immunity for State officers and employees for good faith or**
8 **reasonable reporting of suspected criminal activity.**

9 (a) State officers and employees shall not be liable in their individual capacities
10 on any State law claim against them for reporting information or evidence to their
11 immediate supervisors or to any law enforcement agency regarding suspected criminal
12 activity on State property, at a State-sponsored activity, or at any other place where the
13 conduct may result in the destruction or misappropriation of State property or may
14 adversely impact public safety, except upon proof by clear and convincing evidence of
15 both of the following:

16 (1) That the officer or employee acted maliciously.

17 (2) That the officer or employee had no objectively reasonable basis for
18 making a report.

19 (b) Any claim against an individual State officer or employee brought on the
20 basis of a report of suspected criminal activity or prosecution of a criminal matter shall
21 be accompanied by a proffer of the evidence to support such a claim, which shall be in
22 the form of sworn affidavits. Claims that are not submitted with such a proffer shall be
23 summarily dismissed. Claims based on proffers that do not on their face establish a
24 prima facie case shall be summarily dismissed."

25 **SECTION 5.** This act is effective when it becomes law.