

NORTH CAROLINA GENERAL ASSEMBLY
1961 SESSION

CHAPTER 423
HOUSE BILL 572

AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO WAIVE ITS
GOVERNMENTAL IMMUNITY TO THE EXTENT THAT IT TAKES OUT
LIABILITY INSURANCE.

The General Assembly of North Carolina do enact:

Section 1. The City of Charlotte, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive the City's governmental immunity from liability for damage by reason of death, or injury to person or property, caused by the negligence or tort of the City or by the negligence or tort of any official or employee of such City when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that the City is indemnified by insurance from such negligence or tort.

Any contract of insurance purchased pursuant to this Section must be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State, and such contract of insurance may cover such negligent acts or torts and such officials and employees as such City may decide. The City may purchase one or more contracts of insurance pursuant to this Section, each such contract covering different negligent acts or torts or different officials or employees from every other contract. Any company or corporation which enters into a contract of insurance as above described with such City by such act waives any defense based upon the governmental immunity of such City.

Such City is authorized and empowered to pay, as a necessary expense, the lawful premiums for such insurance.

Any person sustaining damages, or in case of death his personal representative, may sue the City for the recovery of such damages in any court of competent jurisdiction in Mecklenburg County; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of a governmental or discretionary function of such City, if, and to the extent, such City has insurance coverage as provided in this Section.

Except as hereinbefore expressly provided, nothing in this Section shall be construed to deprive such City of any defense whatsoever to any such action for damages, or to restrict, limit, or otherwise affect any such defense which such City may have at common law or by virtue of any statute; and nothing in this Section shall be construed to relieve any person sustaining damages or any personal representative of

any decedent from any duty to give notice of such claim to said City or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

Such City may incur liability pursuant to this Section only with respect to a claim arising after such City has procured liability insurance pursuant to this Section and only during the time when such insurance is in force.

No part of the pleadings which relates to or alleges facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this Section. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect thereto unless the defendant shall ask for a jury trial thereon.

Sec. 2. This Act shall apply to the City of Charlotte only.

Sec. 3. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 16th day of May, 1961.