

NORTH CAROLINA GENERAL ASSEMBLY
1967 SESSION

CHAPTER 1092
HOUSE BILL 1168

1 AN ACT FOR THE DEFENSE OF STATE EMPLOYEES.
2

3 The General Assembly of North Carolina do enact:

5 **Section 1.** Chapter 143 of the General Statutes of North Carolina is amended by
6 adding a new Article 31A as follows:

7 "Article 31A

8 "Defense of State Employees

9 **"§ 143-300.2. Definitions.** Unless the context otherwise requires, the definitions contained in
10 this Section govern the construction of this Article.

- 11 (1) 'Employee' includes an officer, agent, or employee but does not include an
12 independent contractor.
- 13 (2) 'Employment' includes office, agency, or employment.
- 14 (3) 'The State' includes all departments, agencies, boards, commissions,
15 institutions, bureaus, and authorities of the State.
- 16 (4) 'Civil or criminal action or proceeding' includes any case, prosecution,
17 special proceeding, or administrative proceeding in or before any court or
18 agency of this State or any other state or the United States.

19 **"§ 143-300.3. Defense of State Employees.** Except as otherwise provided in § 143-300.4,
20 upon request of an employee or former employee, the State may provide for the defense of any
21 civil or criminal action or proceeding brought against him in his official or individual capacity,
22 or both, on account of an act done or omission made in the scope and course of his employment
23 as a State employee.

24 **"§ 143-300.4. Grounds for Refusal of Defense.** (a) The State shall refuse to provide for the
25 defense of a civil or criminal action or proceeding brought against an employee or former
26 employee if the State determines that:

- 27 (1) The act or omission was not within the scope and course of his
28 employment as a State employee; or
- 29 (2) The employee or former employee acted or failed to act because of actual
30 fraud, corruption, or actual malice on his part; or
- 31 (3) Defense of the action or proceeding by the State would create a conflict of
32 interest between the State and the employee or former employee; or
- 33 (4) Defense of the action or proceeding would not be in the best interests of the
34 State.

35 "(b) The determinations required by subsection (a) of this Section shall be made by the
36 Attorney General. The Attorney General may delegate his authority to make these
37 determinations to the chief administrative authority of any agency, institution, board, or
38 commission whose employees are to be defended as provided by subdivisions (a)(3) or (a)(4) of
39 § 143-300.5. Approval of the request by an employee or former employee for provision of
40 defense shall raise a presumption that the determination required by this Section had been made
41 and that no grounds for refusal to defend were discovered.

42 **"§ 143-300.5. Regulations for Providing Defense Counsel.** The Governor may issue
43 regulations for the defense of employees or former employees of the State pursuant to this

1 Article through one or more of the following methods as may be appropriate to the employee or
2 class of employees in question:

- 3 (1) by the Attorney General;
- 4 (2) by employing other counsel for this purpose as provided in § 147-17;
- 5 (3) by authorizing the purchase of insurance which requires that the insurer
6 provide or underwrite the cost of the defense; or
- 7 (4) by authorizing defense by counsel assigned to or employed by the
8 department, agency, board, commission, institution, bureau, or authority
9 which employed the person requesting the defense."

10 **Sec. 2.** G.S. 147-17 is rewritten to read as follows:

11 **§ 147-17. May Employ Counsel in Cases Wherein State is Interested.** (a) No department,
12 agency, institution, commission, bureau or other organized activity of the State which receives
13 support in whole or in part from the State shall employ any counsel, except with the approval of
14 the Governor. In any case or proceeding, civil or criminal, in or before any court or agency of
15 this State or any other state or the United States, or in any other matter in which the State of
16 North Carolina is interested, the Governor may employ such special counsel as he may deem
17 proper or necessary to represent the interest of the State, and may fix the compensation for their
18 services.

19 " (b) The Attorney General shall be counsel for all departments, agencies, institutions,
20 commissions, bureaus or other organized activities of the State which receive support in whole
21 or in part from the State. Whenever the Attorney General shall advise the Governor that it is
22 impracticable for him to render legal services to any State agency, institution, commission,
23 bureau or other organized activity, or to defend a State employee or former employee as
24 authorized by Article 31A of Chapter 143 of the General Statutes, the Governor may authorize
25 the employment of such counsel, as in his judgment, should be employed to render such
26 services, and may fix the compensation for their services.

27 " (c) The Governor may direct that the compensation fixed under this Section for special
28 counsel shall be paid out of appropriations or other funds credited to the appropriate
29 department, agency, institution, commission, bureau, or other organized activity of the State or
30 out of the Contingency and Emergency Fund."

31 **Sec. 3.** All laws and clauses of laws in conflict with this Act are hereby repealed.

32 **Sec. 4.** This Act shall take effect upon its ratification.

33 In the General Assembly read three times and ratified, this the 3rd day of July, 1967.