

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 105

Short Title: Indemnify Tax Official.

(Public)

Sponsors: Senators Winner, Kincaid, and Staton.

Referred to: Constitution.

February 20, 1991

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR PAYMENT OF EXCESS DAMAGES AGAINST A STATE EMPLOYEE FOR COLLECTING OR ADMINISTERING AN UNCONSTITUTIONAL TAX.

The General Assembly of North Carolina enacts:

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

"§ 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."

Sec. 2. G.S. 143-300.6 reads as rewritten:

"§ 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 by which the employee was employed shall make the payment. 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. All final judgments

1 awarded in courts of competent jurisdiction against State employees in actions or suits to which
2 this Article applies, or any amounts payable under a settlement of such suits in accordance with
3 this section, shall be paid by the department, agency, board, commission, institution, bureau or
4 authority which employs or employed the State employee. Nothing in this section shall be
5 deemed to waive the sovereign immunity of the State with respect to a claim covered by this
6 section. No payment of a judgment or settlement of a claim against a State employee or several
7 State employees as joint tort feasons shall exceed the amount payable for any one claim under
8 the Tort Claims Act.

9 (b) Settlement of Claims. The Attorney General may compromise and settle any
10 claim covered by this section to the extent that he finds the same to be valid, claim valid.
11 A settlement in excess of the limit provided in subsection (a) must be approved by the
12 employee. In an action in which the Attorney General has stated in writing that private
13 counsel should be provided the employee because of a conflict of interest between the
14 employee and the State, a settlement in excess of the limit provided in subsection (a)
15 must be approved by the private counsel. provided that no settlement of any such claim in
16 an amount in excess of the limit provided in the Tort Claims Act shall be made without the
17 approval of the employee. In a case wherein the Attorney General has stated in writing that
18 private counsel ought to be provided because of a conflict with the interests of the State, the
19 settlement in excess of the limit provided in the Tort Claims Act must be approved by the
20 private counsel.

21 (c) Other Insurance. The coverage afforded employees and former employees
22 under this Article shall be excess coverage over any commercial liability insurance up to
23 the limit of the Tort Claims Act, insurance, other than insurance written under G.S. 58-32-
24 15, up to the limit provided in subsection (a). except that this subsection shall not apply to
25 programs of insurance written under the authority of G.S. 143B-424.1; and programs of
26 insurance written under G.S. 143B-424.1 shall not be deemed to be commercial liability
27 insurance within the meaning of this section."

28 Sec. 3. G.S. 58-32-15(b) reads as rewritten:

29 "(b) The Commission, pursuant to this section, may acquire professional liability
30 insurance covering the officers and employees, or any group thereof, of a department,
31 institution or agency of State government or a community college or technical college
32 only if the coverage to be provided by such the insurance policy is in excess of the
33 protection provided by Articles 31 and 31A of General Statutes Chapter 143. Chapter 143
34 of the General Statutes, other than the protection provided by G.S. 143-300.9."

35 Sec. 4. This act is effective upon ratification and applies to payments made
36 on or after the date of ratification.