

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 116\*

Short Title: Duty to Defend State Employees.

(Public)

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Sponsors: Senators Winner; Gulley, Cooper, Carpenter, and Odom.

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Referred to: Judiciary I/Constitution.

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February 1, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS PROVIDING FOR THE DEFENSE OF STATE  
EMPLOYEES FROM TORT CLAIMS ARISING IN THE SCOPE OR COURSE OF  
THEIR EMPLOYMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-300.3 reads as rewritten:

**"§ 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~~shall provide for the defense of any civil ~~or criminal~~ action or ~~proceeding~~proceeding, and ~~may~~provide for the defense of any criminal action or proceeding, brought against ~~him~~the employee in ~~his~~the employee's official or individual capacity, or both, on account of an act done or omission made in the scope and course of ~~his~~the employee's employment as a State employee."

Sec. 2. G.S. 143-300.4 reads as rewritten:

**"§ 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~~the employee's employment as a State employee; or

- 1           (2) The employee or former employee acted or failed to act because of  
2           ~~actual fraud, corruption, or actual malice on his part; or gross negligence,~~  
3           ~~wanton conduct, or intentional wrongdoing on the employee's part.~~  
4           (3) ~~Defense of the action or proceeding by the State would create a conflict~~  
5           ~~of interest between the State and the employee or former employee; or~~  
6           (4) ~~Defense of the action or proceeding would not be in the best interests of~~  
7           ~~the State.~~

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

15           Sec. 3. Article 31A of Chapter 143 is amended by adding a new section to  
16           read:

17           "**§ 143-300.4A. Conflict of interest.**

18           ~~Whenever the Attorney General determines that the defense of an action or a~~  
19           ~~proceeding by the State would create a conflict of interest between the State and the~~  
20           ~~employee or former employee, and that a defense is otherwise required under G.S. 143-~~  
21           ~~300.3 and G.S. 143-300.4, the Attorney General shall request the Governor to authorize~~  
22           ~~employment of other counsel as set forth in G.S. 143-300.5. In that event, the Governor~~  
23           ~~shall appoint other counsel."~~

24           Sec. 4. G.S. 143-300.6 reads as rewritten:

25           "**§ 143-300.6. Payments of judgments; compromise and settlement of claims.**

26           (a) Payment of Judgments and Settlements. In an action to which this Article  
27           applies, including an action in which the State provides the defense of the employee, or  
28           former employee, by employing other counsel pursuant to G.S. 143-300.4A, the State  
29           shall pay (i) a final judgment awarded in a court of competent jurisdiction against a State  
30           employee or (ii) the amount due under a settlement of the action under this section. The  
31           unit of State government by which the employee was employed shall make the ~~payment.~~  
32           payment up to the amount payable under the Tort Claims Act, and any additional  
33           payment due shall be paid from the coverage provided under G.S. 58-32-15. The amount  
34           due under a settlement of an action under this section in which the State employee is  
35           defended by counsel other than the Attorney General must be reviewed and approved by  
36           the Commissioner of Insurance before the settlement becomes binding on the State. This  
37           section does not waive the sovereign immunity of the State with respect to any claim. A  
38           Except as otherwise limited, a payment of a judgment or settlement of a claim against a  
39           State employee or several State employees as joint tort-feasors may not exceed the  
40           ~~amount payable for one claim under the Tort Claims Act. of one million dollars (\$1,000,000)~~  
41           cumulatively to all claimants on account of injury and damages to any one person,  
42           including any amount paid under the Tort Claims Act. Payment of a judgment or  
43           settlement of a claim against a State employee or several State employees as joint tort-

1 feasons shall be limited for recovery under this Article to the amount payable for one  
2 claim under the Tort Claims Act for claims arising out of the following incidences:

- 3 (1) Operation of a motor vehicle, watercraft, or aircraft.
- 4 (2) Medical malpractice by a physician, surgeon, dentist, or X-ray  
5 technician, or by medical personnel or nonmedical personnel when  
6 services or treatment is rendered at a hospital.
- 7 (3) Nuclear liability.
- 8 (4) Circumstances for which the State would be liable for workers'  
9 compensation, unemployment compensation, or disability  
10 compensation.
- 11 (5) Any governmental direction or request to test for, monitor, clean up,  
12 remove, contain, treat, detoxify, or neutralize pollutants.
- 13 (6) Exposure to asbestos.
- 14 (7) Sexual harassment.
- 15 (8) Operations conducted by University of North Carolina Hospitals at  
16 Chapel Hill.
- 17 (9) An action by one State employee against another State employee except  
18 for claims arising out of employment-related activities, discriminatory  
19 practices, or equal protection claims.
- 20 (10) Losses arising out of operations conducted by any department, board,  
21 college, university, or other agency of the State for which other liability  
22 protection coverage applies.

23 This provision does not otherwise limit the rights of recovery under any other provision  
24 of law.

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

32 (c) Other Insurance. The coverage afforded employees and former employees  
33 under this Article shall be excess coverage over any commercial liability insurance, other  
34 than insurance written under G.S. 58-32-15, up to the limit provided in subsection (a)."

35 Sec. 5. This act becomes effective October 1, 1995, and applies to actions  
36 arising on or after that date.