

GENERAL ASSEMBLY OF NORTH CAROLINA  
1987 SESSION

CHAPTER 1087  
SENATE BILL 669

AN ACT TO CLARIFY THE STATE TORT CLAIMS ACT AND RELATED  
STATUTES, TO IMPROVE THE ADMINISTRATION OF THE ACT.

The General Assembly of North Carolina enacts:

**Section 1.** G.S. 143-291 reads as rewritten:

**"§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages.**—(a) The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of one hundred thousand dollars (\$100,000) cumulatively to all claimants on account of injury and damage to any one person. The fact that a claim may be brought under more than one Article under this Chapter shall not increase the foregoing maximum liability of the State.

(b) If a State agency, otherwise authorized to purchase insurance, purchases a policy of commercial liability insurance providing coverage in an amount at least equal to the limits of the State Tort Claims Act, such insurance coverage shall be in lieu of the State's obligation for payment under this Article."

**Sec. 2.** Chapter 143 is amended by adding a new section to read:

**"§ 143-291.2. Costs and fees.**—(a) The Industrial Commission may by order tax the costs against the losing party in the same amount and the same manner as costs are taxed in the General Court of Justice. When a State department, institution, or agency appeals to the full commission the decision rendered by a hearing commissioner, the State department, institution, or agency shall furnish a copy of the transcript of the

hearing to the appellee without cost. The State department, institution, or agency concerned may pay the costs taxed against it. When costs are not paid by a party from whom they are due, the Industrial Commission shall issue an execution for the costs and attach a bill of costs to each execution. The Sheriff shall levy upon the execution as provided in Chapter 6 of the General Statutes in civil actions.

(b) The Industrial Commission shall charge a filing fee for each affidavit initiating a claim filed under this Article in an amount equal to the filing fee charged for civil actions in the Superior Court Division of the General Court of Justice. No filing fee shall be required of indigent persons, provided each claim by an indigent complies with all statutory and administrative requirements applicable to the filing of civil actions by indigents in the Superior Court Division of the General Court of Justice."

**Sec. 3.** Chapter 143 is amended by adding a new section to read:

**"§ 143-291.3. Counterclaims by State.**—The filing of a claim under this Article shall constitute consent by the plaintiff(s) to the jurisdiction of the Industrial Commission to hear and determine any counterclaim of one hundred thousand dollars (\$100,000) or less which may be filed on behalf of a State department, institution, or agency or a county or city board of education. A final award of the Industrial Commission awarding damages on a counterclaim shall be filed with the Clerk of the Superior Court of the county wherein the case was heard. These awards shall be docketed and shall be enforceable in the same manner as judgments of the General Court of Justice. Notwithstanding the provisions of Rule 12 of the Rules of Civil Procedure, nothing in this section shall require the filing of such a counterclaim."

**Sec. 4.** G.S. 143-293 reads as rewritten:

**"§ 143-293. Appeals to Court of Appeals.**—Either the claimant or the State may, within 30 days after receipt of the decision and order of the full Commission, to be sent by registered or certified mail, but not thereafter, appeal from the decision of the Commission to the Court of Appeals. Such appeal shall be for errors of law only under the same terms and conditions as govern appeals in ordinary civil actions, and the findings of fact of the Commission shall be conclusive if there is any competent evidence to support them. The appellant shall cause to be prepared a statement of the case as required by the rules of the Court of Appeals. A copy of this statement shall be served on the respondent within 45 days from the entry of the appeal taken; within 20 days after such service, the respondent shall return the copy with his approval or specified amendments endorsed or attached; if the case be approved by the respondent, it shall be filed with the Clerk of the Court of Appeals as a part of the record; if not returned with objections within the time prescribed, it shall be deemed approved. The chairman of the Industrial Commission shall have the power, in the exercise of his discretion, to enlarge the time in which to serve statement of case on appeal and exceptions thereto or counterstatement of case.

If the case on appeal is returned by the respondent with objections as prescribed, or if a countercase is served on appellant, the appellant shall immediately request the chairman of the Industrial Commission to fix a time and place for settling the case before him. If the appellant delays longer than 15 days after the respondent serves his countercase or exceptions to request the chairman to settle the case on appeal, and

delays for such period to mail the case and countercase or exceptions to the chairman, then the exceptions filed by the respondent shall be allowed; or the countercase served by him shall constitute the case on appeal; but the time may be extended by agreement of counsel.

The chairman shall forthwith notify the attorneys of the parties to appear before him for that purpose at a certain time and place, which time shall not be more than 20 days from the receipt of the request. At the time and place stated, the chairman of the Industrial Commission or his designee shall settle and sign the case and deliver a copy to the attorneys of each party. The appellant shall within five days thereafter file it with the Clerk of the Court of Appeals, and if he fails to do so the respondent may file his copy.

No appeal bond or supersedeas bond shall be required of State departments or agencies."

**Sec. 5.** G.S. 143-298 reads as rewritten:

**"§ 143-298. Duty of Attorney General; expenses.**—It shall be the duty of the Attorney General to represent all departments, institutions, and agencies of the State in connection with claims asserted against them and to attend all hearings in connection therewith where the amount of the claim, in the opinion of the Attorney General, is of sufficient import to require and justify such appearance. In the event the amount appropriated to the Attorney General's office for travel and subsistence is insufficient to take care of the additional expense incident to attending these hearings, the Governor and Council of State are authorized to pay such additional travel expenses from the Contingency and Emergency Fund.

Subpoenas for any purpose authorized by G.S. 1A-1, Rule 45 may be issued by an Attorney of Record for either party in all proceedings under the State Tort Claims Act and served by the means specified in the North Carolina Rules of Civil Procedure or served by registered or certified mail, and service shall be proved by filing of the return receipt."

**Sec. 6.** Chapter 143 of the General Statutes is amended by adding a new section to read:

**"§ 143-299.2. Limitation on payments by the State.**—The maximum amount which the State may pay cumulatively to all claimants on account of injury and damage to any one person, whether the claim or claims are brought under this Article or Article 31A or Article 31B, shall be one hundred thousand dollars (\$100,000), less any commercial liability insurance purchased by the State and applicable to the claim or claims under G.S. 143-291(b), 143-300.6(c), or 143-300.16(c). The fact that a claim or claims may be brought under more than one Article under this Chapter shall not increase the above maximum liability of the State."

**Sec. 7.** G.S. 143-300 reads as rewritten:

**"§ 143-300. Rules and regulations of Industrial Commission; destruction of records.**—The Industrial Commission is hereby authorized and empowered to adopt such rules and regulations as may, in the discretion of the Commission, be necessary to carry out the purpose and intent of this Article. The North Carolina Rules of Civil Procedure and Rules of Evidence, insofar as they are not in conflict with the provisions

of this Article, shall be followed in proceedings under this Article. When any case or claim under this Article has been closed by proper order or award, all records concerning such case or claim may, after five years, in the discretion of the Industrial Commission with and by the authorization of the Department of Cultural Resources, be destroyed by burning or otherwise; provided, that no record pertaining to a case or claim of a minor shall be destroyed until the expiration of three years after such minor attains the age of 18 years."

**Sec. 8.** This act shall become effective January 1, 1989, and shall apply to claims arising on or after that date.

In the General Assembly read three times and ratified this the 8th day of July, 1988.