

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 921

Short Title: Physicians/Tort Claims Act.

(Public)

Sponsors: Senators Taft; Kaplan and Johnson of Wake.

Referred to: Judiciary II.

April 18, 1989

A BILL TO BE ENTITLED

AN ACT TO DEEM PHYSICIANS WHO PROVIDE OBSTETRICAL OR CHILD CARE SERVICES THROUGH THE STATE AND LOCAL HEALTH DEPARTMENTS FOR SUBSTANTIALLY REDUCED OR NO COMPENSATION AS STATE EMPLOYEES UNDER THE TORT CLAIMS ACT, AND TO INCREASE THE MAXIMUM AMOUNT OF DAMAGES AWARDABLE.

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; liability insurance in lieu of obligation under Article.

(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

1 determine the amount of damages which the claimant is entitled to be paid, including
2 medical and other expenses, and by appropriate order direct the payment of such
3 damages by the department, institution or agency concerned, but in no event shall the
4 amount of damages awarded exceed the sum of ~~one hundred thousand dollars (\$100,000)~~
5 two hundred thousand dollars (\$200,000) cumulatively to all claimants on account of
6 injury and damage to any one person. Community colleges and technical colleges shall
7 be deemed State agencies for purposes of this Article. The fact that a claim may be
8 brought under more than one Article under this Chapter shall not increase the foregoing
9 maximum liability of the State.

10 (a1) For purposes of this Article, a physician is an employee of the State if the
11 physician is licensed to practice medicine in this State and is providing medical care:

12 (1) Under contract, employment agreement, or other arrangement between
13 the physician and a local health department organized under Chapter
14 130A of the General Statutes,

15 (2) Without compensation, or for compensation substantially below
16 normal and prevailing levels as determined by regulations of the
17 Commission for Health Services,

18 (3) Related to pregnancy, childbirth, and child care, and

19 (4) For which no payment is received by the physician other than payment
20 by a governmental agency.

21 All claims for injuries proximately caused by the physician's negligence while acting
22 within the scope of his State employment as defined in this subsection shall be heard
23 and decided by the Industrial Commission in accordance with the provisions of this
24 Article, and any damages awarded by the Commission shall be the exclusive legal
25 remedy for such injuries.

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

30 Sec. 2. This act shall become effective January 1, 1990, and shall apply to
31 actions filed on or after that date.