

NC TORT CLAIMS ACT & DEFENSE OF STATE EMPLOYEES ACT

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Disclaimer

- The information contained in this presentation, the slides, and any answers to questions are the opinions of the presenters and not formal opinions of the North Carolina Department of Justice (NCDOJ) or the Attorney General.
- Each situation is unique. The information contained herein is not offered or to be construed as legal advice.

Roadmap

- North Carolina Tort Claims Act
- Defense of State Employees Act

North Carolina Tort Claims Act

N.C.G.S. § 143-291 *et seq.*

Tort Claims: Introduction and Overview

- Claims under the North Carolina Tort Claims Act - N.C.G.S. § 143- 291 *et seq.*
- Claims against state employees in their individual capacity (state/federal court) and the Defense of State Employees Act – N.C.G.S. § 143-300.3 *et seq.*
- Overlap of claims in both forums
- New legislation affecting negligence claims – N.C.G.S. § 143-291(e)

TORT CLAIMS ACT – N.C.G.S. § 143-291 *et seq.*

- Claims of negligence against a state agency filed in the North Carolina Industrial Commission (NCIC)
- Issues:
 - Background of sovereign immunity
 - NCIC and the Tort Claims Act
 - Court of limited (and exclusive) jurisdiction
 - Legislative changes

Sovereign Immunity

- Unlike private parties, State agencies are immune from suit absent the State's consent.
- The Tort Claims Act constitutes a limited waiver of the State's immunity. This waiver, being in derogation of the sovereign right to immunity, must be strictly construed.
- The right to sue the State is conditional, and the terms prescribed by the General Assembly are conditions precedent to institution of an action. *Great Amer. Ins. Co. v. Gold*, 254 N.C. 168, 173, 118 S.E.2d 792, 795 (1961).
- "It is for the General Assembly to determine when and under what circumstances the State may be sued."

TORT CLAIMS ACT

N.C.G.S. § 143-291 *et seq.*

- A tort claim brought against . . .
- any departments, institutions and agencies of the State . . .
- based upon the alleged negligence of any officer, employee, involuntary servant or agent of the State . . .
- while acting within the scope of their office, employment, service, agency or authority

N.C.G.S. § 143-300.1

- A tort claim brought against . . .
- any county board of education or any city board of education . . .
- which claims arise as a result of any alleged mechanical defects or other defects which may affect the safe operation of a public school bus or school transportation service vehicle . . .
- resulting from an alleged negligent act of maintenance personnel or as a result of any alleged negligent act or omission of the driver, transportation safety assistant, or monitor of a public school bus or school transportation service vehicle
 - And individual meets criteria in N.C.G.S. § 143-300.1(a)(1) - (2) at the time

Negligence

- 1) Duty
- 2) Breach
- 3) Causation
- 4) Damages

Negligence—a failure to properly act or not act when there is a responsibility to do so.

- In order to prevail in a negligence claim, a plaintiff must prove:
 - That there was a **breach of duty** by the defendant (its employees/agents) which was a **proximate cause** of his/her **damages**.

North Carolina Industrial Commission

- Industrial Commission is a court created for the purpose of hearing and passing upon tort claims under the Tort Claims Act – N.C.G.S. § 143-291(a)
- Limited jurisdiction (but also exclusive)
 - Exception: "Notwithstanding the provisions of the Tort Claims Act, the State of North Carolina may be made a third party . . . or a third-party defendant . . . in any tort action. In such cases, the same rules governing liability and the limits of liability of the State and its agencies shall apply as is provided for in the Tort Claims Act." N.C. R. Civ. P. 14(c)
 - Interplay with N.C.G.S. § 143-291(e)?

Tort Claims “Complaint” – T1 Affidavit

STATE OF NORTH CAROLINA
COUNTY OF _____

AFFIDAVIT

_____, being duly sworn, deposes and says:
(Print Name of Claimant)

1. My name is _____

2. I live at _____ and my mailing address is _____

(See requirements on p. 2 regarding change of mailing address)

3. I hereby file a claim against _____

(State Agency or County Board of Education)

and its mailing address is _____

4. I have been damaged in the amount of \$ _____ by reason of the negligent conduct of the employee/agent

named here _____

(Name(s) of negligent employee/agent)

5. The injury or accident giving rise to this claim occurred at _____

(Print Name of County and Exact Location Where Accident Occurred)

on _____

(Month) (Day) (Year)

(Time)

M.

6. The injury or property damage occurred in the following manner:

(Give BRIEF Statement of What Happened, Witness Names, etc.)

Service of Tort Claims

- Typically, plaintiffs file T-1 Affidavits (last slide) with the Industrial Commission directly.
- The Industrial Commission then sends the Affidavits/Complaints to NCDOJ.
- NCDOJ then contacts the client agencies and alerts them to the new claims.

Remedies Available from the NCIC

- The Industrial Commission may only award compensatory damages; it may not award injunctive relief in tort actions.
- The Industrial Commission may award costs and attorneys' fees in the same manner as Superior Courts with one major exception. The Commission may not award pre- or post-judgment interest.
- Pursuant to N.C.G.S. § 143-299.2, the claimant's recovery is limited to \$1,000,000 and the claimant may not recover under both the Tort Claims Act and the Defense of State Employees Act. (No stacking.)

Common Defenses

- Contributory Negligence – N.C.G.S. § 143-299.1
- Statute of Limitations – N.C.G.S. § 143-299
 - 3 years from accrual of claim
 - 2 years from death in wrongful death claim
- Public Duty Doctrine – heavily limited by N.C.G.S. § 143-299.1A
- Lack of Jurisdiction
 - Not a negligence claim
 - Not an officer, employee, involuntary servant or agent of the State (independent contractor)

Tort Claims Appeals Process

- Deputy Commissioner (trial level)
- Full Commission (*de novo* appeal)
- North Carolina Court of Appeals
- North Carolina Supreme Court

Settlements

N.C.G.S. § 143-295

- NCIC must approve:
 - Settlements over \$25,000
 - Settlements on behalf of minors or incompetent individual

Limitation on Payments by the State in Tort Claims

- "The maximum amount that the State may pay cumulatively to all claimants on account of injury and damage to any one person arising out of any one occurrence, whether the claim or claims are brought under this Article, or Article 31A or Article 31B of this Chapter, shall be one million dollars (\$1,000,000), 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)." N.C.G.S. § 143-299.2

Payment

N.C.G.S. §§ 143-299.4 and 143-300.6(a)

- The agency is required to pay the first \$150,000 – N.C.G.S. § 143-291(a1)
- N.C.G.S. § 143-299.4 and 143-300.6(a): Describes how claims/judgments over \$150,000 are paid
 - Determination made by the Director of the Office of State Budget and Management as to whether the agency must pay the full claim

New Legislation and Potential Impacts

"This Article [Tort Claims Act] provides **the sole and exclusive remedy for any claim** that arises 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, **and the North Carolina Industrial Commission is the sole and exclusive forum for hearing any such claims.** Any such claims filed in any other forum arising out of or relating to the same subject matter against the officer, employee, involuntary servant, or agent of the State is precluded."

N.C.G.S. § 143-291(e); SL2023-134, Section 31.1(a).

The Gist of the New Legislation?

- If a person is alleging the negligence of a state employee, they must file their lawsuit in the NCIC against the state agency employer.
- Designation of Remedy: Can no longer directly sue a state employee individually for alleged negligence committed in the course and scope of employment
- This change went into effect on October 3, 2023, and applies to all claims filed on or after that date.

Impact Going Forward?

A claim alleging the negligence of a state employee acting in the course and scope of their employment can only be filed in the Industrial Commission against a state agency pursuant to the Tort Claims Act

Statutory cap of \$1,000,000 applies

Testing the Law:

Mandadi v. Monoz, et al. (Wake County Superior Court File No. 24CV025454-910)

- Plaintiffs: Parents and their minor child
- Defendants: Doctors and nurses alleged to be associated with UNC Chapel Hill (UNC Hospital) in their individual capacity
- Plaintiffs filed a case in Wake County Superior Court on August 14, 2024, alleging medical malpractice (negligence) stemming from a birth incident
- Plaintiffs raised an objection to N.C.G.S. § 143-291(e) in their Complaint

Mandadi v. Monoz, et al. (Wake County Superior Court File No. 24CV025454-910)

- “Plaintiffs object to the application of N.C.G.S. § 143-291(e) to their claims as unconstitutional. As applied to the Plaintiffs' claim, this statute would violate Plaintiffs' sacred and inviolable right to a jury trial under Article I, section 25 of the North Carolina Constitution; in addition, any application of this statute to Plaintiffs' claim would be unconstitutionally retroactive in nature as Plaintiffs' claims accrued and were vested prior to the enactment of this statute.” (Pl.’s Compl. ¶ 125, filed 8/14/24)
- The alleged negligence took place in 2021 (before the amendment of the statute, but the lawsuit was not filed until after the statute was amended)
 - "This section is effective when it becomes law and applies to all claims filed on or after that date." SL2023-134, Section 31.1(b) = October 3, 2023

Mandadi v. Monoz, et al. (Wake County Superior Court File No. 24CV025454-910)

- State employees moved to dismiss the Superior Court action based on lack of subject matter and personal jurisdiction – as well as failure to state a claim upon which relief could be granted based upon 143-291(e).
- In the alternative, they moved that the issue as to the constitutionality of 143-291(e) be transferred to a three-judge panel in Wake County Superior Court as a facial challenge to its validity.
- Motion to Dismiss was denied by Order filed July 28, 2025 (treated the objection in the Complaint as an "as applied" challenge)
- Answer & Notice of Appeal filed August 5, 2025 (COA25-1054)
 - Appellant's Brief filed January 14, 2026

Cato v. Charles
(Orange County Superior Court
File No. 24 CV 002233-670)

- Plaintiff: an individual
- Defendant: a doctor practicing at UNC Chapel Hill (UNC Hospital) in his individual capacity
- Allegations: medical malpractice (negligence) allegedly occurring in December 2021 (filed July 17, 2024)
- Complaint objected to application of 143-291(e) as unconstitutional (right to jury trial, due process, equal protection, right to open courts, separation of powers, exclusive emolument) as Plaintiff's rights allegedly vested before the 2023 amendment

Cato v. Charles
(Orange County Superior Court
File No. 24 CV 002233-670)

- On September 27, 2024, Defendant moved to transfer Plaintiff's facial constitutional challenge to a three-judge panel pursuant to N.C.G.S. § 1-267.1(a)
- On June 6, 2025, Plaintiff moved to dismiss and to transfer the matter back to Orange County Superior Court, claiming lack of jurisdiction because Plaintiff's challenge was not a facial challenge
- Order filed August 18, 2025, three-judge panel DENIED Plaintiff's Motion to Dismiss and Transfer and DENIED Plaintiff's facial challenge to the constitutionality of N.C.G.S. § 143-291(e).
- Remanded back to Orange County Superior Court.

Cato v. Charles
(Orange County Superior Court
File No. 24 CV 002233-670)

- On remand, court dismissed plaintiff's claim on the basis that "143-291(e) requires that this lawsuit be dismissed under Rules 12(b)(1), 12(b)(2), and 12(b)(6) of the North Carolina Rules of Civil Procedure." (Order – November 12, 2025)
- Plaintiff appealed to COA on December 10, 2025

Defense of State Employees Act

N.C. Gen. Stat. § 143-300.2 *et seq.*

Scope of DOSEA

- Applies to claims against an individual state employee filed in **state or federal court**.
- “Except as otherwise provided in G.S. 143-300.4, upon request of an employee or former employee, the State may provide for the defense of **any civil or criminal action** or proceeding brought against him in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of his employment as a State employee.” N.C. Gen. Stat. § 143-300.3.

Types of Cases File Against State Employees

- Section 1983 Claims—(vehicle for filing claims against individuals for violations of the Constitution, includes discrimination claims based on various classes, denial of Due Process)
- NC Constitutional Claims
- NC Whistleblower Act claims
- Negligence*
- Wrongful termination
- Civil Conspiracy
- Fraud
- Defamation/Slander
- Breach of contract
- Tortious interference with contract
- Intentional infliction of emotional distress
- Negligent infliction of emotional distress
- Wrongful death
- Malicious prosecution
- False arrest
- False imprisonment
- Assault
- Battery
- Gross negligence

Types of claims frequently brought against state employees

- Negligence-based claims
 - Although the statutory changes require all negligence claims to be brought in the Industrial Commission, plaintiffs' attorneys are still filing these types of claims in state and federal court.
- Intentional torts
 - Defamation
 - Tortious interference with contract
 - Assault/battery
 - Intentional infliction of emotional distress
 - Wrongful death
 - False arrest

Types of claims frequently brought against state employees

- Section 1983 claims
 - “Constitutional torts”
 - First Amendment violations: freedom of speech
 - Fourth Amendment violations: unlawful arrest, excessive force
 - Fourteenth Amendment violations: due process, equal protection
- Other state-law actions

• NC Constitutional claims	Wrongful termination
• NC Whistleblower Act claims	Breach of contract
- Criminal actions

For example...

- Law enforcement officers sued for actions taken in their search, arrest, or other detention of individuals.
- Managers sued for statements made in the course of investigating employee misconduct, or for statements made in employment references requested by employees.
- Managers sued for actions alleged to be discriminatory.
- Supervisors' or administrators' actions that allegedly restricted employee speech.

A State employee's obligation

- The state employee or former employee must make a request for the State to provide him/her a defense in either a civil or criminal proceeding brought against the employee in his/her individual and or official capacity for acts or omissions made in the course and scope of his/her employment as a state employee. N.C. Gen. Stat. § 143-300.3. The definition of employee specifically excludes independent contractors.

So... you've been served with a lawsuit...

- If you are served with a Summons and Complaint, you should notify your supervisor immediately so that the Attorney General's Office can review and assess the matter and determine whether it will undertake representation.
- Individual agencies may have internal processes for notifying the Attorney General's Office of claims against individual employees.
- **IMPORTANT:** Failure to timely respond in the form of an Answer, Motion to Dismiss, or other appropriate pleading could result in a default judgment being entered against you.

If someone from the Attorney General's office contacts you about representation...

- In order to obtain representation, you **must** request representation, in writing, so that the AG's office can review and determine whether it is appropriate.
- If you **do not** request review OR the AG's office determines that you may not be provided with a defense under the DOSEA, **you** (not the State) will be responsible **both for defending yourself and your interests in this lawsuit as well as for paying any monetary judgment that may be awarded against you by the court.**

If an employee requests a defense under the DOSEA...

- The Attorney General evaluates whether or not to provide a defense.
- N.C. Gen. Stat. § 143-300.4 sets out the grounds for refusal to defend. A defense will **not** be provided if:
 - The act or omission was not within the scope of employment with the State; or
 - The employee or former employee acted or failed to act because of actual fraud, corruption, or actual malice on his or her part; or
 - Defense of the action would create a conflict of interest between the State or employee; or
 - Defense of the action would not be in the best interests of the State.

If a defense is provided...

- The employee will be represented, in most cases, by an attorney or attorneys from the AG's office.
- The assigned attorney will send a letter setting out the terms of the offered representation. The represented employee **must respond** to this letter in writing to accept the representation.
 - This representation is conditional and may change if additional facts arise that proclude representation.
- In some limited cases, outside counsel may be retained to represent the employee.
 - Conflicts
 - Specialized expertise

Your role as a State employee named in a lawsuit

- Respond to communications from your assigned attorney.
- Retain and provide documents related to the claims in the lawsuit.
 - **Note:** this may include text messages and emails from personal devices and accounts.
- Be available to provide testimony, via deposition, written affidavits/declarations, and/or trial.

Who pays the judgment?

- Under the DOSEA, State employees are entitled not only to a defense in a lawsuit but also to payment of judgments as a result of that lawsuit.
- The State or its excess insurance carrier will pay judgments and/or settlements up to a certain amount.

QUESTIONS?
