

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1708

Short Title: Charter School Bus Drivers/Tort Claims Act. (Public)

Sponsors: Representatives Bonner; Barefoot, Bell, Lucas, Sutton, Walker, and Yongue.

Referred to: Education.

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO BRING CHARTER SCHOOLS UNDER THE TORT CLAIMS ACT FOR SCHOOL BUS ACCIDENTS AND TO APPROPRIATE FUNDS FOR THAT PURPOSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-300.1 reads as rewritten:

"§ 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles.

(a) The North Carolina Industrial Commission shall have jurisdiction to hear and determine tort claims against any county board of ~~education or any city board of education~~, education, city board of education, or board of directors of a charter school, 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 bus~~, school transportation service ~~vehicle-vehicle~~, or charter school bus 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 bus~~, school transportation service ~~vehicle-vehicle~~, or charter school bus when:

(1) The driver is an employee of the county or city administrative unit of which that board is the governing body, and the driver is paid or authorized to be paid by that administrative unit,

(1a) The monitor was appointed and acting in accordance with G.S. 115C-245(d),

(1b) The transportation safety assistant was employed and acting in accordance with G.S. 115C-245(e),

(1c) The driver is an employee of the board of directors of a charter school,

(1d) The driver is an employee of a county or city administrative unit with which the charter school contracts to provide transportation in

1 accordance with the charter school's transportation plan to students
2 who reside in the local school administrative unit, or

- 3 (2) The driver is an unpaid school bus driver trainee under the supervision
4 of an authorized employee of the Department of Transportation,
5 Division of Motor Vehicles, or an authorized employee of that board
6 or a county or city administrative unit thereof,

7 and which driver was at the time of the alleged negligent act or omission operating a
8 public school bus or school transportation service vehicle in accordance with G.S.
9 115C-242 in the course of his employment by or training for that administrative unit or
10 board, which monitor was at the time of the alleged negligent act or omission acting as
11 such in the course of serving under G.S. 115C-245(d), or which transportation safety
12 assistant was at the time of the alleged negligent act or omission acting as such in the
13 course of serving under ~~G.S. 115C-245(e)~~. G.S. 115C-245(e), or which driver was at the
14 time of the alleged negligent act or omission operating a bus in accordance with a
15 charter school's transportation plan. The liability of such county or city board of
16 ~~education, education or board of directors of a charter school,~~ the defenses which may be
17 asserted against such claim by such board, the amount of damages which may be
18 awarded to the claimant, and the procedure for filing, hearing and determining such
19 claim, the right of appeal from such determination, the effect of such appeal, and the
20 procedure for taking, hearing and determining such appeal shall be the same in all
21 respects as is provided in this Article with respect to tort claims against the State Board
22 of Education except as hereinafter provided. Any claim filed against any county or city
23 board of education or the board of directors of any charter school pursuant to this
24 section shall state the name and address of such board, the name of the employee upon
25 whose alleged negligent act or omission the claim is based, and all other information
26 required by G.S. 143-297 in the case of a claim against the State Board of Education.
27 Immediately upon the docketing of a claim, the Industrial Commission shall forward
28 one copy of the plaintiff's affidavit to the superintendent of the schools of the county or
29 city administrative unit against the governing board of which such claim is ~~made,~~made
30 or the charter school against which such claim is made, one copy of the plaintiff's
31 affidavit to the State Board of Education and one copy of the plaintiff's affidavit to the
32 office of the Attorney General of North Carolina. All notices with respect to tort claims
33 against any such county or city board of education or board of directors of a charter
34 school shall be given to the superintendent of schools of the county or city
35 administrative unit of which such board is a governing ~~board,~~board or to the board of
36 directors of the charter school against which such claim is made, to the State Board of
37 Education and also to the office of the Attorney General of North Carolina.

38 (b) The Attorney General shall be charged with the duty of representing the city
39 or county board of education or board of directors of a charter school in connection with
40 claims asserted against them pursuant to this section where the amount of the claim, in
41 the opinion of the Attorney General, is of sufficient import to require and justify such
42 appearance.

43 (c) In the event that the Industrial Commission awards damages against any
44 county or city board of education or board of directors of a charter school under this

1 section, the Attorney General shall draw a voucher for the amount required to pay the
2 award. The funds necessary to cover the first one hundred fifty thousand dollars
3 (\$150,000) of liability per claim for claims against county and city boards of education
4 and boards of directors of charter schools for accidents involving school buses
5 ~~and buses~~, school transportation service ~~vehicles~~ vehicles, and charter school buses, shall
6 be made available from funds appropriated to the State Board of Education. The balance
7 of any liability owed shall be paid in accordance with G.S. 143-299.4. Neither the
8 county or city boards of education, ~~or the county or city administrative unit~~ unit, or the
9 board of directors of a charter school shall be liable for the payment of any award made
10 pursuant to the provisions of this section in excess of the amount paid upon a voucher
11 by the Attorney General. Settlement and payment may be made by the Attorney General
12 as provided in G.S. 143-295.

13 (d) Except as otherwise provided in this subsection, the Attorney General may,
14 upon the request of an employee or former employee, defend any civil action brought
15 against the driver, transportation safety assistant, or monitor of a public school bus or
16 school transportation service vehicle or school bus maintenance mechanic when the
17 driver or mechanic is employed and paid by the local school administrative unit, when
18 the monitor is acting in accordance with G.S. 115C-245(d), when the transportation
19 safety assistant is acting in accordance with G.S. 115C-245(e), or when the driver is an
20 unpaid school bus driver trainee under the supervision of an authorized employee of the
21 Department of Transportation, Division of Motor Vehicles, or an authorized employee
22 of a county or city board of education or administrative unit. Except as otherwise
23 provided in this subsection, the Attorney General may also, upon the request of an
24 employee or former employee, defend any civil action brought against the driver of a
25 charter school bus when the driver is employed and paid by the charter school or when
26 the driver is employed and paid by the local school administrative unit with which the
27 charter school contracts to provide transportation. The Attorney General may afford this
28 defense through the use of a member of his staff or, in his discretion, employ private
29 counsel. The Attorney General is authorized to pay any judgment rendered in the civil
30 action not to exceed the limit provided under the Tort Claims Act. The funds necessary
31 to cover the first one hundred fifty thousand dollars (\$150,000) of liability per claim
32 shall be made available from funds appropriated to the State Board of Education. The
33 balance of any liability owed shall be paid in accordance with G.S. 143-299.4. The
34 Attorney General may compromise and settle any claim covered by this section to the
35 extent that he finds the same to be valid, up to the limit provided in the Tort Claims Act,
36 provided that the authority granted in this subsection shall be limited to only those
37 claims that would be within the jurisdiction of the Industrial Commission under the Tort
38 Claims Act.

39 The Attorney General shall refuse to provide for the defense of a civil action or
40 proceeding brought against an employee or former employee if the Attorney General
41 determines that:

- 42 (1) The act or omission was not within the scope and course of his
43 employment as a State ~~or employee~~; employee or a charter school
44 employee;

- 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
3 (3) Defense of the action or proceeding by the State would create a
4 conflict of interest between the State and the employee or former
5 employee; or
6 (4) Defense of the action or proceeding would not be in the best interests
7 of the State."

8 **SECTION 2.** There is appropriated from the General Fund to the
9 Department of Public Instruction the sum of two hundred thousand dollars (\$200,000)
10 for the 2002-2003 fiscal year to implement the provisions of this act.

11 **SECTION 3.** This act becomes effective July 1, 2002. Section 1 of this act
12 applies to claims arising on or after July 1, 2002.