

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 539
HOUSE BILL 174

AN ACT TO PROVIDE DEFENSE OF EMPLOYEES AND OFFICERS OF AREA MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE AUTHORITIES AND OF THE AGENCIES WITH WHICH THE AREA AUTHORITY CONTRACTS FOR THE PROVISION OF SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122-35.36(10) is amended by deleting the period on line four and inserting the following:

"as provided in this Article."

Sec. 2. Article 2F of Chapter 122 is amended by adding the following new sections:

"§ 122-35.40B. Liability insurance and waiver of immunity as to torts of agents, employees and board members. — (a) Any area mental health, mental retardation and substance abuse authority, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent, employee or board member of such area mental health, mental retardation and substance abuse authority when acting within the scope of his authority or within the course of his duties or employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said authority is indemnified by insurance for such negligence or tort.

(b) Any contract of insurance purchased pursuant to this section must be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State and must by its terms adequately insure the area mental health, mental retardation and substance abuse authority against any and all liability for any damages by reason of death or injury to a person or property proximately caused by the negligent acts or torts of the agents, employees and board members of said authority when acting within the course of their duties or employment. The area mental health, mental retardation and substance abuse board shall determine the extent of liability and what agents, employees by class and board members shall be covered by any insurance purchased pursuant to this subsection. Any company or corporation which enters into a contract of insurance as above described with such authority, by such act waives any defense based upon the governmental immunity of such authority.

(c) Any persons sustaining damages, or in the case of death, his personal representative may sue an authority insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in a county located within the geographic limits of the authority; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of governmental, municipal or discretionary function of such authority if, and to the extent, such authority has insurance coverage as provided by this section.

(d) Except as hereinbefore expressly provided, nothing in this section shall be construed to deprive any such authority of any defense whatsoever to any such action for damages or to restrict, limit, or otherwise affect any such defense which said authority may have at common law or by virtue of any statute and nothing in this section shall be construed to relieve any

person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to said authority or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

(e) Such authority may incur liability pursuant to this section only with respect to a claim arising after such authority has procured liability insurance pursuant to this section and during the time when such insurance is in force.

(f) No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law with respect to insurance.

"§ 122-35.40C. Defense of agents, employees and board members. — (a) Upon request made by or in behalf of any agent, employee or board member or former agent, employee or board member of the area mental health, mental retardation and substance abuse authority, any such authority may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as an agent, employee or board member of the authority. The defense may be provided by the local board by employing counsel or by purchasing insurance which requires that the insurer provide the defense. Nothing in this section shall be deemed to require any such authority to provide for the defense of any action or proceeding of any nature.

(b) Any such authority may budget funds for the purpose of paying all or part of the claim made or any civil judgment entered against any of its agents, employees or board members or former agents, employees or board members when such claim is made or such judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as an agent, employee or board member of such authority. Nothing in this section shall authorize any authority to budget funds for the purpose of paying any claim made or civil judgment against any of its agents, employees or board members, or former agents, employees or board members, if the authority finds that such agent, employee or board member acted or failed to act because of actual fraud, corruption or actual malice on his part. Any authority may budget for and purchase insurance coverage for payment of claims or judgments pursuant to this section. Nothing in this section shall be deemed to require any authority to pay any claim or judgment referred to herein, and the purchase of insurance coverage for payment of such claim or judgment shall not be deemed an assumption of any liability not covered by such insurance contract, and shall not be deemed an assumption of liability or payment of any claim or judgment in excess of the limits of coverage in such insurance contract.

(c) Subsection (b) of this section shall not authorize any authority to pay all or part of a claim made or civil judgment entered or to provide a defense to a criminal charge unless (i) notice of the claim or litigation is given to the authority prior to the time that the claim is settled or civil judgment is entered and (ii) the authority shall have adopted, and made available for public inspection, uniform standards under which claims made, civil judgments entered, or criminal charges against agents, employees or board members or former agents, employees or board members shall be defended or paid.

(d) The board or boards of county commissioners which establish the area mental health, mental retardation and substance abuse authority and the Secretary of the Department of Human Resources are hereby authorized to allocate funds not otherwise restricted by law, in addition to the funds allocated for the operation of the program, for the purpose of paying legal defense, judgments and settlements under the provisions of this section."

Sec. 3. G.S. 122-35.49 is amended by denoting the existing section as subsection (a) and by adding a new subsection to read:

"(b) The area authority may also provide the other public or private agencies, institutions or resources with funds to purchase liability insurance, to provide legal representation and to pay any claim with respect to liability for acts, omissions or decisions by members of the boards or employees of the agencies, institutions and resources with whom the area authority contracts; provided, that the acts, omissions and decisions must arise out of the performance of the contract and must not result from actual fraud, corruption or actual malice on the part of the board members or employees."

Sec. 4. The provisions of this act shall apply to both single county and multi-county area mental health, mental retardation and substance abuse authorities.

Sec. 5. This act shall become effective July 1, 1981.

In the General Assembly read three times and ratified, this the 10th day of June, 1981.