

March 27, 2007

**H 1113. STATE TORT CLAIMS/PUBLIC DUTY DOCTRINE.** Filed 3/27/07. *TO LIMIT THE USE OF THE PUBLIC DUTY DOCTRINE AS AN AFFIRMATIVE DEFENSE FOR CIVIL ACTIONS UNDER THE STATE TORT CLAIMS ACT TO THOSE CLAIMS IN WHICH THE INJURIES OF THE CLAIMANT ARE THE RESULT OF THE ALLEGED NEGLIGENT FAILURE OF LAW ENFORCEMENT TO PROTECT CLAIMANTS FROM THE MISCONDUCT OF OTHERS.*

Enacts new GS 143-299.1A to provide that the public duty doctrine is an affirmative defense on the part of a state agency only if the injury of the claimant is the result of the alleged negligent failure of law enforcement to protect the claimant from the misconduct of others.

**Intro. by Glazier.**

GS 143

July 3, 2008

**H 1113. STATE TORT CLAIMS/PUBLIC DUTY DOCTRINE.** Filed 3/27/07. Senate committee substitute makes the following changes to 1st edition.

Amends proposed new GS 143-299.1A to clarify the limits of the use of the public duty doctrine as an affirmative defense. Provides that the public duty doctrine is an affirmative defense on the part of the state department, institution, or agency against which a claim is asserted only if the claimant's injury is the result of (1) the alleged negligent failure of a law enforcement officer, as defined in this statute, to protect the claimant from the action of others or from an act of God or (2) the alleged negligent failure of an officer, employee, involuntary servant or agent of the state to perform a health or safety inspection that is required by statute. Defines *law enforcement officer* as a full-time or part-time employee or agent of a state entity or an agent of the state operating under an agreement with a state entity who meets any of the following criteria: (1) is actively serving in a position with assigned primary duties in crime detection and prevention or enforcement of criminal law or serving civil processes; (2) has the power of arrest by virtue of an oath administered by the state; (3) is a juvenile justice officer, chief court counselor, or juvenile court counselor; (4) is a correctional officer performing duties of custody, supervision, and treatment to control and rehabilitate criminal offenders; (5) is a firefighter as defined in GS 113-60.32(1) or is a probation officer appointed under GS Chapter 15, Article 20.

Specifies that the public duty doctrine may not be used as an affirmative defense in the following instances: (1) where there is a special relationship between the claimant and the officer, employee, involuntary servant or agent of the state; (2) when the state has created a special duty owed to the claimant, and the injury suffered by the claimant is causally related to the claimant's relying on that duty; and (3) where there is a statutory requirement to perform a health and safety inspection and the alleged failure to perform the inspection was the result of gross negligence.

Provides that nothing in this statute places a limit on a unit of local government or its officers, employees, or agents asserting the public duty doctrine as an affirmative defense.

Makes conforming and technical changes to the title.

Effective October 1, 2008, and applies to *claims* arising on or after that date (was, effective when it becomes law and applies to *judgments* entered on or after that date).

July 7, 2008

**H 1113. STATE TORT CLAIMS/PUBLIC DUTY DOCTRINE.** Filed 3/27/07. Senate amendment makes the following changes to 2nd edition. Amends proposed new GS 143-299.1A(c) to provide that nothing in the statute limits the assertion of the public duty doctrine as a *defense* (was, an affirmative defense) on the part of a unit of local government or its officers, employees, or agents.

August 8, 2008

**SL 2008-170 (H 1113). STATE TORT CLAIMS/PUBLIC DUTY DOCTRINE. AN ACT TO LIMIT THE USE OF THE PUBLIC DUTY DOCTRINE AS AN AFFIRMATIVE DEFENSE FOR CLAIMS UNDER THE STATE TORT CLAIMS ACT IN WHICH THE INJURIES OF THE CLAIMANT ARE THE RESULT OF THE ALLEGED NEGLIGENT FAILURE OF CERTAIN PARTIES TO PROTECT CLAIMANTS FROM THE ACTION OF OTHERS.** Summarized in *Daily Bulletin* 3/27/07, 7/3/08, and 7/7/08. Enacted August 4, 2008. Effective October 1, 2008.

