**South Carolina General Assembly**

123rd Session, 2019-2020

**S. 386**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Malloy, Goldfinch, Talley, Sabb and Harpootlian

Document Path: l:\s-jud\bills\malloy\jud0026.jcv.docx

Introduced in the Senate on January 17, 2019

Currently residing in the Senate Committee on **Judiciary**

Summary: Tort Claims Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/17/2019 Senate Introduced and read first time ([Senate Journal‑page 3](file:///h:\sj\20190117.docx))

1/17/2019 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 3](file:///h:\sj\20190117.docx))

1/18/2019 Senate Referred to Subcommittee: Malloy (ch), Sabb, Climer, Goldfinch, Talley

2/20/2019 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 12](file:///h:\sj\20190220.docx))

2/21/2019 Scrivener's error corrected

3/27/2019 Senate Recommitted to Committee on **Judiciary** ([Senate Journal‑page 51](file:///h:\sj\20190327.docx))

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**VERSIONS OF THIS BILL**

[1/17/2019](file:///p:\pprever\2019-20\386_20190117.docx)

[2/20/2019](file:///p:\pprever\2019-20\386_20190220.docx)

[2/21/2019](file:///p:\pprever\2019-20\386_20190221.docx)

~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 20, 2019

**S. 386**

Introduced by Senators Malloy, Goldfinch, Climer, Talley, Sabb and Harpootlian

S. Printed 2/20/19--S. [SEC 2/21/19 11:26 AM]

Read the first time January 17, 2019.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 386) to amend Chapter 78, Title 15, Code of Laws of South Carolina, 1976, relating to the South Carolina Tort claims Act, so as to amend and reorganize, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking the bill in its entirety and inserting therein the following:

/ A BILL TO AMEND SECTION 1-11-460, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PAYMENTS OF JUDGMENTS AGAINST GOVERNMENTAL EMPLOYEES AND OFFICIALS IN EXCESS OF ONE MILLION DOLLARS, SO AS TO RAISE THE LIMIT ON JUDGMENTS FROM ONE MILLION TO TWO MILLION DOLLARS, TO APPLY THE STATUTE TO CHARITABLE HOSPITALS AND GOVERNMENTAL ENTITIES AS WELL, TO ELIMINATE THE LIMITATION THAT THE PAYMENTS ON JUDGMENTS BE LIMITED TO THOSE RENDERED UNDER 42 U.S.C. SECTION 1983, TO PROHIBIT PAYMENT FROM THE FUND FOR PUNITIVE DAMAGES, AND TO REQUIRE THAT ANY AUTHORIZED PAYMENTS COME FROM THE STATE’S CATASTROPHIC FUND; TO AMEND SECTION 15-78-30, RELATING TO DEFINITIONS IN THE SOUTH CAROLINA TORT CLAIMS ACT, SO AS TO AMEND THE DEFINITION OF OCCURRENCE; TO AMEND SECTION 15-78-40, RELATING TO TORT LIABILITY OF THE STATE, AN AGENCY, A POLITICAL SUBDIVISION, OR A GOVERNMENTAL ENTITY, GENERALLY, SO AS TO REQUIRE THAT THE STATE, AN AGENCY, A POLITICAL SUBDIVISION, AND A GOVERNMENTAL ENTITY ARE LIABLE FOR THEIR TORTS IN THE SAME MANNER AND TO THE SAME EXTENT AS A PRIVATE INDIVIDUAL SUBJECT TO THE PROVISION ALLOWING FOR A THIRD PARTY BAD FAITH CLAIM AGAINST AN INSURER; TO AMEND SECTION 15-78-60, RELATING TO THE EXCEPTIONS TO THE WAIVER OF IMMUNITY IN THE SOUTH CAROLINA TORT CLAIMS ACT, SO AS TO AMEND AND REORGANIZE THE EXISTING EXCEPTIONS AND TO DELETE THE EXCEPTION GIVING IMMUNITY TO GOVERNMENTAL ENTITIES THAT FAIL TO ADOPT, ENFORCE, OR COMPLY WITH ANY LAW; TO AMEND SECTION 15-78-80, RELATING TO FILING A VERIFIED CLAIM, HANDLING AND DISPOSING OF CLAIMS, AND THE REQUIREMENT THAT AGENCIES AND POLITICAL SUBDIVISIONS COOPERATE WITH THE STATE FISCAL ACCOUNTABILITY AUTHORITY, SO AS TO PROHIBIT THE INSURANCE RESERVE FUND FROM CHARGING AN INSURED ADDITIONAL CONTRIBUTIONS WHEN THE FILED CLAIM IS WITHIN THE POLICY LIMITS; TO AMEND SECTION 15-78-120, RELATING TO THE LIMITATIONS ON LIABILITY AND THE PROHIBITION AGAINST RECOVERY OF PUNITIVE OR EXEMPLARY DAMAGES OR PREJUDGMENT INTEREST, SO AS TO ALLOW FOR COURT COSTS AND INTEREST FROM THE DATE OF THE OFFER OF JUDGMENT OVER AND ABOVE THE LIABILITY LIMITS AS A CONSEQUENCE OF NONACCEPTANCE WHEN AN OFFER OF JUDGMENT HAS BEEN FILED IN A CASE AND TO ALLOW A THIRD PARTY CLAIMANT TO BRING A BAD FAITH ACTION AGAINST AN INSURER AND RECOVER UP TO ONE MILLION DOLLARS; TO ADD SECTION 15-78-125 TO CHAPTER 78 OF TITLE 15, SO AS TO PROVIDE PROCESS AND PROCEDURES RELATED TO THE STATE’S CATASTROPHIC INJURY FUND; AND TO CREATE THE TORT REFORM STUDY COMMITTEE TO DEVELOP AND RECOMMEND LEGISLATION TO ASSIST THE GENERAL ASSEMBLY IN ENACTING AND IMPLEMENTING THE STATE’S CATASTROPHIC FUND.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 1-11-460 of the 1976 Code is amended to read:

“Section 1-11-460. (A) For purposes of this section:

(1) ‘Governmental entity’ means the State and its political entities.

(2) ‘State’ means the means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state‑supported governmental health care facilities, schools, colleges, universities, and technical colleges.

(3) ‘State Catastrophic Fund’ means the fund provided for in Section 15-78-125(B).

(B)(1) The State Fiscal Accountability Authority, through the Division of Insurance Services, is authorized to pay judgments against any hospital that is considered a ‘charitable organization’ as that term is used in Section 33-56-20(1), governmental entities, and individual governmental employees and officials, in excess of ~~one~~ two million dollars~~, subject to a maximum of four million dollars in excess of one million dollars for one employee and~~ but may not pay more than a maximum of twenty million dollars ~~in excess of five million dollars~~ in one fiscal year.

(2) These payments are limited to judgments rendered:

(a) under 42 U.S.C. Section 1983 against governmental employees or officials who are covered by a tort liability policy ~~issued by the Insurance Reserve Fund~~; and

(b) against any hospital that is considered a ‘charitable organization’ as that term is used in Section 33-56-20(1), or against any governmental entities, governmental employees, or governmental officials covered by a tort liability policy.

(3) These payments are also limited to judgments against any hospital that is considered a ‘charitable organization’ as that term is used in Section 33-56-20(1), or against any governmental entities, governmental employees ~~and~~, or governmental officials for acts committed within the scope of employment.

(4) Payments made pursuant to this section must not be paid on an award for punitive damages.

(5) ~~If a judgment is paid, the payment must be recovered by assessments against all governmental entities purchasing tort liability insurance from the Insurance Reserve Fund~~ Any payment authorized by the State Fiscal Accountability Authority as provided in this section must be paid out of the State Catastrophic Fund.”

SECTION 2. Section 15-78-30(g) of the 1976 Code is amended to read:

“(g) ‘Occurrence’ means an unfolding sequence of events which proximately flow from a single act of negligence, where every failure to act after receiving actual or constructive notice and every exercise of the governmental power or function done in a grossly negligent manner or without good faith is a separate act of negligence.”

SECTION 3. Section 15-78-40 of the 1976 Code is amended to read:

“Section 15-78-40. The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, the third party bad faith claim against an insurer, and exemptions from liability and damages, contained herein.”

SECTION 4. Section 15-78-60 of the 1976 Code is amended to read:

“Section 15-78-60. (A) The governmental entity is not liable for a loss resulting from:

~~(1)~~ ~~legislative, judicial, or quasi‑judicial action or inaction;~~

~~(2)~~ ~~administrative action or inaction of a legislative, judicial, or quasi‑judicial nature;~~

~~(3)~~ ~~execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;~~

~~(4)~~ ~~adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;~~

~~(5)~~ ~~the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;~~

~~(6)~~ ~~civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection;~~

~~(7)~~ ~~a nuisance;~~

~~(8)~~ ~~snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions unless the snow or ice thereon is affirmatively caused by a negligent act of the employee;~~

~~(9)~~ ~~entry upon any property where the entry is expressly or impliedly authorized by law;~~

~~(10)~~ ~~natural conditions of unimproved property of the governmental entity, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for the property within a reasonable time after actual or constructive notice of the defect or condition;~~

~~(11)~~ ~~assessment or collection of taxes or special assessments or enforcement of tax laws;~~

~~(12)~~ ~~licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner;~~

~~(13)~~ ~~regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;~~

~~(14)~~ ~~any claim covered by the South Carolina Workers’ Compensation Act, except claims by or on behalf of an injured employee to recover damages from any person other than the employer, the South Carolina Unemployment Compensation Act, or the South Carolina State Employee’s Grievance Act;~~

~~(15)~~ ~~absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice. Governmental entities are not liable for the removal or destruction of signs, signals, warning devices, guardrails, or median barriers by third parties except on failure of the political subdivision to correct them within a reasonable time after actual or constructive notice. Nothing in this item gives rise to liability arising from a failure of any governmental entity to initially place any of the above signs, signals, warning devices, guardrails, or median barriers when the failure is the result of a discretionary act of the governmental entity. The signs, signals, warning devices, guardrails, or median barriers referred to in this item are those used in connection with hazards normally connected with the use of public ways and do not apply to the duty to warn of special conditions such as excavations, dredging, or public way construction. Governmental entities are not liable for the design of highways and other public ways. Governmental entities are not liable for loss on public ways under construction when the entity is protected by an indemnity bond. Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising out of a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way caused by a third party unless the defect or condition is not corrected by the particular governmental entity responsible for the maintenance within a reasonable time after actual or constructive notice;~~

~~(16)~~ ~~maintenance, security, or supervision of any public property, intended or permitted to be used as a park, playground, or open area for recreational purposes, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for maintenance, security, or supervision within a reasonable time after actual notice of the defect or condition;~~

~~(17)~~ ~~employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;~~

~~(18)~~ ~~imposition or establishment of a quarantine by a governmental entity, whether the quarantine relates to persons or property;~~

~~(19)~~ ~~emergency preparedness activities and activities of the South Carolina National Guard and South Carolina State Guard while engaged in state or federal training or duty. This exemption does not apply to vehicular accidents;~~

~~(20)~~ ~~an act or omission of a person other than an employee including but not limited to the criminal actions of third persons;~~

~~(21)~~ ~~the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient, or client or the escape of these persons;~~

~~(22)~~ ~~termination or reduction of benefits under a public assistance program;~~

~~(23)~~ ~~institution or prosecution of any judicial or administrative proceeding;~~

~~(24)~~ ~~holding or conduct of elections;~~

~~(25)~~ ~~responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner;~~

~~(26)~~ ~~failure to supervise or control areas open for public hunting or activities thereon. Failure to control, maintain, and/or supervise the use of and activities in, on, and around public boat ramps except within a reasonable time after actual notice of the defect or condition. Failure to maintain navigational markers, except within a reasonable time after actual notice of the defect or condition.~~

~~(27)~~ ~~solicitations on streets and highways as authorized by the provisions of Section 5‑27‑910.~~

~~(28)~~ ~~Notification of any public school student’s parent, legal guardian, or other person with whom a public school student resides of the student’s suspected use of alcohol, controlled substance, prescription or nonprescription drugs by any public school administrator, principal, counselor, or teacher if such notification is made in good faith.~~

~~(29)~~ ~~acts or omissions of members of the state and county athletic commissions or ringside physicians acting within the scope of their official duties pursuant to Chapter 7 of Title 52.~~

~~(30)~~ ~~acts or omissions of members of local foster care review boards acting within the scope of their official duties pursuant to Subarticle 4, Article 13, Chapter 7 of Title 20. However, the member shall act in good faith, his conduct may not constitute gross negligence, recklessness, wilfulness, or wantonness, and he must have participated in a training program established by the state foster care review board system.~~

~~(31)~~ ~~acts or omissions of employees and volunteers of the South Carolina Protection and Advocacy System for the Handicapped acting within the scope of their official duties pursuant to Article 5, Chapter 33 of Title 43, when such acts or omissions are done or made in good faith, and do not constitute gross negligence, recklessness, wilfulness, or wantonness.~~

~~(32)~~ ~~a pre‑occupancy housing inspection contracted for by the South Carolina Department of Employment and Workforce pursuant to Section 46‑43‑40.~~

~~(33)~~ ~~the performance of any duty related to the service of members of the Judicial Merit Selection Commission or the Citizens Committees on Judicial Selection.~~

~~(34)~~ ~~the performance of any duty related to the service of the members of the Tobacco Community Development Board.~~

~~(35)~~ ~~the failure of a library’s or media arts center’s governing board to adopt policies as provided in Section 10‑1‑205.~~

~~(36)~~ ~~acts or omissions by a special state constable who is appointed pursuant to Section 23‑7‑10 and acting within the scope of his official duty under conditions of a national emergency or of a serious and immediate risk to the physical security of an energy facility within the special state constable’s jurisdiction as provided in Section 23‑7‑40.~~

~~(37)~~ ~~the performance of any duty related to the service of the members of the Tobacco Settlement Revenue Management authority.~~

~~(38)~~ ~~conduct of a director appointed pursuant to Section 58‑31‑20 giving rise to a lawsuit under Section 58‑31‑57.~~

~~(39)~~ ~~the grant or denial by a governing body of a county or municipality as provided in Section 23‑35‑175 of an application to extend a Fireworks Prohibited Zone beyond the subject property for which a Discharge of Fireworks Prohibited Agreement has been filed.~~

~~(40)~~ ~~an injury a student may sustain as a result of self‑monitoring or self‑administering medications or for an injury that a student may sustain from taking or using medications or self‑monitoring devices for which the student does not have a prescription or does not have authorization by the school district.~~

(1) legislative, judicial, or quasi‑judicial action or inaction;

(2) administrative action or inaction of a legislative, judicial, or quasi‑judicial nature;

(3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;

(4) civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection;

(5) a nuisance;

(6) entry upon any property where the entry is expressly or impliedly authorized by law;

(7) assessment or collection of taxes or special assessments or enforcement of tax laws;

(8) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;

(9) any claim covered by the South Carolina Workers’ Compensation Act, except claims by or on behalf of an injured employee to recover damages from any person other than the employer, the South Carolina Unemployment Compensation Act, or the South Carolina State Employee’s Grievance Act;

(10) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;

(11) imposition or establishment of a quarantine by a governmental entity, whether the quarantine relates to persons or property;

(12) emergency preparedness activities and activities of the South Carolina National Guard and South Carolina State Guard while engaged in state or federal training or duty. This exemption does not apply to vehicular accidents;

(13) an act or omission of a person other than an employee, including, but not limited to, the criminal actions of third persons;

(14) the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including, but not limited to, a prisoner, inmate, juvenile, patient, or client or the escape of these persons;

(15) termination or reduction of benefits under a public assistance program;

(16) institution or prosecution of any judicial or administrative proceeding. This exemption does not apply if the governmental entity or the employee acted with malice in instituting such proceeding;

(17) holding or conduct of elections;

(18) failure to supervise or control areas open for public hunting or activities thereon;

(19) solicitations on streets and highways as authorized by the provisions of Section 5‑27‑910;

(20) acts or omissions of members of the state and county athletic commissions or ringside physicians acting within the scope of their official duties pursuant to Chapter 7 of Title 52;

(21) a pre‑occupancy housing inspection contracted for by the South Carolina Department of Employment and Workforce pursuant to Section 46‑43‑40;

(22) the performance of any duty related to the service of members of the Judicial Merit Selection Commission or the Citizens Committees on Judicial Selection;

(23) the performance of any duty related to the service of the members of the Tobacco Community Development Board;

(24) the failure of a library’s or media arts center’s governing board to adopt policies as provided in Section 10‑1‑205;

(25) acts or omissions by a special state constable who is appointed pursuant to Section 23‑7‑10 and acting within the scope of his official duty under conditions of a national emergency or of a serious and immediate risk to the physical security of an energy facility within the special state constable’s jurisdiction as provided in Section 23‑7‑40;

(26) the performance of any duty related to the service of the members of the Tobacco Settlement Revenue Management Authority;

(27) conduct of a director appointed pursuant to Section 58‑31‑20 giving rise to a lawsuit under Section 58‑31‑57;

(28) the grant or denial by a governing body of a county or municipality as provided in Section 23‑35‑175 of an application to extend a Fireworks Prohibited Zone beyond the subject property for which a Discharge of Fireworks Prohibited Agreement has been filed; and

(29) for an injury a student may sustain as a result of self‑monitoring or self‑administering medications or for an injury that a student may sustain from taking or using medications or self‑monitoring devices for which the student does not have a prescription or does not have authorization by the school district.

(B) The governmental entity is not liable for a loss resulting from the following unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice:

(1) natural conditions of unimproved property of the governmental entity;

(2) absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier. Governmental entities are not liable for the removal or destruction of signs, signals, warning devices, guardrails, or median barriers by third parties. Nothing in this item gives rise to liability arising from a failure of any governmental entity to initially place any of the above signs, signals, warning devices, guardrails, or median barriers when the failure is the result of a discretionary act of the governmental entity. The signs, signals, warning devices, guardrails, or median barriers referred to in this item are those used in connection with hazards normally connected with the use of public ways and do not apply to the duty to warn of special conditions such as excavations, dredging, or public way construction. Governmental entities are not liable for the design of highways and other public ways. Governmental entities are not liable for loss on public ways under construction. Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising out of a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way caused by a third party.

(C) The governmental entity is not liable for a loss resulting from the following unless the absence, condition, or malfunction is not corrected by the responsible governmental entity within a reasonable time after actual notice of the defect or condition:

(1) maintenance, security, or supervision of any public property, intended or permitted to be used as a park, playground, or open area for recreational purposes;

(2) failure to control, maintain, or supervise the use of and activities in, on, and around public boat ramps; or

(3) failure to maintain navigational markers.

(D) The governmental entity is not liable for a loss resulting from snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions unless the snow or ice thereon is affirmatively caused by a negligent act of the employee.

(E) The governmental entity is not liable for a loss resulting from the following unless the power or function is exercised in a grossly negligent manner or without good faith:

(1) acts or omissions of members of local foster care review boards acting within the scope of their official duties pursuant to subarticle 4, Article 13, Chapter 7 of Title 20, if the board members have participated in a training program established by the state foster care review board system; or

(2) acts or omissions of employees and volunteers of the South Carolina Protection and Advocacy System for the Handicapped acting within the scope of their official duties pursuant to Article 5, Chapter 33 of Title 43.

(F) The governmental entity is not liable for a loss resulting from the following unless the power or function is exercised in a grossly negligent manner:

(1) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority;

(2) responsibility or duty including, but not limited to, supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity; or

(3) the exercise of discretion or judgment by the governmental entity or employee or the performance of or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee.

(G) The governmental entity is not liable for a loss resulting from notification of any public school student’s parent, legal guardian, or other person with whom a public school student resides of the student’s suspected use of alcohol, controlled substances, prescription or nonprescription drugs by any public school administrator, principal, counselor, or teacher if such notification is made in good faith.”

SECTION 5. Section 15-78-80(g) of the 1976 Code is amended to read:

“(g)(1) In ~~all~~ ~~cases~~ any case~~,~~ where insurance is provided by the State Fiscal Accountability Authority, the agency or political subdivision involved must cooperate with the State Fiscal Accountability Authority in the investigation and handling of any claim.

(2) In any case where the claim is within the policy limits, the Insurance Reserve Fund must not seek any additional contribution from the insured related to that case.”

SECTION 6. Section 15-78-120(b) of the 1976 Code is amended to read:

“(b) Except as otherwise provided in this subsection, ~~No~~ no award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment.

(1) A person who suffers a loss proximately caused by a tort of a governmental entity or its employee acting within the scope of his official duty, and who files a claim as provided in this chapter, may institute an action under this chapter to demonstrate bad faith or unreasonable action by the insurer in processing a claim.

(A) A person seeking a finding of bad faith or unreasonable action by the insurer in processing a claim must file a separate summons and complaint in circuit court.

(B) Before a person initiates a bad faith action under this section, that person must first succeed in establishing liability in the underlying case brought under this chapter arising from any loss the person suffered that was proximately caused by a tort of a governmental entity or its employee acting within the scope of his official duty.

(C) In making a decision regarding bad faith or unreasonable action by the insurer in processing a claim, the court must consider any offer made to the insured by the person who suffered a loss through an offer of judgment pursuant to Section 15-78-120(b)(2) and any information provided in the verified claim for damages pursuant to Section 15-78-80.

(D) In an action brought under, Section 15-78-120(b)(1), a person shall not recover a sum exceeding one million dollars. A verdict or award for bad faith or unreasonable action by the insurer must be paid regardless of whether the total of the verdict or award for bad faith or unreasonable acts combined with the verdict or award in the underlying case exceeds the liability limits specified in Sections 15-78-120(a)(1) through (a)(4).

(2) A party who files an offer of judgment under this chapter as provided in Section 15-35-400(A) shall be allowed to recover as provided in Section 15-35-400(B) from the offeree regardless of whether the total of administrative, filing, or other court costs, and the eight percent interest on the amount of the verdict or award from the date of the offer combined with the verdict or award exceeds the liability limits specified in Sections 15-78-120(a)(1) through (a)(4). The eight percent interest must be determined from the date of the offer and must be computed on the amount of the verdict or award prior to the application of any limitations on liability in Section 15-78-120(a)(1) through (a)(4). Nothing in this subsection shall be so construed as to limit or restrict the right of a defendant who is an offeror pursuant to Section 15-35-400(A) from receiving administrative, filing, or other court costs, and a reduction from the judgment or award of eight percent interest on the amount of the verdict or award as provided in Sections 15-35-400(B)(1) and (B)(3).”

SECTION 7. Chapter 78, Title 15 of the 1976 Code is amended by adding:

“Section 15-78-125. (A)(1) A person may petition the State Fiscal Accountability Authority pursuant to Section 1-11-460 for a payment of the full amount of the verdict over the limitations on liability in Sections 15-78-120(a)(2) and (a)(4) provided the following:

(a) the person suffered a loss proximately caused by any hospital that is considered a ‘charitable organization’ as that term is used in Section 33-56-20(1), a governmental entity, or individual governmental employees and governmental officials acting within the scope of his official duty;

(b) the person was awarded a verdict arising out of that loss that is in excess of two million dollars prior to the application of any limitations on liability in Sections 15-78-120(a)(1) through (a)(4); and

(c) the loss involved more than one claimant but arose out of a single occurrence or related occurrences.

(2) The State Fiscal Accountability Authority, through its Division of Insurance Services, is authorized to pay judgments against any hospital that is considered a ‘charitable organization’ as that term is used in Section 33-56-20(1), or against any governmental entities or any individual governmental employees or governmental officials in excess of two million dollars pursuant to the maximum limitations in Section 1-11-460, except that no payment from the fund may be ordered in excess of deposited funds.

(3) The State Fiscal Accountability Authority may authorize full or partial payment or decline to authorize payment.

(4) The State Fiscal Accountability Authority through its Division on Insurance Services shall promulgate and publish rules and regulations it finds necessary and appropriate that are not inconsistent with the provisions of this section and that concern the process and procedures by which requests for payments under this section are made and considered.

(5) Any payment authorized by the State Fiscal Accountability Authority as provided by Section 1-11-460 must be paid out of the State Catastrophic Fund.

(B)(1) The State Fiscal Accountability Authority through its Division on Insurance Services shall have the authority to promulgate rules and regulations under which it may make a reasonable charge or assessment against any hospital that is considered a ‘charitable organization’ as that term is used in Section 33-56-20(1) and that is protected by the liability limits in this chapter and any governmental entity protected by the liability limits in this chapter as provided by the provisions of this section. Such charge or assessment must be determined by the State Fiscal Accountability Authority and must be apportioned among the various hospitals that are considered ‘charitable organizations’ as that term is used in Section 33-56-20(1) and governmental entities in a proratable or fair manner, and the funds derived from such charge or assessment shall be used exclusively by the State Fiscal Accountability Authority to do the following:

(a) fund the State Catastrophic Fund as provided for in Section 1-11-460 in the amount of three million dollars by July first of 2022, and

(b) collect an additional one million dollars every year thereafter for deposit in the State Catastrophic Fund.

(2) Each governmental entity protected by the limits in this chapter and each hospital that is considered a ‘charitable organization’ as that term is used in Section 33-56-20(1) and that is protected by the limits in this chapter must pay into the State Catastrophic Fund at such time or times prescribed by and in the amounts and at the rates specified by regulations promulgated by the State Fiscal Accountability Authority in order to fund the State Catastrophic Fund pursuant to subsection (B)(1).

(3)(a) In case of refusal to pay such charge or assessment on the part of any hospital that is considered a ‘charitable organization’ as that term is used in Section 33-56-20(1) or governmental entity as defined in this chapter, or in case such charge or assessment remains unpaid for a period of thirty days:

(i) the State Fiscal Accountability Authority may initiate a suit in a court of competent jurisdiction for the recovery of such charge or assessment, or

(ii) the amount of such charge or assessment may, at the request of the State Fiscal Accountability Authority, be deducted from any other moneys payable to such hospital that is considered a ‘charitable organization’ as that term is used in Section 33-56-20(1) or governmental entity by any department or agency of the State.

(b) Any delinquent payment or payments due under this section by any hospital that is considered a ‘charitable organization’ as that term is used in Section 33-56-20(1) or by a governmental entity protected by the liability limits in this chapter must be charged interest compounded annually based on the adjusted prime rate charged by banks, rounded to the nearest full percent. The effective date of this adjustment must be based on the twelve-month period ending March thirty-first of any calendar year and must be established by April fifteenth for an effective date of the next first day of July. As used in this subitem, the ‘adjusted prime rate charged by banks’ means the average predominant prime rate quoted by commercial banks to large businesses as determined by the Board of Governors of the Federal Reserve System. The adjusted prime rate used must be the adjusted prime rate charged by the bank during March of that year.

(c) Delinquent payments may:

(i) be recovered by action in a court of competent jurisdiction against any hospital that is considered a ‘charitable organization’ as that term is used in Section 33-56-20(1) or governmental entity liable for the payment, or

(ii) at the request of the State Fiscal Accountability Authority, be deducted from any other monies payable to such hospital that is considered a ‘charitable organization’ as that term is used in Section 33-56-20(1) or governmental entity by any department or agency of the State. Upon notification from the State Fiscal Accountability Authority to the State Treasurer and Comptroller General as to a delinquency of any payments due under this section, any distributions that might otherwise be made to any hospital that is considered a ‘charitable organization’ as that term is used in Section 33-56-20(1) or the governmental entity from any funds of the State shall be withheld from such governmental entity or hospital until notice from the State Fiscal Accountability Authority to the State Treasurer that such hospital that is considered a ‘charitable organization’ as that term is used in Section 33-56-20(1) or governmental entity is no longer in default in its payments.

(4)(a) As used in this item, ‘target fund amount’ means twenty million dollars.

(b) On June thirtieth of every year, starting in 2039, the State Fiscal Accountability Authority must review all outstanding obligations in this fund and may, by an equitable proratable method established by regulation, refund to the governmental entities and the hospitals that are considered ‘charitable organizations’ as that term is used in Section 33-56-20(1) the amount by which the account assets exceed the target fund amount. Refunds to governmental entities and hospitals that are considered ‘charitable organizations’ as that term is used in Section 33-56-20(1) must be in proportion to the contribution each governmental entity and hospital made to the fund.

(c) Starting June 1, 2040, and every year thereafter, the Revenue and Fiscal Affairs Office, Board of Economic Advisors, must adjust the target fund amount by calculating the increase or decrease in the ratio of the Consumer Price Index for all Urban Consumers (CPI U), South Region, published by the U.S. Department of Labor, to the Index of June first of 2019. As soon as practicable after this adjustment is calculated, the Director of the Revenue and Fiscal Affairs Office shall submit the revised target fund amount to the State Register for publication pursuant to Section 1-23-40(2) and to the Executive Director of the State Fiscal Accountability Authority and the Director of the Insurance Reserve Fund. The revised target fund amount becomes effective on June first of each year, starting June 1, 2040. As soon as practicable after this adjustment is calculated and the revised target fund amount is sent to the Director of the Insurance Reserve Fund, the Director of the Insurance Reserve Fund shall publish the revised target fund amount on the Insurance Reserve Fund’s Internet website.

(5) This fund must be established and held separate and apart from any other funds of the State and must be used and administered exclusively for the purpose of this section and Section 1-11-460. Investment earnings derived from monies in such account must be credited to the account. Withdrawals from this fund must be made solely for payments made pursuant to subsection (A) of this section and Section 1-11-460, and to defray expenses of administration.”

SECTION 8. (A) There is created a Tort Reform Study Committee to develop and recommend legislation to assist the General Assembly in enacting and implementing the State Catastrophic Fund as provided in Sections 1-11-460 and 15-78-125 for the purpose of compensating certain specified persons in an amount in excess of the governmental tort liability limits for injuries or deaths caused by the actions of a governmental entity or an employee of a governmental entity and to study other issues relating to governmental tort liability.

(B)(1) The committee shall be comprised of the following members:

(a) the President of the Senate, or his designee;

(b) the Speaker of the House, or his designee;

(c) the Chairman of the Senate Finance Committee, or his designee;

(d) the Chairman of the House Ways and Means Committee, or his designee;

(e) the Chairman of the Senate Judiciary Committee, or his designee;

(f) the Chairman of the House Judiciary Committee, or his designee; and

(g) the Executive Director of the State Fiscal Accountability Authority, or his designee.

(2) Vacancies in the membership of this study committee must be filled for the remainder of the unexpired term in the manner of the original appointment.

(3) The President of the Senate and the Speaker of the House of Representatives shall provide staffing for the study committee.

(C) The study committee shall provide a report to the General Assembly by March 1, 2020, at which time the study committee shall dissolve.

SECTION 9. Upon approval by the Governor, this act takes effect July 1, 2020, for causes of action with a date of loss arising on and after July 1, 2020. /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**A** **BILL**

TO AMEND CHAPTER 78, TITLE 15, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOUTH CAROLINA TORT CLAIMS ACT, SO AS TO AMEND AND REORGANIZE THE EXISTING EXCEPTIONS AND MAKE OTHER RELATED CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 78, Title 15 of the 1976 Code is amended to read:

SECTION 2. Upon approval by the Governor, this act takes effect for causes of action arising after July 1, 2020.

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