~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 24, 2010

**H. 3249**

Introduced by Rep. G.M. Smith

S. Printed 3/24/10--H.

Read the first time January 13, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3249) to amend Sections 15‑78‑30 and 15‑78‑50, Code of Laws of South Carolina, 1976, relating to liability pursuant to the Tort Claims Act, 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 all after the enacting words and inserting:

/ SECTION 1. Chapter 1, Title 8 of the 1976 Code is amended by adding:

“Section 8‑1‑195. (A) If the State, an agency, a political subdivision, or an employee of these governmental entities is sued for civil conspiracy based in part upon a personnel or employment action or decision regarding a state employee, the court, prior to trial, must make a determination whether the action or decision giving rise to the suit was made by the employee within the scope of official duty. If the court finds that the employee was acting within the scope of the employee’s official duties, the State, an agency, a political subdivision, or an employee of these governmental entities is immune from suit, liability, and damages from the civil conspiracy claim. The immunity granted by this section does not limit any claim available at law, other than civil conspiracy, which challenges personnel or employment action of a governmental entity.

(B) When applicable, the terms used in this section have the same meaning as the terms defined in Section 15‑78‑30.”

SECTION 2. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND SECTIONS 15‑78‑30 AND 15‑78‑50, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LIABILITY PURSUANT TO THE TORT CLAIMS ACT, SO AS TO FURTHER DEFINE THE DEFINITIONS OF THE TERMS “SCOPE OF OFFICIAL DUTY” AND “SCOPE OF STATE EMPLOYMENT” AND TO EXPRESSLY PROVIDE FOR IMMUNITY OF CERTAIN GOVERNMENTAL EMPLOYEES WHEN INVESTIGATING POTENTIAL WRONGDOING OR DISCIPLINING ANOTHER EMPLOYEE UNDER CERTAIN CIRCUMSTANCES.

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

SECTION 1. Section 15‑78‑30(i) of the 1976 Code is amended to read:

“(i) ‘Scope of official duty’ or ‘scope of state employment’ means:

(1) acting in and about the official business of a governmental entity; and

(2) performing official duties.

A personal claim against a state employee may not proceed to trial unless a determination is made by the Attorney General that the subject employee was acting outside the scope of state employment. This determination must be made upon request by either of the parties or by a court of competent jurisdiction. The Attorney General may require the submission of briefs, affidavits, and other documents or evidence and may promulgate rules to regulate this process. The Attorney General’s opinion is reviewable only by appellate courts.

An action taken in furtherance of the governmental entity’s business is presumed to be within the scope of employment and not with intent to harm unless the employee’s actions:

(1) were expressly and specifically prohibited by a higher authority, and the employee has a dominate personal stake in the outcome; or

(2) have already resulted in a criminal conviction.”

SECTION 2. Section 15‑78‑50 of the 1976 Code is amended by adding an appropriately lettered paragraph at the end to read:

“( ) The authority of governmental employees to investigate wrongdoing or impose discipline upon other employees emanates from the authority of the State and can only be affected within the scope of the employee’s official duties. Any legal action challenging the imposition of discipline or corrective action including, but not limited to, termination upon an employee of a governmental entity shall name as a party defendant only the agency or political subdivision for which the employee was acting and not an individual employee.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. This act takes effect upon approval by the Governor.

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