**South Carolina General Assembly**

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**S. 788**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Massey

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Introduced in the Senate on June 6, 2013

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

Summary: Noneconomic damages limit

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

6/6/2013 Senate Introduced and read first time

6/6/2013 Senate Referred to Committee on **Judiciary**

10/8/2013 Senate Referred to Subcommittee: Massey (ch), Coleman, Gregory

**VERSIONS OF THIS BILL**

[6/6/2013](file:///p:\pprever\2013-14\788_20130606.docx)

**A** **BILL**

TO AMEND SECTION 15‑32‑220 OF THE 1976 CODE, RELATING TO NONECONOMIC DAMAGES LIMIT, TO PROVIDE FOR PERSONAL INJURY ACTIONS AGAINST DEFENDANTS AND TO MAKE TECHNICAL CHANGES; TO AMEND CHAPTER 32, TITLE 15, RELATING TO DAMAGES, BY ADDING SECTION 15‑32‑250, TO PROVIDE FOR PLEADINGS IN CLAIMS FOR PUNITIVE DAMAGES, BY ADDING SECTION 15‑32‑260, TO PROVIDE FOR BIFURCATED TRIALS FOR AWARD OF DAMAGES, BY ADDING SECTION 15‑32‑270, TO LIMIT PUNITIVE DAMAGES, AND BY ADDING SECTION 15‑35‑280, TO PROVIDE RESTRICTIONS FOR AWARDING PUNITIVE DAMAGES; TO REPEAL ARTICLE 5, CHAPTER 32, TITLE 15, RELATING TO PUNITIVE DAMAGES; TO AMEND CHAPTER 3, TITLE 27, RELATING TO LIMITATION ON LIABILITY OF LANDOWNERS, TO DEFINE TERMS RELATING TO THE CHAPTER AND TO PROVIDE FOR THE LIABILITY OF AN OWNER, LESSEE, OR OCCUPANT OF AGRICULTURAL LAND AND REAL PROPERTY; AND TO AMEND SECTION 37‑3‑106, RELATING TO THE DEFINITION OF LOANS, TO PROVIDE THAT A LOAN INCLUDES THE PROVISION OF A CASH ADVANCE OR FUNDS TO A PERSON IN EXCHANGE FOR THAT PERSON ASSIGNING, CONVEYING, OR OTHERWISE CONFERRING, TO THE PERSON OR ENTITY ADVANCING THE CASH ADVANCE OR FUNDS, THE RIGHT TO RECEIVE THE PROCEEDS, OR PART THEREOF, OF THE SETTLEMENT, INSURANCE PAYMENT, OR AWARD OF DAMAGES.

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

SECTION 1. Section 15‑32‑220 of the 1976 Code is amended to read:

“Section 15‑32‑220. (A) In ~~an~~ a personal injury action ~~on a medical malpractice claim~~ when final judgment is rendered against a single ~~health care provider~~ defendant, the limit of civil liability for noneconomic damages of the ~~health care provider~~ defendant is limited to an amount not to exceed three hundred fifty thousand dollars for each claimant, regardless of the number of separate causes of action on which the claim is based, except as provided in subsection ~~(E)~~(D).

(B) In ~~an~~ a personal injury action ~~on a medical malpractice claim~~ when final judgment is rendered against ~~a single health care institution~~ more than one defendant, the limit of civil liability for noneconomic damages for each defendant is limited to an amount not to exceed three hundred fifty thousand dollars for each claimant, regardless of the number of separate causes of action on which the claim is based, except as provided in subsection ~~(E)~~(D).

~~(C)~~ ~~In an action on a medical malpractice claim when final judgment is rendered against more than one health care institution, or more than one health care provider, or any combination thereof, the limit of civil liability for noneconomic damages for each health care institution and each health care provider is limited to an amount not to exceed three hundred fifty thousand dollars for each claimant, and the limit of civil liability for noneconomic damages for all health care institutions and health care providers is limited to an amount not to exceed one million fifty thousand dollars for each claimant, except as provided in subsection (E).~~

~~(D)(1)~~(C) The provisions of this section do not limit the amount of compensation for economic damages suffered by each claimant in a ~~medical malpractice claim~~ personal injury action.

~~(2)~~ ~~The provisions of this section do not limit the amount of punitive damages in cases where the plaintiff is able to prove an entitlement to an award of punitive damages as required by law.~~

~~(E)~~(D) The limitations for noneconomic damages rendered against any ~~health care provider or health care institution~~ defendant do not apply if the jury or court determines that the defendant was grossly negligent, wilful, wanton, or reckless, and such conduct was the proximate cause of the claimant’s noneconomic damages, or if the defendant has engaged in fraud or misrepresentation related to the claim, or if the defendant altered or destroyed medical records with the purpose of avoiding a claim or liability to the claimant.

~~(F)~~(E) At the end of each calendar year, the State Budget and Control Board, Board of Economic Advisors must determine the increase or decrease in the ratio of the Consumer Price Index to the index as of December 31 of the previous year, and the limitation on compensation for noneconomic damages pursuant to ~~subsection~~ subsections (A)~~,~~ and (B)~~, or (C)~~ must be increased or decreased accordingly. As soon as practicable after this adjustment is calculated, the Director of the State Budget and Control Board shall submit the revised limitation on compensation to the State Register for publication pursuant to Section 1‑23‑40(2), and the revised limitation becomes effective upon publication in the State Register. For purposes of this subsection, ‘Consumer Price Index’ means the Consumer Price Index for All Urban Consumers as published by the United States Department of Labor, Bureau of Labor Statistics. For the calendar year in which this act takes effect, the adjusted limits in effect as provided by Act 32 of 2005 shall be the limits when this act takes effect and shall be adjusted accordingly in subsequent calendar years as provided by this subsection.”

SECTION 2. Chapter 32, Title 15 of the 1976 Code is amended by adding:

“Section 15‑32‑250. (A) A claim for punitive damages must be specifically prayed for in the complaint.

(B) The plaintiff must specifically plead either:

(1) that at least thirty days in advance of filing the complaint, that the plaintiff has given notice of seeking damages pursuant to this article and that in good faith a reasonable settlement could not be reached; or

(2) that thirty days notice under this section could not be given because of exigent circumstances.

(C) The plaintiff shall not specifically plead an amount of punitive damages, only that punitive damages are sought in the action.

(D) The prayer for punitive damages must be stricken prior to trial by the court, unless the plaintiff presents prima facie evidence sufficient to sustain an award of punitive damages under this chapter to the court at a pretrial hearing held at least thirty days prior to trial.

Section 15‑32‑260. (A) All actions tried before a jury involving punitive damages must, if requested by any defendant, be conducted in a bifurcated manner before the same jury.

(B) In the first stage of a bifurcated trial, the jury shall determine liability for compensatory damages and the amount of compensatory or nominal damages. Evidence relevant only to the issues of punitive damages is not admissible at this stage.

(C) Punitive damages may be considered if compensatory damages have been awarded in the first stage of the trial. An award of nominal damages cannot support an award of punitive damages.

(D) Punitive damages may only be awarded if the plaintiff proves by clear and convincing evidence that his harm was the result of actual malice. This burden of proof may not be satisfied by proof of any degree of negligence, including gross negligence.

(E) In the second stage of a bifurcated trial, the jury shall determine if a defendant is liable for punitive damages and, if determined to be liable, the amount of punitive damages. In determining the amount of punitive damages, the jury shall consider all relevant evidence, including:

(1) the severity of the harm caused by the defendant;

(2) the extent to which the plaintiff’s own conduct contributed to the harm;

(3) the duration of the conduct, the defendant’s awareness, and any concealment by the defendant;

(4) the profitability of the conduct to the defendant;

(5) awards of compensatory and punitive damages to persons similarly situated to the plaintiff;

(6) prospective awards of compensatory damages to persons similarly situated to the plaintiff;

(7) any criminal penalties imposed on the defendant as a result of the conduct complained of by the plaintiff; and

(8) the amount of any civil fines assessed against the defendant as a result of the conduct complained of by the plaintiff.

(F) Evidence of a defendant’s financial condition or net worth is not admissible during the punitive damage phase of the trial, although this evidence may be considered by the trial and appellate courts in determining whether the award is excessive.

(G) If punitive damages are awarded, the trial court shall carefully review the jury’s decision, considering all relevant evidence, including the factors identified in subsection (D), to ensure that the award is not excessive or the result of passion or prejudice.

(H) In any action with multiple defendants, a punitive damages award must be specific to each defendant, and each defendant is liable only for the amount of the award made against that defendant.

Section 15‑32‑270. No award of punitive damages may exceed three times the amount of the plaintiff’s compensatory damages award or two hundred fifty thousand, whichever is greater. If the defendant is an individual or a business with fifty or fewer employees, no award of punitive damages may exceed three times the amount of the plaintiff’s compensatory damages or two hundred fifty thousand dollars, whichever is less.

Section 15‑32‑280. (A) Punitive damages shall not be awarded if a drug or device or combination device or food or food additive which caused the harm:

(1) was subject to premarket approval or licensure by the federal Food and Drug Administration under the ‘Federal Food, Drug, and Cosmetic Act,’ 52 Stat.1040, 21 U.S.C.Sec.301 et seq. or the ‘Public Health Service Act,’ 58 Stat.682, 42 U.S.C.Sec.201 et seq. and was approved or licensed; or

(2) is generally recognized as safe and effective pursuant to conditions established by the federal Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(B) This exception shall not apply when the plaintiff proves by clear and convincing evidence that the product manufacturer:

(1) knowingly and in violation of applicable agency regulations withheld or misrepresented information required to be submitted to the agency, when the information was material and relevant to the harm in question; or

(2) made an illegal payment to an official of the federal Food and Drug Administration for the purpose of securing approval of the product.”

SECTION 3. Article 5, Chapter 32, Title 15 of the 1976 Code is repealed.

SECTION 4. Chapter 3, Title 27 of the 1976 Code is amended to read:

“CHAPTER 3.

LIMITATION ON LIABILITY OF LANDOWNERS

Section 27‑3‑10. ~~The purpose of this chapter is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes.~~ As used in this chapter:

(1) ‘Agricultural land’ means land that is located in this State and that is suitable for:

(a) use in production of plants and fruits grown for consumption, or plants grown for the production of fibers, floriculture, viticulture, horticulture, or planting seed;

(b) forestry and the growing of trees for the purpose of rendering those trees into lumber, fiber, or other items used for industrial, commercial, or personal consumption; or

(c) domestic or native farm or ranch animals kept for use or profit.

(2) ‘Premises’ includes land, roads, water, watercourse, private ways, and buildings, structures, machinery, and equipment attached to or located on the land, road, water, watercourse, or private way.

(3) ‘Recreation’ means an activity including, but not limited to:

(a) hunting;

(b) fishing;

(c) swimming;

(d) boating;

(e) camping;

(f) picnicking;

(g) hiking;

(h) pleasure driving, including off‑road motorcycling and off‑road automobile driving and the use of all‑terrain vehicles;

(i) nature study, including bird‑watching;

(j) cave exploration;

(k) waterskiing and other water sports;

(l) any other activity associated with enjoying nature or the outdoors;

(m) bicycling and mountain biking;

(n) disc golf;

(o) on‑leash and off‑leash walking of dogs; or

(p) radio control flying and related activities.

Section 27‑3‑20. ~~As used in this chapter:~~

~~(a)~~ ~~‘Land’ means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.~~

~~(b)~~ ~~‘Owner’ means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.~~

~~(c)~~ ~~‘Recreational purpose’ includes, but is not limited to, any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, summer and winter sports and viewing or enjoying historical, archaeological, scenic, or scientific sites.~~

~~(d)~~ ~~‘Charge’ means the admission price or fee asked in return for invitation or permission to enter or go upon the land.~~

~~(e)~~ ~~‘Persons’ means individuals regardless of age.~~ (A) An owner, lessee, or occupant of agricultural land:

(1) does not owe a duty of care to a trespasser on the land; and

(2) is not liable for any injury to a trespasser on the land, except for wilful or wanton acts or gross negligence by the owner, lessee, or other occupant of agricultural land.

(B) If an owner, lessee, or occupant of agricultural land gives permission to another or invites another to enter the premises for recreation, the owner, lessee, or occupant, by giving the permission, does not:

(1) assure that the premises are safe for that purpose;

(2) owe to the person to whom permission is granted or to whom the invitation is extended a greater degree of care than is owed to a trespasser on the premises; or

(3) assume responsibility or incur liability for any injury to any individual or property caused by any act of the person to whom permission is granted or to whom the invitation is extended.

(C) If an owner, lessee, or occupant of real property other than agricultural land gives permission to another to enter the premises for recreation, the owner, lessee, or occupant, by giving the permission, does not:

(1) assure that the premises are safe for that purpose;

(2) owe to the person to whom permission is granted a greater degree of care than is owed to a trespasser on the premises; or

(3) assume responsibility or incur liability for any injury to any individual or property caused by any act of the person to whom permission is granted.

(D) Subsections (A), (B), and (C) shall not limit the liability of an owner, lessee, or occupant of real property who has been grossly negligent or has acted with malicious intent or in bad faith.

Section 27‑3‑30. ~~Except as specifically recognized by or provided in Section 27‑3‑60, an owner of land owes no duty of care to keep the premises safe for entry or use by persons who have sought and obtained his permission to use it for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on such premises to such persons entering for such purposes.~~ (A) Subject to subsection (B), the liability of an owner, lessee, or occupant of agricultural land used for recreational purposes for an act or omission by the owner, lessee, or occupant relating to the premises that results in damages to a person who has entered the premises is limited to a maximum amount of five hundred thousand dollars for each person and one million dollars for each single occurrence of bodily injury or death and one hundred thousand dollars for each single occurrence for injury to or destruction of property. In the case of agricultural land, the total liability of an owner, lessee, or occupant for a single occurrence is limited to one million dollars, and the liability also is subject to the limits for each single occurrence of bodily injury or death and each single occurrence for injury to or destruction of property stated in this subsection.

(B) This section applies only to an owner, lessee, or occupant of agricultural land used for recreational purposes who has liability insurance coverage in effect on an act or omission described by subsection (A) and in the amounts equal to or greater than those provided by subsection (A). The coverage may be provided under a contract of insurance or other plan of insurance authorized by statute. The limit of liability insurance coverage applicable with respect to agricultural land may be a combined single limit in the amount of one million dollars for each single occurrence.

(C) This section does not affect the liability of an insurer or insurance plan in an action or an action for bad faith conduct, breach of fiduciary duty, or negligent failure to settle a claim.

(D) This section does not apply to a governmental unit.

Section 27‑3‑40. ~~Except as specifically recognized by or provided in Section 27‑3‑60, an owner of land who permits without charge any person having sought such permission to use such property for recreational purposes does not thereby:~~

~~(a)~~ ~~Extend any assurance that the premises are safe for any purpose.~~

~~(b)~~ ~~Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.~~

~~(c)~~ ~~Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.~~

(A) As used in this section, ‘trespasser’ means a person who enters the land of another without any legal right, express or implied.

(B) An owner, lessee, or occupant of land does not owe a duty of care to a trespasser on the land and is not liable for any injury to a trespasser on the land, except that an owner, lessee, or occupant owes a duty to refrain from injuring a trespasser wilfully, wantonly, or through gross negligence.

(C) Notwithstanding subsection (B), an owner, lessee, or occupant of land may be liable for injury to a child caused by a highly dangerous artificial condition on the land if:

(1) the place where the artificial condition exists is one upon which the owner, lessee, or occupant knew or reasonably should have known that children were likely to trespass;

(2) the artificial condition is one that the owner, lessee, or occupant knew or reasonably should have known existed, and that the owner, lessee, or occupant realized or should have realized involved an unreasonable risk of death or serious bodily harm to such children;

(3) the injured child, because of the child’s youth, did not discover the condition or realize the risk involved in intermeddling with the condition or coming within the area made dangerous by the condition;

(4) the utility to the owner, lessee, or occupant of maintaining the artificial condition and the burden of eliminating the danger were slight as compared with the risk to the child involved; and

(5) the owner, lessee, or occupant failed to exercise reasonable care to eliminate the danger or otherwise protect the child.

(D) An owner, lessee, or occupant of land whose actions are justified, pursuant to the Code, is not liable to a trespasser for damages arising from those actions.

(E) This section does not affect previous articles in this chapter or create or increase the liability of any person.

~~Section 27‑3‑50.~~ ~~Unless otherwise agreed in writing, the provisions of Sections 27‑3‑30 and 27‑3‑40 shall be deemed applicable to the duties and liability of an owner of land leased to the State or any subdivision thereof for recreational purposes.~~

Section 27‑3‑60. Nothing in this chapter limits in any way any liability which otherwise exists:

(a) ~~For~~ for grossly negligent, willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity~~.~~;

(b) ~~For~~ for injury suffered in any case where the owner of land charges persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the State or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

Section 27‑3‑70. Nothing in this chapter shall be construed to:

(a) ~~Create~~ create a duty of care or ground of liability for injury to persons or property~~.~~;

(b) ~~Relieve~~ relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this chapter to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.”

SECTION 5. Section 37‑3‑106 of the 1976 Code is amended to read:

“Section 37-3-106. (A) ‘Loan’ includes:

(1) ~~The~~ the creation of debt by the lender’s payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;

(2) ~~The~~ the creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately;

(3) ~~The~~ the creation of debt pursuant to a lender credit card or similar arrangement; ~~and~~

(4) ~~The~~ the forbearance of debt arising from a loan; and

(5)(a) the provision of a cash advance or funds to a person in exchange for that person assigning, conveying, or otherwise conferring, to the person or entity advancing the cash advance or funds, the right to receive the proceeds, or part thereof, of the settlement, insurance payment, or award of damages obtained in the:

(i) consumer’s civil action, statutory, or regulatory claim for which damages may be awarded to the claiming party; or

(ii) cause of action or legal claim upon which a civil action or statutory claim described in subitem (i) may be based, regardless of whether the right to receive the proceeds is non‑recourse.

(B) A ‘loan’ does not include the provision of professional legal services or the advancement of litigation expenses by an attorney admitted to practice law in this State to an individual on a contingency basis.”

SECTION 6. This act takes effect upon approval by the Governor.

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