**South Carolina General Assembly**

123rd Session, 2019-2020

**H. 3229**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Rutherford

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Introduced in the House on January 8, 2019

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

Summary: Tort Claims

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/18/2018 House Prefiled

12/18/2018 House Referred to Committee on **Judiciary**

1/8/2019 House Introduced and read first time ([House Journal‑page 135](file:///h:\hj\20190108.docx))

1/8/2019 House Referred to Committee on **Judiciary** ([House Journal‑page 135](file:///h:\hj\20190108.docx))

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**VERSIONS OF THIS BILL**

[12/18/2018](file:///p:\pprever\2019-20\3229_20181218.docx)

**A** **BILL**

TO AMEND SECTION 15‑78‑60, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TORT CLAIMS ACT AND EXCEPTIONS TO WAIVER OF IMMUNITY, SO AS TO DELETE THE EXCEPTION FOR INSTITUTION OR PROSECUTION OF ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING.

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

SECTION 1. Section 15‑78‑60 of the 1976 Code is amended to read:

“Section 15‑78‑60. 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)~~(24) 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)~~(25) 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)~~(26) solicitations on streets and highways as authorized by the provisions of Section 5‑27‑910~~.~~;

~~(28)~~(27) ~~Notification~~ 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)~~(28) 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)~~(29) 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)~~(30) 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)~~(31) a pre‑occupancy housing inspection contracted for by the South Carolina Department of Employment and Workforce pursuant to Section 46‑43‑40~~.~~;

~~(33)~~(32) 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)~~(33) the performance of any duty related to the service of the members of the Tobacco Community Development Board~~.~~;

~~(35)~~(34) the failure of a library’s or media arts center’s governing board to adopt policies as provided in Section 10‑1‑205~~.~~;

~~(36)~~(35) 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)~~(36) the performance of any duty related to the service of the members of the Tobacco Settlement Revenue Management authority~~.~~;

~~(38)~~(37) conduct of a director appointed pursuant to Section 58‑31‑20 giving rise to a lawsuit under Section 58‑31‑57~~.~~;

~~(39)~~(38) 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)~~(39) 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.”

SECTION 2. 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 3. This act takes effect upon approval by the Governor.

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