~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 24, 2010

**H. 3489**

Introduced by Reps. Harrell, Cato, Sandifer, Cooper, Duncan, Owens, White, Bingham, A.D. Young, Huggins, E.H. Pitts, Edge, Toole, Kirsh, J.R. Smith, G.R. Smith, Brady, Crawford, Barfield, Bedingfield, Hardwick, Erickson, Loftis, Pinson, Rice, Hiott, Littlejohn, Allison, Chalk, Daning, Bowen, Gambrell, Hamilton, Wylie, Sottile, Nanney, Parker, Forrester, Haley, Millwood, Battle, Frye, Simrill, Spires, Thompson, Whitmire, Horne and Clemmons

S. Printed 2/24/10--H.

Read the first time February 10, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3489) to amend the Code of Laws of South Carolina, 1976, by enacting the “South Carolina Fairness in Civil Justice Act of 2009” by amending Article 1, Chapter 32, 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. This act may be cited as the “South Carolina Fairness in Civil Justice Act of 2010”.

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

“Article 5

Punitive Damages

Section 15‑32‑510. (A) A claim for punitive damages must be specifically prayed for in the complaint.

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

Section 15‑32‑520. (A) All actions tried before a jury involving punitive damages, if requested by any defendant against which punitive damages are sought, must 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 the defendant’s wilful, wanton, or reckless conduct.

(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 may consider all relevant evidence, including, but not limited to:

(1) the defendant’s degree of culpability;

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

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

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

(5) the existence of similar past conduct;

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

(7) the defendant’s ability to pay;

(8) the likelihood the award will deter the defendant or others from like conduct;

(9) the awards of punitive damages against the defendant in any state or federal court action alleging harm from the same act or course of conduct complained of by the plaintiff;

(10) any criminal penalties imposed on the defendant as a result of the same act or course of conduct complained of by the plaintiff; and

(11) the amount of any civil fines assessed against the defendant as a result of the same act or course of conduct complained of by the plaintiff.

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

(G) In an 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 15‑32‑530. (A) An award of punitive damages may not exceed three times the amount of the plaintiff’s compensatory damages award or three hundred fifty thousand dollars, whichever is greater.

(B) The limitations provided in subsection (A) do not apply in the following situations, when the:

(1) fact finder determines that at the time of the plaintiff’s injury the defendant pursued a course of conduct that the defendant knew or should have known would cause injury or damage;

(2) defendant pleads guilty to or is convicted of a felony arising out of the same act or course of conduct complained of by the plaintiff and that act or course of conduct is the proximate cause of the plaintiff’s damages; or

(3) fact finder determines that the defendant acted or failed to act while under the influence of alcohol, drugs, other than lawfully prescribed drugs administered in accordance with a prescription, or any intentionally consumed glue, aerosol, or other toxic vapor to the degree that defendant’s judgment is substantially impaired.

(C) The limitations provided in subsection (A) may not be disclosed to the jury. If the jury returns a verdict for punitive damages in excess of the maximum amount specified in subsection (A) and the exemptions in subsection (B) do not apply, the court shall reduce the award and enter judgment for punitive damages in the maximum amount allowed in subsection (A).”

SECTION 3. Article 5, Chapter 7, Title 1 of the 1976 Code is amended by adding:

“Section 1‑7‑750. (A) This section may be cited as the ‘Private Attorney Retention Sunshine Act’.

(B) Except as provided in Section 1‑7‑760, when the Attorney General or a circuit solicitor retains, engages, associates, hires, or otherwise obtains a private attorney, attorneys, or law firm as outside counsel for any reason, the outside counsel is required to enter into a contract that is governed by the following terms, provisions, or conditions:

(1) the Attorney General or circuit solicitor, in his sole discretion has the right to appoint a designated assistant, who must be an assistant attorney general or assistant solicitor, to oversee the litigation or other matter for which outside counsel has been retained, which appointment the Attorney General or circuit solicitor may modify at will;

(2) the Attorney General or circuit solicitor may provide attorneys and other staff members to assist outside counsel with the litigation. The identity and responsibilities of personnel assigned to assist must be determined solely by the Attorney General or circuit solicitor. All pleadings, motions, briefs, formal documents, and agreements must bear the signature of the Attorney General or circuit solicitor or his designated assistant;

(3) outside counsel shall coordinate the provision of legal services with the Attorney General or circuit solicitor or his designated assistant, other personnel of the Office of the Attorney General or circuit solicitor, and other persons the Attorney General or circuit solicitor may appoint as outside counsel. All pleadings, motions, briefs, and other material which may be filed with the court must first be approved by the Attorney General or circuit solicitor and provided to his office in draft form in a reasonable and timely manner for review;

(4) outside counsel will render services as an independent contractor. Neither outside counsel nor an employee of outside counsel is regarded as employed by, or as an employee of, the Attorney General, a circuit solicitor, or the State. An attorney‑client relationship exists between the Attorney General or circuit solicitor and outside counsel;

(5) detailed time and cost records reflecting all work must be maintained by outside counsel and presented monthly to the Attorney General or circuit solicitor;

(6) the Attorney General or circuit solicitor or his designated assistant shall approve in advance all aspects of the litigation or other matter for which outside counsel is retained and must be included in settlement discussions. Outside counsel agrees that all settlements must receive the Attorney General’s or circuit solicitor’s express prior approval in writing;

(7) any material, data, files, discs, or documents created, produced, or gathered by outside counsel, or in outside counsel’s possession in furtherance of the litigation or other matter for which outside counsel has been retained, or which fulfills an obligation of the appointment, is considered the exclusive property of the State. Outside counsel agrees to adhere to the South Carolina Freedom of Information Act, pursuant to Chapter 4, Title 30, and maintain all public records concerning the matter in accordance with state law provided; however, that outside counsel shall consult with, and obtain the approval of, the Attorney General or circuit solicitor before responding to a public records request. The contract of retention that satisfies this section is considered a public document. At the conclusion of the litigation or other matter for which outside counsel has been retained, all time records and monthly statements maintained or presented by outside counsel are public documents;

(8) in contingent fee cases, outside counsel may not receive compensation for services rendered unless the State receives a settlement or damage award in connection with the litigation. If the State receives an award, outside counsel will be compensated as follows:

(a) outside counsel may not be paid, not including punitive or exemplary damages, more than the following percentages corresponding to the amount of the judgment or settlement:

(i) twenty‑three percent of the judgment or settlement up to and including the first $5,000,000;

(ii) nineteen percent of that portion of the judgment or settlement in excess of $5,000,000 up to $10,000,000;

(iii) fifteen percent of that portion of the judgment or settlement in excess of $10,000,000 up to $25,000,000;

(iv) eleven percent of that portion of the judgment or settlement in excess of $25,000,000 up to $50,000,000;

(v) seven percent of that portion of the judgment or settlement in excess of $50,000,000 but less than $100,000,000; and

(vi) four percent of that portion of the judgment or settlement in excess of $100,000,000.

Provided, that the Attorney General or circuit solicitor shall retain ten percent of outside counsel’s fees awarded pursuant to this subitem;

(b) the remaining net settlement or judgment proceeding, but not including punitive or exemplary damages, must be paid or applied to or for the State or the people of South Carolina or the victims in a manner to be determined by the Attorney General or circuit solicitor in his sole discretion; and

(c) outside counsel may not be paid more than the following percentages corresponding to the amount of punitive or exemplary damages:

(i) ten percent of the damages up to and including the first $10,000,000;

(ii) five percent of that portion of the damages in excess of $10,000,000 up to $100,000,000; and

(iii) three percent of that portion of the damages in excess of $100,000,000.

Provided, that the Attorney General or circuit solicitor shall retain ten percent of outside counsel’s fees awarded pursuant to this subitem;

(d) the remaining amount of punitive and exemplary damages must be paid or applied to or for the State or the people of South Carolina or the victims in a manner to be determined by the Attorney General or circuit solicitor in his sole discretion;

(e) all settlement or judgment proceeds shall be paid by or on behalf of any defendant to the Attorney General or circuit solicitor’s office for distribution; and

(f) the fee schedule required by this section applies to all settlements or judgments, whether the settlement or judgment is entirely monetary in nature or is combined with nonmonetary relief. Should the litigation be resolved by settlement or judgment involving a combination of monetary and nonmonetary relief, such as injunctive relief, nonmonetary payment, the provision of goods or services or other in kind terms, or a combination of these, the Attorney General or circuit solicitor shall determine the monetary value to the State;

(9) outside counsel must be reimbursed solely from the gross recovery of the litigation or other matter for which outside counsel has been retained as approved by the Attorney General or circuit solicitor for reasonable expenses and costs. Proper documentation by receipts or otherwise must be submitted with all invoices and all documentation must be retained by outside counsel for at least one year following the agreement’s termination. All expenses must be itemized and no reimbursement may be applied for or requested for miscellaneous listings. The Attorney General or circuit solicitor in his sole discretion may decline to reimburse outside counsel for improperly documented, unnecessary, or unreasonable costs or expenses. In addition:

(a) outside counsel must be reimbursed for the retention of experts, including fees and other reasonable costs, only when expressly authorized by the Attorney General or circuit solicitor; and

(b) for reimbursements of expenses for lodging, travel, or mileage, receipts are required and these expenses must be expressly authorized in advance by the Attorney General or circuit solicitor; and

(10) outside counsel may not speak to any representative of a television station, radio station, newspaper, magazine, or other media outlet concerning the work outlined or contemplated in the contract of retention without first obtaining approval of the Attorney General or circuit solicitor. Outside counsel is specifically prohibited from speaking on behalf of the Attorney General or circuit solicitor or the State of South Carolina to any representative of the news media.

Section 1‑7‑760. The provisions of Section 1‑7‑750 may be suspended only under certain conditions when the Attorney General or the circuit solicitor, in his discretion, decides that exceptional circumstances exist which warrant departure from the requirements of Section 1‑7‑750 and in his judgment that departure is absolutely necessary and in the best interests of the State. If the Attorney General or the circuit solicitor decides to invoke the provisions of this section, he must specifically state in writing those provisions of Section 1‑7‑750 that he intends to depart from and must delineate the exceptional circumstances that he finds exists as they relate to each provision. This information is considered public information and is subject to disclosure pursuant to the Freedom of Information Act as provided in Chapter 4, Title 30.”

SECTION 4. Section 15‑3‑670 of the 1976 Code is amended to read:

“Section 15‑3‑670. (A) The limitation provided by Sections 15‑3‑640 through 15‑3‑660 may not be asserted as a defense by ~~any~~ a person in actual possession or control, as owner, tenant, or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the event ~~such~~ the person in actual possession or control knows, or reasonably should have known, of the defective or unsafe condition. The limitations provided by Sections 15‑3‑640 through 15‑3‑660 are not available as a defense to ~~any~~ a person guilty of fraud, gross negligence, or recklessness in providing components in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, planning, supervision, testing or observation of construction, construction of, or land surveying, in connection with such an improvement, or to ~~any~~ a person who conceals any such cause of action.

(B) For the purposes of subsection (A), the violation of a building code of a jurisdiction or political subdivision does not constitute per se fraud, gross negligence, or recklessness but this type of violation may be admissible as evidence of fraud, negligence, gross negligence, or recklessness.

(C) The limitation provided by Section 15‑3‑640 may not be asserted as a defense to ~~any~~ an action for personal injury, including a personal injury resulting in death, or property damage which is:

~~(i)~~(1) by its nature not discoverable in the exercise of reasonable diligence at the time of its occurrence; and

~~(ii)~~(2) the result of ingestion of or exposure to some toxic or harmful or injury producing substance, element, or particle, including radiation, over a period of time as opposed to resulting from a sudden and fortuitous trauma.”

SECTION 5. Section 18‑9‑130(A)(1) of the 1976 Code, as last amended by Act 216 of 2004, is further amended to read:

“(1) A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution. If the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment or:

(a) twenty‑five million dollars, whichever is less, for a business entity that employs more than fifty persons and has gross revenues exceeding five million dollars for the previous tax year; or

(b) one million dollars, whichever is less, for all other entities or individuals.”

SECTION 6. Section 56‑5‑6540 of the 1976 Code, as last amended by Act 147 of 2005, is further amended to read:

“Section 56-5-6540. (A) A person who is adjudicated to be in violation of the provisions of this article must be fined not more than twenty‑five dollars, no part of which may be suspended. ~~No~~ Court costs, assessments, or surcharges may not be assessed against a person who violates a provision of this article. A person ~~must~~ may not be fined more than fifty dollars for any one incident of one or more violations of the provisions of this article. A custodial arrest for a violation of this article ~~must~~ may not be made, except upon a warrant issued for failure to appear in court when summoned or for failure to pay an imposed fine. A violation of this article does not constitute a criminal offense. Notwithstanding the provisions of Section 56‑1‑640, a violation of this article ~~must~~ may not be:

(1) included in the offender’s motor vehicle records maintained by the Department of Motor Vehicles or in the criminal records maintained by SLED; or

(2) reported to the offender’s motor vehicle insurer.

(B) A law enforcement officer ~~must~~ may not issue a citation to a driver or a passenger for a violation of this article when the stop is made in conjunction with a driver’s license check, safety check, or registration check conducted at a checkpoint established to stop all drivers on a certain road for a period of time, except when the driver is cited for violating another motor vehicle law. The driver and any passenger ~~shall~~ must be required to buckle up before departing the checkpoint and should the driver or the passenger refuse, then the person refusing may be charged with a primary violation.

(C) ~~A violation of this article is not negligence per se or contributory negligence, and is not admissible as evidence in a civil action.~~

~~(D)~~ A vehicle, driver, or occupant in a vehicle ~~must~~ may not be searched, nor may consent to search be requested by a law enforcement officer, solely because of a violation of this article.

~~(E)~~(D) A law enforcement officer ~~must~~ may not stop a driver for a violation of this article except when the officer has probable cause that a violation has occurred based on his clear and unobstructed view of a driver or an occupant of the motor vehicle who is not wearing a safety belt or is not secured in a child restraint system as required by Article 47 ~~of this chapter~~.

~~(F)~~(E) A person charged with a violation of this article may admit or deny the violation, enter a plea of nolo contendere, or be tried before either a judge or a jury. If the trier of fact is convinced beyond a reasonable doubt that the person was not wearing a safety belt at the time of the incident, the penalty is a civil fine pursuant to the provisionsof Section 56‑5‑6540. If the trier of fact determines that the State has failed to prove beyond a reasonable doubt that the person was not wearing a safety belt, no penalty ~~shall~~ may be assessed.

~~(G)~~(F) A person found to be in violation of this article may bring an appeal to the court of common pleas pursuant to Section 18‑3‑10 or Section 14‑25‑95.”

SECTION 7. 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 8. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this , and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 9. The General Assembly finds that all the provisions contained in this act relate to one subject as required by Article III, Section 17 of the South Carolina Constitution, 1895, in that each provision relates directly to or in conjunction with other sections to the subject of fairness in civil justice.

The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

SECTION 10. This act takes effect July 1, 2010, and applies to all actions filed on or after this date. /

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ENACTING THE “SOUTH CAROLINA FAIRNESS IN CIVIL JUSTICE ACT OF 2009” BY AMENDING ARTICLE 1, CHAPTER 32, TITLE 15, PREVIOUSLY RESERVED, SO AS TO PROVIDE DEFINITIONS FOR PURPOSES OF THE CHAPTER; TO AMEND SECTION 15‑32‑220, AS AMENDED, RELATING TO LIMITS ON NONECONOMIC DAMAGES, AND ARTICLE 5, CHAPTER 32, TITLE 15, RELATING TO PUNITIVE DAMAGES, BOTH SO AS TO PROVIDE LIMITS ON THE AWARD OF NONECONOMIC AND PUNITIVE DAMAGES IN ALL PERSONAL INJURY ACTIONS AND TO PROVIDE FOR CERTAIN PROCEDURES AND REQUIREMENTS RELATING TO THE AWARD OF THESE DAMAGES; BY ADDING SECTION 1‑7‑750 SO AS TO ENACT THE “PRIVATE ATTORNEY RETENTION SUNSHINE ACT” TO GOVERN THE RETENTION OF PRIVATE ATTORNEYS BY THE ATTORNEY GENERAL OR A SOLICITOR AND TO PROVIDE TERMS AND CONDITIONS GOVERNING THE RETAINER AGREEMENT INCLUDING LIMITS ON THE COMPENSATION OF OUTSIDE COUNSEL IN CONTINGENCY FEE CASES; TO AMEND SECTION 15‑3‑670, RELATING TO LIMITATIONS ON ACTIONS BASED ON UNSAFE OR DEFECTIVE IMPROVEMENTS TO REAL PROPERTY, SO AS TO PROVIDE THAT THE VIOLATION OF A BUILDING CODE DOES NOT CONSTITUTE PER SE FRAUD, GROSS NEGLIGENCE, OR RECKLESSNESS; BY ADDING SECTION 15‑3‑160 SO AS TO PROVIDE A REBUTTABLE PRESUMPTION THAT A MANUFACTURER OR SELLER IS NOT LIABLE FOR A PRODUCT IF IT IS MANUFACTURED OR SOLD IN A MANNER APPROVED BY A GOVERNMENT AGENCY; BY ADDING SECTION 15‑5‑10 SO AS TO PROVIDE REQUIREMENTS AND PROCEDURES TO BRING, MAINTAIN, AND CERTIFY CLASS ACTIONS; TO AMEND SECTION 15‑73‑10, RELATING TO LIABILITY OF THE SELLER FOR A DEFECTIVE PRODUCT, SO AS TO PROVIDE THAT THE SELLER IS NOT LIABLE FOR DAMAGE CAUSED ONLY TO THE PRODUCT ITSELF; TO AMEND SECTION 18‑9‑130, AS AMENDED, RELATING TO THE EFFECT OF A NOTICE OF APPEAL ON THE EXECUTION OF JUDGMENT, SO AS TO PROVIDE LIMITS FOR APPEAL BONDS; TO AMEND SECTIONS 33‑6‑220 AND 33‑44‑303, RELATING TO CORPORATIONS AND LIMITED LIABILITY COMPANIES, SO AS TO PROVIDE THAT A JUDGMENT AGAINST A CORPORATION OR LIMITED LIABILITY COMPANY IS A PREREQUISITE TO AN ALTER EGO CLAIM TO PIERCE THE CORPORATE VEIL; TO AMEND SECTION 39‑5‑20, RELATING TO UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES, SO AS TO PROVIDE ACTIONS OR TRANSACTIONS OTHERWISE PERMITTED OR REGULATED BY THE FEDERAL TRADE COMMISSION OR ANOTHER REGULATORY BODY OR OFFICE ACTING UNDER STATUTORY AUTHORITY OF THIS STATE OR THE UNITED STATES ARE NOT COVERED BY THE ACT; TO AMEND SECTION 39‑5‑140, RELATING TO AN ACTION FOR DAMAGES ARISING OUT OF AN UNFAIR OR DECEPTIVE TRADE PRACTICE, SO AS TO PROVIDE THAT A PERSON SEEKING DAMAGES SHALL PAY “OUT‑OF‑POCKET EXPENSES” AND TO DEFINE THIS TERM; TO AMEND SECTION 56‑5‑6540, AS AMENDED, RELATING TO THE PENALTIES FOR THE MANDATORY USE OF SEATBELTS, SO AS TO PROVIDE THAT A VIOLATION MAY BE CONSIDERED IN A CIVIL ACTION AS EVIDENCE OF COMPARATIVE NEGLIGENCE OR AS EVIDENCE OF FAILURE TO MITIGATE DAMAGES; AND TO REPEAL SECTIONS 15‑32‑200, 15‑32‑210, AND 15‑32‑240 ALL RELATING TO NONECONOMIC DAMAGES AND PROCEDURES REGARDING THE LIMITATION AND COLLECTION OF NONECONOMIC DAMAGES.

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

SECTION 1. This act may be cited as the “South Carolina Fairness in Civil Justice Act of 2009”.

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

“Section 15‑32‑100. This chapter may be cited as the ‘South Carolina Damage Awards Fairness Act’.”

SECTION 3. Article 1, Chapter 32, Title 15 of the 1976 Code is amended to read:

“Article 1

~~[RESERVED]~~ Definitions

Section 15‑32‑110. As used in this chapter:

(1) ‘Claimant’ means the person suffering personal injury.

(2) ‘Compensatory damages’ includes both economic and noneconomic damages.

(3) ‘Economic damages’ means pecuniary damages arising from medical expenses and medical care, rehabilitation services, costs associated with education, custodial care, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, a claim for loss of spousal services, loss of employment, loss of business or employment opportunities, loss of retirement income, and other monetary losses.

(4) ‘Drug’, ‘device’, ‘food’, and ‘food additive’ means as defined in the ‘Federal Food, Drug, and Cosmetic Act’.

(5) ‘Malice’ means either conduct which is specifically intended by the defendant to cause tangible or intangible serious injury to the plaintiff or conduct that is carried out by the defendant both with a flagrant indifference to the rights of the plaintiff and with a subjective awareness that the conduct will result in tangible serious injury.

(6) ‘Medical malpractice’ means doing that which the reasonably prudent health care provider or health care institution would not do or not doing that which the reasonably prudent health care provider or health care institution would do in the same or similar circumstances.

(7) ‘Noneconomic damages’ means nonpecuniary damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, other nonpecuniary damages, and another theory of damages including, but not limited to, fear of loss, illness, or injury.

(8) ‘Nominal damages’ means damages that are not designed to compensate a plaintiff and are less than five hundred dollars.

(9) ‘Personal injury’ means injuries to the person including, but not limited to, bodily injuries, mental distress or suffering, loss of wages, loss of services, loss of consortium, wrongful death, survival, and other noneconomic damages and actual economic damages.

(10) ‘Personal injury action’ means an action for personal injury, including a wrongful death action pursuant to Sections 15‑51‑10 through 15‑51‑60 and a survival action pursuant to Section 15‑5‑90, and including, but not limited to, an action on a medical malpractice claim.

(11) ‘Punitive damages’ includes exemplary or vindictive damages and means damages awarded against a party in a civil action because of aggravating circumstances in order to penalize and to discourage similar conduct in the future. Punitive damages do not include compensatory damages or nominal damages.

Section 15‑32‑120. The provisions of this article do not affect any right, privilege, or provision of the South Carolina Tort Claims Act pursuant to Chapter 78, Title 15 or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56, Title 33.”

SECTION 4. Section 15‑32‑220 of the 1976 Code, as last amended by Act 144 of 2005, is further 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 action on a medical malpractice claim when final judgment is rendered against a single health care institution, the limit of civil liability for noneconomic damages 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).~~

~~(C)~~ In ~~an~~a personal injury 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~~defendant, the limit of civil liability for noneconomic damages for each ~~health care institution and each health care provider~~defendant 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~~defendants is limited to an amount not to exceed one million fifty thousand dollars for each claimant, except as provided in subsection ~~(E)~~(D).

~~(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~~a 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~~thirty‑first of the previous year, and the limitation on compensation for noneconomic damages pursuant to subsection (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.”

SECTION 5. Chapter 32, Title 15 of the 1976 Code is amended by adding:

“Article 5

Punitive Damages

Section 15‑32‑510. (A) A claim for punitive damages must be specifically prayed for in the complaint.

(B) The plaintiff specifically shall plead either that:

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

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

(C) The plaintiff is not required to 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 pursuant to this chapter to the court at a pretrial hearing held at least thirty days prior to trial.

Section 15‑32‑520. (A) All actions tried before a jury involving punitive damages, if requested by a defendant, must 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 are awarded in the first stage of the trial. An award of nominal damages cannot support an award of punitive damages.

(D) Punitive damages may be awarded only 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, but not limited to:

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

(8) the amount of 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 damages 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 (E), to ensure that the award is not excessive or the result of passion or prejudice.

(H) In an 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 15‑32‑530. An award of punitive damages may not exceed three times the amount of the plaintiff’s compensatory damages award or two hundred fifty thousand dollars, whichever is greater. If the defendant is an individual or a business with fifty or fewer employees, an award of punitive damages may not exceed three times the amount of the plaintiff’s compensatory damages or two hundred fifty thousand dollars, whichever is less.

Section 15‑32‑540. (A) Punitive damages may 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) The exception provided in subsection (A) does 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 6. Article 5, Chapter 7, Title 1 of the 1976 Code is amended by adding:

“Section 1‑7‑750. (A) This section may be cited as the ‘Private Attorney Retention Sunshine Act’.

(B) When the Attorney General or a solicitor retains, engages, associates, hires, or otherwise obtains a private attorney, attorneys, or law firm as outside counsel for any reason, the outside counsel is required to enter into a contract that is governed by the following terms, provisions, or conditions:

(1) the Attorney General or solicitor, in his sole discretion has the right to appoint a designated assistant, who must be an assistant attorney general or solicitor, to oversee the litigation or other matter for which outside counsel has been retained, which appointment the Attorney General or solicitor may modify at will;

(2) the Attorney General or solicitor may provide attorneys and other staff members to assist outside counsel with the litigation. The identity and responsibilities of personnel assigned to assist must be determined solely by the Attorney General or solicitor. All pleadings, motions, briefs, formal documents, and agreements must bear the signature of the Attorney General or solicitor or his designated assistant;

(3) outside counsel shall coordinate the provision of legal services with the Attorney General or solicitor or his designated assistant, other personnel of the Office of the Attorney General or solicitor, and other persons the Attorney General or solicitor may appoint as outside counsel. All pleadings, motions, briefs, and other material which may be filed with the court must first be approved by the Attorney General or solicitor and provided to his office in draft form in a reasonable and timely manner for review;

(4) outside counsel will render services as an independent contractor. Neither outside counsel nor an employee of outside counsel is regarded as employed by, or as an employee of, the Attorney General, a solicitor, or the State. An attorney‑client relationship exists between the Attorney General or solicitor and outside counsel;

(5) detailed time and cost records reflecting all work must be maintained by outside counsel and presented monthly to the Attorney General or solicitor;

(6) the Attorney General or solicitor or his designated assistant shall approve in advance all aspects of the litigation or other matter for which outside counsel is retained and must be included in settlement discussions. Outside counsel agrees that all settlements must receive the Attorney General’s or solicitor’s express prior approval in writing;

(7) any material, data, files, discs, or documents created, produced, or gathered by outside counsel, or in outside counsel’s possession in furtherance of the litigation or other matter for which outside counsel has been retained, or which fulfills an obligation of the appointment, is considered the exclusive property of the State. Outside counsel agrees to adhere to the South Carolina Freedom of Information Act, pursuant to Chapter 4, Title 30, and maintain all public records concerning the matter in accordance with state law provided; however, that outside counsel shall consult with, and obtain the approval of, the Attorney General or solicitor before responding to a public records request. The contract of retention that satisfies this section is considered a public document. At the conclusion of the litigation or other matter for which outside counsel has been retained, all time records and monthly statements maintained or presented by outside counsel are public documents;

(8) in contingent fee cases, outside counsel may not receive compensation for services rendered unless the State receives a settlement or damage award in connection with the litigation. If the State receives an award, outside counsel will be compensated as follows:

(a) outside counsel must be paid, not including punitive or exemplary damages, the following percentages corresponding to the amount of the judgment or settlement:

(i) up to $5,000,000 ‑ twenty‑three percent;

(ii) more than $5,000,000 but less than $10,000,000 ‑ nineteen percent;

(iii) more than $10,000,000 but less than $25,000,000 ‑ fifteen percent;

(iv) more than $25,000,000 but less than $50,000,000 ‑ eleven percent;

(v) more than $50,000,000 but less than $100,000,000 ‑ seven percent; or

(vi) in excess of $100,000,000 ‑ four percent.

Provided, that the Attorney General or solicitor shall retain ten percent of outside counsel’s fees awarded pursuant to this subitem;

(b) the remaining net settlement or judgment proceeding, but not including punitive or exemplary damages, must be paid or applied to or for the State or the people of South Carolina or the victims in a manner to be determined by the Attorney General or solicitor in his sole discretion; and

(c) outside counsel must be paid the following percentages corresponding to the amount of punitive or exemplary damages:

(i) up to $10,000,000 ‑ ten percent;

(ii) more than $10,000,000 but less than $100,000,000 ‑ five percent; or

(iii) in excess of $100,000,000 ‑ three percent;

Provided, that the Attorney General or solicitor shall retain ten percent of outside counsel’s fees awarded pursuant to this subitem;

(d) the remaining amount of punitive and exemplary damages must be paid or applied to or for the State or the people of South Carolina or the victims in a manner to be determined by the Attorney General or solicitor in his sole discretion;

(e) all settlement or judgment proceeds shall be paid by or on behalf of any defendant to the Attorney General or solicitor’s office for distribution; and

(f) the fee schedule required by this section applies to all settlements or judgments, whether the settlement or judgment is entirely monetary in nature or is combined with nonmonetary relief. Should the litigation be resolved by settlement or judgment involving a combination of monetary and nonmonetary relief, such as injunctive relief, nonmonetary payment, the provision of goods or services or other in kind terms, or a combination of these, the Attorney General or solicitor shall determine the monetary value to the State;

(9) outside counsel must be reimbursed solely from the gross recovery of the litigation or other matter for which outside counsel has been retained as approved by the Attorney General or solicitor for reasonable expenses and costs. Proper documentation by receipts or otherwise must be submitted with all invoices and all documentation must be retained by outside counsel for at least one year following the agreement’s termination. All expenses must be itemized and no reimbursement may be applied for or requested for miscellaneous listings. The Attorney General or solicitor in his sole discretion may decline to reimburse outside counsel for improperly documented, unnecessary, or unreasonable costs or expenses. In addition:

(a) outside counsel must be reimbursed for the retention of experts, including fees and other reasonable costs, only when expressly authorized by the Attorney General or solicitor; and

(b) for reimbursements of expenses for lodging, travel, or mileage, receipts are required and these expenses must be expressly authorized in advance by the Attorney General or solicitor; and

(10) outside counsel may not speak to any representative of a television station, radio station, newspaper, magazine, or other media outlet concerning the work outlined or contemplated in the contract of retention without first obtaining approval of the Attorney General or solicitor. Outside counsel is specifically prohibited from speaking on behalf of the Attorney General or solicitor or the State of South Carolina to any representative of the news media.”

SECTION 7. Section 15‑3‑670 of the 1976 Code is amended to read:

“Section 15‑3‑670. (A) The limitation provided by Sections 15‑3‑640 through 15‑3‑660 may not be asserted as a defense by ~~any~~a person in actual possession or control, as owner, tenant, or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the event ~~such~~the person in actual possession or control knows, or reasonably should have known, of the defective or unsafe condition. The limitations provided by Sections 15‑3‑640 through 15‑3‑660 are not available as a defense to ~~any~~a person guilty of fraud, gross negligence, or recklessness in providing components in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, planning, supervision, testing or observation of construction, construction of, or land surveying, in connection with such an improvement, or to ~~any~~a person who conceals any such cause of action.

(B) For the purposes of subsection (A), the violation of a building code of a jurisdiction or political subdivision does not constitute per se fraud, gross negligence, or recklessness.

(C) The limitation provided by Section 15‑3‑640 may not be asserted as a defense to ~~any~~an action for personal injury, including a personal injury resulting in death, or property damage which is: ~~(i)~~(1) by its nature not discoverable in the exercise of reasonable diligence at the time of its occurrence; and

~~(ii)~~(2) the result of ingestion of or exposure to some toxic or harmful or injury producing substance, element, or particle, including radiation, over a period of time as opposed to resulting from a sudden and fortuitous trauma.”

SECTION 8. Article 1, Chapter 3, Title 15 of the 1976 Code is amended by adding:

“Section 15‑3‑160. (A) For the purposes of this section:

(1) ‘Government agency’ means this State or the United States, or an agency of this State or the United States, or an entity vested with the authority of this State or of the United States to issue rules, regulations, orders, or standards concerning the design, manufacture, packaging, labeling, or advertising of a product or provision of a service.

(2) ‘Manufacturer’ means a person who is engaged in a business to produce, create, make, or construct a product or component part of a product and who:

(a) designs, manufactures, or formulates the product or component part of the product; or

(b) has engaged another person to design, manufacture, or formulate the product or component part of the product.

(3) ‘Product’ means an object possessing intrinsic value, capable of delivery either as an assembled whole or as a component part or parts, and produced for introduction into trade or commerce.

(4) ‘Seller’ means a person who in the course of a business conducted for that purpose:

(a) sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product or service in the stream of commerce; or

(b) installs, repairs, refurbishes, reconditions, or maintains a product.

(5) ‘Service’ means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from manufacture or sale of a product and that are regulated, approved, or licensed by a government agency. Services include, but are not limited to, financial services and the provision of insurance.

(B) There is a rebuttable presumption that a manufacturer or seller is not subject to liability as a matter of law, if the:

(1) product alleged to have caused the harm was designed, manufactured, packaged, labeled, sold, or represented in relevant and material respects in accordance with the terms of an approval, license, or similar determination of a government agency;

(2) product was in compliance with a statute of this State or the United States, or a standard, rule, regulation, order, or other action of a government agency pursuant to statutory authority, when the statute or agency action is relevant to the event or risk allegedly causing the harm and the product was in compliance at the time the product left the control of the manufacturer or seller; or

(3) act or transaction forming the basis of the claim involves terms of service, contract provisions, representations, or other practices authorized by, or in compliance with, the rules, regulations, standards, or orders of, or a statute administered by, a government agency.

This presumption does not extend to a product that departs from its intended design due to a flaw created during the manufacturing process, even though the product manufacturer or seller has complied with all applicable state and federal standards or regulations.

(C) A claimant may rebut the presumption provided in subsection (B) by establishing through clear and convincing evidence that the:

(1) government standards or regulations applicable to the product or service were wholly inadequate to protect the public from unreasonable risks of injury or damage;

(2) manufacturer or seller of the product or service, either before or after placing the product or service in the stream of commerce, intentionally, and in violation of applicable regulations, withheld from or misrepresented to the government agency information material to the approval or maintaining of approval of the product or service, and the material information is relevant to the harm which the claimant allegedly suffered; or

(3) manufacturer or seller secured or maintained approval of the product or service through fraud, bribery, or undue influence.”

SECTION 9. Article 1, Chapter 5, Title 15 of the 1976 Code is amended by adding:

“Section 15‑5‑10. (A) Notwithstanding another provision of law or court rule, one or more members of a class of state residents may sue as representative parties on behalf of all members of the class only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact that the court or jury could reasonably reach conclusions or findings applicable to all class members;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class;

(4) the representative parties will fairly and adequately protect the interests of the class;

(5) the class is defined in a manner to permit the identification of class members before an adjudication on the merits occur; and

(6) in cases in which the relief sought is not injunctive or declaratory in regards to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

A nonresident may initiate a class action or join a class, only if the nonresident’s injury occurred in this State.

(B) An action may be maintained as a class action if the requirements of subsection (A) are met and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of:

(a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(2) the party seeking to maintain the class action does not seek monetary relief and the party opposing the class has acted or refused to act on grounds generally applicable to the class, making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that:

(a) the questions of law or fact as to which the court or jury could reasonably reach conclusions or findings applicable to all class members predominate over questions affecting only individual members;

(b) the evidence likely to be admitted at trial regarding the elements of the claims for which certification is sought and of the defenses to those are substantially similar to all class members; and

(c) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Factors to be considered are:

(i) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(ii) the extent, nature, and maturity of litigation concerning the controversy already commenced by or against members of the class;

(iii) whether it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify maintaining the case as a class action;

(iv) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(v) the difficulties likely to be encountered in the management of a class action; and

(vi) the extent to which the allegations at issue are subject to the jurisdiction of federal or state regulatory agencies.

(C)(1) As soon as practicable after the commencement of an action brought as a class action, the court, after a hearing, shall determine by order whether it is to be maintained as a class action. An order issued pursuant to this subsection may be altered, amended, or withdrawn at any time before the decision on the merits. A court may not certify that an action may be maintained as a class action unless the proponents proffer clear and convincing evidence that the action complies with all requirements for certification. Any doubt as to whether this burden has been met must be resolved in favor of denying class certification. The court shall decertify a class action upon any showing that an action has ceased to satisfy the applicable requirements for maintaining the case as a class action.

(2) If the court finds that the action should be maintained as a class action, it shall certify the action by a written order setting forth the basis for the specific findings as to how the class action meets the requirements of this section.

(3) There is a rebuttable presumption against the maintenance of a class action as to claims for which class members would have to prove knowledge, reliance, or causation on an individual basis.

(4) The determination that an action may be maintained as a class action does not relieve any member of the class from the burden of proving all elements of the member’s cause of action, including individual injury and the amount of damages.

(5) In a class action initiated pursuant to subsection (B)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must include:

(a) a general description of the action, including the relief sought, and the names of the representative parties;

(b) a statement of the right of a member of the class to be excluded from the action by submitting an election to be excluded, including the manner and time for exercising the election;

(c) a description of possible financial consequences for the class;

(d) a general description of any counterclaim or notice of intent to assert a counterclaim by or against members of the class, including the relief sought;

(e) a statement that the judgment, whether favorable or not, will bind members of the class who are not excluded from the action;

(f) a statement that any member of the class may intervene in the action and designate separate counsel;

(g) the address of counsel to whom members of the proposed class may direct inquiries; and

(h) other information the court deems appropriate.

(6) The plaintiff bears the expense of the notification required by subsection (C)(5). The court may require other parties to the litigation to cooperate in securing the names and addresses of the persons within the class for the purpose of providing individual notice, but costs incurred by the party in providing this cooperation must be paid initially by the party claiming the class action. Upon termination of the action, the court may allow as taxable costs all or part of the expenses incurred by the prevailing party.

(7) The judgment in an action maintained as a class action under subsections (B)(1) or (B)(2), whether or not favorable to the class, must include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subsection (B)(3), whether or not favorable to the class, must include and specify or describe those to whom the notice provided in subsection (C)(5) is directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(8) When appropriate, a class may be divided into subclasses and each subclass treated as a class, and the provisions of this section then will be construed and applied accordingly.

(D) In the conduct of actions to which this section applies, the court may issue orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of members of the class or otherwise for the fair conduct of the action, that notice be given in a manner the court determines to some or all of the class members describing any step in the action, or of the proposed entry of judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims and defenses, or otherwise join the action;

(3) imposing conditions on the representative parties or on intervenors;

(4) requiring the pleadings to be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly; and

(5) addressing other procedural matters.

(E)(1) A class action may not be dismissed or compromised without the court’s approval, and notice of the proposed dismissal or compromise must be given to all members of the class in a manner determined by the court.

(2) Before approving the dismissal or a compromise of an action that the court has determined may be maintained as a class action, the court shall hold a hearing to determine whether the terms of the proposed dismissal or compromise are fair, reasonable, and adequate for the class. At the hearing, all parties to the action, including members of the class, must be permitted an opportunity to be heard as determined by the court.

(F) Representative parties and intervenors are subject to discovery in the same manner as parties in other civil actions. Other class members are subject to discovery in the same manner as persons who are not parties, but may be required by the court to submit to discovery procedures applicable to the representative parties and intervenors.

(G) An order granting, denying, or decertifying a class action pursuant to this section is immediately appealable upon the filing of a notice of appeal within ten days after entry of the order. The matter is stayed during the pendency of the appeal.”

SECTION 10. Section 15‑73‑10 of the 1976 Code is amended to read:

“Section 15‑73‑10. ~~(1) One~~(A) A person who sells ~~any~~a product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm caused to the ultimate user or consumer, or to his property, if:

~~(a)~~(1) the seller is engaged in the business of selling ~~such a~~the product~~,~~; and

~~(b)~~(2) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(B) A person who sells a product in a defective condition is not subject to tort liability for physical harm or damage caused only to the product itself, regardless of whether the serious threat of physical bodily harm exists as a result of the defective product.

~~(2)~~(C) The rule stated in subsection ~~(1)~~(A) ~~shall apply~~applies although the:

~~(a)~~(1) ~~the~~seller has exercised all possible care in the preparation and sale of his product~~,~~; and

~~(b)~~(2) ~~the~~user or consumer has not bought the product from or entered into ~~any~~a contractual ~~relation~~relationship with the seller.”

SECTION 11. Section 18‑9‑130(A)(1) of the 1976 Code, as last amended by Act 216 of 2004, is further amended to read:

“(A)(1) A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution. If the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment or:

(a) twenty‑five million dollars, whichever is less, for a business entity that employs more than fifty persons and has gross revenues exceeding five million dollars for the previous tax year; or

(b) one million dollars, whichever is less, for all other entities or individuals.”

SECTION 12. Section 33‑6‑220 of the 1976 Code is amended to read:

“Section 33‑6‑220. ~~(a)~~(A) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued ~~(~~pursuant to Section 33‑6‑210~~)~~ or specified in the subscription agreement ~~(~~pursuant to Section 33‑6‑200~~)~~.

~~(b)~~(B) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

(C) A judgment against a corporation is a prerequisite to an alter ego claim to pierce the corporate veil.”

SECTION 13. Section 33‑44‑303 of the 1976 Code is amended to read:

“Section 33‑44‑303. ~~(a)~~(A) Except as otherwise provided in subsection ~~(c)~~(C), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.

~~(b)~~(B) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

~~(c)~~(C) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if a:

(1) ~~a~~provision to that effect is contained in the articles of organization; and

(2) ~~a~~member so liable has consented in writing to the adoption of the provision or to be bound by the provision.

(D) Subject to and except for the provisions of subsection (C), a judgment against a limited liability company is a prerequisite to an alter ego claim to pierce the corporate veil.”

SECTION 14. Section 39‑5‑20 of the 1976 Code is amended to read:

“Section 39‑5‑20. ~~(a)~~(A) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are ~~hereby~~declared unlawful.

~~(b)~~(B) It is the intent of the legislature that in construing ~~paragraph (a)~~subsection (A)~~of this section~~, the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

(C) The provisions of this chapter do not apply to actions or transactions otherwise permitted or regulated by the Federal Trade Commission or another regulatory body or office acting pursuant to the statutory authority of this State or the United States.”

SECTION 15. Section 39‑5‑140 of the 1976 Code is amended to read:

“Section 39‑5‑140. ~~(a)~~(A) ~~Any~~A person who suffers ~~any ascertainable~~an out‑of‑pocket loss of money ~~or property, real or personal,~~as a result of the use or employment by another person of an unfair or deceptive method, act, or practice declared unlawful ~~by~~pursuant to Section 39‑5‑20 may bring an action individually, but not in a representative capacity, to recover actual damages. A person who seeks to recover damages pursuant to this section is required to prove that the unfair or deceptive method, act, or practice caused him to enter into the transaction that resulted in his damages. An award of damages may not be made without proof that the person who seeks damages suffered an actual out‑of‑pocket loss. For the purposes of this subsection, ‘out‑of‑pocket loss’ means an amount of money equal to the difference between the amount paid by the consumer for the good or service and the actual market value of the good or service actually received by the consumer. If the court finds that the use or employment of the unfair or deceptive method, act, or practice was a ~~willful~~wilful or knowing violation of Section 39‑5‑20, the court shall award three times the actual damages sustained and may provide ~~such~~other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, the court shall award to the person bringing ~~such~~the action ~~under~~pursuant to this section reasonable attorney’s fees and costs.

~~(b)~~(B) Upon commencement of ~~any~~an action brought ~~under~~pursuant to subsection ~~(a)~~(A)~~of this section~~, the clerk of court shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of ~~any~~a judgment or decree in the action, shall mail a copy of ~~such~~the judgment or decree to the Attorney General.

~~(c)~~(C) Any permanent injunction, judgment, or order of the court made ~~under~~pursuant to Section 39‑5‑50 ~~shall be~~is prima facie evidence in an action brought ~~under~~pursuant to Section 39‑5‑140 that the respondent used or employed a method, act, or practice declared unlawful by Section 39‑5‑20.

~~(d)~~(D) For the purposes of this section, a ~~willful~~wilful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of Section 39‑5‑20.”

SECTION 16. Section 56‑5‑6540(C) of the 1976 Code, as last amended by Act 147 of 2005, is further amended to read:

“(C) A violation of this article is not negligence per se or contributory negligence as a matter of law, ~~and is not admissible as evidence~~but may be considered in a civil action as evidence of comparative negligence or as evidence of failure to mitigate damages and may serve to reduce liability based upon an apportionment of damages to the extent the injury was caused or enhanced by the failure to wear a seat belt.”

SECTION 17. For the calendar year in which this act takes effect for the purpose of the adjusted limits provided in Section 15‑32‑220, the adjusted limits in effect as provided by Act 32 of 2005 are the limits in effect and must be adjusted accordingly in subsequent calendar years as provided by the amended provisions of Section 15‑32‑220.

SECTION 18. Sections 15‑32‑200, 15‑32‑210, and 15‑32‑240 of the 1976 Code are repealed.

SECTION 19. 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 20. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this , and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 21. The General Assembly finds that all the provisions contained in this act relate to one subject as required by Article III, Section 17 of the South Carolina Constitution, 1895, in that each provision relates directly to or in conjunction with other sections to the subject of permanently codifying temporary provisos contained in prior versions of the general appropriations act.

The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

SECTION 22. This act takes effect July 1, 2009, and applies to all actions filed on or after this date.

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