~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 11, 2012

**S. 772**

Introduced by Senators Peeler, Reese and Bright

S. Printed 4/11/12--S. [SEC 4/12/12 3:37 PM]

Read the first time April 6, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 772) to amend Section 15‑78‑30 of the 1976 Code, relating to definitions for purposes of the South Carolina Tort Claims Act, to provide a definition for economic, etc., respectfully

**REPORT:**

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

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

/ A BILL

TO AMEND CHAPTER 78, TITLE 15, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 15‑78‑230, RELATING TO THE ESTABLISHMENT OF A FUND BY A POLITICAL SUBDIVISION, SO AS TO PROVIDE THAT THE POLITICAL SUBDIVISION MAY VOLUNTARILY ESTABLISH A FUND TO SETTLE MULTIPLE CLAIMS FOR LOSS RESULTING FROM A SINGLE OCCURRENCE WHEN THE AGGREGATE AMOUNT OF THE CLAIMS EXCEEDS THE LIMITS ESTABLISHED IN THE TORT CLAIMS ACT; AND BY ADDING SECTION 15-78-240, RELATING TO COMPENSATION FOR DAMAGES, TO PROVIDE THAT THE BOARD OF ECONOMIC ADVISORS MUST CALCULATE ADJUSTMENTS IN THE LIMITATIONS ON DAMAGES.

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

SECTION 1. Chapter 78, Title 15 of the 1976 Code is amended by adding the following sections:

“Section 15-78-230. (A) Notwithstanding any provision of this chapter to the contrary, a political subdivision may establish a fund to settle multiple claims for loss resulting from a single occurrence when the aggregate amount of the claims exceed the limits established in Section 15-78-120. A fund established pursuant to this section is the sole financial responsibility of the political subdivision and may only include monies appropriated by the political subdivision for that specific purpose. The provisions of this section are strictly voluntary, and an action taken in furtherance of establishing a fund does not increase the limits on liability for political subdivisions established by Section 15-78-120 and does not obligate any entity providing insurance for tort liability to a political subdivision to contribute to the fund.

(B) A political subdivision shall pay each claimant a percentage of the fund established for a particular occurrence equal to the percentage of the economic damages suffered by the claimant in relation to the total amount of economic damages suffered by all claimants to the fund for the particular occurrence.

Section 15-78-240. 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 damages pursuant to Sections 15-78-120 (a)(1), (a)(2), (a)(3), and (a)(4) 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 2. 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 act, 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.

The provisions of this act are severable. If any section, subsection, paragraph, item, subitem, 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 the act, the General Assembly hereby declaring that it would have passed each and every section, subsection, item, subitem, 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 3. This act takes effect upon approval by the Governor and applies to any occurrence after January 1, 2011, except the provisions of Section 15-78-240 will apply to all occurrences taking place in the year after publication regardless of when the suit is filed or the case is finally settled or adjudicated. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

LARRY A. MARTIN RAYMOND E. CLEARY III

For Majority. PAUL G. CAMPBELL, JR.

For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

A Cost to the General Fund (See Below)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

A Cost of Federal and/or Other Funds (See Below)

**EXPLANATION OF IMPACT:**

State Budget and Control Board

The Insurance Reserve Fund (IRF) reports that insurance premiums are expected to dramatically increase to insure the additional exposure created by this bill. Thus, agencies will incur increased costs, of which a significant portion could be paid from agencies' general fund appropriations. IRF estimates increased premiums on all lines to all insured will be approximately *$94.8 million*, of which approximately *$49.3 million* would be premium increase for state entities.

The IRF also indicates that, if the effective date is retroactive, then no insurance would be available for amounts in excess of IRF policy limits and governmental entities would have to pay the actual amount of any loss above IRF insurance limits from the entities existing funding sources.

**LOCAL GOVERNMENT IMPACT:**

The IRF estimates that there would be an impact of *$45.5million* for premium increases to local governments (counties, municipalities, schools districts, special purpose districts, etc.).

**SPECIAL NOTES:**

IRF reports that these figures are based upon an actuarial study and the best data available. As experience is gained with losses under a change in the Tort Claim Act, costs may vary from current estimates. In addition, the fiscal impact reported in this document is for one year. Costs would be recurring and adjusted with experience.

*The italicized portion of this impact indicates the items that have been revised. For this impact, the revised constitutes information that was not available in the original impact.*

*Approved By:*

Brenda Hart

Office of State Budget

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

A Cost to the General Fund (See Below)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

A Cost of Federal and/or Other Funds (See Below)

**EXPLANATION OF IMPACT:**

State Budget and Control Board

The proposed amendment to S.772 would amend the SC Tort Claims Act (SCTCA) to include an increase in the cap to keep pace with the Consumer Price Index (CPI). This amendment would apply to all governmental entities to include State agencies, counties, municipalities, school districts and special purpose districts. It would also apply to all charitable organizations which benefit from the charitable immunity cap which is linked to the SCTCA cap.

The board indicates that fiscal impact to the Insurance Reserve Fund (IRF) is difficult to determine at this point. As a result of the CPI and inflationary increases, there will be an incremental change in the claims values which may result in increased premiums. The impact to the fund will also be determined by the number of claims that reach the claims cap, the dollar amount of the claims that exceed the cap, and the overall financial condition of the fund. The actual impact amount would have to be determined by an actuarial study which the IRF has not been able to obtain at this time.

**LOCAL GOVERNMENT IMPACT:**

The IRF estimates that there would be an impact for premium increases to local governments (counties, municipalities, schools districts, special purpose districts, etc.).

Pursuant to Section 2-7-72 of the Code of Laws of South Carolina, 1976, the State Budget Division surveyed local governments regarding the fiscal impact of this proposed bill. Respondents indicated that the proposed amendment would have a negative fiscal impact on local governments. They indicate that the best estimate is that local governments would experience at least a commensurate percentage increase in county liability premiums to that of the increase in Consumer Price Index (CPI).  The overall effect would be borne out in the claims history of each entity which may or may not exceed the surplus brought in from increased premiums.  Respondents indicated that the bottom line is that insurance premiums for county governments would go up at least the same percentage as CPI in the first few years.  The cost of procuring adequate coverage increases the costs for counties that they could not absorb. Respondents reported this is especially true in the smaller and rural counties.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND SECTION 15‑78‑30 OF THE 1976 CODE, RELATING TO DEFINITIONS FOR PURPOSES OF THE SOUTH CAROLINA TORT CLAIMS ACT, TO PROVIDE A DEFINITION FOR ECONOMIC AND NONECONOMIC DAMAGES; AND TO AMEND SECTION 15‑78‑120, RELATING TO LIABILITY LIMITS IMPOSED BY THE TORT CLAIMS ACT, TO PROVIDE THAT A PERSON MAY RECOVER THE ACTUAL AMOUNT OF HIS ECONOMIC DAMAGES, TO PROVIDE THAT LIMITS ON NONECONOMIC DAMAGES ARE FIFTY THOUSAND DOLLARS PER PERSON AND NO MORE THAN SIX HUNDRED THOUSAND DOLLARS PER OCCURRENCE, AND THAT THE LIMITS ON NONECONOMIC DAMAGES CAUSED BY A LICENSED PHYSICIAN OR DENTIST ARE THREE HUNDRED FIFTY THOUSAND DOLLARS.

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

SECTION 1. Section 15‑78‑30 of the 1976 Code is amended by adding:

“(k) ‘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.

(l) ‘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 any other theory of damages including, but not limited to, fear of loss, illness, or injury.”

SECTION 2. Section 15‑78‑120 of the 1976 Code is amended to read:

“Section 15‑78‑120. (a) For any action or claim for damages brought under the provisions of this chapter a person may recover the actual amount of his economic damages.

~~(a)~~(b) For any action or claim for damages brought under the provisions of this chapter, the liability for noneconomic damages shall not exceed the following limits:

(1) Except as provided in Section 15‑78‑120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding ~~three hundred~~ fifty thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

(2) Except as provided in Section 15‑78‑120(a)(4), the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

(3) No person may recover in any action or claim brought hereunder against any governmental entity and caused by the tort of any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, a sum exceeding ~~one million two~~ three hundred fifty thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

(4) The total sum recovered hereunder arising out of a single occurrence of liability of any governmental entity for any tort caused by any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, may not exceed ~~one million two~~ three hundred fifty thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

(5) The provisions of Section 15‑78‑120(a)(3) and (a)(4) shall in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim brought hereunder which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from any source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

~~(b)~~(c) No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment.

~~(c)~~(d) In any claim, action, or proceeding to enforce a provision of this chapter, the signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well‑grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney’s fee.”

SECTION 3. This act takes effect upon approval of the Governor and applies to any cause of action arising on or after the effective date. For any cause of action arising with one year prior to the effective date of this act, a person may elect to be bound by the limits on liability imposed by Section 15‑78‑120 as those limits existed prior to the effective date of this act or as amended by this act. For any claim arising within one year prior to the effective date of this act that has not been filed pursuant to Section 15‑78‑80 as of the effective date, the claimant may include in the filing required by Section 15‑78‑80 an election to proceed under the limits on liability imposed by Section 15‑78‑120 as amended by this act. For any claim arising prior to the effective date of this act that is pending as of the effective date, the claimant may elect in writing served upon all parties to the action to be bound by the liability limits imposed by Section 15‑78‑120 as amended by this act, provided that the election is made no later than thirty days prior to the date set for trial.

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