CHAPTER 78

South Carolina Tort Claims Act

CROSS REFERENCES

Emergency Anaphylaxis Treatment Act, immunity, see Section 44‑99‑60.

Limitation on liability of land possessors to trespassers, exception, see Section 15‑82‑10.

**SECTION 15‑78‑10.** Short title.

This chapter may be cited as the “South Carolina Tort Claims Act”.

HISTORY: 1986 Act No. 463, Section 1.

CROSS REFERENCES

Application of the Tort Claims Act to any claim for any loss or injury occurring as a result of soliciting funds from motorists under a permit issued by a municipality or county, see Section 5‑27‑910.

Division of Savannah Valley Development’s status as an agency, see Section 13‑1‑810.

Education, pupils, epinephrine auto‑injectors, obtaining, storing, dispensing, administering, and self‑administering, immunity from liability, see Section 59‑63‑95.

Limited sovereign immunity of Catawba Indian Tribe, see Section 27‑16‑80.

Provision extending the time within which certain persons under a disability may bring a civil action, see Section 15‑3‑40.

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C.J.S. States Sections 196 to 197, 202, 297 to 307, 314.

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89 ALR 6th 1 , Construction and Application of Parratt‑Hudson Doctrine, Providing that Where Deprivation of Property Interest is Occasioned by Random and Unauthorized Conduct of State Officials, Procedural Due Process Inquiry is...

Encyclopedias

119 Am. Jur. Proof of Facts 3d 107, Sports Injuries Based on Negligent Supervision.

Am. Jur. 2d Colleges and Universities Section 49, Personal Liability of Officers and Employees.

S.C. Jur. Appeal and Error Section 16, Exceptions.

S.C. Jur. Appeal and Error Section 70, Appealability.

S.C. Jur. Assault and Battery Section 52, Aggressor Acting Outside Scope of Employment.

S.C. Jur. Colleges and Universities Section 18, Liability.

S.C. Jur. Damages Section 14, Statutory Limits on Damages.

S.C. Jur. Eminent Domain Section 1, Scope Note.

S.C. Jur. False Imprisonment Section 13, Lawfulness.

S.C. Jur. Injunctions Section 34, Torts by the Government.

S.C. Jur. Limitation of Actions Section 30, Personal Injuries, Negligence and Products Liability.

S.C. Jur. Limitation of Actions Section 36, Actions Against Sheriffs, Coroners or Constables.

S.C. Jur. Limitation of Actions Section 45, Government Liability.

S.C. Jur. Limitation of Actions Section 56, Ignorance of Cause of Action.

S.C. Jur. Medical and Health Professionals Section 39, South Carolina Tort Claims Act.

S.C. Jur. Negligence Section 11, Public Duty Rule.

S.C. Jur. Public Nuisance Section 7, Liability of Government for Maintaining a Public Nuisance.

S.C. Jur. Public Officers and Public Employees Section 76, South Carolina Tort Claims Act.

Forms

Am. Jur. Pl. & Pr. Forms Municipal, School, and State Tort Liability Section 2 , Introductory Comments.

Treatises and Practice Aids

17 Causes of Action 745, Causes of Action to Recover for Injury to or Death of Student in Accident Involving Transportation to or from School.

1 Causes of Action 2d 603, Cause of Action Against Governmental Entity for Injury Caused by Condition of Public Building.

Civil Actions Against State & Local Gov. Section 3:5, Approaches to Limitation of Immunity.

Civil Actions Against State & Local Gov. Section 5:1, Overview of Statutory Provisions.

Civil Actions Against State & Local Gov. Section 6:4, Limitations.

LAW REVIEW AND JOURNAL COMMENTARIES

Action arising before July 1, 1986 not barred by sovereign immunity. 39 S.C. L. Rev. 198, Autumn 1987.

Annual survey of South Carolina law, tort law. 40 S.C. L. Rev. 260 (Autumn 1988).

Attorney General’s Opinions

Discussion of a town’s potential liability exposure if alcohol sales are permitted at an event on the grounds of the park owned by the Town. S.C. Op.Atty.Gen. (April 30, 2013) 2013 WL 1931657.

Action by State Department of Highways and Public Transportation in including careless/negligent driving convictions on motor vehicle records of individuals was consistent with State law and therefore, no liability exists for such action. 1993 Op Atty Gen No. 93‑8.

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1. In general

Statute governing federal court’s supplemental jurisdiction over state law claims, which required tolling of the state statute of limitations on a state law claim during the period in which the federal cause of action was pending, was not unconstitutional as applied to tort claims brought against a county, though South Carolina Tort Claims Act conferred upon political subdivisions an immunity from tort liability for any claim brought more than two years after the injury was or should have been discovered; municipalities, unlike states, did not enjoy constitutionally protected immunity from suit. Jinks v. Richland County, S.C. (U.S.S.C. 2003) 123 S.Ct. 1667, 538 U.S. 456, 155 L.Ed.2d 631, on remand 355 S.C. 341, 585 S.E.2d 281. Counties 216

The Tort Claims Act (TCA) does not create causes of action, but removes the common law bar of sovereign immunity in certain circumstances. Arthurs ex rel. Estate of Munn v. Aiken County (S.C. 2001) 346 S.C. 97, 551 S.E.2d 579. Municipal Corporations 723.5

The Tort Claims Act does not create a cause of action; rather it removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act. Bayle v. South Carolina Dept. of Transp. (S.C.App. 2001) 344 S.C. 115, 542 S.E.2d 736, rehearing denied, certiorari denied. Municipal Corporations 723

The dismissal of an insured’s bad faith claim against its insurer, the State Budget and Control Board, did not prejudice the insured where the insured’s contract claim survived; the South Carolina Tort Claims Act, Section 15‑78‑10 et seq. would not allow the recovery of punitive damages, and also the Act required a statutory cap to damages that were less than the amount of damages requested in the contract claim. Charleston County School Dist. v. State Budget and Control Bd. (S.C. 1993) 313 S.C. 1, 437 S.E.2d 6.

The Pollution Control Act, rather than the Tort Claims Act, was the controlling chapter in a case involving a city’s wrongful discharge of wastewater into a river. Although the Tort Claims Act was enacted subsequent to the Pollution Control Act, the latter was the more specific statute under the facts of the case and would take precedence over the more general statute, the Tort Claims Act. Furthermore, there is no language in the Tort Claims Act which either expressly or implicitly negates any of the provisions of the Pollution Control Act. City of Rock Hill v. South Carolina Dept. of Health and Environmental Control (S.C. 1990) 302 S.C. 161, 394 S.E.2d 327.

The effective date of the Tort Claims Act is July 1, 1986, and therefore any person who suffers injuries after that date is limited in recovery to the amount of damages as set forth in the Tort Claims Act. Wright v. Colleton County School Dist. (S.C. 1990) 301 S.C. 282, 391 S.E.2d 564.

Repeal of Governmental Motor Vehicle Tort Claims Act by Tort Claims Act operated retrospectively, and had effect of blotting statute out completely as if it had never existed, and of putting end to all proceedings under it which had not been prosecuted to final judgment. Taylor v. Murphy (S.C. 1987) 293 S.C. 316, 360 S.E.2d 314. Statutes 1571; Statutes 1574(1)

1.5. Construction and application

South Carolina Tort Claims Act governs all tort claims against governmental entities and is the exclusive remedy available in an action against a governmental entity or its employees. Shirley’s Iron Works, Inc. v. City of Union (S.C.App. 2010) 397 S.C. 584, 726 S.E.2d 208, certiorari granted, affirmed in part, reversed in part 403 S.C. 560, 743 S.E.2d 778. Municipal Corporations 723

South Carolina Tort Claims Act did not govern question of city’s liability for violation of section of Subcontractors’ and Suppliers’ Payment Protection Act (SPPA) requiring it to ensure that general contractor on public building project was properly bonded, in action brought by subcontractors on claims for negligence, breach of contract, quantum meruit, and related claims arising out of contractor’s failure to pay subcontractors for work and materials for project; rather, statute requiring city to ensure that general contractor provided payment bond provided subcontractors with implied cause of action, in both tort and contract, for unpaid balance due. Shirley’s Iron Works, Inc. v. City of Union (S.C.App. 2010) 397 S.C. 584, 726 S.E.2d 208, certiorari granted, affirmed in part, reversed in part 403 S.C. 560, 743 S.E.2d 778. Municipal Corporations 348

2. “Public duty rule”

Since the public duty rule, which immunizes public officials from liability in negligence for the discharge of their public duties, is not grounded in immunity but rather in duty, it has not been affected by enactment of South Carolina Tort Claims Act; only if a duty is found, and the other negligence elements shown, will it ever be necessary to reach the Tort Claims Act immunities issue. Repko v. County of Georgetown (S.C.App. 2016) 416 S.C. 22, 785 S.E.2d 376, rehearing denied. Public Employment 893

Denial, in interlocutory order which was not immediately appealable, of motion to dismiss based on immunity, filed by defendant individual members of county council in plaintiff county clerk of court’s action for defamation, defamation per se, and intentional infliction of emotional distress, lacked sufficient nexus to or companionship with immediately appealable order denying plaintiff’s request for preliminary injunction to prevent special audit of county clerk of court’s office, and thus, appellate court would not accept appeal from interlocutory order. Brown v. County of Berkeley (S.C. 2005) 366 S.C. 354, 622 S.E.2d 533. Appeal And Error 70(5)

Trial court’s interlocutory order denying motion to dismiss based on immunity, filed by defendant individual members of county council in plaintiff county clerk of court’s action for defamation, defamation per se, and intentional infliction of emotional distress, was not an order involving the “merits of the case” nor did it “affect a substantial right,” as bases for allowing immediate appeal from interlocutory order; order did not prevent individual council members from raising again, at later point in the case, their affirmative defenses of absolute immunity and immunity under Tort Claims Act. Brown v. County of Berkeley (S.C. 2005) 366 S.C. 354, 622 S.E.2d 533. Appeal And Error 70(5)

When the plaintiff’s negligence claim is founded upon a government entity’s statutorily created duty, the question of whether that duty will support the claim should be analyzed under the “public duty rule,” but where the duty relied upon is based upon the common law, then the existence of that duty is analyzed as it would be were the defendant a private entity. Trousdell v. Cannon (S.C. 2002) 351 S.C. 636, 572 S.E.2d 264, rehearing denied. Municipal Corporations 723

Since the public duty rule is not grounded in immunity but rather in duty, it is not affected by enactment of the Tort Claims Act (TCA). Arthurs ex rel. Estate of Munn v. Aiken County (S.C. 2001) 346 S.C. 97, 551 S.E.2d 579. Public Employment 892

3. Civil actions based on prosecution

Tort Claims Act does not create causes of action, but removes the common law bar of governmental immunity. Richland County v. Carolina Chloride, Inc. (S.C.App. 2009) 382 S.C. 634, 677 S.E.2d 892, rehearing denied, certiorari granted, affirmed in part, reversed in part 394 S.C. 154, 714 S.E.2d 869, rehearing granted, rehearing dismissed 396 S.C. 311, 721 S.E.2d 441, certiorari denied 133 S.Ct. 168, 568 U.S. 821, 184 L.Ed.2d 36. Municipal Corporations 723

In action by arrestee under state Tort Claims Act for violation of state constitution, malicious prosecution, and false imprisonment, state could rely on uncharged offense to establish probable cause to arrest, thereby defeating arrestee’s claims; probable cause was not to be based on guilt or innocence, but was to be determined based on facts and circumstances known to arresting officer at time of arrest. Jackson v. City of Abbeville (S.C.App. 2005) 366 S.C. 662, 623 S.E.2d 656. False Imprisonment 13; Malicious Prosecution 18(6)

Prosecutor and Attorney General were absolutely immune from civil litigation, absent evidence that their conduct in prosecution deviated from their protected duties; though prosecution was dismissed by the trial court on a directed verdict sua sponte, the civil action of the individual prosecuted against the prosecutor and Attorney General in their individual capacities, alleging Sections 1983 claim and tort claims, was dismissed. Williams v. Condon (S.C.App. 2001) 347 S.C. 227, 553 S.E.2d 496. Attorney General 8; Civil Rights 1376(9); District And Prosecuting Attorneys 10

4. Review of award

The trial court did not err in reducing the plaintiff’s award of $545,000 to $250,000 pursuant to the South Carolina Tort Act, Sections 15‑78‑10 et seq., where there was no evidence to support the plaintiff’s claim that she was assaulted twice and should therefore receive 2 awards of $250,000. Doe by Doe v. Greenville Hosp. System (S.C.App. 1994) 323 S.C. 33, 448 S.E.2d 564, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 320 S.C. 235, 464 S.E.2d 124.

5. Waiver of immunity

Tort Claims Act provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed in favor of limiting liability. City of Hartsville v. South Carolina Mun. Ins. & Risk Financing Fund (S.C. 2009) 382 S.C. 535, 677 S.E.2d 574. Municipal Corporations 723.5

The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. City of Hartsville v. South Carolina Mun. Ins. & Risk Financing Fund (S.C. 2009) 382 S.C. 535, 677 S.E.2d 574. Municipal Corporations 742(5)

6. Sovereign immunity

Tort Claims Act is a limited waiver of sovereign immunity. Richland County v. Carolina Chloride, Inc. (S.C.App. 2009) 382 S.C. 634, 677 S.E.2d 892, rehearing denied, certiorari granted, affirmed in part, reversed in part 394 S.C. 154, 714 S.E.2d 869, rehearing granted, rehearing dismissed 396 S.C. 311, 721 S.E.2d 441, certiorari denied 133 S.Ct. 168, 568 U.S. 821, 184 L.Ed.2d 36. Municipal Corporations 723

7. Employee immunity

Assistant soccer coach at state university was immune from student athlete’s negligence claim under South Carolina Tort Claims Act (SCTCA), inasmuch as no allegation supporting athlete’s claim for negligence fell outside scope of his employment. DeCecco v. University of South Carolina, 2013, 918 F.Supp.2d 471. Education 1139; Public Employment 934

Female head soccer coach at state university was entitled to immunity under South Carolina Tort Claims Act (SCTCA) from female student athlete’s suit for negligence in her individual capacity; negligence allegations against head coach were founded on her alleged failure to protect student athlete from male assistant coach, and to extent that head coach had such duty, any obligation arose from her duties as head coach and fell within scope of her employment. DeCecco v. University of South Carolina, 2013, 918 F.Supp.2d 471. Education 1139; Public Employment 934

To the extent sued in their individual capacity, government employees are immune from suit under the South Carolina Tort Claims Act (SCTCA) unless they: (1) acted outside the scope of their employment; or (2) committed actual fraud or acted with actual malice, intent to harm, or committed a crime involving moral turpitude. DeCecco v. University of South Carolina, 2013, 918 F.Supp.2d 471. Municipal Corporations 744; Public Employment 933

**SECTION 15‑78‑20.** Legislative findings; declaration of public policy; extent of, and construction of, waiver of immunity.

(a) The General Assembly finds that while a private entrepreneur may be readily held liable for negligence of his employees within the chosen ambit of his activity, the area within which government has the power to act for the public good has been without limit and, therefore, government did not have the duty to do everything which might have been done. The General Assembly further finds that each governmental entity has financial limitations within which it must exercise authorized power and discretion in determining the extent and nature of its activities. Thus, while total immunity from liability on the part of the government is not desirable, see McCall v. Batson, neither should the government be subject to unlimited nor unqualified liability for its actions. The General Assembly recognizes the potential problems and hardships each governmental entity may face being subjected to unlimited and unqualified liability for its actions. Additionally, the General Assembly recognizes the impossibility of insuring for acts retrospectively. The General Assembly seeks an orderly transition to the recognition of individuals’ rights against the tortious sovereign as defined herein. Consequently, it is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein. It is further declared to be the public policy of the State of South Carolina that to insure an orderly transition from sovereign immunity to qualified and limited liability that the General Assembly intends to provide for liability on the part of the State and its political subdivisions only from July 1, 1986, forward in prospective fashion. No governmental entity which was not insured at the time of the injury for which compensation is sought is liable under this chapter and those which were insured are liable only to the extent provided herein. Liability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person’s standard of care in the performance of that duty.

(b) The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved. The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in Section 15‑78‑70(b).

(c)(i) As to those causes of action that arise or accrue prior to the effective date of this act, the General Assembly reinstates sovereign immunity on the part of the State, its political subdivisions and employees, while acting within the scope of official duty provided that sovereign immunity will not bar recovery in any cause of action arising or accruing on or before the effective date of this act if the defendant maintained liability insurance coverage.

(ii) In such cases involving governmental health care facilities, as defined in Section 15‑78‑30(j), recovery shall not exceed the limits of the liability insurance coverage up to a maximum recovery of five hundred thousand dollars.

(iii) In all other such cases recovery shall not exceed the limits of the liability insurance coverage.

(d) Nothing in this chapter affects liability based on contract nor does it affect the power of the State or its political subdivisions to contract.

(e) Nothing in this chapter is construed as a waiver of the state’s or political subdivision’s immunity from suit in federal court under the Eleventh Amendment to the Constitution of the United States nor as consent to be sued in any state court beyond the boundaries of the State of South Carolina.

(f) The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.

(g) The General Assembly recognizes the competing interests of either providing physicians and dentists qualified immunity under the provisions of the South Carolina Tort Claims Act or continuing unqualified liability for medical malpractice actions brought against governmentally employed physicians or dentists. While patients deserve accountable and competent health care, regardless of the public or private character of the provider, governmental entities, in order to attract qualified physicians and dentists, must be able to offer an affordable compensation and employment package, including liability insurance. The General Assembly, in amending this chapter, intends to provide an orderly transition from noninclusion to inclusion of physicians and dentists under the provisions of this chapter. Additionally, the liability limits, and hence mandated insurance coverage, of governmental entities for acts of physicians or dentists, acting within the scope of their profession, are set somewhat higher than those provided for other types of governmental liability. These higher limits and mandated coverages are recognition by the General Assembly of significantly higher damages in cases of medical malpractice. To this end, inclusion of physicians and dentists within this chapter has been delayed until January 1, 1989, when an affordable program of group liability insurance will be instituted.

HISTORY: 1986 Act No. 463, Section 1; 1987 Act No. 7, Section 1; 1988 Act No. 352, Section 2.

CROSS REFERENCES

Applicability of the provisions of this section to causes of action arising on or before July 1, 1986, see Section 15‑78‑180.

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In pursuit of a remedy: A need for reform of police officer liability. Bonnie E. Bull, 64 S.C. L. Rev. 1015 (Summer 2013).

State immunity from patent infringement lawsuits: Inverse condemnation as an alternative remedy. Wesley D. Greenwell, 63 S.C. L. Rev. 975 (Summer 2012).

United States Supreme Court Annotations

Sovereign immunity, tort claims, corrections officers, other law enforcement officers, statutory interpretation, see Ali v. Federal Bureau of Prisons, 2008, 128 S.Ct. 831, 552 U.S. 214, 169 L.Ed.2d 680.

Attorney General’s Opinions

A contract obligating the Rural Water District to answer for a claim under the South Carolina Tort Claims Act in a manner different from the procedure provided by the Act would violate the public policy of the State; and with regard to claims arising from the acts or omissions of a contractor, an agreement obligating the District in advance to defend the contractor from such claims would be likely to result in an invalid expenditure of public funds for a private purpose. S.C. Op.Atty.Gen. (March 6, 2012) 2012 WL 889087.

State agencies lack authority to enter into indemnification agreements, even with public agencies, as a part of a contract. 1989 Op Atty Gen, No. 89‑43, p 116.

A governmental entity is not a “person” as that term is used in the context of filing a claim under the Tort Claims Act; the Tort Claims Act should not be construed to permit a claim by a governmental entity. 1987 Op Atty Gen, No. 87‑90, p 240.

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1. In general

Under the South Carolina Tort Claims Act (SCTCA), the doctrine of respondeat superior is inapplicable to claims against South Carolina governmental entities or their employees. Newkirk v. Enzor, 2017, 2017 WL 947280. Municipal Corporations 745; Public Employment 961

Governmental entities are vicariously liable for their employees’ torts only as provided by the South Carolina Tort Claims Act (SCTCA); governmental entities are not additionally or alternatively liable under common‑law vicarious liability doctrines. Newkirk v. Enzor, 2017, 2017 WL 947280. Municipal Corporations 745; Public Employment 971

Under the South Carolina Tort Claims Act (SCTCA), for a given tort, either the governmental entity or the employee is liable, but not both. Newkirk v. Enzor, 2017, 2017 WL 947280. Municipal Corporations 745; Public Employment 961

Police officers and city were entitled to governmental immunity under the South Carolina Tort Claims Act (SCTCA) for state‑law tort claims of malicious prosecution, false imprisonment, and assault and battery asserted by arrestee, in connection with his arrest for violation of city ordinance; officers were acting pursuant to their official duties at all relevant times, there was no showing that officers’ conduct constituted actual fraud, actual malice, or intent to harm, and the claims against city were based on enforcement of the ordinance. McCoy v. City of Columbia, 2013, 929 F.Supp.2d 541. Assault And Battery 64; False Imprisonment 15(1); Malicious Prosecution 42; Municipal Corporations 747(3); Public Employment 936

State Tort Claims Act waives sovereign immunity while also providing specific, enumerated exceptions limiting the liability of the state and its political subdivisions in certain circumstances. Huggins v. Metts (S.C.App. 2006) 371 S.C. 621, 640 S.E.2d 465, rehearing denied, certiorari denied. Municipal Corporations 723; States 112(2)

Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson (S.C.App. 2003) 355 S.C. 197, 584 S.E.2d 413, rehearing denied, certiorari denied. Municipal Corporations 723

Tort Claims Act provides a limited waiver of governmental immunity and delineates the conditions upon which a claimant may pursue actions against the state and its political subdivisions. Jinks v. Richland County (S.C. 2002) 349 S.C. 298, 563 S.E.2d 104, certiorari granted, certiorari granted 123 S.Ct. 435, 537 U.S. 972, 154 L.Ed.2d 328, reversed 123 S.Ct. 1667, 538 U.S. 456, 155 L.Ed.2d 631, on remand 355 S.C. 341, 585 S.E.2d 281. States 112(2)

State Tort Claims Act is a limited waiver of governmental immunity. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112(2)

Tort Claims Act is limited waiver of governmental immunity. Staubes v. City of Folly Beach (S.C.App. 1998) 331 S.C. 192, 500 S.E.2d 160, rehearing denied, certiorari granted, affirmed 339 S.C. 406, 529 S.E.2d 543, on remand 2001 WL 35835129. Municipal Corporations 723

The South Carolina Tort Claims Act, Sections 15‑78‑10 et seq., is a limited waiver of governmental immunity. Moore v. Florence School Dist. No. 1 (S.C. 1994) 314 S.C. 335, 444 S.E.2d 498. Municipal Corporations 723

The South Carolina Tort Claims Act, 15‑78‑10 et seq., does not create a new substantive cause of action against a government entity. Moore v. Florence School Dist. No. 1 (S.C. 1994) 314 S.C. 335, 444 S.E.2d 498. Municipal Corporations 723

Section 15‑78‑20(f) only requires that provisions establishing limitations upon and exemptions from the liability of the State, rather than all provisions of the Tort Claims Act, be liberally construed in favor of limiting the State’s liability. Baker v. Sanders (S.C. 1990) 301 S.C. 170, 391 S.E.2d 229.

The Tort Claims Act does not create causes of action. Rather, it removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act. Summers v. Harrison Const. (S.C.App. 1989) 298 S.C. 451, 381 S.E.2d 493. States 112(2); States 193

Negligence claims against city resulting from backup of sewage from sanitary sewer line were barred by doctrine of sovereign immunity where city had no liability insurance in force on date of incident, backup occurred within 3 week period before September 7, 1985, and complaint was filed on July 2, 1986. Rolandi v. City of Spartanburg (S.C.App. 1987) 294 S.C. 161, 363 S.E.2d 385.

Date that incident occurred is determinative of applicability of McCall v Batson (1985) 285 SC 243, 329 SE2d 741, decision governing sovereign immunity and recovery limitations, and not date on which complaint is filed; doctrine of sovereign immunity did apply where injury occurred as result of automobile accident on May 2, 1985, and lawsuit was not filed until July 2, 1986, and city lacked liability insurance coverage. Brabham v. City of Columbia (S.C. 1987) 293 S.C. 266, 360 S.E.2d 144.

2. Actions in federal court

South Carolina Tort Claims Act (SCTCA) expressly preserves the state’s Eleventh Amendment immunity from suit in federal court. DeCecco v. University of South Carolina, 2013, 918 F.Supp.2d 471. Federal Courts 2375(2)

District Court lacked jurisdiction over detainee’s gross negligence claim under South Carolina law against county sheriff’s department, alleging that sheriff’s department was grossly negligent in its care, custody, and control of detainee, thereby causing his injuries which allegedly occurred when he was assaulted by deputy while being transported to detention center, where the suit was a suit against the state of South Carolina itself, and the South Carolina Tort Claims Act (SCTCA), which was the exclusive remedy for any tort committed by an employee of a governmental entity, specifically reserved South Carolina’s Eleventh Amendment immunity from suit in federal court. Stewart v. Beaufort County, 2007, 481 F.Supp.2d 483. Federal Courts 2386(2)

State’s express reservation of sovereign immunity, under Eleventh Amendment, in statute waiving immunity for specified torts when suit was brought in state court, precluded suit on mistreatment claims of former prison inmate, against state or employees in their official capacity. Smith v. Ozmint, 2005, 394 F.Supp.2d 787. Federal Courts 2375(2); Federal Courts 2384

Tort Claims Act makes state agencies subject to suit in state court under certain circumstances. General Assembly has expressly preserved state’s immunity to suit in federal court to full extent available under Eleventh Amendment. Introini v. South Carolina Nat. Guard, 1993, 828 F.Supp. 391.

No language in Whistleblower Act or elsewhere in statutory law of state specifies state’s intention to subject itself to suit in federal court on whistleblower claim. Introini v. South Carolina Nat. Guard, 1993, 828 F.Supp. 391.

State agencies did not waive immunity from suit in federal court, as preserved in Section 15‑78‑20(e), by filing motion to dismiss for jurisdictional defects; neither did agencies’ filing of answer and demand for jury trial in previous state court action waive immunity in federal court action. Bellamy v. Borders, 1989, 727 F.Supp. 247.

3. Construction of exceptions to waiver of immunity

Provisions of the Tort Claims Act establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed in favor of limiting liability. Plyler v. Burns (S.C. 2007) 373 S.C. 637, 647 S.E.2d 188. Municipal Corporations 723.5

Exceptions to waiver of sovereign immunity under Tort Claims Act must be construed liberally in favor of limiting liability of state and its political subdivisions. Staubes v. City of Folly Beach (S.C.App. 1998) 331 S.C. 192, 500 S.E.2d 160, rehearing denied, certiorari granted, affirmed 339 S.C. 406, 529 S.E.2d 543, on remand 2001 WL 35835129. Municipal Corporations 723; States 112(2)

Exceptions to waiver of sovereign immunity under the Tort Claims Act must be construed liberally in favor of limiting liability of state and its political subdivisions. Rakestraw v. South Carolina Dept. of Highways and Public Transp. (S.C.App. 1996) 323 S.C. 227, 473 S.E.2d 890. Municipal Corporations 723.5; States 112(2)

4. Interpretation with other statutes

Under South Carolina law, state prison corrections officer alleging that sheriff’s deputies planted contraband on his vehicle, leading to criminal charges, could not bring action against sheriff under statute making sheriff responsible for misconduct of his deputies; such statute was repealed by South Carolina Tort Claims Act (SCTA). Robinson v. Metts, 1997, 86 F.Supp.2d 557, affirmed 188 F.3d 503, certiorari denied 120 S.Ct. 1166, 528 U.S. 1157, 145 L.Ed.2d 1076. Public Employment 916; Sheriffs And Constables 100

A negligence action against a rehabilitation hospital that was both a government health care facility and a charitable organization was governed by the Tort Claims Act (Sections 15‑78‑10 et seq.), rather than the liability statute for charitable organizations (Section 33‑55‑200), since the Tort Claims Act clearly states that it provides the exclusive remedy for governmental torts such as those at issue. Benton v. Roger C. Peace Hosp. (S.C. 1994) 313 S.C. 520, 443 S.E.2d 537, rehearing denied.

5. Prosecutorial immunity

Tort Claims Act has not displaced the protections guaranteed by the prosecutorial immunity doctrine. Williams v. Condon (S.C.App. 2001) 347 S.C. 227, 553 S.E.2d 496. District And Prosecuting Attorneys 10

Claims by plaintiff who had been prosecuted against prosecutor and Attorney General in their official capacities were impermissible; Section 1983 did not allow plaintiff to initiate suit against government officials in their official capacities, and, absent proof that prosecutor’s or Attorney General’s actions were not “judicial” or “quasi‑judicial” in nature, no cause of action could be brought under Tort Claims Act against either defendant in his official capacity. Williams v. Condon (S.C.App. 2001) 347 S.C. 227, 553 S.E.2d 496. Attorney General 8; Civil Rights 1358; District And Prosecuting Attorneys 10

6. Judicial immunity

In addition to the judicial immunity under the Tort Claims Act, common law judicial immunity was expressly preserved under the Tort Claims Act. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Judges 36

Judges and other officials are not entitled to judicial immunity if: (1) they did not have jurisdiction to act; (2) the act did not serve a judicial function; or (3) the suit is for prospective, injunctive relief only. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Judges 36; Public Employment 902

Limited immunity from suit provided under Tort Claims Act does not supplant common‑law judicial immunity. O’Laughlin v. Windham (S.C.App. 1998) 330 S.C. 379, 498 S.E.2d 689, rehearing denied, certiorari denied. Judges 36

7. “Special duties”

In order to create a special duty by special circumstance in a law enforcement context, the plaintiff must show: (1) an actual promise was made by law enforcement to create a special duty; (2) the promise was reasonably relied upon by the plaintiff; and (3) the plaintiff’s reliance was causally related to the injury ultimately suffered. Arthurs v. Aiken County (S.C.App. 1999) 338 S.C. 253, 525 S.E.2d 542, rehearing denied, certiorari granted, affirmed as modified 346 S.C. 97, 551 S.E.2d 579. Municipal Corporations 747(3)

A county animal control ordinance did not create a special duty of care toward individual members of the general public that would rise to a level sufficient to abrogate the county’s immunity under the Tort Claims Act (Sections 15‑78‑10 et seq.) in an action arising from the death of a bicyclist who was fatally injured when she was chased into traffic by vicious dogs. Adkins v. Varn (S.C. 1993) 312 S.C. 188, 439 S.E.2d 822. Counties 141

8. Acts of licensees

A foster child injured in a car accident allegedly caused by his foster mother’s negligence and recklessness could not maintain an action against the Department of Social Services (DSS) for vicarious liability where his injuries occurred in a single car accident, the car involved was owned and driven by the foster mother, and the 2 were travelling to visit members of the foster mother’s family; since a foster home must first obtain a license before it can receive children, it is a mere licensee of the DSS, and not an employee. Simmons v. Robinson (S.C. 1991) 305 S.C. 428, 409 S.E.2d 381.

A foster mother, sued by her foster child for injuries caused by the mother’s alleged negligence and recklessness, was not covered by the liability insurance policy issued to the Department of Social Services (DSS) to cover its employees and agents operating personal vehicles while engaged in official business since a foster home must first obtain a license before it can receive children, and thus it is a mere licensee of the DSS, and not an employee. Simmons v. Robinson (S.C. 1991) 305 S.C. 428, 409 S.E.2d 381.

9. Contractual liability exclusion

A self‑insured city was not immunized by the Tort Claims Act, Section 15‑78‑10 et seq., from liability to an injured city employee, who was involved in an auto accident with an uninsured motorist while driving a city vehicle, since the Act applies only to the torts of a governmental entity, and uninsured motorist coverage is a contractual liability, which is expressly excluded from immunity. Wright v. Smallwood (S.C. 1992) 308 S.C. 471, 419 S.E.2d 219.

10. Survival actions

The South Carolina Tort Claims Act does not preclude a survival action for conscious pain and suffering and medical expenses against the State for a death which resulted from its alleged negligent act. Baker v. Sanders (S.C. 1990) 301 S.C. 170, 391 S.E.2d 229. States 112.2(2)

11. Burden of establishing exception to waiver of immunity

Burden of establishing a limitation upon liability or an exception to the state’s waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112(1)

Burden of establishing limitation upon liability or exception to waiver of immunity under Tort Claims Act is upon governmental entity asserting it as affirmative defense. Staubes v. City of Folly Beach (S.C.App. 1998) 331 S.C. 192, 500 S.E.2d 160, rehearing denied, certiorari granted, affirmed 339 S.C. 406, 529 S.E.2d 543, on remand 2001 WL 35835129. Municipal Corporations 742(5)

Burden of establishing limitation upon liability or exception to waiver of immunity under Tort Claims Act is upon governmental entity asserting it as affirmative defense. Rakestraw v. South Carolina Dept. of Highways and Public Transp. (S.C.App. 1996) 323 S.C. 227, 473 S.E.2d 890. Municipal Corporations 742(5)

12. Admissibility of evidence

In an action under the South Carolina Tort Claims Act, Section 15‑78‑10 et seq., the court properly admitted evidence that a police officer, whose vehicle had struck and injured the plaintiff, had attempted to prevent witnesses from offering aid to the plaintiff, and that the plaintiff was aware of the resulting altercation, where the evidence was admitted on the issue of damages for emotional injuries rather than to show a separate act of negligence. Creed v. City of Columbia (S.C. 1993) 310 S.C. 342, 426 S.E.2d 785.

13. Jury question

Whether state trooper had qualified immunity to arrestee’s Sections 1983 claim for excessive force was jury question. Heyward v. Christmas (S.C.App. 2002) 352 S.C. 298, 573 S.E.2d 845, rehearing denied, reversed 357 S.C. 202, 593 S.E.2d 141. Civil Rights 1432

14. Liability caps

The provisions of the Tort Claims Act, Sections 15‑78‑10 et seq., which place a liability cap of $250,000 on general torts, but a $1 million cap on losses caused by the tort of a physician or dentist, are not unconstitutional since the statute expresses one basis for the distinction as a “recognition by the General Assembly of significantly higher damages in cases of medical malpractice” and the test for disparate treatment is a showing that the classification is essentially arbitrary and without any reasonable basis. Foster v. South Carolina Dept. of Highways and Public Transp. (S.C. 1992) 306 S.C. 519, 413 S.E.2d 31.

The Tort Claims Act’s limitation on damages does not infringe upon the constitutional right of trial by jury. The limitation on recovery as set forth in the Tort Claims Act does nothing more than establish the outer limits of a remedy provided by the legislature. A remedy is a matter of law, not a matter of fact. Although a party has the right to have a jury assess his or her damages, he or she has no right to have a jury dictate through an award the legal consequences of its assessments. The Tort Claims Act does not restrain the fact‑finding province of the jury or prevent a jury from assessing a plaintiff’s damages. Wright v. Colleton County School Dist. (S.C. 1990) 301 S.C. 282, 391 S.E.2d 564. Jury 31.1; Municipal Corporations 723.5

In cases arising after July 1, 1986, possession of liability coverage in excess of the statutory limit on damages set forth in Section 15‑78‑120(a) does not constitute a waiver of immunity up to the coverage limit. Thus, a school district did not and could not waive its immunity up to the coverage limits of its policy as to causes of action arising or accruing after July 1, 1986, and the statutory cap set forth in Section 15‑78‑102(a) applied to such actions. Wright v. Colleton County School Dist. (S.C. 1990) 301 S.C. 282, 391 S.E.2d 564. Municipal Corporations 743

The statutory limitation on recovery under the Tort Claims Act does not violate equal protection principles. The limitation on damages as set forth in the Tort Claims Act bears a reasonable relationship to the legislative objectives as expressed in Section 15‑78‑20(a), of relieving the government from the hardships of unlimited and unqualified liability and preserving the finite assets of governmental entities which are needed for an effective and efficient government. The limitations set forth in the Act rest on a reasonable basis and are not arbitrary in that the legislature has balanced the need for services and the demand for reasonable taxes against the fair reimbursement of injured tort victims. Furthermore, the damage limitation provisions apply to similar plaintiffs in a similar manner. All tort victims injured by the State have the right to bring an action against it, and potential plaintiffs are not treated disparately because the same monetary cap applies equally to the entire class of plaintiffs. Wright v. Colleton County School Dist. (S.C. 1990) 301 S.C. 282, 391 S.E.2d 564. Constitutional Law 3746; Municipal Corporations 723.5

The General Assembly of South Carolina may enact, alter, or repeal any law or remedy unless inconsistent with the South Carolina Constitution and, therefore, the statutorily imposed limits on the amount of damages recoverable from the State under the Tort Claims Act is a proper exercise of legislative power. Wright v. Colleton County School Dist. (S.C. 1990) 301 S.C. 282, 391 S.E.2d 564.

**SECTION 15‑78‑30.** Definitions.

(a) “Agency” means the individual office, agency, authority, department, commission, board, division, instrumentality, or institution, including a state‑supported governmental health care facility, school, college, university, or technical college, which employs the employee whose act or omission gives rise to a claim under this chapter.

(b) “Claim” means any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty.

(c) Prior to January 1, 1989, “employee” means any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty, whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, “employee” means any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty including, but not limited to, technical experts whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section 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 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 a 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.

(d) “Governmental entity” means the State and its political subdivisions.

(e) “State” means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state‑supported governmental health care facilities, schools, colleges, universities, and technical colleges.

(f) “Loss” means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

(g) “Occurrence” means an unfolding sequence of events which proximately flow from a single act of negligence.

(h) “Political subdivision” means the counties, municipalities, school districts, a regional transportation authority established pursuant to Chapter 25 of Title 58, and an operator as defined in item (8) of Section 58‑25‑20 which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof.

(i) “Scope of official duty” or “scope of state employment” means (1) acting in and about the official business of a governmental entity and (2) performing official duties.

(j) “Governmental health care facility” means one which is operated by the State or a political subdivision through a governing board appointed or elected pursuant to statute or ordinance and which is tax‑exempt under state and federal laws as a governmental entity and from which no part of its net income from its operation accrues to the benefit of any individual or nongovernmental entity. Health care facility includes any facility as defined in Title 44, S. C. Code Ann. for the provision of mental or physical care to individuals, whether or not it is required to be licensed under those provisions.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Sections 3, 4; 1990 Act No. 351, Section 1; 1994 Act No. 380, Section 2; 1996 Act No. 271, Section 1; 2008 Act No. 199, Section 2, eff April 16, 2008.

Effect of Amendment

The 2008 amendment, in subsection (c), in the first sentence of the second undesignated paragraph added “, or court appointed representative” and made nonsubstantive changes throughout.

CROSS REFERENCES

Employees of Edisto Development Authority or of entity established in connection therewith are considered state employees for purposes of SC Tort Claims Act, see Section 13‑21‑30.

Employees of Midlands Authority or of entity established in connection therewith are considered state employees for purposes of SC Tort Claims Act, see Section 13‑19‑30.

SC Edisto Development Authority an “agency” for purposes of SC Tort Claims Act, see Section 13‑21‑220.

SC Midlands Authority an “agency” for purposes of SC Tort Claims Act, see Section 13‑19‑210.

South Carolina Protection and Advocacy System for the Handicapped, see Section 43‑33‑310 et seq.

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C.J.S. States Sections 196 to 197, 202, 297 to 307, 314.

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S.C. Jur. Civil Conspiracy Section 10, Employers.

S.C. Jur. Colleges and Universities Section 18, Liability.

S.C. Jur. Hospitals Section 25, Governmental Immunity.

S.C. Jur. Medical and Health Professionals Section 39, South Carolina Tort Claims Act.

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1. In general

Individual members of governing board of state Commission for Blind were not liable for alleged torts committed against employees, since causes of action alleged by employees constituted conduct within scope of members’ official duties; remedy mandated in Tort Claims Act was legal action initiated against governmental entity rather than individual governmental employees. Flateau v. Harrelson (S.C.App. 2003) 355 S.C. 197, 584 S.E.2d 413, rehearing denied, certiorari denied. Public Employment 914; States 79

The dismissal of an insured’s bad faith claim against its insurer, the State Budget and Control Board, did not prejudice the insured where the insured’s contract claim survived; the South Carolina Tort Claims Act, Section 15‑78‑10 et seq. would not allow the recovery of punitive damages, and also the Act required a statutory cap to damages that were less than the amount of damages requested in the contract claim. Charleston County School Dist. v. State Budget and Control Bd. (S.C. 1993) 313 S.C. 1, 437 S.E.2d 6.

The 2‑year limitations period of the Tort Claims Act, Sections 15‑78‑10 et seq., did not apply to a medical malpractice action against a government‑employed physician where the action accrued before the effective date of the provision providing for qualified and limited liability to government‑employed physicians, but after the effective date of the section providing for the 2‑year limitations period; rather, the 3‑year limitations period for medical malpractice and wrongful death actions applied. Browning v. Hartvigsen (S.C. 1992) 307 S.C. 122, 414 S.E.2d 115. States 201

2. Scope of official duty

A school district employee was not acting within the scope of his official duties when he allegedly assaulted plaintiff during an after‑school pickup basketball game, where most of the participants in the game were not school employees and the game was not played on school grounds. Benekritis v. Johnson, 1995, 882 F.Supp. 521.

There was sufficient evidence that state department of corrections employees acted outside the scope of their employment and with the intent to harm associate prison warden, within meaning of “outside scope of official duty” and “intent to harm” exceptions under South Carolina Tort Claims Act (SCTCA), such that employee’s were not entitled to immunity under the SCTCA in action for civil conspiracy alleging that employees met, schemed, planned and conspired and put together an agenda to purposely harm warden and cause him to be terminated. Pridgen v. Ward (S.C.App. 2010) 391 S.C. 238, 705 S.E.2d 58, rehearing denied. Conspiracy 13

Immunity to suit is an appropriate factor to consider in analyzing whether a particular individual is a public official for purposes of a defamation action, and immunity may lend support to reaching such a conclusion in an appropriate case. Erickson v. Jones Street Publishers, L.L.C. (S.C. 2006) 368 S.C. 444, 629 S.E.2d 653, rehearing denied. Libel And Slander 48(2)

Juvenile probation officer was acting on behalf of Department of Juvenile Justice (DJJ), rather than family court, when he placed juvenile delinquent, even though family court had right to direct probation officer to perform certain tasks, and, thus, DJJ was proper party to action brought by parents of child who was assaulted by juvenile while on probation. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Courts 55

A member of a county school board was a voluntary employee “acting in the course of his volunteer employment” when he gave a press conference to attract public attention to “an apparent pattern of malfeasance, fraud, mismanagement, illegal bid‑solicitation practices, kickbacks, and bribery” within the administration of 2 other board members and was sued for defamation by the other board members based thereon, and thus was a person insured under the terms of an insurance policy held by the school district for members of the school board; the Section 15‑78‑30(i) statutory definition for “scope of official duty” does not apply when the policy definition, “course...of employment,” is broader. South Carolina State Budget & Control Bd., Div. of General Services, Ins. Reserve Fund v. Prince (S.C. 1991) 304 S.C. 241, 403 S.E.2d 643.

3. Government health care facility

A negligence action against a rehabilitation hospital that was both a government health care facility and a charitable organization was governed by the Tort Claims Act (Sections 15‑78‑10 et seq.), rather than the liability statute for charitable organizations (Section 33‑55‑200), since the Tort Claims Act clearly states that it provides the exclusive remedy for governmental torts such as those at issue. Benton v. Roger C. Peace Hosp. (S.C. 1994) 313 S.C. 520, 443 S.E.2d 537, rehearing denied.

4. Governmental entity

Analysis of whether university dealt with statewide or local concerns and how university was treated by state law weighed in favor of conclusion that university was arm of State of South Carolina and entitled to Eleventh Amendment immunity, since higher education was matter of statewide concern; although university could issue revenue bonds, as authorized by its Board of Trustees, that were not binding on state, features of independence did not diminish fact that university effectively was alter ego of state. Martin v. Clemson University, 2009, 654 F.Supp.2d 410. Federal Courts 2388(3)

Factor regarding state treasury’s liability, in determination of whether university was arm of State of South Carolina and entitled to Eleventh Amendment immunity, weighed in favor of conclusion that university was arm of State, where State treasury potentially would have been liable, or otherwise would have been negatively impacted by adverse judgment against university, in spite of existence of insurance though South Carolina Budget and Control Board’s Insurance Reserve Fund. Martin v. Clemson University, 2009, 654 F.Supp.2d 410. Federal Courts 2388(3)

Board of Dentistry constitutes a governmental entity that may invoke the immunity protections of the Tort Claims Act (TCA). Health Promotion Specialists, LLC v. South Carolina Bd. of Dentistry (S.C. 2013) 403 S.C. 623, 743 S.E.2d 808. Health 195

Department of Social Services (DSS) was a “governmental entity” under the Tort Claims Act. Joubert v. South Carolina Dept. of Social Services (S.C.App. 2000) 341 S.C. 176, 534 S.E.2d 1, rehearing denied. States 191.10

The Sumter Airport Commission was not a state agency pursuant to Section 15‑78‑30 for purposes of an action brought by a contractor seeking compensation for extra work performed at the airport under a construction contract, since the commission was acting in a proprietary manner when it entered into the contract, and thus was not an agent or instrumentality of the state in the sense that boards and commissions commonly are. Willis Const. Co., Inc. v. Sumter Airport Com’n (S.C.App. 1992) 308 S.C. 505, 419 S.E.2d 240.

5. Loss

South Carolina Tort Claims Act excludes intentional infliction of emotional harm from definition of “loss” for which government may be liable. Ward v. City of North Myrtle Beach, 2006, 457 F.Supp.2d 625. Municipal Corporations 723

A parent’s claims for a child’s medical expenses and loss of services are within the statutory definition of “loss” as contained in Section 15‑78‑30(f) and are therefore recoverable under the Tort Claims Act. Wright v. Colleton County School Dist. (S.C. 1990) 301 S.C. 282, 391 S.E.2d 564. Municipal Corporations 743

A plaintiff, whose brother was killed allegedly as a result of the State’s negligent act, suffered a compensable “loss” within the meaning of Section 15‑78‑30(f). Baker v. Sanders (S.C. 1990) 301 S.C. 170, 391 S.E.2d 229. States 112.2(2)

The term “loss” as defined in Section 15‑78‑30(f) includes loss of consortium. Gosnell v. Dorchester School Dist. No. 2 (S.C. 1990) 301 S.C. 21, 389 S.E.2d 865.

Mother’s cause of action for medical malpractice, on her minor’s behalf, accrued under discovery rule two weeks and one day after child’s delivery; doctor stated “Oops, I hurt his arm” immediately after he delivered child, and, on next day, doctor checked on mother and commented that injuries like child’s usually healed fully in about two weeks. Bennett v. Lexington County Health Services Dist., Inc. (S.C.App. 2015) 2015 WL 3884262, Unreported. Limitation of Actions 95(12)

6. Guardian ad litem

For purpose of determining liability of guardian ad litem under South Carolina Tort Claims Act for actions taken in course of official duties, guardian ad litem is not “employee” of state; relationship between court and guardian ad litem is not agency relationship or employer‑employee relationship, and guardian ad litem does not effect legal relationships between court and third parties. Fleming v. Asbill (S.C. 1997) 326 S.C. 49, 483 S.E.2d 751. Infants 1236; Infants 1246(2); States 112.1(3)

**SECTION 15‑78‑40.** Tort liability of State, agency, political subdivision, or governmental entity, generally.

The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.

HISTORY: 1986 Act No. 463, Section 1.

CROSS REFERENCES

Publication of arrest and booking records, unlawful under certain circumstances, procedures for removal of such information, penalties, civil cause of action, see Section 17‑1‑60.

South Carolina Jobs—Economic Development Authority an “agency” for purposes of SC Tort Claims Act, see Section 41‑43‑280.

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S.C. Jur. Governor Section 15, Neglect of Office.

S.C. Jur. Medical and Health Professionals Section 39, South Carolina Tort Claims Act.

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Civil Actions Against State & Local Gov. Section 6:7, Damages Recoverable, Generally.

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Action arising before July 1, 1986 not barred by sovereign immunity. 39 S.C. L. Rev. 198, Autumn 1987.

Annual Survey of South Carolina Law: Torts; Governmental Motor Vehicle Tort Claims Act. 32 S.C. L. Rev. 205, August 1980.

United States Supreme Court Annotations

Doctrine of municipal immunity from liability for tort committed in exercise of governmental function as applicable in action under Federal Tort Claims Act. 1 L Ed 2d 1647, 1660; 7 L Ed 2d 994.

Attorney General’s Opinions

Liability of the South Carolina Municipal Insurance and Risk Financing Fund would likely be found by a court to be governed by the Tort Claims Act. S.C. Op.Atty.Gen. (December 17, 2014) 2014 WL 7405219.

Discussion of the potential liability exposure and insurance needs of the Aiken County Commission for Higher Education. S.C. Op.Atty.Gen. (June 26, 2013) 2013 WL 3479877.

The exception of limitation attached to the exclusion found at Section 15‑78‑60(a)(12) of the recently enacted comprehensive Tort Claims Act does not operate as a general limitation of the other separate and distinct exclusions when the governmental function involves licensing. Licensing decisions of quasi‑judicial nature or administrative decisions relate to agency prosecutions are excluded from the liability provisions of the Act. 1986 Op Atty Gen, No. 86‑96, p 293.

[Under 1962, Section 33‑229; 1976 Code Section 57‑5‑1810]: The Department of Highways and Public Transportation has the authority to bear the expense of a ferry to be built and operated as part of Highway S‑362. 1976‑77 Op Atty Gen, No. 77‑202, p 153.

[Under the law as it formerly existed] the Department could either settle or compromise any claim that was filed for damages resulting from a defect in any State highway or the negligent repair of any State highway, but could not either settle or compromise any claim for damage caused by the negligent operation of a Department motor vehicle. 1967‑68 Ops Atty Gen, No 2518, p 207.

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Board of Dentistry constitutes a governmental entity that may invoke the immunity protections of the Tort Claims Act (TCA). Health Promotion Specialists, LLC v. South Carolina Bd. of Dentistry (S.C. 2013) 403 S.C. 623, 743 S.E.2d 808. Health 195

The six year statute of repose for medical malpractice claims barred estate of patient’s claims against public hospital, a government entity, which alleged hospital pathologist misdiagnosed patient’s excised mole as benign. Kerr v. Richland Memorial Hosp. (S.C. 2009) 383 S.C. 146, 678 S.E.2d 809. Death 37

Even if private sector analogy was required pursuant to Tort Claims Act for a governmental entity to be held liable under the Act, such analogy existed with respect to property owner’s claim against county that it negligently maintained its zoning records resulting in owner’s damages, as such claim was analogous to allegations of negligence against private hospital or private school for negligently maintaining an individual’s records. Richland County v. Carolina Chloride, Inc. (S.C.App. 2009) 382 S.C. 634, 677 S.E.2d 892, rehearing denied, certiorari granted, affirmed in part, reversed in part 394 S.C. 154, 714 S.E.2d 869, rehearing granted, rehearing dismissed 396 S.C. 311, 721 S.E.2d 441, certiorari denied 133 S.Ct. 168, 568 U.S. 821, 184 L.Ed.2d 36. Counties 146

Tort Claims Act governs all tort claims against governmental entities and is exclusive civil remedy available in action against government. Shaw v. City of Charleston (S.C.App. 2002) 351 S.C. 32, 567 S.E.2d 530, rehearing denied. Municipal Corporations 723

Tort Claims Act provides a limited waiver of governmental immunity and delineates the conditions upon which a claimant may pursue actions against the state and its political subdivisions. Jinks v. Richland County (S.C. 2002) 349 S.C. 298, 563 S.E.2d 104, certiorari granted, certiorari granted 123 S.Ct. 435, 537 U.S. 972, 154 L.Ed.2d 328, reversed 123 S.Ct. 1667, 538 U.S. 456, 155 L.Ed.2d 631, on remand 355 S.C. 341, 585 S.E.2d 281. States 112(2)

Under the Tort Claims Act (TCA), a plaintiff alleging negligence on the part of a governmental actor or entity may rely either upon a duty created by statute or one founded on the common law. Arthurs ex rel. Estate of Munn v. Aiken County (S.C. 2001) 346 S.C. 97, 551 S.E.2d 579. Municipal Corporations 723

Transferring student’s claims that university owed him a fiduciary duty to competently advise him concerning course requirements necessary to achieve National Collegiate Athletics Association (NCAA) eligibility to play baseball and that he relied on athletic academic advisor’s judgment and advice to his detriment sounded in negligence and, thus, student’s breach of fiduciary duty claim was controlled by the Tort Claims Act. Hendricks v. Clemson University (S.C.App. 2000) 339 S.C. 552, 529 S.E.2d 293, rehearing denied, certiorari granted, reversed 353 S.C. 449, 578 S.E.2d 711. Education 1223

The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against the government. Washington v. Lexington County Jail (S.C.App. 1999) 337 S.C. 400, 523 S.E.2d 204. Municipal Corporations 723

The South Carolina Tort Claims Act, Sections 15‑78‑10 et seq., allows recovery against a governmental agency in the same manner as a person or private entity. Burns v. South Carolina Com’n for Blind (S.C.App. 1994) 323 S.C. 77, 448 S.E.2d 589. Municipal Corporations 723

The State Budget and Control Board may be liable for its bad faith failure to pay a claim under Section 15‑78‑40 because a state agency is liable for its torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations contained in the South Carolina Tort Claims Act, Section 15‑78‑30. Charleston County School Dist. v. State Budget and Control Bd. (S.C. 1993) 313 S.C. 1, 437 S.E.2d 6.

A parent’s claims for a child’s medical expenses and loss of services are claims that are separately cognizable from the child’s claims under the Tort Claims Act. Thus, where a parent’s and child’s damages each exceeded $250,000, the parent was entitled to receive $250,000 in damages, as the maximum amount a person may recover under Section 15‑78‑120(a)(1) because of a loss arising from a single occurrence, without regard to the $250,000 in damages which had already been paid for the child’s claims. Wright v. Colleton County School Dist. (S.C. 1990) 301 S.C. 282, 391 S.E.2d 564. Municipal Corporations 743

The General Assembly of South Carolina may enact, alter, or repeal any law or remedy unless inconsistent with the South Carolina Constitution and, therefore, the statutorily imposed limits on the amount of damages recoverable from the State under the Tort Claims Act is a proper exercise of legislative power. Wright v. Colleton County School Dist. (S.C. 1990) 301 S.C. 282, 391 S.E.2d 564.

The Tort Claims Act does not create causes of action. Rather, it removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act. Summers v. Harrison Const. (S.C.App. 1989) 298 S.C. 451, 381 S.E.2d 493. States 112(2); States 193

2. Actions in federal court

It was clearly established that arresting protestors for their presence and protests on state house grounds after certain time of day violated their First Amendment rights, and therefore, various state officials, including governor, were not entitled to qualified immunity in protestors’ Section 1983 action; at the time of protestors’ arrests, there was no time restriction on protesting on grounds. Occupy Columbia v. Haley (C.A.4 (S.C.) 2013) 738 F.3d 107. Civil Rights 1376(3)

No language in Whistleblower Act or elsewhere in statutory law of state specifies state’s intention to subject itself to suit in federal court on whistleblower claim. Introini v. South Carolina Nat. Guard, 1993, 828 F.Supp. 391.

State may waive its immunity from suit in its own courts without thereby waiving its immunity from suit in federal court under the Eleventh Amendment. Introini v. South Carolina Nat. Guard, 1993, 828 F.Supp. 391. Federal Courts 2375(1)

Whistleblower Act provides a remedy to “employee” of “public Body” who is retaliated against because he reports, exposes or testifies to wrongdoing, waste or corruption by “public body” or by employees or officials of “public body”. Whistleblower claim lies only against “public body” which is defined to include “any department of the state” and “any...state agency”—thus, clearly embracing National Guard but not natural persons such as individual defendants. “Employee” as defined in Act does not extend to plaintiff because, in his capacity as full‑time enlisted military member of National Guard, he was public officer, not employee. Introini v. South Carolina Nat. Guard, 1993, 828 F.Supp. 391.

District Court’s denial of qualified immunity in Section 1983 action brought by inmate against county detention center officials, alleging that the officials failed to protect him from other inmates who beat him up, ultimately turned on unresolved questions of fact as to whether the officials knew of an imminent, serious threat to the physical safety of the inmate, and thus, Court of Appeals did not possess jurisdiction over officials’ appeal as to District Court’s qualified immunity determination. Denney v. Tucker (C.A.4 (S.C.) 2013) 545 Fed.Appx. 211, 2013 WL 5879100. Federal Courts 3295

3. Waiver

State statutes requiring general contractors on state highway projects to provide department of transportation with payment bonds in order to protect subcontractors hired on such projects did not constitute a waiver of sovereign immunity, and therefore, subcontractor did not have private right of action against department in seeking contractual payment for work on highway project. Sloan Const. Co., Inc. v. Southco Grassing, Inc. (S.C.App. 2006) 368 S.C. 523, 629 S.E.2d 372, rehearing denied, certiorari granted, reversed 377 S.C. 108, 659 S.E.2d 158. Highways 113(4); Highways 113(5); Public Contracts 433

State tort claims act did not provide private right to sue state department of transportation for alleged violations of statutes requiring general contractors on state highway projects to provide department with payment bonds in order to protect subcontractors on such projects, precluding action brought by subcontractor against department seeking contractual payment for work on highway project; tort claims act would waive immunity for agencies that were liable for torts in same manner as private individuals, and private individuals could not be liable for the failure to require bonds in government contracts. Sloan Const. Co., Inc. v. Southco Grassing, Inc. (S.C.App. 2006) 368 S.C. 523, 629 S.E.2d 372, rehearing denied, certiorari granted, reversed 377 S.C. 108, 659 S.E.2d 158. Highways 113(5); Public Contracts 433

The Tort Claims Act waives sovereign immunity for torts committed by the state, its political subdivisions, and governmental employees acting within the scope of their official duties, with numerous exceptions. Tanner v. Florence City‑County Bldg. Com’n (S.C.App. 1999) 333 S.C. 549, 511 S.E.2d 369, rehearing denied. Municipal Corporations 723; States 112(2)

Department of Corrections waived defense of sovereign immunity, in inmate’s action against it stemming from alleged denial of access to prescription medication, where it failed to plead sovereign immunity in its answer or mention any exceptions to the Tort Claims Act’s waiver of sovereign immunity in its motion for summary judgment. Tanner v. Florence City‑County Bldg. Com’n (S.C.App. 1999) 333 S.C. 549, 511 S.E.2d 369, rehearing denied. States 112.2(4)

3.5. Disclaimer of liability

A governmental entity cannot override application of South Carolina Tort Claims Act through language in a local ordinance disclaiming all liability. Repko v. County of Georgetown (S.C.App. 2016) 416 S.C. 22, 785 S.E.2d 376, rehearing denied. Municipal Corporations 723

County’s supposed disclaimer of liability for negligence, in ordinance addressing developer’s posting of financial guarantees in lieu of completing required infrastructure improvements for a subdivision as a prerequisite to selling lots, was expressly preempted by South Carolina Tort Claims Act. Repko v. County of Georgetown (S.C.App. 2016) 416 S.C. 22, 785 S.E.2d 376, rehearing denied. Counties 141

4. Official duties

Since the public duty rule, which immunizes public officials from liability in negligence for the discharge of their public duties, is not grounded in immunity but rather in duty, it has not been affected by enactment of South Carolina Tort Claims Act; only if a duty is found, and the other negligence elements shown, will it ever be necessary to reach the Tort Claims Act immunities issue. Repko v. County of Georgetown (S.C.App. 2016) 416 S.C. 22, 785 S.E.2d 376, rehearing denied. Public Employment 893

Prison hospital did not owe a duty of care to inmate that had been discharged from the hospital. McKnight v. South Carolina Dept. of Corrections (S.C.App. 2009) 385 S.C. 380, 684 S.E.2d 566. Prisons 192; Prisons 241

“Public duty rule” was not implicated in former highway patrolman’s negligence suit against county sheriff for injuries he sustained when his cruiser was hit from behind by deputy sheriff’s cruiser, as patrolman did not allege a violation of a statutory duty as the basis for his negligence claim, but, rather, his allegations centered around violation of duties of care created by the common law, such as exercising reasonable caution. Trousdell v. Cannon (S.C. 2002) 351 S.C. 636, 572 S.E.2d 264, rehearing denied. Automobiles 187(3)

“Public duty rule” was not implicated in former highway patrolman’s negligence suit against county sheriff for injuries he sustained when his cruiser was hit from behind by deputy sheriff’s cruiser, as patrolman did not allege a violation of a statutory duty as the basis for his negligence claim, but, rather, his allegations centered around violation of duties of care created by the common law, such as exercising reasonable caution. Trousdell v. Cannon (S.C. 2002) 351 S.C. 636, 572 S.E.2d 264, rehearing denied. Automobiles 187(3)

There is no general duty to control the conduct of another or to warn a third person or potential victim of danger, except (1) where the defendant has a special relationship to the victim; (2) where the defendant has a special relationship to the injurer; (3) where the defendant voluntarily undertakes a duty; (4) where the defendant negligently or intentionally creates the risk; and (5) where a statute imposes a duty on the defendant. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Negligence 220; Negligence 221

When a party is in a position to monitor, supervise, and control a person’s conduct, a special relationship between the defendant and the dangerous person may trigger a common law duty to warn potential victims of the danger posed by the individual; however, this special duty is limited to situations where the person under the defendant’s control has made a specific threat directed at a specific individual. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Negligence 221

The “public duty” rule presumes statutes which create or define the duties of a public office have the essential purpose of providing for the structure and operation of government or for securing the general welfare and safety of the public; such statutes create no duty of care towards individual members of the general public. Arthurs ex rel. Estate of Munn v. Aiken County (S.C. 2001) 346 S.C. 97, 551 S.E.2d 579. Public Employment 892; Public Employment 893

Gross negligence by county sheriff’s department was not element of false arrest. Gist v. Berkeley County Sheriff’s Dept. (S.C.App. 1999) 336 S.C. 611, 521 S.E.2d 163. False Imprisonment 4

Landowner stated claim against county under special duty exception to public duty doctrine by alleging that even though he had provided county his correct address, county failed to provide him required notice of delinquent tax sale of his property. Tanner v. Florence County Treasurer (S.C. 1999) 336 S.C. 552, 521 S.E.2d 153. Counties 194

Under the “public duty doctrine,” public officials ordinarily are not liable to individuals for their negligence in discharging public duties, as the duty is owed to the public at large rather than to anyone individually. Tanner v. Florence County Treasurer (S.C. 1999) 336 S.C. 552, 521 S.E.2d 153. Public Employment 893

A “special duty” to particular individuals may be created by statute when: (1) an essential purpose of the statute is to protect against a particular kind of harm; (2) the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not cause that harm; (3) the class of persons the statute intends to protect is identifiable before the fact; (4) the plaintiff is a person within the protected class; (5) the public officer knows or has reason to know of the likelihood of harm to members of the class if he fails to do his duty; and (6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office. Tanner v. Florence County Treasurer (S.C. 1999) 336 S.C. 552, 521 S.E.2d 153. Public Employment 861

Genuine issue of material fact existed as to whether prison official’s failure to obtain verification of transferred inmate’s prescription medication was result of Department of Correction’s failure to comply with its own regulations, thus precluding summary judgment for Department, in inmate’s action stemming from alleged denial of access to prescription medication. Tanner v. Florence City‑County Bldg. Com’n (S.C.App. 1999) 333 S.C. 549, 511 S.E.2d 369, rehearing denied. Judgment 181(33)

5. Discretionary immunity

To establish absolute discretionary immunity under the Tort Claims Act, the governmental entity must prove that the governmental employees, faced with alternatives, actually weighed competing considerations and made a conscious choice; furthermore, the governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them. Clark v. South Carolina Dept. of Public Safety (S.C.App. 2002) 353 S.C. 291, 578 S.E.2d 16, rehearing denied, affirmed 362 S.C. 377, 608 S.E.2d 573. Municipal Corporations 728

To establish discretionary immunity, the governmental entity must prove that the governmental employees, faced with alternatives, actually weighed competing considerations and made a conscious choice; furthermore, the governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them. Pike v. South Carolina Dept. of Transp. (S.C. 2000) 343 S.C. 224, 540 S.E.2d 87. Municipal Corporations 728

For governmental entity to establish discretionary immunity, it is not enough to say the defect was noted and a decision was made not to repair it. Pike v. South Carolina Dept. of Transp. (S.C. 2000) 343 S.C. 224, 540 S.E.2d 87. Municipal Corporations 728

When a governmental entity asserts affirmative defense of discretionary immunity under Tort Claims Act, burden of proof is on governmental entity; this burden is one of persuasion by a preponderance of the evidence. Pike v. South Carolina Dept. of Transp. (S.C. 2000) 343 S.C. 224, 540 S.E.2d 87. Municipal Corporations 742(5)

6. Jury instructions

An action seeking to hold the South Carolina Commission For the Blind liable for a sexual assault occurring at one of its facilities was a premises liability action; consequently, the trial court erred in refusing to charge the jury as to premises liability as limited by the South Carolina Tort Claims Act, Sections 15‑78‑10 et seq. Burns v. South Carolina Com’n for Blind (S.C.App. 1994) 323 S.C. 77, 448 S.E.2d 589. States 112.2(2)

7. Costs

The trial court in an action for negligence under the South Carolina Tort Claims Act properly assessed costs against the Department of Highways and Public Transportation, even though the Act does not specifically provide for an award of costs, since the Act provides that state agencies are liable for their torts in the same manner and to the same extent as private individuals in the same circumstances, and costs were allowed against the department under a statute allowing recovery, prior to the enactment of the Act. Varn v. South Carolina Dept. of Highways and Public Transp. (S.C.App. 1993) 311 S.C. 349, 428 S.E.2d 895. States 215

8. Zoning

Fact that a private person could not be held liable for negligent administration and enforcement of county’s zoning ordinances did not, under the Tort Claims Act, entitle county to the protection of sovereign immunity with regard to property owner’s negligence and negligent misrepresentation claims, which were based on mistaken zoning classification for the property in county tax records and county official’s mistaken representations as to the property’s zoning. Quail Hill, LLC v. County of Richland (S.C.App. 2008) 379 S.C. 314, 665 S.E.2d 194, rehearing denied, certiorari granted, affirmed in part, reversed in part 387 S.C. 223, 692 S.E.2d 499. Counties 146

9. Presumptions and burden of proof

Burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act (TCA) is upon the governmental entity asserting it as an affirmative defense. Health Promotion Specialists, LLC v. South Carolina Bd. of Dentistry (S.C. 2013) 403 S.C. 623, 743 S.E.2d 808. Municipal Corporations 742(5)

The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense; provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed in favor of limiting liability. Chakrabarti v. City of Orangeburg (S.C.App. 2013) 403 S.C. 308, 743 S.E.2d 109. Municipal Corporations 723.5; Municipal Corporations 742(5)

**SECTION 15‑78‑50.** Right of injured person to file claim; non‑liability of governmental entity where employee would not be liable if a private person; injunctions against governmental entities.

(a) Any person who may suffer a loss proximately caused by a tort of the State, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim as hereinafter provided.

(b) In no case is a governmental entity liable for a tort of an employee where that employee, if a private person, would not be liable under the laws of this State.

(c) Nothing herein shall affect the power of a court of equity at the suit of a party complainant to enjoin unlawful acts committed by governmental entities or mandate lawful action by governmental entities.

HISTORY: 1986 Act No. 463, Section 1.

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C.J.S. States Sections 196 to 197, 202, 297 to 307, 314.

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S.C. Jur. Medical and Health Professionals Section 39, South Carolina Tort Claims Act.

NOTES OF DECISIONS

In general 1

1. In general

The six year statute of repose for medical malpractice claims barred estate of patient’s claims against public hospital, a government entity, which alleged hospital pathologist misdiagnosed patient’s excised mole as benign. Kerr v. Richland Memorial Hosp. (S.C. 2009) 383 S.C. 146, 678 S.E.2d 809. Death 37

Fact that a private person could not be held liable for negligent administration and enforcement of county’s zoning ordinances did not, under the Tort Claims Act, entitle county to the protection of sovereign immunity with regard to property owner’s negligence and negligent misrepresentation claims, which were based on mistaken zoning classification for the property in county tax records and county official’s mistaken representations as to the property’s zoning. Quail Hill, LLC v. County of Richland (S.C.App. 2008) 379 S.C. 314, 665 S.E.2d 194, rehearing denied, certiorari granted, affirmed in part, reversed in part 387 S.C. 223, 692 S.E.2d 499. Counties 146

**SECTION 15‑78‑60.** Exceptions to waiver of immunity.

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) 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) 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) solicitations on streets and highways as authorized by the provisions of Section 5‑27‑910.

(28) 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) 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) 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) 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) a pre‑occupancy housing inspection contracted for by the South Carolina Department of Employment and Workforce pursuant to Section 46‑43‑40.

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

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

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

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

(39) 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) 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.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Sections 5, 6; 1988 Act No. 373, Section 2; 1988 Act No. 664; 1988 Act No. 675, Section 1; 1989 Act No. 132, Section 2; 1990 Act No. 351, Section 2; 1996 Act No. 386, Section 3; 1997 Act No. 35, Section 6; 1999 Act No. 77, Section 4; 2000 Act No. 362, Section 1; 2000 Act No. 387, Part II, Section 69A.5; 2000 Act No. 387, Part II, Section 97B; 2000 Act No. 407, Section 3; 2005 Act No. 6, Section 2, eff January 13, 2005; 2005 Act No. 81, Section 2, eff May 26, 2005; 2005 Act No. 137, Section 2, eff May 25, 2005.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 122, “Department of Employment and Workforce” was substituted for all references to “Employment Security Commission”, and “Executive Director of the Department of Employment and Workforce” or “executive director” was substituted for all references to the “Chairman of the Employment Security Commission” or “chairman” that refer to the Chairman of the Employment Security Commission, as appropriate.

Editor’s Note

Section 46‑43‑40 referenced in item (32) was repealed by 2012 Act No. 207.

Effect of Amendment

The first 2005 amendment added item (39) relating to applications to extend Fireworks Prohibited Zones.

The second 2005 amendment added item (40) relating to self‑monitored or self‑administered medications.

The third 2005 amendment added item (38).

CROSS REFERENCES

Application of Tort Claims Act to liability of local government or agency with respect to 911 emergency telephone system, see Section 23‑47‑70.

Compensation of a plaintiff by his own insurance company where his cause of action is barred under this section, see Section 15‑78‑190.

South Carolina State Employee’s Grievance Act, see Sections 8‑17‑310 et seq.

South Carolina Unemployment Compensation Act, see Sections 41‑27‑10 et seq.

South Carolina Workers’ Compensation Act, see Sections 42‑1‑10 et seq.

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23 ALR 5th 1 , Tort Liability of Public Schools and Institutions of Higher Learning for Accidents Associated With Transportation of Students.

24 ALR 5th 200 , Municipal Liability for Negligent Performance of Building Inspector’s Duties.

140 ALR 1058 , Immunity of Municipality from Liability for Torts in Exercise of Governmental Functions as Applicable to Torts Outside Municipal Limits.

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24 Am. Jur. Proof of Facts 3d 1, Action by Crime Victim Against School Arising Out of Assault or Criminal Act.

S.C. Jur. Animals Section 5.1, Liability of Third Persons.

S.C. Jur. Appeal and Error Section 71, The Four Basic Requirements.

S.C. Jur. Appeal and Error Section 80, Directed Verdict Motions.

S.C. Jur. Appeal and Error Section 81, Matters Related to the Jury.

S.C. Jur. Appeal and Error Section 86, Judgments, Verdicts, and Rulings Based on Multiple Grounds.

S.C. Jur. Automobiles and Other Motor Vehicles Section 221, Defendants.

S.C. Jur. Automobiles and Other Motor Vehicles Section 225, Negligence.

S.C. Jur. Children and Families Section 121, Compensation of Guardian Ad Litem.

S.C. Jur. Colleges and Universities Section 18, Liability.

S.C. Jur. Injunctions Section 34, Torts by the Government.

S.C. Jur. Negligence Section 8, Gross Negligence.

S.C. Jur. Negligence Section 11, Public Duty Rule.

S.C. Jur. Public Nuisance Section 7, Liability of Government for Maintaining a Public Nuisance.

S.C. Jur. Public Officers and Public Employees Section 76, South Carolina Tort Claims Act.

S.C. Jur. South Carolina Rules of Civil Procedure Section 56.2, Discussion.

Treatises and Practice Aids

1 Causes of Action 2d 603, Cause of Action Against Governmental Entity for Injury Caused by Condition of Public Building.

10 Causes of Action 2d 397, Cause of Action Against Governmental Entity for Physical Injury or Property Damage Caused by Defective Design or Condition of Street or Highway.

Civil Actions Against State & Local Gov. Section 2:5, Distinction Between Discretionary and Ministerial Functions.

Civil Actions Against State & Local Gov. Section 3:12, Basic Governmental Activity; Judicial and Legislative Functions.

Civil Actions Against State & Local Gov. Section 3:13, Discretionary Functions.

Civil Actions Against State & Local Gov. Section 3:14, Execution and Enforcement of Law.

Civil Actions Against State & Local Gov. Section 3:15, Execution and Enforcement of Law‑Issuance of Licenses and Permits; Inspections.

Civil Actions Against State & Local Gov. Section 3:16, Police and Fire Protection.

Civil Actions Against State & Local Gov. Section 3:17, Operation of Prisons.

Civil Actions Against State & Local Gov. Section 3:19, Release of Persons from Custody.

Civil Actions Against State & Local Gov. Section 3:22, Intentional Misconduct; Misrepresentation.

Civil Actions Against State & Local Gov. Section 3:25, Liability for Particular Conditions; Public Facilities‑Highways.

Civil Actions Against State & Local Gov. Section 3:27, Notice of Condition.

Civil Actions Against State & Local Gov. Section 3:28, Unimproved Land; Recreational Use of Land.

LAW REVIEW AND JOURNAL COMMENTARIES

Action arising before July 1, 1986 not barred by sovereign immunity. 39 S.C. L. Rev. 198, Autumn 1987.

Annual Survey of South Carolina Law: Torts. 38 S.C. L. Rev. 232 (Autumn 1986).

A guide to the common law of nuisance in South Carolina. 45 S.C. L. Rev. 337 (Winter 1994).

In pursuit of a remedy: A need for reform of police officer liability. Bonnie E. Bull, 64 S.C. L. Rev. 1015 (Summer 2013).

United States Supreme Court Annotations

Immunity, police officers were entitled to qualified immunity for warrantless entry into plaintiffs’ residence, see Ryburn v. Huff, 2012, 132 S.Ct. 987, 565 U.S. 469, 181 L.Ed.2d 966, on remand 676 F.3d 930. Civil Rights 1376(6)

Attorney General’s Opinions

Discussion of the College of Charleston’s policies concerning allegations of sexual harassment or misconduct against employees. S.C. Op.Atty.Gen. (Oct. 8, 2013) 2013 WL 5651551.

The proposed Agreement with Fannie Mae is not enforceable against the S.C. State Housing Finance and Development Authority on the basis it subjects the Authority to liability in manner inconsistent with the principles of sovereign immunity and to an extent not complicated by the Tort Claims Act. S.C. Op.Atty.Gen. (February 07, 2013) 2013 WL 650578.

The exception of limitation attached to the exclusion found at Section 15‑78‑60(a)(12) of the recently enacted comprehensive Tort Claims Act does not operate as a general limitation of the other separate and distinct exclusions when the governmental function involves licensing. Licensing decisions of quasi‑judicial nature or administrative decisions relate to agency prosecutions are excluded from the liability provisions of the Act. 1986 Op Atty Gen, No. 86‑96, p 293.

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1. In general

Property developer’s state law claims against county and zoning administrator, alleging wrongful forced renewal of letter of credit, wrongful denial of building permits, wrongful imposition of additional conditions for certificate of compliance, wrongful conveyance of road and drainage deeds back to developer, and gross negligence under South Carolina Tort Claims Act (SCTCA), would be remanded, following resolution of federal constitutional claim which was sole ground for removal, since state court had more expertise and familiarity with county procedures and law regarding issuance of building permits. Brickyard Holdings, Inc. v. Beaufort County, 2007, 586 F.Supp.2d 409. Federal Courts 2564

Statutory provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed in favor of limiting liability. Health Promotion Specialists, LLC v. South Carolina Bd. of Dentistry (S.C. 2013) 403 S.C. 623, 743 S.E.2d 808. Municipal Corporations 723.5

South Carolina Tort Claims Act waives sovereign immunity while also providing specific, enumerated exceptions limiting the liability of the state and its political subdivisions in certain circumstances. Shirley’s Iron Works, Inc. v. City of Union (S.C.App. 2010) 397 S.C. 584, 726 S.E.2d 208, certiorari granted, affirmed in part, reversed in part 403 S.C. 560, 743 S.E.2d 778. Municipal Corporations 723; States 112(2)

Dismissal of landowner’s conspiracy claim against city as barred by sovereign immunity did not relieve liability insurer of duty to defend; insurer was required to assert the defense on behalf of city. City of Hartsville v. South Carolina Mun. Ins. & Risk Financing Fund (S.C. 2009) 382 S.C. 535, 677 S.E.2d 574. Insurance 2349; Insurance 2930

When a governmental entity owes a duty of care to plaintiff under the common law and other elements of negligence are shown, the next step is to analyze the applicability of exceptions to the waiver of immunity contained in the Tort Claims Act which are asserted by the governmental entity. Madison ex rel. Bryant v. Babcock Center, Inc. (S.C. 2006) 371 S.C. 123, 638 S.E.2d 650, rehearing denied. Municipal Corporations 723

Department of Disabilities and Special Needs, which approved private residential treatment center as provider of housing and other services for mentally retarded individuals, had common law duty to exercise reasonable care in supervising and providing appropriate care and treatment to mentally retarded resident of center, even though center, which was an independent contractor, was the provider of services and a third party might have committed a criminal act in harming resident. Madison ex rel. Bryant v. Babcock Center, Inc. (S.C. 2006) 371 S.C. 123, 638 S.E.2d 650, rehearing denied. States 112.2(4)

Homeowners only presented detailed argument on appeal as to one of the four Tort Claims Act immunity provisions under which the trial court found that watershed conservation district was immune from negligence liability for flooding, and thus Court of Appeals would accept trial court’s findings that the three other exceptions exempted district from liability. LoPresti v. Burry (S.C.App. 2005) 364 S.C. 271, 612 S.E.2d 730, rehearing denied, certiorari denied. Appeal And Error 761

Issue of whether Department of Transportation (SCDOT) was negligent in maintaining highway was for jury, in motorist’s personal injury action resulting from single‑car accident caused by accumulation of water on roadway; former SCDOT resident engineer testified that SCDOT had actual notice the site of accident was flood hazard, and state trooper testified that there had been numerous accidents during past eight years at same location and that he had reported condition to SCDOT on numerous occasions. Elam v. South Carolina Dept. of Transp. (S.C. 2004) 361 S.C. 9, 602 S.E.2d 772. Automobiles 308(7)

Denial of Department of Transportation’s (SCDOT) motion during trial for leave to amend answer to assert statutory defense of immunity of design was not abuse of discretion, in motorist’s action for damages after single‑car crash caused by water accumulation on roadway, given ruling that there was no competent evidence the water on the highway was due to design error. Elam v. South Carolina Dept. of Transp. (S.C. 2004) 361 S.C. 9, 602 S.E.2d 772. Pleading 236(5)

County sheriff was not immune from former highway patrolman’s negligence suit that alleged he sustained injuries when his cruiser was hit from behind by deputy sheriff’s cruiser, as circumstances presented in case were not included among Tort Claims Act’s specific exceptions to the waiver of immunity. Trousdell v. Cannon (S.C. 2002) 351 S.C. 636, 572 S.E.2d 264, rehearing denied. Automobiles 187(3)

In addition to the judicial immunity under the Tort Claims Act, common law judicial immunity was expressly preserved under the Tort Claims Act. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Judges 36

Tort Claims Act provides a limited waiver of governmental immunity and delineates the conditions upon which a claimant may pursue actions against the state and its political subdivisions. Jinks v. Richland County (S.C. 2002) 349 S.C. 298, 563 S.E.2d 104, certiorari granted, certiorari granted 123 S.Ct. 435, 537 U.S. 972, 154 L.Ed.2d 328, reversed 123 S.Ct. 1667, 538 U.S. 456, 155 L.Ed.2d 631, on remand 355 S.C. 341, 585 S.E.2d 281. States 112(2)

When a governmental entity asserts various exceptions to the waiver of immunity under the state Tort Claims Act, the correct approach is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard. Staubes v. City of Folly Beach (S.C. 2000) 339 S.C. 406, 529 S.E.2d 543. Municipal Corporations 723

When a governmental entity asserts various exceptions to the waiver of immunity under the state Tort Claims Act, the correct approach is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. Municipal Corporations 723

Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit liability. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. Municipal Corporations 723

In determining whether cause of action against government entity is barred under Tort Claims Act, no distinction is made between municipal activities deemed governmental versus those activities that are in the nature of business and usually deemed proprietary; rather, all functions exercised by municipal corporations under powers constitutionally granted to them by the General Assembly are considered public and governmental. Wells v. City of Lynchburg (S.C.App. 1998) 331 S.C. 296, 501 S.E.2d 746. Municipal Corporations 724

Government entity bears burden of establishing discretionary immunity as an affirmative defense under South Carolina Tort Claims Act. Summer v. Carpenter (S.C. 1997) 328 S.C. 36, 492 S.E.2d 55. Municipal Corporations 742(5)

A self‑insured city was not immunized by the Tort Claims Act, Section 15‑78‑10 et seq., from liability to an injured city employee, who was involved in an auto accident with an uninsured motorist while driving a city vehicle, since the Act applies only to the torts of a governmental entity, and uninsured motorist coverage is a contractual liability, which is expressly excluded from immunity. Wright v. Smallwood (S.C. 1992) 308 S.C. 471, 419 S.E.2d 219.

Section 15‑78‑60(5), which provides for immunity from liability for losses resulting from “...the exercise of discretion or judgment by the governmental entity or employee...,” must be read in light of Section 15‑78‑60(25), which provides an exception to immunity where the governmental entity exercises its responsibility or duty in a grossly negligent manner. Thus, if discretion is exercised in a grossly negligence manner, the exception to the normal rule of immunity applies. Jackson v. South Carolina Dept. of Corrections (S.C.App. 1989) 301 S.C. 125, 390 S.E.2d 467, certiorari granted, affirmed 302 S.C. 519, 397 S.E.2d 377.

2. Discretion

To establish “discretionary immunity,” the governmental entity must prove that the governmental employees, faced with alternatives, actually weighed competing considerations and made a conscious choice; furthermore, the governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Municipal Corporations 728

Whether state Department of Transportation (DOT) breached a duty to plaintiffs in failing to install median barriers along stretch of interstate highway after notice of an existing hazard, so as to lose discretionary immunity under Tort Claims Act for initial decision not to install barriers, was question for jury in negligence action arising from accident in which vehicle hydroplaned, crossed over median, and struck oncoming vehicles in which plaintiffs were riding, where two people had been killed over two years prior to present accident in crossover accidents that occurred within two miles of present accident and were publicized by local media. Giannini v. South Carolina Dept. of Transp. (S.C. 2008) 378 S.C. 573, 664 S.E.2d 450, rehearing denied. Automobiles 308(2)

To establish absolute discretionary immunity under the Tort Claims Act, the governmental entity must prove that the governmental employees, faced with alternatives, actually weighed competing considerations and made a conscious choice; furthermore, the governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them. Clark v. South Carolina Dept. of Public Safety (S.C.App. 2002) 353 S.C. 291, 578 S.E.2d 16, rehearing denied, affirmed 362 S.C. 377, 608 S.E.2d 573. Municipal Corporations 728

State university did not weigh competing considerations and alternatives when deciding not to discipline or remove university police chief, and thus, could not invoke affirmative defense of discretionary immunity as provided for within Tort Claims Act against a former police department employee’s claims that university negligently supervised and retained police chief. Sabb v. South Carolina State University (S.C. 2002) 350 S.C. 416, 567 S.E.2d 231. Education 1057(2)

Mere room for discretion on the part of the entity is not sufficient to invoke the discretionary immunity provision of Tort Claims Act. Sabb v. South Carolina State University (S.C. 2002) 350 S.C. 416, 567 S.E.2d 231. Municipal Corporations 728

Discretionary immunity from claims under Tort Claims Act is contingent on proof that the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards. Sabb v. South Carolina State University (S.C. 2002) 350 S.C. 416, 567 S.E.2d 231. Municipal Corporations 728

Juvenile probation officer’s decision to place juvenile delinquent in his home, after he was expelled from his foster home, was not a discretionary decision, such that officer was entitled to discretionary immunity; evidence showed that officer placed juvenile in his family home because he thought no one else would take him, even though alternative placement was available as group home had agreed earlier to take juvenile in an emergency, and that, if officer had weighed competing alternatives, he would have placed juvenile in group home. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Courts 55

A governmental entity is not liable for losses resulting from an exercise of discretion by its employees. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Municipal Corporations 728

Discretionary immunity was an affirmative defense, in action brought on behalf of child who was violently assaulted by juvenile delinquent while he was on probation, requiring Department of Juvenile Justice (DJJ) to prove probation counselor evaluated competing alternatives and made a “judgment” call based on applicable professional standards, when he placed juvenile. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Courts 55

The duties of public officials are generally classified as either ministerial or discretionary, for purposes of determining discretionary immunity under the Tort Claims Act; a duty is “ministerial” when it is absolute, certain, and imperative, involving merely execution of a specific duty arising from fixed and designated facts, while a duty is “discretionary” if the governmental entity proves it actually weighed competing considerations, faced with alternatives, and made a conscious decision based upon those considerations. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Public Employment 952

To prevail under the discretionary immunity exception to the state Tort Claims Act, the governmental entity must show that when faced with alternatives, it actually weighed competing considerations and made a conscious decision to act or not to act, and that it used accepted professional standards appropriate to resolve the issue before it. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. Municipal Corporations 728

State Department of Labor, Licensing, and Regulation was not entitled to immunity under discretionary function exception to state Tort Claims Act in wrongful death action alleging that Department negligently failed to investigate upon learning of potentially hazardous substantial modifications to licensed device used to carry bungee jumpers and spectators, as there was scant evidence that Department officials exercised their discretion; evidence showed that Department received three credible notices of modifications in question, but nonetheless took no more than cursory glance. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112.2(2)

To establish discretionary immunity under the South Carolina Torts Claims Act, the governmental entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue. Pike v. South Carolina Dept. of Transp. (S.C.App. 1998) 332 S.C. 605, 506 S.E.2d 516, rehearing denied, certiorari granted, affirmed as modified 343 S.C. 224, 540 S.E.2d 87. Municipal Corporations 728

To sustain immunity under Tort Claims Act for loss resulting from exercise of discretion, the governmental entity must show that when faced with alternatives, it actually weighed competing considerations and made a conscious decision to act or not to act, and that it used accepted professional standards appropriate to resolve the issue before it. Wells v. City of Lynchburg (S.C.App. 1998) 331 S.C. 296, 501 S.E.2d 746. Municipal Corporations 728

Mere room for discretion on part of governmental entity is not sufficient to invoke protection of discretionary immunity provision of South Carolina Tort Claims Act, and rather, discretionary immunity is contingent on proof that government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice. Summer v. Carpenter (S.C. 1997) 328 S.C. 36, 492 S.E.2d 55. Municipal Corporations 728

Governmental entity which claims that it is protected by discretionary immunity under South Carolina Tort Claims Act must establish that, in weighing competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve issue. Summer v. Carpenter (S.C. 1997) 328 S.C. 36, 492 S.E.2d 55. Municipal Corporations 728

In order to establish entitlement to discretionary act immunity, governmental entity must show that when faced with alternatives, it weighed competing considerations and made conscious choice, and that it used accepted professional standards to make that choice. Creech v. South Carolina Wildlife and Marine Resources Dept. (S.C. 1997) 328 S.C. 24, 491 S.E.2d 571. Municipal Corporations 728

Decision to erect railing on only one side of public dock at boat landing was not discretionary act for which county or State Wildlife and Marine Resources Department was entitled to discretionary act immunity in action brought after woman was injured in fall from dock; issue of how many rails to erect was not examined prior to making of informed decision, and any discretionary decision made concerned whether to erect rails at all and not whether to erect one or two. Creech v. South Carolina Wildlife and Marine Resources Dept. (S.C. 1997) 328 S.C. 24, 491 S.E.2d 571. Counties 143; States 112.2(2)

Discretionary immunity under the South Carolina Tort Claims Act, Sections 15‑78‑10 et seq. is contingent on proof that the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice; the government entity must show that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before it. Strange v. South Carolina Dept. of Highways and Public Transp. (S.C. 1994) 314 S.C. 427, 445 S.E.2d 439. Municipal Corporations 728

3. “Gross negligence” exception

Former prison inmate could sue state employees under South Carolina law, in their individual capacities, for intentional infliction of emotional distress in connection with her treatment; statute waived immunity when there was intent to harm or actual malice, both of which were alleged elements of torts in question. Smith v. Ozmint, 2005, 394 F.Supp.2d 787. Prisons 400; Public Employment 936

Former prison inmate could not sue state employees under South Carolina law, in their individual capacities, for negligence and common law libel arising out of her treatment; statute waived immunity when there was intent to harm or actual malice, neither of which were elements of torts in question. Smith v. Ozmint, 2005, 394 F.Supp.2d 787. Prisons 400; Public Employment 936

Gross negligence exception from licensing powers exception to waiver of immunity would be read into other exceptions to waiver of immunity under South Carolina Tort Claims Act, namely law enforcement or compliance exception, exercise of discretion exception, and regulatory inspection exception, in landowner’s negligence action against county brought after county allowed repeated reductions in financial guarantees posted by developer for infrastructure development on subdivision lot and infrastructure was left unfinished. Repko v. County of Georgetown (S.C.App. 2016) 416 S.C. 22, 785 S.E.2d 376, rehearing denied. Counties 141

When an exception under the Tort Claims Act containing the gross negligence standard applies, that same standard will be read into any other applicable exception. Chakrabarti v. City of Orangeburg (S.C.App. 2013) 403 S.C. 308, 743 S.E.2d 109. Municipal Corporations 723.5

Expert opinion that Department of Social Services (DSS) failed to exercise slight care in investigating a potential parental poisoning and in placing children with a relative was not based upon a proper statement of Department’s duty to investigate claims of abuse and neglect, and, therefore, the opinion could not be used to defeat Department’s motion for judgment notwithstanding the verdict (JNOV) with respect to parents’ claim of gross negligence precluding application of exception to waiver of immunity under South Carolina Tort Claims Act for a loss resulting from responsibility or duty, where expert did not take into account the expediency with which Department was required to investigate claims of abuse and neglect. Bass v. South Carolina Dept. of Social Services (S.C.App. 2013) 403 S.C. 184, 742 S.E.2d 667, reversed 414 S.C. 558, 780 S.E.2d 252. Infants 1457; Judgment 199(3.15)

“Gross negligence,” in the context of exception to waiver of immunity under South Carolina Tort Claims Act for a loss resulting from responsibility or duty, is proved by demonstrating the intentional conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do, or the failure of slight care. Bass v. South Carolina Dept. of Social Services (S.C.App. 2013) 403 S.C. 184, 742 S.E.2d 667, reversed 414 S.C. 558, 780 S.E.2d 252. Municipal Corporations 723

Department of Social Services’ (DSS) conduct in investigating a potential parental poisoning reported by hospital and in placing children with a relative was not grossly negligent, and therefore the Department’s conduct fell within the exception to waiver of immunity under South Carolina Tort Claims Act for a loss resulting from responsibility or duty, where DSS caseworker responded to the hospital within 45 minutes of the reported parental poisoning, the children were classified as a medium danger rating which allowed caseworker merely 24 hours to conduct her investigation pursuant to DSS policy, caseworker interviewed family members and learned the children became sick after mother administered their medicine, caseworker also obtained parents’ consent to have the children’s medical information released to DSS, and caseworker further obtained the children’s toxicology report. Bass v. South Carolina Dept. of Social Services (S.C.App. 2013) 403 S.C. 184, 742 S.E.2d 667, reversed 414 S.C. 558, 780 S.E.2d 252. Infants 1448

Evidence did not support a finding that county sheriff’s department exercised gross negligence in its supervision of prison guard who engaged in sexual misconduct with inmate; although expert witness testified the department failed to employ rape prevention measures, maintain nationally accepted standards, or adopt adequate monitoring policies, the department provided uncontradicted evidence that it met minimum security standards set for South Carolina, and there was no evidence the department knew or should have known of the necessity to exercise additional supervision of prison guard to prevent him from harming inmate. Hamilton v. Charleston County Sheriff’s Dept. (S.C.App. 2012) 399 S.C. 252, 731 S.E.2d 727. Public Employment 916; Sheriffs And Constables 100

County sheriff’s immunity became law of the case under the “two issue” rule, after sheriff received a directed verdict from trial court on more than one ground, one of which was that the statutory exception to waiver of immunity for civil disobedience, insurrection, or rebellion or the failure to provide method of providing police or fire protection, applied to shield sheriff from gross negligence claim asserted by estate of arrestee who was fatally shot by an officer, and after the estate failed to argue against such basis in its direct appeal; estate’s argument that trial court erred when it ruled that officers were not negligent did not reference the statutory gross negligence standard, and none of the cited statutory exceptions to waiver of immunity did not contained the gross negligence standard. Jones v. Lott (S.C. 2010) 387 S.C. 339, 692 S.E.2d 900, rehearing denied. Appeal and Error 853

Where county sheriff did not plead or cite any of the statutory exceptions to the waiver of immunity that contained the gross negligence standard, by which standard an exception to the waiver could be negated due to gross negligence, the gross negligence standard could not be interpolated to apply to the provision that the sheriff did cite, which gave immunity for losses resulting from the escape of persons in custody, and thus, a directed verdict for sheriff based on such immunity was not precluded, in action brought by estate of arrestee who was fatally shot by an officer while trying to escape. Jones v. Lott (S.C. 2010) 387 S.C. 339, 692 S.E.2d 900, rehearing denied. Public Employment 936; Sheriffs And Constables 105

Property owner’s claims against county for negligence, arising from actions of county employee in allegedly providing mistaken zoning assessment of property, resulting in loss of sale of property, did not emanate from adoption or enforcement of county’s zoning ordinances, and thus owner’s claims were not barred under provision of Tort Claims Act stating a governmental entity was not liable for loss resulting from adoption, enforcement, or compliance with any law. Richland County v. Carolina Chloride, Inc. (S.C.App. 2009) 382 S.C. 634, 677 S.E.2d 892, rehearing denied, certiorari granted, affirmed in part, reversed in part 394 S.C. 154, 714 S.E.2d 869, rehearing granted, rehearing dismissed 396 S.C. 311, 721 S.E.2d 441, certiorari denied 133 S.Ct. 168, 568 U.S. 821, 184 L.Ed.2d 36. Counties 146

When a governmental entity asserts an exception to the waiver of immunity under the Tort Claims Act and any other applicable exception contains a gross negligence standard, the court must read the gross negligence standard into all of the exceptions under which the entity seeks immunity. Plyler v. Burns (S.C. 2007) 373 S.C. 637, 647 S.E.2d 188. Municipal Corporations 723

Evidence was sufficient to establish to a reasonable degree of certainty, and raise fact issue for jury in gross negligence action against Department of Health and Environmental Control (DHEC), that operator of waste tire processing and disposal facility suffered lost profits as a result of refusal by DHEC to place operator back on rebate list as required by order of ALJ in administrative proceeding; operator owned only one of less than ten such facilities operating in the State, and there was evidence that because operator was not on rebate list he was unable to sustain contracts with his major customers, that operator had been able to resell 35‑40% of the tires delivered by one of the major customer that he had lost and had been able to make a profit on such tires, that operator had been able to sell chips from tires for playgrounds, carpet backing and septic systems, and that prior to be taken off rebate list operator’s business was increasing. Proctor v. Dept. of Health and Environmental Control (S.C.App. 2006) 368 S.C. 279, 628 S.E.2d 496. States 211

When a governmental entity in a Tort Claims Act action asserts multiple exceptions to the waiver of immunity and at least one of the exceptions contains a gross negligent standard, a court must interpolate the gross negligence standard into the other exceptions. Proctor v. Dept. of Health and Environmental Control (S.C.App. 2006) 368 S.C. 279, 628 S.E.2d 496. Municipal Corporations 723

In gross negligence action brought by operator of waste tire processing and disposal facility against Department of Health and Environmental Control (DHEC) for not restoring operator to rebate list as ordered by ALJ in administrative proceeding, DHEC was not entitled to the legislative, judicial, quasi‑judicial, execution or enforcement of court order, law enforcement, discretionary immunity or regulatory exemption power exceptions to the waiver of immunity under the Tort Claims Act, as operator proceeded under the theory of gross negligence, and under the Act the gross negligence standard was interpolated into the other exceptions. Proctor v. Dept. of Health and Environmental Control (S.C.App. 2006) 368 S.C. 279, 628 S.E.2d 496. States 112.2(1)

Evidence raised fact issue for the jury, in Tort Claims Act action by operator of waste tire processing and disposal facility against Department of Health and Environmental Control (DHEC), regarding whether DHEC was “grossly negligent” in failing to restore operator to rebate list, which allowed tire retailers a rebate for each tire delivered to a permitted waste tire facility, following decision by ALJ in administrative proceeding ordering DHEC to return operator to the list; DHEC’s policy was to inspect facilities on a monthly basis, once operator was removed from list he could not be restored absent an inspection, and after DHEC removed operator from list it failed to inspect operator’s facility for four years despite his repeated requests for an inspection. Proctor v. Dept. of Health and Environmental Control (S.C.App. 2006) 368 S.C. 279, 628 S.E.2d 496. States 112.2(1)

Conduct of county, which constructively consented to non‑profit rural water and sewer service corporation servicing designated area in county by failing to respond to corporation’s proposal but undertook to provide its own sewer and water services to such area, did not amount to “gross negligence” for purposes of waiver of sovereign immunity in Tort Claims Act for exercising licensing functions in a grossly negligent manner, where county thought it complied with statute regarding proposals to service unincorporated areas by reading proposed ordinance allowing county to expand its own water and sewer services into area, and county was unaware that corporation had acquired any service rights. Williamsburg Rural Water and Sewer Co., Inc. v. Williamsburg County Water and Sewer Authority (S.C.App. 2003) 357 S.C. 251, 593 S.E.2d 154, rehearing denied, certiorari granted, reversed 367 S.C. 566, 627 S.E.2d 690. Counties 144

Gross negligence, in the context of liability by a government entity, is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do; it is the failure to exercise slight care. Jinks v. Richland County (S.C. 2003) 355 S.C. 341, 585 S.E.2d 281. Municipal Corporations 723

Nurse’s conduct of allegedly removing public hospital patient’s restraints and failing to adequately monitor him following surgery involved duties of supervision and control of patient within meaning of Tort Claims Act’s exception to waiver of sovereign immunity, and thus patient was required to show that nurse acted in grossly negligent manner in order to recover in negligence suit against hospital for injuries resulting from nurse’s alleged conduct. Stewart v. Richland Memorial Hosp. (S.C.App. 2002) 350 S.C. 589, 567 S.E.2d 510, rehearing denied. Health 770

In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Negligence 1697

Even if actions of juvenile probation officer in temporarily placing juvenile delinquent fell within the juvenile release exception to the Tort Claims Act, genuine issue of material fact as to whether officer’s actions were grossly negligent precluded summary judgment in favor of Department of Juvenile Justice (DJJ) in action brought on behalf of youth who juvenile assaulted during placement. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Judgment 181(33)

Even if juvenile probation officer exercised discretion in placing juvenile delinquent, genuine issue of material fact as to whether officer’s placing juvenile into a home where case workers noted there was no proper supervision, knowing of his violent tendencies, was gross negligence precluded summary judgment on grounds of discretionary immunity in action brought on behalf of youth who was assaulted by juvenile during his placement. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Judgment 181(27)

“Gross negligence,” as used in gross negligence exception to sovereign immunity for loss resulting from licensing powers or functions under Torts Claims Act, is the intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do. Worsley Companies, Inc. v. Town of Mount Pleasant (S.C. 2000) 339 S.C. 51, 528 S.E.2d 657. Municipal Corporations 723

Town was not grossly negligent in refusing to issue certificate of occupancy until applicant had water and sewer service, and thus, town was not liable to applicant under Tort Claims Act; town had no discretion and did not fail to do something that it should have done. Worsley Companies, Inc. v. Town of Mount Pleasant (S.C. 2000) 339 S.C. 51, 528 S.E.2d 657. Municipal Corporations 747(1)

The better practice in an action under the state Tort Claims Act is to allow the state government to assert all relevant exceptions, and apply the gross negligence standard to all when it is contained in one applicable exception. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112(2)

Under the Tort Claims Act, if a government entity’s or employee’s discretion is exercised in a grossly negligent manner, then the governmental entity involved is liable for its torts as if it were a private individual. Duncan v. Hampton County School Dist. No. 2 (S.C.App. 1999) 335 S.C. 535, 517 S.E.2d 449, rehearing denied, certiorari denied. Municipal Corporations 728

“Gross negligence” exception to sovereign immunity for loss resulting from licensing powers or functions under Torts Claims Act is mixed question of law and fact and should be presented to jury unless evidence supports only one reasonable inference. Staubes v. City of Folly Beach (S.C.App. 1998) 331 S.C. 192, 500 S.E.2d 160, rehearing denied, certiorari granted, affirmed 339 S.C. 406, 529 S.E.2d 543, on remand 2001 WL 35835129. Municipal Corporations 742(6)

Genuine issues of material fact regarding whether city acted in grossly negligent manner in revoking building permit for repair of hurricane damage to duplex on ground that cost of repair exceeded 50% of property’s value prior to damage precluded summary judgment for city on owner’s negligence claim pursuant to Tort Claims Act. Staubes v. City of Folly Beach (S.C.App. 1998) 331 S.C. 192, 500 S.E.2d 160, rehearing denied, certiorari granted, affirmed 339 S.C. 406, 529 S.E.2d 543, on remand 2001 WL 35835129. Judgment 181(33)

“Gross negligence,” as will allow governmental entity to be held liable for loss resulting from its licensing powers or functions under exception to sovereign immunity, is the failure to exercise slight care, or the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Rakestraw v. South Carolina Dept. of Highways and Public Transp. (S.C.App. 1996) 323 S.C. 227, 473 S.E.2d 890. Municipal Corporations 723

In an action brought under the South Carolina Tort Claims Act, Section 15‑78‑10 et seq., for the wrongful death of a student struck by a car on her way home from school after her bus privileges had been suspended, the school district was not entitled to a directed verdict on the issue of its gross negligence, even though the student’s drama class had been rescheduled to the day of the accident and therefore she might not have ridden the bus that day, where the evidence was inconclusive as to whether the student knew of the rescheduled class. Hollins v. Richland County School Dist. One (S.C. 1993) 310 S.C. 486, 427 S.E.2d 654, rehearing denied.

The gross negligence standard of the South Carolina Tort Claims Act, Section 15‑78‑10 et seq., was inapplicable to an action brought against the Department of Education by a student who was injured when the school bus he was riding in suddenly “lurched forward,” since the bus driver was not exercising any duty involving supervision, custody, control, or protection at the time of the accident. Gardner v. Biggart (S.C. 1992) 308 S.C. 331, 417 S.E.2d 858.

4. Public duty

Since the public duty rule, which immunizes public officials from liability in negligence for the discharge of their public duties, is not grounded in immunity but rather in duty, it has not been affected by enactment of South Carolina Tort Claims Act; only if a duty is found, and the other negligence elements shown, will it ever be necessary to reach the Tort Claims Act immunities issue. Repko v. County of Georgetown (S.C.App. 2016) 416 S.C. 22, 785 S.E.2d 376, rehearing denied. Public Employment 893

Under the “public duty doctrine,” public officials are not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than to anyone individually. Chakrabarti v. City of Orangeburg (S.C.App. 2013) 403 S.C. 308, 743 S.E.2d 109. Public Employment 892; Public Employment 893

Under public duty doctrine, public officials are not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than to anyone individually. Arthurs v. Aiken County (S.C.App. 1999) 338 S.C. 253, 525 S.E.2d 542, rehearing denied, certiorari granted, affirmed as modified 346 S.C. 97, 551 S.E.2d 579. Public Employment 893

An exception to the public duty rule, under which public officials are not liable to individuals for their negligence in discharging public duties, is recognized where the plaintiff can establish the defendant owed a special duty of care to the plaintiff. Arthurs v. Aiken County (S.C.App. 1999) 338 S.C. 253, 525 S.E.2d 542, rehearing denied, certiorari granted, affirmed as modified 346 S.C. 97, 551 S.E.2d 579. Public Employment 893

Deputy sheriff’s advice to domestic violence victim that she should call police if she saw her estranged husband and that she should avoid letting him in the house did not create a special duty on part of sheriff’s department to protect victim from her husband, in action brought by personal representative of victim’s estate against sheriff’s department for negligence after victim was shot and killed by husband. Arthurs v. Aiken County (S.C.App. 1999) 338 S.C. 253, 525 S.E.2d 542, rehearing denied, certiorari granted, affirmed as modified 346 S.C. 97, 551 S.E.2d 579. Public Employment 972; Sheriffs And Constables 99

Public duty rule precluded state and county’s liability in negligence action by homeowner who alleged that state and county failed to properly supervise county jail inmate who escaped from work detail, stole car, and broke into his home; any duty owed to homeowner was in fact public duty owed to public at large and not to homeowner individually. Washington v. Lexington County Jail (S.C.App. 1999) 337 S.C. 400, 523 S.E.2d 204. Counties 148; States 112.2(4)

When a public official asserts the public duty rule as a defense, the burden is on the plaintiff to show a duty of care was owed to him. Washington v. Lexington County Jail (S.C.App. 1999) 337 S.C. 400, 523 S.E.2d 204. Municipal Corporations 744; Public Employment 1003

Those who maintain custody of prisoners or inmates do so for the protection of the public; thus, the public duty rule precludes their liability to individuals for damages caused by an escaped inmate. Washington v. Lexington County Jail (S.C.App. 1999) 337 S.C. 400, 523 S.E.2d 204. Municipal Corporations 740(1)

Even if the existence of a special duty on behalf of public official to individual is found, such that official is not immune from liability under public duty rule, it must still be determined whether the public official’s alleged negligent conduct occurred during the performance of a ministerial or a discretionary duty before liability can be imposed under Tort Claims Act. Wells v. City of Lynchburg (S.C.App. 1998) 331 S.C. 296, 501 S.E.2d 746. Public Employment 897; Public Employment 901

A county animal control ordinance did not create a special duty of care toward individual members of the general public that would rise to a level sufficient to abrogate the county’s immunity under the Tort Claims Act (Sections 15‑78‑10 et seq.) in an action arising from the death of a bicyclist who was fatally injured when she was chased into traffic by vicious dogs. Adkins v. Varn (S.C. 1993) 312 S.C. 188, 439 S.E.2d 822. Counties 141

5. Maintenance of public property

Under the Tort Claims Act, a governmental entity is not liable for a loss resulting from an act of or omission of a person other than an employee; however, this provision of the Act would not operate to exonerate a governmental entity of liability for its own conduct. Padgett v. Colleton County (S.C.App. 2009) 383 S.C. 431, 679 S.E.2d 533, rehearing denied. Municipal Corporations 745

Exemption from liability contained in provision of Tort Claims Act concerning street maintenance did not apply to exempt town from liability for failing to maintain sidewalks within its control, for purposes of pedestrian’s negligence action against town, alleging that town’s failure to maintain sidewalk resulted in her fall, as defect in sidewalk was not caused by third party, and even if defect was caused by third party, town’s mayor testified to knowledge of defect for at least ten years. Vaughan v. Town of Lyman (S.C. 2006) 370 S.C. 436, 635 S.E.2d 631. Municipal Corporations 768(1)

City, its department of parks and recreation, and the county recreation commission did not have actual notice that edge of ditch in park would collapse and, thus, were immune from liability for injuries sustained by child when edge of ditch collapsed pursuant to Tort Claims Act exemption from liability for loss caused by maintenance, security, or supervision of any public property intended or permitted to be used as park. Richardson v. City of Columbia (S.C.App. 2000) 340 S.C. 515, 532 S.E.2d 10, rehearing denied, certiorari denied. Counties 143; Municipal Corporations 851

Term “actual notice,” in statute limiting governmental entity’s liability for loss resulting from maintenance of public property used for recreational purposes to situations where entity has actual notice of defect and defect is not corrected, means express notice and excludes a duty of inquiry; legislature intended to limit liability by requiring actual knowledge of the defect or condition causing the loss. Strother v. Lexington County Recreation Com’n (S.C.App. 1996) 324 S.C. 611, 479 S.E.2d 822, rehearing denied, certiorari granted, affirmed as modified 332 S.C. 54, 504 S.E.2d 117. Municipal Corporations 851

Softball player’s action against county recreational commission did not show required express notice to the commission of an actual problem with the sprinkler heads not retracting in the recreational area, and affidavits that maintenance people involved in maintaining sprinkler systems should most probably be aware of problems encountered with sprinkler systems were insufficient to show that commission had requisite express notice of the problem in order to hold the commission liable under Tort Claims Act. Strother v. Lexington County Recreation Com’n (S.C.App. 1996) 324 S.C. 611, 479 S.E.2d 822, rehearing denied, certiorari granted, affirmed as modified 332 S.C. 54, 504 S.E.2d 117. Counties 143

6. Fire protection

Homeowner’s claim against city for negligent maintenance and inspection of fire hydrant, which allegedly resulted in destruction of home in fire, fell within Tort Claims Act exceptions from liability for method of providing fire protection and the discretionary act of maintaining the city water system with the resources available. Wells v. City of Lynchburg (S.C.App. 1998) 331 S.C. 296, 501 S.E.2d 746. Municipal Corporations 739(2)

Under Tort Claims Act, government entity is not liable for the failure to provide police or fire protection or the method of providing police or fire protection, and omission of conjunctive “or” between “the failure to provide” and “the method of providing police or fire protection” is mere scrivener’s error. Wells v. City of Lynchburg (S.C.App. 1998) 331 S.C. 296, 501 S.E.2d 746. Municipal Corporations 739(2); Municipal Corporations 747(3)

7. Highway design and maintenance

Exercise by state Department of Transportation (DOT) of its initial discretion as to whether to place median barriers or guard rails on highways includes the right to be wrong, for purposes of design immunity under Tort Claims Act. Giannini v. South Carolina Dept. of Transp. (S.C. 2008) 378 S.C. 573, 664 S.E.2d 450, rehearing denied. Automobiles 259; Automobiles 278

Evidence in action against the South Carolina Department of Transportation (SCDOT,) arising from fatal automobile collision at intersection, presented jury question as to whether SCDOT utilized accepted professional engineering standards in analyzing the visibility of the intersection, and thus was entitled to discretionary immunity under the South Carolina Torts Claims Act. Pike v. South Carolina Dept. of Transp. (S.C.App. 1998) 332 S.C. 605, 506 S.E.2d 516, rehearing denied, certiorari granted, affirmed as modified 343 S.C. 224, 540 S.E.2d 87. Automobiles 308(2)

South Carolina Tort Claims Act provides absolute governmental immunity from liability for loss resulting from design of highways and other public ways. Summer v. Carpenter (S.C. 1997) 328 S.C. 36, 492 S.E.2d 55. Automobiles 259

Intersection at which accident occurred was still under design and not subject to maintenance by State Department of Highways and Public Transportation, and Department was thus protected by absolute governmental immunity under South Carolina Tort Claims Act in action brought by passenger who was injured in accident occurring at intersection, even though intersection had been opened for travel and Department had prior to time of accident instructed contractor to level or “wedge” intersection; project had yet to be returned to Department at time of accident, and wedging was modification of original design. Summer v. Carpenter (S.C. 1997) 328 S.C. 36, 492 S.E.2d 55. Automobiles 259

State Department of Highways and Public Transportation does not waive its absolute design immunity under South Carolina Tort Claims Act when it alters its original design during course of construction, since preserving design immunity under circumstances would encourage Department to modify and/or improve designs during ongoing project, thereby improving construction of and safety on highways. Summer v. Carpenter (S.C. 1997) 328 S.C. 36, 492 S.E.2d 55. Automobiles 259

Evidence that State Department of Highways and Public Transportation had used common design for intersection, and expert testimony that design used was not “wrong,” was insufficient to establish that Department had considered various design options for intersection and then chosen design plan after carefully weighing considerations, as would entitle Department to discretionary function immunity under South Carolina Tort Claims Act. Summer v. Carpenter (S.C. 1997) 328 S.C. 36, 492 S.E.2d 55. Automobiles 306(2); Evidence 571(3)

If governmental entity has actual or constructive notice that original plan or design of public way has changed, producing a dangerous condition, design immunity will not shield entity from a failure to take corrective action. Wooten by Wooten v. South Carolina Dept. of Transp. (S.C.App. 1997) 326 S.C. 516, 485 S.E.2d 119, rehearing denied, affirmed as modified 333 S.C. 464, 511 S.E.2d 355. Municipal Corporations 788

Rationale behind statutory design immunity is to avoid jury reweighing same factors which were already considered by governmental entity that approved design of highway. Wooten by Wooten v. South Carolina Dept. of Transp. (S.C.App. 1997) 326 S.C. 516, 485 S.E.2d 119, rehearing denied, affirmed as modified 333 S.C. 464, 511 S.E.2d 355. Automobiles 259

Whether Department of Transportation (DOT) weighed competing considerations and exercised accepted professional standards in deciding not to change intersection due to level of pedestrian traffic was question for jury, for purposes of DOT’s discretionary immunity defense, in action by minor pedestrian who was injured when struck by a vehicle while crossing road at intersection. Wooten by Wooten v. South Carolina Dept. of Transp. (S.C.App. 1997) 326 S.C. 516, 485 S.E.2d 119, rehearing denied, affirmed as modified 333 S.C. 464, 511 S.E.2d 355. Automobiles 308(1)

The Highway Department was not immune from liability for the acts of striping the sidelines, building up the shoulder after resurfacing, and warning of low shoulders of a highway, because such acts are not discretionary acts protected under the South Carolina Tort Claims Act, Sections 15‑78‑10 et seq. Strange v. South Carolina Dept. of Highways and Public Transp. (S.C. 1994) 314 S.C. 427, 445 S.E.2d 439.

The Department of Highways and Public Transportation was not entitled to immunity in a suit brought by a motorist alleging that because of an unusually low shoulder, she lost control of her car when she inadvertently drove her right wheels off the edge of a highway and was injured, where evidence showed that the department had received a letter by a resident of the area warning of the low shoulder, the department had no plan for inspecting the roads or making repairs, and no testimony reflected that a conscious decision weighing the appropriate factors was ever made in reference to the repair and maintenance of the road. Foster v. South Carolina Dept. of Highways and Public Transp. (S.C. 1992) 306 S.C. 519, 413 S.E.2d 31.

In a personal injury action arising out of an automobile accident at an intersection where there were no signs or markings indicating that the approaches to the intersection were no‑passing zones for distances of 100 feet from the intersection, the defendant Department of Highways and Public Transportation was not entitled to discretionary immunity for its failure to place either striping or signs on the highway to indicate a no‑passing zone, without some evidence that the Department actually weighed competing considerations and made a conscious choice not to place either striping or signs on the highway at the location in question. The fact that Sections 56‑5‑930 and 56‑5‑1890 allow the Department in certain instances to exercise discretion regarding the placement of traffic control devices, signs, and markings does not constitute evidence that the Department actually made a decision and exercised its discretion when a failure to place signs or markings at a particular location is called into question. Niver v. S.C. Dept. of Highways and Public Transp. (S.C.App. 1990) 302 S.C. 461, 395 S.E.2d 728.

7.5. Streets and causeways

City’s mere awareness of circumstances which were likely, even certain, to cause depression, rut, or hole in grassy area near street corner in which pedestrian stumbled and was injured did not place city on constructive notice of the actual defect which caused injury, as required to support claim against city under exception to sovereign immunity in Tort Claims Act for defects in streets and causeways; rather, pedestrian was required to show that city had notice of actual defect which she alleged was the proximate cause of her injury. Major v. City of Hartsville (S.C.App. 2012) 398 S.C. 257, 728 S.E.2d 52, rehearing denied, certiorari granted, reversed 410 S.C. 1, 763 S.E.2d 348. Municipal Corporations 791(3)

8. Traffic signals

Department of Transportation presented sufficient evidence to entitle it to jury charge on discretionary immunity provision of Tort Claims Act, in negligence action against Department and railroad for traumatic brain injury minor sustained when train collided with automobile; witnesses identified factors that were considered in placement of stop sign and stop line, witnesses testified about how position of stop sign was affected by presence of open road, driveway, culvert, and fiber optic lines, and witnesses opined that placement of stop sign and stop line was appropriate and in compliance with guidelines for traffic control devices. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Automobiles 309(1)

Public duty rule barred statutory negligence claims in motorist’s action against town after police officer allowed him to drive away from scene of traffic stop as replacement driver for driver who had been drinking alcohol, and he ran off road; statutes corresponding to motorist’s claims merely recited in broad terms when circumstances made it unlawful to operate motor vehicle, procedures surrounding incidents of possible driving under the influence (DUI), and general licensing requirement for motorists, but no statutes implicated by motorist’s claims identified any particular class of victims or any particular harm that would create special duty exception to general rule. Brown v. Brown (S.C.App. 2004) 360 S.C. 7, 598 S.E.2d 728. Municipal Corporations 747(3)

Police officer properly exercised his discretion in selecting motorist, who was passenger in vehicle driven by driver who had been drinking alcohol, as replacement driver, and thus, town was immune to motorist’s negligence claim under tort claims act; officer had choice of issuing citation to original driver and having car towed, or selecting another driver, and so officer chose motorist to drive after he volunteered and satisfactorily completed sobriety tests, motorist admitted that he was in better condition to drive than original driver, and other passenger expressly refused to drive, and police trainer stated that officer operated pursuant to accepted law enforcement practices. Brown v. Brown (S.C.App. 2004) 360 S.C. 7, 598 S.E.2d 728. Municipal Corporations 747(3); Public Employment 936

Tort Claims Act (TCA) section providing immunity for maintenance of traffic signals, rather than TCA section providing immunity for highway design, governed issue of Department of Transportation’s (DOT) liability in negligence action alleging that injuries pedestrian suffered after being hit by car were caused by DOT’s negligence in failing to provide traffic lights that would allow adequate time for pedestrian to cross, or provide pedestrian walk signals, or to warn pedestrians of hazardous nature of intersection; immunity provision regarding signs and signals was more specific one applicable to facts of instant case. Wooten ex rel. Wooten v. South Carolina Dept. of Transp. (S.C. 1999) 333 S.C. 464, 511 S.E.2d 355. Automobiles 279

Evidence presented question for the jury, on issue of whether Tort Claims Act section providing discretionary immunity for failure to initially place signs, signals, or warning devices, immunized Department of Transportation (DOT) from liability for injuries pedestrian suffered after being hit by car while attempting to cross road at intersection with traffic signals; assistant district traffic engineer for DOT admitted that intersection was dangerous for pedestrians, no pedestrian count was done at intersection, minimum crossing time at intersection would be 14 feet per second due to traffic‑actuated traffic signal, and traffic engineer testified that reasonable crossing speed was four feet per second and that median was not designed for pedestrians to wait in middle of road. Wooten ex rel. Wooten v. South Carolina Dept. of Transp. (S.C. 1999) 333 S.C. 464, 511 S.E.2d 355. Automobiles 308(6)

The “sign, signal, warning device, illumination device” referred to in Section 15‑78‑60 are “those used in connection with hazards normally connected with the use of public ways”—that is, warning devices used on the roadway, not on motor vehicles; thus, in an action arising from, inter alia, the malfunctioning of a school bus’s signal lights, the Department of Education could not use Section 15‑78‑60 to limit its liability. Singletary v. South Carolina Dept. of Educ. (S.C.App. 1994) 316 S.C. 153, 447 S.E.2d 231, rehearing denied.

9. Maintenance of premises

City was not immune from liability for its gross negligence in demolishing homeowners’ house pursuant to the Tort Claims Act exceptions that provided a governmental entity is not liable for a loss resulting from an administrative action or inaction of a legislative, judicial or quasi‑judicial nature, is not liable for a loss resulting from enforcement of a law, and is not liable for a loss resulting from the institution or prosecution of a judicial or administrative proceeding, where none of the three exceptions relied on by the city contained a gross negligence standard. Chakrabarti v. City of Orangeburg (S.C.App. 2013) 403 S.C. 308, 743 S.E.2d 109. Municipal Corporations 739(1)

A trial judge did not err in refusing to dismiss under Section 15‑78‑60(20) a personal injury action in which the plaintiff sought damages for injuries received as a result of his being struck by a glass bottle which was thrown by an unknown third party from a city auditorium’s balcony during a rock concert, where the complaint alleged that the city auditorium and its employees were negligent in adequately securing and maintaining the premises during the concert and that this negligence created a reasonably foreseeable risk of such third party conduct, and the complaint did not allege that the city auditorium was liable because of the criminal act of a third party; consequently, Section 15‑78‑60(20) would not operate to exonerate the city auditorium of liability for its own conduct. The city auditorium could not successfully defend on the ground that the plaintiff’s injuries were caused by the wrongful criminal act of a third party where the very basis upon which the city auditorium was claimed to be negligent was that it created a reasonably foreseeable risk of such third party conduct. Greenville Memorial Auditorium v. Martin (S.C. 1990) 301 S.C. 242, 391 S.E.2d 546.

10. Workers’ compensation

Exception to waiver of sovereign immunity under Tort Claims Act for loss resulting from any claim covered by Workers’ Compensation Act barred only claims by government employees against their employer when those claims were covered by workers’ compensation and, thus, did not bar claim by trucker, a private employee, against the Department of Transportation (DOT) for damages arising out of automobile accident between trucker and driver, even though trucker also received workers’ compensation benefits from his private employer. Buff v. South Carolina Dept. of Transp. (S.C.App. 1998) 332 S.C. 472, 505 S.E.2d 360, rehearing denied, certiorari granted, reversed 342 S.C. 416, 537 S.E.2d 279. States 112.2(2)

11. Schools

State university’s athletic director and deputy athletic director were entitled to immunity in their individual capacity under terms of South Carolina Tort Claims Act (SCTCA) in student athlete’s negligence action; actions complained of were all within scope of their official duties and neither allegations nor evidence suggested that either director or deputy director took any action which would have fallen within Act’s listed exceptions. DeCecco v. University of South Carolina, 2013, 918 F.Supp.2d 471. Education 1113; Public Employment 934

School district did not have any fiduciary duty or assumed duty in loco parentis to parents of female student who was involved in a sexual relationship with a substitute teacher. Doe v. Greenville County School Dist. (S.C. 2007) 375 S.C. 63, 651 S.E.2d 305, rehearing denied. Education 809(2); Parent And Child 382; Seduction 4

Complaint by female student’s parents, which alleged that school district acted with gross negligence in failing to protect their daughter from the known danger of a substitute teacher’s inappropriate interest in young girls and which alleged that parents had incurred medical expenses as a result of the negligence, stated a claim for negligent supervision sufficient to survive a motion to dismiss for failure to state a claim, although parents had not indicated any intent to present any medical bills, which trial court found necessary to show allowable damages. Doe v. Greenville County School Dist. (S.C. 2007) 375 S.C. 63, 651 S.E.2d 305, rehearing denied. Education 808(1); Education 818

State university did not owe duty of care to student when it advised student on compliance with National Collegiate Athletics Association (NCAA) eligibility standards, and thus, university was not liable for academic advisement rendering student ineligible to play baseball under NCAA regulations; recognizing such a duty would create potential for flood of litigation against schools. Hendricks v. Clemson University (S.C. 2003) 353 S.C. 449, 578 S.E.2d 711. Education 1223

Student’s breach of contract claim against state university, calling for an adjudication of deficiency of university’s services, could not proceed for purposes of student’s action against university after improper academic advisement rendered student ineligible to play baseball under National Collegiate Athletics Association (NCAA) regulations; allowing such claim to proceed would have invited courts to engage in type of subjective analysis that courts prohibiting educational malpractice claims in tort and contract have avoided. Hendricks v. Clemson University (S.C. 2003) 353 S.C. 449, 578 S.E.2d 711. Education 1223

Consumer Products Safety Commission’s (CPSC) guidelines for playground safety and the American Society for Testing and Materials’ (ASTM) standards for playground equipment were relevant to establish appropriate standard of care, regardless of whether school district had adopted those standards, in action brought by mother of child injured in fall from playground equipment against school district for negligence and gross negligence. Elledge v. Richland/Lexington School Dist. Five (S.C.App. 2000) 341 S.C. 473, 534 S.E.2d 289, rehearing denied, certiorari granted, affirmed 352 S.C. 179, 573 S.E.2d 789. Education 805(3); Education 819

School district exercised, at the very least, slight care for purposes of determining whether gross negligence exception to Tort Claims Act was applicable to wrongful death action brought against district by estate of student, who was killed by another student at school; for purposes of exception, gross negligence was the failure to exercise slight care, district had no knowledge of animosity between students, principal and security monitored hallways, and fact that district might have done more did not negate the fact that it exercised slight care. Etheredge v. Richland School Dist. One (S.C. 2000) 341 S.C. 307, 534 S.E.2d 275, rehearing denied. Education 808(3)

Whether teaching assistant’s actions in leaving mentally disabled students unattended while she used the restroom, or in allowing one of the students to go to restroom by herself, constituted grossly negligent supervision on part of school district was question for jury, in action brought against school district by guardian of student who was sexually assaulted while under school district’s supervision. Duncan v. Hampton County School Dist. No. 2 (S.C.App. 1999) 335 S.C. 535, 517 S.E.2d 449, rehearing denied, certiorari denied. Education 820

Whether sexual assault of mentally disabled student during time that students were supervised by teaching assistant was reasonably foreseeable by school district presented question for jury, in action brought by student’s guardian against school district for grossly negligent supervision. Duncan v. Hampton County School Dist. No. 2 (S.C.App. 1999) 335 S.C. 535, 517 S.E.2d 449, rehearing denied, certiorari denied. Education 820

Genuine issues of material fact precluded summary judgment on whether school district exercised its duties to protect, supervise and control students in its custody in grossly negligent manner within meaning of gross negligence exception to limited waiver of governmental immunity in Tort Claims Act. Etheredge v. Richland School Dist. I (S.C.App. 1998) 330 S.C. 447, 499 S.E.2d 238, rehearing denied, reversed 341 S.C. 307, 534 S.E.2d 275. Judgment 181(6)

In action against school district for injuries or death allegedly caused to student by school’s gross negligence in exercise of its duty of supervision, protection and control of students in its custody, if school district is found to be grossly negligent within meaning of gross negligence exception to Tort Claims Act, it may not claim immunity under any other subsections of Act providing exceptions to waiver of governmental immunity. Etheredge v. Richland School Dist. I (S.C.App. 1998) 330 S.C. 447, 499 S.E.2d 238, rehearing denied, reversed 341 S.C. 307, 534 S.E.2d 275. Education 808(3)

For purposes of affirmative defense of governmental limitation of liability under Tort Claims Act, issue of whether school was grossly negligent in its supervision of male student who was charged with criminal sexual conduct for his attack on another student in school gymnasium was for jury, where attacker was special education student who had prior disciplinary violations at school, including at least one involving improper touching of female students, and evidence showed that male students were left in gymnasium for at least 15 minutes while teacher in charge of them left school. Doe by Roe v. Orangeburg County School Dist. No. 2 (S.C.App. 1997) 329 S.C. 221, 495 S.E.2d 230, rehearing denied, certiorari granted, affirmed as modified 335 S.C. 556, 518 S.E.2d 259. Education 820

Evidence of female student’s alleged willing participation in sexual activity with male student was admissible in female’s action against school district alleging that school had negligently supervised its students, despite rape shield statute, as student’s willing participation was relevant to issue of damages incurred, and rape shield statute did not apply in civil action. Doe by Roe v. Orangeburg County School Dist. No. 2 (S.C.App. 1997) 329 S.C. 221, 495 S.E.2d 230, rehearing denied, certiorari granted, affirmed as modified 335 S.C. 556, 518 S.E.2d 259. Assault And Battery 35(2); Education 819

A school district was entitled to summary judgment in an action, brought by a student who was attacked by a non‑student on a school bus, which was based on the district’s alleged failure to enforce Section 59‑67‑245 (penalties for interference with a school bus), even though the student had been threatened on the bus prior to the attack and the district did not call the police, where the district counseled the student and her assailant after the threat, and attempted to contact their parents; the district exercised at least slight care and thus was not grossly negligent. Clyburn v. Sumter County School Dist. 17 (S.C.App. 1993) 311 S.C. 521, 429 S.E.2d 862, rehearing denied, certiorari granted, affirmed 317 S.C. 50, 451 S.E.2d 885.

The trial court erred in granting summary judgment to a school district which was alleged to have exercised its duty to supervise students in a grossly negligent manner where the evidence showed that the principal permitted the plaintiff, a mentally handicapped student, to be supervised by a school janitor during class hours, and that the plaintiff was injured in a fight with another student during this time; genuine issues of material fact regarding the school district’s exercise of its duty and the janitor’s quality of supervision were raised by the evidence. Grooms v. Marlboro County School Dist. (S.C.App. 1992) 307 S.C. 310, 414 S.E.2d 802.

A school district was not entitled to the dismissal of a complaint by a student which alleged that the district was grossly negligent in its supervision of the student and another student, which resulted in the other student’s assault on the plaintiff at school during school hours, since the complaint did not seek to pin liability on the school district based on the alleged criminal action of the other student; thus, the district was not entitled to the immunity of Section 15‑78‑60 and an issue for the trier of fact was presented. Woodell by Allen v. Marion School Dist. One (S.C.App. 1992) 307 S.C. 297, 414 S.E.2d 794.

A school district’s failure to conduct an identification check during one week of school to ensure that the students had parental permission to drive to a vocational center in private vehicles instead of riding a bus did not constitute an intentional and conscious failure, and thus the school district was not grossly negligent under Section 15‑78‑60 of the Tort Claims Act. Richardson by McDaniel v. Hambright (S.C. 1988) 296 S.C. 504, 374 S.E.2d 296. Automobiles 187(2)

11.5. Hiring and supervision

State university in South Carolina was entitled to common law sovereign immunity as to student athlete’s claims that university was negligent in hiring and retaining soccer coach, failing to take corrective action, failing to properly supervise or monitor university’s soccer coaching staff or exercise proper institutional control, and allowing negligent misrepresentations to be made to student athlete; South Carolina had expressly preserved its sovereign immunity as to such claims under South Carolina Tort Claims Act (SCTCA). DeCecco v. University of South Carolina, 2013, 918 F.Supp.2d 471. Education 1208

12. Amusement

Even though statutes regulating bungee jumping became effective after fatal accident involving mechanical device used to lift bungee jumpers, state Department of Labor, Licensing, and Regulation could be liable under licensing powers exception to the state Tort Claims Act for failing to investigate after receiving three credible post‑licensing reports of suspected problem with or modifications to that device; action pertained to modifications of device—which Department had licensed as amusement device—not to actual jumps that were made. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112.2(2)

State Department of Labor, Licensing, and Regulation was subject to liability under licensing powers exception to South Carolina Tort Claims Act for deaths that occurred when cage holding bungee jumpers fell to ground, even though owner of bungee jumping operation had replaced licensed lifting device with electric winch and cable before fatal accident; evidence indicated that Department was grossly negligent in failing to investigate whether it should suspend or revoke license after learning of potentially dangerous modifications. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112.2(2)

13. Licensing

Under South Carolina Tort Claims Act, when subsection of statute, which provides exceptions to the waiver of immunity of governmental entities for licensing functions, is applicable, the gross negligence exception from that subsection can be extended to apply to any other applicable immunity subsection. Repko v. County of Georgetown (S.C.App. 2016) 416 S.C. 22, 785 S.E.2d 376, rehearing denied. Municipal Corporations 723

Generally, licensing powers exception to the waiver of immunity under South Carolina Tort Claims Act is applied where a governmental agency actually engages in licensing functions. Repko v. County of Georgetown (S.C.App. 2016) 416 S.C. 22, 785 S.E.2d 376, rehearing denied. Municipal Corporations 724

A potential licensee, licensee, or an injured third party may seek relief against a government entity under the Tort Claims Act’s exception for when a licensing power or function is exercised in a grossly negligent manner. Chakrabarti v. City of Orangeburg (S.C.App. 2013) 403 S.C. 308, 743 S.E.2d 109. Municipal Corporations 723

Probate court’s issuance of a certificate of appointment to conservator was not the issuance of a license or similar instrument, and thus licensing powers exception to waiver of immunity under Tort Claims Act had no applicability, and could not be used to interject a gross negligence standard into all of the exceptions under which the probate court sought immunity, in conservatorship beneficiary’s suit against probate court for gross negligence or recklessness in the supervision of the conservatorship. Plyler v. Burns (S.C. 2007) 373 S.C. 637, 647 S.E.2d 188. Guardian And Ward 17; Guardian And Ward 37

Generally, the licensing powers exception to the waiver of immunity under Tort Claims Act is applied where a governmental agency actually engages in licensing functions. Plyler v. Burns (S.C. 2007) 373 S.C. 637, 647 S.E.2d 188. Municipal Corporations 724

Conduct of county, which constructively consented to non‑profit rural water and sewer service corporation servicing designated area in county by failing to respond to corporation’s proposal but undertook to provide its own sewer and water services to such area, did not amount to “gross negligence” for purposes of waiver of sovereign immunity in Tort Claims Act for exercising licensing functions in a grossly negligent manner, where county thought it complied with statute regarding proposals to service unincorporated areas by reading proposed ordinance allowing county to expand its own water and sewer services into area, and county was unaware that corporation had acquired any service rights. Williamsburg Rural Water and Sewer Co., Inc. v. Williamsburg County Water and Sewer Authority (S.C.App. 2003) 357 S.C. 251, 593 S.E.2d 154, rehearing denied, certiorari granted, reversed 367 S.C. 566, 627 S.E.2d 690. Counties 144

Survivors and estate of bungee jumper who was killed when cage in which he was being lifted fell to ground were not collaterally or judicially estopped from arguing in their action against state Department of Labor, Licensing, and Regulation that Department was grossly negligent, within meaning of licensing powers exception to state Tort Claims Act, for failing to suspend or revoke license for cage lifting device after learning that device may have been replaced by unlicensed winch and cable system; such claim was consistent with estate and survivors’ position in prior federal court action alleging that winch and cable system was not licensed. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. Estoppel 68(2); Judgment 829(3)

Jury question was presented in wrongful death action as to whether state Department of Labor, Licensing, and Regulation was grossly negligent within meaning of licensing powers exception to state Tort Claims Act for failing to take more than cursory glance after receiving three credible reports of suspected problem or hazard at licensed amusement device which was thereafter involved in fatal accident. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 211

Inspection powers exception to state Tort Claims Act was required to be read in light of licensing powers exception to Act in wrongful death action against state Department of Labor, Licensing, and Regulation arising from accident in which cage lifting bungee jumpers fell to ground; thus, because Department was grossly negligent within meaning of licensing powers exception for failing to investigate upon learning of potentially hazardous substantial modifications to lifting device, Department could not escape liability merely because inspection powers exception did not contain gross negligence standard. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112.2(2)

Where state Department of Labor, Licensing, and Regulation was grossly negligent within meaning of licensing powers exception to state Tort Claims Act for failing to investigate upon learning of potentially hazardous substantial modifications to device used to carry bungee jumpers and spectators, Department could not, in ensuing wrongful death action, escape liability by invoking Tort Claims Act exceptions for discretionary acts, law enforcement, and losses resulting from act or omission of person other than employee, none of which contained “gross negligence” standard. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112.2(2)

14. Law enforcement

Personal representative’s state law tort claims against city, police department, and police officer, arising from suspect’s fatal shooting death by another officer during execution of warrant, were barred, under South Carolina Tort Claims Act (SCTCA), protecting governmental entity from liability for loss resulting from adoption, enforcement, or compliance with any law or failure to adopt or enforce law, and from exercise of discretion or judgment. Wingate v. Byrd, 2016, 211 F.Supp.3d 816, opinion vacated in part on reconsideration 2016 WL 7012962. States 112(1)

South Carolina Tort Claims Act (SCTCA) waives the sovereign immunity of state agencies and entities for the purpose of allowing tort claims against those entities based on the actions of their employees. Wingate v. Byrd, 2016, 211 F.Supp.3d 816, opinion vacated in part on reconsideration 2016 WL 7012962. Federal Courts 2386(2)

The “two issue rule,” which provided that a verdict would not be overturned on appeal when the court granted a directed verdict on the basis of two defenses if the plaintiff failed to appeal both grounds, applied to warrant affirmance of directed verdict in favor of sheriff, in wrongful death and survival action against sheriff after arrestee was shot and killed by police officer while trying to escape from police custody; the court granted sheriff a directed verdict on four grounds, one of the grounds was that the Sheriff’s Department was entitled to immunity under statute, and estate failed to appeal the grant of a directed verdict on the issue of sheriff’s immunity. Jones v. Lott (S.C.App. 2008) 379 S.C. 285, 665 S.E.2d 642, rehearing denied, certiorari granted, affirmed 387 S.C. 339, 692 S.E.2d 900. Appeal And Error 854(5)

Law enforcement officer is not entitled to discretionary immunity for the decision on whether to begin or continue the immediate pursuit of a suspect. Clark v. South Carolina Dept. of Public Safety (S.C. 2005) 362 S.C. 377, 608 S.E.2d 573, rehearing denied. Automobiles 187(1)

Town was immune from motorist’s claim under tort claims act that town failed to properly train and supervise its police officers after officer allowed motorist to drive away from scene of traffic stop as replacement driver for driver who had been drinking alcohol, where officer’s decision in selecting motorist to be replacement driver met requirements to establish discretionary immunity under tort claims act. Brown v. Brown (S.C.App. 2004) 360 S.C. 7, 598 S.E.2d 728. Municipal Corporations 747(3); Public Employment 936

Juvenile probation officer was not acting as an agent and representative of family court, as was required for his placement of juvenile delinquent to be a quasi‑judicial act entitled to immunity under the Tort Claims Act; although probation officer was essentially charged with executing court’s orders and he may have been entitled to judicial immunity when executing those orders, officer deviated from the explicit terms of the order in placing juvenile on probation before he assaulted another youth. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Courts 55

Alleged liability of county sheriff’s department for false arrest did not arise from the execution, enforcement, or implementation of the magistrate’s order issuing an arrest warrant, and, thus, the department was not immune; the alleged liability arose from allegedly securing the warrant without probable cause. Gist v. Berkeley County Sheriff’s Dept. (S.C.App. 1999) 336 S.C. 611, 521 S.E.2d 163. False Imprisonment 15(1)

Tort Claims Act exceptions for law enforcement and for losses resulting from act or omission of person other than employee did not apply to wrongful death action alleging that state Department of Labor, Licensing, and Regulation negligently failed to investigate upon learning of potentially hazardous substantial modifications to licensed device in which bungee jumpers were being lifted when they fell to their deaths. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. States 112.2(2)

Deputy sheriff had objectively reasonable belief that arrestee was breaching peace, and thus deputy had probable cause to make warrantless arrest for disorderly conduct, and thus was entitled to qualified immunity for arrestee’s Section 1983 and South Carolina Tort Claims Act (SCTCA) claims for illegal seizure and false imprisonment, where at time of arrest, deputy knew arrestee was alleged to have been yelling in his backyard, deputy claimed to have heard yelling in arrestee’s backyard, and deputy believed, based on prior interactions, yelling voice belonged to arrestee. Barfield v. Kershaw County Sheriff’s Office (C.A.4 (S.C.) 2016) 638 Fed.Appx. 196, 2016 WL 80335. Arrest 63.4(13); False Imprisonment 13; Sheriffs and Constables 100

At time of deputy’s conduct of unprovoked tackling of nonthreatening, nonresisting misdemeanor suspect, it was clearly established that deputy was violating Fourth Amendment, and thus, deputy was not entitled to qualified immunity for arrestee’s Section 1983 and South Carolina Tort Claims Act (SCTCA) claims for excessive force and battery. Barfield v. Kershaw County Sheriff’s Office (C.A.4 (S.C.) 2016) 638 Fed.Appx. 196, 2016 WL 80335. Civil Rights 1376(6); Sheriffs and Constables 100

14.5. Social services

Department of Social Services (DSS) did not act in a grossly negligent manner in the Emergency Protective Custody (EPC) removal of poisoned children, such that DSS’s conduct fell within the exception to waiver of immunity under South Carolina Tort Claims Act for a loss resulting from responsibility or duty; DSS caseworker responded to the hospital within 45 minutes of the reported parental poisoning, the children were classified as a medium danger rating which allowed caseworker merely 24 hours to conduct her investigation pursuant to DSS policy, caseworker interviewed family members and learned the children became sick after mother administered their medicine, caseworker also obtained parents’ consent to have the children’s medical information released to DSS, and caseworker further obtained the children’s toxicology report. Bass v. South Carolina Dept. of Social Services (S.C. 2015) 414 S.C. 558, 780 S.E.2d 252. Infants 1448

15. Court orders

In an action for unlawful arrest, a city was not entitled to summary judgment under Section 15‑78‑60(3) where the plaintiff was arrested before the city obtained a warrant from a magistrate, and thus the actions of the police did not occur either during the execution or enforcement of a court order, or during the lawful implementation of any process. Wortman v. Spartanburg (S.C. 1992) 310 S.C. 1, 425 S.E.2d 18. Municipal Corporations 747(3)

15.5. Legislative or quasi‑legislative act

Under Tort Claims Act (TCA), Board of Dentistry was immune from tort claims that were asserted by company employing dental hygienists and that arose from Board’s emergency regulation requiring clinical examination of patient by supervising dentist within 45 days before hygienist could perform preventative dental care for patient in school setting; Board’s promulgation of emergency regulation constituted legislative or quasi‑legislative act that was protected from liability under TCA. Health Promotion Specialists, LLC v. South Carolina Bd. of Dentistry (S.C. 2013) 403 S.C. 623, 743 S.E.2d 808. Health 195

16. Judicial or quasi‑judicial actions

City’s design and maintenance of drainage system was quasi‑judicial function subject to governmental immunity under Tort Claims Act, and thus, city was not liable under act when business owner’s property near drainage system flooded during rainstorm. Hawkins v. City of Greenville (S.C.App. 2004) 358 S.C. 280, 594 S.E.2d 557. Municipal Corporations 835

Probation counselor’s placement of juvenile delinquent, after he was expelled from his foster home, was an administrative, rather than a judicial or quasi‑judicial function, and family court’s mere knowledge that counselor placed juvenile with his family, without more, was insufficient to convert that placement into a judicial act that was entitled to judicial or quasi‑judicial immunity in action brought on behalf of child who was violently assaulted by juvenile while he was on probation. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Courts 55

Determining whether a quasi‑judicial actor is entitled to absolute immunity requires the court to consider the function performed by the individual, rather than the individual’s position. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Public Employment 899

Juvenile probation officer was not acting as an agent and representative of family court, as was required for his placement of juvenile delinquent to be a quasi‑judicial act entitled to immunity under the Tort Claims Act; although probation officer was essentially charged with executing court’s orders and he may have been entitled to judicial immunity when executing those orders, officer deviated from the explicit terms of the order in placing juvenile on probation before he assaulted another youth. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Courts 55

A prosecutor, in his official capacity, is immune from a Tort Claims Act suit involving “judicial” or “quasi‑judicial” acts, provided a defendant prosecutor raises the affirmative defense of sovereign immunity in his return. Williams v. Condon (S.C.App. 2001) 347 S.C. 227, 553 S.E.2d 496. District And Prosecuting Attorneys 10

16.5. Affirmative defenses

Affirmative defenses in Tort Claims Act exempting government from liability should be liberally construed to limit liability. Richland County v. Carolina Chloride, Inc. (S.C.App. 2009) 382 S.C. 634, 677 S.E.2d 892, rehearing denied, certiorari granted, affirmed in part, reversed in part 394 S.C. 154, 714 S.E.2d 869, rehearing granted, rehearing dismissed 396 S.C. 311, 721 S.E.2d 441, certiorari denied 133 S.Ct. 168, 568 U.S. 821, 184 L.Ed.2d 36. Municipal Corporations 723.5

The governmental entity bears the burden of establishing an affirmative defense under the Tort Claims Act. Richland County v. Carolina Chloride, Inc. (S.C.App. 2009) 382 S.C. 634, 677 S.E.2d 892, rehearing denied, certiorari granted, affirmed in part, reversed in part 394 S.C. 154, 714 S.E.2d 869, rehearing granted, rehearing dismissed 396 S.C. 311, 721 S.E.2d 441, certiorari denied 133 S.Ct. 168, 568 U.S. 821, 184 L.Ed.2d 36. Municipal Corporations 742(5)

17. Assessment and collection of taxes

Tax sale purchaser’s loss, which arose from county officials’ mistaken payment of purchase price to taxpayers rather than purchasers upon setting tax sale aside, did not result from “assessment or collection of taxes or ... enforcement of tax laws,” and thus, officials were not statutorily immune from liability in purchaser’s action to recover purchase price plus interest; officials’ failure to refund purchase price to purchaser was ministerial act separate and distinct from assessing, collecting, or enforcing tax laws. H & K Specialists v. Brannen (S.C.App. 2000) 340 S.C. 585, 532 S.E.2d 617. Counties 92; Public Employment 933

18. Failure to follow laws or policies

A claim for failure to enforce the bonding requirements of the Subcontractors’ and Suppliers’ Payment Protection Act (SPPA) is not properly brought pursuant to the Tort Claims Act because the Tort Claims Act does not act as a waiver of sovereign immunity when a governmental entity fails to enforce a statute. Sloan Const. Co., Inc. v. Southco Grassing, Inc. (S.C. 2008) 377 S.C. 108, 659 S.E.2d 158. Municipal Corporations 723

Department of Disabilities and Special Needs failed to preserve for appeal its argument that it was immune from liability for alleged personal injuries of mentally retarded resident of treatment center, under statute providing that a governmental entity is not liable from adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, where argument was neither presented to nor ruled on by the trial court. Madison ex rel. Bryant v. Babcock Center, Inc. (S.C. 2006) 371 S.C. 123, 638 S.E.2d 650, rehearing denied. Appeal And Error 173(2)

Department of Public Safety did not enjoy absolute immunity under the Tort Claims Act from wrongful death suit brought by father of motorist who died when she was struck by vehicle involved in high‑speed police pursuit; while Act afforded immunity for losses caused by failure to enforce written policies, and Department violated its policy by not having a supervisor present to monitor the pursuit, the Department’s policy was merely a statement of generally accepted law enforcement guidelines, and thus was not within scope of immunity provision. Clark v. South Carolina Dept. of Public Safety (S.C.App. 2002) 353 S.C. 291, 578 S.E.2d 16, rehearing denied, affirmed 362 S.C. 377, 608 S.E.2d 573. Automobiles 187(4)

The defendant county was entitled to summary judgment in an action to recover for the death of a bicyclist who was fatally injured when she was chased into traffic by several vicious dogs, since the gravamen of the complaint was the county’s failure to enforce an animal control ordinance, and thus the county was immune from liability under Section 15‑78‑60(4). Adkins v. Varn (S.C. 1993) 312 S.C. 188, 439 S.E.2d 822. Counties 141

18.5. Abuse of process

Tort of abuse of process did not require the finding of actual malice or intent to harm, and therefore, county sheriff was not entitled to sovereign immunity from abuse of process claim pursuant to exception to general waiver of immunity under the South Carolina Tort Claims Act. Swicegood v. Lott (S.C.App. 2008) 379 S.C. 346, 665 S.E.2d 211, rehearing denied, certiorari denied. Process 179; Process 191

19. Prosecutors

Regardless of the prosecutor’s motivation, a prosecutor in the employ of the state is absolutely immune from personal liability under Sections 1983 or the Tort Claims Act for actions relating to the prosecution of an individual as a criminal defendant, provided the actions complained of were committed while the prosecutor was acting as an advocate for the state rather than as an administrator or investigative officer. Williams v. Condon (S.C.App. 2001) 347 S.C. 227, 553 S.E.2d 496. Civil Rights 1376(9); District And Prosecuting Attorneys 10

19.5. Malicious prosecution

Correctional officers failed to establish malice with respect to their claim for malicious prosecution against Department of Corrections, in pursuing criminal charges against them for drug trafficking, DOC’s institution of original proceedings against officers was result of a thorough investigation, involving interviews with no less than 38 inmates. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Malicious Prosecution 31

In an action for malicious prosecution, malice may be inferred from a lack of probable cause to institute the prosecution. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Malicious Prosecution 32

In context of claim for malicious prosecution, “malice” is the deliberate intentional doing of an act without just cause or excuse. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Malicious Prosecution 28

Evidence established that Department of Corrections (DOC) had probable cause to pursue criminal charges against correctional officers, in action for malicious prosecution; indictments of officers on charges of drug trafficking were prima facie evidence of probable cause, and facts, including bank records of certain officers, revealed numerous, large cash deposits and wire transfers during moths prior to investigation, supported finding that DOC had probable cause to pursue criminal charges. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Malicious Prosecution 18(5); Malicious Prosecution 24(7)

Although the question of whether probable cause exists is ordinarily a jury question, in an action for malicious prosecution, it may be decided as a matter of law when the evidence yields but one conclusion. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Malicious Prosecution 71(2)

A true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Malicious Prosecution 24(7)

For purposes of probable cause element of claim for malicious prosecution, the facts must be regarded from the point of view of the party prosecuting; the question is not what the actual facts were, but what he honestly believed them to be. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Malicious Prosecution 20

For purposes of requirement that plaintiff asserting claim for malicious prosecution show the institution of judicial proceedings without probable cause against him, “probable cause” means the extent of such facts and circumstances as would excite the belief in a reasonable mind acting on the facts within the knowledge of the prosecutor that the person charged was guilty of a crime for which he has been charged, and only those facts and circumstances which were or should have been known to the prosecutor at the time he instituted the prosecution should be considered. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Malicious Prosecution 18(6); Malicious Prosecution 20

Correctional officers failed to establish a favorable determination of prior criminal charges against them, which was necessary element for them to establish claim for malicious prosecution against Department of Corrections (DOC); while charges against officers had been nolle prossed, the reason stated for the nolle prosse was that arresting agency had chosen to pursue charges in federal court, which reason did not imply and was not consistent with officers’ innocence. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Malicious Prosecution 35(1)

To maintain an action for malicious prosecution, plaintiff must establish: (1) the institution or continuation of original judicial proceedings, (2) by or at the instance of the defendant, (3) termination of such proceedings in plaintiff’s favor, (4) malice in instituting such proceedings, (5) lack of probable cause, and (6) resulting injury or damage. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Malicious Prosecution .5

20. Prison officials

State employee can be held personally liable in federal court, without violating Eleventh Amendment, for intentional torts not within scope of official duties, or for conduct constituting actual fraud, actual malice, intent to harm or involving crime of moral turpitude. Smith v. Ozmint, 2005, 394 F.Supp.2d 787. Federal Courts 2384

Correctional officers failed to show that their arrests on charges of trafficking in crack cocaine by Department of Corrections (DOC) were unlawful, as necessary to establish claim for false imprisonment; facts known to magistrate at time of probable cause determination included information from affidavits in support of warrants, and from sworn, oral testimony, and those facts would induce ordinarily prudent and cautious person under the circumstances to believe that officers had committed offenses charged. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. False Imprisonment 7(1); False Imprisonment 13

Failure of state Department of Corrections (DOC) to pay certain wage to inmates employed in prison industry does not constitute tort so as to be cognizable under Tort Claims Act. Adkins v. South Carolina Dept. of Corrections (S.C. 2004) 360 S.C. 413, 602 S.E.2d 51. States 112.2(4)

Even if failure of state Department of Corrections (DOC) to pay certain wage to inmates employed in prison industry were a tort claims case, DOC would be immune from liability under statute providing governmental immunity for loss resulting from exercise of discretion or judgment by governmental entity. Adkins v. South Carolina Dept. of Corrections (S.C. 2004) 360 S.C. 413, 602 S.E.2d 51. States 112.2(4)

County correctional officers acted in grossly negligent manner in monitoring arrestee suffering from alcohol withdrawal that proximately caused arrestee’s death, and thus, detention center was not entitled to government immunity from liability for wrongful death; officers were not apprised of arrestee’s condition by detention center physician despite serious nature of condition, officers checked on arrestee approximately every 30 minutes and failed to arouse him when he appeared to be sleeping to determine whether condition was improving or deteriorating, despite established departmental policy that individuals suffering from alcohol withdrawal be monitored intensively and methodically every 15 minutes and aroused from sleep every hour. Jinks v. Richland County (S.C. 2003) 355 S.C. 341, 585 S.E.2d 281. Counties 146

It was not necessary for Supreme Court to decide whether federal court’s findings regarding sufficiency of county detention facility’s medical observation policy and arrival of arrestee’s prescription medication after arrestee’s death collaterally estopped state wrongful death action brought by personal representative of arrestee’s estate, where personal representative presented other additional evidence of gross negligence based on infirmary physician’s failure to advise officers that arrestee was suffering from alcohol withdrawal, which prevented officers from adequately monitoring arrestee’s condition. Jinks v. Richland County (S.C. 2003) 355 S.C. 341, 585 S.E.2d 281. Appeal And Error 843(2)

Prison officials were immune from suit based upon the South Carolina State Tort Claims Act, Sections 15‑78‑10 et seq. arising from the denial of an inmate’s application for participation in a work‑release program; the decision to grant or deny such an application clearly involves the exercise of discretion or judgment which is protected by Section 15‑78‑60. Quillian v. Evatt (S.C.App. 1994) 315 S.C. 489, 445 S.E.2d 639, rehearing denied, certiorari denied, certiorari denied 115 S.Ct. 1105, 513 U.S. 1152, 130 L.Ed.2d 1071. Civil Rights 1376(7)

A jury’s finding that the transfer of a prisoner from a maximum security facility to the general population at a prison where he killed another inmate was the result of gross negligence, so that the Department of Corrections could be held liable under the Tort Claims Act, was supported by evidence that the prisoner had been psychologically evaluated as having strong psychopathic patterns, being unpredictable, and being prone to violent outbursts, the evaluation had recommended against placement at the prison, the prisoner had 13 disciplinary violations at the maximum security facility in a 10‑year period, one of which involved killing another inmate, he had been in possession of weapons which he used to rob other inmates, and the Department of Corrections knew all of these facts when it transferred the prisoner. Jackson v. South Carolina Dept. of Corrections (S.C.App. 1989) 301 S.C. 125, 390 S.E.2d 467, certiorari granted, affirmed 302 S.C. 519, 397 S.E.2d 377. States 112.2(4)

20.5. Wrongful termination

Correctional officers who voluntarily resigned from their employment with Department of Corrections (DOC) failed to state a cause of action for wrongful termination. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Prisons 396; Public Employment 151

21. Burden of proof

The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Curiel v. Hampton County E.M.S. (S.C.App. 2012) 401 S.C. 646, 737 S.E.2d 854, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 411 S.C. 426, 768 S.E.2d 669. Municipal Corporations 742(5)

The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Plyler v. Burns (S.C. 2007) 373 S.C. 637, 647 S.E.2d 188. Municipal Corporations 742(5)

The governmental entity claiming an exception to the waiver of immunity under the Tort Claims Act has the burden of establishing any limitation on liability. Madison ex rel. Bryant v. Babcock Center, Inc. (S.C. 2006) 371 S.C. 123, 638 S.E.2d 650, rehearing denied. Municipal Corporations 742(5)

Burden is on plaintiff asserting claim for malicious prosecution to show that the prosecuting person or entity lacked probable cause to pursue a criminal or civil action against him. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Malicious Prosecution 56

An action for malicious prosecution fails if plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Malicious Prosecution 64(2)

Once public hospital prevailed in asserting affirmative defense of governmental immunity, patient who brought negligence action against hospital had burden of proving nurse’s conduct of allegedly improperly restraining and supervising him was grossly negligent. Stewart v. Richland Memorial Hosp. (S.C.App. 2002) 350 S.C. 589, 567 S.E.2d 510, rehearing denied. Health 819

Governmental entity bears the burden of establishing discretionary immunity from claims under Tort Claims Act as an affirmative defense. Sabb v. South Carolina State University (S.C. 2002) 350 S.C. 416, 567 S.E.2d 231. Municipal Corporations 742(5)

Governmental entity claiming an exception to the waiver of immunity under the Tort Claims Act has the burden of establishing any limitation on liability. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Municipal Corporations 742(5)

Burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Arthurs v. Aiken County (S.C.App. 1999) 338 S.C. 253, 525 S.E.2d 542, rehearing denied, certiorari granted, affirmed as modified 346 S.C. 97, 551 S.E.2d 579. Municipal Corporations 742(5)

The Tort Claims Act provides certain exemptions from or limitations on the government’s liability for its torts, and the burden of proving any of these exceptions to the general rule of governmental liability as a private individual is upon the governmental entity asserting it as an affirmative defense. Duncan v. Hampton County School Dist. No. 2 (S.C.App. 1999) 335 S.C. 535, 517 S.E.2d 449, rehearing denied, certiorari denied. Municipal Corporations 742(5)

Under Tort Claims Act, burden of establishing limitation upon liability of governmental entity responsible to supervise, protect, or control students unless entity acts in grossly negligent manner is upon governmental entity asserting it as affirmative defense. Doe by Roe v. Orangeburg County School Dist. No. 2 (S.C.App. 1997) 329 S.C. 221, 495 S.E.2d 230, rehearing denied, certiorari granted, affirmed as modified 335 S.C. 556, 518 S.E.2d 259. Education 383

Discretionary act immunity which protects governmental entities is an affirmative defense that governmental entity has burden of proving. Creech v. South Carolina Wildlife and Marine Resources Dept. (S.C. 1997) 328 S.C. 24, 491 S.E.2d 571. Municipal Corporations 742(5)

Governmental entity asserting a limitation upon liability, or exception to waiver of immunity under Tort Claims Act, must prove exception or limitation as affirmative defense. Wooten by Wooten v. South Carolina Dept. of Transp. (S.C.App. 1997) 326 S.C. 516, 485 S.E.2d 119, rehearing denied, affirmed as modified 333 S.C. 464, 511 S.E.2d 355. Municipal Corporations 742(5)

The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the South Carolina Tort Claims Act, Sections 15‑78‑10 et seq. is upon the governmental entity asserting it as an affirmative defense. Strange v. South Carolina Dept. of Highways and Public Transp. (S.C. 1994) 314 S.C. 427, 445 S.E.2d 439. Municipal Corporations 742(5)

The Tort Claims Act, Sections 15‑78‑10 et seq., did not bar a suit by a motorist against the Department of Highways and Public Transportation where she alleged that because of an unusually low shoulder, of which the department was aware, she lost control of her car when she inadvertently drove her right wheels off the edge of a highway and was injured; under Section 15‑78‑60 the governmental entity bears the burden of establishing discretionary immunity as an affirmative defense. Foster v. South Carolina Dept. of Highways and Public Transp. (S.C. 1992) 306 S.C. 519, 413 S.E.2d 31.

The burden of establishing a limitation upon liability or an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense. Niver v. S.C. Dept. of Highways and Public Transp. (S.C.App. 1990) 302 S.C. 461, 395 S.E.2d 728. Municipal Corporations 742(5)

22. Admissibility of evidence

Expert opinion that Department of Social Services (DSS) failed to exercise slight care in investigating a potential parental poisoning following caseworker’s initial investigation, and in placing children with a relative, was presented with sufficient evidentiary foundation to allow it to be used to defeat DSS’s motion for judgment notwithstanding the verdict (JNOV) with regard to parent’s claim of gross negligence precluding application of exception to waiver of immunity under South Carolina Tort Claims Act for a loss resulting from responsibility or duty; the expert stated the proper standard of care and provided specific examples to support his opinion that DSS breached the standard of care. Bass v. South Carolina Dept. of Social Services (S.C. 2015) 414 S.C. 558, 780 S.E.2d 252. Evidence 571(3); Infants 1457; Judgment 199(3.15)

Trial court did not abuse its discretion, in gross negligence action brought by operator of waste tire processing and disposal facility against Department of Health and Environmental Control (DHEC) for not placing operator back on rebate list after ALJ ordered DHEC to do so in an administrative proceeding, by admitting evidence of events and damages that occurred before order was issued by DHEC Board reversing ALJ’s decision, as evidence was necessary as a means of introducing the jury to the background events leading up to the period of time when operator was not placed back on the rebate list, among other things evidence served to show that DHEC officials had knowledge of rebate list’s impact on a facility’s business, and trial court specifically instructed jury not to consider such evidence when determining damages operator suffered beginning when DHEC Board reversed ALJ. Proctor v. Dept. of Health and Environmental Control (S.C.App. 2006) 368 S.C. 279, 628 S.E.2d 496. States 209

23. Instructions

Railroad and Department of Transportation were entitled to jury instructions on statutes related to placement of signs at railroad crossings and Department’s authority to close unsafe crossings, in negligence action against railroad and Department for traumatic brain injury minor sustained when train collided with automobile; statutes were relevant, as plaintiff alleged that railroad was negligent in maintaining unreasonably hazardous and unsafe crossing, expert opined that crossing could have been made safer with installation of active traffic‑control devices, and jury was informed that railroad could not close crossing of its own accord. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Automobiles 309(2); Evidence 571(6); Railroads 351(1)

Trial court should not have charged jury on statutes concerning a driver’s duties at stop signs on intersecting highways, in negligence action against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; statutes were irrelevant, as they did not govern a driver’s duty to stop at a railroad crossing, and statutes conflicted with statute specifically addressing driver’s duty to stop at crossing that Department had deemed dangerous. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Automobiles 309(4); Railroads 351(16)

Trial court’s error in charging statutes concerning a driver’s duties at stop signs on intersecting highways prejudiced minor’s guardian ad litem (GAL), in his negligence action on minor’s behalf against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; jury could have been confused as to which statutory provisions governed duty of motorist, who was minor’s mother, to stop at railroad crossing, might have applied incorrect statutes to conclude that motorist was negligent for violating statute addressing driver’s duty to stop at railroad crossing that Department had deemed dangerous, and, in turn, may have concluded that her negligence superseded any admitted or proven negligence of railroad or Department. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Appeal and Error 1066(8)

Evidence warranted charging jury on law of intervening or superseding cause, in negligence action against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile, despite claim that it was foreseeable that motorist, who was minor’s mother, might not stop at stop line at railroad crossing as it was placed too close to railroad track; evidence of motorist’s negligence was not limited to issue of stop line, as she failed to yield, failed to exercise due care, and admitted to consuming alcohol and prescription medication prior to driving, and any of these actions, none of which was reasonably foreseeable, could have served as intervening cause of accident. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Automobiles 309(1); Railroads 351(21)

Trial court’s error in charging jury that “it is always train time at a railroad crossing” prejudiced minor’s guardian ad litem (GAL), in his negligence action on minor’s behalf against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; due to erroneous charge, jury may have incorrectly assigned higher duty of care to motorist, who was mother of minor, or shifted duty entirely to her. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Appeal and Error 1064.1(5)

Minor’s guardian ad litem (GAL) was entitled to have jury instructed that motorist, who was minor’s mother, was not presumptively impaired by alcohol, in his negligence action on minor’s behalf against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; trial court charged jury under criminal statute involving charge of driving under the influence (DUI), but motorist’s blood alcohol content was only 0.018. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Automobiles 309(4); Railroads 351(14)

Trial court’s error in refusing to charge jury that motorist, who was minor’s mother, was not presumptively impaired by alcohol, prejudiced minor’s guardian ad litem (GAL), in his negligence action on minor’s behalf against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; court charged jury on criminal statute involving charge of driving under the influence (DUI), and, thus, jury could have found motorist was impaired while driving and that this criminal act negated any negligence on part of railroad and Department. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Appeal and Error 1067

Even if trial court erred in giving jury charge on discretionary immunity provision of Tort Claims Act, minor’s guardian ad litem (GAL) was not prejudiced, in his negligence action on minor’s behalf against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; GAL did not raise any challenge to other immunity provisions of Act that court charged, and, thus, jury may have based its decision on one of those provisions. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Appeal and Error 1064.1(5)

Instruction to jury limiting operator’s damages to $9,500 was not warranted, in trial of action brought by operator of waste tire processing and disposal facility against DHEC after DHEC refused to place operator back on rebate list after being so ordered by ALJ in administrative proceeding, where operator submitted evidence indicating his damages were in excess of $9,500. Proctor v. Dept. of Health and Environmental Control (S.C.App. 2006) 368 S.C. 279, 628 S.E.2d 496. States 211

24. Method of providing police protection

Exception to waiver of governmental immunity for loss resulting from certain enumerated events including “failure to provide the method of providing police or fire protection” did not apply to motorist’s claim against county emergency medical service for loss from collision with ambulance that was responding to structure fire where burn victim was in need of care. Curiel v. Hampton County E.M.S. (S.C.App. 2012) 401 S.C. 646, 737 S.E.2d 854, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 411 S.C. 426, 768 S.E.2d 669. Automobiles 187(3)

Under provision of state Tort Claims Act governing exceptions to waiver of immunity, governmental entity is not liable for the failure to provide or the method of providing police or fire protection. Huggins v. Metts (S.C.App. 2006) 371 S.C. 621, 640 S.E.2d 465, rehearing denied, certiorari denied. Municipal Corporations 747(3)

Provision of state Tort Claims Act stating that immunity is not waived regarding claims involving method of providing police protection applied to tort claims brought against sheriff by personal representative of estate of individual, who was fatally shot by officers from sheriff’s department when individual walked toward officer while carrying two large butcher knives; claims concerned manner in which police chose to provide police protection. Huggins v. Metts (S.C.App. 2006) 371 S.C. 621, 640 S.E.2d 465, rehearing denied, certiorari denied. Public Employment 972; Sheriffs And Constables 100

25. Intent to harm exception

Municipality, as public employer, was immune from liability under South Carolina law arising from any alleged personal injury to municipal employee due to intentional conduct by other municipal employees who may have “desired” to cause harm to him. Cornelius v. City of Columbia, 2009, 663 F.Supp.2d 471, affirmed 399 Fed.Appx. 853, 2010 WL 4366846. Municipal Corporations 745

Because of its elements, cause of action for abuse of process was not barred by section of the Tort Claims Act, providing that governmental entity is not liable for a loss resulting from 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; cause of action for abuse of process contained neither an element of intent to harm, nor actual malice. McBride v. School Dist. of Greenville County (S.C.App. 2010) 389 S.C. 546, 698 S.E.2d 845. Process 188

Intent‑to‑harm exception to waiver of immunity provided in state Tort Claims Act did not apply to electrical subcontractor’s claims against school district for tortious interference with contractual relations and intentional interference with prospective contractual relations; none of elements required for either cause of action included intent to harm. Eldeco, Inc. v. Charleston County School Dist. (S.C. 2007) 372 S.C. 470, 642 S.E.2d 726. Education 204; Torts 215

26. Judicial immunity

Probate court’s inclusion of the affirmative defense of common‑law judicial immunity in its memorandum in support of motion to dismiss, but not in the motion to dismiss itself, did not result in waiver of the defense, in action brought by beneficiary of conservatorship alleging gross negligence or recklessness in the supervision of the conservatorship; beneficiary did not suffer any prejudice or unfair surprise because the motion to dismiss asserted judicial immunity pursuant to the Tort Claims Act, the analysis of which was substantially similar to the analysis for common‑law judicial immunity. Plyler v. Burns (S.C. 2007) 373 S.C. 637, 647 S.E.2d 188. Judges 36; Pretrial Procedure 562

27. Zoning

Real property purchaser’s claims against county for negligence and negligent misrepresentation, arising from actions of county staff in mistakenly advising purchaser on the applicable zoning restrictions on its property, did not emanate from adoption or enforcement of county’s zoning ordinances, and thus purchaser’s claims were not barred under provision of Tort Claims Act stating a governmental entity was not liable for loss resulting from adoption, enforcement, or compliance with any law. Quail Hill, LLC v. County of Richland (S.C.App. 2008) 379 S.C. 314, 665 S.E.2d 194, rehearing denied, certiorari granted, affirmed in part, reversed in part 387 S.C. 223, 692 S.E.2d 499. Counties 146

28. Independent contractors

Governmental hospital subject to the Tort Claims Act could not be held vicariously liable for any alleged negligent acts or omissions committed by emergency room physician, where physician was an independent contractor, rather than an employee of hospital. Smith v. Regional Medical Center of Orangeburg and Calhoun Counties (S.C.App. 2011) 394 S.C. 110, 713 S.E.2d 656, rehearing denied. Health 782

29. Constructive notice

For purposes of section of South Carolina Tort Claims Act (SCTCA) precluding a government entity from being liable for defect in road or highway unless entity failed to correct defect within reasonable time after obtaining actual or constructive notice, “constructive notice” arises when a condition has existed for such a period of time that a municipality in the use of reasonable care should have discovered the condition. Major v. City of Hartsville (S.C. 2014) 410 S.C. 1, 763 S.E.2d 348. Highways 193

For purposes of section of South Carolina Tort Claims Act (SCTCA) precluding a government entity from being liable for defect in road or highway unless entity failed to correct defect within reasonable time after obtaining actual or constructive notice, where a recurring condition is of such a nature as to amount to a continual condition, when coupled with other factors, the recurring condition may be sufficient to create a jury issue as to constructive notice. Major v. City of Hartsville (S.C. 2014) 410 S.C. 1, 763 S.E.2d 348. Highways 193

30. Summary judgment

Genuine issues of material fact as to whether city should be charged with constructive notice of rut in unpaved area of intersection on basis that rut existed for such a period of time that city, in use of reasonable care, should have discovered it and as to whether recurring nature of defect created continual condition giving rise to constructive notice precluded summary judgment in favor of city under South Carolina Tort Claims Act (SCTCA) in pedestrian’s personal‑injury action. Major v. City of Hartsville (S.C. 2014) 410 S.C. 1, 763 S.E.2d 348. Judgment 181(33)

Genuine issues of material facts are regarding reasonableness of deputy’s use of force in making warrantless misdemeanor arrest precluded summary judgment in favor of deputy and sheriff’s office in arrestee’s Section 1983 claim for excessive force and his South Carolina Tort Claims Act (SCTCA) claim for battery. Barfield v. Kershaw County Sheriff’s Office (C.A.4 (S.C.) 2016) 638 Fed.Appx. 196, 2016 WL 80335. Federal Civil Procedure 2491.5

30.25. Questions for jury

Issue of whether county was grossly negligent in exercising its licensing powers or functions, by allowing repeated reductions to financial guarantee posted by developer for infrastructure as a prerequisite to selling lots, so as to subject county to liability under South Carolina Tort Claims Act, was for jury in landowner’s negligence action against county brought after infrastructure development was left unfinished. Repko v. County of Georgetown (S.C.App. 2016) 416 S.C. 22, 785 S.E.2d 376, rehearing denied. Counties 224

30.5. Sufficiency of evidence

Evidence supported inference that town failed to exercise due care in the operation and maintenance of its sewer system, as required to establish that town was negligent in homeowner’s action brought after municipal sewer system backed up, overflowed, and flooded their property; town was unable to precisely locate its own sewer line, much less reach it in order to properly maintain it, and Department of Health and Environmental Control compliance officer testified about sewer system’s infiltration problems and an unidentified obstruction encountered when a camera test was attempted on the line running beneath the property. Graham v. Town of Latta, South Carolina (S.C.App. 2016) 417 S.C. 164, 789 S.E.2d 71, rehearing denied. Municipal Corporations 845(4)

Evidence supported finding that town’s choice to do nothing about leaking sewer pipe was not the product of weighing competing considerations and making a conscious choice, as would establish discretionary immunity under South Carolina Tort Claims Act in homeowner’s negligence action brought after municipal sewer system backed up, overflowed, and flooded their property; there was no expert testimony indicating the town actually weighed the competing considerations when confronted with the problem, or that the town utilized accepted professional standards in choosing to do nothing. Graham v. Town of Latta, South Carolina (S.C.App. 2016) 417 S.C. 164, 789 S.E.2d 71, rehearing denied. Municipal Corporations 845(4); States 112(2)

Expert testimony that Department of Social Services (DSS) failed to exercise slight care in investigating a potential parental poisoning and in placing children with a relative, in addition to other evidence, was sufficient to support jury finding that DSS was grossly negligent, such that DSS’s conduct fell within the exception to waiver of immunity under South Carolina Tort Claims Act for a loss resulting from responsibility or duty; following DSS caseworker’s initial investigation, she failed to interview the children’s doctors, other medical staff, or their family doctor who initially treated the children, and failed to conduct any investigation into the medication after being told the children became ill shortly after mother administered their medicine. Bass v. South Carolina Dept. of Social Services (S.C. 2015) 414 S.C. 558, 780 S.E.2d 252. Evidence 571(3); Infants 1457

31. Review

Minor’s guardian ad litem (GAL) preserved for appellate review argument that jury charge on discretionary immunity for governmental entities should not have been given, in his negligence action on minor’s behalf against railroad and Department of Transportation for traumatic brain injury minor sustained when train collided with automobile; while GAL did not use phrase “professional standards” when specifically objected to charge, he clearly challenged charge and cited statute governing discretionary immunity in post‑trial motion for judgment notwithstanding the verdict (JNOV). Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Appeal and Error 232(3)

**SECTION 15‑78‑70.** Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).

(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

(c) Prior to January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant. The provisions of this section may in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant. The provisions of this section in no way shall 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.

(d) A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.

(e) Nothing in this chapter may be construed to give a director appointed pursuant to Section 58‑31‑20 immunity from suit and liability as set forth in Section 58‑31‑57. The State Fiscal Accountability Authority, Insurance Reserve Fund, is prohibited from providing insurance coverage for this individual liability; however, nothing shall prevent the Public Service Authority or its directors from obtaining insurance coverage from any other source.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Section 7; 1994 Act No. 380, Section 3; 2005 Act No. 137, Section 3, eff May 25, 2005.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Effect of Amendment

The 2005 amendment added subsection (e).

CROSS REFERENCES

This chapter as providing exclusive civil remedy for torts committed by a governmental entity, its employees, or its agents except as provided in this section, see Section 15‑78‑20.

LIBRARY REFERENCES

Westlaw Key Number Searches: 89k14; 360k191; 360k194; 360k212.

Compromise and Settlement 14.

States 191, 194, 212.

C.J.S. Compromise and Settlement Section 32.

C.J.S. States Sections 196 to 197, 202, 297 to 307, 310, 314, 325.

RESEARCH REFERENCES

Encyclopedias

3 Am. Jur. Trials 553, Selecting the Forum‑Plaintiff’s Position.

S.C. Jur. Civil Conspiracy Section 10, Employers.

S.C. Jur. Colleges and Universities Section 18, Liability.

S.C. Jur. Compromise and Settlement Section 19, Validity, Enforcement and Avoidance.

S.C. Jur. Hospitals Section 25, Governmental Immunity.

S.C. Jur. Hospitals Section 26, Medical Malpractice Immunities.

S.C. Jur. Limitation of Actions Section 36, Actions Against Sheriffs, Coroners or Constables.

S.C. Jur. Medical and Health Professionals Section 39, South Carolina Tort Claims Act.

S.C. Jur. Public Officers and Public Employees Section 42, Authority to Terminate.

S.C. Jur. Public Officers and Public Employees Section 76, South Carolina Tort Claims Act.

Treatises and Practice Aids

Civil Actions Against State & Local Gov. Section 4:10, Scope of Officer’s Authority or Employment.

Civil Actions Against State & Local Gov. Section 4:12, Malice, Bad Faith, Corruption, or Willful and Wanton Conduct.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Tort law 43 S.C. L. Rev. 199 (Autumn 1991).

NOTES OF DECISIONS

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1. In general

Since it appeared that South Carolina recognized an exception to the grant of discretionary immunity to state officials, under South Carolina Tort Claims Act (SCTCA), where officials exercised a duty to supervise, protect, control, confine, or maintain foster children in a grossly negligent manner, best course was to vacate summary judgment on state law claim for gross negligence asserted against South Carolina Department of Social Services (SCDSS), and remand for the district court’s consideration of the applicability of exception. Doe ex rel. Johnson v. South Carolina Dept. of Social Services (C.A.4 (S.C.) 2010) 597 F.3d 163, certiorari denied 131 S.Ct. 392, 562 U.S. 890, 178 L.Ed.2d 137. Federal Courts 3773; Federal Courts 3785

Generally speaking, the South Carolina Tort Claims Act (SCTCA) must be liberally construed in favor of the governmental defendant. Doe ex rel. Johnson v. South Carolina Dept. of Social Services (C.A.4 (S.C.) 2010) 597 F.3d 163, certiorari denied 131 S.Ct. 392, 562 U.S. 890, 178 L.Ed.2d 137. Municipal Corporations 723.5

Under the South Carolina Tort Claims Act (SCTCA), an employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable and a plaintiff must sue the governmental agency itself; however, if the plaintiff proves that the employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude, then the governmental agency is not liable, and the employee is personally liable. Newkirk v. Enzor, 2017, 2017 WL 947280. States 112.1(3)

Police officers did not use excessive force in effecting lawful arrest, as required to support arrestee’s assault and battery claims against officers, under South Carolina law, where arrestee acknowledged that he was not physically injured in any way during the arrest, and although officers pushed and handcuffed arrestee, such conduct was necessary to effect the arrest. McCoy v. City of Columbia, 2013, 929 F.Supp.2d 541. Assault and Battery 7

Former prison inmate could sue state employees under South Carolina law, in their individual capacities, for intentional infliction of emotional distress in connection with her treatment; statute waived immunity when there was intent to harm or actual malice, both of which were alleged elements of torts in question. Smith v. Ozmint, 2005, 394 F.Supp.2d 787. Prisons 400; Public Employment 936

Former prison inmate could not sue state employees under South Carolina law, in their individual capacities, for negligence and common law libel arising out of her treatment; statute waived immunity when there was intent to harm or actual malice, neither of which were elements of torts in question. Smith v. Ozmint, 2005, 394 F.Supp.2d 787. Prisons 400; Public Employment 936

State employee can be held personally liable in federal court, without violating Eleventh Amendment, for intentional torts not within scope of official duties, or for conduct constituting actual fraud, actual malice, intent to harm or involving crime of moral turpitude. Smith v. Ozmint, 2005, 394 F.Supp.2d 787. Federal Courts 2384

Inmate’s return to prison for 13 months, after receiving treatment at prison hospital, during which inmate did not receive further treatment and was allegedly abused by prison guards, constituted an intervening act sufficient to break a causal connection between prison hospital’s alleged negligence and inmate’s suicide. McKnight v. South Carolina Dept. of Corrections (S.C.App. 2009) 385 S.C. 380, 684 S.E.2d 566. Prisons 200

Principle of governmental immunity under Tort Claims Act is not intended to protect a defendant who has used his authority for nothing more than to personally retaliate against an employee. Frazier v. Badger (S.C. 2004) 361 S.C. 94, 603 S.E.2d 587. Municipal Corporations 744; Public Employment 933

Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson (S.C.App. 2003) 355 S.C. 197, 584 S.E.2d 413, rehearing denied, certiorari denied. Municipal Corporations 723

Juvenile probation officer was acting on behalf of Department of Juvenile Justice (DJJ), rather than family court, when he placed juvenile delinquent, even though family court had right to direct probation officer to perform certain tasks, and, thus, DJJ was proper party to action brought by parents of child who was assaulted by juvenile while on probation. Faile v. South Carolina Dept. of Juvenile Justice (S.C. 2002) 350 S.C. 315, 566 S.E.2d 536, rehearing denied. Courts 55

Covenant not to execute between motorist and county employee in negligence action resulting from automobile accident did not arise out of action under Tort Claims Act, and thus motorist’s action against county was not barred, where, when motorist executed covenant, no action had been initiated, nor had any claim been filed, against county. Wade v. Berkeley County (S.C. 2002) 348 S.C. 224, 559 S.E.2d 586. Release 37

District court did not abuse its discretion in refusing to charge jury on scope of employment immunity for state employees under South Carolina Tort Claims Act (SCTCA) in former correctional facility warden’s civil conspiracy action against state Department of Corrections officials under South Carolina law; Act was not intended to protect state employees from liability for their intentional torts, and jury was required to find that officials intentionally injured warden in order to impose liability for civil conspiracy. Anthony v. Ward (C.A.4 (S.C.) 2009) 336 Fed.Appx. 311, 2009 WL 1931192, Unreported. Conspiracy 7

2. Physicians, dentists and nurses

Tort Claims Act’s provision precluding liability based on supervision or control of patients absent showing of gross negligence limited liability of registered nurse in negligence suit brought by public hospital patient against hospital alleging nurse breached standard of care, in view of the omission of any reference to standard of care of licensed nurses in Act’s section specifically stating liability of licensed physicians and dentists was not affected by the Act. Stewart v. Richland Memorial Hosp. (S.C.App. 2002) 350 S.C. 589, 567 S.E.2d 510, rehearing denied. Health 770

Patient who brought medical malpractice action failed to allege that physicians at state university hospital were being paid from nongovernmental source and thus were outside of immunity provisions of statutory grant of immunity, as would potentially allow recovery in direct action against physicians. Higgins v. Medical University of South Carolina (S.C.App. 1997) 326 S.C. 592, 486 S.E.2d 269. Health 770; Public Employment 934

Physician who was employee of medical university, a governmental entity, was entitled to governmental immunity from patient’s malpractice claim, as all of physician’s salary, including that received from clinical practice, had to be approved by university. Proveaux v. Medical University of South Carolina (S.C. 1997) 326 S.C. 28, 482 S.E.2d 774. Health 770; Public Employment 934

The provision of the Tort Claims Act, Sections 15‑78‑10 et seq., which includes government‑employed physicians within the Act and requires that the state entity which employs a physician be named as a defendant in a malpractice action against the physician, did not apply retroactively to an action accruing before the provision’s effective date. Browning v. Hartvigsen (S.C. 1992) 307 S.C. 122, 414 S.E.2d 115. States 112(2)

3. Malicious prosecution

Malicious actions are excluded from immunity provided by South Carolina Tort Claims Act. Pritchett v. Lanier, 1991, 766 F.Supp. 442, affirmed and remanded 973 F.2d 307.

To maintain cause of action for malicious prosecution, plaintiff must prove malice in instituting proceedings. Pritchett v. Lanier, 1991, 766 F.Supp. 442, affirmed and remanded 973 F.2d 307. Malicious Prosecution 26

4. Scope of official duties

Although the South Carolina Tort Claims Act (SCTCA) generally is not intended to protect state employees from liability for intentional torts, it does not automatically grant state entities categorical immunity from any intentional tort committed by an employee acting within the scope of his official duties. Newkirk v. Enzor, 2017, 2017 WL 947280. Negligence 210

There was sufficient evidence that state department of corrections employees acted outside the scope of their employment and with the intent to harm associate prison warden, within meaning of “outside scope of official duty” and “intent to harm” exceptions under South Carolina Tort Claims Act (SCTCA), such that employee’s were not entitled to immunity under the SCTCA in action for civil conspiracy alleging that employees met, schemed, planned and conspired and put together an agenda to purposely harm warden and cause him to be terminated. Pridgen v. Ward (S.C.App. 2010) 391 S.C. 238, 705 S.E.2d 58, rehearing denied. Conspiracy 13

Whether an act is within the scope of employment under Tort Claims Act may be determined by implication from the circumstances of a particular case. Frazier v. Badger (S.C. 2004) 361 S.C. 94, 603 S.E.2d 587. Municipal Corporations 753(2)

Acts not within the scope of employment for insurance purposes are not within the scope of official duties under Tort Claims Act. Frazier v. Badger (S.C. 2004) 361 S.C. 94, 603 S.E.2d 587. Municipal Corporations 753(1); Public Employment 914

Evidence did not support jury instruction on governmental immunity under Tort Claims Act, in middle school teacher’s action against assistant principal for outrage; evidence showed that assistant principal sexually harassed teacher, then retaliated when she refused, thereby placing assistant principal’s conduct outside the scope of official duties, and that retaliatory conduct involved actual malice and an intent to harm teacher. Frazier v. Badger (S.C. 2004) 361 S.C. 94, 603 S.E.2d 587. Education 423; Public Employment 937

Individual members of governing board of state Commission for Blind were not liable for alleged torts committed against employees, since causes of action alleged by employees constituted conduct within scope of members’ official duties; remedy mandated in Tort Claims Act was legal action initiated against governmental entity rather than individual governmental employees. Flateau v. Harrelson (S.C.App. 2003) 355 S.C. 197, 584 S.E.2d 413, rehearing denied, certiorari denied. Public Employment 914; States 79

5. Named party defendant

Failure of members of governing board of state Commission for the Blind to substitute Commission’s name for theirs as party defendant in action by Commission employees against members did not remove litigation from requirements of Tort Claims Act; Act did not place burden on government entity individual defendant to substitute as party defendant the government entity for which individual was employed. Flateau v. Harrelson (S.C.App. 2003) 355 S.C. 197, 584 S.E.2d 413, rehearing denied, certiorari denied. States 112.1(3); States 203

When a plaintiff claims an employee of a state agency acted negligently in the performance of his job, the Tort Claims Act requires plaintiff to sue the agency for which an employee works, rather than suing the employee directly. Flateau v. Harrelson (S.C.App. 2003) 355 S.C. 197, 584 S.E.2d 413, rehearing denied, certiorari denied. Public Employment 914; States 78

6. Affirmative defense

The burden of establishing a limitation upon liability or an exception to the waiver of immunity under South Carolina Tort Claims Act (SCTCA) is upon the governmental entity asserting it as an affirmative defense. Doe ex rel. Johnson v. South Carolina Dept. of Social Services (C.A.4 (S.C.) 2010) 597 F.3d 163, certiorari denied 131 S.Ct. 392, 562 U.S. 890, 178 L.Ed.2d 137. Municipal Corporations 742(5)

Immunity under Tort Claims Act is an affirmative defense that must be proved by the defendant at trial. Frazier v. Badger (S.C. 2004) 361 S.C. 94, 603 S.E.2d 587. Municipal Corporations 742(5)

7. Summary judgment

Genuine issue of material fact existed as to whether police officer acted beyond scope of his duties or with malice during arrest of driver following traffic stop, precluding summary judgment on issue of immunity under the South Carolina Tort Claims Act (SCTCA) in driver’s action against state Department of Public Safety (DPS), alleging various state tort claims, including assault, battery, and false imprisonment. Newkirk v. Enzor, 2017, 2017 WL 947280. Federal Civil Procedure 2515

**SECTION 15‑78‑80.** Filing of verified claim; handling and disposition of claims; requirement that agencies and political subdivisions cooperate with State Fiscal Accountability Authority.

(a) A verified claim for damages under this chapter, setting forth the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, and the amount of the loss sustained may be filed:

(1) in cases against the State, with the State Fiscal Accountability Authority, or with the agency employing an employee whose alleged act or omission gave rise to the claim;

(2) where the claim is against a political subdivision, with the political subdivision employing an employee whose alleged act or omission gave rise to the claim;

(3) where the identification of the proper defendant is in doubt, with the Attorney General.

(b) Each agency and political subdivision must designate an employee or office to accept the filing of the claims.

(c) Filing may be accomplished by receipt of certified mailing of the claims or by compliance with the provisions of law relating to service of process.

(d) The verified claim may be received by the State Fiscal Accountability Authority or the appropriate agency or political subdivision. If filed, the claim must be received within one year after the loss was or should have been discovered.

(e) In all cases in which a claim is filed, the State Fiscal Accountability Authority or political subdivision has one hundred eighty days from the date of filing of the claim in which to determine whether the claim should be allowed or disallowed. Failure to notify the claimant of action upon the claim within one hundred eighty days from the date of filing of the claim is considered a disallowance of the claim.

(f) The handling and disposition of claims filed under this chapter are not subject to the provisions of Article 3, Chapter 23 of Title 1.

(g) In all cases, where insurance is provided by the State Fiscal Accountability Authority, the agency or political subdivision involved must cooperate with the State Fiscal Accountability Authority in the investigation and handling of any claim.

HISTORY: 1986 Act No. 463, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

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Westlaw Key Number Searches: 360k191; 360k194.

States 191, 194.

C.J.S. States Sections 196 to 197, 202, 297 to 307, 310, 314.

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S.C. Jur. Public Officers and Public Employees Section 76, South Carolina Tort Claims Act.

Forms

South Carolina Litigation Forms and Analysis Section 3:22 , Negligence Under South Carolina Tort Claims Act.

Treatises and Practice Aids

Civil Actions Against State & Local Gov. Section 5:9, Presentation of Notice.

Civil Actions Against State & Local Gov. Section 5:11, Commencement and Calculation of Time Period.

Civil Actions Against State & Local Gov. Section 5:20, Contents‑Circumstances of Injury or Loss.

Civil Actions Against State & Local Gov. Section 5:21, Contents‑Amount of Damages.

Civil Actions Against State & Local Gov. Section 5:23, Time Limits for Determining Claim; Effect of Failure to Act.

LAW REVIEW AND JOURNAL COMMENTARIES

Note, Sue first, ask questions later: What the recent equitable estoppel decisions mean for attorneys in South Carolina, 49 S.C. L. Rev. 957, Summer 1998.

NOTES OF DECISIONS

In general 1

Necessity of filing verified complaint 2

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1. In general

There are two ways to assert damages against a state agency under the Tort Claims Act: 1) the filing of a verified claim, or 2) the institution of an action against the appropriate agency. Joubert v. South Carolina Dept. of Social Services (S.C.App. 2000) 341 S.C. 176, 534 S.E.2d 1, rehearing denied. States 169; States 193

A twofold purpose is served by the verification requirement of Section 15‑78‑80 of the South Carolina Tort Claims Act: (1) the governmental entity is put on notice so that it can both conduct an investigation while the facts are fresh and preserve the evidence, and (2) the filing of false claims is discouraged because a verification permits a prosecution for perjury if the claim is fraudulent. Pollard v. County of Florence (S.C.App. 1994) 314 S.C. 397, 444 S.E.2d 534, rehearing denied, certiorari denied.

The fact that one incidental effect of the conditions imposed upon waiver of the state’s immunity to suit, pursuant to governmental tort liability statutes, is that the governmental tortfeasor must be given timely notice of the claim, while notice to the private tortfeasor is not required, does not operate to create an unconstitutional classification among tortfeasors (decided under former law). Hazard v. South Carolina State Highway Dept. (S.C. 1975) 264 S.C. 386, 215 S.E.2d 438. States 112(2)

The intention of the legislature in passing this section [former Code 1962 Section 33‑923] was to give the county prompt notice of any alleged claims, so that the county might promptly and properly investigate the occurrence, and thereby determine its liability, if any. Braudie v. Richland County (S.C. 1951) 219 S.C. 130, 64 S.E.2d 248. Highways 203

2. Necessity of filing verified complaint

Tort action brought by employees of state Commission for the Blind against members of the commission’s governing board was governed by Tort Claims Act’s two‑year statute of limitations, rather than three‑year statute applicable when party filing suit brought verified claim, even if board members acted outside scope of their official duties or if their actions constituted fraud, actual malice, intent to cause harm, or crime involving moral turpitude; record contained no evidence that employees filed verified claim. Flateau v. Harrelson (S.C.App. 2003) 355 S.C. 197, 584 S.E.2d 413, rehearing denied, certiorari denied. States 201

To satisfy the verification requirement of Section 15‑78‑80 of the South Carolina Tort Claims Act, the claim must be under oath. Pollard v. County of Florence (S.C.App. 1994) 314 S.C. 397, 444 S.E.2d 534, rehearing denied, certiorari denied. Municipal Corporations 742(3)

Substantial compliance with Section 15‑78‑80 was insufficient to entitle the plaintiff to the benefit of the 3‑year statute of limitations, applicable to a suit against a state entity if the plaintiff files a verified claim within one year of the loss or injury. Vines v. Self Memorial Hosp. (S.C. 1994) 314 S.C. 305, 443 S.E.2d 909.

Under statutes waiving sovereign immunity from liability and suit, the filing of a claim is a condition precedent to the accrual of a cause of action, and no vested right could be obtained by a victim of a governmental tort until the claim provisions of the statute have been complied with (decided under former law). Hazard v. South Carolina State Highway Dept. (S.C. 1975) 264 S.C. 386, 215 S.E.2d 438. Constitutional Law 2648

A plaintiff should not be denied a trial upon the merits of her case by a mere failure to make a literal compliance with this section [former Code 1962 Section 33‑923] when she has, in fact and in law, made a substantial compliance by appearing before the county supervisor and county board of commissioners at a formal meeting and presenting to them all the facts and circumstances giving rise to her cause of action, and by notifying the county attorney, by letter, of such facts two months after the accident. Braudie v. Richland County (S.C. 1951) 219 S.C. 130, 64 S.E.2d 248.

3. What constitutes verified claim

Oral objection to refusal of the Department of Social Services (DSS) to renew operating license of residential treatment facility, made by facility’s director at institutional abuse hearing, was not a “verified claim” for money damages under the Tort Claims Act to which three‑year, instead of two‑year, statute of limitations applied. Joubert v. South Carolina Dept. of Social Services (S.C.App. 2000) 341 S.C. 176, 534 S.E.2d 1, rehearing denied. States 201

Oral reservation of rights made by attorney for director of residential treatment facility at institutional abuse hearing, in which attorney objected to refusal by the Department of Social Services (DSS) to renew facility’s operating license and reserved right to pursue matter in another court, was not a “verified claim” for money damages under the Tort Claims Act to which three‑year, instead of two‑year, statute of limitations applied, as reservation made no statement regarding the extent of loss, time and place loss occurred, names of all persons involved, and amount of loss sustained. Joubert v. South Carolina Dept. of Social Services (S.C.App. 2000) 341 S.C. 176, 534 S.E.2d 1, rehearing denied. States 201

The letter of an injured hospital patient did not constitute a verified claim against the hospital pursuant to Section 15‑78‑80 where the letter merely stated that he had been injured while a patient 9 months earlier and requested that the hospital contact him; to constitute a verified claim, the patient was required to set forth specific facts, dates, names of witnesses, and the amount of the loss sustained. Rink v. Richland Memorial Hosp. (S.C. 1992) 310 S.C. 193, 422 S.E.2d 747. Health 807

Sections 15‑78‑90(b), 15‑78‑100(a) and 15‑78‑110 must be read with Section 15‑78‑80 because together they are a constituent part of a scheme designed to encourage a person first to seek by a route other than litigation the recovery of damages for a loss proximately caused by a tort of a governmental entity, while at the same time according a governmental entity a measure of protection against fraudulent claims. When these statutes are so read, the “claim” mentioned in these code sections can only refer to the “verified claim” mentioned in Section 15‑78‑80. Thus, neither a pupil accident claim nor a school bus report qualified as a “claim” filed pursuant to the Tort Claims Act where neither document was supported by an oath, and therefore neither document could be considered to have been verified. Accordingly, the pupil had only 2 years from the date she discovered or should have discovered her loss to bring an action under the Tort Claims Act. Searcy v. South Carolina Dept. of Educ., Transp. Div. (S.C.App. 1991) 303 S.C. 544, 402 S.E.2d 486, certiorari denied.

**SECTION 15‑78‑90.** Settlement of claims and actions; institution of action where claim has or has not been filed.

(a) The State Fiscal Accountability Authority, or the political subdivision where it has not purchased insurance from the State Fiscal Accountability Authority, may adjust, compromise, settle, or allow any claim or settle or compromise any action.

(b) Whether or not the claim is filed, the claimant is entitled to institute an action against the appropriate agency or political subdivision. Provided, however, if a claimant files a claim, he may not institute an action until after the occurrence of the earliest of one of the following three events: (1) the passage of one hundred eighty days from the filing of the claim with the governmental entity, (2) the governmental entity’s disallowance of the claim, or (3) the governmental entity’s rejection of a settlement offer.

HISTORY: 1986 Act No. 463, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

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Westlaw Key Number Searches: 360k67; 360k191; 360k194.

States 67, 191, 194.

C.J.S. States Sections 121, 136 to 138, 140, 196 to 197, 202, 297 to 307, 310, 314.

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Civil Actions Against State & Local Gov. Section 5:22, Denial of Claim as Condition Precedent to Filing Suit.

Civil Actions Against State & Local Gov. Section 5:23, Time Limits for Determining Claim; Effect of Failure to Act.

NOTES OF DECISIONS

In general 1

1. In general

There are two ways to assert damages against a state agency under the Tort Claims Act: 1) the filing of a verified claim, or 2) the institution of an action against the appropriate agency. Joubert v. South Carolina Dept. of Social Services (S.C.App. 2000) 341 S.C. 176, 534 S.E.2d 1, rehearing denied. States 169; States 193

Sections 15‑78‑90(b), 15‑78‑100(a) and 15‑78‑110 must be read with Section 15‑78‑80 because together they are a constituent part of a scheme designed to encourage a person first to seek by a route other than litigation the recovery of damages for a loss proximately caused by a tort of a governmental entity, while at the same time according a governmental entity a measure of protection against fraudulent claims. When these statutes are so read, the “claim” mentioned in these code sections can only refer to the “verified claim” mentioned in Section 15‑78‑80. Thus, neither a pupil accident claim nor a school bus report qualified as a “claim” filed pursuant to the Tort Claims Act where neither document was supported by an oath, and therefore neither document could be considered to have been verified. Accordingly, the pupil had only 2 years from the date she discovered or should have discovered her loss to bring an action under the Tort Claims Act. Searcy v. South Carolina Dept. of Educ., Transp. Div. (S.C.App. 1991) 303 S.C. 544, 402 S.E.2d 486, certiorari denied.

The State Highway Department is authorized and empowered to settle or compromise a claim for more than the statutory amount, but the Department cannot pay more than such amount in making such compromise or settlement. (Decision construed a former section which contained similar language.) Fann v. State Highway Dept. (S.C. 1932) 167 S.C. 84, 165 S.E. 785.

**SECTION 15‑78‑100.** When and where to institute action; requirement of special verdict specifying proportionate liability of multiple defendants.

(a) Except as provided for in Section 15‑3‑40, an action for damages under this chapter may be instituted at any time within two years after the loss was or should have been discovered. Provided, that if a claim for damages was filed and disallowed or rejected an action for damages filed under this chapter, based upon the same occurrence as the claim, may be instituted within three years after the loss was or should have been discovered.

(b) Jurisdiction for any action brought under this chapter is in the circuit court and brought in the county in which the act or omission occurred.

(c) In all actions brought pursuant to this chapter when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant against whom liability is determined.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Section 8.

CROSS REFERENCES

Certain provisions of this section applicable to Catawba Indian Tribe, see Section 27‑16‑80.

Extension of time within which certain persons under a disability may bring a civil action, see Section 15‑3‑40.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k200; 360k201; 360k212.

States 200, 201, 212.

C.J.S. States Sections 315 to 316, 325.

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S.C. Jur. Appeal and Error Section 30, Civil Actions.

S.C. Jur. Limitation of Actions Section 45, Government Liability.

S.C. Jur. Limitation of Actions Section 56, Ignorance of Cause of Action.

S.C. Jur. Magistrates and Municipal Judges Section 36, Venue.

S.C. Jur. Public Officers and Public Employees Section 76, South Carolina Tort Claims Act.

Forms

South Carolina Litigation Forms and Analysis Section 3:22 , Negligence Under South Carolina Tort Claims Act.

Treatises and Practice Aids

1 Causes of Action 2d 603, Cause of Action Against Governmental Entity for Injury Caused by Condition of Public Building.

Civil Actions Against State & Local Gov. Section 6:2, Jurisdiction.

Civil Actions Against State & Local Gov. Section 6:3, Venue.

Civil Actions Against State & Local Gov. Section 6:4, Limitations.

LAW REVIEW AND JOURNAL COMMENTARIES

Note, Sue first, ask questions later: What the recent equitable estoppel decisions mean for attorneys in South Carolina, 49 S.C. L. Rev. 957, Summer 1998.

NOTES OF DECISIONS

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Construction and application 2

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Joint tortfeasors 5

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1. In general

Build up of scar tissue in right eye and permanent loss of vision in right eye did not constitute two separate and distinct injuries for limitations purposes, in inmate’s negligence action against the Department of Corrections for medical staff’s alleged delay in diagnosis, treatment, and referral to specialist for eye injury. Young v. South Carolina Dept. of Corrections (S.C.App. 1999) 333 S.C. 714, 511 S.E.2d 413. Limitation Of Actions 55(4)

Sections 15‑78‑90(b), 15‑78‑100(a) and 15‑78‑110 must be read with Section 15‑78‑80 because together they are a constituent part of a scheme designed to encourage a person first to seek by a route other than litigation the recovery of damages for a loss proximately caused by a tort of a governmental entity, while at the same time according a governmental entity a measure of protection against fraudulent claims. When these statutes are so read, the “claim” mentioned in these code sections can only refer to the “verified claim” mentioned in Section 15‑78‑80. Searcy v. South Carolina Dept. of Educ., Transp. Div. (S.C.App. 1991) 303 S.C. 544, 402 S.E.2d 486, certiorari denied.

2. Construction and application

Trial court lacked the authority to require Tort Claims Act (TCA) plaintiff to sue additional alleged co‑tortfeasors, with whom plaintiff had settled in other related lawsuits, under statute granting TCA defendants the right to a proportionate verdict “when an alleged tortfeasor is named as a party defendant,” as it could not be concluded that General Assembly, in enacting statute, intended to abrogate plaintiff’s common law right to choose her defendant, or to force plaintiff to choose between settling with some parties and thereby foregoing her right to sue a TCA defendant, or going to trial against all co‑tortfeasors. Chester v. South Carolina Dept. of Public Safety (S.C. 2010) 388 S.C. 343, 698 S.E.2d 559. Parties 31; Parties 51(4); Parties 54

Tort Claims Act statute addresses the issue of jurisdiction only so far as to confer jurisdiction to hear such cases in the “circuit court,” while the remaining language, “and brought in the county in which the act or omission occurred,” addresses the issue of venue. Jeter v. South Carolina Dept. of Transp. (S.C.App. 2004) 358 S.C. 528, 595 S.E.2d 827, rehearing denied, certiorari granted, affirmed in part, reversed in part 369 S.C. 433, 633 S.E.2d 143. Courts 153; States 200

3. Venue

Venue was proper in action for damages arising from accident caused by Department of Transportation’s (DOT) alleged failure to maintain road in a safe condition and to warn travelers on the road that dangerous conditions existed, under state Tort Claims Act; although accident occurred in different county than where action was tried, nothing in tort statute required that action arising under Tort Claims Act be heard or tried in county in which act or omission occurred, a plaintiff resided in county where action was tried, and action was originally brought in county where accident occurred. Jeter v. South Carolina Dept. of Transp. (S.C.App. 2004) 358 S.C. 528, 595 S.E.2d 827, rehearing denied, certiorari granted, affirmed in part, reversed in part 369 S.C. 433, 633 S.E.2d 143. Automobiles 295

4. Discovery

Inmate’s negligence action against the Department of Corrections for delay in diagnosis, treatment, and referral to a specialist for eye injury accrued more than two years before inmate brought action, on date of his retinal repair surgery, at which time he was aware that he had suffered a delay in treatment, that the delay concerned doctors, and that he had scar tissue built up in his eye, and, thus, his claim was barred by two‑year statute of limitations; inmate was not required to understand fully the ramifications of the scar tissue build up or delay in diagnosis and treatment to be put on notice the delay had resulted in an injury. Young v. South Carolina Dept. of Corrections (S.C.App. 1999) 333 S.C. 714, 511 S.E.2d 413. Limitation Of Actions 95(4.1)

The discovery rule is applicable to actions brought under the Tort Claims Act. Young v. South Carolina Dept. of Corrections (S.C.App. 1999) 333 S.C. 714, 511 S.E.2d 413. Limitation Of Actions 95(3)

The date on which discovery should have been made and, therefore, the date on which statute of limitations began to run, is an objective, not subjective, question. Young v. South Carolina Dept. of Corrections (S.C.App. 1999) 333 S.C. 714, 511 S.E.2d 413. Limitation Of Actions 95(1)

Under discovery rule, inmate was not required to know that the sight in his right eye was permanently lost to be put on notice that the Department of Corrections’ medical staff had caused him injury through delay in diagnosis and treatment, where he was told by two doctors more than two years before he brought action that he had scar tissue and both doctors displayed concern over the delay in diagnosis and treatment. Young v. South Carolina Dept. of Corrections (S.C.App. 1999) 333 S.C. 714, 511 S.E.2d 413. Limitation Of Actions 95(4.1)

5. Joint tortfeasors

Trial court lacked the authority to require Tort Claims Act (TCA) plaintiff to sue additional alleged co‑tortfeasors, with whom plaintiff had settled in other related lawsuits, under statute granting TCA defendants the right to a proportionate verdict “when an alleged tortfeasor is named as a party defendant,” as it could not be concluded that General Assembly, in enacting statute, intended to abrogate plaintiff’s common law right to choose her defendant, or to force plaintiff to choose between settling with some parties and thereby foregoing her right to sue a TCA defendant, or going to trial against all co‑tortfeasors. Chester v. South Carolina Dept. of Public Safety (S.C. 2010) 388 S.C. 343, 698 S.E.2d 559. Parties 31; Parties 51(4); Parties 54

Tort Claims Act’s requirement of special verdict specifying proportion of monetary liability of each defendant was inapplicable where private tortfeasor settled with plaintiff prior to trial, leaving governmental entity as only named defendant before jury. Smalls v. South Carolina Dept. of Educ. (S.C.App. 2000) 339 S.C. 208, 528 S.E.2d 682. Municipal Corporations 742(6)

Sections 15‑78‑100(c) and 15‑78‑120(a)(1) of the Tort Claims Act were repealed by inconsistent provisions of the Uniform Contribution Among Tortfeasors Act, Section 15‑38‑20(B). Southeastern Freight Lines v. City of Hartsville (S.C. 1994) 313 S.C. 466, 443 S.E.2d 395, rehearing denied. Contribution 5(1); Contribution 5(2)

6. Jurisdiction

Circuit Court had subject matter jurisdiction over motorcyclist’s action against Department of Transportation under Tort Claims Act, regardless that action was not tried in county where accident occurred; statutory provision that action be brought in county where act or omission occurred addressed issue of venue, not Circuit Court’s jurisdiction. Jeter v. South Carolina Dept. of Transp. (S.C. 2006) 369 S.C. 433, 633 S.E.2d 143, rehearing denied. Courts 155

**SECTION 15‑78‑110.** Statute of limitations.

Except as provided for in Section 15‑3‑40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Section 9.

CROSS REFERENCES

Extension of time within which certain persons under a disability may bring a civil action, see Section 15‑3‑40.

This section applicable to Catawba Indian Tribe, see Section 27‑16‑80.

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S.C. Jur. Medical and Health Professionals Section 39, South Carolina Tort Claims Act.

S.C. Jur. Negligence Section 43, Duty as to Invitees.

S.C. Jur. Public Officers and Public Employees Section 76, South Carolina Tort Claims Act.

LAW REVIEW AND JOURNAL COMMENTARIES

Note, Sue first, ask questions later: What the recent equitable estoppel decisions mean for attorneys in South Carolina, 49 S.C. L. Rev. 957, Summer 1998.

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1. Tolling provision relating to minors

Servicemember’s service of amended complaint against city for negligent supervision arising out of alleged sexual abuse committed while servicemember was participating in event sponsored by city fire department was nullity, where servicemember never served city with original complaint before two‑year limitations period governing suit under South Carolina Tort Claims Act expired, and thus, and there was no complaint to amend. Doe v. City of Duncan (S.C.App. 2016) 417 S.C. 277, 789 S.E.2d 602, rehearing denied. Armed Services 34.11(1)

The 1988 amendment of the 1986 Tort Claim Act, Sections 15‑78‑10 et seq., adding a tolling provision relating to minors, applies prospectively; consequently, the tolling provision only applies to actions arising on or after the date of the amendment, March 14, 1988. Green By and Through Green v. Lewis Truck Lines, Inc. (S.C. 1993) 315 S.C. 253, 433 S.E.2d 844, rehearing denied.

Prior to its 1988 amendment, the 1986 Tort Claim Act, Sections 15‑78‑10 et seq., violated equal protection guarantees where the Act tolled the statute of limitation for minors only as against private entities but not against governmental entities; thus, a minor was entitled to assert the tolling provisions in his action against a governmental entity. Green By and Through Green v. Lewis Truck Lines, Inc. (S.C. 1993) 315 S.C. 253, 433 S.E.2d 844, rehearing denied.

Section 15‑3‑40 did not toll,until the plaintiff reached the age of 18, the 2‑year period prescribed by Section 15‑78‑110 for the commencement of an action, were the plaintiff’s action accrued before the effective date of the statutes’ amendments which tolled the time for the bringing of an action under the Tort Claims Act by a person “within the age of 18 years” “at the time the cause of action accrued.” Searcy v. South Carolina Dept. of Educ., Transp. Div. (S.C.App. 1991) 303 S.C. 544, 402 S.E.2d 486, certiorari denied.

2. Sanctions

The trial court did not abuse its discretion in awarding sanctions against the plaintiff and his attorney under the Tort Claims Act, Sections 15‑78‑10 et seq. where the plaintiff filed his complaint after the 2‑year statute of limitations; plaintiff’s assertion that the time for filing an action under the Tort Claims Act has been disputed was not sufficient to find the award to be error where (1) the attorney never argued for modification of the existing law as to the time for filing an unverified claim under the Tort Claims Act, (2) the attorney did not argue the he substantially complied with the verified claim requirement, and (3) the award of sanctions was based on numerous factors. Parker v Morin (Ex parte McMillan (S.C. 1995) 319 S.C. 331, 461 S.E.2d 43, rehearing denied.

3. Accrual of cause of action

Two‑year limitations period governing servicemember’s claim against city for negligent supervision arising out of sexual abuse that occurred while servicemember participated in event sponsored by city fire department, which abuse allegedly occurred while servicemember was minor, began to run when servicemember reached age 18. Doe v. City of Duncan (S.C.App. 2016) 417 S.C. 277, 789 S.E.2d 602, rehearing denied. Limitation of Actions 72(1)

Servicemembers Civil Relief Act did not toll two‑year limitations period under South Carolina Tort Claims Act governing servicemember’s suit against city for negligent supervision, arising out of sexual abuse of servicemember during event sponsored by city fire department, for periods during which servicemember was not on active duty. Doe v. City of Duncan (S.C.App. 2016) 417 S.C. 277, 789 S.E.2d 602, rehearing denied. Armed Services 34.11(1)

Gambling suspects knew or should have known that their cash was improperly seized, and two‑year Tort Claims Act statute of limitations commenced to run on their unlawful seizure, conversion and constructive trust claims against county sheriff’s department, on date that suspects signed the consent to forfeiture of the cash, rather than on date when they learned that a judge had not signed the consent to forfeiture; suspects had knowledge of the forfeiture when it occurred, forfeiture was voluntary, and, even if due process required hearing for a forfeiture, suspects never demanded such a hearing. Hackworth v. Greenville County (S.C.App. 2006) 371 S.C. 99, 637 S.E.2d 320. Limitation Of Actions 95(7); Limitation Of Actions 102(8)

Under the discovery rule, the limitations period for claims brought pursuant to the Tort Claims Act begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. Gillman v. City of Beaufort (S.C.App. 2006) 368 S.C. 24, 627 S.E.2d 746, rehearing denied. Limitation Of Actions 95(3)

Pedestrian who tripped on uneven sidewalk located on right of way owned by Department of Transportation could not add Department and state as indispensable parties to her pending negligence action against city and others after expiration of three‑year statute of limitations for claims brought pursuant to Tort Claims Act; nothing in rule governing joinder of indispensable parties prohibited such parties from raising affirmative defenses such as statute of limitations. Gillman v. City of Beaufort (S.C.App. 2006) 368 S.C. 24, 627 S.E.2d 746, rehearing denied. Limitation Of Actions 124

Residential treatment facility and its director reasonably should have been on notice that they had a cause of action against the Department of Social Services (DSS) stemming from DSS’ refusal to renew facility’s operating license when director’s attorney, who was representing director in institutional abuse proceeding, wrote letter to DSS in which he stated that he had advised director to seek legal redress with respect to denial of license renewal in another appropriate forum. Joubert v. South Carolina Dept. of Social Services (S.C.App. 2000) 341 S.C. 176, 534 S.E.2d 1, rehearing denied. Limitation Of Actions 95(3)

Under the Tort Claims Act, the statute of limitations begins to run when the plaintiff should know that he or she might have a potential claim against another, not when he or she develops a full‑blown theory of recovery. Joubert v. South Carolina Dept. of Social Services (S.C.App. 2000) 341 S.C. 176, 534 S.E.2d 1, rehearing denied. Limitation Of Actions 95(3)

In an action by a motorist whose car was hit from behind by another car, which had been hit by a school bus, the statute of limitations on the motorist’s negligence claim against the school bus driver (Section 15‑78‑110) began to run when the motorist witnessed the accident that caused his loss, not when he later discovered evidence to support his claim against the bus driver rather than the driver of the other car. Tanyel v. Osborne (S.C.App. 1994) 312 S.C. 473, 441 S.E.2d 329. Limitation Of Actions 95(4.1); Limitation Of Actions 95(7)

Mother’s cause of action for medical malpractice, on her minor’s behalf, accrued under discovery rule two weeks and one day after child’s delivery; doctor stated “Oops, I hurt his arm” immediately after he delivered child, and, on next day, doctor checked on mother and commented that injuries like child’s usually healed fully in about two weeks. Bennett v. Lexington County Health Services Dist., Inc. (S.C.App. 2015) 2015 WL 3884262, Unreported. Limitation of Actions 95(12)

4. Filing of verified claim

Tort action brought by employees of state Commission for the Blind against members of the commission’s governing board was governed by Tort Claims Act’s two‑year statute of limitations, rather than three‑year statute applicable when party filing suit brought verified claim, even if board members acted outside scope of their official duties or if their actions constituted fraud, actual malice, intent to cause harm, or crime involving moral turpitude; record contained no evidence that employees filed verified claim. Flateau v. Harrelson (S.C.App. 2003) 355 S.C. 197, 584 S.E.2d 413, rehearing denied, certiorari denied. States 201

Tort Claims Act contains a general two‑year statute of limitations; however, if a plaintiff files a statutorily‑defined claim within one year of the loss or injury, the statute of limitations is extended to three years. Joubert v. South Carolina Dept. of Social Services (S.C.App. 2000) 341 S.C. 176, 534 S.E.2d 1, rehearing denied. Municipal Corporations 742(3)

The verified claims procedure found in Section 15‑78‑80 of the South Carolina Tort Claims Act must be strictly complied with in order to trigger the 3‑year limitations period. Pollard v. County of Florence (S.C.App. 1994) 314 S.C. 397, 444 S.E.2d 534, rehearing denied, certiorari denied. Municipal Corporations 742(3)

Sections 15‑78‑90(b), 15‑78‑100(a) and 15‑78‑110 must be read with Section 15‑78‑80 because together they are a constituent part of a scheme designed to encourage a person first to seek by a route other than litigation the recovery of damages for a loss proximately caused by a tort of a governmental entity, while at the same time according a governmental entity a measure of protection against fraudulent claims. When these statutes are so read, the “claim” mentioned in these code sections can only refer to the “verified claim” mentioned in Section 15‑78‑80. Thus, neither a pupil accident claim nor a school bus report qualified as a “claim” filed pursuant to the Tort Claims Act where neither document was supported by an oath, and therefore neither document could be considered to have been verified. Accordingly, the pupil had only 2 years from the date she discovered or should have discovered her loss to bring an action under the Tort Claims Act. Searcy v. South Carolina Dept. of Educ., Transp. Div. (S.C.App. 1991) 303 S.C. 544, 402 S.E.2d 486, certiorari denied.

5. Date of loss

In husband’s wrongful death action against the Department of Transportation (DOT), the date of “loss,” as the date when the two‑year statute of limitations of the Tort Claims Act began to run, was the date of his wife’s death in a motor vehicle accident, rather than when he learned of a possible latent defect in the road surface. Bayle v. South Carolina Dept. of Transp. (S.C.App. 2001) 344 S.C. 115, 542 S.E.2d 736, rehearing denied, certiorari denied. Death 39

Two‑year statute of limitations period of the Tort Claims Act begins on the date of loss, regardless of whether the plaintiff knows the cause of the loss. Bayle v. South Carolina Dept. of Transp. (S.C.App. 2001) 344 S.C. 115, 542 S.E.2d 736, rehearing denied, certiorari denied. Limitation Of Actions 55(1); Limitation Of Actions 95(1)

6. Waiver

The plaintiff could not argue on appeal that the county either waived the 2‑year statute of limitations or was estopped from asserting such limitations period because it admitted liability for the plaintiff’s damages and made payment in partial satisfaction of her claim, where the plaintiff did not raise these issues to the circuit court. Pollard v. County of Florence (S.C.App. 1994) 314 S.C. 397, 444 S.E.2d 534, rehearing denied, certiorari denied. Appeal And Error 170(1)

7. In general

South Carolina Tort Claims Act was exclusive remedy for claim against city for negligent supervision, based on military servicemember’s allegation that he was sexually abused while participating in activity sponsored by city’s fire department, and thus, suit was governed by two‑year limitations period for claims brought under Act, and not six‑year limitations period governing claims for acts of sexual abuse or incest. Doe v. City of Duncan (S.C.App. 2016) 417 S.C. 277, 789 S.E.2d 602, rehearing denied. Municipal Corporations 747(3)

Two year limitations period for front‑end loader operator’s action against city most likely began to run on the date of operator’s injury when loader ran into manhole cover while operator was removing snow from street, or at the latest, on the date operator discovered Board of Public Works was responsible for all sewer work and may have worked on manhole that caused operator’s spinal injuries. Logan v. Cherokee Landscaping and Grading Co. (S.C.App. 2010) 389 S.C. 611, 698 S.E.2d 879. Limitation of Actions 95(4.1)

Front‑end loader operator was not entitled to application of equitable estoppel to toll two year limitations period to bring personal injury action against board of public works for spinal injuries resulting from improperly installed manhole cover, where board told operator’s attorney it was responsible for all manholes, and did nothing to mislead operator into believing board did not have any involvement with manhole cover that resulted in operator’s spinal injuries. Logan v. Cherokee Landscaping and Grading Co. (S.C.App. 2010) 389 S.C. 611, 698 S.E.2d 879. Estoppel 62.5

The date on which discovery of a cause of action should have been made, for purposes of the Tort Claims Act statute of limitations, is an objective, rather than subjective, question. Hackworth v. Greenville County (S.C.App. 2006) 371 S.C. 99, 637 S.E.2d 320. Limitation Of Actions 95(3)

The plaintiff failed to comply with the 2‑year statute of limitations required by the South Carolina Tort Claims Act, Sections 15‑78‑10 et seq. where she filed more than two years after occurrence of the accident on which the complaint was based. Pollard v. County of Florence (S.C.App. 1994) 314 S.C. 397, 444 S.E.2d 534, rehearing denied, certiorari denied.

In a subsequent action, a hospital would not be equitably estopped from asserting the defense of statute of limitations against a patient who allegedly fell and was injured while hospitalized where the limitations period had not yet run when the patient moved for the dismissal of his initial personal injury claim without prejudice Rink v. Richland Memorial Hosp. (S.C. 1992) 310 S.C. 193, 422 S.E.2d 747. Limitation Of Actions 13

The 2‑year limitations period of the Tort Claims Act, Sections 15‑78‑10 et seq., did not apply to a medical malpractice action against a government‑employed physician where the action accrued before the effective date of the provision providing for qualified and limited liability to government‑employed physicians, but after the effective date of the section providing for the 2‑year limitations period; rather, the 3‑year limitations period for medical malpractice and wrongful death actions applied. Browning v. Hartvigsen (S.C. 1992) 307 S.C. 122, 414 S.E.2d 115. States 201

8. Discovery rule

According to the discovery rule, the statute of limitations begins to run from the date the injury resulting from the wrongful conduct either is discovered or may have been discovered by the exercise of reasonable diligence. Logan v. Cherokee Landscaping and Grading Co. (S.C.App. 2010) 389 S.C. 611, 698 S.E.2d 879. Limitation of Actions 95(1)

The state courts apply the discovery rule to determine when a cause of action accrues under the Tort Claims Act. Logan v. Cherokee Landscaping and Grading Co. (S.C.App. 2010) 389 S.C. 611, 698 S.E.2d 879. Limitation of Actions 95(3)

Whether the particular plaintiff actually knew he had a claim is not the test, for purposes of determining when the Tort Claims Act statute of limitations commences; rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. Hackworth v. Greenville County (S.C.App. 2006) 371 S.C. 99, 637 S.E.2d 320. Limitation Of Actions 95(3)

The date on which discovery of negligent act under Tort Claims Act should have been made is an objective, not subjective, question; the fact that the injured party does not comprehend the full extent of his injuries is immaterial. Knox v. Greenville Hosp. System (S.C.App. 2005) 362 S.C. 566, 608 S.E.2d 459, rehearing denied, certiorari denied. Limitation Of Actions 95(3)

The exercise of reasonable diligence to discover negligent act under Tort Claims Act means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. Knox v. Greenville Hosp. System (S.C.App. 2005) 362 S.C. 566, 608 S.E.2d 459, rehearing denied, certiorari denied. Limitation Of Actions 95(3)

Patient should have reasonably discovered that claim against hospital might exist arising from permanent injury to his radial nerve that occurred after needle was improperly inserted into his wrist, and thus, claim was barred by two year statute of limitations; patient experienced pain upon injection, pain was not normal consequence of injection, nurse said she had hit wrong thing, patient previously had many other injections and knew this one was different, and before he was discharged, patient told relatives he was experiencing pain and that doctor had hit nerve. Knox v. Greenville Hosp. System (S.C.App. 2005) 362 S.C. 566, 608 S.E.2d 459, rehearing denied, certiorari denied. Limitation Of Actions 95(12)

Under the discovery rule, two‑year statute of limitations of the Tort Claims Act, as applied to husband’s wrongful death action against the Department of Transportation (DOT), began to run on the date that his wife died when her car lost control after hitting a pool of standing water, rather than when he learned of a possible latent defect in the road surface; husband was aware of the circumstances of wife’s death and was on notice to investigate further. Bayle v. South Carolina Dept. of Transp. (S.C.App. 2001) 344 S.C. 115, 542 S.E.2d 736, rehearing denied, certiorari denied. Death 39

Under the discovery rule, which provides that the statute of limitations begins to run when a cause of action reasonably ought to have been discovered, an absolute certainty that a cause of action exists is not required before the statute of limitations begins to run. Bayle v. South Carolina Dept. of Transp. (S.C.App. 2001) 344 S.C. 115, 542 S.E.2d 736, rehearing denied, certiorari denied. Limitation Of Actions 95(1)

Inmate’s negligence action against the Department of Corrections for delay in diagnosis, treatment, and referral to a specialist for eye injury accrued more than two years before inmate brought action, on date of his retinal repair surgery, at which time he was aware that he had suffered a delay in treatment, that the delay concerned doctors, and that he had scar tissue built up in his eye, and, thus, his claim was barred by two‑year statute of limitations; inmate was not required to understand fully the ramifications of the scar tissue build up or delay in diagnosis and treatment to be put on notice the delay had resulted in an injury. Young v. South Carolina Dept. of Corrections (S.C.App. 1999) 333 S.C. 714, 511 S.E.2d 413. Limitation Of Actions 95(4.1)

The discovery rule is applicable to actions brought under the Tort Claims Act. Young v. South Carolina Dept. of Corrections (S.C.App. 1999) 333 S.C. 714, 511 S.E.2d 413. Limitation Of Actions 95(3)

The date on which discovery should have been made and, therefore, the date on which statute of limitations began to run, is an objective, not subjective, question. Young v. South Carolina Dept. of Corrections (S.C.App. 1999) 333 S.C. 714, 511 S.E.2d 413. Limitation Of Actions 95(1)

Under the discovery rule, whether the particular plaintiff actually knew he had a claim is not the test; rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. Young v. South Carolina Dept. of Corrections (S.C.App. 1999) 333 S.C. 714, 511 S.E.2d 413. Limitation Of Actions 95(1)

Under discovery rule, inmate was not required to know that the sight in his right eye was permanently lost to be put on notice that the Department of Corrections’ medical staff had caused him injury through delay in diagnosis and treatment, where he was told by two doctors more than two years before he brought action that he had scar tissue and both doctors displayed concern over the delay in diagnosis and treatment. Young v. South Carolina Dept. of Corrections (S.C.App. 1999) 333 S.C. 714, 511 S.E.2d 413. Limitation Of Actions 95(4.1)

**SECTION 15‑78‑120.** Limitation on liability; prohibition against recovery of punitive or exemplary damages or prejudgment interest; signature of attorney on pleadings, motions, or other papers.

(a) For any action or claim for damages brought under the provisions of this chapter, the liability 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 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 hundred 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 hundred 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) No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment.

(c) 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.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Section 10; 1994 Act No. 380, Section 4; 1997 Act No. 155, Part II, Sections 55C, 55D.

CROSS REFERENCES

Limitations of liability with respect to accidents involving state‑owned school buses, see Section 59‑67‑710.

Reduction of any recovery under this chapter by amounts received from the Pupil Injury Insurance Fund, see Section 59‑67‑790.

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S.C. Jur. Constitutional Law Section 94, Civil Remedies and Proceedings.

S.C. Jur. Constitutional Law Section 102, Constitutionality of Ex Post Facto Laws.

S.C. Jur. Damages Section 14, Statutory Limits on Damages.

S.C. Jur. Hospitals Section 25, Governmental Immunity.

S.C. Jur. Hospitals Section 28, Punitive Damages.

S.C. Jur. Medical and Health Professionals Section 39, South Carolina Tort Claims Act.

S.C. Jur. Public Officers and Public Employees Section 76, South Carolina Tort Claims Act.

Treatises and Practice Aids

1 Causes of Action 2d 603, Cause of Action Against Governmental Entity for Injury Caused by Condition of Public Building.

Civil Actions Against State & Local Gov. Section 6:10, Punitive Damages; Prejudgment Interest.

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Annual Survey of South Carolina Law: Torts. 38 S.C. L. Rev. 232 (Autumn 1986).

Annual survey of South Carolina law: Tort law. 43 S.C. L. Rev. 191 (Autumn 1991).

Balancing act: Public policy and punitive damages caps. 49 S.C. L. Rev. 293 (Winter 1998).

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1. Validity

Re‑enactments of statutory Tort Claims Act caps on damages, as part of general appropriation acts, reasonably and inherently related to raising and spending of tax monies and thus did not violate single‑subject requirement of State Constitution. Giannini v. South Carolina Dept. of Transp. (S.C. 2008) 378 S.C. 573, 664 S.E.2d 450, rehearing denied. Municipal Corporations 723.5; Statutes 1617(12)

Tort Claims Act’s limitation of recovery to a $600,000 aggregate verdict per occurrence, regardless of the number of agencies or political subdivisions or claims or actions involved, does not violate equal protection; limitation accords with stated legislative purpose of preserving finite governmental assets and treats similar plaintiffs in a similar manner. Giannini v. South Carolina Dept. of Transp. (S.C. 2008) 378 S.C. 573, 664 S.E.2d 450, rehearing denied. Municipal Corporations 723; States 212

Legislature’s attempt to reinstate the statutory caps on governmental entity’s tort liability with respect “to claims or actions pending,” in addition to those “thereafter filed,” after Supreme Court ruled that such caps were impliedly repealed, was, by definition, retroactive, and violated the doctrine of separation of powers. Simmons v. Greenville Hosp. System (S.C. 2003) 355 S.C. 581, 586 S.E.2d 569, rehearing denied, grant of post‑conviction relief affirmed. Constitutional Law 2384; Municipal Corporations 723.5; Statutes 1581

Statute limiting liability of governmental entities and physicians they employed to $1 million did not apply to wrongful death action by estate of deceased patient against hospital, where statutory caps were impliedly repealed by adoption of Uniform Contribution Act, and legislature lacked authority to reenact statutory caps and make act applicable to all claims pending on its effective date. Dykema v. Carolina Emergency Physicians, P.C. (S.C. 2002) 348 S.C. 549, 560 S.E.2d 894. Death 96

Legislature violated doctrine of separation of powers by enacting retroactive statutory amendment attempting to overrule Supreme Court decision which held that Legislature impliedly had repealed Tort Claims Act’s damages cap; thus, action filed before amendment’s effective date was not subject to that cap. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation (S.C. 1999) 336 S.C. 373, 520 S.E.2d 142, rehearing denied. Constitutional Law 2384; Municipal Corporations 743

Sections 15‑78‑100(c) and 15‑78‑120(a)(1) of the Tort Claims Act were repealed by inconsistent provisions of the Uniform Contribution Among Tortfeasors Act, Section 15‑38‑20(B). Southeastern Freight Lines v. City of Hartsville (S.C. 1994) 313 S.C. 466, 443 S.E.2d 395, rehearing denied. Contribution 5(1); Contribution 5(2)

The provisions of the Tort Claims Act, Sections 15‑78‑10 et seq., which place a liability cap of $250,000 on general torts, but a $1 million cap on losses caused by the tort of a physician or dentist, are not unconstitutional since the statute expresses one basis for the distinction as a “recognition by the General Assembly of significantly higher damages in cases of medical malpractice” and the test for disparate treatment is a showing that the classification is essentially arbitrary and without any reasonable basis. Foster v. South Carolina Dept. of Highways and Public Transp. (S.C. 1992) 306 S.C. 519, 413 S.E.2d 31.

The limitation on recovery as set forth in Section 15‑78‑120(a) does not violate Article I, Section 9 of the South Carolina Constitution since that provision is not a guarantee of full compensation to all injured persons. Wright v. Colleton County School Dist. (S.C. 1990) 301 S.C. 282, 391 S.E.2d 564. Constitutional Law 2314; Municipal Corporations 723.5

The statutory limitation on recovery under the Tort Claims Act does not violate equal protection principles. The limitation on damages as set forth in the Tort Claims Act bears a reasonable relationship to the legislative objectives as expressed in Section 15‑78‑20(a), of relieving the government from the hardships of unlimited and unqualified liability and preserving the finite assets of governmental entities which are needed for an effective and efficient government. The limitations set forth in the Act rest on a reasonable basis and are not arbitrary in that the legislature has balanced the need for services and the demand for reasonable taxes against the fair reimbursement of injured tort victims. Furthermore, the damage limitation provisions apply to similar plaintiffs in a similar manner. All tort victims injured by the State have the right to bring an action against it, and potential plaintiffs are not treated disparately because the same monetary cap applies equally to the entire class of plaintiffs. Wright v. Colleton County School Dist. (S.C. 1990) 301 S.C. 282, 391 S.E.2d 564. Constitutional Law 3746; Municipal Corporations 723.5

2. In general

Statutory cap on damages under Tort Claims Act did not apply in wrongful death action against Department of Transportation (DOT), where action was filed prior to July 1, 1994, which was the date of reinstatement of statutory cap. Pike v. South Carolina Dept. of Transp. (S.C. 2000) 343 S.C. 224, 540 S.E.2d 87. States 212

The dismissal of an insured’s bad faith claim against its insurer, the State Budget and Control Board, did not prejudice the insured where the insured’s contract claim survived; the South Carolina Tort Claims Act, Section 15‑78‑10 et seq. would not allow the recovery of punitive damages, and also the Act required a statutory cap to damages that were less than the amount of damages requested in the contract claim. Charleston County School Dist. v. State Budget and Control Bd. (S.C. 1993) 313 S.C. 1, 437 S.E.2d 6.

The Tort Claims Act’s limitation on damages does not infringe upon the constitutional right of trial by jury. The limitation on recovery as set forth in the Tort Claims Act does nothing more than establish the outer limits of a remedy provided by the legislature. A remedy is a matter of law, not a matter of fact. Although a party has the right to have a jury assess his or her damages, he or she has no right to have a jury dictate through an award the legal consequences of its assessments. The Tort Claims Act does not restrain the fact‑finding province of the jury or prevent a jury from assessing a plaintiff’s damages. Wright v. Colleton County School Dist. (S.C. 1990) 301 S.C. 282, 391 S.E.2d 564. Jury 31.1; Municipal Corporations 723.5

The General Assembly of South Carolina may enact, alter, or repeal any law or remedy unless inconsistent with the South Carolina Constitution and, therefore, the statutorily imposed limits on the amount of damages recoverable from the State under the Tort Claims Act is a proper exercise of legislative power. Wright v. Colleton County School Dist. (S.C. 1990) 301 S.C. 282, 391 S.E.2d 564.

2.5. Constitutional issues

In Nevada taxpayer’s suit against Franchise Tax Board of California related to allegedly abusive audit and investigation practices, Nevada court applied special and discriminatory rule, and thus violated Full Faith and Credit Clause, by awarding one million dollars in damages to taxpayer under Nevada law, which amount exceeded maximum that could have been awarded in similar circumstances against Nevada agencies, where Nevada’s Supreme Court ignored both Nevada’s typical rules of immunity, which capped damages against Nevada agencies at $50,000, and California’s immunity‑related statutes, which were consistent with Nevada law by prohibiting monetary recovery greater than amount of maximum recovery under Nevada law in similar circumstances. Franchise Tax Bd. of California v. Hyatt, 2016, 136 S.Ct. 1277, 194 L.Ed.2d 431. States 5(2)

Two‑tier statutory damages cap under Tort Claims Act, which capped damages for claims against government entities at $300,000 per person or $600,000 per occurrence, but which capped damages for medical malpractice at $1.2 million, did not violate equal protection based on injured motorcyclist’s claim that disparate treatment was based solely on identity of tortfeasor, in action against Department of Transportation and Department of Public Safety for injuries sustained when motorist proceeded through intersection controlled by semaphore for which red light bulb had burnt out and struck motorcycle; distinction was rationally related to state’s interest in relieving government of hardships of unlimited liability and in furthering accountable and competent healthcare while promoting affordable medical liability insurance. Boiter v. South Carolina Dept. of Transp. (S.C. 2011) 393 S.C. 123, 712 S.E.2d 401, rehearing denied. Automobiles 313; Constitutional Law 3746

3. Construction and application

Statutory caps on governmental entity’s tort liability did not apply to medical malpractice action against county hospital that accrued prior to effective dates of such caps, even though action was not filed until after effective dates. Simmons v. Greenville Hosp. System (S.C. 2003) 355 S.C. 581, 586 S.E.2d 569, rehearing denied, grant of post‑conviction relief affirmed. Health 605

Monetary caps contained in Tort Claims Act (TCA) did not apply to causes of action against County Health Services District for alleged negligence in childbirth, where causes of action arose or accrued before effective date of act that reenacted caps. Williamson v. South Carolina Ins. Reserve Fund (S.C. 2003) 355 S.C. 420, 586 S.E.2d 115. Health 834(1)

With respect to statute providing that $250,000 cap limiting recovery against the state under the Tort Claims Act “takes effect upon approval by the Governor and applies to claims or actions pending on that date or thereafter filed, except where final judgment has been entered before that date,” term “final judgment” refers to a final decision or verdict in the lower court. Pike v. South Carolina Dept. of Transp. (S.C.App. 1998) 332 S.C. 605, 506 S.E.2d 516, rehearing denied, certiorari granted, affirmed as modified 343 S.C. 224, 540 S.E.2d 87. States 112(2)

Pedestrian’s verdict was rendered within time frame when Tort Claims Act’s statutory damage cap was repealed, and thus trial court properly refused to grant Department of Transportation’s motion for remittitur to $250,000 under Tort Claims Act, where action was filed before July 1, 1994. Wooten by Wooten v. South Carolina Dept. of Transp. (S.C.App. 1997) 326 S.C. 516, 485 S.E.2d 119, rehearing denied, affirmed as modified 333 S.C. 464, 511 S.E.2d 355. States 212

Neither Tort Claims Act’s $250,000 cap on amount individual may recover from government entity for loss arising from single occurrence, nor its $500,000 per occurrence cap, applied to wrongful death case that was filed before legislature re‑enacted caps following their implied repeal. Knoke v. South Carolina Dept. of Parks, Recreation and Tourism (S.C. 1996) 324 S.C. 136, 478 S.E.2d 256, rehearing denied. Municipal Corporations 723.5

Supreme Court’s decisions holding that legislature had impliedly repealed Tort Claims Act’s $250,000 cap on amount that individual may recover from government entity for loss arising from single occurrence applied to $500,000 per occurrence cap, as well. Knoke v. South Carolina Dept. of Parks, Recreation and Tourism (S.C. 1996) 324 S.C. 136, 478 S.E.2d 256, rehearing denied. Municipal Corporations 743

Two hundred fifty thousand dollar governmental liability cap contained in Tort Claims Act is inapplicable to all cases filed before July 1, 1994, not merely those in which Uniform Contribution Act applies. McClain v. South Carolina Dept. of Educ. (S.C. 1996) 323 S.C. 132, 473 S.E.2d 799, rehearing denied. Municipal Corporations 723.5

4. Waiver of immunity

In cases arising after July 1, 1986, possession of liability coverage in excess of the statutory limit on damages set forth in Section 15‑78‑120(a) does not constitute a waiver of immunity up to the coverage limit. Thus, a school district did not and could not waive its immunity up to the coverage limits of its policy as to causes of action arising or accruing after July 1, 1986, and the statutory cap set forth in Section 15‑78‑102(a) applied to such actions. Wright v. Colleton County School Dist. (S.C. 1990) 301 S.C. 282, 391 S.E.2d 564. Municipal Corporations 743

5. Interpretation with other statutes

The statutory cap of $250,000 on damages under the Tort Claims Act, Section 15‑78‑10 et seq., does not apply to a suit brought under the Whistleblower Act, Section 8‑27‑10 et seq., since Section 15‑78‑120 of the Tort Claims Act limits the liability of the governmental agency for any action “brought under this chapter,” and no language therein indicates or infers that its statutory cap governs Whistleblower actions. McGill v. University of South Carolina (S.C. 1992) 310 S.C. 224, 423 S.E.2d 109.

6. Separate claims of parent of child

Parents of a child who contracted meningitis while in the neonatal intensive care unit of a hospital (for treatment of injuries sustained in an automobile accident) were not barred under the Charitable Immunity Act (Section 33‑55‑210) from recovering against the hospital for actual damages for medical and related expenses incurred in caring for the child, despite settlement of a suit by the child against the hospital for the maximum amount recoverable under the Act; the legislature could have provided a limitation for the maximum amount recoverable under the Act but did not do so, and the court would not read such limitation into the Act. Endres v. Greenville Hosp. System (S.C. 1993) 312 S.C. 64, 439 S.E.2d 261. Charities 45(2)

A parent’s claims for a child’s medical expenses and loss of services are claims that are separately cognizable from the child’s claims under the Tort Claims Act. Thus, where a parent’s and child’s damages each exceeded $250,000, the parent was entitled to receive $250,000 in damages, as the maximum amount a person may recover under Section 15‑78‑120(a)(1) because of a loss arising from a single occurrence, without regard to the $250,000 in damages which had already been paid for the child’s claims. Wright v. Colleton County School Dist. (S.C. 1990) 301 S.C. 282, 391 S.E.2d 564. Municipal Corporations 743

6.5. Single occurrence

Negligence by Department of Transportation in failing to implement re‑lamping policy to replace bulbs in traffic signals before they burnt out did not unfold into negligence of Department of Public Safety in failing to respond to citizen call about burnt out red light bulb at intersection one hour and 27 minutes prior to accident, and thus, negligent actions of different agencies did not constitute single occurrence so that damages in action against both Departments for injuries sustained by motorcyclist and passenger who were struck by motorist in intersection were capped under Tort Claims Act, based on single occurrence, at $600,000. Boiter v. South Carolina Dept. of Transp. (S.C. 2011) 393 S.C. 123, 712 S.E.2d 401, rehearing denied. Automobiles 313

7. Attorneys’ fees

Statute authorizing award of attorney fees to prevailing party in civil action does not apply to actions brought under Tort Claims Act; Tort Claims Act is exclusive civil remedy for governmental torts and provides for award of attorney fees only as sanction for filing frivolous pleadings or motions. Knoke v. South Carolina Dept. of Parks, Recreation and Tourism (S.C. 1996) 324 S.C. 136, 478 S.E.2d 256, rehearing denied. Municipal Corporations 1040

Although father of 12‑year‑old child who was killed in fire in state park was prevailing party in wrongful death suit against state Department of Parks, he was not entitled to award of attorney fees, as Tort Claims Act was exclusive civil remedy for claim. Knoke v. South Carolina Dept. of Parks, Recreation and Tourism (S.C. 1996) 324 S.C. 136, 478 S.E.2d 256, rehearing denied. States 215

8. Set off of amount of settlement

Proper method to set off damages awarded against South Carolina Department of Education under Tort Claims Act by amount of pre‑trial settlement paid by private defendant was to reduce jury’s verdict by amount of settlement allocated to each cause of action, to then further reduce verdict by plaintiff’s comparative negligence, and, finally, to apply damages cap under Tort Claims Act. Smalls v. South Carolina Dept. of Educ. (S.C.App. 2000) 339 S.C. 208, 528 S.E.2d 682. Death 25

9. Insurance Reserve Fund

Insurance Reserve Fund was obligated to provide County Health Services District with coverage for stipulated damages in medical malpractice action, involving two separate lawsuits arising from services rendered by two district doctors, in excess of $1 million per occurrence policy limit, because there was no limit on District’s liability for negligence of one of its physicians on date claim arose or accrued, and Fund had both statutory and contractual duty to “to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages.” Williamson v. South Carolina Ins. Reserve Fund (S.C. 2003) 355 S.C. 420, 586 S.E.2d 115. Insurance 2281(2); Insurance 2396

10. Pleadings

Granting sewer district leave to amend answer to include affirmative defense concerning liability cap under Tort Claims Act was warranted in motorist’s personal injury action arising from automobile accident, although sewer district filed amended answer on morning of first day of trial; motorist would not be prejudiced since motorist had maintained that Act applied, and sewer district’s request was not a surprise. Parker v. Spartanburg Sanitary Sewer Dist. (S.C.App. 2005) 362 S.C. 276, 607 S.E.2d 711. Pleading 258(3)

Liability cap articulated within the Tort Claims Act is not an affirmative defense, and the failure to plead the specific limitation on the amount of recovery allowed under the Act is not a waiver of the cap. Parker v. Spartanburg Sanitary Sewer Dist. (S.C.App. 2005) 362 S.C. 276, 607 S.E.2d 711. Municipal Corporations 743

10.5. Instructions

State Department of Transportation (DOT) was not prejudiced, in negligence action arising from motor vehicle accident, by absence of a jury instruction that any jury award would not be subject to income taxes and that jury was not to consider taxes in fixing the amount of an award, where jury awarded $645,00 or more to each of three plaintiffs and trial court reduced each award to $200,000 in accordance with damages caps under Tort Claims Act. Giannini v. South Carolina Dept. of Transp. (S.C. 2008) 378 S.C. 573, 664 S.E.2d 450, rehearing denied. Appeal And Error 1068(4); Appeal And Error 1068(5)

11. Calculation of damages

Collateral source rule barred admission of amounts actually paid by Medicare toward motorist’s total medical bills in motorist’s personal injury action that was brought against sewer district concerning automobile accident involving sewer district’s employee. Parker v. Spartanburg Sanitary Sewer Dist. (S.C.App. 2005) 362 S.C. 276, 607 S.E.2d 711. Damages 182

12. Adequacy or excessiveness of award

Jury award of $688,503 for operator of waste tire processing and disposal facility, which was reduced to $300,000 by trial court pursuant to the Tort Claims Act, was not excessive, in operator’s gross negligence action against Department of Health and Environmental Control (DHEC) for not reinstating operator to rebate list as ordered by ALJ in administrative proceeding; operator owned only one of less than ten such facilities operating in the State, and there was evidence that because operator was not on rebate list he was unable to sustain contracts with his major customers, that operator had been able to resell 35‑40% of the tires delivered by one of the major customer that he had lost and had been able to make a profit on such tires, that operator had been able to sell chips from tires for playgrounds, carpet backing and septic systems, and that prior to be taken off rebate list operator’s business was increasing. Proctor v. Dept. of Health and Environmental Control (S.C.App. 2006) 368 S.C. 279, 628 S.E.2d 496. States 212

13. Apportionment of damages

Trial court could reduce each of three plaintiffs’ verdicts to $200,000 in accordance with damages caps under Tort Claims Act, rather than apportioning the maximum aggregate award of $600,000 in accordance with verdicts awarded to each plaintiff by jury, in negligence action against state Department of Transportation (DOT) in which jury awarded $1.5 million to one plaintiff, $745,000 to another, and $645,000 to the third; each verdict exceeded the $300,000 limit for an individual’s recovery against a government agency, and statute did not indicate a legislative intent that the maximum $600,000 aggregate award be divided in proportion to verdicts awarded to each plaintiff. Giannini v. South Carolina Dept. of Transp. (S.C. 2008) 378 S.C. 573, 664 S.E.2d 450, rehearing denied. States 212

**SECTION 15‑78‑130.** Defense of political subdivision which has not purchased insurance through State Fiscal Accountability Authority.

The defense for a political subdivision against an action brought pursuant to this chapter, when the political subdivision does not purchase insurance through the State Fiscal Accountability Authority, must be provided by the political subdivision or its designee.

HISTORY: 1986 Act No. 463, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k198.

States 198.

C.J.S. States Section 312.

**SECTION 15‑78‑140.** Procurement of insurance by political subdivisions; exclusivity of remedies provided in this chapter.

(A) The political subdivisions of this State, in regard to tort and automobile liability, property, and casualty insurance shall procure insurance to cover these risks for which immunity has been waived by: (1) the purchase of liability insurance pursuant to Section 1‑11‑140; or (2) the purchase of liability insurance from a private carrier; or (3) self‑insurance; or (4) establishing pooled self‑insurance liability funds, by intergovernmental agreement, which may not be construed as transacting the business of insurance or otherwise subject to state laws regulating insurance. A pooled self‑insurance liability pool is authorized to purchase specific and aggregate excess insurance. A pooled self‑insurance liability fund must provide liability coverage for all employees of a political subdivision applying for participation in the fund. If the insurance is obtained other than pursuant to Section 1‑11‑140, it must be obtained subject to the following conditions:

(1) if the political subdivision does not procure tort liability insurance pursuant to Section 1‑11‑140, it also must procure its automobile liability and property and casualty insurance from other sources and shall not procure these coverages through the Insurance Reserve Fund;

(2) if a political subdivision procures its tort liability insurance, automobile liability insurance, or property and casualty insurance through the Insurance Reserve Fund, all liability exposures of the political subdivision as well as its property and casualty insurance must be insured with the Insurance Reserve Fund;

(3) if the political subdivision, at any time, procures its tort liability, automobile liability, property, or casualty insurance other than through the Insurance Reserve Fund and then subsequently desires to obtain this coverage with the Insurance Reserve Fund, notice of its intention to so obtain this subsequent coverage must be provided to the Insurance Reserve Fund at least ninety days prior to the beginning of the coverage with the Insurance Reserve Fund. The other lines of insurance that the political subdivision is required to procure from the fund are not required to commence until the coverage for that line of insurance expires. Any political subdivision may cancel all lines of insurance with the Insurance Reserve Fund if it gives ninety days’ notice to the fund. The Insurance Reserve Fund may negotiate the insurance coverage for any political subdivision separate from the insurance coverage for other insureds;

(4) if any political subdivision cancels its insurance with the Insurance Reserve Fund, it is entitled to an appropriate refund of the premium, less reasonable administrative cost.

(B) For any claim filed under this chapter, the remedy provided in Section 15‑78‑120 is exclusive. The immunity of the State and its political subdivisions, with regard to the seizure, execution, or encumbrance of their properties is reaffirmed.

HISTORY: 1986 Act No. 463, Section 1; 1997 Act No. 155, Part II, Section 55E; 2014 Act No. 121 (S.22), Pt VII, Section 19.C, eff July 1, 2015.

Editor’s Note

2014 Act No. 121, Section 19.A, provides as follows:

“SECTION 19.A. (1) The Insurance Reserve Fund is transferred to the State Fiscal Accountability Authority on July 1, 2015, as a division of the authority.

“(2) The Insurance Reserve Fund, transferred to the authority, shall administer and perform all administrative and operational functions of the Office of Insurance Services, including the Insurance Reserve Fund, except that the Attorney General of this State must continue to approve the attorneys‑at‑law retained to represent the clients of the Insurance Reserve Fund in the manner provided by law.”

Effect of Amendment

2014 Act No. 121, Section 19.C, substituted “Insurance Reserve Fund” for “Budget and Control Board” throughout, and made other nonsubstantive changes.

CROSS REFERENCES

Authorization of Fiscal Accountability Authority, through the Office of Insurance Reserve Fund, to provide insurance, see Section 1‑11‑140.

Catawba Indian Tribe to maintain liability insurance with same coverage and limits as required in this section, see Section 27‑16‑80.

LIBRARY REFERENCES

Westlaw Key Number Searches: 217k2347; 360k73; 360k191.

Insurance 2347.

States 73, 191.

C.J.S. States Sections 130 to 136, 140, 196 to 197, 202, 297 to 307, 314.

NOTES OF DECISIONS

In general 1

1. In general

Release of foul odors through sewage air relief valve was not accidental and unexpected, and, thus, “sudden and accidental” exception to pollution exclusion of liability policy issued to county public service district did not apply to homeowner’s claim to recover for damage caused by release of odors in front of house; release prevented sewer line explosion, and although district did not know when pumps would turn on and cause release, they did so several times each day. South Carolina Ins. Reserve Fund v. East Richland County Public Service Dist. (S.C.App. 2016) 417 S.C. 149, 789 S.E.2d 63, rehearing denied. Insurance 2278(17)

Foul odors from hydrogen sulfide and methane gases released from sewage force main and an air relief valve in front of homeowner’s house were “pollutants” within meaning of pollution exclusion of liability policy issued to county public service district, even though the odors were not harmful; the odors were “fumes” or “gases” listed in the exclusion. South Carolina Ins. Reserve Fund v. East Richland County Public Service Dist. (S.C.App. 2016) 417 S.C. 149, 789 S.E.2d 63, rehearing denied. Insurance 2278(17)

Pollution exclusion was valid in policy issued to county public service district under Tort Claims Act permitting political subdivisions to procure coverage from Insurance Reserve Fund for risks for which immunity was waived; regulation in existence when legislature enacted the Act contained general liability policy with pollution exclusion. South Carolina Ins. Reserve Fund v. East Richland County Public Service Dist. (S.C.App. 2016) 417 S.C. 149, 789 S.E.2d 63, rehearing denied. Insurance 2278(17)

Insurance Reserve Fund was obligated to provide County Health Services District with coverage for stipulated damages in medical malpractice action, involving two separate lawsuits arising from services rendered by two district doctors, in excess of $1 million per occurrence policy limit, because there was no limit on District’s liability for negligence of one of its physicians on date claim arose or accrued, and Fund had both statutory and contractual duty to “to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages.” Williamson v. South Carolina Ins. Reserve Fund (S.C. 2003) 355 S.C. 420, 586 S.E.2d 115. Insurance 2281(2); Insurance 2396

Statutes authorizing State Budget and Control Board to purchase insurance for governmental entities do not provide that only risks that Board can insure against are those waived under Tort Claims Act; Board’s duty to insure against risks waived under Act is not exclusive. Town of Duncan v. State Budget and Control Bd., Div. of Ins. Services (S.C. 1997) 326 S.C. 6, 482 S.E.2d 768, rehearing denied. Insurance 2348

**SECTION 15‑78‑150.** Authority of State Fiscal Accountability Authority to purchase liability insurance; funding of purchase by participating governmental entities; premiums set according to risk; development of actuarial rating system plan.

(a) The State Fiscal Accountability Authority is authorized to purchase liability insurance.

(b) The purchase of insurance must be funded by participating governmental entities by payment of premiums as required by the State Fiscal Accountability Authority. The State Fiscal Accountability Authority in setting these premiums shall rate the policy according to the risk involved with the general class of insured entity. The State Fiscal Accountability Authority must develop an actuarial rating system plan based upon the classification of employee and the risk involved by class of employee which must be implemented by July 1, 1990.

HISTORY: 1986 Act No. 463, Section 1; 1987 Act No. 123, Section 2.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k67; 360k73.

States 67, 73.

C.J.S. States Sections 121, 130 to 138, 140.

**SECTION 15‑78‑160.** Nonliability of State Fiscal Accountability Authority where lack of insurance coverage results from agency’s or political subdivision’s failure to pay premium.

If an agency or political subdivision fails to pay any required premium within sixty days from the date the premium is invoiced, the State Fiscal Accountability Authority may cancel the policy for nonpayment of premium by mailing a notice of cancellation giving not less than thirty days’ notice of the cancellation to the delinquent agency or political subdivision. Prior to the termination of the insurance coverage, notice of the impending termination also must be published in a newspaper of regular circulation in the county where the insured’s headquarters is located. The State Fiscal Accountability Authority is not liable for any risk or loss occurring after the effective date of the cancellation.

HISTORY: 1986 Act No. 463, Section 1; 1996 Act No. 314, Section 3.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

LIBRARY REFERENCES

Westlaw Key Number Searches: 217k2041; 217k2347.

Insurance 2041, 2347.

C.J.S. Insurance Sections 553 to 554, 570, 684, 695, 697, 723 to 724, 772, 779.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Colleges and Universities Section 18, Liability.

**SECTION 15‑78‑170.** Action or claim for death of person; division of recovery.

An action or claim for the death of a person may be brought under this chapter by the executor or administrator respectively, of the person’s estate when death results from bodily injury if the bodily injury would have entitled the injured party to maintain an action or claim if death had not ensued. The provisions and limitations of this chapter are applicable to any such action or claim. Every action or claim must be for the benefit of the wife or husband and child, or children of the person whose death has been so caused and if there is no wife, husband, child, or children, then for the benefit of the parent or parents, and if there is none, then for the benefit of the heirs‑at‑law or the distributees of the person whose death has been so caused. Any amount recovered must be divided among the before‑mentioned parties in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his estate.

HISTORY: 1986 Act No. 463, Section 1.

CROSS REFERENCES

This section applicable to Catawba Indian Tribe, see Section 27‑16‑80.

LIBRARY REFERENCES

Westlaw Key Number Searches: 360k191; 360k203.

States 191, 203.

C.J.S. States Sections 196 to 197, 202, 297 to 307, 314, 317 to 320.

NOTES OF DECISIONS

In general 1

1. In general

**SECTION 15‑78‑170 does not preclude a survival action.** Thus, a plaintiff, whose brother was killed allegedly as a result of the State’s negligent act, was entitled to pursue a survival action for conscious pain and suffering and medical expenses. Baker v. Sanders (S.C. 1990) 301 S.C. 170, 391 S.E.2d 229. States 112.2(2)

The complaint in a wrongful death action must allege that the decedent’s negligence did not cause or contribute to his injury. Otherwise, the complaint would not state facts sufficient to show that the decedent could have maintained an action had he survived, which is the statutory requirement. Patrick v. South Carolina Highway Dept. (S.C. 1963) 243 S.C. 246, 133 S.E.2d 750.

Where an injury occurs, resulting in the death of the only person who could account for the cause, the court held that circumstantial evidence can be relied upon to establish that the deceased did not in any way bring about the injury, or did not negligently contribute thereto. Mahon v. Spartanburg County (S.C. 1944) 205 S.C. 441, 32 S.E.2d 368.

A complaint which is brought under this section [former Code 1962 Section 33‑233] for wrongful death does not state a cause of action when it does not allege the name of the beneficiary or beneficiaries and their relationship to the deceased as set forth in former Code 1962 Section 10‑1952 [see now Section 15‑51‑20]. Kennemore v. South Carolina State Highway Dept. (S.C. 1942) 199 S.C. 85, 18 S.E.2d 611. Death 49(1)

**SECTION 15‑78‑180.** Applicability of chapter to causes of action arising before or after July 1, 1986.

The provisions of Chapter 78 of Title 15 of the 1976 Code shall only apply to those causes of action arising or accruing after the effective date of this chapter; provided, however, the provisions of Section 15‑78‑20(c) of the 1976 Code are applicable to all causes of action arising on or before the effective date of the chapter.

HISTORY: 1986 Act No. 463, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k191.

States 191.

C.J.S. States Sections 196 to 197, 202, 297 to 307, 314.

**SECTION 15‑78‑190.** Compensation of plaintiff pursuant to underinsured or uninsured defendant provisions of plaintiff’s insurance policy.

If the amount of the verdict or judgment is not satisfied by reason of the monetary limitations of this chapter upon recovery from the State or political subdivision thereof, the plaintiff’s insurance company, subject to the underinsured and uninsured defendant provisions of the plaintiff’s insurance policy, if any, shall compensate the plaintiff for the difference between the amount of the verdict or judgment and the payment by the political subdivision. If a cause of action is barred under Section 15‑78‑60 of the 1976 Code, the plaintiff’s insurance company must compensate him for his losses subject to the aforementioned provisions of his insurance policy.

HISTORY: 1986 Act No. 463, Section 6.

CROSS REFERENCES

This section applicable to Catawba Indian Tribe, see Section 27‑16‑80.

LIBRARY REFERENCES

Westlaw Key Number Searches: 217k2347; 360k212.

Insurance 2347.

States 212.

C.J.S. States Section 325.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assault and Battery Section 52, Aggressor Acting Outside Scope of Employment.

S.C. Jur. Colleges and Universities Section 18, Liability.

S.C. Jur. Damages Section 14, Statutory Limits on Damages.

S.C. Jur. Eminent Domain Section 1, Scope Note.

NOTES OF DECISIONS

Purpose 1

Recovery requirements 2

1. Purpose

Purpose of provision of Tort Claims Act stating that if amount of verdict or judgment is not satisfied by reason of Act’s monetary limitations, plaintiff’s insurer, subject to policy’s uninsured‑motorist (UM) coverage and underinsured‑motorist (UIM) coverage provisions, shall compensate plaintiff for differencebetween amount of judgment and payment by political subdivision is to allow injured parties with damages above Act’s cap to obtain further compensation. Cain v. Nationwide Property and Cas. Ins. Co. (S.C. 2008) 378 S.C. 25, 661 S.E.2d 349, rehearing denied. Automobiles 249.3; Insurance 2772

2. Recovery requirements

County’s dump truck, which collided with vehicle in which insured was riding, was “underinsured vehicle,” and thus insured was not entitled to recover uninsured‑motorist (UM) benefits under policy and therefore could not recover under provision of Tort Claims Act governing compensation from UM or underinsured‑motorist (UIM) provisions of plaintiff’s insurance policy when amount of verdict or judgment against governmental entity is not satisfied by reason of Act’s monetary limitations; dump truck had insurance protection greater than minimum limits but less than insured’s damages. Cain v. Nationwide Property and Cas. Ins. Co. (S.C. 2008) 378 S.C. 25, 661 S.E.2d 349, rehearing denied. Insurance 2787

To recover uninsured‑motorist (UM) or underinsured‑motorist (UIM) benefits when judgment is not satisfied due to monetary limitations of Tort Claims Act, plaintiff must first meet requirements and terms found both in provision of Tort Claims Act governing compensation from UM or UIM provisions of plaintiff’s policy and within policy, assuming the policy provisions do not violate the law or public policy. Cain v. Nationwide Property and Cas. Ins. Co. (S.C. 2008) 378 S.C. 25, 661 S.E.2d 349, rehearing denied. Insurance 2772

**SECTION 15‑78‑200.** Exclusive and sole remedy for torts committed by employee of governmental entity while acting within scope of employee’s official duty.

Notwithstanding any provision of law, this chapter, the “South Carolina Tort Claims Act”, is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee’s official duty. The provisions of this chapter establish limitations on and exemptions to the liability of the governmental entity and must be liberally construed in favor of limiting the liability of the governmental entity.

HISTORY: 1997 Act No. 155, Part II, Section 55B.

Editor’s Note

1997 Act No. 155, Part II, Section 55A provides as follows:

“SECTION 55A. The General Assembly finds:

“(1) that because of the unique nature, role, funding, and function of government, the General Assembly has never intended that the government or taxpayers would be subject to unlimited liability for tort actions against the government;

“(2) this section shall clarify any ambiguity in the General Assembly’s intent that there remain reasonable limits upon recovery against the government for tort actions, and that the government is only liable for torts as expressly prescribed and authorized in the ‘South Carolina Tort Claims Act’”.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k191.

States 191.

C.J.S. States Sections 196 to 197, 202, 297 to 307, 314.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Officers and Public Employees Section 76, South Carolina Tort Claims Act.

Attorney General’s Opinions

A contract obligating the Rural Water District to answer for a claim under the South Carolina Tort Claims Act in a manner different from the procedure provided by the Act would violate the public policy of the State; and with regard to claims arising from the acts or omissions of a contractor, an agreement obligating the District in advance to defend the contractor from such claims would be likely to result in an invalid expenditure of public funds for a private purpose. S.C. Op.Atty.Gen. (March 6, 2012) 2012 WL 889087.

NOTES OF DECISIONS

In general 1

1. In general

County’s supposed disclaimer of liability for negligence, in ordinance addressing developer’s posting of financial guarantees in lieu of completing required infrastructure improvements for a subdivision as a prerequisite to selling lots, was expressly preempted by South Carolina Tort Claims Act. Repko v. County of Georgetown (S.C.App. 2016) 416 S.C. 22, 785 S.E.2d 376, rehearing denied. Counties 141

Complaint of employees of state Commission for Blind alleged torts committed by the commission’s governing board members while acting within the scope of their official duty, which were subject to Tort Claims Act, since Act explicitly provided sole and exclusive remedy for torts committed by employees of governmental entity, Commission was governmental entity, and complaint asserted claims against board members who acted on behalf of Commission in commanding employees to attend hearing for purpose of being interviewed by board. Flateau v. Harrelson (S.C.App. 2003) 355 S.C. 197, 584 S.E.2d 413, rehearing denied, certiorari denied. States 112.1(3)

Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson (S.C.App. 2003) 355 S.C. 197, 584 S.E.2d 413, rehearing denied, certiorari denied. Municipal Corporations 723

Individual members of governing board of state Commission for Blind were not liable for alleged torts committed against employees, since causes of action alleged by employees constituted conduct within scope of members’ official duties; remedy mandated in Tort Claims Act was legal action initiated against governmental entity rather than individual governmental employees. Flateau v. Harrelson (S.C.App. 2003) 355 S.C. 197, 584 S.E.2d 413, rehearing denied, certiorari denied. Public Employment 914; States 79

**SECTION 15‑78‑210.** Rights and privileges preserved.

The provisions of Act 27 of 2005 do not affect any right, privilege, or provision of the South Carolina Tort Claims Act as contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33.

HISTORY: 2005 Act No. 27, Section 13, eff March 21, 2005.

Editor’s Note

This section was codified and the wording changed for codification purposes at the request of the Code Commissioner.

**SECTION 15‑78‑220.** Rights and privileges not affected.

The provisions of Act 32 of 2005 do not affect any right, privilege, or provision of the South Carolina Tort Claims Act as contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33.

HISTORY: 2005 Act No. 32, Section 18, eff July 1, 2005.

Editor’s Note

This section was codified and altered for purposes of codification at the direction of the Code Commissioner.