**A** **BILL**

TO AMEND SECTION 15‑32‑220 OF THE 1976 CODE, RELATING TO NONECONOMIC DAMAGES LIMIT, TO PROVIDE FOR PERSONAL INJURY ACTIONS AGAINST DEFENDANTS AND TO MAKE TECHNICAL CHANGES; TO AMEND CHAPTER 32, TITLE 15, RELATING TO DAMAGES, BY ADDING SECTION 15‑32‑250, TO PROVIDE FOR PLEADINGS IN CLAIMS FOR PUNITIVE DAMAGES; BY ADDING SECTION 15‑32‑260, TO PROVIDE FOR BIFURCATED TRIALS FOR AWARD OF DAMAGES; BY ADDING SECTION 15‑32‑270, TO LIMIT PUNITIVE DAMAGES; AND BY ADDING SECTION 15‑35‑280, TO PROVIDE RESTRICTIONS FOR AWARDING PUNITIVE DAMAGES; TO AMEND THE 1976 CODE, BY ADDING ARTICLE 8 TO CHAPTER 23, TITLE 58, SO AS TO ESTABLISH THE CDL DRIVER EMPLOYMENT PROTECTION ACT WHICH PROVIDES THAT CIVIL LIABILITY CLAIMS MADE AGAINST AN EMPLOYER OF A PERSON WHO HOLDS A VALID COMMERCIAL DRIVER’S LICENSE BASED ON ANY THEORY OF NEGLIGENT HIRING, TRAINING, RETENTION, OR ENTRUSTMENT MUST BE CONSIDERED IN THE SECOND PHASE OF A BIFURCATED TRIAL PURSUANT TO SECTION 15‑32‑520(E), IF THERE IS EVIDENCE TO SUPPORT AN AWARD OF PUNITIVE DAMAGES, BUT PUNITIVE DAMAGES MAY NOT BE AWARDED AGAINST AN EMPLOYER SOLELY ON THE BASIS OF VICARIOUS LIABILITY; TO AMEND SECTION 15‑73‑10, RELATING TO SELLER LIABILITY IN PRODUCTS LIABILITY CLAIMS, TO PROHIBIT CLAIMS AGAINST SELLERS UNLESS SPECIFIED CONDITIONS ARE MET; TO REPEAL ARTICLE 5, CHAPTER 32, TITLE 15 RELATING TO PUNITIVE DAMAGES.

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

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

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

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

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

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

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

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

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

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

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

(B) The plaintiff must specifically plead either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. Chapter 23, Title 58 of the 1976 is amended by adding:

“Section 58‑23‑810. (A) Civil liability claims made against an employer of a person who holds a valid commercial driver’s license issued by this state or any other State based on any theory of negligent hiring, negligent training, negligent supervision, negligent retention, or negligent entrustment, must be considered in the second phase of a bifurcated trial described in Section 15‑32‑520(E), if there is evidence against the employer as would support an award of punitive damages.

(B) A violation of a regulation enacted under the motor vehicle traffic and safety statutes and regulations of this State or of any other state, or the Federal Motor Carrier Safety Regulations, or a conviction of a moving violation, shall not constitute per se gross negligence, but evidence of such a violation or conviction shall be admissible to prove gross negligence in the second phase of a bifurcated trial as described in Section 15‑32‑520(E), if the violation or conviction is the proximate cause of the injury for which damages are sought.

(C) Punitive damages may not be awarded against the employer of a person holding a valid commercial driver’s license based solely on a finding of vicarious liability.”

SECTION 4. Title 15 of the 1976 Code is amended to by adding:

“Chapter 82

“Section 15‑82‑10. (A) A possessor of land, including an owner, lessee, or other occupant, owes no duty of care to a trespasser except to refrain from causing a wilful or wanton injury.

(B) Notwithstanding (A), a possessor of land may be subject to liability for physical injury or death to a child trespasser caused by an artificial condition upon the land if:

(1) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass;

(2) the condition is one of which the possessor knows or has reason to know and which the possessor realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children;

(3) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it;

(4) the utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to children involved; and

(5) the possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured children.

(C) This Section does not affect Sections 16‑11‑410 through 16‑11‑450, or create or increase the liability of any person or entity.”

SECTION 5. Section 15‑73‑10 of the 1976 is amended to read:

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

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

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

~~(2)~~ ~~The rule stated in subsection (1) shall apply although~~

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

~~(b)~~ ~~The user or consumer has not bought the product from or entered into any contractual relation with the seller~~ A consumer or user who is harmed by an allegedly defective product shall be barred from bringing a product liability action against the product’s seller, other than the product’s manufacturer, unless:

(1) the seller exercised substantial control over the portion of the design, testing, manufacturing, packaging, or labeling of the product that caused the alleged harm for which recovery is sought;

(2) the seller altered or modified the product, and the alteration or modification was a substantial factor in causing the alleged harm for which recovery is sought;

(3) The seller provided the user or consumer an express warranty on the product; or

(4) The manufacturer or distributor of the product is not subject to service of process in South Carolina and Section 36‑2‑803 does not provide a basis for personal jurisdiction over the manufacturer or distributor.”

SECTION 6. Article 5, Chapter 32, Title 15 of the 1976 Code is repealed.

SECTION 7. This act takes effect upon approval by the Governor.

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