**South Carolina General Assembly**

124th Session, 2021-2022

**A161, R210, H4048**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. G.M. Smith

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Introduced in the House on March 9, 2021

Introduced in the Senate on April 7, 2022

Last Amended on May 10, 2022

Passed by the General Assembly on May 12, 2022

Governor's Action: May 13, 2022, Signed

Summary: Duty to defend and indemnify

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/9/2021 House Introduced and read first time ([House Journal‑page 34](file:///h:\hj\20210309.docx))

3/9/2021 House Referred to Committee on **Ways and Means** ([House Journal‑page 34](file:///h:\hj\20210309.docx))

3/31/2022 House Committee report: Favorable with amendment **Ways and Means** ([House Journal‑page 31](file:///h:\hj\20220331.docx))

4/1/2022 Scrivener's error corrected

4/6/2022 House Amended ([House Journal‑page 87](file:///h:\hj\20220406.docx))

4/6/2022 House Read second time ([House Journal‑page 87](file:///h:\hj\20220406.docx))

4/6/2022 House Roll call Yeas‑107 Nays‑2 ([House Journal‑page 89](file:///h:\hj\20220406.docx))

4/7/2022 House Read third time and sent to Senate

4/7/2022 Senate Introduced and read first time ([Senate Journal‑page 7](file:///h:\sj\20220407.docx))

4/7/2022 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 7](file:///h:\sj\20220407.docx))

4/25/2022 Senate Referred to Subcommittee: Talley (ch), Hutto, Matthews, Climer, Senn, Cash, Harpootlian

5/4/2022 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 13](file:///h:\sj\20220504.docx))

5/5/2022 Scrivener's error corrected

5/10/2022 Senate Committee Amendment Adopted ([Senate Journal‑page 61](file:///h:\sj\20220510.docx))

5/10/2022 Senate Read second time ([Senate Journal‑page 61](file:///h:\sj\20220510.docx))

5/10/2022 Senate Roll call Ayes‑44 Nays‑0 ([Senate Journal‑page 61](file:///h:\sj\20220510.docx))

5/11/2022 Senate Read third time and returned to House with amendments ([Senate Journal‑page 13](file:///h:\sj\20220511.docx))

5/12/2022 House Concurred in Senate amendment and enrolled ([House Journal‑page 74](file:///h:\hj\20220512.docx))

5/12/2022 House Roll call Yeas‑102 Nays‑0 ([House Journal‑page 75](file:///h:\hj\20220512.docx))

5/12/2022 Ratified R 210 ([Senate Journal‑page 222](file:///h:\sj\20220512.docx))

5/13/2022 Signed By Governor

5/31/2022 Effective date 05/13/22

5/31/2022 Act No.  161

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**VERSIONS OF THIS BILL**

[3/9/2021](file:///p:\pprever\2021-22\4048_20210309.docx)

[3/31/2022](file:///p:\pprever\2021-22\4048_20220331.docx)

[4/1/2022](file:///p:\pprever\2021-22\4048_20220401.docx)

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[5/4/2022](file:///p:\pprever\2021-22\4048_20220504.docx)

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[5/10/2022](file:///p:\pprever\2021-22\4048_20220510.docx)

(A161, R210, H4048)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 1‑11‑445 SO AS TO PROVIDE THAT THE STATE OF SOUTH CAROLINA MUST PROVIDE A LEGAL DEFENSE FOR AND INDEMNIFICATION TO A STATE AGENCY, DEPARTMENT, OR INSTRUMENTALITY AGAINST A CLAIM OR SUIT THAT ARISES OUT OF OR BY VIRTUE OF THE PERFORMANCE OF OFFICIAL DUTIES ON BEHALF OF A STATE AGENCY, DEPARTMENT, OR INSTRUMENTALITY, AND TO PROVIDE A SIMILAR DEFENSE AND INDEMNIFICATION TO BOARD MEMBERS AND EMPLOYEES, AND OFFICERS OF THE ENTITY; TO REPEAL SECTION 1‑11‑440 RELATING TO LEGAL DEFENSES AND INDEMNIFICATIONS PROVIDED TO MEMBERS OF THE FISCAL ACCOUNTABILITY AUTHORITY AND ITS DIRECTOR; AND TO REPEAL SECTION 12‑4‑325 RELATING TO LEGAL DEFENSES AND INDEMNIFICATION PROVIDED TO OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF REVENUE.**

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

**Defense and indemnification of state agencies**

SECTION 1. Article 1, Chapter 11, Title 1 of the 1976 Code is amended by adding:

“Section 1‑11‑445. (A) The State of South Carolina, by and through its agencies, departments, and instrumentalities, must defend the state agency, department, or instrumentality, and the members of a governing board of the state agency, department, or instrumentality, as applicable, against an uninsured claim or suit that arises out of or by virtue of the performance of official duties on behalf of the state agency, department, or instrumentality, and must indemnify them for an uninsured loss or judgment incurred by them as a result of the claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. The State also must defend directors, officers, and employees of the entity, and legislative employees performing duties for the entity, against an uninsured claim or suit that arises out of or by virtue of the performance of official duties unless the director, officer, employee, or legislative employee was acting in bad faith including, but not limited to, acting outside the scope of his official duties, or that the actions constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. The State shall indemnify these directors, officers, employees, and legislative employees for a loss or judgment incurred by them as a result of such uninsured claim or suit, without regard to whether the claim or suit is brought against them in their individual or official capacities, or both. This commitment to defend and indemnify extends to members of the entity, the entity’s officers, the entity’s director, the entity’s employees, and legislative employees after they have left their employment with the entity or the General Assembly, as applicable, if the uninsured claim or suit arises out of or by virtue of their performance of official duties on behalf of their employer.

(B) The term ‘instrumentality’ as used in this section includes an entity where a specific duty or function is imposed on the entity by law and includes any function where the entity must exercise a portion of the state’s sovereignty. Entities to which this provision applies include, but are not limited to, the State Fiscal Accountability Authority, the Judicial Merit Selection Commission, the Public Utilities Review Committee, the Retirement Systems Investment Panel, and all joint special legislative committees.

(C) The provisions of subsection (A) also apply to employees and officers while acting within the scope of their employment when administering any South Carolina statute which has not been held to be unconstitutional or unlawful by a final decision of a court of competent jurisdiction. For purposes of this section, a final decision is the decision of a court declaring the South Carolina statute unconstitutional or otherwise unlawful, and from which the appropriate officials of this State may not or do not take an appeal or request a rehearing.

(D) This section does not waive any defense, immunity, limitation, or jurisdictional bar including, but not limited to, the Tort Claims Act. This section does not affect the terms or conditions of any applicable policy of insurance.”

**Repeal**

SECTION 2. Sections 1‑11‑440 and 12‑4‑325 are repealed on the effective date of this act.

**Time effective**

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

Ratified the 12th day of May, 2022.

Approved the 13th day of May, 2022.

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