~~Indicates Matter Stricken~~

Indicates New Matter

POLLED OUT OF COMMITTEE

MAJORITY FAVORABLE WITH AMENDMENT

February 11, 2021

**S. 82**

Introduced by Senator Malloy

S. Printed 2/11/21--S.

Read the first time January 12, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 82) to amend Section 15-78-120 of the 1976 code, relating to limitations on liability, to increase the limits from a loss to one person, etc., respectfully

**REPORT:**

Has polled the Bill out with amendment, to wit:

Amend the bill, as and if amended, page 1, by striking lines 11 through 19, and inserting therein the following:

/ TO AMEND SECTION 15-78-120 OF THE 1976 CODE, RELATING TO LIMITATIONS ON LIABILITY, TO INCREASE THE LIMITS FROM A LOSS TO ONE PERSON ARISING FROM A SINGLE OCCURRENCE FROM THREE HUNDRED THOUSAND DOLLARS TO FIVE HUNDRED THOUSAND DOLLARS, TO INCREASE THE TOTAL LIMITS FROM A LOSS ARISING OUT OF A SINGLE OCCURRENCE FROM SIX HUNDRED THOUSAND DOLLARS TO ONE MILLION DOLLARS, AND TO PROVIDE THAT A PARTY WHO FILES AN OFFER OF JUDGMENT THAT IS NOT ACCEPTED, SHALL BE ALLOWED TO RECOVER FROM THE OFFEREE, AS PROVIDED FOR IN SECTION 15-35-400(B), REGARDLESS OF WHETHER THE TOTAL OF ADMINISTRATIVE, FILING, OR OTHER COURT COSTS, AND EIGHT PERCENT INTEREST ON THE AMOUNT OF THE VERDICT OR AWARD FROM THE DATE OF THE OFFER, COMBINED WITH THE VERDICT OR AWARD, EXCEEDS THE LIABILITY LIMITS SPECIFIED IN THIS SECTION. /

Amend the bill further, as and if amended, page 2, by striking lines 25 through 40, as contained in subsection 5(c), and inserting therein the following:

/ (c) A party that files an offer of judgment, as provided for in Section 15-35-400(A), which is not accepted, shall be allowed to recover from the offeree, as provided in Section 15-35-400(B), regardless of whether the total of administrative, filing, or other court costs, and eight percent interest on the amount of the verdict or award from the date of the offer, combined with the verdict or award, exceeds the liability limits provided for in subsection (a) of this section. The eight percent interest must be determined from the date of the offer and must be computed on the amount of the verdict or award subsequent to the application of any limitations on liability provided for in subsection (a) of this section. Nothing in this subsection shall be construed to limit or restrict the right of a defendant who is an offeror pursuant to Section 15-35-400(A) from receiving administrative, filing, or other court costs, or a reduction from the judgment or award of eight percent interest on the amount of the verdict or award as provided in Section 15-35-400(B). /

Renumber sections to conform.

Amend title to conform.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

This amended bill increases the liability limits under the South Carolina Torts Claims Act to $500,000 for a single person and $1,000,000 total for a single occurrence, regardless of the number of agencies or subdivisions involved in the occurrence. Additionally, this bill is amended to allow a party who makes an offer of judgment that is not accepted and the verdict is more favorable to the offeror than the offer was, pursuant to §15-35-400, to recover of any administrative, filing, or other court costs and 8 percent computed on the amount of the verdict or award, regardless of the liability limits.

Currently, the four liability limits under the South Carolina Torts Claims Act, in §15-78-120(a)(1) through (4), are as follows:

 $300,000 for a single person for a single occurrence, regardless of the number of agencies or subdivisions involved in the occurrence

 $600,000 total for a single occurrence, regardless of the number of agencies or subdivisions involved in the occurrence

 $1,200,000 per person, for a single occurrence arising from an incident with a doctor or dentist, regardless of the number of agencies or subdivisions involved in the occurrence and

 $1,200,000 total for a single occurrence arising from an incident with a doctor or dentist, regardless of the number of agencies or subdivisions involved in the occurrence.

This bill increases the limit per person of $300,000 to $500,000 and the total limit per occurrence from $600,000 to $1,000,000 and allows parties that make an offer of judgment to recover administrative costs or other court costs and 8 percent computed on the amount of the verdict or award, regardless of the liability limits.

As parties are not currently allowed to recover administrative costs under the South Carolina Tort Claims Act, there is no data to estimate the number of cases that may be impacted by the allowance of recovery of administrative costs. Therefore, Revenue and Fiscal Affairs (RFA) is unable to estimate the potential increase of expenditures for all agencies impacted the Tort Claims Act due to the allowance of a party to recover administrative or other court costs and 8 percent computed on the amount of the verdict or award, regardless of the liability limits when an offer of judgment is not accepted and the verdict exceeds the offer.

**State Fiscal Accountability Authority.** This bill will increase all state agencies’ expenditures through an increase in premiums to cover the increased amount of losses paid for claims due to the increased limits. The Insurance Reserve Fund (IRF), a division of the State Fiscal Accountability Authority (SFAA), provides insurance coverage for these liabilities, among others. The IRF insures all state agencies, including the Medical University of South Carolina (MUSC). Counties, municipalities, political subdivisions, school districts, special purpose districts, and other governmental entities may also choose to purchase insurance from the IRF. IRF believes the general/tort liability, professional liability, commercial auto, and school bus liability policies will be most impacted by this bill. An actuarial analysis is being performed to determine the expenditure impact for these liability policies.

Commercial Auto is fully reinsured, therefore IRF anticipates the additional losses for claims brought under the commercial auto policy will be fully reimbursed by its reinsurer. However, the premium price for the reinsurance will increase and IRF is unsure of the potential increase. The estimated increase of commercial auto is calculated based on actuarial models and studies based on losses.

In addition, IRF will have an increase in expenditures to modify policy coverages for certain insureds from a limit of $600,000 to $1,000,000. Currently, IRF offers insurance policies with limits of $600,000 or $1,000,000. All agencies that currently have an insurance policy with a limit of $600,000 will have to change to a policy with a limit of $1,000,000. The expenditure impact of this change in policy limit is pending, contingent upon the completion of an actuarial analysis provided by SFAA.

It is anticipated that the increased premiums for all entities insured by the IRF will offset the anticipated increase in the losses paid by IRF. Therefore, there is no net impact to the IRF. All state agencies and the local entities who choose to purchase insurance with the IRF will pay an increase in premiums. The premiums are estimated in consultation with an actuary. The potential increase in expenditures to all agencies and local entities that purchase insurance with the IRF is pending, contingent upon the completion of an actuarial analysis provided by SFAA.

**State Revenue**

This bill increases the liability limits under the South Carolina Torts Claims Act to $500,000 for a single person and $1,000,000 total for a single occurrence, regardless of the number of agencies or subdivisions involved in the occurrence and applies an annual inflation to all liability limits in §15-78-120(a)(1) through (4).

As discussed above, state agencies and local entities who choose to purchase insurance with the IRF will pay an increase in premiums that will offset the increase in losses paid due to the increase in the liability limits. It is expected that the increase in premium revenue for the IRF will be offset by the increase in losses paid due to the increase in the liability limits. However, the revenue impact is pending, contingent upon the completion of an actuarial analysis provided by SFAA.

Further, an increase in premiums would increase premium tax. The premium tax is 1.25 percent. Premium taxes are paid quarterly and are allocated as follows: 1 percent to the South Carolina Forestry Commission, 1 percent to the aid to fire district account within the State Treasury, 0.25 percent to the aid to emergency medical services regional councils within the Department of Health and Environmental Control (DHEC), and the remaining 97.75 percent to the General Fund. Premium taxes are paid quarterly. The first three payments, paid in June, September, and December of the current year, are estimated using the prior year’s actual tax liability. The final payment is made in March of the following year and is the difference between the actual premium tax liability owed in that year and the prior payments made. Insurance companies may choose to pay more than their estimated quarterly payments to offset any anticipated increase in premium tax liability in the current year. RFA assumes no insurance company will choose to pay more than their estimated quarterly payments due to increased premiums from this bill. As the total increase to premiums is unknown, the increase to premium tax revenue is undetermined.

**Local Expenditure**

This bill increases the liability limits under the South Carolina Torts Claims Act to $500,000 for a single person and $1,000,000 total for a single occurrence, regardless of the number of agencies or subdivisions involved in the occurrence and allows recovery of administrative costs in certain situations. The IRF offers liability coverage for school districts and school entities, counties and county entities, municipalities, and political subdivisions, including special purpose districts. The expenditure impact to these local entities is pending, contingent upon the completion of an actuarial analysis provided by SFAA.

In addition to the IRF, various state associations have established trusts to assist local entities with the purchase of insurance. The South Carolina School Boards Association provides the South Carolina Boards Insurance Trust (SCBIT), which provides the option for insurance coverage for school districts. The South Carolina Association of Counties (SCAC) provides the South Carolina Counties Property and Liability Trust (SCCP&LT), to offer insurance coverage to counties. The Municipal Association (MASC) provides the South Carolina Municipal Insurance and Risk Financing Fund (SMIRF). The expenditure impact to these local entities is pending, contingent upon additional responses from The South Carolina Schools Association, SCAC, and MASC.

The political subdivisions, including special purpose districts, within the state will also have an increase in premiums because of the increased liability limits. RFA previously contacted the special purpose district lobbyist to inquire about the impact to premiums for special purpose districts. The special purpose districts may purchase insurance from the IRF, one of the funds set up by an association discussed above, or through the private market. Based on previous responses, the special purpose districts who purchase insurance through the private market, will likely see a premium increase of approximately 13.5 to 20 percent due to the increase in the liability limits. The actual local expenditure impact for each special purpose district will depend upon the amount and type of coverage needed by that district.

Further, based on the information previously provided by the South Carolina Hospital Association, the hospitals in South Carolina, other than MUSC as a state entity, may purchase insurance from the Palmetto Health Trust or from the private market. The expenditure impact to these hospitals is pending, contingent upon additional response from the South Carolina Hospital Association.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 15-78-120 OF THE 1976 CODE, RELATING TO LIMITATIONS ON LIABILITY, TO INCREASE THE LIMITS FROM A LOSS TO ONE PERSON ARISING FROM A SINGLE OCCURRENCE TO ONE MILLION DOLLARS, TO INCREASE THE TOTAL LIMITS FROM A LOSS ARISING OUT OF A SINGLE OCCURRENCE TO TWO MILLION DOLLARS, AND TO REQUIRE THE LIMITS BE ANNUALLY ADJUSTED IN ACCORDANCE WITH THE CONSUMER PRICE INDEX.

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

SECTION 1. Section 15‑78‑120 of the 1976 Code is amended to read:

“Section 15-78-120. (a) For any action or claim for damages brought under the provisions of this chapter, 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 five ~~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 one million ~~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, except as provided in subsection (c).

(c) A party that files an offer of judgment under this chapter as provided in Section 15-35-400(A) shall be allowed to recover as provided in Section 15-35-400(B) from the offeree, regardless of whether the total of administrative, filing, or other court costs, and the eight percent interest on the amount of the verdict or award from the date of the offer, combined with the verdict or award exceeds the liability limits specified in Section 15-78-120(a)(1) through (a)(4). The eight percent interest must be determined from the date of the offer and must be computed on the amount of the verdict or award subsequent to the application of any limitations on liability in Section 15-78-120(a)(1) through (a)(4). Nothing in this subsection shall be construed to limit or restrict the right of a defendant who is an offeror pursuant to Section 15-35-400(A) from receiving administrative, filing, or other court costs, or a reduction from the judgment or award of eight percent interest on the amount of the verdict or award as provided in Section 15-35-400(B)(1) and (B)(3).

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

SECTION 2. Upon approval by the Governor, this act takes effect July 1, 2021 for causes of action with a date of loss arising on or after July 1, 2021.

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