**South Carolina General Assembly**

123rd Session, 2019-2020

**H. 5140**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. G.M. Smith

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Introduced in the House on February 12, 2020

Currently residing in the House Committee on **Judiciary**

Summary: Injury or wrongful death

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/12/2020 House Introduced and read first time ([House Journal‑page 8](file:///h:\hj\20200212.docx))

2/12/2020 House Referred to Committee on **Judiciary** ([House Journal‑page 8](file:///h:\hj\20200212.docx))

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=5140&session=123&summary=B) at the website

**VERSIONS OF THIS BILL**

[2/12/2020](file:///p:\pprever\2019-20\5140_20200212.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 15‑1‑350 SO AS TO ESTABLISH REQUIREMENTS FOR DEMANDS FOR PERSONAL INJURY, BODILY INJURY, PROPERTY DAMAGE, OR WRONGFUL DEATH.

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

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

“Section 15‑1‑350. (A) For purposes of this section:

(1) ‘Claimant’ means a person or entity pursuing a tort claim either before or after a civil action has been commenced against a tortfeasor.

(2) ‘Extracontractual damages’ means any amount of damage that exceeds the total available limit of liability insurance for all of a liability insurer’s liability insurance policies including uninsured and underinsured motorists applicable to a claim for property damage, bodily injury, or wrongful death.

(3) ‘Release’ means a general release, pro tanto release, covenant not to sue, covenant not to execute, or any other legal document effectuating settlement.

(4) ‘Insurer’ means the insurance carrier of the tortfeasor or first party insurer who is receiving the demand for settlement.

(5) ‘Time‑limited demand’ means any offer to settle any claim for personal injury, property damage, bodily injury, or wrongful death made by, or on behalf of, a claimant to a tortfeasor with a liability insurance policy, for purposes of settling a claim against such tortfeasor, which by its terms, must be accepted within a specified time frame.

(6) ‘Tort claim’ means a claim for personal injury, property damage, bodily injury, or wrongful death.

(7) ‘Tortfeasor’ means any person claimed to have caused or contributed to cause personal injury, property damage, bodily injury, or wrongful death to a claimant.

(B)(1) A time‑limited demand must:

(a) be in writing;

(b) reference this section;

(c) be labeled ‘time sensitive’; and

(d) be sent certified mail with return receipt requested or overnight delivery to the claims department of the tortfeasor’s liability insurer.

(2) The time-limited demand must contain the following material terms:

(a) a specific monetary sum to settle the tort claim;

(b) the type of release the claimant will execute in exchange for the monetary sum demanded;

(c) the persons or entities to be released;

(d) a description of the tort claims to be released if such time‑limited demand is accepted;

(e) the specific date and time by which the settlement offer must be accepted;

(f) the following language in bold type, number twelve font or larger on the first page: ‘TIME-LIMITED DEMAND’;

(g) the date and location of the loss;

(h) the claim number, if known;

(i) a description of all known injuries sustained by the claimant;

(j) an explanation of the theory of liability against the tortfeasor, or each tortfeasor if the demand is presented to multiple tortfeasors; and

(k) disclosure of eligibility or information sufficient to verify eligibility for Medicare, Medicaid, any other federal or state benefit program, and any other known liens or assignments granted by the claimant that may apply to any of the damages claimed.

(3) Any time‑limited demand as outlined in this subsection also must include the following:

(a) Medical records and bills from all health care providers who provided treatment or evaluation of the claimant or decedent for the injuries suffered from the tort claim from the date of injury until the date of the time‑limited demand.

(b) Records of earnings, compensation, or wages, however denominated, from the claimant’s employers or tax records must be provided by the claimant if he alleges a claim for lost wages.

(C) Any additional terms included in the time‑limited demand, not specifically set forth in section (B), are deemed nonmaterial and must be clearly designated in the time‑limited demand as ‘Additional Terms Pursuant to South Carolina Code Section 15‑1‑350(C)’.

(D) Prior to the expiration of the date and time included in the time‑limited demand, the parties have the right to negotiate any nonmaterial terms, and negotiation of nonmaterial terms does not constitute a rejection of or counteroffer to the time‑limited demand. Examples of nonmaterial terms of the time-limited demand include, but are not limited to, the following:

(1) the exact terms and conditions of the release, not including those material terms contained in subsection (B);

(2) how liens and subrogation claims will be satisfied from the proceeds of the settlement;

(3) whether the settlement includes the release of tort claims not possessed by the claimant, but that arise out of the same occurrence as the tort claim possessed by the claimant; and

(4) whether there are additional parties that need to be included in the release based upon the causes of action asserted.

(E) A person or entity receiving a time-limited demand has at least sixty days from the receipt of the demand to accept the same.

(F) Upon receipt of a time-limited demand, the person or entity receiving the demand on behalf of the tortfeasor has the right to seek clarification of any material or nonmaterial terms contained in the time‑limited demand issued by the claimant. Any attempt to seek clarification of material or nonmaterial terms does not constitute a rejection of or a counteroffer to the time‑limited demand by the tortfeasor, and any time limit imposed is deemed extended for a minimum of thirty days from the date of the clarification request or for fifteen days after such clarification is received by the tortfeasor, whichever is greater.

(G) The person or entity providing payment to satisfy the tort claim shall, within ten business days from the date of written acceptance of the time‑limited demand or from the date the settlement is approved by the court, if required, deliver payment to the address specified by the claimant, unless a longer period is agreed upon. The person or entity paying the settlement may do so by one of the following ways:

(1) cash;

(2) money order;

(3) wire transfer;

(4) cashier’s check issued by a bank or other financial institution;

(5) draft or bank check issued by an insurance company; or

(6) electronic funds transfer or other method of electronic payment.

(H) In any lawsuit filed by a claimant, or by a claimant as an assignee of the tortfeasor or by the tortfeasor for the benefit of the claimant, a time‑limited demand that does not strictly comply with the terms of this section must not be considered as a reasonable opportunity to settle for the insurer and is not admissible in any lawsuit alleging extracontractual damages against the tortfeasor’s liability insurer.”

SECTION 2. This act takes effect upon approval by the Governor.

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