**South Carolina General Assembly**

125th Session, 2023-2024

**S. 87**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Malloy

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Introduced in the Senate on January 10, 2023

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

Summary: Liability limitations

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

11/30/2022 Senate Prefiled

11/30/2022 Senate Referred to Committee on **Judiciary**

1/10/2023 Senate Introduced and read first time ([Senate Journal‑page 54](h:\sj\20230110.docx))

1/10/2023 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 54](h:\sj\20230110.docx))

3/14/2023 Senate Referred to Subcommittee: Malloy (ch), Hutto,
Campsen, Matthews, Talley, Garrett, M.Johnson

7/27/2023 Scrivener's error corrected

3/27/2024 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 9](h:\sj\20240327.docx))

4/30/2024 Senate Recommitted to Committee on **Judiciary** ([Senate Journal‑page 15](h:\sj\20240430.docx))

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**VERSIONS OF THIS BILL**

[11/30/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/87_20221130.docx)

[07/27/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/87_20230727.docx)

[03/27/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/87_20240327.docx)

Indicates Matter Stricken

Indicates New Matter

Committee Report

March 27, 2024

S. 87

Introduced by Senator Malloy

S. Printed 03/27/24--S.

Read the first time January 10, 2023

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The committee on Senate Judiciary

To whom was referred a Bill (S. 87) to amend Section 15-78-120 of the South Carolina Code, relating to limitations on liability, so as to increase the limits from a loss to one person arising, etc., respectfully

Report:

That they have duly and carefully considered the same, and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking SECTION 2 and inserting:

SECTION 2. Upon approval by the Governor, this act takes effect July 1, 2024, for causes of action with a date of loss arising on or after July 1, 2024.

Renumber sections to conform.

Amend title to conform.

LUKE RANKIN for Committee.

statement of estimated fiscal impact

Explanation of Fiscal Impact

State 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. Additionally, this bill allows a party who makes an offer of judgment that is not accepted, pursuant to §15-35-400, to recover of any administrative, filing, or other court costs and 8 percent interest computed on the amount of the verdict or award from the date of the offer, 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 from $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 interest computed on the amount of the verdict or award, regardless of the liability limits, even if the recovery is above the newly increased limits.

As parties are not currently allowed to recover administrative costs under the South Carolina Tort Claims Act, there are 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 by the Tort Claims Act from allowing a party to recover administrative or other court costs and 8 percent interest 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.

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 IRF, a division of 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. The 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 was performed to determine the expenditure impact for these liability policies. Based on the actuarial analysis, the IRF anticipates the increase in losses paid for claims brought against governmental entities to total $17,470,000. The following is the increase in loss by insurance type:

General/Tort: $9,835,000

Professional Medical Liability: $3,561,000

Commercial Auto: $3,439,000

School Bus: $635,000

Commercial Auto is fully reinsured, therefore the 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 the IRF is unsure of the amount of the potential increase. The estimated increase of commercial auto is calculated based on actuarial models and studies based on losses. Therefore, the expenditure impact for the commercial auto may be different than the actuarial analysis due to reinsurance.

In addition to the total $17,470,000 increase due to the amended tort liability limits, the 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, the 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 IRF estimates switching all insureds from a $600,000 policy to a $1,000,000 policy will result in an increase of expenditures by $11,283,000. The following is the increase in premiums for the policy shift from $600,000 to $1,000,000:

General/Tort: $4,115,000

Professional Medical Liability: $2,154,000

Commercial Auto: $4,446,000

School Bus: $568,000

Overall, the expenditure impact to the IRF may be as much as $28,753,000 for the increase in losses paid across all liability policies impacted. The following is the total increase in premiums by insurance type:

General/Tort: $13,950,000

Professional Medical Liability: $5,715,000

Commercial Auto: $7,885,000

School Bus: $1,203,000

The estimated increase in losses is based upon historical data, specific loss data, and other relevant information to project potential risk of future loss. However, the actuarial analysis did not capture the potential impact that the modified limits would have on behavioral effects such as the potential increase in frequency of claims filed, potential increased time for negotiation, and the potential increased number of claims going to trial rather than settling in negotiation. Therefore, the actual impact of the modified liability limits may vary from the estimate. Additionally, this estimate does not include the potential impact of the allowance for recovery of any administrative, filing, or other court costs and 8 percent interest computed on the amount of the verdict or award from the date of the offer, regardless of the liability limits.

It is anticipated that the increased premiums for all entities insured by the IRF will offset the anticipated increase in the losses paid by the 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. Based upon an actuarial review of the impact of raising the liability limits, the IRF anticipates each state agency’s insurance premium will increase per policy line by the following percentages:

General Tort: 13 percent for amended tort limits plus 6 percent for change in policy coverage limits.

Professional Medical Liability: 12 percent for amended tort limits plus 8 percent for change in policy coverage limits.

Commercial Auto: 14 percent for the amended tort limits plus 7 percent for change in policy coverage limits.

School Bus: 12 percent for amended tort limits plus 12.0 percent for change in policy coverage limits.

The IRF anticipates the total increase in premiums will total $28,753,000, which consists of $17,085,000 for all state agencies and $11,668,000 for all local entities covered by the IRF. The increase in premiums for all state agencies will be $17,085,000, which consists of $11,006,000 due to the increase in tort limit liability, and $6,079,000 for the increase in policy coverage limits. The impact to the General Fund and Other Funds will depend upon the structure of each agency. Included in the $17,085,000 is a $3,135,000 expenditure impact to the Medical University of South Carolina (MUSC), the only state-owned hospital.

In summary, the IRF anticipates the increase in costs will total $28,753,000, which consists of $17,085,000 for all state agencies and $11,668,000 for all local entities covered by the IRF. The increase in state expenditures will be $17,085,000, total, for all state agencies, including a $3,135,000 expenditure impact on MUSC, beginning in FY 2023-24, because of the increase in premiums paid to the IRF. The expenditure impact on the General Fund and Other Funds due to the increase in premiums for each state agency will depend upon the agency’s funding structure. There will be no net fiscal impact to the IRF, as the premiums collected from its insureds will offset the increase in losses paid due to the increase in the liability limits.

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. The IRF anticipates premiums collected from state agencies and local entities to increase by $17,085,000 and $11,668,000, respectively, for a total increase in collected premiums by the IRF of $28,753,000. 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.

Further, this bill will increase premiums for those entities that purchase insurance through the private sector. An increase in premiums would increase premium tax revenue. 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. 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.

As discussed above, the total increase of local entities premiums is estimated at $11,668,000. The increase is a combination of an increase to cover the increased liability limits of $6,465,000 and an increase to cover the change in the policy coverage limits of $5,204,000. The IRF provides insurance coverage for the following local entities:

15 school districts and school entities,

91 counties and county entities,

119 municipalities and municipal entities, and

331 political subdivisions, including special purpose districts.

The table below provides the anticipated increase in premiums for local entities covered by the IRF.

Increase Tort Policy Coverage Total Premium

Liability Limits Limit Update Increase

School Districts $410,000 $151,000 $561,000

Counties $3,948,000 $2,665,000 $6,613,000

Municipalities $1,341,000 $867,000 $2,208,000

Political Subdivisions $1,708,000 $578,000 $2,286,000

Total $7,407,000 $4,261,000 $11,668,000

In addition to the IRF, various state associations have established trusts to assist local entities with the purchase of insurance. Based on 2020 data, the South Carolina School Boards Association provides the South Carolina Boards Insurance Trust (SCBIT), which provides the option for insurance coverage for school districts. Of the 81 school districts, 54 purchased insurance with the SCBIT as of 2020. Based on the increase in premiums to school districts purchasing insurance through the IRF, we estimate the impact to all other school districts may range from 9 to 14 percent.

The South Carolina Association of Counties (SCAC) provides the South Carolina Counties Property and Liability Trust (SCCP&LT), to offer insurance coverage to counties. Based 2020 data, there were 24 participants, including counties and county entities, who currently purchase insurance with the SCCP&LT. The SCCP&LT anticipated a minimum increase of $1,060,000 to premiums for its participants to offset the cost of losses paid. The increase is based on historical claims and does not consider other factors such as increased frequency of claims. Because of this, SCCP&LT believes that the $1,060,000 may understate the expenditure impact to its participants. RFA will update this section of the fiscal impact statement when SCAC provides updated information.

The Municipal Association of South Carolina (MASC) provides the South Carolina Municipal Insurance and Risk Financing Fund (SCMIRF). Of the 271 municipalities in the state, 130 purchase insurance with SCMIRF. SCMIRF anticipated raising premiums a minimum of 14 percent, or $2,000,000, across all 130 municipalities to offset the increase in expenditures to SCMIRF. The impact to each municipality will vary depending on the size and amount of coverage required. This estimate, provided by SCMIRF’s actuary, AON, is based on historical data and comparable data from around the country. SCMIRF will raise premiums by 14 percent only to cover the immediate costs. Additionally, MASC noted that overall net premiums have already increased by 66 percent, or $13,000,000 due to increased claims costs and reinsurance expenses. Any increase in the tort caps will result in further increases to the overall premium rates increase. Further, MASC stated that allowing an offeree to recover an 8 percent interest in on the amount of the verdict, if any offer of judgment is not accepted may result in offers being made without a good faith effort in settling claims and may inflate the settlement value and provide uncertainty on the final settlement value of a case. Depending on the number of cases where this occurs, premiums may need to be increased above the currently projected 14 percent.

The political subdivisions, including special purpose districts, within the state will also have an increase in premiums because of the increased liability limits. 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. Special purpose districts that purchase from the IRF or a local association’s fund are included in the totals above. The remaining special purpose districts, who purchase insurance through the private market, will likely see a premium increase of approximately 9 to 14 percent due to the increase in the liability limits, if the private market follows the same trends as projected for the IRF. The actual local expenditure impact for each special purpose district will depend upon the amount and type of coverage needed by that district.

Further, local hospitals in South Carolina, other than MUSC as a state entity, may purchase insurance from the Palmetto Health Trust or from the private market. Based on the analysis provided by SFAA, premiums for hospitals due to the modified liability limits will increase by 15 to 29 percent. The expenditure impact to each local hospital will depend on current insurance coverage premiums.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

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A bill

TO AMEND SECTION 15-78-120 OF THE South carolina CODE OF LAWS, RELATING TO LIMITATIONS ON LIABILITY, SO AS 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.

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

SECTION 1. Section 15‑78‑120 of the S.C. 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, 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).

(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, 2023, for causes of action with a date of loss arising on or after July 1, 2023.

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