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CHAPTER 78.

 SOUTH CAROLINA TORT CLAIMS ACT

**SECTION 15‑78‑10.** Short title.

This chapter may be cited as the “South Carolina Tort Claims Act”.

**SECTION 15‑78‑20.** Legislative findings; declaration of public policy; extent of, and construction of, waiver of immunity.

(a) The General Assembly finds that while a private entrepreneur may be readily held liable for negligence of his employees within the chosen ambit of his activity, the area within which government has the power to act for the public good has been without limit and, therefore, government did not have the duty to do everything which might have been done. The General Assembly further finds that each governmental entity has financial limitations within which it must exercise authorized power and discretion in determining the extent and nature of its activities. Thus, while total immunity from liability on the part of the government is not desirable, see McCall v. Batson, neither should the government be subject to unlimited nor unqualified liability for its actions. The General Assembly recognizes the potential problems and hardships each governmental entity may face being subjected to unlimited and unqualified liability for its actions. Additionally, the General Assembly recognizes the impossibility of insuring for acts retrospectively. The General Assembly seeks an orderly transition to the recognition of individuals’ rights against the tortious sovereign as defined herein. Consequently, it is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein. It is further declared to be the public policy of the State of South Carolina that to insure an orderly transition from sovereign immunity to qualified and limited liability that the General Assembly intends to provide for liability on the part of the State and its political subdivisions only from July 1, 1986, forward in prospective fashion. No governmental entity which was not insured at the time of the injury for which compensation is sought is liable under this chapter and those which were insured are liable only to the extent provided herein. Liability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person’s standard of care in the performance of that duty.

(b) The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved. The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in Section 15‑78‑70(b).

(c)(i) As to those causes of action that arise or accrue prior to the effective date of this act, the General Assembly reinstates sovereign immunity on the part of the State, its political subdivisions and employees, while acting within the scope of official duty provided that sovereign immunity will not bar recovery in any cause of action arising or accruing on or before the effective date of this act if the defendant maintained liability insurance coverage.

(ii) In such cases involving governmental health care facilities, as defined in Section 15‑78‑30(j), recovery shall not exceed the limits of the liability insurance coverage up to a maximum recovery of five hundred thousand dollars.

(iii) In all other such cases recovery shall not exceed the limits of the liability insurance coverage.

(d) Nothing in this chapter affects liability based on contract nor does it affect the power of the State or its political subdivisions to contract.

(e) Nothing in this chapter is construed as a waiver of the state’s or political subdivision’s immunity from suit in federal court under the Eleventh Amendment to the Constitution of the United States nor as consent to be sued in any state court beyond the boundaries of the State of South Carolina.

(f) The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.

(g) The General Assembly recognizes the competing interests of either providing physicians and dentists qualified immunity under the provisions of the South Carolina Tort Claims Act or continuing unqualified liability for medical malpractice actions brought against governmentally employed physicians or dentists. While patients deserve accountable and competent health care, regardless of the public or private character of the provider, governmental entities, in order to attract qualified physicians and dentists, must be able to offer an affordable compensation and employment package, including liability insurance. The General Assembly, in amending this chapter, intends to provide an orderly transition from noninclusion to inclusion of physicians and dentists under the provisions of this chapter. Additionally, the liability limits, and hence mandated insurance coverage, of governmental entities for acts of physicians or dentists, acting within the scope of their profession, are set somewhat higher than those provided for other types of governmental liability. These higher limits and mandated coverages are recognition by the General Assembly of significantly higher damages in cases of medical malpractice. To this end, inclusion of physicians and dentists within this chapter has been delayed until January 1, 1989, when an affordable program of group liability insurance will be instituted.

**SECTION 15‑78‑30.** Definitions.

(a) “Agency” means the individual office, agency, authority, department, commission, board, division, instrumentality, or institution, including a state‑supported governmental health care facility, school, college, university, or technical college, which employs the employee whose act or omission gives rise to a claim under this chapter.

(b) “Claim” means any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty.

(c) Prior to January 1, 1989, “employee” means any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty, whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, “employee” means any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty including, but not limited to, technical experts whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section 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 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 a 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.

(d) “Governmental entity” means the State and its political subdivisions.

(e) “State” means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state‑supported governmental health care facilities, schools, colleges, universities, and technical colleges.

(f) “Loss” means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

(g) “Occurrence” means an unfolding sequence of events which proximately flow from a single act of negligence.

(h) “Political subdivision” means the counties, municipalities, school districts, a regional transportation authority established pursuant to Chapter 25 of Title 58, and an operator as defined in item (8) of Section 58‑25‑20 which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof.

(i) “Scope of official duty” or “scope of state employment” means (1) acting in and about the official business of a governmental entity and (2) performing official duties.

(j) “Governmental health care facility” means one which is operated by the State or a political subdivision through a governing board appointed or elected pursuant to statute or ordinance and which is tax‑exempt under state and federal laws as a governmental entity and from which no part of its net income from its operation accrues to the benefit of any individual or nongovernmental entity. Health care facility includes any facility as defined in Title 44, S. C. Code Ann. for the provision of mental or physical care to individuals, whether or not it is required to be licensed under those provisions.

**SECTION 15‑78‑40.** Tort liability of State, agency, political subdivision, or governmental entity, generally.

The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.

**SECTION 15‑78‑50.** Right of injured person to file claim; non‑liability of governmental entity where employee would not be liable if a private person; injunctions against governmental entities.

(a) Any person who may suffer a loss proximately caused by a tort of the State, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim as hereinafter provided.

(b) In no case is a governmental entity liable for a tort of an employee where that employee, if a private person, would not be liable under the laws of this State.

(c) Nothing herein shall affect the power of a court of equity at the suit of a party complainant to enjoin unlawful acts committed by governmental entities or mandate lawful action by governmental entities.

**SECTION 15‑78‑60.** Exceptions to waiver of immunity.

The governmental entity is not liable for a loss resulting from:

(1) legislative, judicial, or quasi‑judicial action or inaction;

(2) administrative action or inaction of a legislative, judicial, or quasi‑judicial nature;

(3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;

(6) civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection;

(7) a nuisance;

(8) snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions unless the snow or ice thereon is affirmatively caused by a negligent act of the employee;

(9) entry upon any property where the entry is expressly or impliedly authorized by law;

(10) natural conditions of unimproved property of the governmental entity, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for the property within a reasonable time after actual or constructive notice of the defect or condition;

(11) assessment or collection of taxes or special assessments or enforcement of tax laws;

(12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner;

(13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;

(14) any claim covered by the South Carolina Workers’ Compensation Act, except claims by or on behalf of an injured employee to recover damages from any person other than the employer, the South Carolina Unemployment Compensation Act, or the South Carolina State Employee’s Grievance Act;

(15) absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice. Governmental entities are not liable for the removal or destruction of signs, signals, warning devices, guardrails, or median barriers by third parties except on failure of the political subdivision to correct them within a reasonable time after actual or constructive notice. Nothing in this item gives rise to liability arising from a failure of any governmental entity to initially place any of the above signs, signals, warning devices, guardrails, or median barriers when the failure is the result of a discretionary act of the governmental entity. The signs, signals, warning devices, guardrails, or median barriers referred to in this item are those used in connection with hazards normally connected with the use of public ways and do not apply to the duty to warn of special conditions such as excavations, dredging, or public way construction. Governmental entities are not liable for the design of highways and other public ways. Governmental entities are not liable for loss on public ways under construction when the entity is protected by an indemnity bond. Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising out of a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way caused by a third party unless the defect or condition is not corrected by the particular governmental entity responsible for the maintenance within a reasonable time after actual or constructive notice;

(16) maintenance, security, or supervision of any public property, intended or permitted to be used as a park, playground, or open area for recreational purposes, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for maintenance, security, or supervision within a reasonable time after actual notice of the defect or condition;

(17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;

(18) imposition or establishment of a quarantine by a governmental entity, whether the quarantine relates to persons or property;

(19) emergency preparedness activities and activities of the South Carolina National Guard and South Carolina State Guard while engaged in state or federal training or duty. This exemption does not apply to vehicular accidents;

(20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons;

(21) the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient, or client or the escape of these persons;

(22) termination or reduction of benefits under a public assistance program;

(23) institution or prosecution of any judicial or administrative proceeding;

(24) holding or conduct of elections;

(25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner;

(26) failure to supervise or control areas open for public hunting or activities thereon. Failure to control, maintain, and/or supervise the use of and activities in, on, and around public boat ramps except within a reasonable time after actual notice of the defect or condition. Failure to maintain navigational markers, except within a reasonable time after actual notice of the defect or condition.

(27) solicitations on streets and highways as authorized by the provisions of Section 5‑27‑910.

(28) Notification of any public school student’s parent, legal guardian, or other person with whom a public school student resides of the student’s suspected use of alcohol, controlled substance, prescription or nonprescription drugs by any public school administrator, principal, counselor, or teacher if such notification is made in good faith.

(29) acts or omissions of members of the state and county athletic commissions or ringside physicians acting within the scope of their official duties pursuant to Chapter 7 of Title 52.

(30) acts or omissions of members of local foster care review boards acting within the scope of their official duties pursuant to Subarticle 4, Article 13, Chapter 7 of Title 20. However, the member shall act in good faith, his conduct may not constitute gross negligence, recklessness, wilfulness, or wantonness, and he must have participated in a training program established by the state foster care review board system.

(31) acts or omissions of employees and volunteers of the South Carolina Protection and Advocacy System for the Handicapped acting within the scope of their official duties pursuant to Article 5, Chapter 33 of Title 43, when such acts or omissions are done or made in good faith, and do not constitute gross negligence, recklessness, wilfulness, or wantonness.

(32) a pre‑occupancy housing inspection contracted for by the South Carolina Employment Security Commission pursuant to Section 46‑43‑40.

(33) the performance of any duty related to the service of members of the Judicial Merit Selection Commission or the Citizens Committees on Judicial Selection.

(34) the performance of any duty related to the service of the members of the Tobacco Community Development Board.

(35) the failure of a library’s or media arts center’s governing board to adopt policies as provided in Section 10‑1‑205.

(36) acts or omissions by a special state constable who is appointed pursuant to Section 23‑7‑10 and acting within the scope of his official duty under conditions of a national emergency or of a serious and immediate risk to the physical security of an energy facility within the special state constable’s jurisdiction as provided in Section 23‑7‑40.

(37) the performance of any duty related to the service of the members of the Tobacco Settlement Revenue Management authority.

(38) conduct of a director appointed pursuant to Section 58‑31‑20 giving rise to a lawsuit under Section 58‑31‑57.

(39) the grant or denial by a governing body of a county or municipality as provided in Section 23‑35‑175 of an application to extend a Fireworks Prohibited Zone beyond the subject property for which a Discharge of Fireworks Prohibited Agreement has been filed.

(40) an injury a student may sustain as a result of self‑monitoring or self‑administering medications or for an injury that a student may sustain from taking or using medications or self‑monitoring devices for which the student does not have a prescription or does not have authorization by the school district.

**SECTION 15‑78‑70.** Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).

(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

(c) Prior to January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant. The provisions of this section may in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant. The provisions of this section in no way shall 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.

(d) A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.

(e) Nothing in this chapter may be construed to give a director appointed pursuant to Section 58‑31‑20 immunity from suit and liability as set forth in Section 58‑31‑57. The State Budget and Control Board, Insurance Reserve Fund, is prohibited from providing insurance coverage for this individual liability; however, nothing shall prevent the Public Service Authority or its directors from obtaining insurance coverage from any other source.

**SECTION 15‑78‑80.** Filing of verified claim; handling and disposition of claims; requirement that agencies and political subdivisions cooperate with Budget and Control Board.

(a) A verified claim for damages under this chapter, setting forth the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, and the amount of the loss sustained may be filed:

(1) in cases against the State, with the State Budget and Control Board, or with the agency employing an employee whose alleged act or omission gave rise to the claim;

(2) where the claim is against a political subdivision, with the political subdivision employing an employee whose alleged act or omission gave rise to the claim;

(3) where the identification of the proper defendant is in doubt, with the Attorney General.

(b) Each agency and political subdivision must designate an employee or office to accept the filing of the claims.

(c) Filing may be accomplished by receipt of certified mailing of the claims or by compliance with the provisions of law relating to service of process.

(d) The verified claim may be received by the Budget and Control Board or the appropriate agency or political subdivision. If filed, the claim must be received within one year after the loss was or should have been discovered.

(e) In all cases in which a claim is filed, the Budget and Control Board or political subdivision has one hundred eighty days from the date of filing of the claim in which to determine whether the claim should be allowed or disallowed. Failure to notify the claimant of action upon the claim within one hundred eighty days from the date of filing of the claim is considered a disallowance of the claim.

(f) The handling and disposition of claims filed under this chapter are not subject to the provisions of Article 3, Chapter 23 of Title 1.

(g) In all cases, where insurance is provided by the Budget and Control Board, the agency or political subdivision involved must cooperate with the Budget and Control Board in the investigation and handling of any claim.

**SECTION 15‑78‑90.** Settlement of claims and actions; institution of action where claim has or has not been filed.

(a) The Budget and Control Board, or the political subdivision where it has not purchased insurance from the Budget and Control Board, may adjust, compromise, settle, or allow any claim or settle or compromise any action.

(b) Whether or not the claim is filed, the claimant is entitled to institute an action against the appropriate agency or political subdivision. Provided, however, if a claimant files a claim, he may not institute an action until after the occurrence of the earliest of one of the following three events: (1) the passage of one hundred eighty days from the filing of the claim with the governmental entity, (2) the governmental entity’s disallowance of the claim, or (3) the governmental entity’s rejection of a settlement offer.

**SECTION 15‑78‑100.** When and where to institute action; requirement of special verdict specifying proportionate liability of multiple defendants.

(a) Except as provided for in Section 15‑3‑40, an action for damages under this chapter may be instituted at any time within two years after the loss was or should have been discovered. Provided, that if a claim for damages was filed and disallowed or rejected an action for damages filed under this chapter, based upon the same occurrence as the claim, may be instituted within three years after the loss was or should have been discovered.

(b) Jurisdiction for any action brought under this chapter is in the circuit court and brought in the county in which the act or omission occurred.

(c) In all actions brought pursuant to this chapter when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant against whom liability is determined.

**SECTION 15‑78‑110.** Statute of limitations.

Except as provided for in Section 15‑3‑40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

**SECTION 15‑78‑120.** Limitation on liability; prohibition against recovery of punitive or exemplary damages or prejudgment interest; signature of attorney on pleadings, motions, or other papers.

(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 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 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.

(c) 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 15‑78‑130.** Defense of political subdivision which has not purchased insurance through Budget and Control Board.

The defense for a political subdivision against an action brought pursuant to this chapter, when the political subdivision does not purchase insurance through the Budget and Control Board, must be provided by the political subdivision or its designee.

**SECTION 15‑78‑140.** Procurement of insurance by political subdivisions; exclusivity of remedies provided in this chapter.

(a) (Reserved)

(b) The political subdivisions of this State, in regard to tort and automobile liability, property and casualty insurance shall procure insurance to cover these risks for which immunity has been waived by (1) the purchase of liability insurance pursuant to Section 1‑11‑140; or (2) the purchase of liability insurance from a private carrier; or (3) self‑insurance; or (4) establishing pooled self‑insurance liability funds, by intergovernmental agreement, which may not be construed as transacting the business of insurance or otherwise subject to state laws regulating insurance. A pooled self‑insurance liability pool is authorized to purchase specific and aggregate excess insurance. A pooled self‑insurance liability fund must provide liability coverage for all employees of a political subdivision applying for participation in the fund. If the insurance is obtained other than pursuant to Section 1‑11‑140, it must be obtained subject to the following conditions:

(1) If the political subdivision does not procure tort liability insurance pursuant to Section 1‑11‑140, it must also procure its automobile liability and property and casualty insurance from other sources and shall not procure these coverages through the Budget and Control Board;

(2) If a political subdivision procures its tort liability insurance, automobile liability insurance, or property and casualty insurance through the Budget and Control Board, all liability exposures of the political subdivision as well as its property and casualty insurance must be insured with the Budget and Control Board;

(3) If the political subdivision, at any time, procures its tort liability, automobile liability, property, or casualty insurance other than through the Budget and Control Board and then subsequently desires to obtain this coverage with the Budget and Control Board, notice of its intention to so obtain this subsequent coverage must be provided the Budget and Control Board at least ninety days prior to the beginning of the coverage with the State Budget and Control Board. The other lines of insurance that the political subdivision is required to procure from the board are not required to commence until the coverage for that line of insurance expires. Any political subdivision may cancel all lines of insurance with the State Budget and Control Board if it gives ninety days’ notice to the board. The Budget and Control Board may negotiate the insurance coverage for any political subdivision separate from the insurance coverage for other insureds.

(4) If any political subdivision cancels its insurance with the Budget and Control Board, it is entitled to an appropriate refund of the premium, less reasonable administrative cost.

(c) For any claim filed under this chapter, the remedy provided in Section 15‑78‑120 is exclusive. The immunity of the State and its political subdivisions, with regard to the seizure, execution, or encumbrance of their properties is reaffirmed.

**SECTION 15‑78‑150.** Authority of Budget and Control Board to purchase liability insurance; funding of purchase by participating governmental entities; premiums set according to risk; development of actuarial rating system plan.

(a) The Budget and Control Board is authorized to purchase liability insurance.

(b) The purchase of insurance must be funded by participating governmental entities by payment of premiums as required by the Budget and Control Board. The Budget and Control Board in setting these premiums shall rate the policy according to the risk involved with the general class of insured entity. The Budget and Control Board must develop an actuarial rating system plan based upon the classification of employee and the risk involved by class of employee which must be implemented by July 1, 1990.

**SECTION 15‑78‑160.** Nonliability of Budget and Control Board where lack of insurance coverage results from agency’s or political subdivision’s failure to pay premium.

If an agency or political subdivision fails to pay any required premium within sixty days from the date the premium is invoiced, the State Budget and Control Board may cancel the policy for nonpayment of premium by mailing a notice of cancellation giving not less than thirty days’ notice of the cancellation to the delinquent agency or political subdivision. Prior to the termination of the insurance coverage, notice of the impending termination also must be published in a newspaper of regular circulation in the county where the insured’s headquarters is located. The State Budget and Control Board is not liable for any risk or loss occurring after the effective date of the cancellation.

**SECTION 15‑78‑170.** Action or claim for death of person; division of recovery.

An action or claim for the death of a person may be brought under this chapter by the executor or administrator respectively, of the person’s estate when death results from bodily injury if the bodily injury would have entitled the injured party to maintain an action or claim if death had not ensued. The provisions and limitations of this chapter are applicable to any such action or claim. Every action or claim must be for the benefit of the wife or husband and child, or children of the person whose death has been so caused and if there is no wife, husband, child, or children, then for the benefit of the parent or parents, and if there is none, then for the benefit of the heirs‑at‑law or the distributees of the person whose death has been so caused. Any amount recovered must be divided among the before‑mentioned parties in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his estate.

**SECTION 15‑78‑170 does not preclude a survival action.** Thus, a plaintiff, whose brother was killed allegedly as a result of the State’s negligent act, was entitled to pursue a survival action for conscious pain and suffering and medical expenses. Baker v. Sanders (S.C. 1990) 301 S.C. 170, 391 S.E.2d 229. States 112.2(2)

The complaint in a wrongful death action must allege that the decedent’s negligence did not cause or contribute to his injury. Otherwise, the complaint would not state facts sufficient to show that the decedent could have maintained an action had he survived, which is the statutory requirement. Patrick v. South Carolina Highway Dept. (S.C. 1963) 243 S.C. 246, 133 S.E.2d 750.

Where an injury occurs, resulting in the death of the only person who could account for the cause, the court held that circumstantial evidence can be relied upon to establish that the deceased did not in any way bring about the injury, or did not negligently contribute thereto. Mahon v. Spartanburg County (S.C. 1944) 205 S.C. 441, 32 S.E.2d 368.

A complaint which is brought under this section [former Code 1962 Section 33‑233] for wrongful death does not state a cause of action when it does not allege the name of the beneficiary or beneficiaries and their relationship to the deceased as set forth in former Code 1962 Section 10‑1952 [see now Section 15‑51‑20]. Kennemore v. South Carolina State Highway Dept. (S.C. 1942) 199 S.C. 85, 18 S.E.2d 611. Death 49(1)

**SECTION 15‑78‑180.** Applicability of chapter to causes of action arising before or after July 1, 1986.

The provisions of Chapter 78 of Title 15 of the 1976 Code shall only apply to those causes of action arising or accruing after the effective date of this chapter; provided, however, the provisions of Section 15‑78‑20(c) of the 1976 Code are applicable to all causes of action arising on or before the effective date of the chapter.

**SECTION 15‑78‑190.** Compensation of plaintiff pursuant to underinsured or uninsured defendant provisions of plaintiff’s insurance policy.

If the amount of the verdict or judgment is not satisfied by reason of the monetary limitations of this chapter upon recovery from the State or political subdivision thereof, the plaintiff’s insurance company, subject to the underinsured and uninsured defendant provisions of the plaintiff’s insurance policy, if any, shall compensate the plaintiff for the difference between the amount of the verdict or judgment and the payment by the political subdivision. If a cause of action is barred under Section 15‑78‑60 of the 1976 Code, the plaintiff’s insurance company must compensate him for his losses subject to the aforementioned provisions of his insurance policy.

**SECTION 15‑78‑200.** Exclusive and sole remedy for torts committed by employee of governmental entity while acting within scope of employee’s official duty.

Notwithstanding any provision of law, this chapter, the “South Carolina Tort Claims Act”, is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee’s official duty. The provisions of this chapter establish limitations on and exemptions to the liability of the governmental entity and must be liberally construed in favor of limiting the liability of the governmental entity.

**SECTION 15‑78‑210.** Rights and privileges preserved.

The provisions of Act 27 of 2005 do not affect any right, privilege, or provision of the South Carolina Tort Claims Act as contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33.

**SECTION 15‑78‑220.** Rights and privileges not affected.

The provisions of Act 32 of 2005 do not affect any right, privilege, or provision of the South Carolina Tort Claims Act as contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33.