

Summary of South Carolina Fairness in Civil Justice Act of 2011

Barnes, Alford, Stork & Johnson, LLP

On June 14, 2011, Governor Nikki Haley signed the South Carolina Fairness in Civil Justice Act of 2011 into law. The Act takes effect on January 1, 2012, and applies to all actions accruing on or after that date.

The main goal of the Act is to establish a new regime for awarding punitive damages. Under the Act:

- A claim for punitive damages must be specifically prayed for in the complaint;
- All jury trials involving punitive damages must be bifurcated upon the request of a defendant;
- Both stages of the bifurcated trial shall be tried before the same jury;
- In the first stage of a bifurcated trial, the jury determines liability for compensatory damages and the amount of compensatory or nominal damages, with evidence relevant to the issue of punitive damages not being admissible at this stage;
- Punitive damages may only be awarded if the plaintiff proves by clear and convincing evidence that his harm was the result of the defendant's willful, wanton, or reckless conduct (note that gross negligence is apparently no longer a sufficient basis for an award of punitive damages); and
- Punitive damages awards must be specific to each defendant.

The Act includes a non-exclusive list of relevant evidence a jury may consider in determining the amount of punitive damages. Relevant evidence includes previous awards of punitive damages against the defendant for the same act or course of conduct, as well as any civil fines and criminal penalties.

The Act also imposes tiered limits on punitive damages awards based on the severity of the defendant's conduct. Generally, an award of punitive damages may not exceed the greater of three times the amount of compensatory damages or \$500,000, whichever is greater. The limitation is not to be disclosed to the jury.

If the trial judge determines that either:

- (1) the defendant's wrongful conduct was motivated by financial gain and the defendant knew the conduct was unreasonably dangerous and carried a high likelihood of injury; or
- (2) the defendant's actions could subject the defendant to conviction of a felony and that act or course of conduct is a proximate cause of the plaintiff's damages,

then the punitive damages limit is increased to the greater of four times the amount of compensatory damages or \$2 million, whichever is greater.

There is no limit on punitive damages if the trial judge determines that:

- (1) the defendant intended to harm, and did in fact harm, the plaintiff;
- (2) the defendant has pled guilty to or been convicted of a felony arising from the same act or course of conduct complained of by the plaintiff and which proximately caused the plaintiff's damages; or
- (3) the defendant acted or failed to act while under the influence of illegal drugs, alcohol, or other impairing substances.

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The Act also addresses several miscellaneous items as set forth below.

- The Act provides that a circuit solicitor may employ outside counsel, in his discretion, for civil forfeiture proceedings arising from criminal activity or from estreatment of bail bonds.
- The Act requires insurance companies to provide documentation of an insured's coverage limits upon the request of a claimant's attorney.
- The Act provides that the statute of repose for actions based upon defective or unsafe conditions of improvements to real property may not be asserted:
 - (1) by a person in actual possession or control of an improvement (owners, tenants, etc.) that knows or reasonably should have known of the defective or unsafe condition;
 - (2) by a person guilty of fraud, gross negligence, or recklessness in connection with such an improvement; or
 - (3) in an action for personal injury or property damage which is not discoverable in the exercise of reasonable diligence at the time of its occurrence and which results from the ingestion of or exposure to toxins over a period of time, as opposed to resulting from a sudden and fortuitous trauma.
- The Act provides that a notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge grants a stay.

A complete copy of the Act is attached for reference.

South Carolina General Assembly
119th Session, 2011-2012

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~~Indicates Matter Stricken~~

Indicates New Matter

A52, R86, H3375

STATUS INFORMATION

General Bill

Sponsors: Reps. Harrell, Lucas, Cooper, Hardwick, Harrison, Owens, Sandifer, White, Bingham, Atwater, Parker, Crawford, Loftis, Bowen, G.R. Smith, Bedingfield, Toole, Sottile, V.S. Moss, Forrester, Bikas, Huggins, Brady, Allison, Pinson, Frye, Whitmire, Skelton, Nanney, Henderson, Limehouse, Corbin, Barfield, Battle, Clemmons, Cole, Crosby, Daning, Gambrell, Hamilton, Hiott, Hixon, Horne, Lowe, D.C. Moss, Murphy, Norman, Patrick, Simrill, G.M. Smith, J.R. Smith, Spires, Taylor, Willis, Young, Herbkersman, Ballentine, Thayer, Bannister, McCoy, Tallon, Stringer, Long, Hayes, Ott, J.M. Neal, Vick, G.A. Brown, Branham, Anthony, Bowers, Sellers, Quinn, Hearn, Edge, Anderson, Erickson, Knight, Chumley, Butler Garrick and Bales

Document Path: I:\council\bill\ms\7075ahb11.docx

Companion/Similar bill(s): 22, 23

Introduced in the House on January 19, 2011

Introduced in the Senate on February 15, 2011

Last Amended on May 31, 2011

Passed by the General Assembly on June 2, 2011

Governor's Action: June 14, 2011, Signed

Summary: S.C. Fairness in Civil Justice Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/19/2011	House	Introduced and read first time (House Journal-page 12)
1/19/2011	House	Referred to Committee on Judiciary (House Journal-page 12)
1/20/2011	House	Member(s) request name added as sponsor: Herbkersman
1/25/2011	House	Member(s) request name added as sponsor: Ballentine, Thayer, Bannister
1/26/2011	House	Member(s) request name added as sponsor: McCoy, Tallon, Stringer, Long, Hayes
1/27/2011	House	Member(s) request name added as sponsor: Ott, J.M.Neal, Vick, G.A.Brown, Branham, Anthony, Bowers
2/1/2011	House	Member(s) request name added as sponsor: Sellers
2/2/2011	House	Member(s) request name added as sponsor: Quinn, Hearn
2/2/2011	House	Committee report: Favorable Judiciary (House Journal-page 5)
2/3/2011	House	Member(s) request name added as sponsor: Edge, Anderson
2/4/2011		Scrivener's error corrected
2/8/2011	House	Member(s) request name added as sponsor: Erickson,

Knight, Chumley, Butler Garrick

2/8/2011	House	Debate adjourned until Wednesday, February 9, 2011 (House Journal-page 77)
2/9/2011	House	Member(s) request name added as sponsor: Bales
2/9/2011	House	Read second time (House Journal-page 24)
2/9/2011	House	Roll call Yeas-100 Nays-7 (House Journal-page 24)
2/10/2011	House	Read third time and sent to Senate (House Journal-page 16)
2/10/2011	House	Roll call Yeas-100 Nays-11 (House Journal-page 16)
2/15/2011	Senate	Introduced and read first time (Senate Journal-page 10)
2/15/2011	Senate	Referred to Committee on Judiciary (Senate Journal-page 10)
2/23/2011	Senate	Committee report: Favorable with amendment Judiciary (Senate Journal-page 30)
2/24/2011		Scrivener's error corrected
3/2/2011		Scrivener's error corrected
3/15/2011	Senate	Special order, set for March 15, 2011 (Senate Journal-page 19)
3/31/2011	Senate	Debate interrupted (Senate Journal-page 31)
4/5/2011	Senate	Debate interrupted (Senate Journal-page 31)
4/6/2011	Senate	Debate interrupted (Senate Journal-page 21)
4/7/2011	Senate	Debate interrupted (Senate Journal-page 40)
5/11/2011	Senate	Debate interrupted (Senate Journal-page 52)
5/31/2011	Senate	Committee Amendment Amended and Adopted (Senate Journal-page 41)
5/31/2011	Senate	Read second time (Senate Journal-page 41)
5/31/2011	Senate	Roll call Ayes-39 Nays-0 (Senate Journal-page 41)
5/31/2011	Senate	Debate interrupted (Senate Journal-page 41)
6/1/2011		Scrivener's error corrected
6/1/2011	Senate	Read third time and returned to House with amendments (Senate Journal-page 178)
6/2/2011	House	Concurred in Senate amendment and enrolled (House Journal-page 54)
6/2/2011	House	Roll call Yeas-99 Nays-16 (House Journal-page 54)
6/8/2011		Ratified R 86
6/14/2011		Signed By Governor
6/20/2011		Effective date See Act for Effective Date
6/20/2011		Act No. 52

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VERSIONS OF THIS BILL

[1/19/2011](#)

[2/2/2011](#)

[2/4/2011](#)

[2/23/2011](#)

[2/24/2011](#)

[3/2/2011](#)

[5/31/2011](#)

[6/1/2011](#)

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

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JOINT RESOLUTIONS. WHEN THIS DOCUMENT IS PUBLISHED IN THE ADVANCE SHEET, THIS NOTE WILL BE REMOVED.

(A52, R86, H3375)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "SOUTH CAROLINA FAIRNESS IN CIVIL JUSTICE ACT OF 2011" BY ADDING ARTICLE 5, CHAPTER 32 TO TITLE 15 SO AS TO PROVIDE LIMITS ON THE AWARD OF PUNITIVE DAMAGES AND TO PROVIDE FOR CERTAIN PROCEDURES AND REQUIREMENTS RELATING TO THE AWARD OF THESE DAMAGES; BY ADDING SECTION [1-7-750](#) SO AS TO AUTHORIZE CIRCUIT SOLICITORS TO EMPLOY OUTSIDE COUNSEL UNDER CERTAIN CIRCUMSTANCES; BY ADDING SECTION [38-77-250](#) SO AS TO REQUIRE EVERY INSURER PROVIDING AUTOMOBILE INSURANCE COVERAGE IN THE STATE TO PROVIDE CERTAIN INSURANCE COVERAGE INFORMATION WHEN A WRITTEN REQUEST IS MADE BY A CLAIMANT'S ATTORNEY AND TO AUTHORIZE SANCTIONS BY THE COURT FOR NONCOMPLIANCE; TO AMEND SECTION [15-3-670](#), RELATING TO LIMITATIONS ON ACTIONS BASED ON UNSAFE OR DEFECTIVE IMPROVEMENTS TO REAL PROPERTY, SO AS TO PROVIDE THAT THE VIOLATION OF A BUILDING CODE DOES NOT CONSTITUTE PER SE FRAUD, GROSS NEGLIGENCE, OR RECKLESSNESS BUT MAY BE ADMISSIBLE AS EVIDENCE; AND TO AMEND SECTION [18-9-130](#), AS AMENDED, RELATING TO THE EFFECT OF A NOTICE OF APPEAL ON THE EXECUTION OF JUDGMENT, SO AS TO PROVIDE LIMITS FOR APPEAL BONDS.

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

Citation

SECTION 1. This act may be cited as the "South Carolina Fairness in Civil Justice Act of 2011".

Punitive damages, limitations

SECTION 2. Chapter 32, Title 15 of the 1976 Code is amended by adding:

"Article 5

Punitive Damages

Section [15-32-510](#). (A) A claim for punitive damages must be specifically prayed for in the complaint.

(B) The plaintiff shall not specifically plead an amount of punitive damages, only that punitive damages are sought in the action.

Section [15-32-520](#). (A) All actions tried before a jury involving punitive damages, if requested by any defendant against whom punitive damages are sought, must be conducted in a bifurcated manner before the same jury.

(B) In the first stage of a bifurcated trial, the jury shall determine liability for compensatory damages and the amount of compensatory or nominal damages. Evidence relevant only to the issues of punitive damages is not admissible at this stage.

(C) Punitive damages may be considered if compensatory or nominal damages have been awarded in the first stage of the trial.

(D) Punitive damages may be awarded only if the plaintiff proves by clear and convincing evidence that his harm was the result of the defendant's wilful, wanton, or reckless conduct.

(E) In the second stage of a bifurcated trial, the jury shall determine if a defendant is liable for punitive damages and, if determined to be liable, the amount of punitive damages. In determining the amount of punitive damages, the jury may consider all relevant evidence, including, but not limited to:

(1) the defendant's degree of culpability;

(2) the severity of the harm caused by the defendant;

(3) the extent to which the plaintiff's own conduct contributed to the harm;

(4) the duration of the conduct, the defendant's awareness, and any concealment by the defendant;

(5) the existence of similar past conduct;

(6) the profitability of the conduct to the defendant;

(7) the defendant's ability to pay;

(8) the likelihood the award will deter the defendant or others from like conduct;

(9) the awards of punitive damages against the defendant in any state or federal court action alleging harm from the same act or course of conduct complained of by the plaintiff;

(10) any criminal penalties imposed on the defendant as a result of the same act or course of conduct complained of by the plaintiff; and

(11) the amount of any civil fines assessed against the defendant as a result of the same act or course of conduct complained of by the plaintiff.

(F) If punitive damages are awarded, the trial court shall review the jury's decision, considering all relevant evidence, including the factors identified in subsection (E), to ensure that the award is not excessive or the result of passion or prejudice.

(G) In an action with multiple defendants, a punitive damages award must be specific to each defendant, and each defendant is liable only for the amount of the award made against that defendant.

Section [15-32-530](#). (A) Except as provided in subsections (B) and (C), an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars.

(B) The limitation provided in subsection (A) may not be disclosed to the jury. If the jury returns a verdict for punitive damages in excess of the maximum amount specified in subsection (A), the trial court should first determine whether:

- (1) the wrongful conduct proven under this section was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved by the managing agent, director, officer, or the person responsible for making policy decisions on behalf of the defendant; or
- (2) the defendant's actions could subject the defendant to conviction of a felony and that act or course of conduct is a proximate cause of the plaintiff's damages;

If the trial court determines that either item (1) or (2) apply, then punitive damages must not exceed the greater of four times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of two million dollars and, if necessary, the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount allowed by this subsection. If the trial court determines that neither item (1) or (2) apply, then the award of punitive damages shall be subject to the maximum amount provided by subsection (A) and the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount allowed by subsection (A).

(C) However, when the trial court determines one of the following apply, there shall be no cap on punitive damages:

- (1) at the time of injury the defendant had an intent to harm and determines that the defendant's conduct did in fact harm the claimant; or
- (2) the defendant has pled guilty to or been convicted of a felony arising out of the same act or course of conduct complained of by the plaintiff and that act or course of conduct is a proximate cause of the plaintiff's damages; or
- (3) the defendant acted or failed to act while under the influence of alcohol, drugs, other than lawfully prescribed drugs administered in accordance with a prescription, or any intentionally consumed glue, aerosol, or other toxic vapor to the degree that the defendant's judgment is substantially impaired.

(D) At the end of each calendar year, the State Budget and Control Board, Board of Economic Advisors must determine the increase or decrease in the ratio of the Consumer Price Index to the index as of December thirty-one of the previous year, and the maximum amount recoverable for punitive damages pursuant to subsection (A) must be increased or decreased accordingly. As soon as practicable after this adjustment is calculated, the Director of the State Budget and Control Board shall submit the revised maximum amount recoverable for punitive damages to the State Register for publication, pursuant to Section [1-23-40](#)(2), and the revised maximum amount recoverable for punitive damages becomes effective upon publication in the State Register. For purposes of this subsection, 'Consumer Price Index' means the Consumer Price Index for All Urban Consumers as published by the United States Department of Labor, Bureau of Labor Statistics.

Section [15-32-540](#). The provisions of this article do not affect any right, privilege, or provision of the South Carolina Tort Claims Act pursuant to Chapter 78, Title 15 or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56, Title 33."

Circuit solicitors authorized to employ outside counsel

SECTION 3. Article 5, Chapter 7, Title 1 of the 1976 Code is amended by adding:

"Section [1-7-750](#). A circuit solicitor may employ outside counsel, in his discretion, without approval

of the Attorney General, for civil forfeiture proceedings arising from criminal activity or from estreatment of bail bonds. In any other matter, the circuit solicitor must obtain written approval of the Attorney General prior to retaining counsel to or filing a civil cause of action."

Automobile insurance coverage, release of coverage information upon written request of claimant's attorney

SECTION 4. Article 3, Chapter 77, Title 38 of the 1976 Code is amended by adding:

"Section [38-77-250](#). (A) Every insurer providing automobile insurance coverage in this State and which is or may be liable to pay all or a part of any claim shall provide, within thirty days of receiving a written request from the claimant's attorney, a statement, under oath, of a corporate officer or the insurer's claims manager stating with regard to each known policy of nonfleet private passenger insurance issued by it, the name of the insurer, the name of each insured, and the limits of coverage. The insurer may provide a copy of the declaration page of each such policy in lieu of providing such information. The request shall set forth under oath the specific nature of the claim asserted and shall be mailed to the insurer by certified mail or statutory overnight delivery. The request also must state that the attorney is authorized to make such a request and must be accompanied by a copy of the incident report from which the claim is derived.

(B) If the request provided in subsection (A) contains information insufficient to allow compliance, the insurer upon whom the request was made may so state in writing, stating specifically what additional information is needed and such compliance shall constitute compliance with this section.

(C) The information provided to a claimant or his attorney as required by subsection (A) of this section shall not create a waiver of any defenses to coverage available to the insurer and shall not be admissible in evidence.

(D) The information provided to a claimant or his attorney as required by subsection (A) shall be amended upon the discovery of facts inconsistent with or in addition to the information provided.

(E) The provisions of this section do not require disclosure of limits for fleet policy limits, umbrella coverages, or excess coverages.

(F) The information received pursuant to this section is confidential and must not be disclosed to any outside party. Upon final disposition of the case, the claimant's attorney must destroy all information received pursuant to this section. The court must impose sanctions for a violation of this subsection."

Limitations on actions based on unsafe or defective improvements to real property, evidence of fraud, negligence, gross negligence, or recklessness

SECTION 5. Section [15-3-670](#) of the 1976 Code is amended to read:

"Section [15-3-670](#). (A) The limitation provided by Sections [15-3-640](#) through [15-3-660](#) may not be asserted as a defense by a person in actual possession or control, as owner, tenant, or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the event the person in actual possession or control knows, or reasonably should have known, of the defective or unsafe condition. The limitations provided by Sections [15-3-640](#) through [15-3-660](#) are not available as a defense to a person guilty of fraud, gross negligence, or recklessness in providing components in furnishing materials, in developing

real property, in performing or furnishing the design, plans, specifications, surveying, planning, supervision, testing or observation of construction, construction of, or land surveying, in connection with such an improvement, or to a person who conceals any such cause of action.

(B) For the purposes of subsection (A), the violation of a building code of a jurisdiction or political subdivision does not constitute per se fraud, gross negligence, or recklessness, but this type of violation may be admissible as evidence of fraud, negligence, gross negligence, or recklessness.

(C) The limitation provided by Section [15-3-640](#) may not be asserted as a defense to an action for personal injury, including a personal injury resulting in death, or property damage which is:

(1) by its nature not discoverable in the exercise of reasonable diligence at the time of its occurrence; and

(2) the result of ingestion of or exposure to some toxic or harmful or injury producing substance, element, or particle, including radiation, over a period of time as opposed to resulting from a sudden and fortuitous trauma."

Limitations on appeal bonds

SECTION 6. Section [18-9-130](#)(A)(1) of the 1976 Code, as last amended by Act 216 of 2004, is further amended to read:

"(1) A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution. If the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment or:

(a) twenty-five million dollars, whichever is less, for a business entity that employs more than fifty persons and has gross revenues exceeding five million dollars for the previous tax year; or

(b) one million dollars, whichever is less, for all other entities or individuals."

Time effective

SECTION 7. This act takes effect January 1, 2012, and applies to all actions that accrue on or after the effective date except the provisions of SECTION 3 do not apply to any matter pending on the effective date of this act.

Ratified the 8th day of June, 2011.

Approved the 14th day of June, 2011.