

## South Carolina General Assembly

116th Session, 2005-2006

### R23, H3008

#### STATUS INFORMATION

##### General Bill

Sponsors: Reps. Cato, Bales, Clark, Barfield, Huggins, Frye, Sandifer, E.H. Pitts, Taylor, Anthony, Bailey, Battle, Bingham, Ceips, Chalk, Chellis, Clemmons, Cooper, Dantzler, Davenport, Duncan, Edge, Hamilton, Hardwick, Harrell, Hinson, Kirsh, Leach, Limehouse, Littlejohn, Loftis, McCraw, Norman, Owens, Perry, Pinson, Rice, Simrill, Skelton, D.C. Smith, G.R. Smith, J.R. Smith, Stewart, Thompson, Toole, Townsend, Tripp, Umphlett, Vaughn, Vick, Viers, Walker, White, Whitmire, Wilkins, Witherspoon, Coates, Brady, Ballentine, Ott, Mahaffey, Haley, Hagood, Bowers and Young  
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Introduced in the House on January 11, 2005

Introduced in the Senate on February 17, 2005

Last Amended on March 9, 2005

Passed by the General Assembly on March 16, 2005

Governor's Action: March 21, 2005, Signed

Summary: Economic Development, Citizens, and Small Business Protection Act of 2005

#### HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/8/2004	House	Prefiled
12/8/2004	House	Referred to Committee on <b>Judiciary</b>
1/11/2005	House	Introduced and read first time HJ-42
1/11/2005	House	Referred to Committee on <b>Judiciary</b> HJ-43
1/26/2005	House	Member(s) request name added as sponsor: Hagood
2/9/2005	House	Committee report: Favorable with amendment <b>Judiciary</b> HJ-2
2/10/2005	House	Member(s) request name added as sponsor: Bowers, Young
2/10/2005		Scrivener's error corrected
2/15/2005	House	Requests for debate-Rep(s). Cato, Leach, GR Smith, Loftis, Hamilton, Altman, Sinclair, JR Smith, Davenport, Skelton, Thompson, Weeks, and Mack HJ-20
2/16/2005	House	Amended HJ-24
2/16/2005	House	Read second time HJ-50
2/16/2005	House	Roll call Yeas-101 Nays-15 HJ-50
2/17/2005	House	Read third time and sent to Senate HJ-12
2/17/2005	Senate	Introduced and read first time SJ-7
2/17/2005	Senate	Referred to Committee on <b>Judiciary</b> SJ-7
2/17/2005		Scrivener's error corrected
3/3/2005	Senate	Recalled from Committee on <b>Judiciary</b> SJ-41
3/4/2005		Scrivener's error corrected
3/8/2005	Senate	Amended SJ-28
3/8/2005	Senate	Read second time SJ-28
3/8/2005	Senate	Unanimous consent for third reading on next legislative day SJ-28
3/9/2005	Senate	Reconsidered SJ-34
3/9/2005	Senate	Amended SJ-34
3/9/2005	Senate	Read third time and returned to House with amendments SJ-34
3/15/2005	House	Debate adjourned HJ-111

3/15/2005	House	Debate adjourned HJ-157
3/16/2005	House	Debate adjourned HJ-13
3/16/2005	House	Concurred in Senate amendment and enrolled HJ-38
3/16/2005	House	Roll call Yeas-115 Nays-0 HJ-85
3/17/2005		Ratified R 23 SJ-85
3/21/2005		Signed By Governor
3/23/2005		Copies available
3/23/2005		Effective date See Act for Effective Date

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## **VERSIONS OF THIS BILL**

[12/8/2004](#)

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(R23, H3008)

**AN ACT TO AMEND SECTION 15-3-640, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO AN ACTION BASED UPON A DEFECTIVE OR UNSAFE IMPROVEMENT TO REAL PROPERTY, SO AS TO DECREASE THE TIME AN ACTION MAY BE BROUGHT FROM THIRTEEN TO EIGHT YEARS AFTER THE SUBSTANTIAL COMPLETION OF THE IMPROVEMENT; TO AMEND SECTION 15-7-30, RELATING TO ACTIONS THAT MUST BE TRIED WHERE THE DEFENDANT RESIDES, SO AS TO DEFINE KEY TERMS AND TO PROVIDE FACTORS FOR THE COURT TO CONSIDER WHEN DETERMINING THE PRINCIPAL PLACE OF BUSINESS; TO AMEND SECTION 15-7-100, RELATING TO CHANGING THE PLACE OF TRIAL, SO AS TO PROVIDE THAT THE COURT MAY CHANGE THE PLACE OF TRIAL IF IT IS A COURT IN A COUNTY DESIGNATED FOR THAT PURPOSE BUT THE DESIGNATED COUNTY IS NOT THE PROPER COUNTY PURSUANT TO ANOTHER VENUE STATUTE; TO AMEND SECTION 15-36-10, RELATING TO LIABILITY FOR ATTORNEY'S FEES AND COSTS OF FRIVOLOUS LAWSUITS, SO AS TO REPLACE THE EXISTING PROVISIONS WITH PROVISIONS REQUIRING THE SIGNATURE OF AN ATTORNEY OR PARTY ON ALL PLEADINGS AND OTHER DOCUMENTS FILED IN A CIVIL OR ADMINISTRATIVE ACTION, TO PROVIDE A PROCEDURE FOR ADMINISTERING SANCTIONS FOR A VIOLATION, AND TO PROVIDE FOR THE REPORTING OF AN ATTORNEY TO THE COMMISSION ON LAWYER CONDUCT; BY ADDING SECTION 15-38-15 SO AS TO PROVIDE IN AN ACTION TO RECOVER DAMAGES RESULTING FROM PERSONAL INJURY, WRONGFUL DEATH, DAMAGE TO PROPERTY, OR TO RECOVER DAMAGES FOR ECONOMIC LOSS OR NONECONOMIC LOSS, JOINT AND SEVERAL LIABILITY DOES NOT APPLY TO A DEFENDANT WHO IS LESS THAN FIFTY PERCENT AT**

**FAULT, TO PROVIDE FOR APPORTIONMENT OF PERCENTAGES OF FAULT AMONG DEFENDANTS, AND TO PROVIDE THAT THE PROVISIONS OF THIS SECTION DO NOT APPLY TO A DEFENDANT WHOSE CONDUCT IS WILFUL, WANTON, RECKLESS, GROSSLY NEGLIGENT, INTENTIONAL, OR CONDUCT INVOLVING THE USE, SALE, OR POSSESSION OF ALCOHOL OR DRUGS; TO AMEND SECTION 34-31-20, AS AMENDED, RELATING TO THE LEGAL RATE OF INTEREST, SO AS TO CHANGE THE RATE FROM TWELVE PERCENT A YEAR TO EQUAL TO THE PRIME RATE AS LISTED IN THE FIRST EDITION OF THE WALL STREET JOURNAL PUBLISHED FOR EACH CALENDAR YEAR PLUS FOUR PERCENTAGE POINTS; TO AMEND SECTION 36-2-803, RELATING TO PERSONAL JURISDICTION BASED UPON CONDUCT, SO AS TO REMOVE AN EXCEPTION SO THAT AN ACTION PURSUANT TO THIS SECTION WOULD BE SUBJECT TO THE PROVISIONS OF SECTION 15-7-100(3); BY ADDING SECTION 39-5-39 SO AS TO PROVIDE THAT IT IS AN UNLAWFUL TRADE PRACTICE FOR AN ATTORNEY TO ADVERTISE HIS SERVICES IN A FALSE, DECEPTIVE, OR MISLEADING MANNER; AND TO REPEAL SECTIONS 15-36-20, 15-36-30, 15-36-40, AND 15-36-50 ALL RELATING TO FRIVOLOUS LAWSUITS AND SECTION 58-23-90 RELATING TO VENUE IN ACTIONS AGAINST LICENSED MOTOR CARRIERS.**

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

**PART I  
GENERAL ASSEMBLY FINDINGS**

**General Assembly findings**

SECTION 1. The General Assembly finds that the sections presented in this act constitute one subject as required by Article III, Section 17 of the South Carolina Constitution, in particular finding that each change and each topic relates directly to or in conjunction with other sections to the subject of tort and other civil action reform as clearly enumerated in the title.

The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality

but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

PART II  
GENERAL PROVISIONS

**Civil procedure, improvements to real property, statute of repose**

SECTION 2. Section 15-3-640 of the 1976 Code is amended to read:

“Section 15-3-640. No actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than eight years after substantial completion of the improvement. For purposes of this section, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:

- (1) an action to recover damages for breach of a contract to construct or repair an improvement to real property;
- (2) an action to recover damages for the negligent construction or repair of an improvement to real property;
- (3) an action to recover damages for personal injury, death, or damage to property;
- (4) an action to recover damages for economic or monetary loss;
- (5) an action in contract or in tort or otherwise;
- (6) an action for contribution or indemnification for damages sustained on account of an action described in this section;
- (7) an action against a surety or guarantor of a defendant described in this section;
- (8) an action brought against any current or prior owner of the real property or improvement, or against any other person having a current or prior interest in the real property or improvement;
- (9) an action against owners or manufacturers of components, or against any person furnishing materials, or against any person who develops real property, or who performs or furnishes the design, plans, specifications, surveying, planning, supervision, testing, or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property.

This section describes an outside limitation of eight years after the substantial completion of the improvement, within which normal statutes of limitations continue to run.

A building permit for the construction of an improvement to real property must contain in bold type notice to the owner or possessor of the property of his rights under this section to contract for a guarantee

of the structure being free from defective or unsafe conditions beyond eight years after substantial completion of the improvement. The Department of Consumer Affairs shall publish in conspicuous places the right of an owner or possessor to contract for extended liability under this section. Nothing in this section prohibits a person from entering into a contractual agreement prior to the substantial completion of the improvement which extends any guarantee of a structure or component being free from defective or unsafe conditions beyond eight years after substantial completion of the improvement or component.

For any improvement to real property, a certificate of occupancy issued by a county or municipality, in the case of new construction or completion of a final inspection by the responsible building official in the case of improvements to existing improvements, shall constitute proof of substantial completion of the improvement under the provisions of Section 15-3-630, unless the contractor and owner, by written agreement, establish a different date of substantial completion.”

### **Civil procedure, venue**

SECTION 3. Section 15-7-30 of the 1976 Code is amended to read:

“Section 15-7-30. (A) As used in this section:

(1) ‘Domestic corporation’ means a ‘domestic corporation’ as defined in Section 33-1-400.

(2) ‘Domestic limited partnership’ means a ‘domestic limited partnership’ as defined in Section 33-42-20.

(3) ‘Domestic limited liability company’ means a ‘domestic limited liability partnership’ as defined in Section 33-41-1110 with its principal place of business within this State.

(4) ‘Domestic limited liability partnership’ means a ‘domestic limited liability partnership’ as defined in Section 33-41-1110 with its principal place of business within this State.

(5) ‘Foreign corporation’ means a ‘foreign corporation’ as defined in Section 33-1-400.

(6) ‘Foreign limited partnership’ means a ‘foreign limited partnership’ as defined in Section 33-42-20.

(7) ‘Foreign limited liability company’ means a ‘foreign limited liability partnership’ as defined in Section 33-41-1150 with its principal place of business outside this State.

(8) ‘Foreign limited liability partnership’ means a ‘foreign limited liability partnership’ as defined in Section 33-41-1150 with its principal place of business outside this State.

(9) 'Nonresident individual' means a person who is not domiciled in this State.

(10) 'Principal place of business' means:

(a) the corporation's home office location within the State from which the corporation's officers direct, control, or coordinate its activities;

(b) the location of the corporation's manufacturing, sales, or purchasing facility within the State if the corporation does not have a home office within the State; or

(c) the location at which the majority of corporate activity takes place if the corporation has multiple offices, centers of manufacturing, sales, or purchasing located within the State if the corporation does not have a home office within the State and has more than one manufacturing, sales, or purchasing facility within the State. The following factors may be considered when determining the location at which the majority of corporate activity takes place:

(i) the number of employees located in any one county;

(ii) the authority of the employees located in any one county; or

(iii) the tangible corporate assets that exist in any one county.

(11) 'Resident individual' means a person who is domiciled in this State.

(B) In cases not provided for in Sections 15-7-10, 15-7-20, or 15-78-100, the action must be tried in the county where it properly may be brought and tried against the defendant according to the provisions of this section. If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section. This section is subject to the power of the court in the county where the action properly may be maintained according to this section to change the place of trial as provided in Section 15-7-100 or as otherwise provided by law.

(C) A civil action tried pursuant to this section against a resident individual defendant must be brought and tried in the county in which the:

(1) defendant resides at the time the cause of action arose; or

(2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

(D) A civil action tried pursuant to this section against a nonresident individual defendant must be brought and tried in the county in which the:

(1) most substantial part of the alleged act or omission giving rise to the cause of action occurred; or

(2) plaintiff resides at the time the cause of action arose, or if the plaintiff is a domestic corporation, domestic limited partnership, domestic limited liability company, domestic limited liability partnership, foreign corporation, foreign limited partnership, foreign limited liability company, or foreign limited liability partnership, at its principal place of business at the time the cause of action arose.

(E) A civil action tried pursuant to this section against a domestic corporation, domestic limited partnership, domestic limited liability company, or domestic limited liability partnership, must be brought and tried in the county in which the:

(1) corporation, limited partnership, limited liability company, or limited liability partnership has its principal place of business at the time the cause of action arose; or

(2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

(F) A civil action tried pursuant to this section against a foreign corporation required to possess and possessing a certificate of authority under the provisions of Section 33-15-101 et seq., a foreign limited partnership required to possess and possessing a certificate of authority under the provisions of Section 33-15-101 et seq., a foreign limited liability company required to possess and possessing a certificate of authority under the provisions of Section 33-15-101 et seq., or a foreign limited liability partnership required to possess and possessing a certificate of authority under the provisions of Section 33-15-101 et seq. must be brought and tried in the county in which the:

(1) most substantial part of the alleged act or omission giving rise to the cause of action occurred; or

(2) foreign corporation, foreign limited partnership, foreign limited liability company, or foreign limited liability partnership has its principal place of business at the time the cause of action arose.

(G) A civil action tried pursuant to this section against a foreign corporation, except a foreign corporation described in subsection (F); a foreign limited partnership, except a foreign limited partnership described in subsection (F); a foreign limited liability company, except a foreign limited liability company described in subsection (F); or a foreign limited liability partnership, except a foreign limited liability partnership described in subsection (F); must be brought and tried in the county in which the:

(1) most substantial part of the alleged act or omission giving rise to the cause of action occurred;

(2) plaintiff resides at the time the cause of action arose, or if the plaintiff is a domestic corporation, domestic limited partnership, domestic limited liability company, domestic limited liability

partnership, foreign corporation, foreign limited partnership, foreign limited liability company, or foreign limited liability partnership, at its principal place of business at the time the cause of action arose; or

(3) foreign corporation, foreign limited partnership, foreign limited liability company, or foreign limited liability partnership has its principal place of business at the time the cause of action arose.

(H) Owning property and transacting business in a county is insufficient in and of itself to establish the principal place of business for a corporation for purposes of this section.”

### **Civil procedure, changing place of trial**

SECTION 4. Section 15-7-100 of the 1976 Code is amended to read:

“Section 15-7-100. (A) The court may change the place of trial if:

(1) it is a court in a county designated for that purpose in the complaint, but the designated county is not the proper county pursuant to the provisions of Chapter 7 of Title 15 of the 1976 Code or other statutes providing for the venue of actions;

(2) there is reason to believe that a fair and impartial trial cannot be had there; or

(3) the convenience of witnesses and the ends of justice would be promoted by the change.

(B) When the place of trial is changed, all other proceedings must be in the county to which the place of trial is changed, unless otherwise provided by the consent of the parties in writing duly filed or by order of the court. The pleadings and other papers must be filed or transferred accordingly.”

### **Civil procedure, frivolous lawsuits**

SECTION 5. Section 15-36-10 of the 1976 Code is amended to read:

“Section 15-36-10. (A)(1) A pleading filed in a civil or administrative action on behalf of a party who is represented by an attorney must be signed by at least one attorney of record who is an active member of the South Carolina Bar or who is admitted to practice in the courts of this State and must include the address and telephone number of the attorney signing the document.

(2) A document filed in a civil or administrative action by a party who is not represented by an attorney must be signed by the party and must include the address and telephone number of the party.

(3) The signature of an attorney or a pro se litigant constitutes a certificate to the court that:

(a) the person has read the document;

(b) a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a good faith argument exists for the extension, modification, or reversal of existing law;

(c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and

(d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

(B)(1) If a document is not signed or does not otherwise comply with this section, it must be stricken unless it is signed promptly or amended to comply with this section after the omission is called to the attention of the attorney or the party.

(2) If a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.

(C)(1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or

(c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

(2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

(D) A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section. A court or party proposing a sanction pursuant to this section shall notify the court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction imposed. Upon notification, the attorney, party, or pro se litigant who allegedly violated subsection (A)(4) has thirty days to respond to the allegations as that person considers appropriate,

including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation.

(E) In determining if an attorney, party, or a pro se litigant has violated the provisions of this section, the court shall take into account:

- (1) the number of parties;
- (2) the complexity of the claims and defenses;
- (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
- (4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
- (5) previous violations of the provisions of this section;
- (6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
- (7) other factors the court considers just, equitable, or appropriate under the circumstances.

(F) In determining whether sanctions are appropriate or the severity of a sanction, the court shall consider previous violations of the provisions of this section.

(G) Sanctions may include:

(1) an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section. Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding;

(2) an order for the attorney to pay a reasonable fine to the court;

or

(3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith.

(H) If the court imposes a sanction on an attorney in violation of the provisions of this section, the court shall report its findings to the South Carolina Commission of Lawyer Conduct.

(I) This act shall not alter the South Carolina Rules of Civil Procedure or the South Carolina Appellate Court Rules.

(J) The provisions of this section shall not apply where an attorney or pro se litigant establishes a basis to proceed with litigation, or to assert or controvert an issue therein, that is not frivolous, which

includes a good faith argument for an extension, modification, or reversal of the existing law.

(K) The provisions of this section apply in addition to all other remedies available at law or in equity.

(L) The amount requested for damages in a pleading may not be considered in a determination of a violation of the provisions of this section.

(M) All violations of the provisions of this section must be reported to the South Carolina Supreme Court and a public record must be maintained and reported annually to the Governor, Senate, and House of Representatives.”

### **Civil procedure, civil liability**

SECTION 6. Chapter 38, Title 15 of the 1976 Code is amended by adding:

“Section 15-38-15. (A)(1) In an action to recover damages resulting from personal injury, wrongful death, or damage to property or to recover damages for economic loss or for noneconomic loss such as mental distress, loss of enjoyment, pain, suffering, loss of reputation, or loss of companionship resulting from tortious conduct, if indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability does not apply to any defendant whose conduct is determined to be less than fifty percent of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the defendants; and (ii) the fault (‘comparative negligence’), if any, of plaintiff. A defendant whose conduct is determined to be less than fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact.

(B) Apportionment of percentages of fault among defendants is to be determined as specified in subsection (C).

(C) The jury, or the court if there is no jury, shall:

(1) specify the amount of damages;

(2) determine the percentage of fault, if any, of plaintiff and the amount of recoverable damages under applicable rules concerning ‘comparative negligence’; and

(3) upon a motion by at least one defendant, where there is a verdict under items (1) and (2) above for damages against two or more defendants for the same indivisible injury, death, or damage to property, specify in a separate verdict under the procedures described at subitem (b) below the percentage of liability that proximately caused

the indivisible injury, death, damage to property, or economic loss from tortious conduct, as determined by item (1) above, that is attributable to each defendant whose actions are a proximate cause of the indivisible injury, death, or damage to property. In determining the percentage attributable to each defendant, any fault of the plaintiff, as determined by item (2) above, will be included so that the total of the percentages of fault attributed to the plaintiff and to the defendants must be one hundred percent.

(a) For this purpose, the court may determine that two or more persons are to be treated as a single party. Such treatment must be used where two or more defendants acted in concert or where, by reason of agency, employment, or other legal relationship, a defendant is vicariously responsible for the conduct of another defendant.

(b) After the initial verdict awarding damages is entered and before the special verdict on percentages of liability is rendered, the parties shall be allowed oral argument, with the length of such argument subject to the discretion of the trial judge, on the determination of the percentage attributable to each defendant. However, no additional evidence shall be allowed.

(D) A defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.

(E) Notwithstanding the application of this section, setoff from any settlement received from any potential tortfeasor prior to the verdict shall be applied in proportion to each defendant's percentage of liability as determined pursuant to subsection (C).

(F) This section does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional or conduct involving the use, sale, or possession of alcohol or drugs."

### **Banking, financial institutions, money, legal rate of interest**

SECTION 7. Section 34-31-20 of the 1976 Code, as last amended by Act 344 of 2000, is further amended to read:

"Section 34-31-20. (A) In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum.

(B) A money decree or judgment of a court enrolled or entered must draw interest according to law. The legal rate of interest is equal

to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points.”

### **Commercial code, personal jurisdiction**

SECTION 8. Section 36-2-803 of the 1976 Code is amended to read:

“Section 36-2-803. (A) A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person’s:

- (1) transacting any business in this State;
- (2) contracting to supply services or things in the State;
- (3) commission of a tortious act in whole or in part in this State;
- (4) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State;
- (5) having an interest in, using, or possessing real property in this State;
- (6) contracting to insure any person, property, or risk located within this State at the time of contracting;
- (7) entry into a contract to be performed in whole or in part by either party in this State; or
- (8) production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.

(B) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him.”

### **Unlawful trade practices, attorney advertising**

SECTION 9. Article 1, Chapter 5, Title 39 of the 1976 Code is amended by adding:

“Section 39-5-39. Notwithstanding another provision of law, it is an unlawful trade practice, pursuant to Section 39-5-20, for an attorney to advertise his services in this State in a false, deceptive, or misleading manner including, but not limited to, the use of a nickname that creates an unreasonable expectation of results.”

PART III  
DEPARTMENT OF INSURANCE AND GENERAL ASSEMBLY  
REVIEW OF INSURER’S REDUCTION OF PREMIUMS TO  
REFLECT SAVINGS

**Department of Insurance, report of savings**

SECTION 10. The Department of Insurance shall review data reported on annual statements by liability insurers, including, but not limited to, paid claims, reserves, loss adjustment expenses, and such additional data as the department may require by promulgation of bulletin, to determine savings related to a decrease in litigation and claims paid pursuant to litigation after the effective date of this act. The department may require special reports from insurers to determine if savings are realized as a result of the provisions of this act. The department shall compile a report of savings realized and submit it for General Assembly review upon request. Costs or expenses associated with the compilation of this report of savings shall be paid by the insurers pursuant to the provisions of Chapter 13 of Title 38. The Department of Insurance shall review premium and losses by line of insurance to determine if appropriate adjustments have been made based upon the department estimates of savings realized pursuant to the provisions of this act.

PART IV  
MISCELLANEOUS

**Severability clause, Section 6**

SECTION 11. If any provision of Section 6 or its application to any person is held invalid, unenforceable, or unconstitutional, this validity, unenforceability, or unconstitutionality shall negate the other provisions or applications of Section 6, and to this end, the provisions of Section 6 are not severable.

**Repeal**

SECTION 12. Sections 15-36-20, 15-36-30, 15-36-40, 15-36-50, and 58-23-90 of the 1976 Code are repealed.

### **Rights under Tort Claims Act**

SECTION 13. The provisions of this act 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 of South Carolina or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33.

### **Savings clause**

SECTION 14. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

### **Severability clause**

SECTION 15. Except as provided in Section 11, if any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

### **Time effective**

SECTION 16. Upon approval by the Governor:

- (1) Sections 1, 7, 10, 11, 13, 14, and 15 take effect;
- (2) Section 2 takes effect on July 1, 2005, and applies to improvements to real property for which certificates of occupancy are issued by a county or municipality or completion of a final inspection by the responsible local building official after the effective date;
- (3) Sections 3, 4, 5, 8, and 12 take effect July 1, 2005, and shall only apply to causes of action arising on or after that date;
- (4) Section 6 takes effect July 1, 2005, and shall only apply to causes of action arising on or after that date except for causes of actions relating to construction torts which would take effect on July 1, 2005, and apply to improvements to real property that first obtain substantial completion on or after July 1, 2005. For purposes of this section, an improvement to real property obtains substantial completion when a municipality or county issues a certificate of occupancy in the case of new construction, or completes a final inspection in the case of improvements to existing improvements; and
- (5) Section 9 takes effect but shall only apply to advertisements appearing after that date.

Ratified the 17<sup>th</sup> day of March, 2005.

Approved the 21<sup>st</sup> day of March, 2005. -- S.

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