

Legal Update | South Carolina Tort Reform

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PART 1

Tort Reform Amendments

The South Carolina Legislature has introduced significant amendments to the state's laws regarding joint and several liability, alcohol sales and liquor liability insurance. These changes aim to enhance accountability and safety in alcohol-related incidents and streamline legal procedures. Governor Henry McMaster signed this legislation on May 12, 2025, the amendments take effect January 1, 2026, and the amendments apply only to causes of action or claims arising or accruing after January 1, 2026. As with any new legislation, it is anticipated there will be some growing pains that naturally come as parties, lawyers and judges wrestle with the resulting changes.

Key Amendment 1 | Joint and Several Liability

Previously, S.C. Code Ann. §15-38-15 (F) noted joint and several liability did not apply to a defendant whose conduct was determined to be willful, wanton, reckless, grossly negligent or intentional, or conduct involving the use, sale or possession of alcohol, or the illegal or illicit use, sale or possession of drugs. The amendments now remove the exceptions for the use, sale or possession of alcohol and gross negligence, and allow joint and several liability. However, "[I]f a verdict is rendered against both a licensee and a defendant charged [with DUI offenses], then the licensee is jointly and severally liable for fifty percent of the plaintiff's actual damages." The intentional acts and use and/or sale of drugs exceptions to joint and several liability remain.

Key Amendment 2 | Alcohol Sales Regulations

The amendments also include a new chapter that establishes mandatory training for alcohol servers and imposes penalties on establishments for alcohol violations that can result in the revocation of the establishment's liquor license if too many violations occur in a three year period. Any establishment that sells alcohol after 5:00 PM is still required to maintain a \$1 million liability policy; however, there are opportunities for establishments to lower that amount if they meet certain criteria, such as if they stop serving alcohol before midnight or less than 40% of an establishment's sales are derived from alcohol sales.

PART 2

Inclusion of Additional Parties on the Verdict Form

One of the more significant changes in South Carolina's tort reform legislation introduces new procedures for including additional parties on the jury verdict form. This change will allow a jury to allocate fault to non-parties and parties that settled prior to trial.

Previously, defendants were able to make an “empty chair” argument to assert a party not participating in the trial (due to settlement or if the party was not added to the action) was a proximate cause of the plaintiff’s damages. This was previously an all-or-nothing endeavor as the absent party was not included on the verdict form, and the jury was required to apportion 100% of fault only to the parties participating in trial. With the absence of the empty chair party or parties on the verdict form, a jury could be forced to allocate 100% of fault without the most culpable parties listed—an illogical endeavor. This doesn’t account for the increased likelihood a remaining party could be exposed to joint and several liability.

Under the new amendments, the defendant can file a motion to include additional tortfeasors on the jury verdict form. With this motion, the defendant bears the burden of demonstrating the non-party tortfeasor was a proximate cause of the plaintiff’s damages, unless the plaintiff amends the complaint to add the proposed tortfeasor as a party to the action. In the alternative, the plaintiff can move to remove the non-party tortfeasor from the verdict form via a motion for summary judgment or a motion for directed verdict at trial.

Finally, non-parties that settled prior to suit or parties that settled during suit are required, with limited exceptions, to be added to the verdict form. This can prevent situations where one party is disproportionately liable for the entire amount of damages, as each party’s (or non-party’s) degree of fault is considered, potentially reducing the burden on any single defendant.

The original bill, proposed amendments, and other competing tort reform bills included changes to other areas connected to civil litigation such as medical malpractice claims and minimum limits of automobile insurance. It is expected that the South Carolina Legislature will look to address these additional issues next year.

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