

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2011

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HOUSE BILL 542
Committee Substitute Favorable 5/10/11

Short Title: Tort Reform for Citizens and Businesses.

(Public)

Sponsors:

Referred to:

March 31, 2011

1 **A BILL TO BE ENTITLED**

2 **AN ACT TO PROVIDE TORT REFORM FOR NORTH CAROLINA CITIZENS AND**
3 **BUSINESSES.**

4 The General Assembly of North Carolina enacts:

5 **PART I. GENERAL REFORMS**

6 **SECTION 1.1.** Article 4 of Chapter 8C of the General Statutes is amended by
7 adding a new section to read:

8 **"Rule 414. Evidence of medical expenses.**

9 Evidence offered to prove past medical expenses may include all bills reasonably paid and a
10 statement of the amounts actually necessary to satisfy the bills that have been incurred but not
11 yet paid. This rule does not impose upon any party an affirmative duty to seek a reduction in
12 billed charges to which the party is not contractually entitled."

13 **SECTION 1.2.** G.S. 8-58.1 reads as rewritten:

14 **"§ 8-58.1. Injured party as witness when medical charges at issue.**

15 Whenever an issue of hospital, medical, dental, pharmaceutical, or funeral charges arises in
16 any civil proceeding, the injured party or his guardian, administrator, or executor is competent
17 to give evidence regarding the amount of such charges, provided that records or copies of such
18 charges accompany such testimony. ~~The testimony of such a person establishes a rebuttable
19 presumption of the reasonableness of the amount of the charges."~~

20 **SECTION 1.3.** G.S. 8C-702(a) reads as rewritten:

21 "(a) If scientific, technical or other specialized knowledge will assist the trier of fact to
22 understand the evidence or to determine a fact in issue, a witness qualified as an expert by
23 knowledge, skill, experience, training, or education, may testify thereto in the form of an
24 opinion.~~opinion, or otherwise if all of the following apply:~~

- 25 (1) The testimony is based upon sufficient facts or data.
26 (2) The testimony is the product of reliable principles and methods.
27 (3) The witness has applied the principles and methods reliably to the facts of
28 the case."

29 **SECTION 1.4.** G.S. 1D-25 reads as rewritten:

30 **"§ 1D-25. Limitation of amount of recovery.**

31 (a) In all actions seeking an award of punitive damages, the trier of fact shall determine
32 the amount of punitive damages separately from the amount of compensation for all other
33 damages.

34 (b) Punitive damages awarded against a defendant shall not exceed three times the
35 amount of compensatory damages or two hundred fifty thousand dollars (\$250,000), whichever
36 is greater. If a trier of fact returns a verdict for punitive damages in excess of the maximum



1 amount specified under this subsection, the trial court shall reduce the award and enter
2 judgment for punitive damages in the maximum amount.

3 (c) The provisions of subsection (b) of this section shall not be made known to the trier
4 of fact through any means, including voir dire, the introduction into evidence, argument, or
5 instructions to the jury.

6 (d) Punitive damages awarded in excess of one hundred thousand dollars (\$100,000)
7 shall be awarded by the presiding judge as follows:

8 (1) Twenty-five percent (25%) of the amount over one hundred thousand dollars
9 (\$100,000) shall be remitted to the plaintiff in accordance with applicable
10 law.

11 (2) Seventy-five percent (75%) of the amount over one hundred thousand
12 dollars (\$100,000), less a proportionate part of the costs of litigation,
13 including reasonable attorneys' fees, all as determined by the trial judge,
14 shall be remitted to the Civil Penalty and Forfeiture Fund.

15 Prior to its deliberations on the issue of punitive damages, the jury shall be instructed on the
16 provisions of this subsection."

PART II. REFORM APPLICABLE TO PRODUCTS LIABILITY ACTIONS

18 SECTION 2.1. G.S. 99B-1 reads as rewritten:

"§ 99B-1. Definitions.

20 When used in this Chapter, unless the context otherwise requires:

21 (1) "Claimant" means a person or other entity asserting a claim and, if said
22 claim is asserted on behalf of an estate, an incompetent or a minor,
23 "claimant" includes plaintiff's decedent, guardian, or guardian ad litem.

24 (1a) "Government agency" means this State or the United States, or any agency
25 of this State or the United States, or any entity vested with the authority of
26 this State or of the United States to issue rules, regulations, orders, or
27 standards concerning the design, manufacture, packaging, labeling, or
28 advertising of a product or provision of a service.

29 (2) "Manufacturer" means a person or entity who designs, assembles, fabricates,
30 produces, constructs or otherwise prepares a product or component part of a
31 product prior to its sale to a user or consumer, including a seller owned in
32 whole or significant part by the manufacturer or a seller owning the
33 manufacturer in whole or significant part.

34 (3) "Product liability action" includes any action brought for or on account of
35 personal injury, death or property damage caused by or resulting from the
36 manufacture, construction, design, formulation, development of standards,
37 preparation, processing, assembly, testing, listing, certifying, warning,
38 instructing, marketing, selling, advertising, packaging, or labeling of any
39 product.

40 (4) "Seller" includes a retailer, wholesaler, or distributor, and means any
41 individual or entity engaged in the business of selling a product, whether
42 such sale is for resale or for use or consumption. "Seller" also includes a
43 lessor or bailor engaged in the business of leasing or bailment of a product."

44 SECTION 2.2. Chapter 99B of the General Statutes is amended by adding the
45 following new section to read:

"§ 99B-12. Regulatory compliance.

47 No manufacturer or seller of a product that is a drug shall be held liable in any product
48 liability action if the drug alleged to have caused the harm was approved for safety and efficacy
49 by the United States Food and Drug Administration and the drug and its labeling were in
50 compliance with the United States Food and Drug Administration's approval at the time the
51 drug left the control of the manufacturer or seller. This section does not apply if the claimant

proves that the manufacturer or seller, at any time before the event that allegedly caused the harm, did any of the following:

- (1) Sold the drug in the United States after the effective date of an order of the United States Food and Drug Administration to remove the drug from the market, to withdraw its approval, or to substantially alter the terms of approval in a manner that would have avoided the claimant's alleged injury.
- (2) Intentionally, and in violation of applicable regulations as determined by final agency action, withheld from or misrepresented to the United States Food and Drug Administration information material to the approval or maintaining of approval of the drug, and such information is relevant to the harm which the claimant allegedly suffered.
- (3) Made an illegal payment to an official or employee of a government agency for the purpose of securing or maintaining approval of the drug."

PART III. OTHER REFORMS

SECTION 3.1. G.S. 6-21.1 reads as rewritten:

"§ 6-21.1. Allowance of counsel fees as part of costs in certain cases.

(a) In any personal injury or property damage suit, or suit against an insurance company under a policy issued by the defendant insurance company and in which the insured or beneficiary is the plaintiff, instituted in a court of record, upon a finding by the court (i) that there was an unwarranted refusal by the defendant insurance company to negotiate or pay the claim which constitutes the basis of such suit, instituted in a court of record, where (ii) that the judgment for recovery of amount of damages recovered is ten thousand dollars (\$10,000) twenty thousand dollars (\$20,000) or less, and (iii) that the amount of damages recovered exceeded the highest offer made by the defendant 30 days or more prior to the commencement of the trial, the presiding judge may, in his discretion, allow a reasonable attorney fee attorneys' fees to the duly licensed attorney attorneys representing the litigant obtaining a judgment for damages in said suit, said attorney's fee attorneys' fees to be taxed as a part of the court costs. The attorneys' fees so awarded shall not exceed the higher of five thousand dollars (\$5,000) or fifty percent (50%) of the damages awarded.

(b) When the presiding judge determines that an award of attorneys' fees is to be made under this statute, the judge shall issue a written order including findings of fact detailing the factual basis for the finding of an unwarranted refusal to negotiate or pay the claim, and setting forth the amount of the highest offer made 30 days or more prior to the commencement of the trial, and the amount of damages recovered, as well as the factual basis and amount of any such attorneys' fees to be awarded."

SECTION 3.2. The General Statutes are amended by adding a new Chapter to read:

"Chapter 38B.

"Trespasser Responsibility.

"§ 38B-1. Title.

This Chapter may be cited as the Trespasser Responsibility Act.

"§ 38B-2. General rule.

A possessor of land, including an owner, lessee, or other occupant, does not owe a duty of care to a trespasser and is not subject to liability for any injury to a trespasser.

"§ 38B-3. Exceptions.

Notwithstanding G.S. 38B-2, a possessor of land may be subject to liability for physical injury or death to a trespasser in the following situations:

- (1) Intentional harms. – A possessor may be subject to liability if the trespasser's bodily injury or death resulted from the possessor's willful or wanton conduct, or was intentionally caused by the possessor, except that a

- 1 possessor may use reasonable force to repel a trespasser who has entered the
2 land or a building with the intent to commit a crime.
- 3 (2) Harms to trespassing children caused by artificial condition. – A possessor
4 may be subject to liability for bodily injury or death to a child trespasser
5 resulting from an artificial condition on the land if all of the following apply:
- 6 a. The possessor knew or had reason to know that children were likely
7 to trespass at the location of the condition.
- 8 b. The condition is one the possessor knew or reasonably should have
9 known involved an unreasonable risk of serious bodily injury or
10 death to such children.
- 11 c. The injured child did not discover the condition or realize the risk
12 involved in the condition or in coming within the area made
13 dangerous by it.
- 14 d. The utility to the possessor of maintaining the condition and the
15 burden of eliminating the danger were slight as compared with the
16 risk to the child involved.
- 17 e. The possessor failed to exercise reasonable care to eliminate the
18 danger or otherwise protect the injured child.
- 19 (3) Position of peril. – A possessor may be subject to liability for physical injury
20 or death to a trespasser if the possessor discovered the trespasser in a
21 position of peril or helplessness on the property and failed to exercise
22 ordinary care not to injure the trespasser.

"§ 38B-4. Definitions.

24 The following definitions shall apply in this Chapter:

- 25 (1) Child trespasser. – A trespasser who is less than 14 years of age or who has
26 the level of mental development found in a person less than 14 years of age.
- 27 (2) Possessor. – A person in lawful possession of land, including an owner,
28 lessee, or other occupant, or a person acting on behalf of such a lawful
29 possessor of land.
- 30 (3) Trespasser. – A person who enters on the property of another without
31 permission and without an invitation, express or implied."

PART IV. MISCELLANEOUS PROVISIONS

33 **SECTION 4.1.** Severability. – If any provision of this act or its application to any
34 person or circumstance is held invalid, the remainder of this act or the application of the
35 provision to other persons or circumstances is not affected.

36 **SECTION 4.2.** Sections 2.1, 2.2, and 3.2 of this act become effective October 1,
37 2011, and apply to causes of actions arising on or after that date. The remainder of this act
38 becomes effective October 1, 2011, and applies to actions commenced on or after that date.