NORTH CAROLINA GENERAL ASSEMBLY
SELECT COMMITTEE ON TORT REFORM
2011-2012 SESSION

Rep. McLawhorn
Rep. Mills
Rep. Owens
Rep. Parfitt
Rep. Randleman

Rep. Samuelson
Rep. Stam
Rep. Weiss
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Select Committee on Tort Reform

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* indicates the bill is an appropriation bill.
A bold line indicates the bill is an appropriation bill.
** indicates that the text of the original bill was changed by some action.
= indicates that the original bill is identical to another bill.
HOUSE SELECT COMMITTEE ON TORT REFORM

AGENDA

February 24, 2011

I. Welcome and introductions

II. What is a tort and what is tort reform?

III. Current trends in tort reform
   a. Cary Silverman, American Tort Reform Association

IV. General perspectives on tort reform
   a. John McMillan
   b. Joe Knott
   c. Dick Taylor
   d. Sammy Thompson

V. Summary/status of Senate bill

VI. Next steps

VII. Adjourn
MINUTES
HOUSE SELECT COMMITTEE ON TORT REFORM
Thursday, February 24, 2011

Upon call of Chairman Rhyne, the House Select Committee on Tort Reform met on Thursday, February 24, 2011 in room 1327 of the Legislative Building. The following members were present: Danny McComas, Johnathan Rhyne, Co-Chairs; Representatives Crawford, Moffitt, Murry, Barnhart, Brisson, Carney, Dockham, Dollar, Gillespie, Hill, Jackson, McGrady, Mills, Owens, Parfitt, Parmon, Randleman, Stam, and Weiss.

Chairman Rhyne called the meeting to order. He and Chairman McComas made opening remarks. Chairman Rhyne introduced Cary Silverman of the America Tort Reform Association who spoke to the committee.

Chairman Rhyne introduced John McMillan who spoke to the committee.

Chairman Rhyne introduced Joe Knott who spoke to the committee.

Chairman Rhyne introduced Dick Taylor of North Carolina Advocates for Justice who spoke to the committee.

Chairman Rhyne introduced Bill Patterson of the Research Division of the General Assembly. Mr. Patterson explained Senate Bill 33 (see attached).

Chairman Rhyne introduced Sammy Thompson who spoke to the committee.

The meeting adjourned at 11:50 a.m.

[Signatures]
Representative Johnathan L. Rhyne
Co-Chair

[Signatures]
Susan Beauupied
Committee Assistant
SENATE PCS 33:  
Medical Liability Reforms  
2011-2012 General Assembly

Committee: Senate Judiciary I  
Introduced by: Sens. Apodaca, Brown, Rucho  
Analysis of: PCS to First Edition S33-CSTG-1  
Date: February 15, 2011  
Prepared by: Bill Patterson Committee Counsel

SUMMARY: The PCS to Senate Bill 33 will (changes from previous PCS shown in bold):

• require a finding of gross negligence, wanton conduct or intentional wrongdoing by the greater weight of the evidence to recover damages in medical malpractice actions arising out of the furnishing of or failure to furnish emergency medical services required to be provided under federal law

• require separate trials on the issues of liability and damages on motion of any party in medical malpractice actions in which the plaintiff seeks damages of at least $75,000

• limit noneconomic damages to $500,000

• on motion of any party, require that future economic damages with a present value of at least $200,000 must be paid in periodic payments rather than in one lump sum

• require damage awards to specify the amount awarded as noneconomic damages, present economic damages, future economic damages, loss of future earnings, and loss of future household services

• require the court to specify the amount of the appeal bond required to stay execution in all appeals from a money judgment, based on the amount of the judgment, the limits of liability insurance coverage of the appellant, and the net worth of the appellant

• require medical malpractice plaintiffs to certify that all medical records pertaining to the alleged injury have been reviewed by the expert witness who is willing to testify as to non-compliance with the applicable standard of care

• require each side in a medical malpractice case to provide a written report signed by each expert witness containing the opinions to be offered at trial, limit the expert’s trial testimony on direct examination to the scope of the opinion contained in the written report, and bar depositions of experts unless the court otherwise orders for good cause shown, requiring

CURRENT LAW AND BILL ANALYSIS:

Section 1: Emergency Services Required to be Provided by Federal Law

Current law: G.S. 90-21.12 provides that a "health care provider" is not liable for damages in a "medical malpractice action" unless the trier of fact finds by the greater weight of the evidence that the care

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1 The terms "health care provider" and "medical malpractice action" are defined in G.S. 90-21.11 as follows:

As used in this Article, the term "health care provider" means without limitation any person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed, or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology; or a hospital
provided "was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action."

G.S. 90-21.14 requires a showing of gross negligence, wanton conduct or intentional wrongdoing before liability can be imposed upon any person who receives no compensation for his or her services as an emergency medical care provider, and who renders first aid or emergency health care treatment to a person who is unconscious, ill, or injured under circumstances requiring prompt action in which any delay in treatment would seriously worsen the person's physical condition or endanger the person's life.

Consequently, under current law, providers of emergency medical care who are compensated for their services are subject to liability in malpractice actions under the general standard of care set forth in G.S. 90-21.12.

Bill Analysis: Section 1 amends G.S. 90-21.12 to add new subsection (b) providing that in a medical malpractice action arising out of the furnishing or the failure to furnish services pursuant to obligations imposed by the federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd ("EMTALA")\(^2\), liability may not be imposed unless the trier of fact finds that the defendant's failure to meet the statutory standard of care constituted gross negligence, wanton conduct or intentional wrongdoing. Section 1 also designates the current statutory language as subsection (a) and makes technical and clarifying changes. The first PCS rewrote Section 1 of the original bill by limiting its application to malpractice actions arising out of emergency services required to be provided under EMTALA, and by requiring a finding of gross negligence, wanton conduct or intentional wrongdoing. The current PCS changes the burden of proof on this issue from "clear and convincing evidence" to "the greater weight of the evidence."

**Section 2: Separate Trials of Liability and Damages**

Current law: Courts are currently permitted, but not required, to grant a motion for separate trials of any issues "in furtherance of convenience or to avoid prejudice." G.S. 1A-1, Rule 42(b)(1).

or a nursing home; or any other person who is legally responsible for the negligence of such person, hospital or nursing home; or any other person acting at the direction or under the supervision of any of the foregoing persons, hospital, or nursing home.

As used in this Article, the term "medical malpractice action" means a civil action for damages for personal injury or death arising out of the furnishing or failure to furnish professional services in the performance of medical, dental, or other health care by a health care provider.

\(^2\)42 U.S.C. § 1395dd(a) requires that when a patient presents to a hospital emergency department, the hospital is obligated to determine whether the patient has an ""emergency medical condition," defined as:

(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—
   (i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,
   (ii) serious impairment to bodily functions, or
   (iii) serious dysfunction of any bodily organ or part; or
(B) with respect to a pregnant woman who is having contractions—
   (i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or
   (ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

42 U.S.C. § 1395dd(e)(1). If the patient is determined to have an emergency medical condition, then the hospital is obligated to provide treatment necessary to stabilize the medical condition, regardless of the patient's ability to pay for those services, unless transferring the patient to another medical facility for treatment would be more beneficial to the patient. 42 U.S.C. § 1395dd(b), (c).
Bill Analysis: Section 2 adds a new subdivision (3) to Rule 42(b), applicable in medical malpractice actions in which the plaintiff seeks damages of at least $75,000 that will:

- require the court, on motion of any party, to order separate trials on the issue of liability and damages
- prohibit the admission of evidence relating solely to compensatory damages until liability is established
- require the same trier of fact to try the liability-related issues and the damages-related issues

Section 3 – Liability Limit for Noneconomic Damages

Current law: There currently is no limit on the amount of noneconomic damages for which a medical malpractice defendant may be found liable. However, trial courts are authorized under Rule 59 of the Rules of Civil Procedure to order a new trial if it appears that excessive or inadequate damages have been given under the influence of passion or prejudice or if the evidence is insufficient to justify the verdict. G.S. 1A-1, Rule 59(a)(6), (7).

Bill Analysis: Section 3 adds a new G.S. 90-21.19 to Article 1B of Chapter 90 of the General Statutes that will:

- impose a cap on noneconomic damages in medical malpractice actions of $500,000 per defendant per occurrence (increased by PCS from former $250,000 cap)
- define "noneconomic damages" as "damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, physical impairment, disfigurement, and any other non-pecuniary, compensatory damage"
- prohibit informing the jury of the cap on noneconomic damages

Section 4: Periodic Payment of Future Economic Damages

Current law: An award of future damages is reduced to its present value by the trier of fact, to be paid in one lump sum as part of the judgment. N.C. Pattern Jury Instruction – Civil – 810.16.

Bill Analysis: Section 4 enacts a new G.S. 90-21.19A that will:

- require the verdict form to indicate specifically the amount being awarded for future economic damages, and what amount of the future economic damages, if any, represents damages awarded for loss of future earnings or loss of future household services (added by PCS)
- in cases where the present value of the future economic damages awarded by the trier of fact is at least $200,000 (increased by PCS from former $75,000 threshold), require the court to enter an order on motion of any party that the future economic damages be paid in whole or in part by periodic payments rather than by a lump-sum payment
- require that any judgment ordering future periodic payments also order that the payments be made through a trust fund or purchase of an annuity for the life of the plaintiff on terms approved by the court, including the amount and schedule of the periodic payments
- provide that upon the death of the plaintiff the liability for payment of future periodic payments not yet due will cease, except that the court entering the original judgment may modify the judgment to provide that future periodic payments to compensate the plaintiff for loss of future earnings or loss of future household services (added by PCS) shall continue...
to be paid to persons surviving the plaintiff to whom the plaintiff owed a duty of support pursuant to law

Section 5: Form of Verdict in Medical Malpractice Actions

Current law: There is no current statutory requirement that separate elements of damages must be separately stated in a verdict or award of damages.

Bill Analysis: Section 5 enacts a new G.S. 90-91.19B requiring that the verdict or award of damages in a medical malpractice action indicate specifically the amount being awarded for noneconomic damages, present economic damages, future economic damages, loss of future earnings, and loss of future household services, and requiring the court to instruct the jury on the statutory definitions of these damages.

Section 6: Modified Appeal Bond (entirely rewritten by current PCS)

Current law: In order to stay execution of a money judgment during the pendency of an appeal, an appellant is required to post a bond equal to the amount of the judgment. However, in cases in which the judgment exceeds $25 million, the bond is limited to $25 million, unless the appellee proves that the appellant is seeking to evade the judgment by dissipating, secreting, or diverting its assets. G.S. 1-289.

Bill Analysis: Section 6 amends G.S. 1-289 by requiring the court entering judgment to specify the amount of the bond required to stay execution. This decision to be made after notice and hearing, and based on the following factors:

- the amount of the judgment
- the amount of the limits of all applicable liability policies of the appellant judgment debtor
- the aggregate net worth of the appellant judgment debtor

Section 6.1: Expert Witness Certification (added by current PCS)

Current Law: Rule 9(j) of the Rules of Civil Procedure requires that the complaint in any medical malpractice action must assert that the plaintiff's expert witness has reviewed "the medical care" given to the plaintiff.

Bill Analysis: The PCS adds a requirement that the complaint assert that the medical expert has reviewed the medical care and "all medical records pertaining to the alleged injury then available to the plaintiff after reasonable inquiry."

Section 6.2: Expert Witness Discovery (added by current PCS)

Current Law: Rule 26(f1) of the Rules of Civil Procedure provides, in pertinent part, that the court conduct a discovery conference in medical malpractice cases, at which the court shall "[e]stablish an appropriate schedule for designating expert witnesses . . . to be complied with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses.

Bill Analysis: Section 6.2 of the PCS amends Rule 26(f1) to require that each expert witness designation shall be accompanied by a written report prepared and signed by the expert witness, and containing:
Senate PCS 33

Page 5

- a complete statement of all opinions to be expressed and the basis and reasons therefor
- the information considered by the witness in forming the opinions
- the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years
- the compensation the witness is to be paid for the study and testimony
- a listing of any other cases in which the witness has testified as an expert within the preceding four years

Section 6.2 of the PCS would also limit the expert's testimony on direct examination to the fair scope of the expert report disclosed pursuant to this rule. In addition, no depositions of experts would be permitted unless the court otherwise orders for good cause shown.

Section 7: Severability

Bill Analysis: Section 7 of the PCS provides that if Section 3 of the act is declared to be invalid. Sections 4 and 5 of the act are repealed, but the invalidity of Section 3 will not affect other provisions of the act that can be given effect without the invalid provision.

EFFECTIVE DATE: The effective date of the act is October 1, 2011. Sections 1, 3, 4, 5, 6.1 and 6.2 apply to causes of action arising on or after October 1, 2011. Sections 2 and 6 apply to actions commenced on or after October 1, 2011.

Research Division

O. Walker Reagan, Director

(919) 733-2578
A BILL TO BE ENTITLED
AN ACT TO REFORM THE LAWS RELATING TO MEDICAL LIABILITY BY
PROVIDING LIMITED PROTECTION FROM LIABILITY TO THOSE REQUIRED BY
FEDERAL LAW TO PROVIDE EMERGENCY MEDICAL CARE, BY AUTHORIZING
THE BIFURCATION OF TRIALS ON ISSUES OF LIABILITY AND DAMAGES IN
CERTAIN ACTIONS, BY LIMITING THE AMOUNT OF NONECONOMIC
DAMAGES THAT MAY BE AWARDED, BY AUTHORIZING THE PERIODIC
PAYMENT OF FUTURE ECONOMIC DAMAGES IN LIEU OF A LUMP-SUM
PAYMENT, BY MODIFYING APPEAL BONDS IN MEDICAL MALPRACTICE
ACTIONS, BY CLARIFYING THAT COMPLAINTS ALLEGING MEDICAL
MALPRACTICE BY HEALTH CARE PROVIDES MUST ASSERT THAT ALL
MEDICAL RECORDS AVAILABLE TO THE PLAINTIFF HAVE BEEN REVIEWED
BY AN EXPERT WITNESS, AND TO REQUIRE CERTAIN INFORMATION BE
PROVIDED BY EXPERT WITNESSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-21.12 reads as rewritten:

"§ 90-21.12. Standard of health care; limited liability for federally mandated emergency
medical services.
(a) Except as provided in subsection (b) of this section, in any medical malpractice
action, action for damages for personal injury or death arising out of the furnishing or the
failure to furnish professional services in the performance of medical, dental, or other health
care, the defendant health care provider shall not be liable for the payment of damages unless
the trier of fact finds by the greater weight of the evidence that the care of
such health care provider was not in accordance with the standards of practice among members
of the same health care profession with similar training and experience situated in the same or
similar communities at the time of the alleged act giving rise to the cause of action.
(b) In any medical malpractice action arising out of the furnishing or the failure to
furnish services pursuant to obligations imposed by 42 U.S.C. §1395dd for an emergency
medical condition as defined in 42 U.S.C. §1395dd(e)(1), the defendant health care provider
shall not be liable for the payment of damages unless the trier of fact finds by the greater
weight of the evidence that the health care provider's deviation from the standard of care
required under subsection (a) of this section constituted gross negligence, wanton conduct or
intentional wrongdoing. Nothing in this subsection shall be construed to change, alter, override,
or otherwise affect the provisions of G.S. 90-21.14, 90-21.15, 90-21.16, or 20-166."
SECTION 2. G.S. 1A-1, Rule 42(b), reads as rewritten:

"(b) Separate trials –
(1) The court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

(2) Upon motion of any party in an action that includes a claim commenced under Article 1G of Chapter 90 of the General Statutes involving a managed care entity as defined in G.S. 90-21.50, the court shall order separate discovery and a separate trial of any claim, cross-claim, counterclaim, or third-party claim against a physician or other medical provider.

(3) Upon motion of any party in a medical malpractice action commenced under Article 1B of Chapter 90 of the General Statutes wherein the plaintiff seeks damages in an amount equal to or greater than seventy-five thousand dollars ($75,000), the court shall order separate trials for the issue of liability and the issue of damages. Evidence relating solely to compensatory damages shall not be admissible until the trier of fact has determined that the defendant is liable for medical malpractice. The same trier of fact that tried the issues relating to liability shall try the issues relating to damages."

SECTION 3. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

(a) In any medical malpractice action against a health care provider in which the plaintiff is entitled to an award of noneconomic damages, the amount of noneconomic damages for which judgment is entered shall not exceed five hundred thousand dollars ($500,000) per defendant per occurrence. In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B(1) exceeds five hundred thousand dollars ($500,000) per defendant per occurrence, the court shall modify the judgment as necessary to conform to the requirements of this subsection.

(b) As used in this section, 'noneconomic damages' means damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, physical impairment, disfigurement, and any other nonpecuniary, compensatory damage. 'Noneconomic damages' does not include punitive damages as defined in G.S. 1D-5.

(c) Any award of damages in a medical malpractice action shall be stated in accordance with G.S. 90-21.19B. If a jury is determining the facts, the court shall not instruct the jury with respect to the limit of noneconomic damages under subsection (a) of this section, and neither the attorney for any party nor a witness shall inform the jury or potential members of the jury panel of that limit."

SECTION 4. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"§ 90-21.19A. Periodic payment of future economic damages in medical malpractice actions.
(a) The following definitions apply in this section:

(1) Future economic damages. – Damages for future expense for medical treatment, care or custody, loss of future earnings, loss of future household services, and any other future pecuniary damages of the plaintiff following the date of the verdict or award.

(2) Periodic payments. – The payment of money or delivery of other property to the plaintiff at regular intervals.
In any medical malpractice action, the form of the fact finder's verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for future economic damages, and what amount, if any, of the total amount awarded for future economic damages represents damages awarded for loss of future earnings or loss of future household services.

(c) Upon the award of future economic damages in any medical malpractice action, the presiding judge shall, at the request of either party, enter a judgment ordering that the future economic damages of the plaintiff be paid in whole or in part by periodic payments rather than by a lump-sum payment if the present value of the future economic damages award is greater than or equal to two hundred thousand dollars ($200,000). In entering a judgment ordering the payment of future economic damages by periodic payments, the court shall make a specific finding as to the dollar amount of the present value of that portion of the future economic damages for which the plaintiff is to be paid by periodic payments. In calculating the total damages upon which any attorney contingency fee for representing the plaintiff in connection with the medical malpractice action is calculated, the present value of any portion of the award representing future economic damages that are to be paid by periodic payments shall be used.

(d) A judgment authorizing periodic payments of future economic damages shall require that such payments be made through the establishment of a trust fund or the purchase of an annuity for the life of the plaintiff or during the continuance of the compensable injury or disability of the plaintiff, in such form and under such terms as shall be approved by the court. The establishment of a trust fund or the purchase of an annuity, as required and approved by the court, shall constitute the satisfaction of the defendant's judgment for future economic damages.

(e) The judgment ordering the payment of future economic damages by periodic payments shall specify the recipient of the payments, the schedule of the periodic payments, and the dollar amount of each periodic payment to be made pursuant to the schedule. The death of the plaintiff terminates liability for payment of future economic damages which by judgment pursuant to this section are required to be paid in periodic payments not yet due, except that the court that entered the original judgment may modify the judgment to provide that liability for payment of future periodic payments compensating the plaintiff for loss of future earnings or loss of future household services shall not be terminated by reason of the death of the plaintiff, but shall continue to be paid to persons surviving the plaintiff to whom the plaintiff owed a duty of support pursuant to law immediately prior to the plaintiff's death.

SECTION 5. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

§ 90-21.19B. Verdicts and awards of damages in medical malpractice actions; form.

In any malpractice action, any verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for each of the following:

(1) Noneconomic damages.
(2) Present economic damages.
(3) Future economic damages.
(4) Loss of future earnings.
(5) Loss of future household services.

If applicable, the court shall instruct the jury on the definition of noneconomic damages under G.S. 90-21.19(b) and the definition of future economic damages under G.S. 90-21.19A(a)(1). If applicable, the court shall instruct the jury that present economic damages are those damages for medical treatment, care or custody, loss of earnings, loss of household services, and any other pecuniary damages of the plaintiff up to the date of the verdict or award.

SECTION 6. G.S. 1-289 reads as rewritten:

§ 1-289. Undertaking to stay execution on money judgment.
(a) If the appeal is from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, as set forth in this section.

(a1) In an action where the judgment directs the payment of money, the court shall specify the amount of the undertaking required to stay execution of the judgment pending appeal as provided in subsections (a2) and (b) of this section. The undertaking shall be to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal, except as provided in subsection (b) of this section. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time before the deposit is made, order the money deposited in court instead of with the officer; and a deposit made pursuant to such order is of the same effect as if made with the officer. The perfecting of an appeal by giving the undertaking mentioned in this section stays proceedings in the court below upon the judgment appealed from; except when the sale of perishable property is directed, the court below may order the property to be sold and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

(a2) Except as provided in subsection (b) of this section, the amount of the undertaking that shall be required by the court shall be an amount determined by the court after notice and hearing proper and reasonable for the security of the rights of the adverse party, considering relevant factors including the following:

1. The amount of the judgment.
2. The amount of the limits of all applicable liability policies of the appellant judgment debtor.
3. The aggregate net worth of the appellant judgment debtor.

(b) If the appellee in a civil action brought under any legal theory obtains a judgment directing the payment or expenditure of money in the amount of twenty five million dollars ($25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review, including discretionary review and certiorari, the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be twenty five million dollars ($25,000,000).

(c) If the appellee proves by a preponderance of the evidence that the appellant for whom the undertaking has been limited under subsections (a2) and (b) of this section is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United States other than in the ordinary course of business, then the limitations in subsections (a2) and (b) of this section shall not apply and the appellant shall be required to make an undertaking in the full amount otherwise required by this section."

SECTION 6.1. G.S. 1A-1, Rule 9(j) reads as rewritten:
"(j) Medical malpractice. – Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care has-and all medical records pertaining to the alleged injury then available to the plaintiff after reasonable inquiry, have been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care has-and all medical records pertaining to the alleged injury then available to the plaintiff after reasonable inquiry, have been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident judge of the superior court for a judicial district in which venue for the cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge of the superior court for that judicial district may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33. At the request of the defendant, the plaintiff shall furnish to the defendant, within 30 days, an affidavit from the expert certifying compliance with this subsection."

SECTION 6.2. G.S. 1A-1, Rule 26(f1) reads as rewritten:

"(f1) Medical malpractice discovery conference. – In a medical malpractice action as defined in G.S. 90-21.11, upon the case coming at issue or the filing of a responsive pleading or motion requiring a determination by the court, the judge shall, within 30 days, direct the attorneys for the parties to appear for a discovery conference. At the conference the court may consider the matters set out in Rule 16, and shall:

(2) Establish an appropriate schedule for designating expert witnesses, consistent with a discovery schedule pursuant to subdivision (3), to be complied with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses.(3) As to each expert designated, the designation shall be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation the witness is to be paid for the study
and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. The party shall supplement the expert's report if the party learns that in some material respect the report is incomplete or incorrect. The expert's direct testimony shall not be inconsistent with or go beyond the fair scope of the expert report as supplemented. The parties shall not depose expert witnesses, unless the court otherwise orders for good cause shown.

SECTION 7. If the provisions of Section 3 of this act are declared to be unconstitutional or otherwise invalid by final decision of a court of competent jurisdiction, following any appellate review, then Section 4 and Section 5 of this act are repealed, but the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application.

SECTION 8. This act becomes effective October 1, 2011. Sections 1, 3, 4, 5, 6.1 and 6.2 apply to causes of action arising on or after the effective date. Sections 2 and 6 apply to actions commenced on or after the effective date.
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<th>NAME</th>
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<tr>
<td>Andy Ellen</td>
<td>NCLA</td>
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<td>Doug Herrore</td>
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VISITOR REGISTRATION SHEET

Name of Committee: Sheet Committee on Tort Reform
Date: 2/24/2011

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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<tr>
<th>NAME</th>
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<td>Gary Salamida</td>
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<td>Wendy Kelly</td>
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<td>Hannah Brockman</td>
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Committee Sergeants at Arms

HOUSE SELECT COMMITTEE ON
TORT REFORM

NAME OF COMMITTEE

DATE: FEB 24 Room: 1228

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<th>House Sgt-At Arms:</th>
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<tr>
<td>1. Name: Billy Jones</td>
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<td>2. Name: Doug Harris</td>
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AGENDA

HOUSE SELECT COMMITTEE ON TORT REFORM

Wednesday, March 23, 2011
Room 425
11:00 am

I. Welcome and opening remarks

II. Review committee schedule

III. Presentation of bill

IV. Speaker

V. Solicitation of input

VI. Adjournment
MINUTES
HOUSE SELECT COMMITTEE ON TORT REFORM
Wednesday, March 24, 2011

Upon call of Chairman Rhyne, the House Select Committee on Tort Reform met on Wednesday, March 23, 2011, at 11:00 a.m. in room 425 of the Legislative Office Building. The following members were present: Danny McComas, Johnathan Rhyne, Co-Chairs; Tim Moffitt, Tom Murry, Vice-Chairs; Representatives Brisson, Carney, Dockham, Gillespie, McGrady, McLawhorn, Mills, Parfitt, Parman, Randleman, Samuelson, and Weiss.

Chairman Rhyne called the meeting to order. Chairman Rhyne explained the proposed Tort Reform bill.

Chairman Rhyne introduced John Del Giorno of GlaxoSmithKline who spoke to the committee (see attached remarks).

The meeting adjourned at 11:50 a.m.

Respectfully submitted,

Representative Johnathan Rhyne, Jr.
Co-Chair

Susan Beaupied
Committee Assistant
TESTIMONY OF JOHN DELGIORNO, ESQ.
GLAXOSMITHKLINE
RESEARCH TRIANGLE PARK
NORTH CAROLINA

SUPPORTING DRAFT 2011-MH-13 [V.24], AN ACT TO
PROVIDE TORT REFORM FOR NORTH CAROLINA CITIZENS AND BUSINESSES

BEFORE THE NORTH CAROLINA
HOUSE SELECT COMMITTEE ON TORT REFORM

MARCH 23, 2011
Mr. Chairman and Members of the Committee, I am appearing on behalf of GlaxoSmithKline ("GSK") to express GSK's support for civil justice reform and a number of the provisions in Draft 2011-MH-13.

Background

I am Vice President of Government Relations for GlaxoSmithKline and I work closely with the North Carolina Chamber of Commerce on legal reform issues. Before joining GSK 17 years ago, I was a litigation attorney in the Chicago area. I received my J.D. from John Marshall Law School in Chicago and an M.S. in educational psychology from Southern Illinois University.

GSK's Interest

GSK is a research-based, global health care company with significant operations in Research Triangle Park, North Carolina, employing about 6,000 people throughout the state. GSK is dedicated to helping people do more, feel better, and live longer. Our research staff of highly skilled scientists is among the largest in the pharmaceutical industry. Their considerable expertise and long-established experience in the clinical sciences, biostatistics, epidemiology, pharmacovigilance and health outcomes research ensures that GSK has a robust supply of disease-based information and population perspectives required to identify, develop, and bring to the marketplace, safe and effective medicines that address unmet health needs.

GSK, along with the North Carolina Chamber of Commerce and the business coalition supporting legal reform, strongly believes a state's legal climate can be a major factor driving a company's decisions about business investment and job creation. Companies look for fairness and predictability, so they can structure their business dealings to conform to the law. They also look for a cost-effective and efficient civil justice system. This allows business disputes and
legal claims to be resolved effectively, without creating unnecessary distractions or depleting the
financial resources and employee time and energy needed to respond to customers' needs for
beneficial products and services and to carry out corporate fiduciary responsibilities to return
profits to shareholders.

Unfortunately, the U.S. civil liability system is the most expensive in the world, increasingly putting companies in North Carolina and other states at a disadvantage compared with their international competitors. Our country spends 2.2% of its GDP on civil liability costs, twice that of industrialized countries with standards of living comparable to ours.\(^1\) Annual civil liability costs in the United States, on average, have increased more than nominal GDP. Even setting aside judgments and settlements, litigation transaction costs have risen substantially over the past decade and are consuming an increasing percentage of corporate revenues. A recent survey of Fortune 200 companies found that the average litigation cost per company (excluding internal company costs) was *nearly $115 million in 2008, up 73 percent from $66 million in 2000* – representing an average increase of 9 percent each year.\(^2\) Between 2000 and 2008, average annual litigation costs as a percent of revenues increased *78 percent* for the companies providing this data for the full survey period.\(^3\) What's more, the U.S. litigation system imposes a


\(^2\) Lawyers for Civil Justice et al., *Litigation Cost Survey of Major Companies* 7-8 & fig. 4 (2010). This figure reflects responses from 20 companies in 2000 increasing to 36 companies in 2008. The average litigation costs for the 20 companies responding for all years increased from $66 million in 2000 to $140 million in 2008, while the total litigation costs of these 20 companies grew from $1.3 billion in 2000 to $2.75 billion in 2008. *Id.* at 8 & fig. 5.

\(^3\) *Id.* at 9 & fig. 5 (14 companies responding).
much greater cost burden on companies than systems outside the United States. The survey of Fortune 200 companies found that on average, a company’s U.S. litigation costs as a percent of U.S. revenues were **4 to 9 times higher**, depending on the year, than were non-U.S. costs as a percent of non-U.S. revenues.\(^4\) Imagine a company disadvantaged by these expenses trying to compete for business opportunities and employee talent against foreign companies with a fraction of these costs.

It’s not just U.S.-based companies that are disadvantaged – the costs of the U.S. civil justice system adversely affect the economic development of North Carolina and other states, and the prosperity of their citizens too. The disparity in civil liability costs will inevitably affect decisions by corporations about where to invest their resources.\(^5\) Global competition for foreign investment is increasing, and the changing dynamics of the global economy are affecting the United States’ ability to remain a leader. The International Trade Administration at the U.S. Department of Commerce has found that “many foreign investors view the U.S. legal environment as a liability when investing in the United States.”\(^6\) If civil liability costs are significantly higher in the U.S. than in other countries, and the situation is left unchecked as

\(^4\) *Id.* at 14 & fig. 9.


\(^6\) *Id.* at 7.
economic differences between countries narrow, the United States will be unable to compete effectively in the global marketplace.7

The North Carolina Chamber set forth studies showing that job growth and revenue growth is greater in the states with the best civil justice systems. In 2006 job growth in the 10 states ranked as having the best system was 57% greater than the 10 with the worst systems and the growth of tax revenue was 24% greater.8 Since 1995, a series of legal reforms in Texas have created nearly half a million permanent jobs.9 GSK believes that the draft bill you have before you, 2011-MH-13, is a good start on legislation to foster a fair, predictable, and cost-effective civil justice system that should help create jobs and economic opportunities for citizens and businesses in North Carolina. We support a number of reforms in the proposed bill.

**Regulatory Compliance Defense to Liability**

The draft bill includes a regulatory compliance defense that respects the authority of expert government regulators and offers strong incentives for companies to comply with government requirements, appropriately rewarding behavior that is in the public interest. (See Section 3.1.) The bill provides immunity from liability in products liability actions if the product complies with relevant regulatory requirements or government approvals, unless the government

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approval was obtained by bribery or by the defendant withholding or misrepresenting material facts.

In the context of FDA-regulated medicines, the regulatory compliance defense helps assure that prescription drugs are used appropriately and that beneficial medicines remain available to consumers. It protects public health by ensuring that the FDA controls the content of drug labeling, including any warnings about product risks. The doctrine prevents additional, potentially conflicting warnings from being imposed as a result of state lawsuits.

Regulatory compliance defenses do not absolve a drug manufacturer’s responsibility to provide adequate warnings and safety monitoring of its products. They simply recognize that communications on those topics are submitted to the FDA, which holds the final say on drug approvals and label changes in the most practical sense. Moreover, while the United States Supreme Court has held that an FDA approved label does not necessarily preempt state court product liability suits, states are free to enact defenses that recognize the practical interactions of drug manufacturers with their federal regulators. In fact at least seven state legislatures have enacted some form of a regulatory compliance defense specific to FDA-regulated products,\(^9\) and at least nine states have enacted more broadly applicable regulatory compliance defenses.\(^{10}\)

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\(^{10}\) These states are Arizona, Colorado, Michigan, New Jersey, Ohio, Oregon, and Texas.

\(^{11}\) These states are Colorado, Florida, Indiana, Kansas, Michigan, North Dakota, Tennessee, Utah, and Wisconsin.
The regulatory compliance defense recognizes, in the context of prescription medicines, that the FDA has the expert staff and institutional experience necessary to collect and analyze a wealth of information to ensure that warnings about a product's risks are appropriate and effective. FDA drug labeling regulations are designed to require consistent, effectively communicated warnings about all known risks of the drug based on reliable scientific evidence, while screening out warnings for inadequately substantiated risks. If warnings are not grounded in science, they can jeopardize public health by creating unfounded fears that discourage doctors or patients from using the medicine, or by diluting the impact of scientifically substantiated warnings.

In fact, according to a 2003 Harris Interactive Survey conducted for the U.S. Chamber of Commerce found that 43% of the doctors surveyed did not prescribe a drug that would have been appropriate for their patients because the drug might be involved in product liability litigation. About 38% of the doctors surveyed reported that their patients had stopped taking a prescribed drug because they found out it might be involved in litigation – and 29% said their patients had refused to take a prescribed drug that might be involved in litigation.

Lay judges and juries lack the expertise of expert agency regulators. They can consider only limited information in the particular matter brought before the court by the plaintiff. In litigation, each lawyer's obligation is solely to represent his or her client zealously. The adversary system of litigation is not designed to regulate the development of prescription drugs or other medical products in the interest of the public health. Differing individual rulings in individual lawsuits could result in multiple de facto "court-created" warnings from fifty different jurisdictions. These de facto court-created warnings could readily impose conflicting legal
requirements on manufacturers who already must comply with FDA regulations and on doctors and patients who might be confused about the relative importance of each warning.

The regulatory compliance defense also can encourage innovation. Robust research and development is the catalyst for safer medical products that may address previously untreatable or poorly controlled conditions. In the FDA context, the defense’s limits on liability benefit public health by encouraging manufacturers to invest in the process of researching and developing new medicines. Bringing a new drug to market is risky and expensive. Only one of every 5,000 to 10,000 potential medicines is ultimately approved for patient use by the FDA. On average, obtaining this approval takes 10 to 15 years and costs over $800 million, with much of the financial investment up front. The FDA approval process is designed to protect consumers from excessive risk, with extensive government oversight of the testing, formulation, manufacture, marketing, and distribution of drug products.

Liability protection is reasonable where the FDA has thoroughly evaluated and approved the drug for safety and efficacy. It gives manufacturers a degree of certainty in making business decisions about whether to develop a potentially promising medicine, as unwarranted and expensive litigation is less likely to undermine the companies significant investment. It also helps keep beneficial products from being pulled from the market out of concerns over the risk of excessive litigation, and helps keep prices stable.

**Discouraging the Award of Medical Damages Beyond Those Actually Paid or Incurred**

The draft legislation includes an important reform – it seeks to bring transparency to litigation awards and educate juries about claims for medical expenses beyond those actually paid. (See Sec. 1.1.)
In personal injury litigation, a responsible defendant pays for the plaintiff’s medical care. The goal is for the plaintiff to be reimbursed for all of his or her reasonable and necessary expenses. The plaintiff is made whole. In most cases, however, defendants have to pay more, often multiple times what the plaintiff or his or her insurer actually pay, for the plaintiffs’ medical care.

The discrepancy comes from the difference between the amount of medical expenses billed by a doctor (the “sticker price”) and the amount that the plaintiff and his or her insurer actually paid for those services. Nobody ever paid these damages. The plaintiffs’ insurer, Medicare or Medicaid have negotiated rates with health care providers. For example, a hospital may charge $1,500 for an MRI, but the actual amount paid for that MRI might be $500. The plaintiff may have paid a $25 co-pay and the insurer paid the remaining $475. Yet, in litigation, the defendant is often required to pay the full $1,500 to the plaintiff -- $1,000 more than anyone ever paid -- simply because that amount was printed on the original bill.

For instance, in a typical slip-and-fall accident case recently upheld by a divided Colorado Supreme Court, the amount paid by the plaintiff’s insurer for his medical expenses came to $43,236, while the amount billed, before application of the negotiated rate, was $74,242. Yet, the defendant, the nonprofit Volunteers of America, was required to pay based on medical costs that included $31,006 in medical discounts that the company had negotiated with healthcare providers. As this example shows, inclusion of such illusory costs can easily increase awards for damages in personal injury suits by 40% or more.

12 Volunteers of America Colorado Branch v. Gardenswartz, 242 P.3d 1080 (Colo. 2010).
It is enormously wasteful for defendants to “over-compensate” plaintiffs for their medical bills. Aside from increasing the economic damages award, this practice drives up noneconomic and punitive damages as well. These costs tend to be passed on to consumers in the price of goods and services, including health care. The draft legislation addresses this problem by allowing the jury to hear evidence of medical bills reasonably paid and a statement of the amount actually required to satisfy the medical bills incurred but not yet paid, so jurors can make an accurate assessment of the plaintiff’s out-of-pocket medical costs. The jury also would be allowed to hear evidence of the source of any payment and rights of subrogation related to the payment.

This proposed reform would implicate the collateral source rule. The collateral source rule bars courts from considering compensation that the plaintiff has received from other sources. In many cases, the rule leads to double compensation of plaintiffs – once from an insurer, then again through a lawsuit. The rule does not serve a compensatory purpose, but aims to not permit a defendant to benefit from a plaintiff’s prudence in buying insurance. This is seen most clearly when a plaintiff has bought a life insurance policy.

Some courts consider a “negotiated rate” between an insurer and a health care provider as a benefit of the insurance policy and therefore require the jury to determine damages based on the fictional sticker price of medical care rather than the amount actually paid. Other courts find that such write-offs cannot be considered a collateral source because they are never paid and therefore cannot be considered to be “benefits.” This is the more sound conclusion because the core basis of the collateral source rule, the plaintiff’s prudence in purchasing insurance, is irrelevant.
Expert Evidence Reform

The draft bill proposes to adopt the federal “Daubert” rule governing the admission of expert witness testimony. (Sec. 1.5.) When a case goes to trial, information provided by experts on scientific facts and professional opinions can significantly influence the outcome of a case. The research and opinion of a trained expert is taken to be much more reliable than that of a standard witness. For this reason, it is critical that these experts are indeed qualified to deliver facts and educated opinions, especially in complex, high-stakes litigation like that faced by a number of N.C. businesses. But unfortunately, sometimes loose expert standard rules allow the opinions of inappropriately trained experts to masquerade as fact. The draft legislation creates additional requirements for the admission of expert witness testimony to ensure that the testimony is reliable. Also, by helping assure that the federal and North Carolina standards are similar, the bill would help prevent forum shopping while keeping our state’s courts from being flooded with cases based on insufficiently reliable expert evidence that cannot pass muster in federal courts.

Conclusion

The draft tort reform bill is a good and much appreciated step toward creating a fairer environment for all litigants in North Carolina. We look forward in working with the Committee, the Legislature, and the citizens of North Carolina to finalize and enact legislation designed to strengthen the state’s economy and make it more competitive in the national and global marketplace, while continuing to assure that truly injured people are appropriate compensated for their injuries by the responsible parties.
Thank you very much for the opportunity to speak with you today.
VISITOR REGISTRATION SHEET

SELECT COMMITTEE ON TORT REFORM          MARCH 23, 2011
Name of Committee                      Date

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<td>Gray Sarvis</td>
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<td>Penny Krupa</td>
<td>School of Med.</td>
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SELECT COMMITTEE ON TORT REFORM

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**MARCH 23, 2011**

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<td>Jay Easley</td>
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<td>Nabil Salameh, M.D.</td>
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VISITOR REGISTRATION SHEET

SELECT COMMITTEE ON TORT REFORM
MARCH 23, 2011

Name of Committee

Date

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<td>Donna Mosley</td>
<td>Westside OB/GYN Burlington, NC</td>
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<td>Central Carolina Surgery, Dunwoody, NC</td>
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**SELECT COMMITTEE ON TORT REFORM**  
MARCH 23, 2011

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<td>Joan Emerson</td>
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**Name of Committee**  
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Committee Sergeants at Arms

NAME OF COMMITTEE: TORT REFORM

DATE: 3-23-2011    Room: 425

House Sgt-At Arms:

1. Name: R.L. CARTER
2. Name: BILL BASS
3. Name: ____________________________
4. Name: ____________________________
5. Name: ____________________________

Senate Sgt-At Arms:

1. Name: ____________________________
2. Name: ____________________________
3. Name: ____________________________
4. Name: ____________________________
5. Name: ____________________________
AGENDA

HOUSE SELECT COMMITTEE ON TORT REFORM

Thursday, March 31, 2011
Room 1327 LB
11:00 AM

I. Welcome and introductions

II. Note that tort reform bill has now been filed: HB 542 with sponsors Representatives Rhyne, McComas, Brisson and Crawford

III. Speakers—each speaker may take 8 minutes. [Due to time constraints and to be respectful to the other speakers, questions will not be taken today; we will ask the speakers to stay after the meeting for informal questions and to give the committee clerk their contact information for distribution to the members.]

Dick Taylor/Burton Craig—N.C. Advocates for Justice

Kenneth Kyre—Pinto, Coates, Kyre and Brown

Bill Wilson—AARP

Dr. Charles Bregier—President, N.C. College of Emergency Physicians

Gary Clemmons—Chesnutt, Clemmons & Peacock/Jon Moore/Evan Griffin

David Hood—Patrick, Harper & Dixon

Janet Ward Black—Ward Black Law

Frederick Rom—Womble, Carlyle, Sandridge and Rice
Laurie Sanders/April Messer/Dr. John Faulkner—N.C. Coalition for Patient Safety

Sammy Thompson—Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan

Edward LeCarpentier, Lawyers Mutual Insurance Company

Bob Crumley—Crumley and Associates

Julian Philpott/Steve Woodson—N.C. Farm Bureau
MINUTES
HOUSE SELECT COMMITTEE ON TORT REFORM
Thursday, March 31, 2011

Upon call of the Chair, the House Select Committee on Tort Reform met on Thursday, March 31, 2011 in room 1327 of the Legislative Building. The following members were present: Danny McComas, Johnathan Rhyne, Co-Chairs; Jim Crawford, Tim Moffitt, Tom Murry, Vice-Chairs; Representatives Brisson, Carney, Dockham, Hill, McGrady, McLawhorn, Mills, Parfitt, Parman, Randleman, Stam, and Weiss.

Chairman McComas called the meeting to order. After explaining that each speaker had eight minutes in which to speak, Chairman McComas called the first speaker. The following is a list of those who spoke:

Dick Taylor, N.C. Advocates for Justice
Kenneth Kyre, Pinto, Coates, Kyre and Brown
Bill Wilson, AARP
Dr. Charles Bregier, President, N.C. College of Emergency Physicians
Gary Clemmons, Chesnutt, Clemmons & Peacock
Jon Moore
David Hood, Patrick, Harper & Dixon
Janet Ward Black, Ward Black Law
Frederick Rom; Womble, Carlyle, Sandridge and Rice
Laurie Sanders, N.C. Coalition for Patient Safety
Sammy Thompson; Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan
Edward LeCarpentier; Lawyers Mutual Insurance Company
Julian Philpott; N.C. Farm Bureau
Dr. John Faulkner; N.C. Coalition for Patient Safety

Chairman Rhyne made brief remarks in closing.

Chairman McComas adjourned the meeting at 12:39 pm.

Respectfully submitted,

Representative Johnathan L. Rhyne, Jr.  
Co-Chair

Susan Beaupied  
Committee Assistant
NAME OF COMMITTEE: House Select Comm. Tort Reform

DATE: 3-31-11  Room: 1228

*Name: Regan Hall
County: Guilford
Sponsor: John Faircloth

*Name: Kathryn Cooke
County: Wake
Sponsor: Paul Stam

*Name: ____________________________
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Sponsor: ____________________________

House Sgt-At Arms:

1. Name: Billy Jones
2. Name: Wayne Davis
3. Name: Bill Mackee
4. Name: ____________________________
5. Name: ____________________________
6. Name: ____________________________
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<td>Chris Nichols</td>
<td>106 Kipling Pl Rte 1, NC</td>
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<td>Phillip Miller</td>
<td>Blankenship, Miller, Lewis, Rhyne</td>
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<td>Jon Moore</td>
<td>Brown Moore &amp; Associates&lt;br&gt;920 East Blvd., Charlotte, NC</td>
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<td>Meredith Hinton</td>
<td>Ricci Law Firm, Greenville, NC</td>
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<td>Scott Freeman</td>
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VISITOR REGISTRATION SHEET

SELECT COMMITTEE ON TORT REFORM
MARCH 31, 2011
Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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**SELECT COMMITTEE ON TORT REFORM**  
**MARCH 31, 2011**

**Name of Committee**

**Date**

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VISITOR REGISTRATION SHEET

SELECT COMMITTEE ON TORT REFORM  MARCH 31, 2011
Name of Committee  Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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AGENDA

HOUSE SELECT COMMITTEE ON TORT REFORM

Thursday, April 7, 2011
Room 1327 LB
11:00 AM

OPENING REMARKS

Representative Danny McComas, Co-Chair
House Select Committee on Tort Reform

AGENDA ITEMS

SB 33  MEDICAL LIABILITY REFORMS

ADJOURNMENT
MINUTES
HOUSE SELECT COMMITTEE ON TORT REFORM
Thursday, April 7, 2011

Upon call of the Chair, the House Select Committee on Tort Reform met on Thursday, April 07, 2011 in room 1327 of the Legislative Building. The following members were present: Danny McComas, Johnathan Rhyne, Co-Chairs; Jim Crawford, David Lewis, Tim Moffitt, Tom Murry, Vice-Chairs; Representatives Barnhart, Brisson, Carney, Dockham, Dollar, Faison, Gillespie, Hall, Hill, McGrady, McLawhorn, Mills, Owens, Parfitt, Randleman, Samuelson, Stam, and Weiss.

Chairman McComas called the meeting to order.
Chairman McComas recognized Rep. Rhyne to explain the proposed committee substitute for Senate Bill 33.

Chairman McComas recognized Rep. Stam to explain amendment #1. The amendment was adopted.
Chairman McComas recognized Rep. Mills to explain amendment #2. The amendment failed.
Chairman McComas recognized Rep. Mills to explain amendment #3. The amendment was tabled.
Chairman McComas recognized Rep. Stam to explain amendment #4. Rep. Rhyne offered a perfecting amendment (4a) which was adopted. Amendment #4 was withdrawn.
Chairman McComas recognized Rep. Faison to explain amendment #5. The amendment failed.
Chairman McComas recognized Rep. Hall to explain amendment #6. The amendment failed.
Chairman McComas recognized Rep. Murry to explain amendment #7. The amendment was adopted.
Chairman McComas recognized Rep. McGrady to explain amendment #8. Rep. Stam offered a perfecting amendment (8a) which was adopted. Amendment #8 was tabled.
Chairman McComas recognized Rep. Rhyne to explain amendment #9. The amendment was adopted.
Chairman McComas recognized Rep. Hall to explain amendment #10. The amendment failed.
Chairman McComas recognized Rep. Hall to explain amendment #11. After discussion, a division vote was called for. The amendment failed; 9 voting in favor, 15 voting against the amendment.

Chairman McComas dismissed the meeting at 12:48.

Respectfully submitted,

[Signature]

Representative Danny McComas  
Co-Chair

[Signature]

Susan Beaupied  
Committee Assistant
Representative Stam

1 moves to amend the bill on page 1, lines 11 - 12, by rewriting those lines to read:
2 "yet paid."
3

SIGNED

Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED  ✔  FAILED  ❌  TABLED  ___

Date April 7, 2011

Page 1 of 1
moves to amend the bill on page 1, lines 6 through 12, by deleting those lines; and by renumbering the remaining sections accordingly.
moves to amend the bill on page 1, lines 9-12, by rewriting those lines to read:

"Evidence offered to prove past medical expenses may include all bills reasonably paid and a statement of the amounts actually necessary to satisfy the bills that have been incurred but not yet paid, unless the amount paid or to be paid is different from the incurred bill because of insurance procured by the plaintiff through employment or payment of premium. In the event that the amount paid or to be paid is introduced, then evidence of source of payment and rights of subrogation related to the payment shall be admissible".

SIGNED  
Amendment Sponsor

SIGNED  
Committee Chair if Senate Committee Amendment

ADOPTED  FAILED  TABLED  

Representative Stam moves to amend the bill on page 3, line 9, by rewriting the line to read:

"damages exceeding two hundred fifty thousand dollars ($250,000), the court shall".

SIGNED _____________________________
Amendment Sponsor

SIGNED _____________________________
Committee Chair if Senate Committee Amendment

ADOPTED ___________  FAILED ___________  TABLED ___________
Amendment No. 4a (to be filled in by Principal Clerk)

DATE April 7, 2011

H. B. No. 33

S. B. No. 33

COMMITTEE SUBSTITUTE

Rep.) Rhyne, R

Sen.)

 moves to amend the bill on page 1, line 2

() WHICH CHANGES THE TITLE

by deleting the words "two hundred fifty thousand dollars ($250,000)" and substituting the words "one hundred fifty thousand dollars ($150,000)".

SIGNED ________________________

ADOPTED ___________ FAILED ___________ TABLED ___________

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)
Representative Faison

moves to amend the bill on page 3, line 14, by rewriting that line to read:

"relating to damages. The prevailing movant under this subdivision shall pay the reasonable
additional expenses and costs of the opposing party that are incurred as a result of an expert
witness for the opposing party being required to testify a second time during the trial on the
issue of damages."

Signed
Amendment Sponsor

Signed
Committee Chair if Senate Committee Amendment

ADOPTED FAILED TABLED
Representative Hall

moves to amend the bill on page 3, lines 15 through 36, by deleting those lines in their entirety;
and by renumbering the remaining sections of Part I accordingly.

SIGNED Larry D. Hall
Amendment Sponsor

SIGNED
Committee Chair if Senate Committee Amendment

ADOPTED FAILED TABLED

Page 1 of 1
Date April 17, 2011

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

S33-ATG-57 [v.3]
Comm. Sub. [YES]
Amends Title [NO]
Third Edition

AMENDMENT NO. (to be filled in by Principal Clerk)

 moveto amend the bill on page 3, lines 15 through 36, by deleting those lines in their entirety;
Representative Murry moves to amend the bill on page 3, lines 36 - 37, by adding between the lines the following:

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

SIGNED

Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED TABLED
moves to amend the bill on page 3, lines 36-37, by inserting the following between those lines:

"SECTION 1.7. G.S. 1-17 reads as rewritten:

"§ 1-17. Disabilities.

(a) A person entitled to commence an action who is under a disability at the time the cause of action accrued may bring his or her action within the time limited in this Subchapter, after the disability is removed, except in an action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents and services out of the real property, when the person must commence his or her action, or make the entry, within three years next after the removal of the disability, and at no time thereafter.

For the purpose of this section, a person is under a disability if the person meets one or more of the following conditions:

(1) The person is within the age of 18 years.
(2) The person is insane.
(3) The person is incompetent as defined in G.S. 35A-1101(7) or (8).

(a1) For those persons under a disability on January 1, 1976, as a result of being imprisoned on a criminal charge, or in execution under sentence for a criminal offense, the statute of limitations shall commence to run and no longer be tolled from January 1, 1976.

(b) Notwithstanding the provisions of subsection (a) of this section, and except as otherwise provided in subsection (c) of this section, an action on behalf of a minor for malpractice arising out of the performance of or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except that if those time limitations expire before the minor attains the full age of 19 years, the action may be brought before the minor attains the full age of 19 years.

(c) Notwithstanding the provisions of subsection (a) and (b) of this section, a medical malpractice action on behalf of a minor arising out of a health care provider's performance of or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except that if those time limitations expire before the minor attains the full age of 10 years, the action may be brought before the minor attains the full age of 10 years. Notwithstanding the foregoing, if before a minor reaches the full age of 18 years a court has entered judgment or consent order under the provisions of the North Carolina Juvenile Code finding that said minor is an abused or neglected juvenile as defined in G.S. 7B-101, the medical malpractice action shall be commenced within 3 years from the date of such judgment or consent order.
(d) Notwithstanding the provisions of subsection (a), an action on behalf of a minor arising out of or relating to a child care facility's provision of child care or failure to provide child care shall be commenced within the periods prescribed in this Chapter, as provided in G.S. 1-15(a), except that if those time limitations expire before the minor attains the full age of 10 years, the action may be brought before the minor attains the full age of 10 years. Notwithstanding the foregoing, if before a minor reaches the full age of 18 years a court has entered judgment or consent order under the provisions of the North Carolina Juvenile Code finding that said minor is an abused or neglected juvenile as defined in G.S. 7B-101, the action shall be commenced within 3 years from the date of such judgment or consent order.

And on page 9, line 42 by rewriting that line to read:

"SECTION 5.2. Sections 1.7, 2.2, 3.1, and 4.2 of this act become effective October 1, ".

Signed

Amendment Sponsor

Signed

Committee Chair if Senate Committee Amendment

ADOPTED FAILED TABLED
Amendment No. 39
(to be filled in by Principal Clerk)

Amendment moves to amend the bill on page 33, line 33

( ) WHICH CHANGES THE TITLE

and on page 2, line 9, by rewriting the line to read:

"shall be commenced within 3 years from the date of such judgment or consent order, or until the minor attains the full age of 10 years, whichever is later."

SIGNED

ADOPTED ✔ FAILED FAILED TABLED X

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)
Representative Rhyne

moves to amend the bill on page 5, line 10, by rewriting the line to read:

"Chapter 131E of the General Statutes, or an adult care home licensed".
Representative Hall moves to amend the bill on page 5, line 46, by writing the line to read:

"(a) In any medical malpractice action, excluding an action for wrongful death, in which the plaintiff is entitled to an award of".
 Representative Hall

moves to amend the bill on page 6, lines 9 through 13, by rewriting those lines to read:

"(2) Noneconomic damages. – Damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, and any other nonpecuniary compensatory damages other than damages to compensate for scars or disfigurement, loss of use of part of the body, permanent injury, or death. "Noneconomic damages" does not include punitive damages as defined in G.S. 1D-5."

SIGNED __________________________
Amendment Sponsor

SIGNED __________________________
Committee Chair if Senate Committee Amendment

ADOPTED ☐ FAILED ☑ TABLED ☐
### VISITOR REGISTRATION SHEET

**Select Committee on Tort Reform** | **April 7th, 2011**

**Name of Committee** | **Date**

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

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VISITOR REGISTRATION SHEET

SELECT COMMITTEE ON TORT REFORM       APRIL 7, 2011
Name of Committee                Date

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**VISITOR REGISTRATION SHEET**

Name of Committee: Select Committee on Joint Reform

Date: 4/7/11

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

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<td>Sylvia Adcock</td>
<td>N.C. Lawyers Weekly</td>
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# House Committee Pages / Sergeants at Arms

**NAME OF COMMITTEE:** House Select Committee on Tort Reform  

**DATE:** April 7, 2011  
**Room:** LB 1228

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<tr>
<th>Name</th>
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<tr>
<td>Caroline Ricciarelli</td>
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**House Sgt-At Arms:**

1. Name: Bob Rossi  
2. Name: Wayne Davis  
3. Name: Billy Jones  
4. Name:             
5. Name:             
6. Name:             
AGENDA

HOUSE SELECT COMMITTEE ON TORT REFORM

Thursday, April 14, 2011
Room 1327 LB
11:00 AM

OPENING REMARKS

Representative Johnathan Rhyne, Co-Chair
House Select Committee on Tort Reform

AGENDA ITEMS

SB 33  MEDICAL LIABILITY REFORMS
HB 542  TORT REFORM FOR CITIZENS AND BUSINESSES

ADJOURNMENT
Upon call of the Chair, the House Select Committee on Tort Reform met on Thursday, April 14, 2011 in room 1327 of the Legislative Building. The following members were present: Danny McComas, Johnathan Rhyne, Co-Chairs; David Lewis, Tim Moffitt, Tom Murry, Vice-Chairs; Representatives Barnhart, Brisson, Carney, Dockham, Dollar, Faison, Gillespie, Hall, Hill, McGrady, McLawhorn, Mills, Owens, Parfitt, Randleman, Samuelson, Stam, and Weiss.

Chairman Rhyne called the meeting to order.
Representative McComas made a motion to accept the Proposed Committee Substitute for SB 33. The motion carried.

Three amendments were offered for the PCS for SB 33. Amendments 1 and 2 were adopted, amendment 3 failed. (amendments attached)

Representative McComas moved for a favorable report for PCS for SB 33, unfavorable to the original bill. The motion carried.

Representative McComas made a motion to accept the PCS for HB 542. The motion carried.

Five amendments were offered for PCS for HB 542. Amendments 1, 4, and 5 were adopted; amendments 2 and 3 failed. (amendments attached)

Representative McComas made a motion for the favorable report to PCS for HB 542, unfavorable to the original bill. The motion was adopted.

Chairman Rhyne dismissed the meeting at 12:12 p.m.

Respectfully submitted,

Representative Johnathan Rhyne
Co-Chair

Susan Beaupied
Committee Assistant
The following report(s) from standing committee(s) is/are presented:

By Representative McComas, Rhyne (Chairs) for the Committee on HOUSE SELECT COMMITTEE ON TORT REFORM.

☐ Committee Substitute for

HB 542 A BILL TO BE ENTITLED AN ACT TO PROVIDE TORT REFORM FOR NORTH CAROLINA CITIZENS AND BUSINESSES.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _______.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. ____ ) is placed on the Calendar of _______. (The original bill resolution No. ____ ) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____ ) is re-referred to the Committee on _______. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ____ ) is placed on the Unfavorable Calendar.
The following report(s) from standing committee(s) is/are presented:

By Representative McComas, Rhyne (Chair) for the Committee on HOUSE SELECT COMMITTEE ON TORT REFORM.

Committee Substitute for

SB 33
A BILL TO BE ENTITLED AN ACT TO REFORM THE LAWS RELATING TO MEDICAL LIABILITY BY PROVIDING LIMITED PROTECTION FROM LIABILITY TO THOSE REQUIRED BY FEDERAL LAW TO PROVIDE EMERGENCY MEDICAL CARE, BY AUTHORIZING THE BIFURCATION OF TRIALS ON ISSUES OF LIABILITY AND DAMAGES IN CERTAIN ACTIONS, BY LIMITING THE AMOUNT OF NONECONOMIC DAMAGES THAT MAY BE AWARDED, BY AUTHORIZING THE PERIODIC PAYMENT OF FUTURE ECONOMIC DAMAGES IN LIEU OF A LUMP-SUM PAYMENT, BY MODIFYING APPEAL BONDS IN MEDICAL MALPRACTICE ACTIONS, BY CLARIFYING THAT COMPLAINTS ALLEGING MEDICAL MALPRACTICE BY HEALTH CARE PROVIDERS MUST ASSERT THAT ALL MEDICAL RECORDS AVAILABLE TO THE PLAINTIFF HAVE BEEN REVIEWED BY AN EXPERT WITNESS, AND BY REQUIRING THAT CERTAIN INFORMATION BE PROVIDED BY EXPERT WITNESSES.

With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on __________.

Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No.____) is placed on the Calendar of ________. (The original bill resolution No.____) is placed on the Unfavorable Calendar.

The (House) committee substitute bill/(joint) resolution (No.____) is re-referred to the Committee on ________. (The original bill resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No.____) is placed on the Unfavorable Calendar.

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The (House) committee substitute bill/(joint) resolution (No.____) is re-referred to the Committee on ________. (The original bill resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No.____) is placed on the Unfavorable Calendar.
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SENATE BILL 33
Judiciary I Committee Substitute Adopted 3/1/11
Third Edition Engrossed 3/2/11

Short Title: Medical Liability Reforms. (Public)

Sponsors:

Referred to:

February 3, 2011

A BILL TO BE ENTITLED
AN ACT TO REFORM THE LAWS RELATING TO MEDICAL LIABILITY BY
PROVIDING LIMITED PROTECTION FROM LIABILITY TO THOSE REQUIRED BY
FEDERAL LAW TO PROVIDE EMERGENCY MEDICAL CARE, BY AUTHORIZING
THE BIFURCATION OF TRIALS ON ISSUES OF LIABILITY AND DAMAGES IN
CERTAIN ACTIONS, BY LIMITING THE AMOUNT OF NONECONOMIC
DAMAGES THAT MAY BE AWARDED, BY AUTHORIZING THE PERIODIC
PAYMENT OF FUTURE ECONOMIC DAMAGES IN LIEU OF A LUMP-SUM
PAYMENT, BY MODIFYING APPEAL BONDS IN MEDICAL MALPRACTICE
ACTIONS, BY CLARIFYING THAT COMPLAINTS ALLEGING MEDICAL
MALPRACTICE BY HEALTH CARE PROVIDERS MUST ASSERT THAT ALL
MEDICAL RECORDS AVAILABLE TO THE PLAINTIFF HAVE BEEN REVIEWED
BY AN EXPERT WITNESS, AND BY REQUIRING THAT CERTAIN INFORMATION
BE PROVIDED BY EXPERT WITNESSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-21.12 reads as rewritten:

"§ 90-21.12. Standard of health care; limited liability for federally mandated emergency
medical services.

(a) Except as provided in subsection (b) of this section, in any medical malpractice
action, action for damages for personal injury or death arising out of the furnishing or the
failure to furnish professional services in the performance of medical, dental, or other health
care, the defendant health care provider shall not be liable for the payment of damages unless
the trier of fact finds by the greater weight of the evidence that the care of
such health care provider was not in accordance with the standards of practice among members
of the same health care profession with similar training and experience situated in the same or
similar communities under the same or similar circumstances at the time of the alleged act or
omission giving rise to the cause of action.

(b) In any medical malpractice action arising out of the furnishing or the failure to
furnish services pursuant to obligations imposed by 42 U.S.C. § 1395dd for an emergency
medical condition as defined in 42 U.S.C. § 1395dd(e)(1), the defendant health care provider
shall not be liable for the payment of damages unless the trier of fact finds by the greater
weight of the evidence that the health care provider's deviation from the standard of care
required under subsection (a) of this section constituted gross negligence, wanton conduct, or
intentional wrongdoing. Nothing in this subsection shall be construed to change, alter, override,
or otherwise affect the provisions of G.S. 90-21.14, 90-21.15, 90-21.16, or 20-166."
SECTION 2. G.S. 1A-1, Rule 42(b), reads as rewritten:

(b) Separate trials. —

(1) The court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

(2) Upon motion of any party in an action that includes a claim commenced under Article 1G of Chapter 90 of the General Statutes involving a managed care entity as defined in G.S. 90-21.50, the court shall order separate discovery and a separate trial of any claim, cross-claim, counterclaim, or third-party claim against a physician or other medical provider.

(3) Upon motion of any party in a medical malpractice action commenced under Article 1B of Chapter 90 of the General Statutes wherein the plaintiff seeks damages in an amount equal to or greater than seventy-five thousand dollars ($75,000), the court shall order separate trials for the issue of liability and the issue of damages. Evidence relating solely to compensatory damages shall not be admissible until the trier of fact has determined that the defendant is liable for medical malpractice. The same trier of fact that tried the issues relating to liability shall try the issues relating to damages.

SECTION 3. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:


(a) In any medical malpractice action in which the plaintiff is entitled to an award of noneconomic damages, the total amount of noneconomic damages for which judgment is entered against all defendants shall not exceed five hundred thousand dollars ($500,000) per plaintiff. Judgment shall not be entered against any defendant for noneconomic damages in excess of five hundred thousand dollars ($500,000) for all claims brought by all parties arising out of the same cause of action. On January 1, of every third year, beginning with January 1, 2014, the Administrative Office of the Courts shall reset the limitation on damages for noneconomic loss set forth in this subsection to be equal to $500,000 times the ratio of the consumer price index for November of the prior year to the Consumer Price Index for November 2011. As used in this subsection, "consumer price index" means the Consumer Price Index -- All Urban Consumers, for the South urban area, as published by the Bureau of Labor Statistics of the United States Department of Labor. In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B(1) exceeds these limits, the court shall modify the judgment as necessary to conform to the requirements of this subsection.

(b) As used in this section, 'noneconomic damages' means damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, physical impairment, disfigurement, and any other nonpecuniary, compensatory damage. 'Noneconomic damages' does not include punitive damages as defined in G.S. 1D-5.

(c) Any award of damages in a medical malpractice action shall be stated in accordance with G.S. 90-21.19B. If a jury is determining the facts, the court shall not instruct the jury with respect to the limit of noneconomic damages under subsection (a) of this section, and neither the attorney for any party nor a witness shall inform the jury or potential members of the jury panel of that limit.

SECTION 4. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:


(a) The following definitions apply in this section:
General Assembly Of North Carolina  Session 2011

1. (1) Future economic damages. - Damages for future expense for medical
treatment, care or custody, loss of future earnings, loss of future household
services, and any other future pecuniary damages of the plaintiff following
the date of the verdict or award.

2. (2) Periodic payments. - The payment of money or delivery of other property to
the plaintiff at regular intervals.

(b) In any medical malpractice action, the form of the fact finder's verdict or award of
damages, if supported by the evidence, shall indicate specifically what amount is awarded for
future economic damages, and what amount, if any, of the total amount awarded for future
economic damages represents damages awarded for loss of future earnings or loss of future
household services.

(c) Upon the award of future economic damages in any medical malpractice action, the
presiding judge shall, at the request of either party, enter a judgment ordering that the future
economic damages of the plaintiff be paid in whole or in part by periodic payments rather than
by a lump-sum payment if the present value of the future economic damages award is greater
than or equal to two hundred thousand dollars ($200,000). In entering a judgment ordering the
payment of future economic damages by periodic payments, the court shall make a specific
finding as to the dollar amount of the present value of that portion of the future economic
damages for which the plaintiff is to be paid by periodic payments. In calculating the total
damages upon which any attorney contingency fee for representing the plaintiff in connection
with the medical malpractice action is calculated, the present value of any portion of the award
representing future economic damages that are to be paid by periodic payments shall be used.

(d) A judgment authorizing periodic payments of future economic damages shall
require that such payments be made through the establishment of a trust fund or the purchase of
an annuity for the life of the plaintiff or during the continuance of the compensable injury or
disability of the plaintiff, in such form and under such terms as shall be approved by the court.
The establishment of a trust fund or the purchase of an annuity, as required and approved by the
court, shall constitute the satisfaction of the defendant's judgment for future economic damages.

(e) The judgment ordering the payment of future economic damages by periodic
payments shall specify the recipient of the payments, the schedule of the periodic payments,
and the dollar amount of each periodic payment to be made pursuant to the schedule. The death
of the plaintiff terminates liability for payment of future economic damages which by judgment
pursuant to this section are required to be paid in periodic payments not yet due, except that the
court that entered the original judgment may modify the judgment to provide that liability for
payment of future periodic payments compensating the plaintiff for loss of future earnings or
loss of future household services shall not be terminated by reason of the death of the plaintiff,
but shall continue to be paid to persons surviving the plaintiff to whom the plaintiff owed a
duty of support pursuant to law immediately prior to the plaintiff's death.

SECTION 5. Article 1B of Chapter 90 of the General Statutes is amended by
adding the following new section to read:

§ 90-21.19B. Verdicts and awards of damages in medical malpractice actions; form.

In any malpractice action, any verdict or award of damages, if supported by the evidence,
shall indicate specifically what amount is awarded for each of the following:

(1) Noneconomic damages.
(2) Present economic damages.
(3) Future economic damages.
(4) Loss of future earnings.
(5) Loss of future household services.

If applicable, the court shall instruct the jury on the definition of noneconomic damages
under G.S. 90-21.19(b) and the definition of future economic damages under
G.S. 90-21.19A(a)(1). If applicable, the court shall instruct the jury that present economic
damages are those damages for medical treatment, care or custody, loss of earnings, loss of household services, and any other pecuniary damages of the plaintiff up to the date of the verdict or award."

SECTION 6.1. G.S. 1-289 reads as rewritten:

"§ 1-289. Undertaking to stay execution on money judgment.

(a) If the appeal is from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, as set forth in this section.

(a1) In an action where the judgment directs the payment of money, the court shall specify the amount of the undertaking required to stay execution of the judgment pending appeal as provided in subsections (a2) and (b) of this section. The undertaking shall be to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal, except as provided in subsection (b) of this section. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs.

Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time before the deposit is made, order the money deposited in court instead of with the officer; and a deposit made pursuant to such order is of the same effect as if made with the officer. The perfecting of an appeal by giving the undertaking mentioned in this section stays proceedings in the court below upon the judgment appealed from; except when the sale of perishable property is directed, the court below may order the property to be sold and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

(a2) Except as provided in subsection (b) of this section, the amount of the undertaking that shall be required by the court shall be an amount determined by the court after notice and hearing proper and reasonable for the security of the rights of the adverse party, considering relevant factors, including the following:

(1) The amount of the judgment.
(2) The amount of the limits of all applicable liability policies of the appellant judgment debtor.
(3) The aggregate net worth of the appellant judgment debtor.

(b) If the appellee in a civil action brought under any legal theory obtains a judgment directing the payment or expenditure of money in the amount of twenty five million dollars ($25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review, including discretionary review and certiorari, the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be twenty five million dollars ($25,000,000).

(c) If the appellee proves by a preponderance of the evidence that the appellant for whom the undertaking has been limited under subsection (b) of this section is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United
States other than in the ordinary course of business, then the limitation in subsection (b) of this section shall not apply and the appellant shall be required to make an undertaking in the full amount otherwise required by this section."

SECTION 6.2. G.S. 1A-1, Rule 9(j), reads as rewritten:
"(j) Medical malpractice. – Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care has-and all medical records pertaining to the alleged injury then available to the plaintiff after reasonable inquiry, have been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care has-and all medical records pertaining to the alleged injury then available to the plaintiff after reasonable inquiry, have been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident judge of the superior court for a judicial district in which venue for the cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge of the superior court for that judicial district may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33. At the request of the defendant, the plaintiff shall furnish to the defendant, within 30 days, an affidavit from the expert certifying compliance with this subsection."

SECTION 6.3. G.S. 1A-1, Rule 26(f1), reads as rewritten:
"(f1) Medical malpractice discovery conference. – In a medical malpractice action as defined in G.S. 90-21.11, upon the case coming at issue or the filing of a responsive pleading or motion requiring a determination by the court, the judge shall, within 30 days, direct the attorneys for the parties to appear for a discovery conference. At the conference the court may consider the matters set out in Rule 16, and shall:

... Establish an appropriate schedule for designating expert witnesses, consistent with a discovery schedule pursuant to subdivision (3), to be completed with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses;(3). As to each expert designated, the designation shall be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and

Senate Bill 33-Third Edition
Page 5
the basis and reasons therefor; the data or other information considered by
the witness in forming the opinions; the qualifications of the witness,
including a list of all publications authored by the witness within the
preceding 10 years; the compensation the witness is to be paid for the study
and testimony; and a listing of any other cases in which the witness has
tested as an expert at trial or by deposition within the preceding four years.
The party shall supplement the expert's report if the party learns that in some
material respect the report is incomplete or incorrect. The expert's direct
testimony shall not be inconsistent with or go beyond the fair scope of the
expert report as supplemented. Depositions of expert witnesses shall be
governed by Rules 26(b)(4) and 26(f1).

SECTION 7. If the provisions of Section 3 of this act are declared to be
unconstitutional or otherwise invalid by final decision of a court of competent jurisdiction,
following any appellate review, then Section 4 and Section 5 of this act are repealed, but the
invalidity does not affect other provisions or applications of this act that can be given effect
without the invalid provisions or application.

SECTION 8. This act becomes effective October 1, 2011. Sections 1, 3, 4, 5, 6.2
and 6.3 apply to causes of action arising on or after the effective date. Sections 2 and 6.1 apply
to actions commenced on or after the effective date.
GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011  

SENATE BILL 33  
Judiciary I Committee Substitute Adopted 3/1/11  
Third Edition Engrossed 3/2/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S33-CSMH-7 [v.11]  

4/13/2011 7:49:47 PM  

Short Title: Medical Liability Reforms. (Public)  

Sponsors:  

Referred to:  

February 3, 2011  

A BILL TO BE ENTITLED  
AN ACT TO REFORM THE LAWS RELATING TO MONEY JUDGMENT APPEAL  
BONDS, BIFURCATION OF TRIALS IN CIVIL CASES, AND MEDICAL LIABILITY.  
The General Assembly of North Carolina enacts:  

SECTION 1. G.S. 1-289 reads as rewritten:  

"§ 1-289. Undertaking to stay execution on money judgment.  
(a) If the appeal is from a judgment directing the payment of money, it does not stay the  
execution of the judgment unless a written undertaking is executed on the part of the appellant,  
by one or more sureties, as set forth in this section. In an action where the judgment directs the payment of money, the court shall  
specify the amount of the undertaking required to stay execution of the judgment pending  
appeal as provided in subsection (c) of this section. The undertaking shall be to the effect that if  
the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the  
appellant will pay the amount directed to be paid by the judgment, or the part of such amount  
as to which the judgment shall be affirmed, if affirmed only in part, and all damages which  
shall be awarded against the appellant upon the appeal, except as provided in subsection (b) of  
this section. Whenever it is satisfactorily made to appear to the court that since the execution of  
the undertaking the sureties have become insolvent, the court may, by rule or order, require the  
appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute  
such undertaking within twenty days after the service of a copy of the rule or order requiring it,  
the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a  
party to an action or proceeding to give a bond or an undertaking with surety or sureties, he  
may, in lieu thereof, deposit with the officer into court money to the amount of the bond or  
undertaking to be given. The court in which the action or proceeding is pending may direct  
what disposition shall be made of such money pending the action or proceeding. In a case  
where, by this section, the money is to be deposited with an officer, a judge of the court, upon  
the application of either party, may, at any time before the deposit is made, order the money  
deposited in court instead of with the officer; and a deposit made pursuant to such order is of  
the same effect as if made with the officer. The perfecting of an appeal by giving the  
undertaking mentioned in this section stays proceedings in the court below upon the judgment  
appealed from; except when the sale of perishable property is directed, the court below may
order the property to be sold and the proceeds thereof to be deposited or invested, to abide the
judgment of the appellate court.

(c) The amount of the undertaking that shall be required by the court shall be an amount
determined by the court after notice and hearing proper and reasonable for the security of the
rights of the adverse party, considering relevant factors, including the following:

(1) The amount of the judgment.
(2) The amount of the limits of all applicable liability policies of the appellant
judgment debtor.
(3) The aggregate net worth of the appellant judgment debtor.

If the appellee in a civil action brought under any legal theory obtains a judgment
directing the payment or expenditure of money in the amount of twenty five million dollars
($25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the
period of time during which the appellant has the right to pursue appellate review, including
discretionary review and certiorari, the amount of the undertaking that the appellant is required
to execute to stay execution of the judgment during the entire period of the appeal shall be
twenty five million dollars ($25,000,000).

If the appellee proves by a preponderance of the evidence that the appellant for
whom the undertaking has been limited under subsection (b)(d) of this section is, for the
purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii)
diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts
of the United States other than in the ordinary course of business, then the limitation in
subsection (b)(d) of this section shall not apply and the appellant shall be required to make an
undertaking in the full amount otherwise required by this section.

SECTION 2. G.S. 1A-1, Rule 42(b), reads as rewritten:

"(b) Separate trials. —

(1) The court may in furtherance of convenience or to avoid prejudice and shall
for considerations of venue upon timely motion order a separate trial of any
claim, cross-claim, counterclaim, or third-party claim, or of any separate
issue or of any number of claims, cross-claims, counterclaims, third-party
claims, or issues.

(2) Upon motion of any party in an action that includes a claim commenced
under Article 1G of Chapter 90 of the General Statutes involving a managed
care entity as defined in G.S. 90-21.50, the court shall order separate
discovery and a separate trial of any claim, cross-claim, counterclaim, or
third-party claim against a physician or other medical provider.

(3) Upon motion of any party in an action in tort wherein the plaintiff seeks
damages exceeding one hundred fifty thousand dollars ($150,000), the court
shall order separate trials for the issue of liability and the issue of damages.
Evidence relating solely to compensatory damages shall not be admissible
until the trier of fact has determined that the defendant is liable. The same
trier of fact that tries the issues relating to liability shall try the issues
relating to damages."

SECTION 3. G.S. 1A-1, Rule 9(j), reads as rewritten:

"(j) Medical malpractice. — Any complaint alleging medical malpractice by a health care
provider as defined in pursuant to G.S. 90-21.11(2)a, in failing to comply with
the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care was-and all medical
records pertaining to the alleged negligence and resulting injuries that are
available to the plaintiff after reasonable inquiry have been reviewed by a
person who is reasonably expected to qualify as an expert witness under
Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care has-and all medical records pertaining to the alleged negligence and resulting injuries that are available to the plaintiff after reasonable inquiry have been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident judge of the superior court for a judicial district in which venue for the cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge of the superior court for that judicial district may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33."

SECTION 4. G.S. 8C-702(h) reads as rewritten:

"(h) Notwithstanding subsection (b) of this section, in a medical malpractice action as defined in G.S. 90-21.11(2)b. against a hospital, or other health care or medical facility, a person shall not give expert testimony on the appropriate standard of care as to administrative or other nonclinical issues if-unless the person has substantial knowledge, by virtue of his or her training and experience, about the standard of care among hospitals, or health care or medical facilities, of the same type as the hospital, or health care or medical facility, whose actions or inactions are the subject of the testimony situated in the same or similar communities at the time of the alleged act giving rise to the cause of action."

SECTION 5. G.S. 90-21.11 reads as rewritten:

As used in this Article, the following definitions apply in this Article:

(1) the term "health care provider" means without limitation, any of the following:
   a. any person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed, or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesiologist, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology, or psychology.
   b. a hospital or, a nursing home licensed under Chapter 131E of the General Statutes, or an adult care home licensed under Chapter 131D of the General Statutes.
   c. any other person who is legally responsible for the negligence of such person, hospital or nursing home a person described by sub-subdivision a. of this subdivision, a hospital, a nursing home..."
licensed under Chapter 131E of the General Statutes, or an adult care
home licensed under Chapter 131D of the General Statutes.

d. any other person acting at the direction or under the
supervision of any of the foregoing persons, a person described by
sub-subdivision a. of this subdivision, a hospital, or a nursing
home licensed under Chapter 131E of the General Statutes, or an adult care
home licensed under Chapter 131D of the General
Statutes.

(2) As used in this Article, the term "medical malpractice action" means
Medical malpractice action. – Either of the following:
a. A civil action for damages for personal injury or death arising out of
the furnishing or failure to furnish professional services in the
performance of medical, dental, or other health care by a health care
provider.
b. A civil action against a hospital, a nursing home licensed under
Chapter 131E of the General Statutes, or an adult care home licensed
under Chapter 131D of the General Statutes for damages for personal
injury or death, when the civil action (i) alleges a breach of
administrative or corporate duties to the patient, including, but not
limited to, allegations of negligent credentialing or negligent
monitoring and supervision; and (ii) arises from the same facts or
circumstances as a claim under sub-subdivision a. of this
subdivision."

SECTION 6. G.S. 90-21.12 reads as rewritten:
(a) Except as provided in subsection (b) of this section, in any medical malpractice
action as defined in G.S. 90-21.11(2)(a), action for damages for personal injury or death arising
out of the furnishing or the failure to furnish professional services in the performance of
medical, dental, or other health care, the defendant health care provider shall not be liable for
the payment of damages unless the trier of fact finds by the greater weight of
the evidence that the care of such health care provider was not in accordance with the standards
of practice among members of the same health care profession with similar training and
experience situated in the same or similar communities under the same or similar circumstances
at the time of the alleged act giving rise to the cause of action; or in the case of a medical
malpractice action as defined in G.S. G.S. 90-21.11(2)(b), the defendant health care provider
shall not be liable for the payment of damages unless the trier of fact finds by the greater
weight of the evidence that the action or inaction of such health care provider was not in
accordance with the standards of practice among similar health care providers situated in the
same or similar communities under the same or similar circumstances at the time of the alleged
act giving rise to the cause of action.
(b) In any medical malpractice action arising out of the furnishing or the failure to
furnish services pursuant to obligations imposed by 42 U.S.C. § 1395dd for an emergency
medical condition as defined in 42 U.S.C. § 1395dd(e)(1), the defendant health care provider
shall not be liable for the payment of damages unless the trier of fact finds by the greater
weight of the evidence that the health care provider's deviation from the standard of care
required under subsection (a) of this section constituted gross negligence, wanton conduct, or
intentional wrongdoing. Nothing in this subsection shall be construed to change, alter, override,
or otherwise affect the provisions of G.S. 90-21.14, 90-21.15, 90-21.16, or 20-166."

SECTION 7. Article 1B of Chapter 90 of the General Statutes is amended by
adding the following new section to read:
(a) In any medical malpractice action in which the plaintiff is entitled to an award of noneconomic damages, the total amount of noneconomic damages for which judgment is entered against all defendants shall not exceed five hundred thousand dollars ($500,000). On January 1 of every third year, beginning with January 1, 2014, the Administrative Office of the Courts shall reset the limitation on damages for noneconomic loss set forth in this subsection to be equal to five hundred thousand dollars ($500,000) times the ratio of the Consumer Price Index for November of the prior year to the Consumer Price Index for November 2011. In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B(1) exceeds these limits, the court shall modify the judgment as necessary to conform to the requirements of this subsection.

(b) The following definitions apply in this section:


2. Noneconomic damages. – Damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, physical impairment, disfigurement, and any other nonpecuniary, compensatory damage. "Noneconomic damages" does not include punitive damages as defined in G.S. 1D-5.

(c) Any award of damages in a medical malpractice action shall be stated in accordance with G.S. 90-21.19B. If a jury is determining the facts, the court shall not instruct the jury with respect to the limit of noneconomic damages under subsection (a) of this section, and neither the attorney for any party nor a witness shall inform the jury or potential members of the jury panel of that limit."

SECTION 8. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"§ 90-21.19A. Periodic payment of future economic damages in medical malpractice actions."

(a) The following definitions apply in this section:

1. Future economic damages. – Damages for future expense for medical treatment, care or custody, loss of future earnings, loss of future household services, and any other future pecuniary damages of the plaintiff following the date of the verdict or award.

2. Periodic payments. – The payment of money or delivery of other property to the plaintiff at regular intervals.

(b) In any medical malpractice action, the form of the fact finder's verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for future economic damages, and what amount, if any, of the total amount awarded for future economic damages represents damages awarded for loss of future earnings or loss of future household services.

(c) Upon the award of future economic damages in any medical malpractice action, the presiding judge shall, at the request of either party, enter a judgment ordering that the future economic damages of the plaintiff be paid in whole or in part by periodic payments rather than by a lump-sum payment if the present value of the future economic damages award is greater than or equal to two hundred thousand dollars ($200,000). In entering a judgment ordering the payment of future economic damages by periodic payments, the court shall make a specific finding as to the dollar amount of the present value of that portion of the future economic damages for which the plaintiff is to be paid by periodic payments. In calculating the total damages from which any attorney contingency fee for representing the plaintiff in connection with the medical malpractice action is calculated, the present value of any portion of the award representing future economic damages that are to be paid by periodic payments shall be used.
(d) A judgment authorizing periodic payments of future economic damages shall require that such payments be made through the establishment of a trust fund or the purchase of an annuity for the life of the plaintiff or during the continuance of the compensable injury or disability of the plaintiff, in such form and under such terms as shall be approved by the court. The establishment of a trust fund or the purchase of an annuity, as required and approved by the court, shall constitute the satisfaction of the defendant's judgment for future economic damages.

(e) The judgment ordering the payment of future economic damages by periodic payments shall specify the recipient of the payments, the schedule of the periodic payments, and the dollar amount of each periodic payment to be made pursuant to the schedule. The death of the plaintiff terminates liability for payment of future economic damages which by judgment pursuant to this section are required to be paid in periodic payments not yet due, except that the court that entered the original judgment may modify the judgment to provide that liability for payment of future periodic payments compensating the plaintiff for loss of future earnings or loss of future household services shall not be terminated by reason of the death of the plaintiff, but shall continue to be paid to persons surviving the plaintiff to whom the plaintiff owed a duty of support pursuant to law immediately prior to the plaintiff's death."

SECTION 9. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"§ 90-21.19B. Verdicts and awards of damages in medical malpractice actions; form. In any malpractice action, any verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for each of the following:

(1) Noneconomic damages.
(2) Present economic damages.
(3) Future economic damages.
(4) Loss of future earnings.
(5) Loss of future household services.

If applicable, the court shall instruct the jury on the definition of noneconomic damages under G.S. 90-21.19(b) and the definition of future economic damages under G.S. 90-21.19A(a). If applicable, the court shall instruct the jury that present economic damages are those damages for medical treatment, care or custody, loss of earnings, loss of household services, and any other pecuniary damages of the plaintiff up to the date of the verdict or award."

SECTION 10. Severability. – If the provisions of Section 7 of this act are declared to be unconstitutional or otherwise invalid by final decision of a court of competent jurisdiction, then Section 8 and Section 9 of this act are repealed, but the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions. If any other provision of this act or its application to any person or circumstance is held invalid, the remainder of this act or the application of the provision to other persons or circumstances is not affected.

SECTION 11. Sections 5 and 6 of this act become effective October 1, 2011, and apply to causes of actions arising on or after that date. The remainder of this act becomes effective October 1, 2011, and applies to actions commenced on or after that date.
Representative McGrady moves to amend the bill on page 6, lines 32-33, by inserting the following between those lines:

"SECTION 10. G.S. 1-17 reads as rewritten:

§ 1-17. Disabilities.

(a) A person entitled to commence an action who is under a disability at the time the cause of action accrued may bring his or her action within the time limited in this Subchapter, after the disability is removed, except in an action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents and services out of the real property, when the person must commence his or her action, or make the entry, within three years next after the removal of the disability, and at no time thereafter.

For the purpose of this section, a person is under a disability if the person meets one or more of the following conditions:

(1) The person is within the age of 18 years.

(2) The person is insane.

(3) The person is incompetent as defined in G.S. 35A-1101(7) or (8).

(a) For those persons under a disability on January 1, 1976, as a result of being imprisoned on a criminal charge, or in execution under sentence for a criminal offense, the statute of limitations shall commence to run and no longer be tolled from January 1, 1976.

(b) Notwithstanding the provisions of subsection (a) of this section, and except as otherwise provided in subsection (c) of this section, an action on behalf of a minor for malpractice arising out of the performance of or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except that if those time limitations expire before the minor attains the full age of 19 years, the action may be brought before the minor attains the full age of 19 years.

(c) Notwithstanding the provisions of subsection (a) and (b) of this section, an action on behalf of a minor for injuries alleged to have resulted from malpractice arising out of a health care provider's performance of or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except as follows:

(1) If the time limitations specified in G.S. 1-15(c) expire before the minor attains the full age of 10 years, the action may be brought any time before the minor attains the full age of 10 years.

(2) If the time limitations in G.S. 1-15(c) have expired and before a minor reaches the full age of 18 years a court has entered judgment or consent order under the provisions of Chapter 7B of the General Statutes finding that...
said minor is an abused or neglected juvenile as defined in G.S. 7B-101, the medical malpractice action shall be commenced within 3 years from the date of such judgment or consent order, or before the minor attains the full age of 10 years, whichever is later. 

(3) If the time limitations in G.S. 1-15(c) have expired and a minor is in legal custody of the State, a county, or an approved child placing agency as defined in G.S. 131D-10.2, the medical malpractice action shall be commenced within one year after the minor is no longer in such legal custody, or before the minor attains the full age of 10 years, whichever is later."

and by renumbering the remaining sections accordingly;

and on page 6, line 40 by rewriting that line to read:

"SECTION 12. Sections 5, 6 and 10 of this act become effective October 1, 2011, and".

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED √ FAILED ___________ TABLED ___________
moves to amend the bill on page 4, lines 41 through 48, by rewriting the lines to read:

"(b) In any medical malpractice action arising out of the furnishing or the failure to furnish professional services in a hospital emergency room, the claimant must prove a violation of the standard of health care set forth in subsection (a) of this section by clear and convincing evidence."

SIGNED

Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED  ✔  FAILED  TABLED
Representative Faison moves to amend the bill on page 6, lines 32-33, by inserting the following between those lines:

"SECTION 10. G.S. 1A-1, Rule 26(fl), reads as rewritten:

"(fl) Medical malpractice discovery conference. - In a medical malpractice action as defined in G.S. 90-21.11, upon the case coming at issue or the filing of a responsive pleading or motion requiring a determination by the court, the judge shall, within 30 days, direct the attorneys for the parties to appear for a discovery conference. At the conference the court may consider the matters set out in Rule 16, and shall:

(2) Establish an appropriate schedule for designating expert witnesses, consistent with a discovery schedule pursuant to subdivision (3), to be complied with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses under this subsection. As to each expert designated, the designation shall be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation the witness is to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. The party shall supplement the expert's report if the party learns that in some material respect the report is incomplete or incorrect. The expert's direct testimony shall not be inconsistent with or go beyond the fair scope of the expert report as supplemented. An expert who submits a report in accordance with this subsection shall not be deposed, except pursuant to court order for good cause shown;"

and by renumbering the remaining sections accordingly.
AMENDMENT NO. 3
(to be filled in by Principal Clerk)

Page 2 of 2

SIGNED
Amendment Sponsor

SIGNED
Committee Chair if Senate Committee Amendment

ADOPTED FAILED TABLED
Amendment 3

1 moves to amend the bill on page 1, line 26-28

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"beyond the fair scope of the expert report as supplemented."

SIGNED  Starn

ADOPTED  TABLED  FAILED

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)
A BILL TO BE ENTITLED
AN ACT TO REFORM THE LAWS RELATING TO MONEY JUDGMENT APPEAL
BONDS, BIFURCATION OF TRIALS IN CIVIL CASES, AND MEDICAL LIABILITY.
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-289 reads as rewritten:
"§ 1-289. Undertaking to stay execution on money judgment.
(a) If the appeal is from a judgment directing the payment of money, it does not stay the
execution of the judgment unless a written undertaking is executed on the part of the appellant,
by one or more sureties, as set forth in this section.
(b) In an action where the judgment directs the payment of money, the court shall
specify the amount of the undertaking required to stay execution of the judgment pending
appeal as provided in subsection (c) of this section. The undertaking shall be to the effect that if
the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the
appellant will pay the amount directed to be paid by the judgment, or the part of such amount
as to which the judgment shall be affirmed, if affirmed only in part, and all damages which
shall be awarded against the appellant upon the appeal, except as provided in subsection (b) of
this section. Whenever it is satisfactorily made to appear to the court that since the execution of
the undertaking the sureties have become insolvent, the court may, by rule or order, require the
appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute
such undertaking within twenty days after the service of a copy of the rule or order requiring it,
the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a
party to an action or proceeding to give a bond or an undertaking with surety or sureties, he
may, in lieu thereof, deposit with the officer into court money to the amount of the bond or
undertaking to be given. The court in which the action or proceeding is pending may direct
what disposition shall be made of such money pending the action or proceeding. In a case
where, by this section, the money is to be deposited with an officer, a judge of the court, upon
the application of either party, may, at any time before the deposit is made, order the money
deposited in court instead of with the officer; and a deposit made pursuant to such order is of
the same effect as if made with the officer. The perfecting of an appeal by giving the
undertaking mentioned in this section stays proceedings in the court below upon the judgment
appealed from; except when the sale of perishable property is directed, the court below may
order the property to be sold and the proceeds thereof to be deposited or invested, to abide the
judgment of the appellate court.

c) The amount of the undertaking that shall be required by the court shall be an amount
determined by the court after notice and hearing proper and reasonable for the security of the
rights of the adverse party, considering relevant factors, including the following:

1. The amount of the judgment.

2. The amount of the limits of all applicable liability policies of the appellant
judgment debtor.

3. The aggregate net worth of the appellant judgment debtor.

(b)(d) If the appellee in a civil action brought under any legal theory obtains a judgment
directing the payment or expenditure of money in the amount of twenty five million dollars
($25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the
period of time during which the appellant has the right to pursue appellate review, including
discretionary review and certiorari, the amount of the undertaking that the appellant is required
to execute to stay execution of the judgment during the entire period of the appeal shall be
twenty five million dollars ($25,000,000).

e)(e) If the appellee proves by a preponderance of the evidence that the appellant for
whom the undertaking has been limited under subsection (b)(d) of this section is, for the
purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii)
deviating its assets outside the jurisdiction of the courts of North Carolina or the federal courts
of the United States other than in the ordinary course of business, then the limitation in
subsection (b)(d) of this section shall not apply and the appellant shall be required to make an
undertaking in the full amount otherwise required by this section."

SECTION 2. G.S. 1A-1, Rule 42(b), is amended by adding a new subdivision to
read:

"(b) Separate trials. –

1. The court may in furtherance of convenience or to avoid prejudice and shall
for considerations of venue upon timely motion order a separate trial of any
claim, cross-claim, counterclaim, or third-party claim, or of any separate
issue or of any number of claims, cross-claims, counterclaims, third-party
claims, or issues.

2. Upon motion of any party in an action that includes a claim commenced
under Article 1G of Chapter 90 of the General Statutes involving a managed
care entity as defined in G.S. 90-21.50, the court shall order separate
discovery and a separate trial of any claim, cross-claim, counterclaim, or
third-party claim against a physician or other medical provider.

3. Upon motion of any party in an action in tort wherein the plaintiff seeks
damages exceeding one hundred fifty thousand dollars ($150,000), the court
shall order separate trials for the issue of liability and the issue of damages.
Evidence relating solely to compensatory damages shall not be admissible
until the trier of fact has determined that the defendant is liable. The same
trier of fact that tries the issues relating to liability shall try the issues
relating to damages."

SECTION 3. G.S. 1A-1, Rule 9(j), reads as rewritten:

"(j) Medical malpractice. – Any complaint alleging medical malpractice by a health care
provider as defined in pursuant to G.S. 90-21.11G.S. 90-21.11(2)a, in failing to comply with
the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

1. The pleading specifically asserts that the medical care has and all medical
records pertaining to the alleged negligence and resulting injuries that are
available to the plaintiff after reasonable inquiry have been reviewed by a
person who is reasonably expected to qualify as an expert witness under
Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care has and all medical records pertaining to the alleged negligence and resulting injuries that are available to the plaintiff after reasonable inquiry have been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipso loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident judge of the superior court for a judicial district in which venue for the cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge of the superior court for that judicial district may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33."

SECTION 4. G.S. 8C-702(h) reads as rewritten:

"(h) Notwithstanding subsection (b) of this section, in a medical malpractice action as defined in G.S. 90-21.11(2)b. against a hospital, or other health care or medical facility, a person may not give expert testimony on the appropriate standard of care as to administrative or other nonclinical issues if the person has substantial knowledge, by virtue of his or her training and experience, about the standard of care among hospitals, or health care or medical facilities, of the same type as the hospital, or health care or medical facility, whose actions or inactions are the subject of the testimony situated in the same or similar communities at the time of the alleged act giving rise to the cause of action."
licenced under Chapter 131E of the General Statutes, or an adult care
home licensed under Chapter 131D of the General Statutes.
d. Any other person acting at the direction or under the
supervision of any of the foregoing persons, a person described by
sub-subdivision a. of this subdivision, a hospital, or a nursing
home licensed under Chapter 131E of the General Statutes, or
an adult care home licensed under Chapter 131D of the General
Statutes.
(2) As used in this Article, the term "medical malpractice action" means
Medical malpractice action.—Either of the following:
a. A civil action for damages for personal injury or death arising out of
the furnishing or failure to furnish professional services in the
performance of medical, dental, or other health care by a health care
provider.
b. A civil action against a hospital, a nursing home licensed under
Chapter 131E of the General Statutes, or an adult care home licensed
under Chapter 131D of the General Statutes for damages for personal
injury or death, when the civil action (i) alleges a breach of
administrative or corporate duties to the patient, including, but not
limited to, allegations of negligent credentialing or negligent
monitoring and supervision and (ii) arises from the same facts or
circumstances as a claim under sub-subdivision a. of this
subsection."

SECTION 6. G.S. 90-21.12 reads as rewritten:
(a) Except as provided in subsection (b) of this section, in any medical malpractice
action as defined in G.S. 90-21.11(2)(a), action for damages for personal injury or death arising
out of the furnishing or the failure to furnish professional services in the performance of
medical, dental, or other health care, the defendant health care provider shall not be liable for
the payment of damages unless the trier of the facts finds by the greater weight of
the evidence that the care of such health care provider was not in accordance with the standards
of practice among members of the same health care profession with similar training and
experience situated in the same or similar communities under the same or similar circumstances
at the time of the alleged act giving rise to the cause of action; or in the case of a medical
malpractice action as defined in G.S. 90-21.11(2)(b), the defendant health care provider shall
not be liable for the payment of damages unless the trier of fact finds by the greater weight of
the evidence that the action or inaction of such health care provider was not in accordance with
the standards of practice among similar health care providers situated in the same or similar
communities under the same or similar circumstances at the time of the alleged act giving rise
to the cause of action.
(b) In any medical malpractice action arising out of the furnishing or the failure to
furnish professional services in a hospital emergency room, the claimant must prove a violation
of the standard of health care set forth in subsection (a) of this section by clear and convincing
evidence."

SECTION 7. Article 1B of Chapter 90 of the General Statutes is amended by
adding the following new section to read:
(a) In any medical malpractice action in which the plaintiff is entitled to an award of
noneconomic damages, the total amount of noneconomic damages for which judgment is
entered against all defendants shall not exceed five hundred thousand dollars ($500,000). On
January 1 of every third year, beginning with January 1, 2014, the Administrative Office of the
Courts shall reset the limitation on damages for noneconomic loss set forth in this subsection to be equal to five hundred thousand dollars ($500,000) times the ratio of the Consumer Price Index for November of the prior year to the Consumer Price Index for November 2011. In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B(1) exceeds these limits, the court shall modify the judgment as necessary to conform to the requirements of this subsection.

(b) The following definitions apply in this section:


(2) Noneconomic damages. – Damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, physical impairment, disfigurement, and any other nonpecuniary, compensatory damage. "Noneconomic damages" does not include punitive damages as defined in G.S. 1D-5.

(c) Any award of damages in a medical malpractice action shall be stated in accordance with G.S. 90-21.19B. If a jury is determining the facts, the court shall not instruct the jury with respect to the limit of noneconomic damages under subsection (a) of this section, and neither the attorney for any party nor a witness shall inform the jury or potential members of the jury panel of that limit.

SECTION 8. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"§ 90-21.19A. Periodic payment of future economic damages in medical malpractice actions.

(a) The following definitions apply in this section:

(1) Future economic damages. – Damages for future expense for medical treatment, care or custody, loss of future earnings, loss of future household services, and any other future pecuniary damages of the plaintiff following the date of the verdict or award.

(2) Periodic payments. – The payment of money or delivery of other property to the plaintiff at regular intervals.

(b) In any medical malpractice action, the form of the fact finder's verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for future economic damages, and what amount, if any, of the total amount awarded for future economic damages represents damages awarded for loss of future earnings or loss of future household services.

(c) Upon the award of future economic damages in any medical malpractice action, the presiding judge shall, at the request of either party, enter a judgment ordering that the future economic damages of the plaintiff be paid in whole or in part by periodic payments rather than by a lump-sum payment if the present value of the future economic damages award is greater than or equal to two hundred thousand dollars ($200,000). In entering a judgment ordering the payment of future economic damages by periodic payments, the court shall make a specific finding as to the dollar amount of the present value of that portion of the future economic damages for which the plaintiff is to be paid by periodic payments. In calculating the total damages from which any attorney contingency fee for representing the plaintiff in connection with the medical malpractice action is calculated, the present value of any portion of the award representing future economic damages that are to be paid by periodic payments shall be used.

(d) A judgment authorizing periodic payments of future economic damages shall require that such payments be made through the establishment of a trust fund or the purchase of an annuity for the life of the plaintiff or during the continuance of the compensable injury or disability of the plaintiff, in such form and under such terms as shall be approved by the court.
The establishment of a trust fund or the purchase of an annuity, as required and approved by the court, shall constitute the satisfaction of the defendant's judgment for future economic damages.

(e) The judgment ordering the payment of future economic damages by periodic payments shall specify the recipient of the payments, the schedule of the periodic payments, and the dollar amount of each periodic payment to be made pursuant to the schedule. The death of the plaintiff terminates liability for payment of future economic damages which by judgment pursuant to this section are required to be paid in periodic payments not yet due, except that the court that entered the original judgment may modify the judgment to provide that liability for payment of future periodic payments compensating the plaintiff for loss of future earnings or loss of future household services shall not be terminated by reason of the death of the plaintiff but shall continue to be paid to persons surviving the plaintiff to whom the plaintiff owed a duty of support pursuant to law immediately prior to the plaintiff's death."

SECTION 9. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"§ 90-21.19B. Verdicts and awards of damages in medical malpractice actions; form.

In any malpractice action, any verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for each of the following:

(1) Noneconomic damages.
(2) Present economic damages.
(3) Future economic damages.
(4) Loss of future earnings.
(5) Loss of future household services.

If applicable, the court shall instruct the jury on the definition of noneconomic damages under G.S. 90-21.19(b) and the definition of future economic damages under G.S. 90-21.19A(a). If applicable, the court shall instruct the jury that present economic damages are those damages for medical treatment, care or custody, loss of earnings, loss of household services, and any other pecuniary damages of the plaintiff up to the date of the verdict or award."

SECTION 10. G.S. 1-17 reads as rewritten:

"§ 1-17. Disabilities.

(a) A person entitled to commence an action who is under a disability at the time the cause of action accrued may bring his or her action within the time limited in this Subchapter, after the disability is removed, except in an action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents and services out of the real property, when the person must commence his or her action, or make the entry, within three years next after the removal of the disability, and at no time thereafter.

For the purpose of this section, a person is under a disability if the person meets one or more of the following conditions:

(1) The person is within the age of 18 years.
(2) The person is insane.
(3) The person is incompetent as defined in G.S. 35A-1101(7) or (8).

(a1) For those persons under a disability on January 1, 1976, as a result of being imprisoned on a criminal charge, or in execution under sentence for a criminal offense, the statute of limitations shall commence to run and no longer be tolled from January 1, 1976.

(b) Notwithstanding the provisions of subsection (a) of this section, and except as otherwise provided in subsection (c) of this section, an action on behalf of a minor for malpractice arising out of the performance of or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except that if those time limitations expire before the minor attains the full age of 19 years, the action may be brought before the minor attains the full age of 19 years.
(c) Notwithstanding the provisions of subsection (a) and (b) of this section, an action on behalf of a minor for injuries alleged to have resulted from malpractice arising out of a health care provider's performance of or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except as follows:

1. If the time limitations specified in G.S. 1-15(c) expire before the minor attains the full age of 10 years, the action may be brought any time before the minor attains the full age of 10 years.

2. If the time limitations in G.S. 1-15(c) have expired and before a minor reaches the full age of 18 years a court has entered judgment or consent order under the provisions of Chapter 7B of the General Statutes finding that said minor is an abused or neglected juvenile as defined in G.S. 7B-101, the medical malpractice action shall be commenced within three years from the date of such judgment or consent order, or before the minor attains the full age of 10 years, whichever is later.

3. If the time limitations in G.S. 1-15(c) have expired and a minor is in legal custody of the State, a county, or an approved child placing agency as defined in G.S. 131D-10.2, the medical malpractice action shall be commenced within one year after the minor is no longer in such legal custody, or before the minor attains the full age of 10 years, whichever is later.

SECTION 11. Severability. — If the provisions of Section 7 of this act are declared to be unconstitutional or otherwise invalid by final decision of a court of competent jurisdiction, then Section 8 and Section 9 of this act are repealed, but the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions. If any other provision of this act or its application to any person or circumstance is held invalid, the remainder of this act or the application of the provision to other persons or circumstances is not affected.

SECTION 12. Sections 5, 6 and 10 of this act become effective October 1, 2011, and apply to causes of actions arising on or after that date. The remainder of this act becomes effective October 1, 2011, and applies to actions commenced on or after that date.
A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

PART I. GENERAL REFORMS

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

"Rule 414. Evidence of medical expenses.
Evidence offered to prove past medical expenses may include all bills reasonably paid and a statement of the amounts actually necessary to satisfy the bills that have been incurred but not yet paid. Evidence of source of payment and rights of subrogation related to the payment shall be admissible."

SECTION 1.2. G.S. 1-289 reads as rewritten:

"§ 1-289. Undertaking to stay execution on money judgment.
(a) If the appeal is from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, as set forth in this section.

(b) In an action where the judgment directs the payment of money, the court shall specify the amount of the undertaking required to stay execution of the judgment pending appeal as provided in subsection (c) of this section. The undertaking shall be to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal, except as provided in subsection (b) of this section. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time before the deposit is made, order the money"
deposited in court instead of with the officer; and a deposit made pursuant to such order is of
the same effect as if made with the officer. The perfecting of an appeal by giving the
undertaking mentioned in this section stays proceedings in the court below upon the judgment
appealed from; except when the sale of perishable property is directed, the court below may
order the property to be sold and the proceeds thereof to be deposited or invested, to abide the
judgment of the appellate court.

(c) The amount of the undertaking that shall be required by the court shall be an amount
determined by the court after notice and hearing proper and reasonable for the security of the
rights of the adverse party, considering relevant factors, including the following:

(1) The amount of the judgment.
(2) The amount of the limits of all applicable liability policies of the appellant
judgment debtor.
(3) The aggregate net worth of the appellant judgment debtor.

(b) If the appellee in a civil action brought under any legal theory obtains a judgment
directing the payment or expenditure of money in the amount of twenty five million dollars
($25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the
period of time during which the appellant has the right to pursue appellate review, including
discretionary review and certiorari, the amount of the undertaking that the appellant is required
to execute to stay execution of the judgment during the entire period of the appeal shall be
twenty five million dollars ($25,000,000).

(e) If the appellee proves by a preponderance of the evidence that the appellant for
whom the undertaking has been limited under subsection (b) of this section is, for the purpose
of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its
assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United
States other than in the ordinary course of business, then the limitation in subsection (b) of this
section shall not apply and the appellant shall be required to make an undertaking in the full
amount otherwise required by this section."

SECTION 1.3. Chapter 8 of the General Statutes is amended by adding a new
Article to read:

"Article 7D.
"Admissibility of Collateral Source Payments.
§ 8-58.25. Certain collateral source payments admissible as evidence.
(a) As used in this section, "collateral source payments" means a payment for any of the
following damages for which recovery is permitted in a civil action that is made to or for the
benefit of a plaintiff or is otherwise available to the plaintiff:

(1) Medical expenses and disability payments under the federal Social Security
Act, any federal, State, or local income disability act, or any other public
program.
(2) Payments under any health, sickness, or income disability insurance or
automobile accident insurance that provides health benefits or income
disability coverage, and any other similar insurance benefits available to the
plaintiff, except life insurance.
(3) Payments under any contract or agreement of any person, group,
organization, partnership, or corporation to provide, pay for, or reimburse
the costs of hospital, medical, dental, or health care services.
(4) Payments under any contractual or voluntary wage continuation plan
provided by an employer or other system intended to provide wages during a
period of disability.
(5) From any other source.

A collateral source payment does not include gifts, gratuitous contributions or assistance, or
payments arising from assets of the plaintiff."
In any action, the court shall allow into evidence, if requested by a defendant, collateral source payments paid to or for the benefit of the plaintiff, or that are otherwise made available to the plaintiff, related to the losses or damages alleged in the complaint. Any amounts so allowed shall first be reduced by any payments made by the plaintiff to secure the right to receive the collateral source payment. The court shall allow into evidence, if requested by the plaintiff, rights of subrogation of any collateral source."

SECTION 1.4. G.S. 8C-702(a) reads as rewritten:

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

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

SECTION 1.5. G.S. 1A-1, Rule 42(b), reads as rewritten:

"(b) Separate trials. –

(1) The court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

(2) Upon motion of any party in an action that includes a claim commenced under Article 1G of Chapter 90 of the General Statutes involving a managed care entity as defined in G.S. 90-21.50, the court shall order separate discovery and a separate trial of any claim, cross-claim, counterclaim, or third-party claim against a physician or other medical provider.

(3) Upon motion of any party in an action in tort wherein the plaintiff seeks damages exceeding seventy-five thousand dollars ($75,000), the court shall order separate trials for the issue of liability and the issue of damages. Evidence relating solely to compensatory damages shall not be admissible until the trier of fact has determined that the defendant is liable. The same trier of fact that tries the issues relating to liability shall try the issues relating to damages."

SECTION 1.6. G.S. 1D-25 reads as rewritten:

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

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

(b) Punitive damages awarded against a defendant shall not exceed three times the amount of compensatory damages or two hundred fifty thousand dollars ($250,000), whichever is greater. If a trier of fact returns a verdict for punitive damages in excess of the maximum amount specified under this subsection, the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount.

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

(d) Punitive damages awarded in excess of one hundred thousand dollars ($100,000) shall be awarded by the presiding judge as follows:
(1) Twenty-five percent (25%) of the amount over one hundred thousand dollars ($100,000) shall be remitted to the plaintiff in accordance with applicable law.

(2) Seventy-five percent (75%) of the amount over one hundred thousand dollars ($100,000) shall be remitted to the Civil Penalty and Forfeiture Fund.

PART II. REFORMS APPLICABLE TO MEDICAL MALPRACTICE ACTIONS

SECTION 2.1. G.S. 1A-1, Rule 9(j), reads as rewritten:

"(j) Medical malpractice. – Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 90-21.12 shall be dismissed unless:

(1) The pleading specifically asserts that the medical care and all medical records pertaining to the alleged injury then available to the plaintiff after reasonable inquiry, have been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care;

(2) The pleading specifically asserts that the medical care and all medical records pertaining to the alleged injury then available to the plaintiff after reasonable inquiry, have been reviewed by a person that the complainant will seek to have qualified as an expert witness by motion under Rule 702(e) of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care, and the motion is filed with the complaint; or

(3) The pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitur.

Upon motion by the complainant prior to the expiration of the applicable statute of limitations, a resident judge of the superior court for a judicial district in which venue for the cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is physically present in that judicial district, otherwise available, or able or willing to consider the motion, then any presiding judge of the superior court for that judicial district may allow a motion to extend the statute of limitations for a period not to exceed 120 days to file a complaint in a medical malpractice action in order to comply with this Rule, upon a determination that good cause exists for the granting of the motion and that the ends of justice would be served by an extension. The plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection. These interrogatories do not count against the interrogatory limit under Rule 33."

SECTION 2.2. (a) G.S. 90-21.11 reads as rewritten:


As used in this Article, the term "health care provider" means any person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed, or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology, psychiatry, or psychology.
b. or a hospital or hospital, a nursing home, or an adult care home licensed under Chapter 131D of the General Statutes.

c. or any other person who is legally responsible for the negligence of such person, hospital or nursing home, or an adult care home described by sub-subdivision a. of this subdivision.

d. or any other person acting at the direction or under the supervision of any of the foregoing persons, a person described by sub-subdivision a. of this subdivision.

(2) As used in this Article, the term "medical malpractice action" means:

Medical malpractice action. — Either of the following:

a. a civil action for damages for personal injury or death arising out of the furnishing or failure to furnish professional services in the performance of medical, dental, or other health care by a health care provider.

b. A civil action against a hospital, a nursing home, or an adult care home licensed under Chapter 131D of the General Statutes for damages for personal injury or death, when the civil action (i) alleges a breach of administrative or corporate duties to the patient, including, but not limited to, allegations of negligent credentialing or negligent monitoring and supervision; and (ii) arises from the same facts or circumstances as a claim under sub-subdivision a. of this subdivision.

SECTION 2.2.(b) G.S. 90-21.12 reads as rewritten:


(a) Except as provided in subsection (b) of this section, in any medical malpractice action for damages for personal injury or death arising out of the furnishing or the failure to furnish professional services in the performance of medical, dental, or other health care, the defendant health care provider shall not be liable for the payment of damages unless the trier of the fact finds by the greater weight of the evidence that the care of such health care provider was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities under the same or similar circumstances at the time of the alleged act giving rise to the cause of action.

(b) In any medical malpractice action arising out of the furnishing or the failure to furnish services pursuant to obligations imposed by 42 U.S.C. § 1395dd for an emergency medical condition as defined in 42 U.S.C. § 1395dd(e)(1), the defendant health care provider shall not be liable for the payment of damages unless the trier of fact finds by the greater weight of the evidence that the health care provider's deviation from the standard of care required under subsection (a) of this section constituted gross negligence, wanton conduct, or intentional wrongdoing. Nothing in this subsection shall be construed to change, alter, override, or otherwise affect the provisions of G.S. 90-21.14, 90-21.15, 90-21.16, or 20-166."

SECTION 2.3.(a) Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:


(a) In any medical malpractice action in which the plaintiff is entitled to an award of noneconomic damages, the total amount of noneconomic damages for which judgment is entered against all defendants shall not exceed two hundred fifty thousand dollars ($250,000)."
per defendant. On January 1 of every third year, beginning with January 1, 2014, the
Administrative Office of the Courts shall reset the limitation on damages for noneconomic loss
set forth in this subsection to be equal to two hundred fifty thousand dollars ($250,000) times
the ratio of the Consumer Price Index for November of the prior year to the Consumer Price
Index for November 2011. In the event that any verdict or award of noneconomic damages
stated pursuant to G.S. 90-21.19B(1) exceeds these limits, the court shall modify the judgment
as necessary to conform to the requirements of this subsection.

(b) The following definitions apply in this section:
(1) Consumer Price Index. – The Consumer Price Index – All Urban
Consumers, for the South urban area, as published by the Bureau of Labor
Statistics of the United States Department of Labor.
(2) Noneconomic damages. – Damages to compensate for pain, suffering,
emotional distress, loss of consortium, inconvenience, physical impairment,
disfigurement, and any other nonpecuniary, compensatory damage.
"Noneconomic damages" does not include punitive damages as defined in
G.S. 1D-5.

(c) Any award of damages in a medical malpractice action shall be stated in accordance
with G.S. 90-21.19B. If a jury is determining the facts, the court shall not instruct the jury with
respect to the limit of noneconomic damages under subsection (a) of this section, and neither
the attorney for any party nor a witness shall inform the jury or potential members of the jury
panel of that limit."

§ 90-21.19A. Periodic payment of future economic damages in medical malpractice
actions.
(a) The following definitions apply in this section:
(1) Future economic damages. – Damages for future expense for medical
treatment, care or custody, loss of future earnings, loss of future household
services, and any other future pecuniary damages of the plaintiff following
the date of the verdict or award.
(2) Periodic payments. – The payment of money or delivery of other property to
the plaintiff at regular intervals.
(b) In any medical malpractice action, the form of the fact finder's verdict or award of
damages, if supported by the evidence, shall indicate specifically what amount is awarded for
future economic damages, and what amount, if any, of the total amount awarded for future
economic damages represents damages awarded for loss of future earnings or loss of future
household services.
(c) Upon the award of future economic damages in any medical malpractice action, the
presiding judge shall, at the request of either party, enter a judgment ordering that the future
economic damages of the plaintiff be paid in whole or in part by periodic payments rather than
by a lump-sum payment if the present value of the future economic damages award is greater
than or equal to two hundred thousand dollars ($200,000). In entering a judgment ordering the
payment of future economic damages by periodic payments, the court shall make a specific
finding as to the dollar amount of the present value of that portion of the future economic
damages for which the plaintiff is to be paid by periodic payments. In calculating the total
damages from which any attorney contingency fee for representing the plaintiff in connection
with the medical malpractice action is calculated, the present value of any portion of the award
representing future economic damages that are to be paid by periodic payments shall be used.
(d) A judgment authorizing periodic payments of future economic damages shall
require that such payments be made through the establishment of a trust fund or the purchase of
an annuity for the life of the plaintiff or during the continuance of the compensable injury or
disability of the plaintiff, in such form and under such terms as shall be approved by the court. The establishment of a trust fund or the purchase of an annuity, as required and approved by the court, shall constitute the satisfaction of the defendant's judgment for future economic damages.

(e) The judgment ordering the payment of future economic damages by periodic payments shall specify the recipient of the payments, the schedule of the periodic payments, and the dollar amount of each periodic payment to be made pursuant to the schedule. The death of the plaintiff terminates liability for payment of future economic damages which by judgment pursuant to this section are required to be paid in periodic payments not yet due, except that the court that entered the original judgment may modify the judgment to provide that liability for payment of future periodic payments compensating the plaintiff for loss of future earnings or loss of future household services shall not be terminated by reason of the death of the plaintiff, but shall continue to be paid to persons surviving the plaintiff to whom the plaintiff owed a duty of support pursuant to law immediately prior to the plaintiff's death."

SECTION 2.3.(c) Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"§ 90-21.19B. Verdicts and awards of damages in medical malpractice actions; form.

In any malpractice action, any verdict or award of damages, if supported by the evidence, shall indicate specifically what amount is awarded for each of the following:

1. Noneconomic damages.
2. Present economic damages.
3. Future economic damages.
5. Loss of future household services.

If applicable, the court shall instruct the jury on the definition of noneconomic damages under G.S. 90-21.19(b) and the definition of future economic damages under G.S. 90-21.19A(a). If applicable, the court shall instruct the jury that present economic damages are those damages for medical treatment, care or custody, loss of earnings, loss of household services, and any other pecuniary damages of the plaintiff up to the date of the verdict or award."

SECTION 2.4. G.S. 1A-1, Rule 26(f1), reads as rewritten:

"(f1) Medical malpractice discovery conference. - In a medical malpractice action as defined in G.S. 90-21.11, upon the case coming at issue or the filing of a responsive pleading or motion requiring a determination by the court, the judge shall, within 30 days, direct the attorneys for the parties to appear for a discovery conference. At the conference the court may consider the matters set out in Rule 16, and shall:

... (2) Establish an appropriate schedule for designating expert witnesses, consistent with a discovery schedule pursuant to subdivision (3), to be complied with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses: (3) of this subsection. As to each expert designated, the designation shall be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation the witness is to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. The party shall supplement the expert's report if the
party learns that in some material respect the report is incomplete or
incorrect. The expert's direct testimony shall not be inconsistent with or go
beyond the fair scope of the expert report as supplemented.

PART III. REFORM APPLICABLE TO PRODUCTS LIABILITY ACTIONS
SECTION 3.1.(a) G.S. 99B-1 reads as rewritten:

"§ 99B-1. Definitions.
When used in this Chapter, unless the context otherwise requires:

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

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

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

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

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

SECTION 3.1.(b) Chapter 99B of the General Statutes is amended by adding the
following new section to read:

"§ 99B-12. Regulatory compliance.
(a) No manufacturer or seller shall be held liable in any product liability action if any
one of the following apply:

(1) The product alleged to have caused the harm was designed, manufactured,
packaged, labeled, sold, or represented in relevant and material respects in
accordance with the terms of an approval, license, or similar determination
of a government agency, where the approval, license, or similar
determination is relevant to the event or risk allegedly causing the harm.

(2) The product was in compliance with a statute of this State or the United
States, or a standard, rule, regulation, order, or other action of a government
agency pursuant to statutory authority, where the statute or agency action is
relevant to the event or risk allegedly causing the harm and the product was
in compliance at the time the product left the control of the manufacturer or
seller.

(3) The act or transaction forming the basis of the claim involves terms of
service, contract provisions, representations, or other practices authorized
by, or in compliance with, the rules, regulations, standards, or orders of, or a
statute administered by, a government agency.

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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 product after the effective date of an order of a government agency to remove the product or service from the market, to withdraw its approval, or to substantially alter its terms of approval in a manner that would have avoided the claimant's alleged injury.

2. Intentionally, and in violation of applicable regulations, withheld from or misrepresented to the government agency information material to the approval or maintaining of approval of the product, 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 product.

(c) Nothing in this section shall be construed to (i) expand the authority of any State agency or State agent to adopt or promulgate standards or regulations where no such authority previously existed; (ii) reduce the scope of any limitation on liability based on compliance with the rules or regulations of a government agency applicable to a specific act, transaction, person, or industry; or (iii) affect the liability of a service provider based on rates filed with and reviewed or approved by a government agency.

PART IV. OTHER REFORMS

SECTION 4.1. 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 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 (i) that the judgment for recovery of amount of damages recovered is ten thousand dollars ($10,000) or fifteen thousand dollars ($15,000) or less, and (ii) that the amount of damages recovered exceeded the highest offer made by the defendant prior to the commencement of the trial, the presiding judge may, in his discretion, allow a reasonable attorney fee to the duly licensed attorney representing the litigant obtaining a judgment for damages in said suit, said attorney's fee 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 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 4.2. 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 possessor may use reasonable force to repel a trespasser who has entered the land or a building with the intent to commit a crime.

2. Harms to trespassing children caused by artificial condition. – A possessor may be subject to liability for bodily injury or death to a child trespasser resulting from an artificial condition on the land if all of the following apply:
   a. The possessor knew or had reason to know that children were likely to trespass at the location of the condition.
   b. The condition is one the possessor knew or reasonably should have known involved an unreasonable risk of bodily injury or death to such children.
   c. The injured child did not discover the condition or realize the risk involved in the condition or in coming within the area made dangerous by it.
   d. The possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.

§ 38B-4. Definitions.

The following definitions shall apply in this Chapter:

1. Child trespasser. – A trespasser who is less than 14 years of age or who has the level of mental development found in a person less than 14 years of age.

2. Possessor. – A person in lawful possession of land, including an owner, lessee, or other occupant, or a person acting on behalf of such a lawful possessor of land.

3. Trespasser. – A person who enters on the property of another without permission and without an invitation, express or implied.

PART V. MISCELLANEOUS PROVISIONS

SECTION 5.1. Severability. – If the provisions of Section 2.3(a) of this act are declared to be unconstitutional or otherwise invalid by final decision of a court of competent jurisdiction, then Section 2.3(b) and Section 2.3(c) of this act are repealed, but the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions. If any other provision of this act or its application to any person or circumstance is held invalid, the remainder of this act or the application of the provision to other persons or circumstances is not affected.

SECTION 5.2. Sections 2.2, 2.3, 3.1, and 4.2 of this act become effective October 1, 2011, and apply to causes of actions arising on or after that date. The remainder of this act becomes effective October 1, 2011, and applies to actions commenced on or after that date.
A BILL TO BE ENTITLED
AN ACT TO PROVIDE TORT REFORM FOR NORTH CAROLINA CITIZENS AND
BUSINESSES.
The General Assembly of North Carolina enacts:
PART I. GENERAL REFORMS
SECTION 1.1. Article 4 of Chapter 8C of the General Statutes is amended by
adding a new section to read:
"Rule 414. Evidence of medical expenses.
Evidence offered to prove past medical expenses may include all bills reasonably paid and a
statement of the amounts actually necessary to satisfy the bills that have been incurred but not
yet paid."
SECTION 1.2. G.S. 8-58.1 reads as rewritten:
"§ 8-58.1. Injured party as witness when medical charges at issue.
Whenever an issue of hospital, medical, dental, pharmaceutical, or funeral charges arises in
any civil proceeding, the injured party or his guardian, administrator, or executor is competent
to give evidence regarding the amount of such charges, provided that records or copies of such
charges accompany such testimony. The testimony of such a person establishes a rebuttable
presumption of the reasonableness of the amount of the charges."
SECTION 1.3. G.S. 8C-702(a) reads as rewritten:
"(a) If scientific, technical or other specialized knowledge will assist the trier of fact to
understand the evidence or to determine a fact in issue, a witness qualified as an expert by
knowledge, skill, experience, training, or education, may testify thereto in the form of an
opinion, opinion, or otherwise if all of the following apply:
(1) The testimony is based upon sufficient facts or data.
(2) The testimony is the product of reliable principles and methods.
(3) The witness has applied the principles and methods reliably to the facts of
the case."
SECTION 1.4. G.S. 1D-25 reads as rewritten:
"§ 1D-25. Limitation of amount of recovery.
(a) In all actions seeking an award of punitive damages, the trier of fact shall determine
the amount of punitive damages separately from the amount of compensation for all other
damages.
(b) Punitive damages awarded against a defendant shall not exceed three times the
amount of compensatory damages or two hundred fifty thousand dollars ($250,000), whichever
is greater. If a trier of fact returns a verdict for punitive damages in excess of the maximum amount specified under this subsection, the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount.

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

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

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

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

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

PART II. REFORM APPLICABLE TO PRODUCTS LIABILITY ACTIONS

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

"§ 99B-1. Definitions.

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

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

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

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

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

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

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

"§ 99B-12. Regulatory compliance.

No manufacturer or seller of a product that is a drug shall be held liable in any product liability action if the drug alleged to have caused the harm was approved for safety and efficacy by the United States Food and Drug Administration, and the drug and its labeling were in compliance with the United States Food and Drug Administration's approval at the time the
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:

- 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.
- 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.
- 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 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 (i) that the judgment for recovery of amount of damages recovered is ten thousand dollars ($10,000) or fifteen thousand dollars ($15,000) or less, and (ii) 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 to the duly licensed attorney representing the litigant obtaining a judgment for damages in said suit, said attorney's fee 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
possessor may use reasonable force to repel a trespasser who has entered the land or a building with the intent to commit a crime.

Harms to trespassing children caused by artificial condition. – A possessor may be subject to liability for bodily injury or death to a child trespasser resulting from an artificial condition on the land if all of the following apply:

a. The possessor knew or had reason to know that children were likely to trespass at the location of the condition.
b. The condition is one the possessor knew or reasonably should have known involved an unreasonable risk of bodily injury or death to such children.
c. The injured child did not discover the condition or realize the risk involved in the condition or in coming within the area made dangerous by it.
d. The possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.

"§ 38B-4. Definitions.

The following definitions shall apply in this Chapter:

(1) Child trespasser. – A trespasser who is less than 14 years of age or who has the level of mental development found in a person less than 14 years of age.

(2) Possessor. – A person in lawful possession of land, including an owner, lessee, or other occupant, or a person acting on behalf of such a lawful possessor of land.

(3) Trespasser. – A person who enters on the property of another without permission and without an invitation, express or implied."

PART IV. MISCELLANEOUS PROVISIONS

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

SECTION 4.2. Sections 2.1, 2.2, and 3.2 of this act become effective October 1, 2011, and apply to causes of actions arising on or after that date. The remainder of this act becomes effective October 1, 2011, and applies to actions commenced on or after that date.
Representative Mills moves to amend the bill on page 1, line 11, by rewriting that line to read:
"yet paid. This rule does not impose upon any party an affirmative duty to seek a reduction in billed charges to which the party is not contractually entitled.".

AMENDMENT NO. 1
(to be filled in by Principal Clerk)
Page 1 of 1
Date April 14, 2011

SIGNED Amendment Sponsor

SIGNED Committee Chair if Senate Committee Amendment

ADOPTED √ FAILED FAILED TABLED
Representative Weiss

1 moves to amend the bill on page 2, line 18 through page 3, line 14, by deleting those lines;
2 and by renumbering the remaining parts and sections accordingly.

SIGNED

Amendment Sponsor

Committee Chair if Senate Committee Amendment

ADOPTED FAILED TABLED
Representative Mills

moves to amend the bill on page 3, lines 16 through 36, by deleting those lines in their entirety;

and on page 3, lines 37 and 38, by rewriting those lines to read:

"SECTION 3.1. The General Statutes are amended by adding a new Chapter to read:"

SIGNED

Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED

FAILED

TABLED
moves to amend the bill on page 3, line 24, by deleting the phrase "fifteen thousand dollars ($15,000)" and substituting the phrase "twenty thousand dollars ($20,000)".

Representative

Amendment Sponsor

Committee Chair if Senate Committee Amendment

ADOPTED ✔ FAILED TABLED
Representative Murry moves to amend the bill on page 4, line 9, by rewriting that line to read: "known involved an unreasonable risk of serious bodily injury or death to";

and on page 4, lines 14 through 15, by rewriting those lines to read:

"d) The utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child involved.

e) The possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.";

and on page 4, lines 15 through 16, by inserting the following between those lines:

"(3) Position of peril. - A possessor may be subject to liability for physical injury or death to a trespasser if the possessor discovered the trespasser in a position of peril or helplessness on the property and failed to exercise ordinary care not to injure the trespasser.".

SIGNED ____________________________
Amendment Sponsor

SIGNED ____________________________
Committee Chair if Senate Committee Amendment

ADOPTED [ ] FAILED [ ] TABLED [ ]
A BILL TO BE ENTITLED
AN ACT TO PROVIDE TORT REFORM FOR NORTH CAROLINA CITIZENS AND
BUSINESSES.

The General Assembly of North Carolina enacts:

PART I. GENERAL REFORMS

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

"Rule 414. Evidence of medical expenses.
Evidence offered to prove past medical expenses may include all bills reasonably paid and a
statement of the amounts actually necessary to satisfy the bills that have been incurred but not
yet paid. This rule does not impose upon any party an affirmative duty to seek a reduction in
billed charges to which the party is not contractually entitled."

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

"§ 8-58.1. Injured party as witness when medical charges at issue.
Whenever an issue of hospital, medical, dental, pharmaceutical, or funeral charges arises in
any civil proceeding, the injured party or his guardian, administrator, or executor is competent
to give evidence regarding the amount of such charges, provided that records or copies of such
charges accompany such testimony. The testimony of such a person establishes a rebuttable
presumption of the reasonableness of the amount of the charges."

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

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

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

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

"§ 1D-25. Limitation of amount of recovery.
(a) In all actions seeking an award of punitive damages, the trier of fact shall determine
the amount of punitive damages separately from the amount of compensation for all other
damages.
General Assembly Of North Carolina  
Session 2011

(b) Punitive damages awarded against a defendant shall not exceed three times the amount of compensatory damages or two hundred fifty thousand dollars ($250,000), whichever is greater. If a trier of fact returns a verdict for punitive damages in excess of the maximum amount specified under this subsection, the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount.

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

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

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

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

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

PART II. REFORM APPLICABLE TO PRODUCTS LIABILITY ACTIONS

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

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

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

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

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

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

"§ 99B-12. Regulatory compliance.
No manufacturer or seller of a product that is a drug shall be held liable in any product liability action if the drug alleged to have caused the harm was approved for safety and efficacy..."
by the United States Food and Drug Administration and the drug and its labeling were in compliance with the United States Food and Drug Administration's approval at the time the 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.

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

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(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 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 (i) that the judgment for recovery of amount of damages recovered is ten thousand dollars ($10,000) or less, and (ii) 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's fees to the duly licensed attorney representing the litigant obtaining a judgment for damages in said suit, said attorney's fees to be taxed as a part of the court costs. The attorney's fees so awarded shall not exceed the higher of five thousand dollars ($5,000) or fifty percent (50%) of the damages awarded.

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This Chapter may be cited as the Trespasser Responsibility Act.

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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:
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 possessor may use reasonable force to repel a trespasser who has entered the land or a building with the intent to commit a crime.

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a. The possessor knew or had reason to know that children were likely to trespass at the location of the condition.

b. The condition is one the possessor knew or reasonably should have known involved an unreasonable risk of serious bodily injury or death to such children.

c. The injured child did not discover the condition or realize the risk involved in the condition or in coming within the area made dangerous by it.

d. The utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child involved.

e. The possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.

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The following definitions shall apply in this Chapter:

(1) Child trespasser. — A trespasser who is less than 14 years of age or who has the level of mental development found in a person less than 14 years of age.

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(3) Trespasser. — A person who enters on the property of another without permission and without an invitation, express or implied.

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

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

**SELECT COMMITTEE ON TORT REFORM**

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<th>Name</th>
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<td>Barry Howard</td>
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<td>Bo Heath</td>
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<td>Amy White</td>
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<td>Jennifer Epperson</td>
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<td>Nicole Fisher</td>
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<td>Elizabeth Robinson</td>
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<td>Jennifer Clayton</td>
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<td>John McMichael</td>
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**House Committee Pages / Sergeants at Arms**

**NAME OF COMMITTEE**: Tax Reform

**DATE**: 4-14-11

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<th>Name</th>
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<td>Jane Moffitt</td>
<td>Buncombe</td>
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<td>Tiaja Smalls</td>
<td>Cumberland</td>
<td>Earline Paymon</td>
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**Sponsor**: Earline Paymon

**House Sgt-At Arms**

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<td>Robert Rossi</td>
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<td>Billy Jones</td>
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REVISED AGENDA

HOUSE SELECT COMMITTEE ON TORT REFORM

Thursday, April 21, 2011
Room 1327 LB
11:00 AM

I. OPENING REMARKS

Representative Johnathan Rhyne, Co-Chair
Select Committee on Tort Reform

II. EXPLANATION OF HB 709

Representative Dale Folwell

III. PUBLIC COMMENT—each speaker may take 5 minutes

1. Lew Ebert--President and CEO of NC Chamber
2. Richard Harper—Attorney, Sylva, NC
3. Jeff Misenheimer—Chair for Workers’ Compensation Section of
   the NC Association of Defense Attorney
4. Don Carter—Columbia Forestry Products
5. Ken Stoller—Senior Counsel, American Insurance Association
6. Bill Wilson—AARP
7. Stephanie Gay—NC Association of Self Insurers
8. Bruce Clarke—President, Capital Associated Industries
9. Gina Cammarano—Attorney, Farah and Cammarano
10. George Ports—Employers Coalition of North Carolina
11. Byron Diggs—Pepsi Bottling Ventures
12. Ted Sawyer—Vocational Rehabilitation Expert
13. Mary Freeman—Tammy Lynn Center, Wake County
14. David Anders—Professional Fire Fighters & Paramedics of NC
15. Levi Grantham—injured worker
16. George Gonzales—injured worker

IV. ADJOURNMENT
Upon call of the Chair, the House Select Committee on Tort Reform met on Thursday, April 21, 2011 in room 1327 of the Legislative Building. The following members were present: Danny McComas, Johnathan Rhyne, Co-Chairs; Jim Crawford, Tom Murry, Vice-Chairs; Representatives Carney, Dollar, Faison, Gillespie, Hall, Hill, McGrady, McLawhorn, Mills, Owens, Parfitt, Randleman, Samuelson, and Weiss.

Chairman Rhyne called the meeting to order.

Chairman Rhyne recognized Representative Folwell to explain HB 709.

Chairman Rhyne explained the procedures for the public comment time, allowing each speaker to take no more than five minutes.

Sixteen people spoke (see Agenda).

Representative Folwell made brief concluding remarks.

Chairman Rhyne adjourned the meeting at 12:27 p.m.

Respectfully submitted,

Representative Johnathan Rhyne  
Co-Chair

Susan Beaupied  
Committee Assistant
A BILL TO BE ENTITLED
AN ACT PROTECTING AND PUTTING NORTH CAROLINA BACK TO WORK BY
REFORMING THE WORKERS' COMPENSATION ACT TO (1) DEFINE "SUITABLE
EMPLOYMENT" PERTAINING TO AN EMPLOYEE'S RETURN TO WORK WITHIN
RESTRICTIONS OR AFTER REACHING MAXIMUM IMPROVEMENT; (2) MAKE
WILLFUL MISREPRESENTATIONS GROUNDS FOR DISQUALIFICATION FROM
RECEIVING BENEFITS; (3) PROVIDE THAT PARTIES MAY REACH A SEPARATE
CONTEMPORANEOUS AGREEMENT TO RESOLVE ISSUES NOT COVERED BY
THE ACT; (4) CLARIFY THE RIGHTS AND RESPONSIBILITIES OF EMPLOYERS
AND EMPLOYEES REGARDING MEDICAL EXAMINATIONS, TREATMENT, AND
ACCESS TO MEDICAL INFORMATION; (5) CAP THE DURATION OF
COMPENSATION FOR TEMPORARY TOTAL DISABILITY; (6) EXTEND FROM
THREE HUNDRED TO FIVE HUNDRED THE NUMBER OF WEEKS AN INJURED
EMPLOYEE IS ELIGIBLE TO RECEIVE COMPENSATION FOR PARTIAL
INCAPACITY; (7) INCREASE THE DEATH BENEFIT AND BURIAL EXPENSE
ALLOWANCE; (8) REDUCE THE INDUSTRIAL COMMISSION FROM SEVEN TO
FIVE MEMBERS SUBJECT TO LEGISLATIVE CONFIRMATION; (9) PROVIDE
THAT COMMISSIONERS AND DEPUTY COMMISSIONERS ARE SUBJECT TO THE
CODE OF JUDICIAL STANDARDS; AND (10) REPEAL THE COMMISSION'S FULL
EXEMPTION FROM THE ADMINISTRATIVE PROCEDURE ACT, THEREBY
SUBJECTING THE COMMISSION TO RULE MAKING PURSUANT TO ARTICLE 2A
OF CHAPTER 150B OF THE GENERAL STATUTES AND REQUIRING THE
COMMISSION TO READOPT RULES PURSUANT TO THAT ARTICLE.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as the "Protecting and Putting North
Carolina Back to Work Act."

SECTION 2. G.S. 97-2 is amended by adding a new subsection to read:

"§ 97-2. Definitions. When used in this Article, unless the context otherwise requires:

(22) Suitable employment. – The term "suitable employment" means any
employment available that (i) prior to reaching maximum medical
improvement is within the employee's work restrictions including
rehabilitative employment approved by the employee's treating health care
provider or (ii) after reaching maximum medical improvement is
employment which the employee is capable of performing considering the employee's education, physical limitations due to the injury, vocational skills, and experience."

SECTION 3. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-12.1. Willful misrepresentation in applying for employment.

No compensation shall be allowed under this Article for injury by accident or occupational disease if the employer proves that (i) at the time of hire or in the course of entering into employment, (ii) at the time of receiving notice of the removal of conditions from a conditional offer of employment, or (iii) during the course of a post-offer medical examination:

1. The employee knowingly and willfully made a false representation as to the employee's physical condition;
2. The employer relied upon one or more false representations by the employee, and the reliance was a substantial factor in the employer's decision to hire the employee; and
3. There was a causal connection between false representation by the employee and the injury or occupational disease."

SECTION 4. G.S. 97-17 is amended by adding a new subsection to read:

"(e) Nothing in this section prevents the parties from reaching a separate contemporaneous agreement resolving issues not covered by this Article."

SECTION 5. G.S. 97-25 reads as rewritten:

"§ 97-25. Medical treatment and supplies.

Medical compensation shall be provided by the employer. In ease of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the Industrial Commission may order such further treatments as may in the discretion of the Commission be necessary.

The Industrial Commission may at any time upon the request of an employee order a change of treatment and designate other treatment suggested by the injured employee subject to the approval of the Commission, and in or health care provider, and in such a case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance. The Commission must find that any change in treatment or health care provider is based upon clear and convincing medical evidence. The Commission shall disregard any opinions of an unauthorized health care provider who evaluated, diagnosed, or treated the employee before the employee's request to change treatment or health care provider was filed with the Commission.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure when ordered by the Industrial Commission shall bar said the employee from further compensation until such the refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."

SECTION 6. G.S. 97-25.6 reads as rewritten:

"§ 97-25.6. Reasonable access to medical information.
It is the policy of this State that the parties have reasonable access to all medical records, reports, and information that are pertinent to and necessary for the fair and swift resolution of workers' compensation claims. Therefore, an employer is entitled, without the express authorization of the employee, to obtain medical records of the employee and communicate with an employee's health care providers if the requested medical records, reports, and information are:

1. Restricted to the particular evaluation, diagnosis, or treatment of the injury or disease for which compensation, including medical compensation, is sought;
2. Reasonably related to the injury or diseases for which the employee claims compensation; or
3. Related to an assessment of the employee's ability to return to work or perform suitable employment as a result of the particular injury or disease.

A party may communicate with the employee's health care providers by written and oral communication if the requesting party notifies the opposing party of the health care provider's response within 15 calendar days. The employer shall make every reasonable effort to limit unnecessary communication with the health care provider.

Upon motion by an employee or the health care provider from whom medical records, reports, or information are sought or upon its own motion, for good cause shown, the Commission may make any order which justice requires to protect an employee, health care provider, or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense.

The provisions of this section shall not apply to communications concerning an independent medical evaluation for the purpose of expert testimony.

The Commission shall annually establish an appropriate medical fee to compensate health care providers for time spent communicating with the employer or representatives of the employee.

No cause of action shall arise and no health care provider shall incur any liability as a result of the release of medical records, reports, or information pursuant to this Article.

For purposes of this section, the term "employer" means the employer, the employer's attorney, and the employer's insurance carrier or third-party administrator, and the term "employee" means the employee, legally appointed guardian, or any attorney representing the employee.

Notwithstanding any provision of G.S. 8-53 to the contrary, and because discovery is limited under G.S. 97-80, records obtained and communications conducted pursuant to this section supersede the prohibition against ex parte communications, and privacy of medical records in the custody of health care providers in matters or proceedings under this Article.

Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer or insurer paying medical compensation to a provider rendering treatment under this Article may obtain records of the treatment without the express authorization of the employee. In addition, with written notice to the employee, the employer or insurer may obtain directly from a medical provider medical records of evaluation or treatment restricted to a current injury or current condition for which an employee is claiming compensation from that employer under this Article.
Any medical records or reports, restricted to conditions related to the injury or illness for which the employee is seeking compensation, in the possession of the employee shall be furnished by the employee to the employer when requested in writing by the employer.

An employer or insurer paying compensation for an admitted claim or paying without prejudice pursuant to G.S. 97-18(d) may communicate with an employee's medical provider in writing, limited to specific questions promulgated by the Commission, to determine, among other information, the diagnosis for the employee's condition, the reasonable and necessary treatment, the anticipated time that the employee will be out of work, the relationship, if any, of the employee's condition to the employment, the restrictions from the condition, the kind of work for which the employee may be eligible, the anticipated time the employee will be restricted, and the permanent impairment, if any, as a result of the condition. When these questions are used, a copy of the written communication shall be provided to the employee at the same time and by the same means as the communication is provided to the provider.

Other forms of communication with a medical provider may be authorized by (i) a valid written authorization voluntarily given and signed by the employee, (ii) by agreement of the parties, or (iii) by order of the Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this section or through other provisions for discovery authorized by the Commission's rules. In adopting rules or authorizing employer communications with medical providers, the Commission shall protect the employee's right to a confidential physician-patient relationship while facilitating the release of information necessary to the administration of the employee's claim.

Upon motion by an employee or provider from whom medical records or reports are sought or upon its own motion, for good cause shown, the Commission may make any order which justice requires to protect an employee or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense.

SECTION 7. G.S. 97-27 reads as rewritten:

"§ 97-27. Medical examination; facts not privileged; refusal to be examined suspends compensation; other medical opinions; autopsy.

(a) After an injury, and so long as he-the employee claims compensation, the employee, if so requested by his or her employer or ordered by the Industrial Commission, shall, subject to the provisions of subsection (b), submit himself to an independent medical examination, at reasonable times and places, by a duly-qualified physician or surgeon—physician who is licensed and practicing in North Carolina and is designated and paid by the employer or the Industrial Commission, even if the employee's claim has been denied pursuant to G.S. 97-18(c).

(b) The injured employee shall have has the right to have present at such—the independent medical examination any duly-qualified physician or surgeon provided and paid by him—the employee.

(c) Notwithstanding the provisions of G.S. 8-53, no fact communicated to or otherwise learned by any physician or surgeon or hospital or hospital employee who may have attended or examined the employee, or who may have been present at any examination, shall be privileged in any workers' compensation case with respect to a claim pending for hearing before the Industrial Commission.

(d) If the employee refuses to submit himself to or in any way obstructs such—the examination requested by and provided for by the employer, his—the employee's right to compensation and his-right to take or prosecute any proceedings under this Article shall be suspended immediately until such—the refusal or objection ceases, and no compensation shall at any time be payable for the period of obstruction, unless in the opinion of the Industrial Commission the circumstances justify the refusal or obstruction. The employer, or the
Industrial Commission, shall have the right in any case of death to require an autopsy at the expense of the party requesting the same.

(b) In those cases arising under this Article in which there is a question as to the percentage of permanent disability suffered by an employee, if any employee, required to submit to a physical examination under the provisions of subsection (a) is dissatisfied with such examination or the report thereof, he shall be entitled to have another examination by a duly qualified physician or surgeon licensed and practicing in North Carolina or by a duly qualified physician or surgeon licensed to practice in South Carolina, Georgia, Virginia and Tennessee provided said nonresident physician or surgeon shall have been approved by the North Carolina Industrial Commission and his name placed on the Commission's list of approved nonresident physicians and surgeons, designated by him and paid by the employer or the Industrial Commission in the same manner as physicians designated by the employer or the Industrial Commission are paid. Provided, however, that all travel expenses incurred in obtaining said examination shall be paid by said employee. The employer shall have the right to have present at such examination a duly qualified physician or surgeon provided and paid for by him. No fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in hearings provided for by this Article or any action at law.

(e) In any case arising under this Article in which the employee is dissatisfied with the percentage of permanent disability as provided by G.S. 97-31 and determined by the authorized health care provider, the employee is entitled to another opinion solely on the issue of the percentage of permanent disability provided by a duly qualified physician of the employee's choosing who is licensed and practicing in North Carolina and designated by the employee. That physician is paid by the employer in the same manner as health care providers designated by the employer or the Industrial Commission are paid. The Industrial Commission shall disregard any opinions of the duly qualified physician chosen by the employee other than the physician's opinion on the percentage of permanent disability as described in G.S. 97-31. No fact communicated to or otherwise learned by any physician who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in hearings provided for by this Article or any action at law.

(f) The employer, or the Industrial Commission, has the right in any case of death to require an autopsy at its expense.

SECTION 8. G.S. 97-29 reads as rewritten:

"§ 97-29. Compensation rates--Rates and duration of compensation for total incapacity.

(a) Except as hereinafter otherwise provided, where the incapacity for work resulting from the injury or occupational disease is total, the employer shall pay or cause to be paid, as hereinafter provided, to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (662/3%) of his average weekly wages, but not more than the amount established annually to be effective October 1 as provided herein, nor less than thirty dollars ($30.00) per week.

(b) In cases of temporary total and permanent disability, compensation, including medical compensation, shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38 but in no case shall the period covered by the compensation be greater than 500 weeks from the date of the injury, except as provided by subsection (c) of this section. Where an employee can show both a disability pursuant to this section or G.S. 97-30 and a specific physical impairment pursuant to G.S. 97-31, regardless of whether the employee sustained multiple scheduled injuries as a result of the accident, the employee may not collect benefits pursuant to both this section or G.S. 97-30 and G.S. 97-31 after reaching maximum medical improvement, but rather is entitled to select the statutory compensation which provides the more favorable remedy.
In cases of total and permanent disability compensation, compensation including medical compensation, shall be paid by the employer during the lifetime of the injured employee. If death results from the injury or occupational disease, then the employer shall pay compensation in accordance with the provisions of G.S. 97-37. An injured employee is presumed to be totally and permanently disabled and qualified for lifetime compensation only if the injured employee has an injury consisting of one or more of the following:

1. The loss of both hands, both arms, both feet, both legs, or both eyes as provided by G.S. 97-31(17).
2. Spinal injury involving severe paralysis of both arms, both legs, or the trunk.
3. Severe brain or closed-head injury as evidenced by severe and permanent:
   a. Sensory or motor disturbances;
   b. Communication disturbances;
   c. Complex integrated disturbances of cerebral function; or
   d. Neurological disorders.
4. Second-degree or third-degree burns of thirty-three percent (33%) or more of the total body surface unless the employer shows that the employee is capable of returning to suitable employment as defined in G.S. 97-2(22).

The weekly compensation payment for members of the North Carolina National Guard and the North Carolina State Defense Militia shall be the maximum amount established annually in accordance with the last paragraph of this section per week as fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars ($30.00) a week as fixed herein.

An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article.

Notwithstanding any other provision of this Article, on July 1 of each year, a maximum weekly benefit amount shall be computed. The amount of this maximum weekly benefit shall be derived by obtaining the average weekly insured wage in accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by 1.10, and by rounding such figure to its nearest multiple of two dollars ($2.00), and this said maximum weekly benefit shall be applicable to all injuries and claims arising on and after January 1 following such computation. Such maximum weekly benefit shall apply to all provisions of this Chapter and shall be adjusted July 1 and effective January 1 of each year as herein provided."

"§ 97-30. Partial incapacity.
Except as otherwise provided in G.S. 97-31, where the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such disability, a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than the amount established annually to be effective October 1 as provided in G.S. 97-29 a week, and in no case shall the period covered by such compensation be greater than 300-500 weeks from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period herein allowed for partial disability. An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol and the North Carolina State Defense Militia shall be the maximum amount established annually in accordance with the last paragraph of this section per week as fixed herein.
General Assembly of North Carolina  
Session 2011

Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article."

SECTION 10. G.S. 97-32 reads as rewritten:

"§ 97-32. Refusal of injured employee to accept suitable employment as suspending compensation.

If an injured employee refuses suitable employment as defined by G.S. 97-2(22), the employee shall not be entitled to any compensation at any time during the continuance of such refusal, unless in the opinion of the Industrial Commission such refusal was justified. Nothing in this Article prohibits an employer from contacting the employee directly about returning to suitable employment."

SECTION 11. G.S. 97-38 reads as rewritten:

"§ 97-38. Where death results proximately from compensable injury or occupational disease; dependents; burial expenses; compensation to aliens; election by partial dependents.

If death results proximately from a compensable injury or occupational disease and within six years thereafter, or within two years of the final determination of disability, whichever is later, the employer shall pay or cause to be paid, subject to the provisions of other sections of this Article, weekly payments of compensation equal to sixty-six and two-thirds percent (66 2/3%) of the average weekly wages of the deceased employee at the time of the accident, but not more than the amount established annually to be effective October 1 as provided in G.S. 97-29, nor less than thirty dollars ($30.00), per week, and burial expenses not exceeding three thousand five hundred dollars ($3,500), ten thousand dollars ($10,000), to the person or persons entitled thereto as follows:

(3) If there is no person wholly dependent, and the person or all persons partially dependent is or are within the classes of persons defined as "next of kin" in G.S. 97-40, whether or not such persons or such classes of persons are of kin to the deceased employee in equal degree, and all so elect, he or they may take, share and share alike, the commuted value of the amount provided for whole dependents in (1) above instead of the proportional payment provided for partial dependents in (2) above; provided, that the election herein provided may be exercised on behalf of any infant partial dependent by a duly qualified guardian; provided, further, that the Industrial Commission may, in its discretion, permit a parent or person standing in loco parentis to such infant to exercise such option in its behalf, the award to be payable only to a duly qualified guardian except as in this Article otherwise provided; and provided, further, that if such election is exercised by or on behalf of more than one person, then they shall take the commuted amount in equal shares.

When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments. Compensation payments due on account of death shall be paid for a period of 400-500 weeks from the date of the death of the employee; provided, however, after said 400-week-500-week period in case of a widow or widower who is unable to support herself or himself because of physical or mental disability as of the date of death of the employee, compensation payments shall continue during her or his lifetime or until remarriage and compensation payments due a dependent child shall be continued until such child reaches the age of 18.

Compensation payable under this Article to aliens not residents (or about to become nonresidents) of the United States or Canada, shall be the same in
amounts as provided for residents, except that dependents in any foreign
country except Canada shall be limited to surviving spouse and child or
children, or if there be no surviving spouse or child or children, to the
surviving father or mother."

SECTION 12. G.S. 97-77(a) reads as rewritten:
"(a) There is hereby created a commission to be known as the North Carolina Industrial
Commission, consisting of seven-five commissioners who shall devote their entire time to the
duties of the Commission. The Governor shall appoint the members of the Commission, one for
two terms of two years, one for a term of four years, one for a term of six years. Of the
additional appointments made in 1994, one shall be for a term expiring June 30,
the expiration of each term as above mentioned, the Governor shall appoint a successor for a
term of six years, and thereafter the term of office of each commissioner shall be six years. Not
more than three—Two appointees commissioners shall be persons who, on account of their
previous vocations, employment or affiliations, can be classed as representatives of employers,
and not more than three—Two appointees—commissioners shall be persons who, on
account of their previous vocations, employment or affiliations, can be classed as
representatives of employees. No person may serve more than two terms on the Commission.
Service for any part of a term counts as a term. For the purpose of this paragraph, service prior
to its effective date shall be counted in the calculation."

SECTION 13. G.S. 97-77 is amended by adding a new subsection to read:
"(a1) Appointments of commissioners are subject to confirmation by the General
Assembly by joint resolution. The names of commissioners to be appointed by the Governor
shall be submitted by the Governor to the General Assembly for confirmation by the General
Assembly on or before March 1 of the year of expiration of the term. If the Governor fails to
timely submit nominations, the General Assembly shall appoint to fill the succeeding term
upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of
the House of Representatives in accordance with G.S. 120-121 not inconsistent with this
section.
In case of death, incapacity, resignation, or vacancy for any other reason in the office of any
commissioner prior to the expiration of the term of office, a nomination to fill the vacancy for
the remainder of the unexpired term shall be submitted by the Governor within four weeks after
the vacancy arises to the General Assembly for confirmation by the General Assembly. If the
Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall
appoint to fill the remainder of the unexpired term upon the joint recommendation of the
President Pro Tempore of the Senate and the Speaker of the House of Representatives in
accordance with G.S. 120-121 not inconsistent with this section. If a vacancy arises or exists
pursuant to this subsection when the General Assembly is not in session, and the appointment is
deemed urgent by the Governor, the commissioner may be appointed and serve on an interim
basis pending confirmation by the General Assembly. For the purpose of this subsection, the
General Assembly is not in session only (i) prior to convening of the Regular Session, (ii)
during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die
adjournment of the Regular Session.
No person while in otlice as a commissioner may be nominated or appointed on an interim
basis to fill the remainder of an unexpired term, or to a full term that commences prior to the
expiration of the term that the commissioner is serving."

SECTION 14. Article 1 of Chapter 97 of the General Statutes is amended by
adding a new section to read:
"§ 97-78.1. Standards of judicial conduct to apply to commissioners and deputy
commissioners.

Page 8
The standards of judicial conduct provided for judges in Article 30 of Chapter 7A of the General Statutes shall apply to commissioners and deputy commissioners. Commissioners and deputy commissioners shall be liable to impeachment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes. Commissioners and deputy commissioners shall not engage in any other employment, business, profession, or vocation while in office."

SECTION 15. G.S. 97-80(a) reads as rewritten:

"(a) The Commission may make rules, in accordance with Article 2A of Chapter 150B of the General Statutes and not inconsistent with this Article, for carrying out the provisions of this Article. The Commission shall request the Office of State Budget and Management to prepare a fiscal note for a proposed new or amended rule that has a substantial economic impact, as defined in G.S. 150B-21.4(b1). The Commission shall not take final action on a proposed rule change that has a substantial economic impact until at least 60 days after the fiscal note has been prepared.

Processes, procedure, and discovery under this Article shall be as summary and simple as reasonably may be."

SECTION 16. G.S. 97-84 reads as rewritten:

"§ 97-84. Determination of disputes by Commission or deputy.
The Commission or any of its members shall hear the parties at issue and their representatives and witnesses, and shall determine the dispute in a summary manner. The Commission shall decide the case and issue findings of fact based upon the preponderance of the evidence in view of the entire record. The award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue shall be filed with the record of the proceedings, within 180 days of the close of the hearing record unless time is extended for good cause by the Commission, and a copy of the award shall immediately be sent to the parties in dispute. The parties may be heard by a deputy, in which event the hearing shall be conducted in the same way and manner prescribed for hearings which are conducted by a member of the Industrial Commission, and said deputy shall proceed to a complete determination of the matters in dispute, file his written opinion within 180 days of the close of the hearing record unless time is extended for good cause by the Commission, and the deputy shall cause to be issued an award pursuant to such determination."

SECTION 17.(a) G.S. 150B-1(c) reads as rewritten:

"(c) Full Exemptions. – This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.
(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.
(3) The Utilities Commission.
(4) The Industrial Commission.
(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.
(8) (Expires June 30, 2012) Except as provided in G.S. 150B-21.1B, any agency with respect to contracts, disputes, protests, and/or claims arising out of or relating to the implementation of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)."

SECTION 17.(b) G.S. 150B-(1)(e) is amended by adding a new subdivision to read:
"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

<p>| | |</p>
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</table>
| (18) | The Industrial Commission.

SECTION 17.(e) The Industrial Commission shall adopt all rules contained in Title 4 of Chapter 10 of the North Carolina Administrative Code as of the effective date of this act in accordance with Article 2A of Chapter 150B of the General Statutes. Any existing rule that has not been readopted by December 31, 2012, shall expire.

SECTION 17.(d) This section becomes effective May 1, 2011, and applies to claims filed and to rule making commenced on or after that date.

SECTION 18. As of February 1, 2011, the terms of the seven members of the Industrial Commission are as follows:

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>(1)</td>
<td>One serves a term expiring April 30, 2011.</td>
</tr>
<tr>
<td>(2)</td>
<td>Two serve terms expiring June 30, 2012.</td>
</tr>
<tr>
<td>(3)</td>
<td>One serves a term expiring April 30, 2013.</td>
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<td>(4)</td>
<td>One serves a term expiring June 30, 2014.</td>
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<tr>
<td>(5)</td>
<td>One serves a term expiring April 30, 2015.</td>
</tr>
<tr>
<td>(6)</td>
<td>One serves a term expiring June 30, 2016.</td>
</tr>
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The reduction from seven commissioners to five commissioners provided by Section 9 of this act is effective by not filling the two offices that expire June 30, 2012, pursuant to subdivision (2) of this section. The reduction from three commissioners to two in the employee and employer categories of qualification and the qualifications of the fifth commissioner as provided by G.S. 97-77(a) become effective July 1, 2012.

SECTION 19. This act is effective when it becomes law, with Sections 4, 5, 6, and 7 applying as to claims pending on or after that date. Sections 2, 3, 8, 9, 10, 11, and 16 of this act become effective July 1, 2011, and apply to claims arising on or after that date.
House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE: Tort Reform

DATE: 4/21/2011 Room: 1528

*Name: Alexis Barfield
County: New Hanover
Sponsor: Susi Hamilton

*Name: Cooper Blackburn
County: Edgecombe
Sponsor: Jean Farmer-Butterfield

Name: ____________________________
County: ____________________________
Sponsor: ____________________________

*Name: ____________________________
County: ____________________________
Sponsor: ____________________________

*Name: ____________________________
County: ____________________________
Sponsor: ____________________________

House Sgt-At Arms:
1. Name: Young Bag
2. Name: Seetha Radin
3. Name: Billy Jones
4. Name: ____________________________
5. Name: ____________________________
6. Name: ____________________________
<table>
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<tr>
<th>Name</th>
<th>Firm or Agency and Address</th>
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<tr>
<td>Scott A. Yates</td>
<td>109 George Wilton Dr</td>
</tr>
<tr>
<td></td>
<td>Clayton, NC 27520</td>
</tr>
<tr>
<td>Mary Bumgerro</td>
<td>123 Friendly Grove Ch Rd.</td>
</tr>
<tr>
<td></td>
<td>Millers Creek, NC 28681</td>
</tr>
<tr>
<td>Don DelTorto</td>
<td>201 Sawmill Rd</td>
</tr>
<tr>
<td></td>
<td>Cedar Grove, NC 27521</td>
</tr>
<tr>
<td>Wilma Fuller</td>
<td>3301 Crusader Ave</td>
</tr>
<tr>
<td></td>
<td>Durham, NC 27705</td>
</tr>
<tr>
<td>Eric Wickham Jr</td>
<td></td>
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<td></td>
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<tr>
<td>Mark White</td>
<td></td>
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<td>Amy Whitfield</td>
<td></td>
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<td></td>
<td>NC Medical Society</td>
</tr>
<tr>
<td>Ted Sawyer</td>
<td>500 N. H.S. Blvd</td>
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<td></td>
<td>Raleigh, NC 27615</td>
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<tr>
<td>Byron Diggs</td>
<td></td>
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<tr>
<td></td>
<td>Pepsi Bottling Ventures</td>
</tr>
<tr>
<td></td>
<td>1900 Pepsi Way, Garner, NC 27529</td>
</tr>
<tr>
<td>Sam Scott</td>
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VISITOR REGISTRATION SHEET

HOUSE BANKING COMMITTEE

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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<tr>
<th>NAME</th>
<th>FIRM OR AGENCY AND ADDRESS</th>
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<tr>
<td>Beverly Allen</td>
<td>Stauntonville, NC</td>
</tr>
<tr>
<td>Greg Verno</td>
<td>NCSA, PD</td>
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<tr>
<td>Kendra Hill</td>
<td>Gov. Office</td>
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<td>Crystal Wallace</td>
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<tr>
<td>Angela V. Stanley</td>
<td>Angier, NC</td>
</tr>
<tr>
<td>Michael Mouaoumi</td>
<td>Kannapolis, NC</td>
</tr>
<tr>
<td>Gerald Easty</td>
<td>Concord, NC</td>
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<tr>
<td>Tarija Burnette</td>
<td>Winston Salem, NC</td>
</tr>
<tr>
<td>Nara Green</td>
<td>Hockey-Century Furniture</td>
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<tr>
<td>Sam Taylor</td>
<td>NC Rate Bureau</td>
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<tr>
<td>Jessica Why</td>
<td>Carter, Weygreen Probation</td>
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**VISITOR REGISTRATION SHEET**

**HOUSE BANKING COMMITTEE**  
**APRIL 21, 2011**

<table>
<thead>
<tr>
<th>Name of Committee</th>
<th>Date</th>
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**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

<table>
<thead>
<tr>
<th>NAME</th>
<th>FIRM OR AGENCY AND ADDRESS</th>
</tr>
</thead>
</table>
| James Blake      | Communications Workers of America  
5511 W Patterson St.  
Hillsboro, NC 28218 |
| James Erwin      | CWA  
5511 W Patterson St.  
Hillsboro, NC 28218 |
| Talmadge Walton  Jr. | 128 Deltaire Dr.  
Youngsville, NC 27596 |
| Johnny Helmick   | Philipsboro NC  
Zips. 27312 |
| John Wease       | PFPNC, Lexington FF Assoc.  
244 Rockway Dr.  
Lexington, NC 27295 |
| Richard O'Brien  | PFPNC |
| Claude Young     | TEAMSTRICS Local 314 |
| Steve A. Underly | One Moore-Henderson  
Raleigh, NC |
| John Morgan      | Milliken College  
325 Ramsey Street  
Greensboro, NC 27401 |
| Penny Webster    |                                                            |
### VISITOR REGISTRATION SHEET

**Name of Committee:** House Banking Committee  
**Date:** April 21, 2011

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

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<thead>
<tr>
<th>NAME</th>
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<tr>
<td>Jeff Mixnerstein</td>
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<td>Heidi Chapman</td>
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<tr>
<td>Soni Cammarano</td>
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<tr>
<td>Richard Anderson</td>
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<tr>
<td>Ken Stoller</td>
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<tr>
<td>Ray Frazier</td>
<td>American Tax Assoc.</td>
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<tr>
<td>Michelle Frazier</td>
<td>MFAS</td>
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<td>Hunter Edgington</td>
<td>Zebulon, NC</td>
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<td>Christopher Bendeck</td>
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<td>Robert Paschal</td>
<td>Young Moore</td>
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<td>Paul Miller</td>
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<td>Katherine A. Picklesimer</td>
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<tr>
<td>Don Carrol</td>
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<td>Glen Gillette</td>
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<td>Jeff Marvin</td>
<td>NC ASU</td>
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<tr>
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<td>Pitt County Industrial Development Comm</td>
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<td>Charlene Shobazz</td>
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<tr>
<td>Patti Harper</td>
<td>Harvey Law Office</td>
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<tr>
<td></td>
<td>Sylva, NC</td>
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## VISITOR REGISTRATION SHEET

**House Banking Committee**  
**April 21, 2011**

**Visitors: Please sign in below and return to Committee Clerk**

<table>
<thead>
<tr>
<th>Name</th>
<th>Firm or Agency and Address</th>
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<tbody>
<tr>
<td>Susan Rhodes</td>
<td>8320 Catawba Cove Dr., Belmont, NC</td>
</tr>
<tr>
<td>Timmy</td>
<td>Greenleaf, NC</td>
</tr>
<tr>
<td>Connie Watson</td>
<td>NC</td>
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<tr>
<td>Peggy Watson</td>
<td>Mocksville, NC</td>
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## VISITOR REGISTRATION SHEET

**HOUSE BANKING COMMITTEE**

Name of Committee

AUG 21, 2021

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

<table>
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<tr>
<th>Name</th>
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<td>David Shelby</td>
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<td>Vera L. Wadles</td>
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<td>Steve Gardner</td>
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<td>Jocelyn Petley</td>
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<td>John Jernigan</td>
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<td>Leonard Barlow</td>
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<td>Kristine Brown</td>
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<td>Herb Ehl</td>
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<td>Joe Bazile</td>
<td>Wake &amp; Utter</td>
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<tr>
<td>Melinda Crampler</td>
<td>Youree &amp; Utter, 3701 Lakeshore Rd, 300</td>
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<tr>
<td>Ed Moore</td>
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<tr>
<td>Robin Haddock</td>
<td>3014 Mobile Bridge Road</td>
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<td></td>
<td>Crimetsville, NC 21837</td>
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VISITOR REGISTRATION SHEET

HOUSE BANKING COMMITTEE

AUGUST 21, 2011

Name of Committee

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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<tr>
<th>NAME</th>
<th>FIRM OR AGENCY AND ADDRESS</th>
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<tbody>
<tr>
<td>Richard Harper</td>
<td>atty, PO Box 395, Syracuse, NY 28709</td>
</tr>
<tr>
<td>Bob Cromley</td>
<td>Attorney At Large</td>
</tr>
<tr>
<td>Bill Wilson</td>
<td>NARP</td>
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<td>Jeff Cobb</td>
<td>Atty, New Bern, NC</td>
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<td>Cameron Albright</td>
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<td>Alice Hudson</td>
<td>Commissioner, Asheville, NC</td>
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<td>Michelle Addleth</td>
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<td>Shaelene Mims</td>
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<td>Jodie Nolf</td>
<td>IARP</td>
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<td>Jane Rouse</td>
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<tr>
<td>Marla Summatt</td>
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<tr>
<td>Stormy Sargent</td>
<td>James Scott Farren 3630 Amadoris Dr</td>
</tr>
<tr>
<td>Rebecca Facteau</td>
<td>NASCAR</td>
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<tr>
<td>Sarah Davis</td>
<td>Protect NC Workers</td>
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<td>Tio Colwin-Ulizetz</td>
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<td>Maureen Olsen</td>
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<td>Judy Roberts</td>
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<td>Ann</td>
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<tr>
<td>Jemima Fitzgerald</td>
<td>MLE</td>
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</tbody>
</table>
AGENDA

HOUSE SELECT COMMITTEE ON TORT REFORM

Thursday, May 12, 2011
Room 1327 LB
11:00 AM

OPENING REMARKS

Representative Johnathan Rhyne, Co-Chair
House Select Committee on Tort Reform

AGENDA ITEMS

HB 709 PROTECT AND PUT NC BACK TO WORK
1. Staff to explain changes in the bill
2. Comments by Representative Dale Folwell
3. Dick Taylor, NC Advocates for Justice
4. John McAlister, NC Chamber

ADJOURNMENT
MINUTES
HOUSE SELECT COMMITTEE ON TORT REFORM
Thursday, May 12, 2011

Upon call of the Chair, the House Select Committee on Tort Reform met on Thursday, May 12, 2011 in room 1327 of the Legislative Building. The following members were present: Danny McComas, Johnathan Rhyne, Co-Chairs; David Lewis, Tim Moffitt, Tom Murry, Vice-Chairs; Representatives Brisson, Carney, Dockham, Dollar, Faison, Gillespie, Hall, Hill, McLawhorn, Mills, Owens, Parfitt, Randleman, Samuelson, and Weiss.

Chairman Rhyne called the meeting to order to consider the status of HB 709, a bill entitled PROTECT AND PUT NC BACK TO WORK, sponsored by Representative Dale Folwell. Chairman Rhyne recognized Representative Folwell to give an update on the status of and recent negotiations concerning the bill.

Chairman Rhyne recognized staff legal counsel Bill Patterson to explain changes to the bill.

Chairman Rhyne recognized Dick Taylor of the North Carolina Advocates for Justice to give his perspective on the bill.

Chairman Rhyne recognized Bob Crumley, president of North Carolina Republican Attorneys, to give his perspective on the bill.

Chairman Rhyne recognized John McAlister of the North Carolina Chamber to give his perspective on the bill.

Chairman Rhyne recognized Representative Folwell to give closing comments.

Chairman Rhyne adjourned the meeting at 11:35 AM.

Respectfully submitted,

Representative Johnathan Rhyne
Chairman

Susan Beaupied
Committee Assistant
HOUSE BILL 709:
Protect and Put NC Back to Work

2011-2012 General Assembly

Committee: House Select Committee on Tort Reform, if favorable, Insurance
Introduced by: Reps. Folwell, Dollar, Hager, Crawford
Analysis of: First Edition
Date: April 29, 2011
Prepared by: Bill Patterson, Committee Counsel

SUMMARY:

House Bill 709 makes substantive changes to the Workers Compensation Act.

As introduced, this bill was identical to S544, as introduced by Sens. Brown, Apodaca, Davis, which is currently in Senate Insurance.

CURRENT LAW AND BILL ANALYSIS:

In General: Under the Workers Compensation Act, Article 1 of Chapter 97 of the General Statutes ("the Act"), an employee who sustains a compensable injury by accident or occupational disease is eligible for several types of benefits, including indemnity (wage-replacement) and medical benefits.

The Industrial Commission is charged with carrying out the Act’s provisions, among its other duties. In addition to administering the Workers Compensation Act, the Commission also administers and adjudicates the Tort Claims Act, the Childhood Vaccine-Related Injury Act, the Law Enforcement Officers’, Firemen’s, Rescue Squad Workers’, and Civil Air Patrol Members’ Death Benefit Act, and the Act to Compensate Individuals Erroneously Convicted of Felonies.

Seven commissioners appointed by the Governor make the Commission’s rules and hear appeals from decisions of deputy commissioners in contested cases. Pursuant to G.S. 150B-1(c)(4), the Commission is exempt from all provisions of the Administrative Procedures Act.

In addition to medical compensation, an employee whose injury has resulted in a loss of wage-earning capacity is entitled to weekly compensation for either total or partial incapacity:

For a total loss of wage-earning capacity, the employee is entitled under G.S. 97-29 to receive weekly compensation in the amount of 2/3 of his or her average weekly wage for as long as that loss lasts, with no limitation on the duration of the benefits. If the total incapacity is permanent, the employee is entitled to receive this compensation for life.

For a partial loss of wage-earning capacity, the employee is entitled under G.S. 97-30 to receive weekly compensation in the amount of 2/3 of the difference in average weekly wage before and after the injury, for as long as the partial loss of wage-earning capacity lasts, but subject to a maximum of 300 weeks.

In addition to compensation for partial or total incapacity, if an employee has a specific physical impairment that falls under the schedule of injuries set forth in G.S. 97-31, the employee is presumed to have suffered a loss of wage-earning capacity. In that case, the employee is entitled to weekly compensation during the "healing period" and, in addition, a lump-sum payment according to the schedule of injuries set forth in the statute.

Employees who are eligible for compensation under G.S. 97-31 for a scheduled injury and who also qualify under either G.S. 97-29 or 97-30 for permanent total or partial disability compensation are permitted to select the more favorable remedy.

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1 In addition to administering the Workers Compensation Act, the Commission also administers and adjudicates the Tort Claims Act, the Childhood Vaccine-Related Injury Act, the Law Enforcement Officers’, Firemen’s, Rescue Squad Workers’, and Civil Air Patrol Members’ Death Benefit Act, and the Act to Compensate Individuals Erroneously Convicted of Felonies.

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Page 2

Section 2\(^3\): Definition of "Suitable Employment"


Employment that is "make work" and that would not be offered to plaintiff by other employers at a comparable wage is not suitable employment. "If the proffered employment does not accurately reflect the person's ability to compete with others for wages, it cannot be considered evidence of earning capacity. Proffered employment would not accurately reflect earning capacity if other employers would not hire the employee with the employee's limitations at a comparable wage level. The same is true if the proffered employment is so modified because of the employee's limitations that it is not ordinarily available in the competitive job market. The rationale behind the competitive measure of earning capacity is apparent. If an employee has no ability to earn wages competitively, the employee will be left with no income should the employee's job be terminated. Termination of the employee would not necessarily signal a bad motive on the part of the employer. An employer facing a business decline reasonably could determine that continued retention of the employee was not feasible. The employee also could be dismissed for misconduct. The employer could, for reasons beyond its control, simply cease doing business." Peoples v. Cone Mills Corp., 316 N.C. 426, 438, 342 S.E.2d 798, 806 (N.C.,1986).

The IC's Rehabilitation Rules define "suitable employment" as "employment in the local labor market or self-employment which is reasonably attainable and which offers an opportunity to restore the worker as soon as possible and as nearly as practicable to pre-injury wage, while giving due consideration to the worker's qualifications (age, education, work experience, physical and mental capacities), impairment, vocational interests, and aptitudes. No one factor shall be considered solely in determining suitable employment." 04 NCAC 10C.0103(g).

Analysis: Section 2 amends G.S. 97-2 to define the term "suitable employment" as any available employment that is within the employee's work restrictions before the employee has reached maximum medical improvement, or that the employee is capable of performing after reaching maximum medical improvement given the employee's education, injury-related physical limitations, vocational skills and experience.

In contrast to current law, this definition does not require that the available employment wage be comparable to the employee's pre-injury wage, and does not exclude "make work," i.e., a position that is not available from any other employer at a comparable wage.

Section 3: Willful Misrepresentation in Applying for Employment

Current Law: None; this section of the bill adds a new section to the General Statutes.

Analysis: Section 3 enacts new G.S. 97-12.1, which disqualifies an employee from receiving compensation under the Act if, in connection with being hired, the employee willfully made a false representation regarding his or her physical condition, the employer relied upon the representation, and there was a causal connection between the representation and the injury or occupational disease for which the employee seeks compensation.

\(^3\) Section 1 of the bill states the name by which the Act shall be known ("Protecting and Putting North Carolina Back to Work") and contains no substantive provisions.

Research Division  O. Walker Reagan, Director  (919) 733-2578
### Section 4: Settlements Resolving Issues Not Covered by Act

**Current Law:** None on this precise point; however, current Commission rules for approval of a compromise agreement require a finding that "no rights other than those arising under the provisions of the Workers' Compensation Act are compromised or released." 04 NCAC 10A .0502(a)(5).

**Analysis:** Section 4 amends G.S. 97-17, which governs settlements of claims brought under the Act, to clarify that nothing in this section prevents the parties from reaching a separate contemporaneous agreement resolving issues not covered by the Act.

### Section 5: Changes in Treatment or Health Care Provider

**Current Law:** Pursuant to G.S. 97-25, the Commission can order such further treatments as it deems necessary in the event of a dispute over continued medical treatment. Upon an employee's request, the Commission can approve other treatment. Subject to Commission approval, an employee can choose a physician to take charge of his case.

**Analysis:** Section 5 amends G.S. 97-25 to remove the Commission's discretion to order further treatment in the event of a dispute. A change in treatment or provider ordered by the Commission upon the employee's request must be "based upon clear and convincing medical evidence" and the Commission must disregard the opinion of an unauthorized provider who evaluated the employee before the request for a change was filed by the employee. This section also eliminates the employee's current ability to select a physician of his own choosing subject to Commission approval.

### Section 6: Access to the Employee's Medical Information

**Current Law:** Pursuant to G.S. 97-25.6, an employer or its insurer that is paying medical compensation to an employee may obtain the employee's medical records without the employee's consent. Upon written notice to the employee, the employer or its insurer may also obtain records of evaluation or treatment, restricted to a current injury or condition for which the employee seeks compensation. Other communications between the employer/insurer and health care providers not consented to by employee must be approved by Commission and narrowly tailored to the issues involved in the claim.

**Analysis:** Section 6 amends G.S. 25.6 to grant the employer, its insurer and its attorney a broad general right of access to all medical records and provider information of the employee that involves the evaluation, diagnosis or treatment of the injury or disease for which compensation is sought, that is reasonably related to such injury or disease, or that is related to the employee's ability to return to work or perform suitable employment. The Commission is required annually to set the fee payable to providers to respond to information requests.

### Section 7: Medical Examinations/Second Opinions on Permanent Disability Percentage

**Current Law:** Pursuant to G.S. 97-27, in cases where there is a dispute over the percentage of permanent disability, if the employee disagrees with the results of a physical exam requested by employer or ordered by Commission, the employee is entitled to another opinion by a physician licensed to practice in North Carolina, South Carolina, Georgia, Virginia, or Tennessee.

**Analysis:** Amends G.S. 97-27 to provide that:

- the employee must submit to an independent medical examination after an injury and for so long as the employee claims compensation, as requested by the employer or as ordered by the Commission, by a physician licensed and practicing in North Carolina, regardless of whether the employee's claim has been denied by the employer.
any refusal by the employee immediately suspends the employee's right to compensation and right to prosecute any proceedings under the Act

an employee who wishes to challenge the permanent disability rating resulting from the medical examination requested by the employer is entitled to another opinion limited to the issue of the percentage of permanent disability, provided by a physician licensed and practicing in North Carolina, and any opinion on any other issue shall be disregarded by the Commission

Section 8: Duration of Compensation for Total Disability/Injuries Presumed to Render an Employee Totally and Permanently Disabled

Current Law: Pursuant to G.S. 97-29, benefits are payable for as long as an employee's incapacity for work is total. If the employee's disability is determined to be total and permanent, compensation is payable for life. Pursuant to G.S. 97-31(17), loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, is deemed to constitute total and permanent disability.

To be entitled to benefits for total incapacity, "Plaintiff is required to show that he was incapable after his injury of earning any wages in the same or any other employment, and that the incapacity was caused by the compensable injury," Hilliard v. Apex Cabinet Co., 305 N.C. 593, 290 S.E. 2d 682 (1982). "The employee may meet this burden in one of four ways: (1) the production of medical evidence that he is physically or mentally, as a consequence of the work related injury, incapable of work in any employment; (2) the production of evidence that he is capable of some work, but that he has, after a reasonable effort on his part, been unsuccessful in his effort to obtain employment; (3) the production of evidence that he is capable of some work but that it would be futile because of preexisting conditions, i.e., age, inexperience, lack of education, to seek other employment; or (4) the production of evidence that he has obtained other employment at a wage less than that earned prior to the injury." Russell v. Lowes Product Distribution, 108 N.C.App. 762, 765-766, 425 S.E.2d 454, 457 (1993).

Analysis: Section 8 amends G.S. 97-29 to:

- place a limit on the duration of compensation, including medical compensation, paid for temporary total disability of 500 weeks from the date of the injury
- require an employee who has reached maximum medical improvement and who has one or more scheduled injuries to elect whether to receive compensation under G.S. 97-31 or receive compensation under either G.S.97-29 (temporary total disability) or G.S. 97-30 (temporary partial disability)
- provide that an employee is presumed to be totally and permanently disabled only if the employee has one or more of the injuries specified in new subdivisions (c)(1) through (c)(4) (this would appear to conflict with G.S. 97-31(17), under which an employee who has lost any two of these body parts is presumed to be permanently and totally disabled)

Section 9: Compensation for Partial Incapacity

Current Law: Pursuant to G.S. 97-30, an injured employee is entitled to compensation for partial incapacity for a maximum of 300 weeks from the date of the injury.

Analysis: Section 9 amends G.S. 97-30 to increase the maximum period of compensation for partial incapacity to 500 weeks from the date of the injury.

Section 10: Refusal to Accept Suitable Employment

Current Law: Pursuant to G.S. 97-32, an employee who refuses "employment procured for him suitable to his capacity" is disqualified from receiving compensation during the continuance of the refusal.
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Analysis: Section 10 amends G.S. 97-32 to provide that an employee shall not receive compensation for so long as the employee refuses "suitable employment" as defined in G.S. 97-2(22) without justification as determined by the Commission. Section 10 also clarifies that nothing in the Act prohibits an employer from directly contacting the employee about returning to suitable employment.

Section 11: Burial Expense and Compensation to Deceased Employee's Dependents

Current Law: Pursuant to G.S. 97-38, compensation for burial expenses is capped at $3,500 and the duration of compensation to the dependents of an employee whose compensable injuries resulted in death is capped at 400 weeks from the date of death.

Analysis: Section 11 amends G.S. 97-38 to raise the cap on burial expenses to $10,000 and to increase the maximum duration of dependent compensation to 500 weeks from the date of death.

Section 12: Terms of Commissioners

Current Law: Pursuant to G.S. 97-77(a), the Industrial Commission comprises seven members serving six-year terms, appointed by Governor. No more than three are employee representatives and no more than three are employer representatives, based on previous vocations, employment or affiliations.

Analysis: Section 12 amends G.S. 97-77(a) to reduce the number of commissioners from seven to five, two of whom shall be classed as employer representatives and two of whom shall be classed as employee representatives, based on their previous vocations, employment or affiliations, and no one of whom may serve more than two terms, including terms served prior to the effective date of this change.

Section 13: Selection of Commissioners

Current Law: None; this section enacts a new subsection G.S. 97-77(a1).

Analysis: Section 13 enacts a new subsection (a1) to G.S. 97-77 requiring legislative confirmation of the Governor's appointments to the Commission, and setting forth the procedure for confirmation of appointments and for filling vacancies in the office of any commissioner prior to expiration of the commissioner's term.

Section 14: Commissioners and Deputy Commissioners Subject to Standards of Judicial Conduct and Impeachment Procedures Provided for Judges

Current Law: Commissioners are "covered persons" subject to the ethical standards of the State Ethics Act, Article 4 of Chapter 138A, including the prohibition against using their public position for private gain, or receiving personal financial gain other than their official salary for performing their public duties. Commissioners and deputy commissioners are not "judges" as that term is used in G.S. 7A-376, which authorizes the Judicial Standards Commission to investigate complaints concerning the qualification or conduct of any judge and to either issue a private letter of caution or a public reprimand for violation of the Code of Judicial Conduct not warranting censure, suspension or removal, and to recommend that the more serious sanctions be imposed by the North Carolina Supreme Court for "willful misconduct in office, willful and persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute." The Code of Judicial Conduct as adopted by the Supreme Court is a guide to the meaning of G.S. 7A-376.

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4 G.S. 7A-374.2(5) provides that "judge" means "any justice or judge of the General Court of Justice of North Carolina, including any retired justice or judge who is recalled for service as an emergency judge of any division of the General Court of Justice."

5 In re Nowell, 293 N.C. 235, 237 S.E.2d 246 (1977)
Analysis: Section 14 enacts a new G.S. 97-78.1 prohibiting commissioners and deputy commissioners from engaging in any other employment, business, profession, or vocation while in office, and subjecting them to the standards of judicial conduct provided for judges in Article 30 of Chapter 7A of the General Statutes and to the impeachment provisions applicable to judges under Chapter 123 of the General Statutes.6

Section 15: Commission Required to Adopt Rules in Accordance with APA

Current Law: Pursuant to G.S. 97-80(a), the Commission is authorized to make rules for carrying out the provisions of the Act.

Analysis: Section 15 amends G.S. 97-80(a) to require the Commission to adopt rules in accordance with Article 2A of the Administrative Procedures Act.

Section 16: Commission Findings Based on Preponderance of the Evidence of Entire Record


Analysis: Section 16 amends G.S. 97-84 to provide that decisions and findings of fact of the Commission shall be based upon the preponderance of the evidence in view of the entire record.

Section 17: Commission Subject to APA; Exempt from Contested Cases Provisions; Rules Expire if not Readopted by December 31, 2012

Current Law: G.S. 150B-1 exempts the Commission from the requirements of the Administrative Procedures Act ("APA").

Analysis: Section 17 amends G.S. 150B-1 to delete the current statutory exemption of the Commission from the APA, amends G.S. 150B-1(e) to add a new subdivision (18) exempting the Commission from the APA's contested case provisions, requires the Commission to readopt all rules currently in effect pursuant to the procedures in APA Article 2A, and provides that any existing Commission rule that is not readopted by December 31, 2012 shall expire.

Section 18: Remaining Terms of Existing Commissioners

Current Law: Not applicable; this section is uncodified.

Analysis: Section 18 establishes the remaining terms of the current seven commissioners, reduces the number of commissioners from seven to five by providing that the two commissioners whose terms expire on June 30, 2012, shall not be replaced, and requires that the reduction in the employee and employer categories from three each to two each shall become effective July 1, 2012.

EFFECTIVE DATE: This act is effective when it becomes law, with Sections 4, 5, 6, and 7 applying to claims pending on or after that date, and with Sections 2, 3, 8, 9, 10, 11, and 16 applying to claims arising on or after July 1, 2011.
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**Name of Committee**: House Tort Reform

**Date**: May 12, 2011

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**HOUSE TORT REFORM**

**MAY 12, 2011**

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**HOUSE TORT REFORM**

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<td>Younce &amp; Utipil 3701 Colie Boulevard Raleigh 27607</td>
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<td>Diana Nunez</td>
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<td>Melany Smith</td>
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<td>Alice Heidson</td>
<td>Grimes Teich Anderson, Ashv.</td>
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<td>Steve Brewer</td>
<td>Century Link</td>
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## VISITOR REGISTRATION SHEET

### HOUSE TORT REFORM

Name of Committee: House Tort Reform  
Date: May 12, 2011

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

<table>
<thead>
<tr>
<th>Name</th>
<th>Firm or Agency and Address</th>
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<tr>
<td>Cameron Frick</td>
<td>Breit Adam &amp; Assoc 2425 20th Highas Blvd</td>
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<td>Will Under-</td>
<td>ANA</td>
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<td>Penny R. Pierce</td>
<td>The Tejada Law Firm</td>
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<td>Richard O'Brien</td>
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<td>Donald Roganne</td>
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<td>James F Mullins Jr</td>
<td>Kathleen Clancy Law Firm</td>
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<td>Troy Hammond</td>
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<td>Alex Moundford</td>
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<td>Joyce Fowler</td>
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### Visitor Registration Sheet

**Name of Committee:** HOUSE TORT REFORM  
**Date:** MAY 12, 2011

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

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<thead>
<tr>
<th>NAME</th>
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<td>McGuire Wood</td>
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<td>Demi Bonobo</td>
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<td>Ben Matthews</td>
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<td>Eileen Townsend</td>
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<td>Bruce Thompson</td>
<td>PARKER POB</td>
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<tr>
<td>Reid Acree</td>
<td>M Reid Acree, attorneys, Inc</td>
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**Note:** The table continues with blank lines for additional entries. Each name is followed by their corresponding firm or agency and address.
House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE: House Select Committee on Tour Room

DATE: 5/12/2011 Room: 1228

*Name: Carter Atwater
County: Wake County
Sponsor: Tom Tillis

*Name: Ryan Mann
County: Mecklenburg
Sponsor: ____________________________

*Name: ____________________________
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House Sgt-At Arms:

1. Name: Bill MacKee
2. Name: ____________________________
3. Name: R.L. Carter
4. Name: ____________________________
5. Name: ____________________________
6. Name: ____________________________

Name: Ken Kirby

Name: ____________________________
AGENDA

HOUSE SELECT COMMITTEE ON TORT REFORM

Thursday, May 26, 2011
Room 1327 LB
11:00 AM

OPENING REMARKS

Representative Johnathan Rhyne, Co-Chair
House Select Committee on Tort Reform

AGENDA ITEMS

HB 709  PROTECT AND PUT NC BACK TO WORK

ADJOURNMENT
MINUTES  
HOUSE SELECT COMMITTEE ON TORT REFORM  
Thursday, May 26, 2011

Upon call of the Chair, the House Select Committee on Tort Reform met on Thursday, May 26, 2011 in room 1327 of the Legislative Building. The following members were present: Danny McComas, Johnathan Rhyne, Co-Chairs; David Lewis, Tom Murry, Vice-Chairs; Representatives Barnhart, Carney, Dockham, Dollar, Faison, Hall, Hill, McLawhorn, Mills, Parfitt, Stam, and Weiss.

The Chairman called the meeting to order to consider HB 709, AN ACT PROTECTING AND PUTTING NORTH CAROLINA BACK TO WORK BY REFORMING THE WORKERS' COMPENSATION ACT.

Representative Murry made a motion to accept a proposed committee substitute. The motion carried. Representative Weiss asked to be excused from any committee vote on the basis of rule 24. The chairman recognized the following people, representing all the stakeholders, who unanimously endorsed the PCS for HB 709: Dick Taylor, Bob Crumley, John McAlister, James Andrews, Kevin Leonard, and Chip Baggett.

The chairman recognized Bill Patterson to explain the bill changes. Chairman Rhyne then recognized Representative Dollar who made a motion to give a favorable report to the PCS. A voice vote was taken, and the ayes were unanimous.

The serial referral to the Insurance Committee was stricken, and the committee substitute for HB 709 was placed on the calendar for a vote on the House floor on May 31st.

Respectfully submitted,

[Signature]
Representative Johnathan L. Rhyne, Jr.  
Co-Chair

[Signature]
Susan Beaupied  
Committee Clerk
The following report(s) from standing committee(s) is/are presented:

By Representative McComas, Rhyne (Chairs) for the Committee on HOUSE SELECT COMMITTEE ON TORT REFORM.

Committee Substitute for HB 709

A BILL TO BE ENTITLED AN ACT PROTECTING AND PUTTING NORTH CAROLINA BACK TO WORK BY REFORMING THE WORKERS' COMPENSATION ACT.

☑ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on .

Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/joint resolution (No. ) is placed on the Calendar of . (The original bill resolution No. ) is placed on the Unfavorable Calendar.

The (House) committee substitute bill/joint resolution (No. ) is re-referred to the Committee on . (The original bill/resolution) (House/Senate Committee Substitute Bill/Joint) resolution No. ) is placed on the Unfavorable Calendar.
A BILL TO BE ENTITLED
AN ACT PROTECTING AND PUTTING NORTH CAROLINA BACK TO WORK BY
REFORMING THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as the "Protecting and Putting North Carolina Back to Work Act."

SECTION 2. G.S. 97-2 is amended as follows:

§ 97-2. Definitions.
When used in this Article, unless the context otherwise requires—

(19) Medical Compensation. — The term "medical compensation" means medical, surgical, hospital, nursing, and rehabilitative services including, but not limited to, attendant care services prescribed by a health care provider authorized by the employer or subsequently by the Commission, vocational rehabilitation, and medicines, sick travel, and other treatment, including medical and surgical supplies, as may reasonably be required to effect a cure or give relief and for such additional time as, in the judgment of the Commission, will tend to lessen the period of disability; and any original artificial members as may reasonably be necessary at the end of the healing period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical circumstances.

(22) Suitable employment. — The term "suitable employment" means employment offered to the employee, or if prohibited by the Immigration and Nationality Act, 8 U.S.C. 1324a, employment available to the employee, that (i) prior to reaching maximum medical improvement is within the employee's work restrictions including rehabilitative or other non-competitive employment with the employer of injury approved by the employee's authorized health care provider or (ii) after reaching maximum medical improvement is employment that the employee is capable of performing considering the employee's pre-existing and injury related physical and mental limitations, vocational skills, education and experience and is located within a 50-mile radius of the employee's residence at the time of injury or the employee's current residence if the employee had a legitimate reason to relocate since
the date of injury. No one factor shall be considered exclusively in
determining suitable employment."

SECTION 3. Article 1 of Chapter 97 of the General Statutes is amended by adding
a new section to read:

"§ 97-12.1. Willful misrepresentation in applying for employment.

No compensation shall be allowed under this Article for injury by accident or occupational
disease if the employer proves that (i) at the time of hire or in the course of entering into
employment, (ii) at the time of receiving notice of the removal of conditions from a conditional
offer of employment, or (iii) during the course of a post-offer medical examination:

1. The employee knowingly and willfully made a false representation as to the employee's physical condition;
2. The employer relied upon one or more false representations by the employee, and the reliance was a substantial factor in the employer's
decision to hire the employee; and
3. There was a causal connection between false representation by the employee and the injury or occupational disease."

SECTION 4. G.S. 97-17 is amended by adding a new subsection to read:

"(e) Nothing in this section prevents the parties from reaching a separate
contemporaneous agreement resolving issues not covered by this Article."

SECTION 5. G.S. 97-18 is amended by adding a new subsection to read:

"(k) In addition to any other methods for reinstatement of compensation available under
the Act, whenever the employer or insurer has admitted the employee's right to compensation,
or liability has been established, the employee may move for reinstatement of compensation on
a form prescribed by the Commission. If the employer or insurer contests the employee's
request for reinstatement, the matter shall be scheduled on a preemptive basis. This subsection
shall not apply to a request for a review of an award on the grounds of a change in condition
pursuant to G.S. 97-47."

SECTION 6. G.S. 97-25 reads as rewritten:

"§ 97-25. Medical treatment and supplies.

Medical compensation shall be provided by the employer. In case of a controversy arising
between the employer and employee relative to the continuance of medical, surgical, hospital,
or other treatment, the Industrial Commission may order such further treatments as may in the
discretion of the Commission be necessary.

The Commission may at any time upon the request of an employee order a change of
treatment and designate other treatment suggested by the injured employee subject to the
approval of the Commission, and in such a case the expense thereof shall be borne by the
employer upon the same terms and conditions as hereinbefore provided in this section for
medical and surgical treatment and attendance.

Upon the written request of the employee to the employer, the employer may agree to
authorize and pay for a second opinion examination with a duly qualified physician licensed to
practice in North Carolina, or licensed in another state if agreed to by the parties or ordered by
the Commission. If, within fourteen (14) calendar days of the receipt of the written request, the
request is denied or the parties, in good faith, are unable to agree upon a health care provider to
perform a second opinion examination, the employee may request that the Industrial
Commission order a second opinion examination. The expense thereof shall be borne by the
employer upon the same terms and conditions as provided in this section for medical
compensation.

Provided, however, if the employee so desires, an injured employee may select a health
care provider of the employee's own choosing to attend, prescribe and assume the care and
charge of the employee's case subject to the approval of the Industrial Commission. In addition,
in case of a controversy arising between the employer and the employee, the Industrial
Commission may order necessary treatment. In order for the Commission to grant an employee's request to change treatment or health care provider, the employee must show by a preponderance of the evidence that the change is reasonably necessary to effect a cure, provide relief or lessen the period of disability. When deciding whether to grant an employee's request to change treatment or health care provider, the Commission may disregard or give less weight to the opinion of a health care provider from whom the employee sought evaluation, diagnosis or treatment before the employee first requested authorization in writing from the employer, insurer or Commission.

The refusal of the employee to accept any medical, hospital, surgical or other treatment or rehabilitative procedure for medical compensation when ordered by the Industrial Commission shall bar the employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal, in which case, the Industrial Commission may order a change in the medical or hospital service refusal. Any order issued by the Commission suspending compensation pursuant to G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate the compensation.

If in an emergency on account of the employer's failure to provide the medical or other care as herein specified, compensation, a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

Provided, however, if he so desires, an injured employee may select a physician of his own choosing to attend, prescribe and assume the care and charge of his case, subject to the approval of the Industrial Commission."

SECTION 7. G.S. 97-25.6 is amended as follows:

"§ 97-25.6. Reasonable access to medical information.

(a) Notwithstanding any provision of G.S. 8-53 to the contrary, and because discovery is limited pursuant to G.S. 97-80, it is the policy of this State to protect the employee's right to a confidential physician-patient relationship while allowing the parties to have reasonable access to all relevant medical information, including medical records, reports and information necessary to the fair and swift administration and resolution of workers' compensation claims, while limiting unnecessary communications with and administrative requests to health care providers.

(b) As used in this section, "relevant medical information" means any medical record, report or information that is:

(1) restricted to the particular evaluation, diagnosis, or treatment of the injury or disease for which compensation, including medical compensation, is sought;

(2) reasonably related to the injury or disease for which the employee claims compensation; or

(3) related to an assessment of the employee's ability to return to work as a result of the particular injury or disease.

(c) Relevant medical information shall be requested and provided subject to the following provisions:

(1) Medical records. – An employer is entitled, without the express authorization of the employee, to obtain the employee's medical records containing relevant medical information from the employee's health care providers. In a claim in which the employer is not paying medical compensation to a health care provider from whom the medical records are sought, or in a claim denied pursuant to G.S. 97-18(c), the employer shall provide the employee with contemporaneous written notice of the request for medical records. The employer shall provide the employee with a copy of
Written communications with health care providers. – An employer may communicate with the employee’s authorized health care provider in writing, without the express authorization of the employee, to obtain relevant medical information not available in the employee’s medical records. The employer shall provide the employee with contemporaneous written notice of the written communication. The employer may request the following additional information:

a. the diagnosis of the employee’s condition;
b. the appropriate course of treatment;
c. the anticipated time that the employee will be out of work;
d. the relationship, if any, of the employee’s condition to the employment;
e. work restrictions resulting from the condition;
f. the kind of work for which the employee may be eligible;
g. the anticipated time the employee will be restricted; and
h. any permanent impairment as a result of the condition.

The employer shall provide a copy of the health care provider’s response to the employee within ten (10) business days of its receipt by the employer.

Oral communications with health care providers. – An employer may communicate with the employee’s authorized health care provider by oral communication to obtain relevant medical information not contained in the employee’s medical records, not available through written communication, and not otherwise available to the employer, subject to the following:

a. The employer must give the employee prior notice of the purpose of the intended oral communication and an opportunity for the employee to participate in the oral communication at a mutually convenient time for the employer, employee, and health care provider.
b. The employer shall provide the employee with a summary of the communication with the health care provider within ten (10) business days of any oral communication in which the employee did not participate.

Additional information submitted by the employer. – Notwithstanding subsection (c) of this section, an employer may submit additional relevant medical information not already contained in the employee’s medical records to the employee’s authorized health care provider and may communicate in writing with the health care provider about the additional information in accordance with the following procedure:

1. The employer shall first notify the employee in writing that the employer intends to communicate additional information about the employee to the employee’s health care provider. The notice shall include the employer’s proposed written communication to the health care provider and the additional information to be submitted.
2. The employer shall have ten (10) business days from the postmark or verifiable facsimile or electronic mail to either consent or object to the employer’s proposed written communication.
3. Upon consent of the employee or in the absence of the employee’s timely response, the employer may submit the additional information directly to the health care provider.
Upon making a timely objection, the employee may request a protective order to prevent the written communication, in which case the employer shall refrain from communicating with the health care provider until the Commission has ruled upon the employee's request. In deciding whether to allow the submission of additional information to the health care provider, in whole or in part, the Commission shall determine whether the proposed written communication and additional information are pertinent to and necessary for the fair and swift administration and resolution of the workers' compensation claim and whether there is an alternative method to discover the information. If the Industrial Commission determines that any party has acted unreasonably by initiating or objecting to the submission of additional information to the health care provider, the Commission may assess costs associated with any proceeding, including reasonable attorney's fees and deposition costs, against the offending party.

Any medical records or reports that reflect evaluation, diagnosis, or treatment of the particular injury or disease for which compensation is sought or is reasonably related to the injury or disease for which the employee seeks compensation that are in the possession of a party shall be furnished to the requesting party by the opposing party when requested in writing, except for records or reports generated by a retained expert.

Upon motion by an employee or the health care provider from whom medical records, reports, or information are sought, or with whom oral communication is sought, or upon its own motion, for good cause shown, the Commission may make any order which justice requires to protect an employee, health care provider, or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense.

Other forms of communication with a health care provider may be authorized by order of the Industrial Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this section.

The employer may communicate with the health care provider to request medical bills or a response to a pending written request, or about non-substantive administrative matters without the express authorization of the employee.

The Commission shall annually establish an appropriate medical fee to compensate health care providers for time spent communicating with the employer or employee. Each party shall bear its own costs for said communication.

No cause of action shall arise and no health care provider shall incur any liability as a result of the release of medical records, reports, or information pursuant to this Article.

For purposes of this section, the term "employer" means the employer, the employer's attorney, and the employer's insurance carrier or third-party administrator, and the term "employee" means the employee, legally appointed guardian, or any attorney representing the employee.

Notwithstanding the provisions of G.S. 8-53, any law relating to the privacy of medical records or information, and the prohibition against ex parte communications at common law, an employer or insurer paying medical compensation to a provider rendering treatment under this Article may obtain records of the treatment without the express authorization of the employee. In addition, with written notice to the employee, the employer or insurer may obtain directly from a medical provider medical records of evaluation or treatment restricted to a current injury or current condition for which an employee is claiming compensation from that employer under this Article.

Any medical records or reports, restricted to conditions related to the injury or illness for which the employee is seeking compensation, in the possession of the employee shall be furnished by the employee to the employer when requested in writing by the employer.
An employer or insurer paying compensation for an admitted claim or paying without prejudice pursuant to G.S. 97-18(d) may communicate with an employee’s medical provider in writing, limited to specific questions promulgated by the Commission, to determine, among other information, the diagnosis for the employee’s condition, the reasonable and necessary treatment, the anticipated time that the employee will be out of work, the relationship, if any, of the employee’s condition to the employment, the restrictions from the condition, the kind of work for which the employee may be eligible, the anticipated time the employee will be restricted, and the permanent impairment, if any, as a result of the condition. When these questions are used, a copy of the written communication shall be provided to the employee at the same time and by the same means as the communication is provided to the provider.

Other forms of communication with a medical provider may be authorized by (i) a valid written authorization voluntarily given and signed by the employee, (ii) by agreement of the parties, or (iii) by order of the Commission issued upon a showing that the information sought is necessary for the administration of the employee’s claim and is not otherwise reasonably obtainable under this section or through other provisions for discovery authorized by the Commission’s rules. In adopting rules or authorizing employer communications with medical providers, the Commission shall protect the employee's right to a confidential physician-patient relationship while facilitating the release of information necessary to the administration of the employee’s claim.

Upon motion by an employee or provider from whom medical records or reports are sought or upon its own motion, for good cause shown, the Commission may make any order which justice requires to protect an employee or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense.

SECTION 8. G.S. 97-26 is amended to include a new subsection:

"(g1) Administrative Simplification. — The applicable administrative standards for code sets, identifiers, formats, and electronic transactions to be used in processing electronic medical bills under this Article shall comply with 45 C.F.R. 162, The Commission shall adopt rules to require electronic medical billing and payment processes, to standardize the necessary medical documentation for billing adjudication, to provide for effective dates and compliance, and for further implementation of this subsection."

SECTION 9. G.S. 97-27 reads as rewritten:

"§ 97-27. Medical examination; facts not privileged; refusal to be examined suspends compensation; other medical opinions; autopsy.

(a) After an injury, and so long as he the employee claims compensation, the employee, if so requested by his or her employer or ordered by the Industrial Commission, shall, subject to the provisions of subsection (b), submit himself to examination independent medical examinations, at reasonable times and places, by a duly qualified physician or surgeon who is licensed and practicing in North Carolina and is designated and paid by the employer or the Industrial Commission, even if the employee's claim has been denied pursuant to G.S. 97-18(c). The independent medical examination shall be subject to the following provisions:

(1) The injured employee shall have the right to have present at such the independent medical examination any duly qualified physician or surgeon provided and paid by him the employee.

(2) Notwithstanding the provisions of G.S. 8-53, no fact communicated to or otherwise learned by any physician or surgeon or hospital or hospital employee who may have attended or examined the employee, or who may have been present at any examination, shall be privileged in any workers' compensation case with respect to a claim pending for hearing before the Industrial Commission.
(3) Notwithstanding the provisions of G.S. 97-25.6 to the contrary, an employer or its agent shall be allowed to openly communicate either orally or in writing with an independent medical examiner chosen by the employer regardless of whether the examiner physically examined the employee.

(4) If the examiner physically examined the employee, the employer must produce the examiner's report to the employee within ten (10) business days of receipt by the employer, along with a copy of all documents and written communication sent to the independent medical examiner pertaining to the employee.

(5) If the employee refuses to submit himself to or in any way obstructs such an independent medical examination requested by--and provided for--by the employer, his--the employee's--right to compensation and his right to take or prosecute any proceedings under this Article shall be suspended pursuant to G.S. 97-18.1 until such refusal or objection ceases, and no compensation shall at any time be payable for the period of obstruction, unless in the opinion of the Industrial Commission the circumstances justify the refusal or obstruction. When the employer seeks to suspend compensation under this subdivision, it shall not be necessary for the employer to have first obtained an order compelling the employee to submit to the proposed independent medical examination. Any order issued by the Commission suspending compensation pursuant to G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate the compensation.

The employer, or the Industrial Commission, shall have the right in any case of death to require an autopsy at the expense of the party requesting the same.

(b) In those cases--any case--arising under this Article in which there is a question as to the employee is dissatisfied with the percentage of permanent disability suffered by an employee, if any employee, required to submit to a physical examination under the provisions of subsection (a) is dissatisfied with such examination or the report thereof, he shall be entitled to have as provided by G.S. 97-31 and determined by the authorized health care provider, the employee is entitled to have another examination solely on the percentage of permanent disability provided by a duly qualified physician or surgeon licensed and practicing of the employee's choosing who is licensed to practice in North Carolina or by a duly qualified physician or surgeon licensed to practice in South Carolina, Georgia, Virginia and Tennessee provided said nonresident physician or surgeon shall have been approved by the North Carolina Industrial Commission and his name placed on the Commission's list of approved nonresident physicians and surgeons in Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission, and designated by him--and the employee. That physician shall be paid by the employer or the Industrial Commission in the same manner as physicians--health care providers designated by the employer or the Industrial Commission are paid. The Industrial Commission must either disregard or give less weight to the opinions of the duly qualified physician chosen by the employee pursuant to this subsection on issues outside the scope of the G.S. 97-27(b) examination. No fact that is communicated to or otherwise learned by any physician who attended or examined the employee, or who was present at any examination, shall be privileged with respect to a claim before the Industrial Commission. Provided, however, that all travel expenses incurred in obtaining said examination shall be paid by said employee. The employer shall have the right to have present at such examination a duly qualified physician or surgeon provided and paid by him. No fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in

H709-CSTG-19 [v.8] House Bill 709* Page 7
The employer, or the Industrial Commission, has the right in any case of death to require an autopsy at its expense."

SECTION 10. G.S. 97-29 reads as rewritten:

"§ 97-29. Compensation rates and duration of compensation for total incapacity.

(a) When an employee qualifies for total disability, except as hereinafter otherwise provided, where the incapacity for work resulting from the injury is total, the employer shall pay or cause to be paid, as hereinafter provided by subsections (b) through (d) of this section, to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (66⅔%) of his average weekly wages, but not more than the amount established annually to be effective October 1 as provided herein, nor less than thirty dollars ($30.00) per week.

(b) When a claim is compensable pursuant to G.S. 97-18(b), paid without prejudice pursuant to G.S. 97-18(d), agreed by the parties pursuant to G.S. 97-82, or when an employee proves by a preponderance of the evidence that the employee is unable to earn the same wages the employee had earned before the injury, either in the same or other employment, the employee qualifies for temporary total disability subject to the limitations noted herein. The employee shall not be entitled to compensation pursuant to this subsection greater than 500 weeks from the date of first disability unless the employee qualifies for extended compensation under subsection (c) of this section.

(c) An employee may qualify for extended compensation in excess of the 500 week limitation on temporary total disability as described in subsection (b) only if: (i) at the time the employee makes application to the Commission to exceed the 500 week limitation on temporary total disability as described in subsection (b), 425 weeks have passed since the date of first disability and (ii) pursuant to the provisions of G.S. 97-84, unless agreed to by the parties, the employee shall prove by a preponderance of the evidence that the employee has sustained a total loss of wage earning capacity. If an employee makes application for extended compensation pursuant to this subsection and is awarded extended compensation by the Commission, the award shall not be stayed pursuant to G.S. 97-85 or 97-86 until the Full Commission or an appellate court determines otherwise. Upon its own motion or upon the application of any party in interest, the Industrial Commission may review an award for extended compensation in excess of the 500 week limitation on temporary total disability described in subsection (b), and on such review may make an award ending or continuing extended compensation. When reviewing a prior award to determine if the employee remains entitled to extended compensation, the Commission shall determine if the employer has proven by a preponderance of the evidence that the employee no longer has a total loss of wage earning capacity. When an employee is receiving full retirement benefits under Section 202(a) of the Social Security Act, after attainment of retirement age, as defined in Section 216(1) of the Social Security Act, the employer may reduce the extended compensation by one-hundred percent (100%) of the employee's retirement benefit. The reduction shall consist of the employee's primary benefit paid pursuant to Section 202(a) of the Social Security Act, but shall not include any dependent or auxiliary benefits paid pursuant to any other Section of the Social Security Act, if any, or any cost-of-living increases in benefits made pursuant to Section 215(i) of the Social Security Act.

(d) An injured employee may qualify for permanent total disability only if the employee has one or more of the following physical or mental limitations resulting from the injury:

(1) The loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof, as provided by G.S. 97-31(17).

(2) Spinal injury involving severe paralysis of both arms, both legs, or the trunk.

(3) Severe brain or closed head injury as evidenced by severe and permanent:

a. Sensory or motor disturbances;

b. Communication disturbances;
c. Complex integrated disturbances of cerebral function; or
d. Neurological disorders.

(4) Second degree or third degree burns to thirty three percent (33%) or more of the total body surface.

An employee who qualifies for permanent total disability pursuant to this subsection, shall be entitled to compensation, including medical compensation, during the lifetime of the injured employee, unless the employer shows by a preponderance of the evidence that the employee is capable of returning to suitable employment as defined in G.S. 97-2(22). Provided, however, the termination or suspension of compensation because the employee is capable of returning to suitable employment as defined in G.S. 97-2(22) does not affect the employee's entitlement to medical compensation. An employee who qualifies for permanent total disability under subdivision (d)(1) of this subsection is entitled to lifetime compensation, including medical compensation, regardless of whether or not the employee has returned to work in any capacity. In no other case shall an employee be eligible for lifetime compensation for permanent total disability.

In cases of total and permanent disability, compensation, including medical compensation, shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38.

(e) An employee shall not be entitled to benefits under this section or G.S. 97-30 and G.S. 97-31 at the same time.

(f) Where an employee can show entitlement to compensation pursuant to this section or G.S. 97-30 and a specific physical impairment pursuant to G.S. 97-31, the employee shall not collect benefits concurrently pursuant to both this section or G.S. 97-30 and G.S. 97-31, but rather is entitled to select the statutory compensation which provides the more favorable remedy.

In cases of total and permanent disability, compensation, including medical compensation, shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38.

(g) The weekly compensation payment for members of the North Carolina National Guard and the North Carolina State Defense Militia shall be the maximum amount established annually in accordance with the last paragraph of this section per week as fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars ($30.00) a week as fixed herein.

(h) An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article.

(i) Notwithstanding any other provision of this Article, on July 1 of each year, a maximum weekly benefit amount shall be computed. The amount of this maximum weekly benefit shall be derived by obtaining the average weekly insured wage in accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by 1.10, and by rounding such figure to its nearest multiple of two dollars ($2.00), and this said maximum weekly benefit shall be applicable to all injuries and claims arising on and after January 1 following such computation. Such maximum weekly benefit shall apply to all provisions of this Chapter and shall be adjusted July 1 and effective January 1 of each year as herein provided.

(j) If death results from the injury or occupational disease, then the employer shall pay compensation in accordance with the provisions of G.S. 97-38."
SECTION 11. G.S. 97-30 reads as rewritten:

"§ 97-30. Partial incapacity.

Except as otherwise provided in G.S. 97-31, where the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such disability, a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than the amount established annually to be effective October 1 as provided in G.S. 97-29, a week, and in no case shall the period covered by such compensation be greater than one hundred fifty weeks. Any weeks of payments made pursuant to G.S. 97-29 shall be deducted from the 500 weeks of payments available under this section, from the date of injury. In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period herein allowed for partial disability. An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article."

SECTION 12. G.S. 97-32 reads as rewritten:

"§ 97-32. Refusal of injured employee to accept suitable employment as suspending compensation.

If an injured employee refuses employment procured for him—suitable to his capacity—he shall not be entitled to any compensation at any time during the continuance of such refusal, unless in the opinion of the Industrial Commission such refusal was justified. Any order issued by the Commission suspending compensation pursuant to G.S. 97-18.1 on the ground of an unjustified refusal of an offer of suitable employment shall specify what actions the employee should take to end the suspension and reinstate the compensation. Nothing in this Article prohibits an employer from contacting the employee directly about returning to suitable employment with contemporaneous notice to the employee's counsel, if any."

SECTION 13. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"§ 97-32.2. Vocational rehabilitation.

(a) In a compensable claim, the employer may engage vocational rehabilitation services at any point during a claim regardless of whether the employee has reached maximum medical improvement to include, among other services, a one-time assessment of the employee's vocational potential. If the employee (i) has not returned to work or (ii) has returned to work earning less than seventy-five percent (75%) of his average weekly wages and is receiving benefits pursuant to G.S. 97-30, the employee may request vocational rehabilitation services including education and retraining in the North Carolina community college or university systems so long as the education and retraining are reasonably likely to substantially increase the employee's wage-earning capacity following completion of the education or retraining program. Provided, however, the seventy-five percent (75%) threshold is for the purposes of qualification for vocational rehabilitation benefits only and shall not impact a decision as to whether a job is suitable per G.S. 97-2(22). The expense of vocational rehabilitation services provided pursuant to this section shall be borne by the employer in the same manner as medical compensation.

(b) Vocational rehabilitation services shall be provided by either a qualified or conditional rehabilitation professional approved by the Industrial Commission. Unless the parties mutually agree to a vocational rehabilitation professional, the employer may make the
initial selection. At any point during the vocational rehabilitation process, either party may request that the Industrial Commission order a change of vocational rehabilitation professional for good cause.

(c) Vocational rehabilitation services shall include a vocational assessment and the formulation of an individualized written rehabilitation plan with the goal of substantially increasing the employee's wage earning capacity, and subject to the following provisions:

1. When performing a vocational assessment, the vocational rehabilitation professional should evaluate the employee's medical and vocational circumstances, the employee's expectations and specific requests for vocational training, benefits expected from vocational services, and other information significant to the employee's employment potential. The assessment should also involve a face-to-face interview between the employee and the vocational rehabilitation professional to identify the specific type and sequence of appropriate services. If, at any point during vocational rehabilitation services, the vocational rehabilitation professional determines that the employee will not benefit from vocational rehabilitation services, the employer may terminate said services unless the Commission orders otherwise.

2. Following assessment, and after receiving input from the employee, the vocational rehabilitation professional shall draft an individualized written rehabilitation plan. The plan should be individually tailored to the employee based on the employee's education, skills, experience, and aptitudes with appropriate recommendations for vocational services which may include appropriate re-training, education, or job placement. The plan may be changed or updated by mutual consent at any time during rehabilitation services. A written plan is not necessary if the vocational rehabilitation professional has been retained to perform a one-time assessment.

(d) Specific vocational rehabilitation services may include but are not limited to: vocational assessment, vocational exploration, sheltered workshop or community supported employment training, counseling, job analysis, job modification, job development and placement, labor market survey, vocational or psychometric testing, analysis of transferable skills, work adjustment counseling, job seeking skills training, on-the-job training, or training or education through the North Carolina community college or university systems.

(e) Vocational rehabilitation services may be terminated by agreement of the parties or by order of the Commission.

(f) Job placement activities may commence after completion of an individualized written rehabilitation plan. Return-to-work options should be considered with order of priority given to returning the employee to suitable employment with the current employer, returning the employee to suitable employment with a new employer, and, if appropriate, formal education or vocational training to prepare the employee for suitable employment with the current employer or a new employer.

(g) The refusal of the employee to accept or cooperate with vocational rehabilitation services when ordered by the Industrial Commission shall bar the employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal. Any order issued by the Commission suspending compensation per G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate the compensation.

SECTION 14. G.S. 97-38 reads as rewritten:
§ 97-38. Where death results proximately from compensable injury or occupational disease; dependents; burial expenses; compensation to aliens; election by partial dependents.

If death results proximately from a compensable injury or occupational disease and within six years thereafter, or within two years of the final determination of disability, whichever is later, the employer shall pay or cause to be paid, subject to the provisions of other sections of this Article, weekly payments of compensation equal to sixty-six and two-thirds percent (66 2/3%) of the average weekly wages of the deceased employee at the time of the accident, but not more than the amount established annually to be effective October 1 as provided in G.S. 97-29, nor less than thirty dollars ($30.00), per week, and burial expenses not exceeding three thousand five hundred dollars ($3,500), ten thousand dollars ($10,000), to the person or persons entitled thereto as follows:

... (3) If there is no person wholly dependent, and the person or all persons partially dependent is or are within the classes of persons defined as "next of kin" in G.S. 97-40, whether or not such persons or such classes of persons are of kin to the deceased employee in equal degree, and all so elect, he or they may take, share and share alike, the commuted value of the amount provided for whole dependents in (1) above instead of the proportional payment provided for partial dependents in (2) above; provided, that the election herein provided may be exercised on behalf of any infant partial dependent by a duly qualified guardian; provided, further, that the Industrial Commission may, in its discretion, permit a parent or person standing in loco parentis to such infant to exercise such option in its behalf, the award to be payable only to a duly qualified guardian except as in this Article otherwise provided; and provided, further, that if such election is exercised by or on behalf of more than one person, then they shall take the commuted amount in equal shares.

When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments. Compensation payments due on account of death shall be paid for a period of 400-500 weeks from the date of the death of the employee; provided, however, after said 400-week-500-week period in case of a widow or widower who is unable to support herself or himself because of physical or mental disability as of the date of death of the employee, compensation payments shall continue during her or his lifetime or until remarriage and compensation payments due a dependent child shall be continued until such child reaches the age of 18.

Compensation payable under this Article to aliens not residents (or about to become nonresidents) of the United States or Canada, shall be the same in amounts as provided for residents, except that dependents in any foreign country except Canada shall be limited to surviving spouse and child or children, or if there be no surviving spouse or child or children, to the surviving father or mother."

SECTION 15. G.S. 97-40 reads as rewritten:

§ 97-40. Commutation and payment of compensation in absence of dependents; "next of kin" defined; commutation and distribution of compensation to partially dependent next of kin; payment in absence of both dependents and next of kin.

Subject to the provisions of G.S. 97-38, if the deceased employee leaves neither whole nor partial dependents, then the compensation which would be payable under G.S. 97-38 to whole dependents shall be commuted to its present value and paid in a lump sum to the next of kin as...
herein defined. For purposes of this section and G.S. 97-38, "next of kin" shall include only child, father, mother, brother or sister of the deceased employee, including adult children or adult brothers or adult sisters of the deceased, but excluding a parent who has willfully abandoned the care and maintenance of his or her child and who has not resumed its care and maintenance at least one year prior to the first occurring of the majority or death of the child and continued its care and maintenance until its death or majority. For all such next of kin who are neither wholly nor partially dependent upon the deceased employee and who take under this section, the order of priority among them shall be governed by the general law applicable to the distribution of the personal estate of persons dying intestate. In the event of exclusion of a parent based on abandonment, the claim for compensation benefits shall be treated as though the abandoning parent had predeceased the employee. For all such next of kin who were also partially dependent on the deceased employee but who exercise the election provided for partial dependents by G.S. 97-38, the general law applicable to the distribution of the personal estate of persons dying intestate shall not apply and such person or persons upon the exercise of such election, shall be entitled, share and share alike, to the compensation provided in G.S. 97-38 for whole dependents commuted to its present value and paid in a lump sum.

If the deceased employee leaves neither whole dependents, partial dependents, nor next of kin as hereinabove defined, then no compensation shall be due or payable on account of the death of the deceased employee, except that the employer shall pay or cause to be paid the burial expenses of the deceased employee not exceeding three thousand five hundred dollars ($3,500) to the person or persons entitled thereto.

SECTION 16. G.S. 97-77(a) reads as rewritten:

"(a) There is hereby created a commission to be known as the North Carolina Industrial Commission, consisting of seven commissioners who shall devote their entire time to the duties of the Commission. The Governor shall appoint the members of the Commission, one for a term of two years, one for a term of four years, one for a term of six years. Of the additional appointments made in 1994, one shall be for a term expiring June 30, 1996, one for a term expiring June 30, 1998, and two for terms expiring June 30, 2000. Upon the expiration of each term as above mentioned, the Governor shall appoint a successor for a term of six years, and thereafter the term of office of each commissioner shall be six years. Not more than three appointees commissioners shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of employers, and not more than three appointees commissioners shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of employees. No person may serve more than two terms on the Commission, including any term served prior to the effective date of this section. In calculating the number of terms served, a partial term that is less than three years in length shall not be included."

SECTION 17. G.S. 97-77 is amended by adding a new subsection to read:

"(a1) Appointments of commissioners are subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before March 1 of the year of expiration of the term. If the Governor fails to timely submit nominations, the General Assembly shall appoint to fill the succeeding term, upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section.

In case of death, incapacity, resignation, or any other vacancy in the office of any commissioner prior to the expiration of the term of office, a nomination to fill the vacancy for the remainder of the unexpired term shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. If the Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall
appoint a person to till the remainder of the unexpired term upon the joint recommendation of
the President Pro Tempore of the Senate and the Speaker of the House of Representatives in
accordance with G.S. 120-121, not inconsistent with this section. If a vacancy arises or exists
pursuant to this subsection when the General Assembly is not in session, and the appointment is
deemed urgent by the Governor, the commissioner may be appointed and serve on an interim
basis pending confirmation by the General Assembly. For the purpose of this subsection, the
General Assembly is not in session only (i) prior to convening of the Regular Session, (ii)
during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die
adjournment of the Regular Session.

No person while in office as a commissioner may be nominated or appointed on an interim
basis to till the remainder of an unexpired term, or to a full term that commences prior to the
expiration of the term that the commissioner is serving."

SECTION 18. Article I of Chapter 97 of the General Statutes is amended by
adding a new section to read:
"§ 97-78.1. Standards of judicial conduct to apply to commissioners and deputy
commissioners.

The Code of Judicial Conduct for judges of the General Court of Justice and the procedure
for discipline of judges in Article 30 of Chapter 7A of the General Statutes shall apply to
commissioners and deputy commissioners. Commissioners and deputy commissioners shall be
liable for impeachment for the causes and in the manner provided for judges of the General
Court of Justice in Chapter 123 of the General Statutes."

SECTION 19. G.S. 97-80(a) reads as rewritten:
"(a) The Commission may make rules, in accordance with Article 2A of
Chapter 150B of the General Statutes and not inconsistent with this Article, for carrying out the
provisions of this Article. The Commission shall request the Office of State Budget and
Management to prepare a fiscal note for a proposed new or amended rule that has a substantial
economic impact, as defined in G.S. 150B 21.4(b). The Commission shall not take final action
on a proposed rule change that has a substantial economic impact until at least 60 days after the
fiscal note has been prepared.

Processes, procedure, and discovery under this Article shall be as summary and simple as
reasonably may be."

SECTION 20. G.S. 97-84 reads as rewritten:
"§ 97-84. Determination of disputes by Commission or deputy.

The Commission or any of its members shall hear the parties at issue and their
representatives and witnesses, and shall determine the dispute in a summary manner. The
Commission shall decide the case and issue findings of fact based upon the preponderance of
the evidence in view of the entire record. The award, together with a statement of the findings
of fact, rulings of law, and other matters pertinent to the questions at issue shall be filed with
the record of the proceedings, within 180 days of the close of the hearing record unless time is
extended for good cause by the Commission, and a copy of the award shall immediately be sent
to the parties in dispute. The parties may be heard by a deputy, in which event the hearing shall
be conducted in the same way and manner prescribed for hearings which are conducted by a
member of the Industrial Commission, and said deputy shall proceed to a complete
determination of the matters in dispute, file his written opinion within 180 days of the close of
the hearing record unless time is extended for good cause by the Commission, and the deputy
shall cause to be issued an award pursuant to such determination."

SECTION 21.(a) G.S. 150B-1(c) reads as rewritten:
"(c) Full Exemptions. — This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial
jurisdiction.
(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.

(3) The Utilities Commission.

(4) The Industrial Commission.


(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.


(8) (Expires June 30, 2012) Except as provided in G.S. 1508-21.1B, any agency with respect to contracts, disputes, protests, and/or claims arising out of or relating to the implementation of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)."

SECTION 21.(b) G.S. 150B-(1)(e) is amended by adding a new subdivision to read:

"(e) Exemptions From Contested Case Provisions. — The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

... (18) The Industrial Commission."

SECTION 21.(e) Any existing rule contained in Title 4 of Chapter 10 of the North Carolina Administrative Code that has not been readopted in accordance with Article 2A of Chapter 150B of the General Statutes on or before December 31, 2012, shall expire. Any rule that has been readopted by the Industrial Commission in accordance with G.S. 150B-21.2(g) on or before December 31, 2012, shall remain in effect until the rule becomes effective pursuant to G.S. 150B-21.3.

SECTION 22. As of February 1, 2011, the terms of the seven members of the Industrial Commission are as follows:

(1) One serves a term expiring April 30, 2011.
(2) Two serve terms expiring June 30, 2012.
(3) One serves a term expiring April 30, 2013.
(4) One serves a term expiring June 30, 2014.
(5) One serves a term expiring April 30, 2015.
(6) One serves a term expiring June 30, 2016.

The reduction from seven commissioners to six commissioners provided by Section 16 of this act shall be effected by not filling one of the two offices that expire June 30, 2012, pursuant to subdivision (2) of this section.

SECTION 23. Notwithstanding G.S. 97-31.1, this act is effective when it becomes law. Sections 4, 5, 6, 7, and 9 apply to claims pending on or after the effective date of this act. Sections 2, 3, 10, 11, 12, 13, 14, 15 and 20 apply to claims arising on or after the effective date of this act. Section 21 applies to rules adopted on or after the effective date of this act.
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<tr>
<th>NAME</th>
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<tr>
<td>Matt Smith</td>
<td>NCSBA &quot;THE CHILDREN&quot;</td>
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<td>Daniel Baum</td>
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<td>Carl Dean</td>
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## VISITOR REGISTRATION SHEET

**TORT REFORM COMMITTEE**  
Name of Committee  
MAY 26, 2011  
Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

<table>
<thead>
<tr>
<th>NAME</th>
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<tr>
<td>Victor Farah</td>
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<td>Gia Cammarano</td>
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<td>Edwina Mejia</td>
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<td>Greg Thompson</td>
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VISITOR REGISTRATION SHEET

TORT REFORM COMMITTEE

MAY 26, 2011

Name of Committee

Date

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<td>ECNC</td>
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<tr>
<td>Tara Loengsby</td>
<td>VITRA</td>
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### House Committee Pages / Sergeants at Arms

**NAME OF COMMITTEE**: House Sgt At Arms

**DATE**: 5-26-11  
**Room**: 1228

<table>
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<tr>
<th><em>Name</em></th>
<th>County</th>
<th>Sponsor</th>
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<tr>
<td>Destinee Clark</td>
<td>Mecklenburg</td>
<td>Representative Cotten</td>
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<tr>
<td>Nia Hill</td>
<td>Wake</td>
<td>Garland Pierce</td>
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_**House Sgt-At Arms:**_

1. **Name**: Larry Elliot  
2. **Name**: Doug Harris  
3. **Name**: Bob Rossi  
4. **Name**:         5. **Name**:         6. **Name**:         