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Short Title: Tort Reform for Citizens and Businesses.

(Public)

Sponsors:

Referred to:

March 31, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE TORT REFORM FOR NORTH CAROLINA CITIZENS AND
3 BUSINESSES.

4 The General Assembly of North Carolina enacts:

5 PART I. GENERAL REFORMS

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

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

9 Evidence offered to prove past medical expenses shall be limited to evidence of the
10 amounts actually paid to satisfy the bills that have been satisfied, regardless of the source of
11 payment, and evidence of the amounts actually necessary to satisfy the bills that have been
12 incurred but not yet satisfied. This rule does not impose upon any party an affirmative duty to
13 seek a reduction in billed charges to which the party is not contractually entitled. Nothing in
14 this rule modifies current law governing the admissibility of evidence relating to collateral
15 sources of payments."

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

17 "**§ 8-58.1. Injured party as witness when medical charges at issue.**

18 (a) Whenever an issue of hospital, medical, dental, pharmaceutical, or funeral charges
19 arises in any civil proceeding, the injured party or his guardian, administrator, or executor is
20 competent to give evidence regarding the amount paid or required to be paid in full satisfaction
21 of such charges, provided that records or copies of such charges showing the amount paid or
22 required to be paid in full satisfaction of such charges accompany such testimony.

23 (b) The testimony of ~~such~~ a person pursuant to subsection (a) of this section establishes
24 a rebuttable presumption of the reasonableness of the amount paid or required to be paid in full
25 satisfaction of the charges. However, testimony given in person before the trier of fact
26 by the provider of hospital, medical, dental, pharmaceutical, or funeral services that a charge
27 that has not yet been satisfied in full can be satisfied for an amount less than the amount
28 charged, or that a charge that has been satisfied in full was satisfied by payment of an amount
29 less than the amount charged, rebuts the presumption and establishes a rebuttable presumption
30 that the lesser satisfaction amount is the reasonable amount of the charges for such hospital,
31 medical, dental, pharmaceutical, or funeral services. For the purposes of this subsection, the
32 word "provider" shall include the agent or employee of a provider of hospital, medical, dental,
33 pharmaceutical or funeral services, or a person with responsibility to pay a provider of hospital,
34 medical, dental, pharmaceutical or funeral services on behalf of an injured party.



1 (c) The fact that a provider charged for services provided to the injured person
2 establishes a rebuttable presumption that the services were reasonably necessary."

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

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

8 (1) The testimony is based upon sufficient facts or data.

9 (2) The testimony is the product of reliable principles and methods.

10 (3) The witness has applied the principles and methods reliably to the facts of
11 the case."

12 **PART II. REFORM APPLICABLE TO PRODUCTS LIABILITY ACTIONS**

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

14 **"§ 99B-1. Definitions.**

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

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

19 (1a) "Government agency" means this State or the United States, or any agency
20 of this State or the United States, or any entity vested with the authority of
21 this State or of the United States to issue rules, regulations, orders, or
22 standards concerning the design, manufacture, packaging, labeling, or
23 advertising of a product or provision of a service.

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

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

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

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

41 **"§ 99B-12. Regulatory compliance.**

42 (a) Except as provided in subsection (b) or (c) of this section, in any product liability
43 action against a manufacturer or seller of a drug, if the drug that is alleged to have caused the
44 harm was approved for safety and efficacy by the United States Food and Drug Administration,
45 and the drug and its labeling were in compliance with the United States Food and Drug
46 Administration's approval at the time the drug left the control of the manufacturer or seller,
47 there is a rebuttable presumption that the drug was safe and effective for its approved use, and
48 the manufacturer or seller is not liable. This presumption may be rebutted only by clear and
49 convincing evidence.

50 (b) This section does not apply if the claimant proves that the manufacturer or seller, at
51 any time before the event that allegedly caused the harm, did any of the following:

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

12 (c) This section shall not bar an action brought pursuant to Article 51 of Chapter 1 of
13 the General Statutes, if the action is not based upon allegations that the product was not safe or
14 effective or that the manufacturer failed to provide an adequate warning."

PART III. OTHER REFORMS

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

16 **"§ 6-21.1. Allowance of counsel fees as part of costs in certain cases.**

17 (a) In any personal injury or property damage suit, or suit against an insurance company
18 under a policy issued by the defendant insurance company ~~and~~ in which the insured or
19 beneficiary is the plaintiff, instituted in a court of record, upon a finding findings by the court (i)
20 that there was an unwarranted refusal by the defendant ~~insurance company~~ to negotiate or pay
21 the claim which constitutes the basis of such suit, instituted in a court of record, where- (ii) that
22 the judgment for recovery of amount of damages recovered is ten thousand dollars
23 (\$10,000) twenty thousand dollars (\$20,000) or less, and (iii) that the amount of damages
24 recovered exceeded the highest offer made by the defendant no later than 30 days after the
25 deadline for completion of court-ordered mediation, or in cases in which there is no court-
26 ordered mediation, no later than the earlier of either 180 days after the filing of the last
27 responsive pleading or 90 days before the commencement of trial, the presiding judge may, in
28 his the judge's discretion, allow a reasonable attorney fee attorneys' fees to the duly licensed
29 ~~attorney~~ attorneys representing the litigant obtaining a judgment for damages in said suit, said
30 ~~attorney's fee~~ attorneys' fees to be taxed as a part of the court costs. The attorneys' fees so
31 awarded shall not exceed ten thousand dollars (\$10,000).

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

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

"Chapter 38B.

"Trespasser Responsibility.

40 **"§ 38B-1. Title.**

41 This Chapter may be cited as the Trespasser Responsibility Act.

42 **"§ 38B-2. General rule.**

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

45 **"§ 38B-3. Exceptions.**

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

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

26 **"§ 38B-4. Definitions.**

27 The following definitions shall apply in this Chapter:

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

35 **PART IV. MISCELLANEOUS PROVISIONS**

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

39 **SECTION 4.2.** Sections 2.1, 2.2, and 3.2 of this act become effective October 1,
40 2011, and apply to causes of actions arising on or after that date. The remainder of this act
41 becomes effective October 1, 2011, and applies to actions commenced on or after that date.