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HOUSE BILL 542  
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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, except that a provider, as that term is defined in G.S. 8-58.1(b), may  
16 disclose the existence of a contract or negotiation with a third party as the basis for any  
17 discount provided to a plaintiff."

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

19 "**§ 8-58.1. Injured party as witness when medical charges at issue.**

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

25 (b) The testimony of ~~such~~ a person pursuant to subsection (a) of this section establishes  
26 a rebuttable presumption of the reasonableness of the amount paid or required to be paid in full  
27 satisfaction of the charges. However, in the event that the provider of hospital, medical,  
28 dental, pharmaceutical, or funeral services gives sworn testimony that the charge for that  
29 provider's service either was satisfied by payment of an amount less than the amount charged,  
30 or can be satisfied by payment of an amount less than the amount charged, then with respect to  
31 that provider's charge only, the presumption of the reasonableness of the amount charged is  
32 rebutted and a rebuttable presumption is established that the lesser satisfaction amount is the  
33 reasonable amount of the charges for the testifying provider's services. For the purposes of this  
34 subsection, the word "provider" shall include the agent or employee of a provider of hospital,



1 medical, dental, pharmaceutical, or funeral services, or a person with responsibility to pay a  
2 provider of hospital, medical, dental, pharmaceutical, or funeral services on behalf of an injured  
3 party.

4 (c) The fact that a provider charged for services provided to the injured person  
5 establishes a permissive presumption that the services provided were reasonably necessary but  
6 no presumption is established that the services provided were necessary because of injuries  
7 caused by the acts or omissions of an alleged tortfeasor."

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

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

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

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

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

### 17 PART III. OTHER REFORMS

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

19 "**§ 6-21.1. Allowance of counsel fees as part of costs in certain cases.**

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

33 (b) When the presiding judge determines that an award of attorneys' fees is to be made  
34 under this statute, the judge shall issue a written order including findings of fact detailing the  
35 factual basis for the finding of an unwarranted refusal to negotiate or pay the claim, and setting  
36 forth the amount of the highest offer made 90 days or more before the commencement of trial,  
37 and the amount of damages recovered, as well as the factual basis and amount of any such  
38 attorneys' fees to be awarded."

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

### 41 **"Chapter 38B.**

### 42 **"Trespasser Responsibility.**

#### 43 **"§ 38B-1. Title.**

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

#### 45 **"§ 38B-2. General rule.**

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

#### 48 **"§ 38B-3. Exceptions.**

49 Notwithstanding G.S. 38B-2, a possessor of land may be subject to liability for physical  
50 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 4.1.(a)** If Senate Bill 33 of the 2011 Regular Session of the General  
40 Assembly becomes law, then G.S. 90-21.12(b), as enacted by Section 6 of Senate Bill 33, reads  
41 as rewritten:

42 "(b) In any medical malpractice action arising out of the furnishing or the failure to  
43 furnish professional services in the treatment of an emergency medical condition, as the term  
44 "emergency medical condition" is defined in ~~42 U.S.C. 1395dd(e)(1)~~, 42 U.S.C. §  
45 1395dd(e)(1)(A), the claimant must prove a violation of the standards of practice set forth in  
46 subsection (a) of this section by clear and convincing evidence."

47 **SECTION 4.2.** Section 4.1(a) of this act is effective when it becomes law. Section  
48 3.2 of this act becomes effective October 1, 2011, and applies to causes of actions arising on or  
49 after that date. The remainder of this act becomes effective October 1, 2011, and applies to  
50 actions commenced on or after that date.