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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~~-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



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1 rebutted and a rebuttable presumption is established that the lesser satisfaction amount is the
2 reasonable amount of the charges for the testifying provider's services. For the purposes of this
3 subsection, the word "provider" shall include the agent or employee of a provider of hospital,
4 medical, dental, pharmaceutical, or funeral services, or a person with responsibility to pay a
5 provider of hospital, medical, dental, pharmaceutical, or funeral services on behalf of an injured
6 party.

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

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

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

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

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

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

20 PART III. OTHER REFORMS

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

22 **"§ 6-21.1. Allowance of counsel fees as part of costs in certain cases.**

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

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

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

44 **"Chapter 38B.**

45 **"Trespasser Responsibility.**

46 **"§ 38B-1. Title.**

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

48 **"§ 38B-2. General rule.**

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

51 **"§ 38B-3. Exceptions.**

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

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

28 **"§ 38B-4. Definitions.**

29 The following definitions shall apply in this Chapter:

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

37 **PART IV. MISCELLANEOUS PROVISIONS**

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

41 **SECTION 4.1.(a)** If Senate Bill 33 of the 2011 Regular Session of the General
 42 Assembly becomes law, then G.S. 90-21.12(b), as enacted by Section 6 of Senate Bill 33, reads
 43 as rewritten:

44 "(b) In any medical malpractice action arising out of the furnishing or the failure to
 45 furnish professional services in the treatment of an emergency medical condition, as the term
 46 "emergency medical condition" is defined in ~~42 U.S.C. 1395dd(e)(1)~~, 42 U.S.C. §
 47 1395dd(e)(1)(A), the claimant must prove a violation of the standards of practice set forth in
 48 subsection (a) of this section by clear and convincing evidence."

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

1 after that date. The remainder of this act becomes effective October 1, 2011, and applies to
2 actions commenced on or after that date.