## **GENERAL ASSEMBLY OF NORTH CAROLINA** SESSION 2011

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## HOUSE BILL 542

## **Committee Substitute Favorable 5/10/11** Third Edition Engrossed 6/1/11 Senate Judiciary I Committee Substitute Adopted 6/13/11 Fifth Edition Engrossed 6/15/11

	Short Title: Tort Reform for Citizens and Businesses. (Pu	blic)				
	Sponsors:					
	Referred to:					
	March 31, 2011					
1	A BILL TO BE ENTITLED					
2 3	AN ACT TO PROVIDE TORT REFORM FOR NORTH CAROLINA CITIZENS A BUSINESSES.	ND				
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	l 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					
10	amounts actually paid to satisfy the bills that have been satisfied, regardless of the source					
11	payment, and evidence of the amounts actually necessary to satisfy the bills that have b					
12	incurred but not yet satisfied. This rule does not impose upon any party an affirmative dut	<u>y to</u>				
13	seek a reduction in billed charges to which the party is not contractually entitled."					
14	SECTION 1.2. G.S. 8-58.1 reads as rewritten:					
15	"§ 8-58.1. Injured party as witness when medical charges at issue.					
16	(a) Whenever an issue of hospital, medical, dental, pharmaceutical, or funeral cha					
17	arises in any civil proceeding, the injured party or his guardian, administrator, or execute					
18	competent to give evidence regarding the amount paid or required to be paid in full satisfac					
19	of such charges, provided that records or copies of such charges showing the amount pai	<u>1 or</u>				
20	required to be paid in full satisfaction of such charges accompany such testimony.	- <b>1</b>				
21 22	(b) The testimony of such a person <u>pursuant to subsection (a) of this section</u> establist a rebuttable presumption of the reasonableness of the amount <u>paid or required to be paid in</u>					
22	satisfaction of the charges.charges. However, in the event that the provider of hospital, med					
23 24	dental, pharmaceutical, or funeral services gives sworn testimony that the charge for					
25	provider's service either was satisfied by payment of an amount less than the amount char					
26	or can be satisfied by payment of an amount less than the amount charged, then with respect					
27	that provider's charge only, the presumption of the reasonableness of the amount charge					
28	rebutted and a rebuttable presumption is established that the lesser satisfaction amount is					
29	reasonable amount of the charges for the testifying provider's services. For the purposes of					
30	subsection, the word "provider" shall include the agent or employee of a provider of hosp					
31	medical, dental, pharmaceutical, or funeral services, or a person with responsibility to pa					
32	provider of hospital, medical, dental, pharmaceutical, or funeral services on behalf of an inju					
33	party.	_				



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1	(c) The fact that a provider charged for services provided to the injured	person			
2	establishes a permissive presumption that the services provided were reasonably necessary bu				
3	no presumption is established that the services provided were necessary because of in	-			
4	caused by the acts or omissions of an alleged tortfeasor."				
5	SECTION 1.3. G.S. 8C-702(a) reads as rewritten:				
6	"(a) If scientific, technical or other specialized knowledge will assist the trier of	fact to			
7	understand the evidence or to determine a fact in issue, a witness qualified as an exp	ert by			
8	knowledge, skill, experience, training, or education, may testify thereto in the form	of an			
9	opinion.opinion, or otherwise, if all of the following apply:				
10	(1) The testimony is based upon sufficient facts or data.				
11	(2) The testimony is the product of reliable principles and methods.				
12	(3) The witness has applied the principles and methods reliably to the fa	acts of			
13	the case."				
14	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 con				
18	under a policy issued by the defendant insurance company and in which the insurance finding in the plaintiff instituted in a court of record upon a finding in the plaintiff.				
19 20	beneficiary is the plaintiff, <u>instituted in a court of record</u> , upon a <u>findingfindings</u> by the co that there was an unwarranted refusal by the defendant <u>insurance company</u> to <u>negotiate</u>				
20	the claim which constitutes the basis of such suit, instituted in a court of record, where (				
21	the judgment for recovery of amount of damages recovered is ten thousand of				
23	(\$10,000)twenty thousand dollars (\$20,000) or less, and (iii) that the amount of da				
24	recovered exceeded the highest offer made by the defendant no later than 90 days befor	_			
25	<u>commencement of trial,</u> the presiding judge may, in histhe judge's discretion, al				
26	reasonable attorney fee attorneys' fees to the duly licensed attorney attorneys representi				
27	litigant obtaining a judgment for damages in said suit, said attorney's fee attorneys' fees	-			
28	taxed as a part of the court costs. The attorneys' fees so awarded shall not exceed ten the	ousand			
29	<u>dollars (\$10,000).</u>				
30	(b) When the presiding judge determines that an award of attorneys' fees is to be	made			
31	under this statute, the judge shall issue a written order including findings of fact detaili				
32	factual basis for the finding of an unwarranted refusal to negotiate or pay the claim, and				
33	forth the amount of the highest offer made 90 days or more before the commencement of				
34	and the amount of damages recovered, as well as the factual basis and amount of any	<u>y such</u>			
35	attorneys' fees to be awarded."				
36	<b>SECTION 3.2.</b> The General Statutes are amended by adding a new Chap	oter to			
37 38	read:				
38 39	" <u>Chapter 38B.</u> " <u>Trespasser Responsibility.</u>				
40	"§ 38B-1. Title.				
41	<u>This Chapter may be cited as the Trespasser Responsibility Act.</u>				
42	"§ 38B-2. General rule.				
43	A possessor of land, including an owner, lessee, or other occupant, does not owe a d	lutv 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 ph	iysical			
47	injury or death to a trespasser in the following situations:				
48	(1) Intentional harms. – A possessor may be subject to liability if the tresp				
49	bodily injury or death resulted from the possessor's willful or v				
50	conduct, or was intentionally caused by the possessor, except	that a			

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1		possessor may use reasonable force to repel a trespasser	who has entered the	
2		land or a building with the intent to commit a crime.		
	<u>(2)</u>	Harms to trespassing children caused by artificial cond	-	
		may be subject to liability for bodily injury or death		
		resulting from an artificial condition on the land if all of	• • • •	
		a. <u>The possessor knew or had reason to know that</u>	children were likely	
		to trespass at the location of the condition.		
		b. The condition is one the possessor knew or rea		
		known involved an unreasonable risk of serio	ous bodily injury or	
		death to such children.		
		c. <u>The injured child did not discover the condition</u>	· · · · · · · · · · · · · · · · · · ·	
		involved in the condition or in coming with	thin the area made	
		dangerous by it.		
		d. <u>The utility to the possessor of maintaining th</u>		
		burden of eliminating the danger were slight as	s compared with the	
		risk to the child involved.		
		e. <u>The possessor failed to exercise reasonable c</u>	are to eliminate the	
	(2)	danger or otherwise protect the injured child.	ty for physical inium	
	<u>(3)</u>	<u>Position of peril. – A possessor may be subject to liabili</u> or death to a trespasser if the possessor discovered		
		position of peril or helplessness on the property an	•	
		ordinary care not to injure the trespasser.	u Talleu to exercise	
	"§ 38B-4. Defin			
		ng definitions shall apply in this Chapter:		
	(1)	<u>Child trespasser. – A trespasser who is less than 14 yea</u>	rs of age or who has	
		the level of mental development found in a person less the		
	<u>(2)</u>	Possessor. – A person in lawful possession of land,		
		lessee, or other occupant, or a person acting on beha	alf of such a lawful	
		possessor of land.		
	<u>(3)</u>	Trespasser A person who enters on the property		
		permission and without an invitation, express or implied	" <u>•</u>	
		PART IV. MISCELLANEOUS PROVISIONS		
		<b>TION 4.1.</b> Severability. – If any provision of this act or i		
	-	mstance is held invalid, the remainder of this act or th	e application of the	
	1	er persons or circumstances is not affected.		
		TION 4.1.(a) If Senate Bill 33 of the 2011 Regular Se		
	•	nes law, then G.S. 90-21.12(b), as enacted by Section 6 of	Senate Bill 33, reads	
	as rewritten:			
	"(b) In any medical malpractice action arising out of the furnishing or the failure to			
	furnish professional services in the treatment of an emergency medical condition, as the term			
	"emergency medical condition" is defined in $42$ U.S.C. $1395dd(e)(1),42$ U.S.C. §			
	<u>1395dd(e)(1)(A)</u> , the claimant must prove a violation of the standards of practice set forth in $\frac{1395dd(e)(1)(A)}{1000}$ , of this spatian by alarm and appringing avidance."			
		f this section by clear and convincing evidence."	acomos low Castian	
	<b>SECTION 4.2.</b> Section 4.1(a) of this act is effective when it becomes law. Section			
	3.2 of this act becomes effective October 1, 2011, and applies to causes of actions arising on or after that date. The remainder of this act becomes effective October 1, 2011, and applies to			
		ced on or after that date.	2011, and applies to	
	actions commen	ceu on or arter that date.		