

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 674

Short Title: Civil Justice System Reforms. (Public)

Sponsors: Senators Brunstetter, Brown, Rucho; Hunt, Rabon, Rouzer, Stevens, and Tillman.

Referred to: Judiciary I.

April 20, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO REFORM AND IMPROVE THE NORTH CAROLINA CIVIL JUSTICE
3 SYSTEM.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 4 of Chapter 8C of the General Statutes is amended by adding
6 a new section to read:

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

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

12 **SECTION 2.** Chapter 8 of the General Statutes is amended by adding a new Article
13 to read:

14 "Article 7D.

15 "Admissibility of Collateral Source Payments.

16 **"§ 8-58.25. Certain collateral source payments admissible as evidence.**

17 (a) As used in this section, "collateral source payments" means a payment for any of the
18 following damages for which recovery is permitted in a civil action that is made to or for the
19 benefit of a plaintiff or is otherwise available to the plaintiff:

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

34 A collateral source payment does not include gifts, gratuitous contributions or assistance, or
35 payments arising from assets of the plaintiff.



1 (2) Stating, as to each claim, the percentage of the total responsibility for
2 causing the personal injury, wrongful death, or harm to property that is
3 attributed to each responsible party or released person, with the total of all
4 percentages being equal to one hundred percent (100%).

5 (b) In determining percentages of responsibility, the trier of fact shall consider both of
6 the following:

7 (1) The nature of the conduct of each party and released person determined to be
8 responsible.

9 (2) The extent of the causal relation between the conduct and the damages
10 claimed.

11 (c) The court shall determine the extent to which the responsibility of one party or
12 released person, which is based on the act or omission of another party or released person,
13 warrants that the parties or released persons be treated as a single party for the purpose of
14 making findings under subsection (a) of this section.

15 (d) Nothing in this section shall alter any party's right to move for a separate trial of any
16 issue or claim pursuant to G.S. 1A-1, Rule 42(b).

17 **§ 1F-15. Entering judgment.**

18 After determining an award of damages to a claimant and the amount of the several share
19 for which each responsible party is liable, the court shall enter judgment severally against each
20 party adjudged liable, except in the following situations:

21 (1) If a party is adjudged liable for the act or omission of another party under
22 G.S. 1F-10(c), the court shall enter judgment jointly and severally against
23 those parties for their joint share.

24 (2) If any other statute of this State requires that liability be joint and several,
25 the court shall enter judgment accordingly.

26 **§ 1F-20. Right of contribution and indemnity; third-party action.**

27 (a) Except as otherwise provided in subsection (b) or (c) of this section, a party that is
28 jointly and severally liable with one or more other parties under either subdivision of
29 G.S. 1F-15 has a right of contribution from such other party or parties for any amount the party
30 seeking contribution pays in excess of the several amount for which the party is responsible. A
31 party against which contribution is sought is not liable for more than the monetary amount of
32 that party's several share of responsibility determined pursuant to G.S. 1F-10.

33 (b) A party that is adjudged liable for the act or omission of another party under
34 G.S. 1F-10(c) has a right of indemnification from the other party.

35 (c) There is no right of contribution against any party liable for negligent conduct in
36 favor of any party liable for intentional wrongful conduct causing personal injury, wrongful
37 death, or harm to property giving rise to the claim.

38 (d) A party that is subject to liability for personal injury, wrongful death, or harm to
39 property under this Chapter has a right to the following:

40 (1) To join a person that is not a party to the action and that is also subject to
41 liability to the claimant for all or part of the same personal injury, wrongful
42 death, or harm to property.

43 (2) To seek contribution or indemnity, whichever is appropriate, from another
44 person whose liability is not determined in the proceeding in which the party
45 is adjudged liable if the other person is responsible for all or part of the same
46 personal injury, wrongful death, or harm to property and has not been
47 discharged from liability to the claimant under G.S. 1F-35(a).

48 (e) A claim for contribution or indemnity may be asserted in the original action or in a
49 separate action.

50 (f) The provisions of Article 1 of Chapter 1B of the General Statutes shall not apply to
51 claims subject to this Chapter.

"§ 1F-25. Effect of release.

(a) A release, covenant not to sue, covenant not to execute a judgment, or similar agreement between a claimant and person subject to liability discharges the person from liability to the claimant to the extent provided in the agreement and from liability for contribution to any other person subject to liability to the claimant for the same personal injury, wrongful death, or harm to property. The agreement does not discharge any other person subject to liability upon the same claim unless the agreement so provides. Neither the amount stipulated by the agreement nor any consideration paid for it shall in any way affect any party's liability for the same personal injury, wrongful death, or harm to property unless the agreement so provides.

(b) The amount of the claim of the releasing person under subsection (a) of this section against other persons jointly and severally liable for the same personal injury, wrongful death, or harm to property for which the released person would have been liable is reduced by the amount of the total award corresponding to the percentage of responsibility attributed to the released person pursuant to G.S. 1F-10.

(c) A release, covenant not to sue, covenant not to execute a judgment, or similar agreement extinguishes any claim for contribution or indemnity that the released person would have had against another person that would have been jointly and severally liable with the released person.

"§ 1F-30. Reduction of workers' compensation lien and subrogation right; notice and intervention.

(a) If an employer or workers' compensation insurer asserts a lien or right of subrogation under G.S. 97-10.2, the employer or insurer is deemed to have had its obligation to the employee for the compensation benefits paid or payable discharged under G.S. 1F-25 as if the employer or insurer had received a release, covenant not to sue, or covenant not to execute a judgment from, or entered a similar agreement with, the employee. In such a case, any percentage of responsibility that the employer would have had for the employee's injury, were the employer not immune under Article 1 of Chapter 97 of the General Statutes, must be determined as that of a released person pursuant to G.S. 1F-10, and the lien or right of subrogation is reduced by the monetary amount of the employer's percentage of responsibility, if any, assigned by the trier of fact in the employee's action against the third party.

(b) A party asserting that an employer's or workers' compensation insurer's lien or right of subrogation should be reduced under subsection (a) of this section because of the employer's fault shall give notice to the employer or workers' compensation insurer. In that case, the employer or insurer may intervene in the employee's action for personal injury.

"§ 1F-35. Reduction of State's lien and subrogation right; notice and intervention.

(a) If the State asserts a lien or right of subrogation under G.S. 127A-110, the State is deemed to have had its obligation to the guardsman for the compensation benefits paid or payable discharged under G.S. 1F-25 as if the State had received a release, covenant not to sue, or covenant not to execute a judgment from, or entered a similar agreement with, the guardsman. In such a case, any percentage of responsibility of the State for the guardsman's injury must be determined as that of a released person pursuant to G.S. 1F-10, and the lien or right of subrogation is reduced by the monetary amount of the State's percentage of responsibility, if any, assigned by the trier of fact in the guardsman's action against the third party.

(b) A party asserting that the State's lien or right of subrogation should be reduced under subsection (a) of this section because of the State's fault shall give notice to the State. In that case, the State may intervene in the employee's action for personal injury.

"§ 1F-40. No modification to existing law governing apportionment of damages resulting from divisible injuries.

1 Nothing in this Chapter shall alter the application of existing law governing apportionment
2 of damages in cases involving separate, distinct, and divisible injuries."

3 **SECTION 7.** G.S. 1B-1 is amended by adding a new subsection to read:

4 "(j) This Article shall not apply to tort-feasors liable for claims that are subject to
5 Chapter 1F of the General Statutes."

6 **SECTION 8.** G.S. 28A-18-2 is amended by adding a new subsection to read:

7 "(e) The provisions of Chapter 1F of the General Statutes shall apply to actions for
8 damages under this section requiring a determination of the responsibility of more than one
9 party for the death of the decedent."

10 **SECTION 9.** G.S. 99B-1.1 reads as rewritten:

11 "**§ 99B-1.1. Strict liability-liability; apportionment of tort responsibility.**

12 (a) There shall be no strict liability in tort in product liability actions.

13 (b) The provisions of Chapter 1F of the General Statutes shall apply to product liability
14 actions under this Chapter requiring a determination of the responsibility of more than one
15 party for the injury, wrongful death, or harm to property giving rise to the cause of action."

16 **SECTION 10.** Article 31 of Chapter 143 of the General Statutes is amended by
17 adding a new section to read:

18 "**§ 143-300.1B. Apportionment of tort responsibility applies to this Article.**

19 Subject to the provisions of G.S. 143-300.1A, the provisions of Chapter 1F of the General
20 Statutes shall apply to claims under this Article requiring a determination of the responsibility
21 of more than one party for the injury, wrongful death, or harm to property giving rise to the
22 cause of action."

23 **SECTION 11.** This act becomes effective October 1, 2011, and applies to causes of
24 actions accruing on or after that date.