

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE DRH50195-MH-13A (02/01)

Short Title: Tort Reform for Citizens and Businesses. (Public)

Sponsors: Representatives Rhyne, McComas, Brisson, and Crawford (Primary Sponsors).

Referred to:

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 may include all bills reasonably paid and a
10 statement of the amounts actually necessary to satisfy the bills that have been incurred but not
11 yet paid. Evidence of source of payment and rights of subrogation related to the payment shall
12 be admissible."

13 SECTION 1.2. G.S. 1-289 reads as rewritten:

14 "**§ 1-289. Undertaking to stay execution on money judgment.**

15 (a) If the appeal is from a judgment directing the payment of money, it does not stay the
16 execution of the judgment unless a written undertaking is executed on the part of the appellant,
17 by one or more sureties, as set forth in this section.

18 (b) In an action where the judgment directs the payment of money, the court shall
19 specify the amount of the undertaking required to stay execution of the judgment pending
20 appeal as provided in subsection (c) of this section. The undertaking shall be to the effect that if
21 the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the
22 appellant will pay the amount directed to be paid by the judgment, or the part of such amount
23 as to which the judgment shall be affirmed, if affirmed only in part, and all damages which
24 shall be awarded against the appellant upon the appeal, except as provided in subsection (b) of
25 this section. Whenever it is satisfactorily made to appear to the court that since the execution of
26 the undertaking the sureties have become insolvent, the court may, by rule or order, require the
27 appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute
28 such undertaking within twenty days after the service of a copy of the rule or order requiring it,
29 the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a
30 party to an action or proceeding to give a bond or an undertaking with surety or sureties, he
31 may, in lieu thereof, deposit with the officer into court money to the amount of the bond or
32 undertaking to be given. The court in which the action or proceeding is pending may direct
33 what disposition shall be made of such money pending the action or proceeding. In a case
34 where, by this section, the money is to be deposited with an officer, a judge of the court, upon
35 the application of either party, may, at any time before the deposit is made, order the money



1 deposited in court instead of with the officer; and a deposit made pursuant to such order is of
2 the same effect as if made with the officer. The perfecting of an appeal by giving the
3 undertaking mentioned in this section stays proceedings in the court below upon the judgment
4 appealed from; except when the sale of perishable property is directed, the court below may
5 order the property to be sold and the proceeds thereof to be deposited or invested, to abide the
6 judgment of the appellate court.

7 (c) The amount of the undertaking that shall be required by the court shall be an amount
8 determined by the court after notice and hearing proper and reasonable for the security of the
9 rights of the adverse party, considering relevant factors, including the following:

10 (1) The amount of the judgment.

11 (2) The amount of the limits of all applicable liability policies of the appellant
12 judgment debtor.

13 (3) The aggregate net worth of the appellant judgment debtor.

14 ~~(b) If the appellee in a civil action brought under any legal theory obtains a judgment~~
15 ~~directing the payment or expenditure of money in the amount of twenty five million dollars~~
16 ~~(\$25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the~~
17 ~~period of time during which the appellant has the right to pursue appellate review, including~~
18 ~~discretionary review and certiorari, the amount of the undertaking that the appellant is required~~
19 ~~to execute to stay execution of the judgment during the entire period of the appeal shall be~~
20 ~~twenty five million dollars (\$25,000,000).~~

21 ~~(c) If the appellee proves by a preponderance of the evidence that the appellant for~~
22 ~~whom the undertaking has been limited under subsection (b) of this section is, for the purpose~~
23 ~~of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its~~
24 ~~assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United~~
25 ~~States other than in the ordinary course of business, then the limitation in subsection (b) of this~~
26 ~~section shall not apply and the appellant shall be required to make an undertaking in the full~~
27 ~~amount otherwise required by this section."~~

28 **SECTION 1.3.** Chapter 8 of the General Statutes is amended by adding a new
29 Article to read:

30 "Article 7D.

31 "Admissibility of Collateral Source Payments.

32 "**§ 8-58.25. Certain collateral source payments admissible as evidence.**

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

36 (1) Medical expenses and disability payments under the federal Social Security
37 Act, any federal, State, or local income disability act, or any other public
38 program.

39 (2) Payments under any health, sickness, or income disability insurance or
40 automobile accident insurance that provides health benefits or income
41 disability coverage, and any other similar insurance benefits available to the
42 plaintiff, except life insurance.

43 (3) Payments under any contract or agreement of any person, group,
44 organization, partnership, or corporation to provide, pay for, or reimburse
45 the costs of hospital, medical, dental, or health care services.

46 (4) Payments under any contractual or voluntary wage continuation plan
47 provided by an employer or other system intended to provide wages during a
48 period of disability.

49 (5) From any other source.

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

1 (b) In any action, the court shall allow into evidence, if requested by a defendant,
2 collateral source payments paid to or for the benefit of the plaintiff, or that are otherwise made
3 available to the plaintiff, related to the losses or damages alleged in the complaint. Any
4 amounts so allowed shall first be reduced by any payments made by the plaintiff to secure the
5 right to receive the collateral source payment. The court shall allow into evidence, if requested
6 by the plaintiff, rights of subrogation of any collateral source."

7 **SECTION 1.4.** G.S. 8C-702(a) reads as rewritten:

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

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

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

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

16 **SECTION 1.5.** G.S. 1A-1, Rule 42(b), reads as rewritten:

17 "(b) Separate trials. –

18 (1) The court may in furtherance of convenience or to avoid prejudice and shall
19 for considerations of venue upon timely motion order a separate trial of any
20 claim, cross-claim, counterclaim, or third-party claim, or of any separate
21 issue or of any number of claims, cross-claims, counterclaims, third-party
22 claims, or issues.

23 (2) Upon motion of any party in an action that includes a claim commenced
24 under Article 1G of Chapter 90 of the General Statutes involving a managed
25 care entity as defined in G.S. 90-21.50, the court shall order separate
26 discovery and a separate trial of any claim, cross-claim, counterclaim, or
27 third-party claim against a physician or other medical provider.

28 (3) Upon motion of any party in an action in tort wherein the plaintiff seeks
29 damages exceeding seventy-five thousand dollars (\$75,000), the court shall
30 order separate trials for the issue of liability and the issue of damages.
31 Evidence relating solely to compensatory damages shall not be admissible
32 until the trier of fact has determined that the defendant is liable. The same
33 trier of fact that tries the issues relating to liability shall try the issues
34 relating to damages."

35 **SECTION 1.6.** G.S. 1D-25 reads as rewritten:

36 "**§ 1D-25. Limitation of amount of recovery.**

37 (a) In all actions seeking an award of punitive damages, the trier of fact shall determine
38 the amount of punitive damages separately from the amount of compensation for all other
39 damages.

40 (b) Punitive damages awarded against a defendant shall not exceed three times the
41 amount of compensatory damages or two hundred fifty thousand dollars (\$250,000), whichever
42 is greater. If a trier of fact returns a verdict for punitive damages in excess of the maximum
43 amount specified under this subsection, the trial court shall reduce the award and enter
44 judgment for punitive damages in the maximum amount.

45 (c) The provisions of subsection (b) of this section shall not be made known to the trier
46 of fact through any means, including voir dire, the introduction into evidence, argument, or
47 instructions to the jury.

48 (d) Punitive damages awarded in excess of one hundred thousand dollars (\$100,000)
49 shall be awarded by the presiding judge as follows:

- 1 (1) Twenty-five percent (25%) of the amount over one hundred thousand dollars
 2 (\$100,000) shall be remitted to the plaintiff in accordance with applicable
 3 law.
 4 (2) Seventy-five percent (75%) of the amount over one hundred thousand
 5 dollars (\$100,000) shall be remitted to the Civil Penalty and Forfeiture
 6 Fund."

7 PART II. REFORMS APPLICABLE TO MEDICAL MALPRACTICE ACTIONS

8 **SECTION 2.1.** G.S. 1A-1, Rule 9(j), reads as rewritten:

9 "(j) Medical malpractice. – Any complaint alleging medical malpractice by a health care
 10 provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care
 11 under G.S. 90-21.12 shall be dismissed unless:

- 12 (1) The pleading specifically asserts that the medical care ~~has~~ and all medical
 13 records pertaining to the alleged injury then available to the plaintiff after
 14 reasonable inquiry, have been reviewed by a person who is reasonably
 15 expected to qualify as an expert witness under Rule 702 of the Rules of
 16 Evidence and who is willing to testify that the medical care did not comply
 17 with the applicable standard of care;
 18 (2) The pleading specifically asserts that the medical care ~~has~~ and all medical
 19 records pertaining to the alleged injury then available to the plaintiff after
 20 reasonable inquiry, have been reviewed by a person that the complainant
 21 will seek to have qualified as an expert witness by motion under Rule 702(e)
 22 of the Rules of Evidence and who is willing to testify that the medical care
 23 did not comply with the applicable standard of care, and the motion is filed
 24 with the complaint; or
 25 (3) The pleading alleges facts establishing negligence under the existing
 26 common-law doctrine of res ipsa loquitur.

27 Upon motion by the complainant prior to the expiration of the applicable statute of
 28 limitations, a resident judge of the superior court for a judicial district in which venue for the
 29 cause of action is appropriate under G.S. 1-82 or, if no resident judge for that judicial district is
 30 physically present in that judicial district, otherwise available, or able or willing to consider the
 31 motion, then any presiding judge of the superior court for that judicial district may allow a
 32 motion to extend the statute of limitations for a period not to exceed 120 days to file a
 33 complaint in a medical malpractice action in order to comply with this Rule, upon a
 34 determination that good cause exists for the granting of the motion and that the ends of justice
 35 would be served by an extension. The plaintiff shall provide, at the request of the defendant,
 36 proof of compliance with this subsection through up to ten written interrogatories, the answers
 37 to which shall be verified by the expert required under this subsection. These interrogatories do
 38 not count against the interrogatory limit under Rule 33."

39 **SECTION 2.2.(a)** G.S. 90-21.11 reads as rewritten:

40 "**§ 90-21.11. Definitions.**

41 ~~As used~~ The following definitions apply in this Article, Article:

- 42 (1) ~~the term "health care provider" means~~ Health care provider. – without
 43 ~~limitation~~ Without limitation, any of the following:
 44 a. ~~any~~ A person who pursuant to the provisions of Chapter 90 of the
 45 General Statutes is licensed, or is otherwise registered or certified to
 46 engage in the practice of or otherwise performs duties associated
 47 with any of the following: medicine, surgery, dentistry, pharmacy,
 48 optometry, midwifery, osteopathy, podiatry, chiropractic, radiology,
 49 nursing, physiotherapy, pathology, anesthesiology, anesthesia,
 50 laboratory analysis, rendering assistance to a physician, dental
 51 hygiene, ~~psychiatry, psychology;~~ psychiatry, or psychology.

- 1 b. ~~or a~~ hospital or hospital, a nursing home; home, or an adult care
2 home licensed under Chapter 131D of the General Statutes.
3 c. ~~or any~~ Any other person who is legally responsible for the negligence
4 of such person, hospital or nursing home; a person described by
5 sub-subdivision a. of this subdivision, a hospital, a nursing home, or
6 an adult care home described by sub-subdivision b. of this
7 subdivision.
8 d. ~~or any~~ Any other person acting at the direction or under the
9 supervision of any of the foregoing persons, a person described by
10 sub-subdivision a. of this subdivision, a hospital, ~~or a~~ nursing
11 ~~home~~ home, or an adult care home described by sub-subdivision b. of
12 this subdivision.

13 (2) ~~As used in this Article, the term "medical malpractice action" means~~
14 Medical malpractice action. – Either of the following:

- 15 a. ~~a~~ A civil action for damages for personal injury or death arising out of
16 the furnishing or failure to furnish professional services in the
17 performance of medical, dental, or other health care by a health care
18 provider.
19 b. A civil action against a hospital, a nursing home, or an adult care
20 home licensed under Chapter 131D of the General Statutes for
21 damages for personal injury or death, when the civil action (i) alleges
22 a breach of administrative or corporate duties to the patient,
23 including, but not limited to, allegations of negligent credentialing or
24 negligent monitoring and supervision; and (ii) arises from the same
25 facts or circumstances as a claim under sub-subdivision a. of this
26 subdivision."

27 **SECTION 2.2.(b)** G.S. 90-21.12 reads as rewritten:

28 **"§ 90-21.12. Standard of health care.**

29 (a) ~~Except as provided in subsection (b) of this section, in ~~in~~ any medical malpractice~~
30 ~~action, action for damages for personal injury or death arising out of the furnishing or the~~
31 ~~failure to furnish professional services in the performance of medical, dental, or other health~~
32 ~~care, the defendant health care provider shall not be liable for the payment of damages unless~~
33 ~~the trier of the facts~~ fact is satisfied finds by the greater weight of the evidence that the care of
34 such health care provider was not in accordance with the standards of practice among members
35 of the same health care profession with similar training and experience situated in the same or
36 similar communities under the same or similar circumstances at the time of the alleged act
37 giving rise to the cause of action.

38 (b) In any medical malpractice action arising out of the furnishing or the failure to
39 furnish services pursuant to obligations imposed by 42 U.S.C. § 1395dd for an emergency
40 medical condition as defined in 42 U.S.C. § 1395dd(e)(1), the defendant health care provider
41 shall not be liable for the payment of damages unless the trier of fact finds by the greater
42 weight of the evidence that the health care provider's deviation from the standard of care
43 required under subsection (a) of this section constituted gross negligence, wanton conduct, or
44 intentional wrongdoing. Nothing in this subsection shall be construed to change, alter, override,
45 or otherwise affect the provisions of G.S. 90-21.14, 90-21.15, 90-21.16, or 20-166."

46 **SECTION 2.3.(a)** Article 1B of Chapter 90 of the General Statutes is amended by
47 adding the following new section to read:

48 **"§ 90-21.19. Liability limit for noneconomic damages.**

49 (a) In any medical malpractice action in which the plaintiff is entitled to an award of
50 noneconomic damages, the total amount of noneconomic damages for which judgment is
51 entered against all defendants shall not exceed two hundred fifty thousand dollars (\$250,000)

1 per defendant. On January 1 of every third year, beginning with January 1, 2014, the
2 Administrative Office of the Courts shall reset the limitation on damages for noneconomic loss
3 set forth in this subsection to be equal to two hundred fifty thousand dollars (\$250,000) times
4 the ratio of the Consumer Price Index for November of the prior year to the Consumer Price
5 Index for November 2011. In the event that any verdict or award of noneconomic damages
6 stated pursuant to G.S. 90-21.19B(1) exceeds these limits, the court shall modify the judgment
7 as necessary to conform to the requirements of this subsection.

8 (b) The following definitions apply in this section:

9 (1) Consumer Price Index. – The Consumer Price Index – All Urban
10 Consumers, for the South urban area, as published by the Bureau of Labor
11 Statistics of the United States Department of Labor.

12 (2) Noneconomic damages. – Damages to compensate for pain, suffering,
13 emotional distress, loss of consortium, inconvenience, physical impairment,
14 disfigurement, and any other nonpecuniary, compensatory damage.
15 "Noneconomic damages" does not include punitive damages as defined in
16 G.S. 1D-5.

17 (c) Any award of damages in a medical malpractice action shall be stated in accordance
18 with G.S. 90-21.19B. If a jury is determining the facts, the court shall not instruct the jury with
19 respect to the limit of noneconomic damages under subsection (a) of this section, and neither
20 the attorney for any party nor a witness shall inform the jury or potential members of the jury
21 panel of that limit."

22 **SECTION 2.3.(b)** Article 1B of Chapter 90 of the General Statutes is amended by
23 adding the following new section to read:

24 **"§ 90-21.19A. Periodic payment of future economic damages in medical malpractice**
25 **actions.**

26 (a) The following definitions apply in this section:

27 (1) Future economic damages. – Damages for future expense for medical
28 treatment, care or custody, loss of future earnings, loss of future household
29 services, and any other future pecuniary damages of the plaintiff following
30 the date of the verdict or award.

31 (2) Periodic payments. – The payment of money or delivery of other property to
32 the plaintiff at regular intervals.

33 (b) In any medical malpractice action, the form of the fact finder's verdict or award of
34 damages, if supported by the evidence, shall indicate specifically what amount is awarded for
35 future economic damages, and what amount, if any, of the total amount awarded for future
36 economic damages represents damages awarded for loss of future earnings or loss of future
37 household services.

38 (c) Upon the award of future economic damages in any medical malpractice action, the
39 presiding judge shall, at the request of either party, enter a judgment ordering that the future
40 economic damages of the plaintiff be paid in whole or in part by periodic payments rather than
41 by a lump-sum payment if the present value of the future economic damages award is greater
42 than or equal to two hundred thousand dollars (\$200,000). In entering a judgment ordering the
43 payment of future economic damages by periodic payments, the court shall make a specific
44 finding as to the dollar amount of the present value of that portion of the future economic
45 damages for which the plaintiff is to be paid by periodic payments. In calculating the total
46 damages from which any attorney contingency fee for representing the plaintiff in connection
47 with the medical malpractice action is calculated, the present value of any portion of the award
48 representing future economic damages that are to be paid by periodic payments shall be used.

49 (d) A judgment authorizing periodic payments of future economic damages shall
50 require that such payments be made through the establishment of a trust fund or the purchase of
51 an annuity for the life of the plaintiff or during the continuance of the compensable injury or

1 disability of the plaintiff, in such form and under such terms as shall be approved by the court.
2 The establishment of a trust fund or the purchase of an annuity, as required and approved by the
3 court, shall constitute the satisfaction of the defendant's judgment for future economic damages.

4 (e) The judgment ordering the payment of future economic damages by periodic
5 payments shall specify the recipient of the payments, the schedule of the periodic payments,
6 and the dollar amount of each periodic payment to be made pursuant to the schedule. The death
7 of the plaintiff terminates liability for payment of future economic damages which by judgment
8 pursuant to this section are required to be paid in periodic payments not yet due, except that the
9 court that entered the original judgment may modify the judgment to provide that liability for
10 payment of future periodic payments compensating the plaintiff for loss of future earnings or
11 loss of future household services shall not be terminated by reason of the death of the plaintiff,
12 but shall continue to be paid to persons surviving the plaintiff to whom the plaintiff owed a
13 duty of support pursuant to law immediately prior to the plaintiff's death."

14 **SECTION 2.3.(c)** Article 1B of Chapter 90 of the General Statutes is amended by
15 adding the following new section to read:

16 **"§ 90-21.19B. Verdicts and awards of damages in medical malpractice actions; form.**

17 In any malpractice action, any verdict or award of damages, if supported by the evidence,
18 shall indicate specifically what amount is awarded for each of the following:

- 19 (1) Noneconomic damages.
- 20 (2) Present economic damages.
- 21 (3) Future economic damages.
- 22 (4) Loss of future earnings.
- 23 (5) Loss of future household services.

24 If applicable, the court shall instruct the jury on the definition of noneconomic damages
25 under G.S. 90-21.19(b) and the definition of future economic damages under
26 G.S. 90-21.19A(a). If applicable, the court shall instruct the jury that present economic
27 damages are those damages for medical treatment, care or custody, loss of earnings, loss of
28 household services, and any other pecuniary damages of the plaintiff up to the date of the
29 verdict or award."

30 **SECTION 2.4.** G.S. 1A-1, Rule 26(f1), reads as rewritten:

31 "(f1) Medical malpractice discovery conference. – In a medical malpractice action as
32 defined in G.S. 90-21.11, upon the case coming at issue or the filing of a responsive pleading or
33 motion requiring a determination by the court, the judge shall, within 30 days, direct the
34 attorneys for the parties to appear for a discovery conference. At the conference the court may
35 consider the matters set out in Rule 16, and shall:

- 36 ...
- 37 (2) Establish an appropriate schedule for designating expert witnesses,
38 consistent with a discovery schedule pursuant to subdivision (3), ~~to be~~
39 ~~complied with by all parties to the action such that there is a deadline for~~
40 ~~designating all expert witnesses within an appropriate time for all parties to~~
41 ~~implement discovery mechanisms with regard to the designated expert~~
42 ~~witnesses;~~(3) of this subsection. As to each expert designated, the
43 designation shall be accompanied by a written report prepared and signed by
44 the witness. The report shall contain a complete statement of all opinions to
45 be expressed and the basis and reasons therefor; the data or other
46 information considered by the witness in forming the opinions; the
47 qualifications of the witness, including a list of all publications authored by
48 the witness within the preceding 10 years; the compensation the witness is to
49 be paid for the study and testimony; and a listing of any other cases in which
50 the witness has testified as an expert at trial or by deposition within the
51 preceding four years. The party shall supplement the expert's report if the

1 party learns that in some material respect the report is incomplete or
2 incorrect. The expert's direct testimony shall not be inconsistent with or go
3 beyond the fair scope of the expert report as supplemented.

4"

5 PART III. REFORM APPLICABLE TO PRODUCTS LIABILITY ACTIONS

6 SECTION 3.1.(a) G.S. 99B-1 reads as rewritten:

7 "§ 99B-1. Definitions.

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

- 9 (1) "Claimant" means a person or other entity asserting a claim and, if said
10 claim is asserted on behalf of an estate, an incompetent or a minor,
11 "claimant" includes plaintiff's decedent, guardian, or guardian ad litem.
12 (1a) "Government agency" means this State or the United States, or any agency
13 of this State or the United States, or any entity vested with the authority of
14 this State or of the United States to issue rules, regulations, orders, or
15 standards concerning the design, manufacture, packaging, labeling, or
16 advertising of a product or provision of a service.
17 (2) "Manufacturer" means a person or entity who designs, assembles, fabricates,
18 produces, constructs or otherwise prepares a product or component part of a
19 product prior to its sale to a user or consumer, including a seller owned in
20 whole or significant part by the manufacturer or a seller owning the
21 manufacturer in whole or significant part.
22 (3) "Product liability action" includes any action brought for or on account of
23 personal injury, death or property damage caused by or resulting from the
24 manufacture, construction, design, formulation, development of standards,
25 preparation, processing, assembly, testing, listing, certifying, warning,
26 instructing, marketing, selling, advertising, packaging, or labeling of any
27 product.
28 (4) "Seller" includes a retailer, wholesaler, or distributor, and means any
29 individual or entity engaged in the business of selling a product, whether
30 such sale is for resale or for use or consumption. "Seller" also includes a
31 lessor or bailor engaged in the business of leasing or bailment of a product."

32 SECTION 3.1.(b) Chapter 99B of the General Statutes is amended by adding the
33 following new section to read:

34 "§ 99B-12. Regulatory compliance.

35 (a) No manufacturer or seller shall be held liable in any product liability action if any
36 one of the following apply:

- 37 (1) The product alleged to have caused the harm was designed, manufactured,
38 packaged, labeled, sold, or represented in relevant and material respects in
39 accordance with the terms of an approval, license, or similar determination
40 of a government agency, where the approval, license, or similar
41 determination is relevant to the event or risk allegedly causing the harm.
42 (2) The product was in compliance with a statute of this State or the United
43 States, or a standard, rule, regulation, order, or other action of a government
44 agency pursuant to statutory authority, where the statute or agency action is
45 relevant to the event or risk allegedly causing the harm and the product was
46 in compliance at the time the product left the control of the manufacturer or
47 seller.
48 (3) The act or transaction forming the basis of the claim involves terms of
49 service, contract provisions, representations, or other practices authorized
50 by, or in compliance with, the rules, regulations, standards, or orders of, or a
51 statute administered by, a government agency.

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

3 (1) Sold the product after the effective date of an order of a government agency
4 to remove the product or service from the market, to withdraw its approval,
5 or to substantially alter its terms of approval in a manner that would have
6 avoided the claimant's alleged injury.

7 (2) Intentionally, and in violation of applicable regulations, withheld from or
8 misrepresented to the government agency information material to the
9 approval or maintaining of approval of the product, and such information is
10 relevant to the harm which the claimant allegedly suffered.

11 (3) Made an illegal payment to an official or employee of a government agency
12 for the purpose of securing or maintaining approval of the product.

13 (c) Nothing in this section shall be construed to (i) expand the authority of any State
14 agency or State agent to adopt or promulgate standards or regulations where no such authority
15 previously existed; (ii) reduce the scope of any limitation on liability based on compliance with
16 the rules or regulations of a government agency applicable to a specific act, transaction, person,
17 or industry; or (iii) affect the liability of a service provider based on rates filed with and
18 reviewed or approved by a government agency."

19 PART IV. OTHER REFORMS

20 SECTION 4.1. G.S. 6-21.1 reads as rewritten:

21 "§ 6-21.1. Allowance of counsel fees as part of costs in certain cases.

22 (a) In any personal injury or property damage suit, or suit against an insurance company
23 under a policy issued by the defendant insurance company and in which the insured or
24 beneficiary is the plaintiff, instituted in a court of record, upon a finding findings by the court (i)
25 that there was an unwarranted refusal by the defendant insurance company to negotiate or pay
26 the claim which constitutes the basis of such suit, instituted in a court of record, where (ii) that
27 the judgment for recovery of amount of damages recovered is ten thousand dollars
28 (\$10,000) fifteen thousand dollars (\$15,000) or less, and (iii) that the amount of damages
29 recovered exceeded the highest offer made by the defendant prior to the commencement of the
30 trial, the presiding judge may, in his discretion, allow a reasonable attorney fee to the duly
31 licensed attorney representing the litigant obtaining a judgment for damages in said suit, said
32 attorney's fee to be taxed as a part of the court costs. The attorneys' fees so awarded shall not
33 exceed the higher of five thousand dollars (\$5,000) or fifty percent (50%) of the damages
34 awarded.

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

41 SECTION 4.2. The General Statutes are amended by adding a new Chapter to
42 read:

43 "Chapter 38B.

44 "Trespasser Responsibility.

45 "§ 38B-1. Title.

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

47 "§ 38B-2. General rule.

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

50 "§ 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 bodily injury or death to
15 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 possessor failed to exercise reasonable care to eliminate the
20 danger or otherwise protect the injured child.

21 **"§ 38B-4. Definitions.**

22 The following definitions shall apply in this Chapter:

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

30 **PART V. MISCELLANEOUS PROVISIONS**

31 **SECTION 5.1.** Severability. – If the provisions of Section 2.3(a) of this act are
32 declared to be unconstitutional or otherwise invalid by final decision of a court of competent
33 jurisdiction, then Section 2.3(b) and Section 2.3(c) of this act are repealed, but the invalidity
34 does not affect other provisions or applications of this act that can be given effect without the
35 invalid provisions. If any other provision of this act or its application to any person or
36 circumstance is held invalid, the remainder of this act or the application of the provision to
37 other persons or circumstances is not affected.

38 **SECTION 5.2.** Sections 2.2, 2.3, 3.1, and 4.2 of this act become effective October
39 1, 2011, and apply to causes of actions arising on or after that date. The remainder of this act
40 becomes effective October 1, 2011, and applies to actions commenced on or after that date.