GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-283
HOUSE BILL 542

AN ACT TO PROVIDE TORT REFORM FOR NORTH CAROLINA CITIZENS AND BUSINESSES.

The General Assembly of North Carolina enacts:

PART I. GENERAL REFORMS

SECTION 1.1. Article 4 of Chapter 8C of the General Statutes is amended by adding a new section to read:

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

Evidence offered to prove past medical expenses shall be limited to evidence of the amounts actually paid to satisfy the bills that have been satisfied, regardless of the source of payment, and evidence of the amounts actually necessary to satisfy the bills that have been incurred but not yet satisfied. This rule does not impose upon any party an affirmative duty to seek a reduction in billed charges to which the party is not contractually entitled."

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

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

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

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

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

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

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

(1) The testimony is based upon sufficient facts or data.
(2) The testimony is the product of reliable principles and methods.
(3) The witness has applied the principles and methods reliably to the facts of the case."

PART III. OTHER REFORMS

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

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

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

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

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

"**Chapter 38B.**

"**Trespasser Responsibility.**

"**§ 38B-1. Title.**

This Chapter may be cited as the Trespasser Responsibility Act.

"**§ 38B-2. General rule.**

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

"**§ 38B-3. Exceptions.**

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

(1) Intentional harms. – A possessor may be subject to liability if the trespasser's bodily injury or death resulted from the possessor's willful or wanton conduct, or was intentionally caused by the possessor, except that a possessor may use reasonable force to repel a trespasser who has entered the land or a building with the intent to commit a crime.

(2) Harms to trespassing children caused by artificial condition. – A possessor may be subject to liability for bodily injury or death to a child trespasser resulting from an artificial condition on the land if all of the following apply:

a. The possessor knew or had reason to know that children were likely to trespass at the location of the condition.

b. The condition is one the possessor knew or reasonably should have known involved an unreasonable risk of serious bodily injury or death to such children.

c. The injured child did not discover the condition or realize the risk involved in the condition or in coming within the area made dangerous by it.

d. The utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child involved.

e. The possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.

(3) Position of peril. – A possessor may be subject to liability for physical injury or death to a trespasser if the possessor discovered the trespasser in a position of peril or helplessness on the property and failed to exercise ordinary care not to injure the trespasser.

"**§ 38B-4. Definitions.**

The following definitions shall apply in this Chapter:

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

PART IV. MISCELLANEOUS PROVISIONS

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

SECTION 4.1.(a) If Senate Bill 33 of the 2011 Regular Session of the General Assembly becomes 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. § 1395dd(e)(1)(A), the claimant must prove a violation of the standards of practice set forth in subsection (a) of this section by clear and convincing evidence."

SECTION 4.2. 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 actions commenced on or after that date.

In the General Assembly read three times and ratified this the 17th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:20 p.m. this 24th day of June, 2011