

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  
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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."

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 charges  
17 arises in any civil proceeding, the injured party or his guardian, administrator, or executor is  
18 competent to give evidence regarding the amount paid or required to be paid in full satisfaction  
19 of such charges, provided that records or copies of such charges showing the amount paid or  
20 required to be paid in full satisfaction of such charges accompany such testimony.

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





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.

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

23   **"§ 38B-4. Definitions.**

24    The following definitions shall apply in this Chapter:

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

32           PART IV. MISCELLANEOUS PROVISIONS

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

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

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

44           **SECTION 4.2.** Section 4.1(a) of this act is effective when it becomes law. Section  
 45           3.2 of this act becomes effective October 1, 2011, and applies to causes of actions arising on or  
 46           after that date. The remainder of this act becomes effective October 1, 2011, and applies to  
 47           actions commenced on or after that date.