

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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BILL DRAFT 2011-MH-13 [v.28] (02/01)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
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Short Title: Tort Reform for Citizens and Businesses. (Public)

Sponsors: Representatives Rhyne and McComas (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



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

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

12 (1) The amount of the judgment.

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

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

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

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

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

32 "Article 7D.

33 Admissibility of Collateral Source Payments.

34 **§ 8-58.25 Certain collateral source payments admissible as evidence.**

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

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

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

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

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

51 (5) From any other source.

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

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

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

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

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

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

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

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

19 "(b) Separate trials. –

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

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

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

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

38 "**§ 1D-25. Limitation of amount of recovery.**

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

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

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

50 (d) Punitive damages awarded in excess of one hundred thousand dollars (\$100,000)  
51 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.

b. ~~or a~~ hospital or hospital, a nursing home, home, or an adult care home licensed under Chapter 131D of the General Statutes.

c. ~~or any~~ Any other person who is legally responsible for the negligence of such person, hospital or nursing home; a person, hospital, nursing home, or adult care home described by sub-subdivisions a. or b. of this subdivision.

d. ~~or any~~ Any other person acting at the direction or under the supervision of any of the foregoing persons, a person, hospital, or nursing home; home, or adult care home described by sub-subdivisions a. or b. of this subdivision.

(2) ~~As used in this Article, the term "medical malpractice action" means~~ Medical malpractice action. – a civil action for damages for personal injury or death arising out of the furnishing or failure to furnish professional services in the performance of medical, dental, or other health care by a health care provider."

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

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

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

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

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

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

(a) ~~In any medical malpractice action in which the plaintiff is entitled to an award of noneconomic damages, the total amount of noneconomic damages for which judgment is entered against all defendants shall not exceed two hundred fifty thousand dollars (\$250,000) per defendant. On January 1, of every third year, beginning with January 1, 2014, the Administrative Office of the Courts shall reset the limitation on damages for noneconomic loss set forth in this subsection to be equal to two hundred fifty thousand dollars (\$250,000) times the ratio of the consumer price index for November of the prior year to the Consumer Price Index for November 2011. In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B(1) exceeds these limits, the court shall modify the judgment as necessary to conform to the requirements of this subsection.~~

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

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

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

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

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

13 **"§ 90-21.19A. Periodic payment of future economic damages in medical malpractice**  
14 **actions.**

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

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

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

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

27           (c) Upon the award of future economic damages in any medical malpractice action, the  
28           presiding judge shall, at the request of either party, enter a judgment ordering that the future  
29           economic damages of the plaintiff be paid in whole or in part by periodic payments rather than  
30           by a lump-sum payment if the present value of the future economic damages award is greater  
31           than or equal to two hundred thousand dollars (\$200,000). In entering a judgment ordering the  
32           payment of future economic damages by periodic payments, the court shall make a specific  
33           finding as to the dollar amount of the present value of that portion of the future economic  
34           damages for which the plaintiff is to be paid by periodic payments. In calculating the total  
35           damages from which any attorney contingency fee for representing the plaintiff in connection  
36           with the medical malpractice action is calculated, the present value of any portion of the award  
37           representing future economic damages that are to be paid by periodic payments shall be used.

38           (d) A judgment authorizing periodic payments of future economic damages shall  
39           require that such payments be made through the establishment of a trust fund or the purchase of  
40           an annuity for the life of the plaintiff or during the continuance of the compensable injury or  
41           disability of the plaintiff, in such form and under such terms as shall be approved by the court.  
42           The establishment of a trust fund or the purchase of an annuity, as required and approved by the  
43           court, shall constitute the satisfaction of the defendant's judgment for future economic damages.

44           (e) The judgment ordering the payment of future economic damages by periodic  
45           payments shall specify the recipient of the payments, the schedule of the periodic payments,  
46           and the dollar amount of each periodic payment to be made pursuant to the schedule. The death  
47           of the plaintiff terminates liability for payment of future economic damages which by judgment  
48           pursuant to this section are required to be paid in periodic payments not yet due, except that the  
49           court that entered the original judgment may modify the judgment to provide that liability for  
50           payment of future periodic payments compensating the plaintiff for loss of future earnings or  
51           loss of future household services shall not be terminated by reason of the death of the plaintiff.

1 but shall continue to be paid to persons surviving the plaintiff to whom the plaintiff owed a  
2 duty of support pursuant to law immediately prior to the plaintiff's death."

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

5 **"§ 90-21.19B. Verdicts and awards of damages in medical malpractice actions; form.**

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

- 8 (1) Noneconomic damages.
- 9 (2) Present economic damages.
- 10 (3) Future economic damages.
- 11 (4) Loss of future earnings.
- 12 (5) Loss of future household services.

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

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

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

- 25 ...
- 26 (2) Establish an appropriate schedule for designating expert witnesses,  
27 consistent with a discovery schedule pursuant to subdivision (3), ~~to be~~  
28 ~~complied with by all parties to the action such that there is a deadline for~~  
29 ~~designating all expert witnesses within an appropriate time for all parties to~~  
30 ~~implement discovery mechanisms with regard to the designated expert~~  
31 ~~witnesses;(3). As to each expert designated, the designation shall be~~  
32 accompanied by a written report prepared and signed by the witness. The  
33 report shall contain a complete statement of all opinions to be expressed and  
34 the basis and reasons therefor; the data or other information considered by  
35 the witness in forming the opinions; the qualifications of the witness,  
36 including a list of all publications authored by the witness within the  
37 preceding 10 years; the compensation the witness is to be paid for the study  
38 and testimony; and a listing of any other cases in which the witness has  
39 testified as an expert at trial or by deposition within the preceding four years.  
40 The party shall supplement the expert's report if the party learns that in some  
41 material respect the report is incomplete or incorrect. The expert's direct  
42 testimony shall not be inconsistent with or go beyond the fair scope of the  
43 expert report as supplemented.

44 ...."

45 **PART III. REFORM APPLICABLE TO PRODUCTS LIABILITY ACTIONS**

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

47 **"§ 99B-1. Definitions.**

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

- 49 (1) "Claimant" means a person or other entity asserting a claim and, if said  
50 claim is asserted on behalf of an estate, an incompetent or a minor,  
51 "claimant" includes plaintiff's decedent, guardian, or guardian ad litem.

- 1           (1a) "Government Agency" means this State or the United States, or any agency  
2 of this State or the United States, or any entity vested with the authority of  
3 this State or of the United States to issue rules, regulations, orders, or  
4 standards concerning the design, manufacture, packaging, labeling, or  
5 advertising of a product or provision of a service.
- 6           (2) "Manufacturer" means a person or entity who designs, assembles, fabricates,  
7 produces, constructs or otherwise prepares a product or component part of a  
8 product prior to its sale to a user or consumer, including a seller owned in  
9 whole or significant part by the manufacturer or a seller owning the  
10 manufacturer in whole or significant part.
- 11           (3) "Product liability action" includes any action brought for or on account of  
12 personal injury, death or property damage caused by or resulting from the  
13 manufacture, construction, design, formulation, development of standards,  
14 preparation, processing, assembly, testing, listing, certifying, warning,  
15 instructing, marketing, selling, advertising, packaging, or labeling of any  
16 product.
- 17           (4) "Seller" includes a retailer, wholesaler, or distributor, and means any  
18 individual or entity engaged in the business of selling a product, whether  
19 such sale is for resale or for use or consumption. "Seller" also includes a  
20 lessor or bailor engaged in the business of leasing or bailment of a product."

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

23 **"§ 99B-12. Regulatory Compliance.**

- 24           (a) No manufacturer or seller shall be held liable in any product liability action if:
- 25           1. The product alleged to have caused the harm was designed, manufactured,  
26 packaged, labeled, sold, or represented in relevant and material respects in  
27 accordance with the terms of an approval, license or similar determination of  
28 a government agency, where the approval, license or similar determination is  
29 relevant to the event or risk allegedly causing the harm; or
- 30           2. The product was in compliance with a statute of this State or the United  
31 States, or a standard, rule, regulation, order, or other action of a government  
32 agency pursuant to statutory authority, where the statute or agency action is  
33 relevant to the event or risk allegedly causing the harm and the product was  
34 in compliance at the time the product left the control of the manufacturer or  
35 seller; or
- 36           3. The act or transaction forming the basis of the claim involves terms of  
37 service, contract provisions, representations, or other practices authorized  
38 by, or in compliance with, the rules, regulations, standards, or orders of, or a  
39 statute administered by, a government agency.
- 40           (b) This section does not apply if the claimant proves that the manufacturer or seller at  
41 any time before the event that allegedly caused the harm did any of the following:
- 42           1. Sold the product after the effective date of an order of a government agency  
43 to remove the product or service from the market, to withdraw its approval,  
44 or to substantially alter its terms of approval in a manner that would have  
45 avoided the claimant's alleged injury.
- 46           2. Intentionally, and in violation of applicable regulations, withheld from or  
47 misrepresented to the government agency information material to the  
48 approval or maintaining of approval of the product, and such information is  
49 relevant to the harm which the claimant allegedly suffered.
- 50           3. Made an illegal payment to an official or employee of a government agency  
51 for the purpose of securing or maintaining approval of the product.



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

7 PART IV. OTHER REFORMS

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

9 "§ 6-21.1. Allowance of counsel fees as part of costs in certain cases.

10 (a) In any personal injury or property damage suit, or suit against an insurance company  
11 under a policy issued by the defendant insurance company and in which the insured or  
12 beneficiary is the plaintiff, instituted in a court of record, upon a finding findings by the court (i)  
13 that there was an unwarranted refusal by the defendant insurance company to negotiate or pay  
14 the claim which constitutes the basis of such suit, instituted in a court of record, where (ii) that  
15 the judgment for recovery of amount of damages recovered is ten thousand dollars  
16 (\$10,000) fifteen thousand dollars (\$15,000) or less, and (iii) that the amount of damages  
17 recovered exceeded the highest offer made by the defendant prior to the commencement of the  
18 trial, the presiding judge may, in his discretion, allow a reasonable attorney fee to the duly  
19 licensed attorney representing the litigant obtaining a judgment for damages in said suit, said  
20 attorney's fee to be taxed as a part of the court costs. [The attorneys fees so awarded shall not  
21 exceed the higher of five thousand dollars (\$5,000) or fifty percent (50%) of the damages  
22 awarded.]

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

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

30 "Chapter 38B.

31 Trespasser Responsibility.

32 "§ 38B-1. Title.

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

34 "§ 38B-2. General Rule.

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

37 "§ 38B-3. Exceptions

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

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

45 (2) Harms to Trespassing Children Caused by Artificial Condition. – A  
46 possessor may be subject to liability for bodily injury or death to a child  
47 trespasser resulting from an artificial condition on the land if all of the  
48 following apply:

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

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- b. the condition is one the possessor knew or reasonably should have known involved an unreasonable risk of 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 possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.

**"§ 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.
- (2) Trespasser. – A person who enters on the property of another without permission and without an invitation, express or implied."

**PART V. MISCELLANEOUS PROVISIONS**

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

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