GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2011

S SENATE DRS95064-TG-12 (03/04)

Short Title:	Civil Justice System Reforms. (Pu	
Sponsors:	Senators Brunstetter, Brown, and Rucho (Primary Sponsors).	
Referred to:		

1 A BILL TO BE ENTITLED

AN ACT TO REFORM AND IMPROVE THE NORTH CAROLINA CIVIL JUSTICE SYSTEM.

The General Assembly of North Carolina enacts:

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

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

"Article 7D.

"Admissibility of Collateral Source Payments.

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

- (a) As used in this section, "collateral source payments" means a payment for any of the following damages for which recovery is permitted in a civil action that is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:
 - (1) Medical expenses and disability payments under the federal Social Security Act, any federal, state, or local income disability act, or any other public program.
 - (2) Payments under any health, sickness, income disability insurance, or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance.
 - (3) Payments under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or health care services.
 - (4) Payments under any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability.
 - (5) Payments from any other source.

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



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

SECTION 3. G.S. 8C-702(a) reads as rewritten:

"Rule 702. Testimony by experts.

- (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."

SECTION 4. 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 findingfindings 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) fifteen thousand dollars (\$15,000) or less, and (iii) that the amount of damages recovered exceeded the highest offer made by the defendant 30 days or more prior to the commencement of the trial, the presiding judge may, in 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 the higher of five thousand dollars (\$5,000) or fifty percent (50%) of the damages awarded.
- (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 30 days or more prior to the commencement of the trial and the amount of damages recovered, as well as the factual basis and amount of any such attorneys' fees to be awarded."

SECTION 5. 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

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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	<u>(2)</u>	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		<u>a.</u> The possessor knew or had reason to know that children were likely
7		to trespass at the location of the condition.
8		<u>b.</u> The condition is one the possessor knew or reasonably should have
9		known involved an unreasonable risk of bodily injury or death to
10		such children.
11		<u>c.</u> 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		<u>d.</u> The possessor failed to exercise reasonable care to eliminate the
15		danger or otherwise protect the injured child.
16	" <u>§ 38B-4. Definit</u>	
17	-	g definitions shall apply in this Chapter:
18	<u>(1)</u>	Child trespasser. – A trespasser who is younger than 14 years of age, or who
19		has the level of mental development found in a person less than 14 years of
20	/^	age.
21	<u>(2)</u>	Possessor. – A person in lawful possession of land, including an owner,
22		lessee, or other occupant, or a person acting on behalf of such a lawful
22 23 24	(2)	possessor of land.
24 25	<u>(3)</u>	<u>Trespasser. – A person who enters on the property of another without</u>
25 26	CE CE	permission and without an invitation, express or implied."
25 26 27	SECT	TION 6. The General Statutes are amended by adding a new Chapter to read:
27		"Chapter 1F.
28	"\$ 1E 1 Chart 4	"Apportionment of Tort Responsibility.
29	"§ 1F-1. Short ti	
30	"§ 1F-5. Definiti	may be cited as the North Carolina Apportionment of Tort Responsibility Act.
31 32		g definitions apply in this Chapter:
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33 34	<u>(1)</u>	Party. – A party to an action to which this Chapter applies at the time the trier of fact makes the findings required under G.S. 1F-10.
3 4 35	(2)	Person. – An individual, corporation, business trust, estate, trust, partnership,
36	<u>(2)</u>	limited liability company, association, joint venture, public corporation,
37		government, or governmental subdivision, agency, or instrumentality, or any
38		other legal or commercial entity.
39	<u>(3)</u>	Property. – Real property or tangible personal property.
40	(4)	Released person. – A person that would be liable for damages to a claimant
41	<u>(+)</u>	for personal injury, wrongful death, or harm to property if the person had not
42		been discharged from liability under G.S. 1F-25, 1F-30, or 1F-35. A
43		"released person" is not a "party" within the meaning of this Chapter.
44	<u>(5)</u>	Responsibility. – With respect to a claim for damages for personal injury,
45	(3)	wrongful death, or harm to property, the legal consequences of an act or
46		omission that is the basis for liability or a defense in whole or in part.
4 7	"\$ 1F-10. Findin	ng damages; attribution of responsibility.
48		action grounded in tort to recover damages for personal injury, wrongful

(1) Stating the total amount of damages that the claimant is entitled to recover.

one party, the trier of fact shall make all of the following findings:

death, or harm to property in which the claimant is entitled to recover damages from more than

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 attributed to each responsible party or released person, with the total of all percentages being equal to one hundred percent (100%).

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

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

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The extent of the causal relation between the conduct and the damages <u>(2)</u> claimed.

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

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

"§ 1F-15. Entering judgment.

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

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

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

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

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

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

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

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

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

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

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

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The provisions of Article 1 of Chapter 1B of the General Statutes shall not apply to claims subject to this Chapter.

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"§ 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.

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

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

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"(e)

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

SECTION 8. G.S. 28A-18-2 is amended by adding a new subsection to read: The provisions of Chapter 1F of the General Statutes shall apply to actions for damages under this section requiring a determination of the responsibility of more than one

party for the death of the decedent."

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

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

- There shall be no strict liability in tort in product liability actions.
- (b) The provisions of Chapter 1F of the General Statutes shall apply to product liability actions under this Chapter requiring a determination of the responsibility of more than one party for the injury, wrongful death, or harm to property giving rise to the cause of action."

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

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

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

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

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