

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 854
HOUSE BILL 763

AN ACT TO PROVIDE FOR CREDIT ON JUDGMENTS OF ADVANCE OR PARTIAL
PAYMENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1 of the General Statutes is hereby amended by inserting a new section to be numbered GS. 1-540.3, and to read as follows:

"§ 1-540.3. **Advance Payments.** — (a) In any claim, potential civil action or action in which any person claims to have sustained bodily injuries, advance or partial payment or payments to any such person claiming to have sustained bodily injuries or to the personal representative of any person claimed to have sustained fatal injuries may be made to such person or such personal representative by the person or party against whom such claim is made or by the insurance carrier for the person, party, corporation, association or entity which is or may be liable for such injuries or death. Such advance or partial payment or payments shall not constitute an admission of liability on the part of the person, party, corporation, association or entity on whose behalf the payment or payments are made or by the insurance carrier making the payments. It shall be incompetent for any party in a civil action to offer into evidence, through any witness either by oral testimony or paper writing, the fact of the advance or partial payment or payments made by or on behalf of the opposing party. The receipt of the advance or partial payment or payments shall not in and of itself act as a bar, release, accord and satisfaction, or a discharge of any claims of the person or representative receiving the advance or partial payment or payments, unless by the terms of a properly executed settlement agreement it is specifically stated that the acceptance of said payment or payments constitutes full settlement of all claims and causes of action for personal injuries or wrongful death, as applicable.

(b) In any civil action for personal injuries or wrongful death the person or party against whom claim is made for such injuries or death and by or on whose behalf advance or partial payment or payments have been made to the party asserting the claim shall file with the Court and serve upon opposing counsel a motion setting out the date and amount of payment or payments and praying that said sums be credited upon any judgment recovered by the opposing party against the party on whose behalf the payment or payments were made. Prior to the entry of judgment, the trial judge shall conduct a hearing and may consider affidavits, oral testimony, depositions, and any other competent evidence, and shall enter his findings of fact and conclusions of law as to whether the advance or partial payment or payments were made by or on behalf of the person or party claiming to have made such payment(s) to the party asserting the claim for injuries or wrongful death. Upon a finding that the advance or partial payment or payments were made by or on behalf of the person or party claiming to have made such payment(s), all such payments shall be credited by the trial judge upon any judgment rendered in favor of the person or representative who received the payment or payments. Advance payments made by one joint tortfeasor shall not inure to the benefit or credit of any joint tortfeasor not making such payments.

No claim for reimbursement may be made or allowed by or on behalf of the person or party making such advance payment or payments against the person or party to whom such payment or payments are made except a claim based on fraud.

The making of any advance payment shall not affect in any way whatsoever the running of the statute of limitations."

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 14th day of July, 1971.