

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003

# A Bill

HOUSE BILL 1038

4  
5 By: Representatives Ferguson, Parks  
6 By: Senators B. Johnson, Bisbee

## For An Act To Be Entitled

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10 AN ACT TO PROVIDE COMPREHENSIVE AND UNIFORM  
11 CIVIL JUSTICE REFORM; AND FOR OTHER PURPOSES.

### Subtitle

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13  
14 "THE CIVIL JUSTICE REFORM ACT OF 2003."

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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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19 SECTION 1. Modification of joint and several liability.

20 (a) In any action for personal injury, property damage, or wrongful  
21 death, the liability of each defendant for compensatory or punitive damages  
22 shall be several only and shall not be joint.

23 (b) Each defendant shall be liable only for the amount of damages  
24 allocated to that defendant in direct proportion to that defendant's  
25 percentage of fault, and a separate judgment shall be rendered against that  
26 defendant for that amount.

27 (c) To determine the amount of judgment to be entered against each  
28 defendant, the court, with regard to each defendant, shall multiply the total  
29 amount of damages recoverable by the plaintiff by the percentage of each  
30 defendant's fault, and that amount shall be the maximum recoverable against  
31 the defendant.

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33 SECTION 2. Assessment of percentages of fault.

34 (a) In assessing percentages of fault, the trier of fact shall  
35 consider the fault of all persons or entities who contributed to the alleged  
36 injury or death or damage to property, tangible or intangible, regardless of

1 whether the person or entity was, or could have been, named as a party to the  
 2 suit.

3 (b)(1) Negligence or fault of a nonparty shall be considered if the  
 4 plaintiff entered into a settlement agreement with the nonparty or if the  
 5 defending party gives notice within one hundred twenty (120) days of the date  
 6 of trial that a nonparty was wholly or partially at fault.

7 (2) The notice shall be given by filing a pleading in the action  
 8 designating the nonparty and setting forth the nonparty's name and last known  
 9 address, or the best identification of the nonparty which is possible under  
 10 the circumstances, together with a brief statement of the basis for believing  
 11 the nonparty to be at fault.

12 (c)(1) Nothing in this section 2 shall eliminate or diminish any  
 13 defenses or immunities which currently exist, except as expressly stated  
 14 herein.

15 (2) Assessments of percentages of fault of nonparties shall be  
 16 used only for accurately determining the percentage of fault of named  
 17 parties.

18 (3) Where fault is assessed against nonparties, findings of  
 19 fault shall not subject any nonparty to liability in any action, or be  
 20 introduced as evidence of liability in any action.

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 22 SECTION 3. Acting in concert.

23 (a) Notwithstanding section 1 of this act, a party is responsible for  
 24 the fault of another person or entity, or for payment of the proportionate  
 25 share of another person or entity, if both the party and the other person or  
 26 entity were acting in concert or if the other person or entity was acting as  
 27 an agent or servant of the party.

28 (b)(1) As used in this section 3, "acting in concert" means entering  
 29 into a conscious agreement to pursue a common plan or design to commit an  
 30 intentional tort and actively taking part in that intentional tort.

31 (2) "Acting in concert" does not mean the act of any person or  
 32 entity whose conduct was negligent in any degree other than intentional.

33 (3) A person or entity's conduct which provides substantial  
 34 assistance to one committing an intentional tort does not constitute "acting  
 35 in concert" if the person or entity has not consciously agreed with the other  
 36 to commit the intentional tort.

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SECTION 4. Burden of proof.

This act does not amend the existing law that provides that the burden of alleging and proving fault is upon the person who seeks to establish fault.

SECTION 5. Comparative negligence.

This act does not amend the existing law that provides that the plaintiff may not recover any amount of damages if the plaintiff's own negligence is determined to be fifty percent (50%) or greater.

SECTION 6. Cause of action not created.

(a) This act does not create a cause of action.

(b) This act does not alter the defenses or immunity of any person or entity.

SECTION 7. Standards for award of punitive damages.

(a) Punitive damages may be awarded only if the claimant proves that the defendant is liable for compensatory damages and that one of the following aggravating factors was present and was related to the injury for which compensatory damages were awarded:

- (1) Actual, and not constructive, fraud;
- (2) Malice; or
- (3) Willful or wanton conduct.

(b) The claimant must prove the existence of an aggravating factor by clear and convincing evidence.

(c) Except as provided in subsection (d) of this section, a punitive damage award may not be more than the lesser of:

- (1) Three (3) times the amount of compensatory damages awarded in the action; or
- (2) Two hundred and fifty thousand dollars (\$250,000).

(d) Where the fact finder determines by clear and convincing evidence that, at the time of the injury, the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there shall be no limit on punitive damages.

SECTION 8. Separate proceeding.

(a) In a civil action in which punitive damages are sought, the trier of facts shall first determine whether compensatory damages are to be awarded.

(b) Evidence of the financial condition of the defendant and other evidence relevant only to punitive damages is not admissible in any compensatory damages determination.

(c) After a compensatory damages determination has been made, the trier of facts shall, in a separate proceeding, determine whether and in what amount punitive damages will be awarded.

SECTION 9. Compensatory damages.

(a) This act does not limit compensatory damages.

(b) The costs of any reasonable and necessary medical services, rehabilitation services, and custodial care shall include only costs actually paid by or on behalf of the plaintiff.

SECTION 10. Venue.

(a) All civil actions, other than those mentioned in Arkansas Code §§ 16-60-101 through 16-60-103, § 16-60-107, § 16-60-114, § 16-60-115 and subsection (e) of this section, must be brought in any of the following counties:

(1) The county in which a substantial part of the events or omissions giving rise to the claim occurred, or another county within the same judicial district;

(2)(A) If subdivision (a)(1) of this section does not apply, the county in which an individual defendant resided, or another county within the same judicial district;

(B) If the defendant is an entity other than an individual, the county where the entity had its principal office in this state at the time of the accrual of the cause of action; or

(3)(A) If subdivisions (a)(1) or (a)(2) of this section do not apply, the county in which the plaintiff resided, or another county within the same judicial district.

(B) If the plaintiff is an entity other than an individual, the county where the plaintiff had its principal office in this

1 state at the time of the accrual of the cause of action.

2 (b)(1) The residence of any properly joined named class representative  
 3 or representatives may be considered in determining proper venue in a class  
 4 action.

5 (2) The residency of any putative or actual member of a class  
 6 other than a named representative shall not be considered in determining  
 7 proper venue for a class action.

8 (c) In any civil action, venue must be proper as to each or every  
 9 named plaintiff joined in the action unless:

10 (A) The plaintiffs establish that they assert any right to  
 11 relief against the defendants jointly, severally, or arising out of the same  
 12 transaction or occurrence; and

13 (B) That the existence of a substantial number of  
 14 questions of law or material fact common to all those persons not only will  
 15 arise in the action, but also:

16 (i) That the questions will predominate over  
 17 individualized questions pertaining to each plaintiff;

18 (ii) That the action can be maintained more  
 19 efficiently and economically for all parties than if prosecuted separately;  
 20 and

21 (iii) That the interest of justice supports the  
 22 joinder of the parties as plaintiffs in one action.

23 (d)(1) Unless venue objections are waived by the defendant, or by  
 24 unanimous agreement of multiple defendants, if venue is improper for any  
 25 plaintiff joined in the action, then the claim of the plaintiff shall be  
 26 severed and transferred to a court where venue is proper.

27 (2)(A) If severance and transfer is mandated and venue is  
 28 appropriate in more than one court, a defendant sued alone or multiple  
 29 defendants, by unanimous agreement, shall have the right to select another  
 30 court to which the action shall be transferred.

31 (B) If there are multiple defendants who are unable to  
 32 agree on another court, the court in which the action was originally filed  
 33 may transfer the action to another court.

34 (e) Any action against a medical care provider shall be filed in the  
 35 county in which the alleged act or omission occurred.

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SECTION 11. Maximum appeal bond in civil litigation.

(a) Appeal bonds shall be determined under Arkansas Code §§ 16-68-301 through 16-68-306, and Rule 8, Arkansas Rules of Appellate Procedure - Civil, except that the maximum appeal bond that may be required in any civil action under any legal theory shall be limited to twenty-five million dollars (\$25,000,000), regardless of the amount of the judgment.

(b) If a party proves by a preponderance of the evidence that the party who has posted a bond in accordance with subsection (a) of this section is purposely dissipating or diverting assets outside of the ordinary course of its business for the purpose of evading ultimate payment of the judgment, the court may enter orders as are necessary to prevent dissipation or diversion, including requiring that a bond be posted equal to the full amount of the judgment.

SECTION 12. Arkansas Code § 16-114-206(a), concerning the burden of proof in actions for medical injury, is amended to read as follows:

(a) In any action for medical injury, when the asserted negligence does not lie within the jury's comprehension as a matter of common knowledge, the plaintiff shall have the burden of proving by means of expert testimony provided only by a medical care provider who practices the same specialty as the defendant:

(1) The degree of skill and learning ordinarily possessed and used by members of the profession of the medical care provider in good standing, engaged in the same type of practice or specialty in the locality in which he practices or in a similar locality;

(2) That the medical care provider failed to act in accordance with that standard; and

(3) That as a proximate result thereof, the injured person suffered injuries which would not otherwise have occurred.

SECTION 13. Arkansas Code § 16-114-208(a), concerning damage awards in actions for medical injury, is amended to read as follows:

(a)(1)(A) The damages awarded may include compensation for actual economic losses recognized by law suffered by the injured person by reason of medical injury including, but not limited to, the cost of reasonable and necessary medical services, rehabilitation services, custodial care, loss of

1 services, and loss of earnings or earning capacity;

2 (B) The costs of reasonable and necessary medical  
3 services, rehabilitation services, and custodial care shall include only  
4 costs actually paid by or on behalf of the plaintiff;

5 (2) The damages awarded may include compensation for pain and  
6 suffering and other noneconomic loss recognized by law;

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8 SECTION 14. Arkansas Code § 16-114-208(c)(1), concerning awards for  
9 future damages in actions for medical injury, is amended to read as follows:

10 (c)(1) In the event of a judgment for the plaintiff, if the award for  
11 future damages exceeds one hundred thousand dollars (\$100,000) the court ~~may~~  
12 shall, at the request of either party, order that the future damages of the  
13 injured person exceeding one hundred thousand dollars (\$100,000) be paid in  
14 whole, or in part, by periodic payments as determined by the court, rather  
15 than by lump sum payment, on terms as the court deems just and equitable.

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17 SECTION 15. Arkansas Code § 16-114-209 is amended to read as follows:  
18 16-114-209. False and unreasonable pleadings.

19 (a) If in any action for medical injury, claims, defenses, or denials  
20 are intentionally made without reasonable cause and found to be untrue, the  
21 party pleading them shall thereafter be subject to the payment of reasonable  
22 costs actually incurred by the other party by reason of the untrue pleading.

23 (b)(1) Reasonable cause for filing any action for medical injury due  
24 to negligence shall only be established by the filing of an affidavit signed  
25 by an expert engaged in the same type of medical care as is each medical care  
26 provider defendant.

27 (2) The affidavit shall be filed when the complaint is filed in  
28 all cases where expert testimony is required under § 16-114-206.

29 (3) The affidavit shall be executed under oath by an expert with  
30 the same license and the same board certification, if any, as the health care  
31 provider defendant, and shall state with particularity:

32 (A) The expert's familiarity with the applicable standard  
33 of care in issue;

34 (B) The expert's qualifications;

35 (C) The expert's opinion as to how the applicable standard  
36 of care has been breached; and

1                    (D) The expert’s opinion as to how the breach of the  
2 applicable standard of care resulted in injury or death.

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4                    SECTION 16. Arkansas Code Title 16, Chapter 114, Subchapter 2 is  
5 amended to add additional sections to read as follows:

6                    16-114-210. Employed medical care provider.

7                    When a medical care provider is a codefendant with a medical care  
8 facility in an action for medical injury, and the only reason for naming the  
9 facility as a defendant is that the defendant medical care provider practices  
10 in the facility, the plaintiff shall have the burden of proving that the  
11 defendant medical care provider is the employee of the facility before the  
12 facility may be held liable for the medical care provider’s negligence, if  
13 any is proven.

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15                    16-114-211. Surveys and inspection reports as evidence.

16                    The results of any surveys or inspections by state or federal  
17 regulators, or by accrediting organizations, which the plaintiff seeks to use  
18 as evidence against a medical care provider must be directly relevant to the  
19 plaintiff’s injury to be admissible at trial.

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21                    SECTION 17. Applicability.

22                    This act applies to all causes of action arising on or after the  
23 effective date of this act.