

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
4

As Engrossed: H1/24/03

A Bill

HOUSE BILL 1038

5 By: Representatives Ferguson, Parks, *Agee, Anderson, Bennett, Biggs, Bolin, Borhauer, Boyd, Dees, L.*
6 *Evans, Gipson, Harris, Jacobs, Kenney, Matayo, Petrus, Rosenbaum, Scroggin, J. Taylor, Walters*
7 By: Senators B. Johnson, Bisbee, *Baker, Gullett, Horn, J. Jeffress, Miller, Trusty, Whitaker, Womack,*
8 *Wooldridge*
9

For An Act To Be Entitled

12 AN ACT TO PROVIDE COMPREHENSIVE AND UNIFORM
13 CIVIL JUSTICE REFORM; AND FOR OTHER PURPOSES.
14

Subtitle

16 "THE CIVIL JUSTICE REFORM ACT OF 2003."
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

SECTION 1. Modification of joint and several liability.

21 (a) In any action for personal injury, property damage, or wrongful
22 death, the liability of each defendant for compensatory or punitive damages
23 shall be several only and shall not be joint.
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25 (b) Each defendant shall be liable only for the amount of damages
26 allocated to that defendant in direct proportion to that defendant's
27 percentage of fault, and a separate judgment shall be rendered against that
28 defendant for that amount.

29 (c) To determine the amount of judgment to be entered against each
30 defendant, the court, with regard to each defendant, shall multiply the total
31 amount of damages recoverable by the plaintiff by the percentage of each
32 defendant's fault, and that amount shall be the maximum recoverable against
33 the defendant.
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SECTION 2. Assessment of percentages of fault.

35 (a) In assessing percentages of fault, the fact finder shall consider
36



1 the fault of all persons or entities who contributed to the alleged injury or
2 death or damage to property, tangible or intangible, regardless of whether
3 the person or entity was, or could have been, named as a party to the suit.

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

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

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

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

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

22
23 SECTION 3. Acting in concert.

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

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

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

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

1 to commit the intentional tort.

2
3 SECTION 4. Burden of proof.

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

7
8 SECTION 5. Comparative negligence.

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

12
13 SECTION 6. Cause of action not created.

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

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

17
18 SECTION 7. Standards for award of punitive damages.

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

23 (1) Actual, and not constructive, fraud;

24 (2) Malice; or

25 (3) Willful or wanton conduct.

26 (b) The *plaintiff* must prove the existence of an aggravating factor by
27 clear and convincing evidence.

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

30 (1) Three (3) times the amount of compensatory damages awarded
31 in the action; or

32 (2) Two hundred and fifty thousand dollars (\$250,000).

33 (d) Where the fact finder determines by clear and convincing evidence
34 that, at the time of the injury, the defendant had a specific intent to harm
35 the *plaintiff* and determines that the defendant's conduct did in fact harm
36 *plaintiff*, then subsection (c) of this section shall not apply.

1
2 SECTION 8. Separate proceeding.

3 (a) In a civil action in which punitive damages are sought, the fact
4 finder shall first determine whether compensatory damages are to be awarded.

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

8 (c) After a compensatory damages determination has been made, the fact
9 finder shall, in a separate proceeding, determine whether and in what amount
10 punitive damages will be awarded.

11
12 SECTION 9. Compensatory damages.

13 (a) This act does not limit compensatory damages.

14 (b) Any verdict which includes an award for the costs of any necessary
15 medical care, treatment, or services received shall be reduced by the court
16 in an amount equal to any contractual or legally required reduction off
17 billed charges.

18
19 SECTION 10. Venue.

20 (a) All civil actions, other than those mentioned in Arkansas Code §§
21 16-60-101 through 16-60-103, § 16-60-107, § 16-60-114, § 16-60-115 and
22 subsection (e) of this section, must be brought in any of the following
23 counties:

24 (1) The county in which a substantial part of the events or
25 omissions giving rise to the claim occurred;

26 (2)(A) If subdivision (a)(1) of this section does not apply, the
27 county in which an individual defendant resided;

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

31 (3)(A) If subdivisions (a)(1) or (a)(2) of this section do not
32 apply, the county in which the plaintiff resided.

33 (B) If the plaintiff is an entity other than an
34 individual, the county where the plaintiff had its principal office in this
35 state at the time of the accrual of the cause of action.

36 (b)(1) The residence of any properly joined named class representative

1 or representatives may be considered in determining proper venue in a class
2 action.

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

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

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

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

14 (i) That the questions will predominate over
15 individualized questions pertaining to each plaintiff;

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

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

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

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

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

32 (e) Any action for medical injury brought under Arkansas Code §§ 16-
33 114-201 through § 16-114-209 against a medical care provider, as defined in
34 Arkansas Code § 16-114-201(2), shall be filed in the county in which the
35 alleged act or omission occurred.

36

1 SECTION 11. Maximum appeal bond in civil litigation.

2 (a) Appeal bonds shall be determined under Arkansas Code §§ 16-68-301
3 through 16-68-306, and Rule 8, Arkansas Rules of Appellate Procedure - Civil,
4 except that the maximum appeal bond that may be required in any civil action
5 under any legal theory shall be limited to twenty-five million dollars
6 (\$25,000,000), regardless of the amount of the judgment.

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

14
15 SECTION 12. Arkansas Code § 16-114-206(a), concerning the burden of
16 proof in actions for medical injury, is amended to read as follows:

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

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

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

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

30
31 SECTION 13. Arkansas Code § 16-114-208(a), concerning damage awards in
32 actions for medical injury, is amended to read as follows:

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

1 services, and loss of earnings or earning capacity;

2 (B) Any verdict which includes an award for the costs of
3 any necessary medical care, treatment, or services received shall be reduced
4 by the court in an amount equal to any contractual or legally required
5 reduction off billed charges.

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

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

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

17
18 SECTION 15. Arkansas Code § 16-114-209 is amended to read as follows:
19 16-114-209. False and unreasonable pleadings.

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

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

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

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

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

35 (B) The expert's qualifications;

36 (C) The expert's opinion as to how the applicable standard

1 of care has been breached; and

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

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

7 16-114-210. Employed medical care provider.

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

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

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

21
22 SECTION 17. Applicability.

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

25
26 */s/ Ferguson, et al.*
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