

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 H1/30/03*

# 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 *Bledsoe, Hutchinson, Pritchard, R. Smith, Norton*  
8 By: Senators B. Johnson, Bisbee, Baker, Gullett, Horn, J. Jeffress, Miller, Trusty, Whitaker, Womack,  
9 *Wooldridge, Hendren, Holt*

## For An Act To Be Entitled

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

### Subtitle

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15  
16 "THE CIVIL JUSTICE REFORM ACT OF 2003."  
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Modification of joint and several liability.

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

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

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

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36 SECTION 2. Assessment of percentages of fault.



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1           (a) In assessing percentages of fault, the fact finder shall consider  
2 the fault of all persons or entities who contributed to the alleged injury or  
3 death or damage to property, tangible or intangible, regardless of whether  
4 the person or entity was, or could have been, named as a party to the suit.

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

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

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

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

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

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24           SECTION 3. Acting in concert.

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

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

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

35           (3) A person or entity's conduct which provides substantial  
36 assistance to one committing an intentional tort does not constitute "acting

1 in concert” if the person or entity has not consciously agreed with the other  
2 to commit the intentional tort.

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4 SECTION 4. Burden of proof.

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

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9 SECTION 5. Comparative negligence.

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

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14 SECTION 6. Cause of action not created.

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

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

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19 SECTION 7. Standards for award of punitive damages.

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

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

25 (2) Malice; or

26 (3) Willful or wanton conduct.

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

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

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

33 (2) Five hundred thousand dollars (\$500,000).

34 (d) Where the fact finder determines by clear and convincing evidence  
35 that, at the time of the injury, the defendant had a specific intent to harm  
36 and determines that the defendant’s conduct did in fact harm plaintiff, then

1 subsection (c) of this section shall not apply.

2 (e) As to the punitive damage standard established in subsection  
3 (c)(2) of this section, the fixed sum shall be adjusted as of January 1,  
4 2006, and as of January 1 at three-year intervals thereafter, at an annual  
5 rate in accordance with the Consumer Price Index rate as determined by the  
6 Administrative Office of the Courts.

7 SECTION 8. Separate proceeding.

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

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

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

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17 SECTION 9. Compensatory damages.

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

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

23  
24 SECTION 10. Venue.

25 (a) All civil actions, other than those mentioned in Arkansas Code §§  
26 16-60-101 through 16-60-103, § 16-60-107, § 16-60-114, § 16-60-115 and  
27 subsection (e) of this section, must be brought in any of the following  
28 counties:

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

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

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

36 (3)(A) If subdivisions (a)(1) or (a)(2) of this section do not

1 apply, the county in which the plaintiff resided.

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

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

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

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

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

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

19 (i) That the questions will predominate over  
20 individualized questions pertaining to each plaintiff;

21 (ii) That the action can be maintained more  
22 efficiently and economically for all parties than if prosecuted separately;  
23 and

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

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

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

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

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

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6           SECTION 11. Maximum appeal bond in civil litigation.

7           (a) Appeal bonds shall be determined under Arkansas Code §§ 16-68-301  
8 through 16-68-306, and Rule 8, Arkansas Rules of Appellate Procedure - Civil,  
9 except that the maximum appeal bond that may be required in any civil action  
10 under any legal theory shall be limited to twenty-five million dollars  
11 (\$25,000,000), regardless of the amount of the judgment.

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

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

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

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

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

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

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36           SECTION 13. Arkansas Code § 16-114-208(a), concerning damage awards in

1 actions for medical injury, is amended to read as follows:

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

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

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

13

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

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

22

23 SECTION 15. Arkansas Code § 16-114-209 is amended to read as follows:  
24 16-114-209. False and unreasonable pleadings.

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

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

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

35 (3) The affidavit shall be executed under oath by an expert with  
36 the same type of license, which may be issued by the State of Arkansas or any

1 other state, and shall state with particularity:

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

4 (B) The expert's qualifications;

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

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

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

12 16-114-210. Employed medical care provider.

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

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21 16-114-211. Surveys and inspection reports as evidence.

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

26  
27 SECTION 17. Nothing in this act shall be construed to diminish  
28 or enlarge the powers or duties of a coroner or medical examiner.

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30 SECTION 18. Applicability and severability.

31 (a) This act applies to all causes of action accruing on or  
32 after the effective date of this act.

33 (b) This act shall not apply to any action filed or cause of  
34 action accruing prior to the effective date of this act.

35 (c) If any provision of this act or the application thereof to  
36 any person or circumstance is held invalid, such invalidity shall not



1 affect other provisions or applications of the act which can be given  
2 effect without the invalid provision or application, and to this end  
3 the provisions of this act are declared to be severable.

4  
5 /s/ Ferguson, et al  
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