

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

SENATE BILL 201

4
5 By: Senator Luker

For An Act To Be Entitled

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9 AN ACT TO BE KNOWN AS THE "ARKANSAS TORT REFORM
10 ACT OF 2003"; AND FOR OTHER PURPOSES.

Subtitle

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12
13 AN ACT TO BE KNOWN AS THE "ARKANSAS TORT
14 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. This act shall be known, and may be cited, as the "Arkansas
20 Tort Reform Act of 2003".

21
22 SECTION 2. Limitation on punitive damages.

23 (a) An award of punitive damages shall not exceed the greater of:

24 (1) Two hundred and fifty thousand dollars (\$250,000); or

25 (2) Ten percent (10%) of the defendant's net worth, as

26 determined by generally accepted accounting principles.

27 (b)(1) Nothing in this section shall be construed as creating a right
28 to an award of punitive damages.

29 (2) Nothing in this section shall limit the duty of the court,
30 or the appellate courts, to:

31 (A) Scrutinize all punitive damages awards;

32 (B) Ensure that all punitive damage awards comply with
33 applicable procedural, evidentiary, and constitutional requirements; and

34 (C) Order remittitur if appropriate.

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36 SECTION 3. Standards for award of punitive damages.



1 (a)(1) Punitive damages may be imposed to punish a wrongdoer and to
2 deter others from similar conduct.

3 (2) Punitive damages may be awarded only if the plaintiff proves
4 that the defendant is liable for compensatory damages.

5 (b)(1) An award for punitive damages shall be by a separate verdict.

6 (2) If the award is by a jury, the verdict shall be by a
7 unanimous vote of the jury.

8 (c) To recover punitive damages from the defendant, the plaintiff has
9 the burden of proving either or both of the following:

10 (1) That the defendant knew or ought to have known, in the light
11 of the surrounding circumstances, that his or her conduct would naturally and
12 probably result in injury or damage and that he or she continued the conduct
13 with malice or in reckless disregard of the consequences from which malice
14 may be inferred; or

15 (2) That the defendant intentionally pursued a course of conduct
16 for the purpose of causing injury or damage.

17 (d) In arriving at the amount of punitive damages the financial
18 condition of the defendant shall be considered.

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20 SECTION 4. Disposition of punitive damages award - Fund created.

21 (a) There is created on the books of the Treasurer of State, Auditor
22 of State, and Chief Fiscal Officer of the State a special revenue fund to be
23 known as the "Disease and Injury Prevention Fund".

24 (b) Seventy five percent (75%) of any award of punitive damages, less
25 attorneys fees and expenses, shall be payable to the Treasurer of State for
26 deposit in the State Treasury as special revenues to the credit of the
27 Disease and Injury Prevention Fund.

28 (c) The fund shall be used by the Department of Health for the support
29 of disease and injury prevention programs.

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31 SECTION 5. Arkansas Code § 16-114-208(c)(1), concerning awards for
32 future damages in actions for medical injury, is amended to read as follows:

33 (c)(1)(A) In the event of a judgment for the plaintiff, if the award
34 for future damages exceeds one hundred thousand dollars (\$100,000) and the
35 damages have not been reduced to present value the court may shall, at the
36 request of either party, order that the future damages of the injured person

1 exceeding one hundred thousand dollars (\$100,000) be paid in whole, or in
2 part, by periodic payments as determined by the court, rather than by lump
3 sum payment, on such terms as the court deems just and equitable.

4 (B) However, the court shall require that the responsible
5 party provide an adequate surety bond and appropriate guarantee of payment.

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7 SECTION 6. Modification of joint and several liability.

8 (a) In any action for personal injury, property damage, or wrongful
9 death, the liability of each defendant for compensatory or punitive damages
10 shall be several only and shall not be joint, except as provided in this
11 section.

12 (b) The court shall determine, in accordance with the percentages of
13 responsibility found, the monetary amount of any award of damages to a
14 claimant, the amount of the several share for which each party found liable
15 is responsible, and any amount attributable to a released person.

16 (c)(1) After the court has made its determinations pursuant to
17 subsection (b), a claimant, no later than the time permitted for filing a
18 motion for new trial, may move the court to determine whether all or part of
19 the amount of the several share for which a party is liable will not be
20 reasonably collectible.

21 (2)(A) If the court, based on a preponderance of the evidence,
22 determines that the party's share will not be reasonably collectible, the
23 court shall make findings reallocating the uncollectible share severally to
24 the other parties, including the claimant, and any released person.

25 (B) Reallocation must be made in the proportion that each
26 party's and released person's respective percentage of responsibility bears
27 to the total of the percentages of responsibility attributed to the parties,
28 including the claimant and any released person, but not including the
29 percentage being reallocated.

30 (3)(A) A party whose liability is reallocated remains liable to
31 a claimant for any additional share of responsibility allocated to the
32 claimant.

33 (B) A party that discharges an additional share of
34 responsibility allocated to it pursuant to this subsection (c) has a right of
35 reimbursement from the party from which the share was reallocated.

36 (C) Upon motion, the court in which the judgment was

1 entered shall declare the rights and obligations resulting from the
2 reallocation.

3 (4) Reallocation does not make a released person liable for any
4 reallocated share of responsibility unless the release or other agreement so
5 provides.

6 (5) If a motion for reallocation is made, any party may conduct
7 discovery regarding any issue relevant to the motion.

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9 SECTION 7. Venue.

10 (a) All civil actions, other than those mentioned in Arkansas Code §§
11 16-60-101 through 16-60-103, § 16-60-107, § 16-60-114, § 16-60-115 and
12 subsection (e) of this section, must be brought in any of the following
13 counties:

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

16 (2)(A) The county in which an individual defendant resided; or

17 (B) The county where the entity had its principal office
18 in this state at the time of the accrual of the cause of action; or

19 (3)(A) The county in which the plaintiff resided at the time of
20 the occurrence that gave rise to the cause of action; or

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

24 (b) If the court finds that in the interest of substantial justice the
25 action should be heard in another forum, the court may stay or dismiss the
26 action in whole or in part on any conditions that may be just.

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28 SECTION 8. Maximum appeal bond in civil litigation.

29 (a) Appeal bonds shall be determined under Arkansas Code §§ 16-68-301
30 through 16-68-306, and Rule 8, Arkansas Rules of Appellate Procedure - Civil,
31 except that the maximum appeal bond that may be required in any civil action
32 under any legal theory shall be limited to twenty-five million dollars
33 (\$25,000,000), regardless of the amount of the judgment.

34 (b) If a party proves by a preponderance of the evidence that the
35 party who has posted a bond in accordance with subsection (a) of this section
36 is purposely dissipating or diverting assets outside of the ordinary course

1 of its business for the purpose of evading ultimate payment of the judgment,
 2 the court may enter orders as are necessary to prevent dissipation or
 3 diversion, including requiring that a bond be posted in some greater amount.
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5 SECTION 9. Arkansas Code § 16-114-209 is amended to read as follows:
 6 16-114-209. False and unreasonable pleadings.

7 (a) If in any action for medical injury, claims, defenses, or denials
 8 are intentionally made without reasonable cause and found to be untrue, the
 9 party pleading them shall thereafter be subject to the payment of reasonable
 10 ~~costs actually incurred by the other party by reason of the untrue pleading a~~
 11 sanction sufficient to deter repetition of the conduct or comparable conduct
 12 by others. The sanction may consist of or include an order to pay a penalty
 13 into court or to pay a penalty to another party to the action and reasonable
 14 attorney's fees and expenses incurred as a result of the violation.

15 (b) Reasonable cause for filing any action for medical injury due to
 16 negligence shall only be established by the filing of an affidavit signed by
 17 the plaintiff's attorney stating that:

18 (1) He or she has read the pleading, motion, or other paper;

19 (2) To the best of his or her knowledge, information, and belief
 20 formed after reasonable inquiry it is well grounded in fact and is warranted
 21 by existing law or a good faith argument for the extension, modification, or
 22 reversal of existing law; and

23 (3) It is not interposed for any improper purpose, such as to
 24 harass or to cause unnecessary delay or needless increase in the cost of
 25 litigation.
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27 SECTION 10. Arkansas Code Title 16, Chapter 114, Subchapter 2 is
 28 amended to add an additional section to read as follows:

29 16-114-210. Surveys and inspection reports as evidence.

30 (a) The results of any surveys or inspections by state or federal
 31 regulators, or by accrediting organizations, which the plaintiff seeks to use
 32 as evidence against a medical care provider, shall not be admissible at trial
 33 unless the court determines that the evidence has a tendency to make the
 34 existence of any fact that is of consequence to the determination of the
 35 action more probable or less probable than it would be without the evidence.

36 (b) However, the evidence may be excluded if its probative value is

1 substantially outweighed by the danger of unfair prejudice, confusion of the
2 issues, or misleading the jury, or by considerations of undue delay, waste of
3 time, or needless presentation of cumulative evidence.

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5 SECTION 11. Applicability.

6 (a) This act applies to all cause of action accruing on or after the
7 effective date of this act.

8 (b) This act does not apply to any cause of action filed or cause of
9 action accruing before the effective date of this act.

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