

Stricken language would be deleted from and underlined language would be added to the Arkansas Constitution.

1 State of Arkansas *As Engrossed: H2/24/17*

2 91st General Assembly

3 Regular Session, 2017

SJR 8

4

5 By: Senators Irvin, E. Williams, T. Garner, Bledsoe, J. Dismang, L. Eads, J. English, Files, J. Hendren,
6 Hester, B. Johnson, Rapert, B. Sample, Standridge, D. Wallace

7 By: Representatives Ballinger, Barker, Beck, Bentley, Bragg, Brown, Cavanaugh, Coleman, Collins,
8 Cozart, Davis, Dotson, D. Douglas, Drown, Eaves, Eubanks, Farrer, D. Ferguson, L. Fite, Gates,
9 Gonzales, M. Gray, Henderson, K. Hendren, Hillman, G. Hodges, Holcomb, Hollowell, Jean, Jett,
10 Ladyman, Lemons, Lowery, Lundstrum, Lynch, Magie, McCollum, D. Meeks, Payton, Petty, Pilkington,
11 Richmond, Rushing, Rye, B. Smith, Sorvillo, Speaks, Sturch, Vaught, Wardlaw, Warren, Watson,
12 Womack

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SENATE JOINT RESOLUTION

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*PROPOSING AN AMENDMENT TO THE ARKANSAS CONSTITUTION
TO LIMIT ATTORNEYS' CONTINGENCY FEES IN CIVIL ACTIONS
TO THIRTY-THREE AND ONE-THIRD PERCENT (33 1/3 %) OF
THE NET RECOVERY; TO LIMIT AWARDS OF PUNITIVE DAMAGES
AND NON-ECONOMIC DAMAGES IN CIVIL ACTIONS; TO REQUIRE
ADJUSTMENTS TO THE LIMITATIONS ON PUNITIVE AND NON-
ECONOMIC DAMAGE AWARDS FOR INFLATION OR DEFLATION;
AND TO PROVIDE THAT THE GENERAL ASSEMBLY MAY, BY A
THREE-FIFTHS VOTE OF EACH HOUSE, AMEND OR REPEAL A
RULE OF PLEADING, PRACTICE, OR PROCEDURE PRESCRIBED
BY THE SUPREME COURT AND ADOPT A RULE OF PLEADING,
PRACTICE, OR PROCEDURE.*

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Subtitle

A CONSTITUTIONAL AMENDMENT LIMITING
CONTINGENCY FEES AND AWARDS OF PUNITIVE
AND NON-ECONOMIC DAMAGES; AND CHANGING
THE POWERS OF THE GENERAL ASSEMBLY AND
THE SUPREME COURT REGARDING RULES OF
PLEADING, PRACTICE, AND PROCEDURE.

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2 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-FIRST GENERAL
3 ASSEMBLY OF THE STATE OF ARKANSAS AND BY SENATE, A MAJORITY OF ALL MEMBERS
4 ELECTED TO EACH HOUSE AGREEING THERETO:

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6 That the following is proposed as an amendment to the Constitution of
7 the State of Arkansas, and upon being submitted to the electors of the state
8 for approval or rejection at the next general election for Representatives
9 and Senators, if a majority of the electors voting thereon at the election
10 adopt the amendment, the amendment shall become a part of the Constitution of
11 the State of Arkansas, to wit:

12
13 SECTION 1. Arkansas Constitution, Article 7, is amended to add an
14 additional section to read as follows:

15 § 53. Contingency fees.

16 (a) As used in this section, "contingency fee" means an attorney's fee
17 that is paid only if the claimant recovers money by way of settlement,
18 arbitration, or judgment.

19 (b) A contingency fee for legal representation in a civil action shall
20 not exceed thirty-three and one-third percent (33 1/3 %) of the net amount of
21 the recovery, whether obtained by settlement, arbitration, or judgment.

22 (c) Beginning with the 2019 regular session, by a majority vote of
23 each house, the General Assembly shall enact laws necessary for the proper
24 implementation of this section, including without limitation laws:

25 (1) Establishing penalties for contingency fees that exceed the
26 maximum under this section; and

27 (2) Defining terms in subsection (b) of this section as
28 necessary, including without limitation defining the phrase "net amount of
29 the recovery".

30 (d) By a two-thirds vote of each house, the General Assembly may enact
31 laws amending the maximum percentage for contingency fees for legal
32 representation under subdivision (b) of this section.

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34 SECTION 2. Arkansas Constitution, Article 5, Section 32, is amended to
35 read as follows:

36 § 32. Workmen's Compensation Laws – Actions for ~~personal~~ injuries

1 resulting in death or injuries to persons or property.

2 (a) As used in this section:

3 (1) "Non-economic damages" means damages that cannot be measured
4 in money, including without limitation any loss or damage, however
5 characterized, for pain and suffering, mental and emotional distress, loss of
6 life or companionship, or visible result of injury; and

7 (2) "Punitive damages" means damages to punish and deter
8 wrongful conduct.

9 (b) The General Assembly shall have power to enact laws prescribing
10 the amount of compensation to be paid by employers for injuries to or death
11 of employees, and to whom said payment shall be made. It shall have power to
12 provide the means, methods, and forum for adjudicating claims arising under
13 said laws, and for securing payment of same. Provided, that otherwise, except
14 as provided in subsections (c), (d), and (e) of this section, no law shall be
15 enacted limiting the amount to be recovered for injuries resulting in death
16 or for injuries to persons or property; and in case of death from such
17 injuries the right of action shall survive, and the General Assembly shall
18 prescribe for whose benefit such action shall be prosecuted.

19 (c)(1) Punitive damage awards for each claimant in actions for
20 injuries resulting in death and actions for injuries to persons or property,
21 including without limitation medical injuries, shall not exceed the greater
22 of:

23 (A) Five hundred thousand dollars (\$500,000); or

24 (B) Three (3) times the amount of compensatory damages
25 awarded to the claimant.

26 (2) Subdivision (c)(1) of this section does not apply if the
27 finder of fact determines by clear and convincing evidence that:

28 (A) The defendant intentionally pursued a course of
29 conduct for the purpose of causing injury or damage to the claimant; and

30 (B) The defendant's intentional conduct harmed the
31 claimant.

32 (3)(A) Except as provided in subsection (e) of this section, by
33 a two-thirds vote of each house, the General Assembly may enact laws
34 increasing the limitations under subdivisions (c)(1)(A) and (B) of this
35 section.

36 (B) Except as provided in subsection (e) of this section,

1 the General Assembly shall not enact laws decreasing the limitations under
2 subdivisions (c)(1)(A) and (B) of this section.

3 (d)(1) Non-economic damage awards in actions for injuries resulting in
4 death and actions for injuries to persons or property, including without
5 limitation medical injuries, shall be limited to:

6 (A) Five hundred thousand dollars (\$500,000) for each
7 claimant; and

8 (B) Five hundred thousand dollars (\$500,000) for all
9 beneficiaries of an individual decedent in the aggregate in an action for
10 injuries resulting in death.

11 (2)(A) Except as provided in subsection (e) of this section, by
12 a two-thirds vote of each house, the General Assembly may enact laws
13 increasing the limitations under subdivisions (d)(1)(A) and (B) of this
14 section.

15 (B) Except as provided in subsection (e) of this section,
16 the General Assembly shall not enact laws decreasing the limitations under
17 subdivisions (d)(1)(A) and (B) of this section.

18 (e)(1) By a majority vote of each house, the General Assembly during
19 its 2019 regular session shall enact laws adopting a procedure to adjust the
20 dollar figures under subsections (c) and (d) of this section for inflation or
21 deflation in future years.

22 (2) The procedure for adjustment under subdivision (e)(1) of
23 this section shall:

24 (A) Provide for adjustments intended only to compensate
25 for inflation or deflation;

26 (B) Be based upon the Consumer Price Index or a comparable
27 index chosen by the General Assembly; and

28 (C) Permit rounding to the nearest one hundred dollars
29 (\$100).

30 (3) Beginning with the 2021 regular session, by a two-thirds
31 vote of each house, the General Assembly may enact laws amending the
32 procedure enacted by law under subsection (e)(1) of this section.

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34 SECTION 3. Amendment 80, § 3, is amended to read as follows:

35 § 3. Rules of pleading, practice, and procedure.

36 (a) The Supreme Court shall prescribe ~~the~~ rules of pleading, practice,

1 *and procedure for all courts, subject to subsections (b)-(e) of this section;*
 2 *provided these rules shall not abridge, enlarge or modify any substantive*
 3 *right and shall preserve the right of trial by jury as declared in this*
 4 *Constitution.*

5 (b)(1) By a three-fifths vote of each house, the General Assembly may
 6 enact laws:

7 (A) Amending or repealing a rule of pleading, practice, or
 8 procedure prescribed by the Supreme Court; and

9 (B) Adopting on its own initiative a rule of pleading,
 10 practice, or procedure.

11 (2) A rule of pleading, practice, or procedure enacted by law by the
 12 General Assembly shall supersede a conflicting rule of pleading, practice, or
 13 procedure prescribed by the Supreme Court.

14 (c) Rules of pleading, practice, and procedure under this section
 15 shall preserve the right of trial by jury as declared in this Constitution.

16 (d) Rules of pleading, practice, and procedure in effect on January 1,
 17 2019, shall continue in effect until amended, superseded, or repealed under
 18 this section.

19 (e) Rules of pleading, practice, and procedure under this section
 20 include without limitation rules governing the presentation and admission of
 21 evidence.

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23 SECTION 4. Arkansas Constitution, Amendment 80, § 9, is amended to
 24 read as follows:

25 § 9. Annulment or amendment of rules.

26 Any rules promulgated by the Supreme Court pursuant to Sections 5,
 27 6(B), 7(B), 7(D), or 8 of this Amendment may be annulled or amended, in whole
 28 or in part, by a ~~two-thirds (2/3)~~ three-fifths vote of the membership of each
 29 house of the General Assembly.

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31 SECTION 5. SEVERABILITY. The provisions of this amendment are
 32 severable, and if any should be held invalid, the remainder shall stand.

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34 SECTION 6. EFFECTIVE DATE. This amendment:

35 (1) Is effective on and after January 1, 2019; and

36 (2) Applies to all:

1 (A) Civil actions that accrue on and after January 1,
2 2019; and

3 (B) Contingency fee agreements signed on and after January
4 1, 2019.

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6 SECTION 7. BALLOT TITLE AND POPULAR NAME. (a) When presented on the
7 general election ballot, the popular name for this proposed amendment shall
8 be "An Amendment Concerning Civil Lawsuits and the Powers of the General
9 Assembly and Supreme Court to Adopt Court Rules."

10 (b) When presented on the general election ballot, the ballot title
11 for this proposed amendment shall be "A proposed amendment to the Arkansas
12 Constitution providing that a contingency fee for an attorney in a civil
13 lawsuit shall not exceed thirty-three and one-third percent (33 1/3 %) of the
14 net recovery; defining "contingency fee" as an attorney's fee that is paid
15 only if the claimant recovers money; providing that the General Assembly may
16 amend the foregoing percentage by a two-thirds (2/3) vote of each house;
17 limiting punitive damages awards for each claimant in lawsuits for personal
18 injury, property damage, or wrongful death to the greater of (i) five hundred
19 thousand dollars (\$500,000), or (ii) three (3) times the amount of
20 compensatory damages awarded; defining "punitive damages" as damages assessed
21 to punish and deter wrongful conduct; providing that the General Assembly may
22 not decrease the foregoing limitations on punitive damages but may increase
23 the limitations by a two-thirds (2/3) vote of each house; providing that the
24 limitations on punitive damages do not apply if the factfinder determines by
25 clear and convincing evidence that the defendant intentionally pursued a
26 course of conduct for the purpose of causing injury or damage to the claimant
27 and that such intentional conduct harmed the claimant; limiting awards of
28 non-economic damages in lawsuits for personal injury, property damage, or
29 wrongful death to (i) five hundred thousand dollars (\$500,000) for each
30 claimant, or (ii) five hundred thousand dollars (\$500,000) for all
31 beneficiaries of an individual deceased person in the aggregate in a lawsuit
32 for wrongful death; defining "non-economic damages" as damages that cannot be
33 measured in money, including pain and suffering, mental and emotional
34 distress, loss of life or companionship, or visible result of injury;
35 providing that the General Assembly may not decrease the foregoing
36 limitations on non-economic damages but may increase the limitations by a

1 two-thirds (2/3) vote of each house; providing that the General Assembly
2 shall adopt a procedure to adjust the dollar limitations on punitive damages
3 and non-economic damages in future years to account for inflation or
4 deflation; providing that the Supreme Court's power to prescribe *rules of*
5 *pleading, practice, and procedure for courts is subject to the provisions of*
6 *this amendment; providing that the General Assembly, by a three-fifths vote*
7 *of each house, may amend or repeal a rule prescribed by the Supreme Court and*
8 *may adopt other rules of pleading, practice, or procedure on its own*
9 *initiative; providing that rules of pleading, practice, and procedure in*
10 *effect on January 1, 2019, shall continue in effect until amended,*
11 *superseded, or repealed under the provisions of this amendment; providing*
12 *that a rule of pleading, practice, or procedure enacted by the General*
13 *Assembly shall supersede a conflicting rule of pleading, practice, or*
14 *procedure prescribed by the Supreme Court; providing that certain other rules*
15 *promulgated by the Supreme Court may be annulled or amended by a three-fifths*
16 *(3/5) vote of each house of the General Assembly instead of a two-thirds*
17 *(2/3) vote as presently stated in the Arkansas Constitution; and providing*
18 *that this amendment becomes effective on January 1, 2019."*

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20 /s/Irvin
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