

**ARKANSAS SENATE**  
89th General Assembly - Regular Session, 2013  
**Amendment Form**

---

Subtitle of Senate Joint Resolution No. 2  
THE TORT REFORM AMENDMENT OF 2013.

---

**Amendment No. 2 to Senate Joint Resolution No. 2**

Amend Senate Joint Resolution No. 2 as engrossed, S1/24/13 (version: 01/24/2013 8:46:58 AM)

Add Senator K. Ingram as a cosponsor of the bill

AND

Add Representative B. Wilkins as a cosponsor of the bill

AND

Page 1, delete lines 11 through 25 and substitute the following:  
"AMENDING THE ARKANSAS CONSTITUTION CONCERNING THE PROCEDURES FOR CIVIL CLAIMS; AN AMENDMENT TO THE ARKANSAS CONSTITUTION CONCERNING THE AWARD OF COSTS AND FEES WHEN CERTAIN CLAIMS ARE DISMISSED, THE BURDEN OF PROOF IN CERTAIN ACTIONS FOR MEDICAL INJURY, THE FILING OF A CERTIFICATE OF GOOD FAITH IN CONJUNCTION WITH CERTAIN ACTIONS FOR MEDICAL INJURY, THE SUBMISSION OF WRITTEN NOTICE OF A CLAIM FOR MEDICAL INJURY TO PERSONS ALLEGEDLY LIABLE BEFORE THE COMMENCEMENT OF A LEGAL CLAIM, LIMITATIONS ON THE AMOUNT OF PUNITIVE DAMAGES WHICH MAY BE AWARDED IN A CIVIL ACTION, AND THE APPORTIONMENT OF TORT RESPONSIBILITY."

AND

Page 9, delete line 14 and substitute the following:  
"claimant's treating medical care providers upon proper authorization.

§ 57. Limitations on the amount of punitive damages.

(a) Except as provided in subsection (b) of this section, a punitive damages award for each plaintiff in a civil action shall not be more than nine (9) times the amount of compensatory damages awarded in the civil action.

(b) Subsection (a) of this section does not apply when the finder of fact:

(1) Determines by clear and convincing evidence that, at the



time of the injury, the defendant intentionally pursued a course of conduct that shocks the conscience for the purpose of causing serious bodily injury or death; and

(2) Determines that the defendant's conduct did, in fact, result in serious bodily injury or death.

§ 58. Apportionment of tort responsibility.

(a) As used in this section:

(1) "Contributory fault" includes contributory negligence, misuse of a product, unreasonable failure to avoid or mitigate harm, and assumption of risk unless the risk is expressly assumed in a legally enforceable release or similar agreement;

(2) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(3) "Released person" means a person that would be liable for damages to a claimant for personal injury or harm to property if the person had not been discharged from liability under subsection (g) of this section; and

(4) "Responsibility", with respect to a claim for damages for personal injury or harm to property, means the legal consequences of an act or omission that is the basis for liability or a defense in whole or in part.

(b)(1) Except as otherwise provided in subsection (b)(2) and (b)(3) of this section, in an action seeking damages for personal injury or harm to property based on negligence or on any other claim for which the claimant may be subject to a defense in whole or part based on contributory fault, any contributory fault chargeable to the claimant diminishes the amount that the claimant otherwise would be entitled to recover as compensatory damages for the injury or harm by the percentage of responsibility assigned to the claimant pursuant to subsection (c) of this section.

(2) If the claimant's contributory fault is equal to or greater than the combined responsibility of all other parties and released persons whose responsibility is determined to have caused personal injury to or harm to property of the claimant, the claimant may not recover any damages.

(3) A party is responsible for the fault of another person or entity or for the payment of a proportionate share of another person or entity if the other person or entity was acting as an agent or servant of the party.

(3) In a jury trial, the court shall instruct the jury regarding the legal effect of its answers to interrogatories, made under subsection (c) of this section, on a claimant's right to recover damages under subsection (b)(2) of this section.

(c)(1) In an action to recover damages for personal injury or harm to property involving the responsibility of more than one party or a released person, the court shall instruct the jury to answer special interrogatories or, if there is no jury, make findings:

(A) Stating the amount of damages that a claimant would be entitled to recover if any contributory fault were disregarded;

(B) Stating, as to each claim, the percentage of the total responsibility of all the parties and released persons attributed to each claimant, defendant, and released person that caused the injury or harm;

(C) Regarding whether any of the parties or released persons acted in concert or with an intent to cause personal injury or harm to property; and

(D) Regarding any other issue of fact fairly raised by the evidence which is necessary to make a determination under subsection (d) of this section or enter judgment under subsection (e) of this section.

(2) In determining percentages of responsibility, the trier of fact shall consider:

(A) The nature of the conduct of each party and released person determined to be responsible; and

(B) The extent of the causal relation between the conduct and the damages claimed.

(3) The court shall determine the extent to which the responsibility of one party, which is based on the act or omission of another party, warrants that the parties be treated as a single party for the purpose of submitting interrogatories to the jury or making findings under subdivision (c)(1) of this section.

(d)(1) After the trier of fact has answered interrogatories or made findings under subsection (c) of this section, the court shall determine, in accordance with the percentages of responsibility found:

(A) The monetary amount of any award of damages to a claimant;

(B) The amount of the several share for which each party found liable is responsible; and

(C) Any amount attributable to a released person.

(2)(A) After the court has made its determinations pursuant to subsection (d)(1) of this section, a claimant, no later than ninety (90) days after the entry of judgment for the plaintiff, may move the court to determine whether all or part of the amount of the several share for which a party is liable will not be reasonably collectible and request reallocation.

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

(C) Reallocation shall be made in the proportion that each party's and released person's respective percentage of responsibility bears to the total of the percentages of responsibility attributed to the parties, including the claimant, and any released person but not including the percentage being reallocated.

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

(B) A party that discharges an additional share of responsibility allocated to it under subdivision (d)(2) of this section has a right of reimbursement from the party from which the share was reallocated.

(C) Upon motion, the court in the judgment entered under subsection (e) of this section shall declare the rights and obligations resulting from the reallocation, including any rights and obligations with regard to subrogation or a secured position.

(D) If any party to whom reallocation has been made holds a secured position with regard to the share reallocated, each party to whom reallocation has been made has a proportionate share in the secured position.

(E) Any amount recovered under this subsection from a party whose liability has been reallocated shall be distributed to each of the parties to whom the reallocation was made in the same proportion as the original reallocation.

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

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

(e)(1) After determining an award of damages to a claimant and the amount of the several share, including any reallocated share, for which each party found liable is responsible, the court shall enter judgment severally against each party adjudged liable, except in the following situations:

(A) If two or more parties adjudged liable acted in concert or with an intent to cause personal injury to, or harm to property of, the claimant, the court shall enter judgment jointly and severally against the parties for their joint share;

(B) If a party is adjudged liable for failing to prevent another party from intentionally causing personal injury to, or harm to property of, the claimant, the court shall enter judgment jointly and severally against the parties for their combined shares of responsibility;

(C) If a party is adjudged liable for the act or omission of another party under subdivision (c)(3) of this section, the court shall enter judgment jointly and severally against the parties for their joint share; and

(D) If Arkansas law, other than this amendment, so requires, the court shall enter judgment jointly and severally or otherwise conform the judgment to the statute.

(2) If a court grants a motion for reallocation pursuant to subsection (d) of this section after judgment is entered, the court shall modify the judgment to declare the rights and obligations resulting from the reallocation, including any rights and obligations with regard to subrogation or a secured position.

(f)(1)(A) Except as otherwise provided in subdivision (f)(2) of this section, a party that is jointly and severally liable with one or more other parties under this amendment has a right of contribution from another party jointly liable for any amount the party pays in excess of the several amount for which the party is responsible.

(B) A party against which contribution is sought is not liable for more than the monetary amount of the party's several share of responsibility determined pursuant to subsection (d) of this amendment.

(2) A party that is adjudged liable for the act or omission of another party under subdivision (e)(1)(C) of this section has a right of indemnification from the other party.

(3) A party that is subject to liability for injury to, or harm to property of, a claimant under this amendment has a right to:

(A) Join a person that is also subject to liability to the claimant for all or part of the same injury or harm if the claimant has not sued the person; and

(B) Seek contribution or indemnity, whichever is appropriate, from another person whose liability is not determined in the proceeding in which the party is adjudged liable if the other person is

responsible for all or part of the claimant's injury or harm.

(4) A claim for contribution or indemnity may be asserted in the original action or in a separate action.

(g)(1)(A) A release, covenant not to sue, covenant not to execute a judgment, or similar agreement by a claimant and person subject to liability discharges the person from liability to the claimant to the extent provided in the agreement and from liability for contribution to any other person subject to liability to the claimant for the same injury or harm.

(B) The agreement does not discharge any other person subject to liability upon the same claim unless the agreement so provides.

(2) The amount of the claim of the releasing person under subdivision (g)(1) of this section against other persons jointly and severally liable for the same injury or harm for which the released person would have been liable is reduced by the percentage of responsibility attributed to the released person pursuant to subsection (c) of this amendment.

(3) A release, covenant not to sue, covenant not to execute a judgment, or similar agreement extinguishes any claim for contribution or indemnity that the released person would have had against another person that would have been jointly and severally liable with the released person."

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_

By: Senator J. Hutchinson

MBM/CDS - 02-06-2013 11:00:45

MBM082

\_\_\_\_\_  
Secretary