

Hall of the House of Representatives

91st General Assembly - Regular Session, 2017

Amendment Form

Subtitle of Senate Joint Resolution No. 8

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.

Amendment No. 2 to Senate Joint Resolution No. 8

Amend Senate Joint Resolution No. 8 as originally introduced:

Delete the title in its entirety and substitute the following:

"PROPOSING AN AMENDMENT TO THE ARKANSAS CONSTITUTION PROVIDING THAT A PARTY TO A CIVIL ACTION IS ENTITLED TO REIMBURSEMENT OF REASONABLE ATTORNEY'S FEES AND LITIGATION COSTS FROM AN OPPOSING PARTY WHO INTERPOSES AN IMPROPER CLAIM OR DEFENSE; PROVIDING THAT THE GENERAL ASSEMBLY MAY ENACT LAWS LIMITING THE AMOUNT OF PUNITIVE DAMAGES AND NON-ECONOMIC DAMAGES THAT MAY BE AWARDED; PROVIDING THAT A LIMITATION ON AN AWARD OF PUNITIVE DAMAGES ENACTED BY THE GENERAL ASSEMBLY SHALL NOT BE LESS THAN THE GREATER OF FOUR (4) TIMES THE AMOUNT AWARDED FOR COMPENSATORY DAMAGES OR TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) AND SHALL NOT APPLY TO INJURIES OR DAMAGE CAUSED BY INTENTIONAL CONDUCT; PROVIDING THAT A LIMITATION ON AN AWARD OF NON-ECONOMIC DAMAGES ENACTED BY THE GENERAL ASSEMBLY SHALL NOT BE LESS THAN ONE MILLION DOLLARS (\$1,000,000) IN AN ACTION WHERE THE FINDER OF FACT DETERMINES THAT THE DEFENDANT COMMITTED AN ACT OF ORDINARY NEGLIGENCE THAT HARMED THE CLAIMANT OR THE PERSON ON WHOSE BEHALF A CLAIM WAS MADE AND SHALL NOT APPLY TO GROSS DEVIATIONS FROM THE STANDARD OF CARE OF A REASONABLE AND PRUDENT PERSON, INJURIES OR DAMAGE CAUSED BY INTENTIONAL ACTS, AND TORTIOUS ACTS THAT CAUSE DEATH; PROVIDING THAT LIMITATIONS ON PUNITIVE DAMAGES AND NON-ECONOMIC DAMAGES ENACTED BY THE GENERAL ASSEMBLY SHALL PROVIDE FOR ANNUAL ADJUSTMENTS FOR INFLATION; PROVIDING THAT A CONTINGENCY FEE FOR LEGAL REPRESENTATION IN A CIVIL ACTION SHALL NOT EXCEED THIRTY-THREE AND ONE-THIRD PERCENT (33 1/3 %) OF THE GROSS AMOUNT OF THE RECOVERY; PROVIDING THAT THE SUPREME COURT MAY PRESCRIBE FOR CASES IN CIRCUIT, DISTRICT, AND APPELLATE COURTS GENERAL RULES OF PRACTICE AND PROCEDURE AND RULES OF EVIDENCE SO LONG AS THE RULES DO NOT ABRIDGE, ENLARGE, OR MODIFY ANY SUBSTANTIVE RIGHT; PROVIDING THAT THE ARKANSAS JUDICIAL COUNCIL SHALL PRESCRIBE AND PUBLISH THE PROCEDURES FOR THE CONSIDERATION OF PROPOSED RULES BY THE SUPREME COURT AND SHALL APPOINT ONE (1) OR MORE COMMITTEES TO CONSIDER AND REVIEW PROPOSED RULES; PROVIDING THAT THE ARKANSAS JUDICIAL COUNCIL SHALL CONSIST OF ALL JUSTICES OF THE SUPREME COURT, JUDGES OF THE COURT OF APPEALS, CIRCUIT JUDGES, AND PERSONS RETIRED FROM THOSE POSITIONS; PROVIDING THAT RULES PRESCRIBED BY THE SUPREME COURT



SHALL BE TRANSMITTED TO THE GENERAL ASSEMBLY IN ADVANCE OF THEIR EFFECTIVE DATE; PROVIDING THAT THE GENERAL ASSEMBLY SHALL APPROVE RULES PRESCRIBED BY THE SUPREME COURT THAT CREATE, ABOLISH, OR MODIFY AN EVIDENTIARY PRIVILEGE; AND PROVIDING THAT THE AMENDMENT IS EFFECTIVE ON AND AFTER JANUARY 1, 2019."

AND

Delete the subtitle in its entirety and substitute:

"AN AMENDMENT CONCERNING CIVIL LAWSUITS
AND THE POWERS OF THE SUPREME COURT AND
GENERAL ASSEMBLY PERTAINING TO THE
ADOPTION OF COURT RULES."

AND

Delete SECTIONS 1 through 7 of the Joint Resolution in their entirety and substitute the following:

"SECTION 1. Arkansas Constitution, Article 2, is amended to add an additional section to read as follows:

§ 30. Entitlement to reimbursement of reasonable attorney's fees and litigation costs.

A party to a civil action is entitled to reimbursement of reasonable attorney's fees and litigation costs from an opposing party who interposes a claim or defense that is:

- (1) Not well grounded in law or fact;
- (2) Not warranted by existing law of a good faith argument for the extension, modification, or reversal of existing law; or
- (3) Interposed for an improper purpose if the opposing party refuses to withdraw the claim or defense following a reasonable opportunity to do so.

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

§ 32. Workmen's Compensation Laws – Actions for ~~personal~~ injuries resulting in death or injuries to persons or property.

(a) As used in this section:

- (1) "Non-economic damages" means damages that cannot be measured in money, including without limitation any loss or damage, however characterized, for pain and suffering, mental and emotional distress, loss of life or companionship, visible result of injury, or physical impairment; and
- (2) "Punitive damages" means damages to punish and deter wrongful conduct.

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

(c)(1) The General Assembly may enact laws limiting the amount of punitive damages that may be awarded as follows:

(A) A limitation on the amount of punitive damages that may be awarded under this subdivision (c)(1) against each defendant shall not be less than the greater of:

(i) Four (4) times the amount awarded for compensatory damages; or

(ii) Two hundred fifty thousand dollars (\$250,000);
and

(B) A limitation on the amount of punitive damages that may be awarded under this subdivision (c)(1) shall not be effective when the finder of fact determines by clear and convincing evidence that the:

(i) Defendant intentionally pursued a course of conduct for the purpose of causing injury or damage to the claimant; and

(ii) Defendant's intentional conduct harmed the claimant.

(d) The General Assembly may enact laws limiting the amount of non-economic damages that may be awarded as follows:

(1) A limitation on the amount of non-economic damages that may be awarded against each defendant in favor of each claimant or person on who behalf a claim is made shall not be less than one million dollars (\$1,000,000) in an action where the finder of fact determines that the defendant committed an act of ordinary negligence that harmed the claimant or the person on whose behalf a claim was made;

(2) A limitation on the amount of non-economic damages that may be awarded shall not be effective when the finder of fact determines that the defendant:

(A)(i) Committed an act that was a gross deviation from the standard of care that a reasonable and prudent person would have exercised in the circumstances; and

(ii) The gross deviation from the standard of care under subdivision (d)(2)(A)(i) of this section harmed the claimant or a person on whose behalf a claim was made; or

(B)(i) Intentionally pursued a course of conduct for the purpose of causing injury or damage to the claimant or a person on whose behalf a claim was made; and

(ii) The intentional conduct under subdivision (d)(2)(B)(i) of this section harmed the claimant or a person on whose behalf a claim was made; and

(3) A limitation shall not be enacted limiting the award of non-economic damages for a tortious act that causes death.

(e) Laws enacted by the General Assembly imposing limitations under this section shall provide for annual adjustments for inflation based upon the Consumer Price Index or other recognized measure of the value of money.

SECTION 3. Arkansas Constitution, Article 7, is amended to add an additional section to read as follows:

§ 53. Contingency fees.

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

(b) A contingency fee for legal representation in a civil action shall

not exceed thirty-three and one-third percent (33 1/3 %) of the gross amount of the recovery, whether obtained by settlement, arbitration, or judgment.

(c) Rules for the enforcement and implementation of this section shall be promulgated under Amendment 80, § 3 of this Constitution.

SECTION 4. Amendment 80, § 3, is amended to read as follows:

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

~~The Supreme Court shall prescribe the rules of pleading, practice and procedure for all courts; provided these rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as declared in this Constitution.~~

(a)(1) The Supreme Court may prescribe for cases in the circuit and district courts and appellate courts of this state:

(A) General rules of practice and procedure; and

(B) Rules of evidence.

(2)(A) Rules under subdivision (a)(1) of this section:

(i) Shall not abridge, enlarge or modify any substantive right; and

(ii) Shall preserve the right of trial by jury as declared in this Constitution.

(B) All laws in conflict with rules under subdivision (a)(1) of this section shall be of no further force or effect after the rules have taken effect.

(3) Rules under subdivision (a)(1) of this section may without limitation define when a ruling of a circuit or district court is final for the purposes of appeal.

(b)(1)(A)(i) The Arkansas Judicial Council shall prescribe and publish the procedures for the consideration of proposed rules under subsection (a) of this section.

(ii) The Arkansas Judicial Council shall consist of all:

(a) Justices of the Supreme Court;

(b) Judges of the Court of Appeals;

(c) Circuit judges; and

(d) Persons retired from the positions under subdivision (b)(1)(A)(ii)(a)-(c) of this section.

(B)(i) The council may authorize the appointment of committees to assist the council by recommending rules to be prescribed under subsection (a) of this section.

(ii) A committee under subdivision (b)(1)(B)(i) of this section shall consist of members of the bench and the professional bar, trial judges, and appellate judges.

(2)(A) The council shall authorize the appointment of a standing committee on rules of practice, procedure, and evidence under subdivision (b)(1)(B)(i) of this section.

(B) The standing committee on rules of practice, procedure, and evidence shall:

(i) Review a rule recommendation made by a committee appointed under subdivision (b)(1)(B)(i) of this section; and

(ii) Recommend to the council rules of practice, procedure, and evidence and amendments to rules of practice, procedure, and evidence as may be necessary to maintain consistency and otherwise promote

the interest of justice.

(3)(A) A meeting of a committee appointed under this section to make or consider recommendations pertaining to rules to be prescribed under subsection (a) of this section shall be open to the public, except when the committee so meeting:

(i) Determines in open session and with a majority present that it is in the public interest that all or part of the remainder of the meeting on that day be closed to the public; and

(ii) States the reason that the meeting shall be closed to the public.

(B)(i) Except as provided in subdivision (b)(3)(B)(ii) of this section, minutes of a meeting of a committee appointed under this section to make or consider recommendations pertaining to rules to be prescribed under subsection (a) of this section shall be maintained by the committee and made available to the public.

(ii) Any portion of the minutes of a meeting relating to a closed meeting under subdivision (b)(3)(A) of this section may contain redactions as necessary to avoid frustrating the purposes of closing the meeting.

(C) A meeting of a committee appointed under this section to make or consider recommendations pertaining to rules to be prescribed under subsection (a) of this section shall be preceded by sufficient notice to enable all interested persons to attend.

(4) When making a recommendation concerning a rule to be prescribed under subsection (a) of this section, the committee appointed under this section shall provide:

(A) A proposed rule;

(B) An explanatory note on the rule; and

(C) A written report explaining the committee's recommendation, including any minority or other separate views of the committee members.

(5) The failure of the council or a committee appointed under this section to comply with this subsection does not invalidate a rule prescribed under this section.

(c)(1) The Supreme Court shall transmit to the General Assembly not later than May 1 of the year in which a rule prescribed under subsection (a) is to become effective a copy of the proposed rule.

(2) A rule prescribed by the Supreme Court shall take effect no earlier than December 1 of the year in which the rule is transmitted under subdivision (c)(1) of this section unless otherwise provided by law.

(3)(A) Except as provided in subdivision (c)(3)(B) of this section, the Supreme Court may fix the extent that a rule prescribed by the Supreme Court shall apply to proceedings then pending.

(B)(i) The Supreme Court shall not require the application of a rule to further proceedings then pending to the extent that, in the opinion of the court in which the proceedings are pending, the application of the rule in the proceedings would not be feasible or would work injustice.

(ii) If the court in which the proceedings are pending determines that the application of a rule to further proceedings would not be feasible or would work injustice, the rules preceding the prescribing of the rule at issue by the Supreme Court shall apply to the proceedings.

(4) A rule prescribed by the Supreme Court creating, abolishing, or modifying an evidentiary privilege shall not have force or effect unless approved by an act of the General Assembly.

SECTION 5. EFFECTIVE DATE. (a) This amendment is effective on and after January 1, 2019.

(b) Section 1 of this amendment shall apply to causes of action accruing on and after January 1, 2019.

(c) Section 3 of this amendment shall apply to contingency fee agreements entered into on and after January 1, 2019.

SECTION 6. BALLOT TITLE AND POPULAR NAME. When this proposed amendment is submitted to the electors of this state on the general election ballot:

(1) The title of this joint resolution shall be the ballot title; and

(2) The popular name shall be "An Amendment Concerning Civil Lawsuits and the Powers of the Supreme Court and General Assembly Pertaining to the Adoption of Court Rules"."

The Amendment was read
By: Representative Gazaway
MBM/KFW - 02-24-2017 09:11:36
MBM133

Chief Clerk