

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

As Engrossed: H3/16/99

# A Bill

HOUSE BILL 2070

5 By: Representative Womack  
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## For An Act To Be Entitled

9 "AN ACT TO BE *KNOWN* AS THE 'HEALTH CARE COST REDUCTION  
10 ACT OF 1999;' TO AMEND ARKANSAS CODE 16-114-201 AND  
11 16-114-208; AND FOR OTHER PURPOSES."  
12

## Subtitle

13 "AN ACT TO BE *KNOWN* AS THE 'HEALTH CARE  
14 COST REDUCTION ACT OF 1999.' "  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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20 SECTION 1. This act shall be known and may be cited as the "Health Care  
21 Cost Reduction Act of 1999."  
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23 SECTION 2. It is found and determined by the General Assembly that  
24 medical malpractice insurance is the second greatest cost for health care  
25 providers; that the cost of malpractice insurance affects the ability of the  
26 citizens of this state to obtain affordable health care; and that reasonable  
27 limitations on medical malpractice damages are needed to provide affordable  
28 health care.  
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30 SECTION 3. Arkansas Code 16-114-201 is amended to read as follows:  
31 "16-114-201. Definitions.

32 As used in this subchapter, unless the context otherwise requires:

33 (1) 'Action for medical injury' means any action against a  
34 medical care provider, whether based in tort, contract, or otherwise, to  
35 recover damages on account of medical injury;

36 (2) 'Compensatory damages' means damages intended to compensate

1 the plaintiff for an actual loss, either economic damages or non-economic  
2 damages;

3 (3) 'Damages' means compensatory damages and punitive damages;

4 (4) 'Economic damages' means medical expenses, lost wages, loss  
5 of earning capacity, and other objectively measurable monetary losses;

6 (2)-(5) 'Medical care provider' means a physician, certified  
7 registered nurse anesthetist, physician's assistant, nurse, optometrist,  
8 chiropractor, physical therapist, dentist, podiatrist, pharmacist,  
9 veterinarian, hospital, nursing home, community mental health center,  
10 psychologist, clinic, or not-for-profit home health care agency licensed by  
11 the state or otherwise lawfully providing professional medical care or  
12 services, or an officer, employee or agent thereof acting in the course and  
13 scope of employment in the providing of such medical care or medical services;

14 (3)-(6) 'Medical injury' or 'injury' means any adverse  
15 consequences arising out of or sustained in the course of the professional  
16 services being rendered by a medical care provider, whether resulting from  
17 negligence, error, or omission in the performance of such services; or from  
18 rendition of such services without informed consent or in breach of warranty  
19 or in violation of contract; or from failure to diagnose; or from premature  
20 abandonment of a patient or of a course of treatment; or from failure to  
21 properly maintain equipment or appliances necessary to the rendition of such  
22 services; or otherwise arising out of or sustained in the course of such  
23 services;

24 (7)(A) 'Non-economic damages' means pain, suffering,  
25 inconvenience, loss of consortium, mental anguish, and other non-monetary  
26 damages intended to compensate the plaintiff;

27 (B) 'Non-economic damages' does not include punitive  
28 damages;

29 (8) 'Punitive damages' means damages intended to punish the  
30 defendant for an act or omission that is either intentional or grossly  
31 negligent."

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33 SECTION 4. Arkansas Code 16-114-208 is amended to read as follows:

34 "16-114-208. Damage awards - Periodic payment of future damages.

35 (a)~~(1)~~ The damages awarded may include compensation ~~for actual~~  
36 ~~economic losses recognized by law~~ damages suffered by the injured person by

1 reason of medical injury, ~~including, but not limited to, the cost of~~  
2 ~~reasonable and necessary medical services, rehabilitation services, custodial~~  
3 ~~care, loss of services, and loss of earnings or earning capacity;~~

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

6 (b) In the event of a verdict for the plaintiff, the finder of fact  
7 shall separately state its awards for both past and future economic ~~losses~~  
8 damages and for both past and future noneconomic ~~losses;~~ damages.

9 (c)(1) In the event of a judgment for the plaintiff, if the award for  
10 future compensatory damages exceeds one hundred thousand dollars (\$100,000)  
11 the court may, at the request of either party, order that the future  
12 compensatory damages of the injured person exceeding one hundred thousand  
13 dollars (\$100,000) be paid in whole, or in part, by periodic payments as  
14 determined by the court, rather than by lump sum payment, on such terms as the  
15 court deems just and equitable.

16 (2) As a condition to authorizing periodic payments of future  
17 compensatory damages, the court may order a judgment debtor who is not  
18 adequately insured to post security adequate to assure full payment of such  
19 compensatory damages.

20 (3) In the event of the death of the injured person prior to  
21 completion of installment payments of principal and interest upon motion of  
22 any party in interest, the court shall modify the order by deducting from the  
23 remaining balance the amount representing unpaid compensation for future ~~pain~~  
24 ~~and suffering and future expenses of care~~ economic damages and non-economic  
25 damages and by ordering the remainder to be paid into and become a part of the  
26 estate of the decedent.

27 (d)(1) Joint and severable liability shall not apply to punitive  
28 damages.

29 (2) Punitive damages shall not exceed the greater of seventy-five  
30 thousand dollars (\$75,000) or three (3) times the amount of compensatory  
31 damages. Punitive damages shall not be allowed unless more than five hundred  
32 dollars (\$500) is awarded for compensatory damages.

33 (3) If punitive damages are sought, the trial shall be bifurcated  
34 with the amount of punitive damages determined in a separate phase of the  
35 trial after the compensatory damage amount has been established by the finder  
36 of fact in the court."

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SECTION 5. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 7. All laws and parts of laws in conflict with this act are hereby repealed.

*/s/ Womack*