

Bureau of Legislative Research

State Capitol, Room 315
Little Rock, Arkansas 72201
Phone: (501) 682-1937 Fax: (501) 682-1936
www.arkleg.state.ar.us

Memorandum

DATE : October 7, 2013
TO : Constitutional Issues Subcommittee -- State Agencies and
Governmental Affairs Committee
FROM : Matthew Miller, Assistant Director for Legal Services, BLR
SUBJECT : Proposed constitutional amendments

Question Presented

I was asked to provide the procedural history of the constitutional amendment proposals concerning "tort reform" presented during the 2013 regular session.

Discussion

Below is a history of each resolution. Also attached are drafts of each version of the proposals (numbered to correspond with the references below).

SJR 2

The initial filing of SJR 2 on January 16 (attachment #1) contained four (4) provisions:

(1) An award of costs and attorney's fees against a party when a court grants a motion to dismiss for failure to state facts upon which relief can be granted and makes a finding that a claim is frivolous. The court would not require a party to pay costs in excess of a combined total of \$10,000 in a single lawsuit;

(2) The establishment of a burden of proof in actions for medical injury, including providing that expert testimony come from a medical care provider of the same specialty;

(3) A requirement that a plaintiff file a certificate of good faith with the complaint in an action for medical injury in which expert testimony was required; and

(4) A requirement that written notice be filed with a person alleged liable in an action for medical injury at least sixty (60) days before a case was commenced.

A January 24 amendment amended the co-sponsors of the SJR (attachment #2).

A February 11 amendment (attachment #3) added two (2) additional provisions --

(1) Punitive damages for each plaintiff in a civil action could not exceed nine (9) times the amount of compensatory damages awarded in the civil action; and

(2) A provision concerning the apportionment of liability in tort cases, including the apportionment of contributory fault.

A March 25 amendment (attachment #4) revised the punitive damage limit from nine (9) times to five (5) times the amount of compensatory damages awarded in the civil action.

An April 4 amendment (attachment #5) deleted the previous content of the SJR and inserted a provision stating that in any civil case concerning death or injury to persons, the General Assembly may enact laws limiting the amount that may be recovered for mental anguish, pain and suffering, loss of life, or scars and disfigurement. Also, the amount of punitive damages awarded against any separate defendant found guilty of punitive conduct in a civil case could not exceed five (5) times the award of compensatory damages against the defendant.

SJR 6

SJR 6 (attachment #6), filed on February 7, provided that the General Assembly may enact general laws regulating the compensation or damages that may be awarded by courts and administrative agencies, including without limitation punitive damages. SJR 6 also provided that the General Assembly shall prescribe the rules of pleading, practice, and procedure for all courts and that the General Assembly may delegate that authority to the Supreme Court. Rules of pleading, practice, and procedure in effect when the resolution was approved by the voters would remain in effect until amended, superseded, or repealed. Except as expressly delegated by the General Assembly, the Supreme Court had no authority to prescribe rules of pleading, practice, and procedure for courts.

SJR 5

On March 20, SJR 5 (attachment #7) was amended to provide that the General Assembly may enact general laws regulating the compensation or damages that may be awarded by courts and administrative agencies, including

without limitation noneconomic damages and punitive damages. It also provided that the General Assembly shall delegate nonexclusive authority to the Supreme Court to prescribe rules of pleading, practice, and procedure and the rules of evidence for all courts. Except as expressly delegated by the General Assembly, the Supreme Court would have had no authority to prescribe rules of pleading, practice, and procedure and rules of evidence for courts. The SJR authorized the General Assembly to enact laws that superseded the rules of pleading, practice, and procedure and the rules of evidence. Existing rules would continue in effect until amended, superseded, or repealed.

A March 25 amendment limited the damages which the General Assembly might regulate by law to noneconomic damages and punitive damages (attachment #8).

An April 3 amendment stated that the proposal did not supersede or amend the right of trial by jury and also added co-sponsors (attachment #9).

An April 5 amendment (attachment #10) provided that the General Assembly may enact laws regulating noneconomic damages by a 3/5 vote. Punitive damage awards could not exceed five (5) times the amount of compensatory damages allocated against the defendant and this limitation could be changed by a 2/3 vote of each house. The General Assembly was authorized to enact laws that adopted, amended, affected or superseded rules of pleading, practice, and procedure and rules of evidence. A law enacted by the General Assembly that expressly repealed a rule of pleading, practice, or procedure or a rule of evidence would require a 3/5 vote. The proposal included the language requiring the General Assembly to delegate nonexclusive authority to the Supreme Court to prescribe rules and the Supreme Court had no authority to prescribe those rules except as expressly delegated by the General Assembly.

When SJR 5 was presented in committee on April 10 it received an additional amendment (attachment #11). This amendment, which was adopted by the committee, provided that the General Assembly may enact laws regulating the award of noneconomic damages by a majority vote. A punitive damages award against a defendant could not exceed five (5) times the amount of compensatory damages allocated against the defendant and this limitation could be amended by a 3/5 vote of the General Assembly. The amendment gave the authority to promulgate court rules to the Supreme Court, but provided that the General Assembly could enact laws that included provisions relating to procedural or evidentiary matters in civil cases by a majority vote and the courts were to apply such laws. Any law that expressly amended, superseded, or repealed a specific rule of pleading, practice, or procedure or a rule of evidence required a 3/5 vote of the General Assembly.