

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

1 State of Arkansas
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

SENATE JOINT RESOLUTION

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14
15 PROPOSING AN AMENDMENT TO THE ARKANSAS CONSTITUTION
16 TO LIMIT ATTORNEYS' CONTINGENCY FEES IN CIVIL ACTIONS
17 TO THIRTY-THREE AND ONE-THIRD PERCENT OF THE NET
18 RECOVERY; TO LIMIT AWARDS OF PUNITIVE DAMAGES AND
19 NON-ECONOMIC DAMAGES IN CIVIL ACTIONS; TO REQUIRE
20 ADJUSTMENTS TO THE LIMITATIONS ON PUNITIVE AND NON-
21 ECONOMIC DAMAGE AWARDS FOR INFLATION OR DEFLATION;
22 AND TO PROVIDE THAT THE SUPREME COURT'S POWER TO
23 PRESCRIBE RULES OF PLEADING, PRACTICE, AND PROCEDURE
24 FOR COURTS IS SUBJECT TO APPROVAL BY THE GENERAL
25 ASSEMBLY, WHICH MAY ADOPT, AMEND, OR REPEAL SUCH
26 RULES AS IT DEEMS NECESSARY OR PROPER BY A THREE-
27 FIFTHS VOTE OF EACH HOUSE.

Subtitle

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



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3 BE IT RESOLVED BY THE SENATE OF THE NINETY-FIRST GENERAL ASSEMBLY OF THE
4 STATE OF ARKANSAS AND BY THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL
5 MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:
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7 That the following is proposed as an amendment to the Constitution of
8 the State of Arkansas, and upon being submitted to the electors of the state
9 for approval or rejection at the next general election for Representatives
10 and Senators, if a majority of the electors voting thereon at the election
11 adopt the amendment, the amendment shall become a part of the Constitution of
12 the State of Arkansas, to wit:
13

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

16 § 53. Contingency fees.

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

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

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

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

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

31 (d) By a two-thirds vote of each house, the General Assembly may enact
32 laws amending the maximum percentage for contingency fees for legal
33 representation under subdivision (b) of this section.
34

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

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

3 (a) As used in this section:

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

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

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

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

24 (A) Two hundred and fifty thousand dollars (\$250,000); or

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

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

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

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

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

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

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

7 (A) Two hundred fifty thousand dollars (\$250,000) for each
8 claimant; and

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

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

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

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

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

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

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

29 (C) Permit rounding to the nearest one hundred dollars
30 (\$100).

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

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

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

1 (a)(1) The Supreme Court shall prescribe the rules of pleading,
 2 practice, and procedure for all courts, subject to approval by the General
 3 Assembly under this section; provided these rules shall not abridge, enlarge
 4 or modify any substantive right and shall preserve the right of trial by jury
 5 as declared in this Constitution.

6 (2) A rule of pleading, practice, or procedure prescribed
 7 by the Supreme Court shall not become effective until approved by the General
 8 Assembly at a regular session, fiscal session, or special session.

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

11 (A) Approving, amending, or repealing a rule of pleading,
 12 practice, or procedure prescribed by the Supreme Court and

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

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

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

20 (d) Rules of pleading, practice, and procedure in effect on January 1,
 21 2019, shall continue in effect until amended, superseded, or repealed under
 22 this section.

23 (e) Rules of pleading, practice, and procedure under this section
 24 include without limitation rules governing the presentation and admission of
 25 evidence.

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

29 § 9. Annulment or amendment of rules.

30 Any rules promulgated by the Supreme Court pursuant to Sections 5,
 31 6(B), 7(B), 7(D), or 8 of this Amendment may be annulled or amended, in whole
 32 or in part, by a ~~two-thirds (2/3)~~ three-fifths vote of the membership of each
 33 house of the General Assembly.

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

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2 SECTION 6. EFFECTIVE DATE. This amendment:

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

4 (2) Applies to all:

5 (A) Civil actions that accrue on and after January 1,
6 2019; and

7 (B) Contingency fee agreements signed on and after January
8 1, 2019.

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

14 (b) When presented on the general election ballot, the ballot title
15 for this proposed amendment shall be "A proposed amendment to the Arkansas
16 Constitution providing that a contingency fee for an attorney in a civil
17 lawsuit shall not exceed thirty-three and one-third percent (33 1/3 %) of the
18 net recovery; defining "contingency fee" as an attorney's fee that is paid
19 only if the claimant recovers money; providing that the General Assembly may
20 amend the foregoing percentage by a two-thirds (2/3) vote of each house;
21 limiting punitive damages awards for each claimant in lawsuits for personal
22 injury, property damage, or wrongful death to the greater of (i) two hundred
23 fifty thousand dollars (\$250,000), or (ii) three (3) times the amount of
24 compensatory damages awarded; defining "punitive damages" as damages assessed
25 to punish and deter wrongful conduct; providing that the General Assembly may
26 not decrease the foregoing limitations on punitive damages but may increase
27 the limitations by a two-thirds (2/3) vote of each house; providing that the
28 limitations on punitive damages do not apply if the factfinder determines by
29 clear and convincing evidence that the defendant intentionally pursued a
30 course of conduct for the purpose of causing injury or damage to the claimant
31 and that such intentional conduct harmed the claimant; limiting awards of
32 non-economic damages in lawsuits for personal injury, property damage, or
33 wrongful death to (i) two hundred fifty thousand dollars (\$250,000) for each
34 claimant, or (ii) five hundred thousand dollars (\$500,000) for all
35 beneficiaries of an individual deceased person in the aggregate in a lawsuit
36 for wrongful death; defining "non-economic damages" as damages that cannot be

1 measured in money, including pain and suffering, mental and emotional
2 distress, loss of life or companionship, visible result of injury, or
3 physical impairment; providing that the General Assembly may not decrease the
4 foregoing limitations on non-economic damages but may increase the
5 limitations by a two-thirds (2/3) vote of each house; providing that the
6 General Assembly shall adopt a procedure to adjust the dollar limitations on
7 punitive damages and non-economic damages in future years to account for
8 inflation or deflation; providing that the Supreme Court's power to prescribe
9 rules of pleading, practice, and procedure for courts is subject to approval
10 by the General Assembly, which by a three-fifths (3/5) vote of each house may
11 approve, amend, or repeal the rules prescribed by the Supreme Court and may
12 adopt other rules of pleading, practice, or procedure on its own initiative;
13 providing that rules of pleading, practice, or procedure prescribed by the
14 Supreme Court shall not become effective until approved by the General
15 Assembly, but that rules of pleading, practice, and procedure in effect on
16 January 1, 2019 shall continue in effect until a change to the rules is
17 approved or enacted by the General Assembly; providing that a rule of
18 pleading, practice, or procedure enacted by the General Assembly shall
19 supersede a conflicting rule of pleading, practice, or procedure prescribed
20 by the Supreme Court; providing that certain other rules promulgated by the
21 Supreme Court may be annulled or amended by a three-fifths (3/5) vote of each
22 house of the General Assembly instead of a two-thirds (2/3) vote as presently
23 stated in the Arkansas Constitution; and providing that this amendment
24 becomes effective on January 1, 2019."

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