

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

State of Arkansas  
91st General Assembly  
Regular Session, 2017

*As Engrossed: H2/24/17*

SJR 8

By: Senators Irvin, E. Williams, T. Garner, Bledsoe, J. Dismang, L. Eads, J. English, Files, J. Hendren, Hester, B. Johnson, Rapert, B. Sample, Standridge, D. Wallace

By: Representatives Ballinger, Barker, Beck, Bentley, Bragg, Brown, Cavanaugh, Coleman, Collins, Cozart, Davis, Dotson, D. Douglas, Drown, Eaves, Eubanks, Farrer, D. Ferguson, L. Fite, Gates, Gonzales, M. Gray, Henderson, K. Hendren, Hillman, G. Hodges, Holcomb, Hollowell, Jean, Jett, Ladyman, Lemons, Lowery, Lundstrum, Lynch, Magie, McCollum, D. Meeks, Payton, Petty, Pilkington, Richmond, Rushing, Rye, B. Smith, Sorvillo, Speaks, Sturch, Vaught, Wardlaw, Warren, Watson, Womack

**SENATE JOINT RESOLUTION**

*PROPOSING AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO LIMIT ATTORNEYS' CONTINGENCY FEES IN CIVIL ACTIONS TO THIRTY-THREE AND ONE-THIRD PERCENT (33 1/3 %) OF THE NET RECOVERY; TO LIMIT AWARDS OF PUNITIVE DAMAGES AND NON-ECONOMIC DAMAGES IN CIVIL ACTIONS; TO REQUIRE ADJUSTMENTS TO THE LIMITATIONS ON PUNITIVE AND NON-ECONOMIC DAMAGE AWARDS FOR INFLATION OR DEFLATION; AND TO PROVIDE THAT THE GENERAL ASSEMBLY MAY, BY A THREE-FIFTHS VOTE OF EACH HOUSE, AMEND OR REPEAL A RULE OF PLEADING, PRACTICE, OR PROCEDURE PRESCRIBED BY THE SUPREME COURT AND ADOPT A RULE OF PLEADING, PRACTICE, OR PROCEDURE.*

**Subtitle**

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.



BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE NINETY-FIRST GENERAL ASSEMBLY OF THE STATE OF ARKANSAS AND BY SENATE, A MAJORITY OF ALL MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

That the following is proposed as an amendment to the Constitution of the State of Arkansas, and upon being submitted to the electors of the state for approval or rejection at the next general election for Representatives and Senators, if a majority of the electors voting thereon at the election adopt the amendment, the amendment shall become a part of the Constitution of the State of Arkansas, to wit:

SECTION 1. 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 net amount of the recovery, whether obtained by settlement, arbitration, or judgment.

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

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

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

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

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, or visible result of injury; 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), (d), and (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) Punitive damage awards for each claimant in actions for injuries resulting in death and actions for injuries to persons or property, including without limitation medical injuries, shall not exceed the greater of:

(A) Five hundred thousand dollars (\$500,000); or

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

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

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

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

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

(B) Except as provided in subsection (e) of this section,

the General Assembly shall not enact laws decreasing the limitations under subdivisions (c)(1)(A) and (B) of this section.

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

(A) Five hundred thousand dollars (\$500,000) for each claimant; and

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

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

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

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

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

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

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

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

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

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

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

(a) The Supreme Court shall prescribe ~~the~~ rules of pleading, practice,

*and procedure for all courts, subject to subsections (b)-(e) of this section; 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.*

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

(A) Amending or repealing a rule of pleading, practice, or procedure prescribed by the Supreme Court; and

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

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

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

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

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

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

§ 9. Annulment or amendment of rules.

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

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

SECTION 6. EFFECTIVE DATE. This amendment:

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

(2) Applies to all:

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

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

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

(b) When presented on the general election ballot, the ballot title for this proposed amendment shall be "A proposed amendment to the Arkansas Constitution providing that a contingency fee for an attorney in a civil lawsuit shall not exceed thirty-three and one-third percent (33 1/3 %) of the net recovery; defining "contingency fee" as an attorney's fee that is paid only if the claimant recovers money; providing that the General Assembly may amend the foregoing percentage by a two-thirds (2/3) vote of each house; limiting punitive damages awards for each claimant in lawsuits for personal injury, property damage, or wrongful death to the greater of (i) five hundred thousand dollars (\$500,000), or (ii) three (3) times the amount of compensatory damages awarded; defining "punitive damages" as damages assessed to punish and deter wrongful conduct; providing that the General Assembly may not decrease the foregoing limitations on punitive damages but may increase the limitations by a two-thirds (2/3) vote of each house; providing that the limitations on punitive damages do not apply if the factfinder determines by clear and convincing evidence that the defendant intentionally pursued a course of conduct for the purpose of causing injury or damage to the claimant and that such intentional conduct harmed the claimant; limiting awards of non-economic damages in lawsuits for personal injury, property damage, or wrongful death to (i) five hundred thousand dollars (\$500,000) for each claimant, or (ii) five hundred thousand dollars (\$500,000) for all beneficiaries of an individual deceased person in the aggregate in a lawsuit for wrongful death; defining "non-economic damages" as damages that cannot be measured in money, including pain and suffering, mental and emotional distress, loss of life or companionship, or visible result of injury; providing that the General Assembly may not decrease the foregoing limitations on non-economic damages but may increase the limitations by a

two-thirds (2/3) vote of each house; providing that the General Assembly shall adopt a procedure to adjust the dollar limitations on punitive damages and non-economic damages in future years to account for inflation or deflation; providing that the Supreme Court's power to prescribe *rules of pleading, practice, and procedure for courts is subject to the provisions of this amendment; providing that the General Assembly, by a three-fifths vote of each house, may amend or repeal a rule prescribed by the Supreme Court and may adopt other rules of pleading, practice, or procedure on its own initiative; providing that rules of pleading, practice, and procedure in effect on January 1, 2019, shall continue in effect until amended, superseded, or repealed under the provisions of this amendment; providing that a rule of pleading, practice, or procedure enacted by the General Assembly shall supersede a conflicting rule of pleading, practice, or procedure prescribed by the Supreme Court; providing that certain other rules promulgated by the Supreme Court may be annulled or amended by a three-fifths (3/5) vote of each house of the General Assembly instead of a two-thirds (2/3) vote as presently stated in the Arkansas Constitution; and providing that this amendment becomes effective on January 1, 2019.*"

*/s/Irvin*