

**EXHIBIT D-2
ATTACHMENTS 1-11**

**PROPOSED CONSTITUTIONAL
AMENDMENTS**

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

ATTACHMENT 1

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013

SJR 2

4
5 By: Senators J. Hutchinson, Files, J. Hendren, Holland, J. Woods, J. Dismang, Hester, G. Stubblefield, S.
6 Flowers, R. Thompson, D. Johnson, B. Pierce, D. Wyatt, Burnett, E. Cheatham, U. Lindsey, Elliott
7 By: Representatives Wright, Hammer, D. Altes, J. Burris, Neal, Kizzia, Leding, Vines, Davis, Steel,
8 Sabin, McLean, Ballinger

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SENATE JOINT RESOLUTION

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Subtitle

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THE TORT REFORM AMENDMENT OF 2013.

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



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SECTION 1. This amendment shall be known and may be cited as the "Tort Reform Amendment of 2013".

SECTION 2. Article 7 of the Arkansas Constitution is amended to add additional sections to read as follows:

§ 53. Motions to dismiss.

(a) As used in this section, "frivolous" means a claim that is:

- (1) Not well grounded in fact;
- (2) Not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; or
- (3) Interposed for an improper purpose, including without limitation to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(b)(1)(A) When a court grants a motion to dismiss for failure to state facts upon which relief can be granted and makes a finding that the claim is frivolous, the court shall award the party or parties against whom the dismissed claims were pending at the time the successful motion to dismiss was granted the costs and reasonable and necessary attorney's fees incurred in the proceedings.

(B) The awarded costs and fees shall be paid by the party or parties whose claim or claims were dismissed as a result of the granted motion to dismiss.

(2) Costs awarded shall include all reasonable and necessary litigation costs actually incurred due to the proceedings that resulted from the filing of the dismissed claims, including without limitation:

- (A) Court costs;
- (B) Attorney's fees;
- (C) Court reporter fees;
- (D) Interpreter fees; and
- (E) Guardian ad litem fees.

(c)(1) An award of costs under this section shall be made only:

- (A) After all appeals of the issue of the granting of the motion to dismiss have been exhausted; and
- (B) If the final outcome is the granting of the motion to dismiss.

2

1 (2) The award of costs and attorney's fees under this section
 2 shall be stayed until a final decision that is not subject to appeal is
 3 rendered.

4 (d)(1) Notwithstanding any other provision of this section, the court
 5 shall not require a party to pay costs under this section in excess of a
 6 combined total of ten thousand dollars (\$10,000) in any single lawsuit.

7 (2) When multiple parties are entitled to recover their costs
 8 from a single party under this section and those parties' combined actual
 9 costs under this section exceed ten thousand dollars (\$10,000), then the
 10 court shall apportion the awarded costs to the moving parties in proportion
 11 to the amount of each moving party's incurred costs unless agreed otherwise
 12 by the moving parties.

13 (3) This section does not limit the award of costs as otherwise
 14 provided under Arkansas law, court rules, or at common law.

15 (e) This section does not apply to:

16 (1) Actions by or against the state, other governmental
 17 entities, or public officials acting in their official capacity or under
 18 color of law;

19 (2) Any claim that is dismissed by the granting of a motion to
 20 dismiss that was filed more than sixty (60) days after the moving party
 21 received service of the latest complaint, counter-complaint, or cross-
 22 complaint in which that dismissed claim was made;

23 (3)(A) Any claim that the party against whom the motion to
 24 dismiss was filed:

25 (i) Withdrew; or

26 (ii) In good faith amended to state a claim upon
 27 which relief may be granted.

28 (4)(A) Except as provided in subdivision (e)(4)(B) of this
 29 section, actions by pro se litigants.

30 (B) Subdivision (e)(4)(A) of this section does not apply
 31 if the court also finds that the pro se litigant acted unreasonably in
 32 bringing or refusing to voluntarily withdraw the dismissed claim;

33 (5)(A) Except as provided in subdivision (e)(5)(B) of this
 34 section, any claim that is a good faith, nonfrivolous claim filed for the
 35 express purpose of:

36 (i) Extending, modifying, or reversing existing

1 precedent, law, rule, or regulation; or

2 (ii) Establishing the meaning, lawfulness, or
 3 constitutionality of a law, rule, regulation, or United States or Arkansas
 4 constitutional right if the meaning, lawfulness, or constitutionality is a
 5 matter of first impression that has not been established by precedent in a
 6 published opinion by the Supreme Court, Court of Appeals, a United States
 7 district court in Arkansas, or the United States Supreme Court.

8 (B) Subdivision (e)(5)(A) of this section does not apply
 9 unless at the time the successful motion to dismiss was filed, the party that
 10 made the dismissed claim had:

11 (i) Specially pleaded in its latest complaint,
 12 counter-complaint, or cross-complaint that the dismissed claim was made for
 13 one (1) of the express purposes under subdivision (e)(5)(A) of this section;
 14 and

15 (ii) Cited the contrary precedent or interpretation
 16 the party seeks to distinguish or overcome or stated that the issue to be
 17 decided is a matter of first impression as described in subdivision (e)(5) of
 18 this section; or

19 (6) Any claim for which relief could be granted under a law, a
 20 court precedent published by a court described in subdivision (e)(5) of this
 21 section, a rule, or a regulation that was in effect and applicable to the
 22 claim at the time the motion to dismiss was filed when the:

23 (A) Law, precedent, rule, or regulation was cited in the
 24 pleading in which the dismissed claim was made or in the response to the
 25 motion to dismiss; and

26 (B) Motion to dismiss the claim was granted due to the
 27 subsequent repeal, amendment, overruling, or distinguishing of that law,
 28 rule, regulation, or published court precedent.

29 (f) This section does not limit the ability of a court to dismiss a
 30 claim or assess costs against a party whose claim has been dismissed when
 31 permitted or required by other law, court rule, or at common law.

32
 33 § 54. Burden of proof.

34 (a)(1)(A) As used in this section, "same specialty as the defendant"
 35 means a medical care provider who practices the treatment or procedure at
 36 issue in the action for medical injury.

1 (B) "Same specialty as the defendant" does not mean a
2 medical care provider with the same specific credentials of the defendant
3 physician.

4 (2) A physician who by education, training, and experience is
5 familiar with the treatment or procedure at issue in an action for medical
6 injury shall be deemed to practice in the same specialty at issue.

7 (b) In an action for medical injury, when the asserted negligence does
8 not lie within the jury's comprehension as a matter of common knowledge, the
9 plaintiff shall have the burden of proving:

10 (1) By means of expert testimony provided only by a medical care
11 provider of the same specialty as the defendant, the degree of skill and
12 learning ordinarily possessed and used by members of the profession of the
13 medical care provider in good standing, engaged in the same type of practice
14 or specialty in the locality in which he or she practices or in a similar
15 locality;

16 (2) By means of expert testimony provided only by a medical care
17 provider of the same specialty as the defendant that the medical care
18 provider failed to act in accordance with that standard; and

19 (3) By means of expert testimony provided only by a qualified
20 medical expert that as a proximate result thereof the injured person suffered
21 injuries that would not otherwise have occurred.

22 (c)(1) Without limiting the applicability of subsection (b) of this
23 section, when the plaintiff claims that a medical care provider failed to
24 supply adequate information to obtain the informed consent of the injured
25 person, the plaintiff shall have the burden of proving that the:

26 (A) Treatment, procedure, or surgery was performed in
27 other than an emergency situation; and

28 (B) Medical care provider did not supply that type of
29 information regarding the treatment, procedure, or surgery as would
30 customarily have been given to a patient in the position of the injured
31 person or other persons authorized to give consent for such a patient by
32 other medical care providers with similar training and experience at the time
33 of the treatment, procedure, or surgery in the locality in which the medical
34 care provider practices or in a similar locality.

35 (2) In determining whether the plaintiff has satisfied the
36 requirements of subdivision (c)(1) of this section, the following matters

1 shall be considered as material issues:

2 (A) Whether a person of ordinary intelligence and
 3 awareness in a position similar to that of the injured person or persons
 4 giving consent on his or her behalf could reasonably be expected to know of
 5 the risks or hazards inherent in such treatment, procedure, or surgery;

6 (B) Whether the injured party or the person giving consent
 7 on his or her behalf knew of the risks or hazards inherent in such treatment,
 8 procedure, or surgery;

9 (C) Whether the injured party would have undergone the
 10 treatment, procedure, or surgery regardless of the risk involved or whether
 11 he or she did not wish to be informed thereof; and

12 (D) Whether it was reasonable for the medical care
 13 provider to limit disclosure of information because such disclosure could be
 14 expected to adversely and substantially affect the injured person's
 15 condition.

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 17 § 55. Certificate of good faith.

18 (a)(1) In an action for medical injury in which expert testimony is
 19 required under Arkansas law, the plaintiff or plaintiff's counsel shall file
 20 a certificate of good faith with the complaint.

21 (2) If the certificate is not filed with the complaint, the
 22 complaint shall be dismissed as provided in subsection (d) of this section
 23 absent a showing that the failure to file a certificate of good faith was due
 24 to:

25 (A) The failure of the provider to timely provide copies
 26 of the claimant's records requested under Arkansas law; or

27 (B) Demonstrated extraordinary cause.

28 (b) The certificate of good faith shall state that:

29 (1) The plaintiff or plaintiff's counsel has consulted with one
 30 (1) or more experts who have provided a signed written statement confirming
 31 that upon information and belief they:

32 (A) Are competent under Arkansas law to express an opinion
 33 or opinions in the case; and

34 (B) Believe, based on the information available from the
 35 medical records concerning the care and treatment of the plaintiff for the
 36 incident or incidents at issue, that there is a good-faith basis to maintain

1 the action consistent with the requirements of Arkansas law; or

2 (2) The plaintiff or plaintiff's counsel has consulted with one
3 (1) or more experts who have provided a signed written statement confirming
4 that upon information and belief they:

5 (A) Are competent under Arkansas law to express an opinion
6 or opinions in the case; and

7 (B)(i) Believe, based on the information available from
8 the medical records reviewed concerning the care and treatment of the
9 plaintiff for the incident or incidents at issue and, as appropriate,
10 information from the plaintiff or others with knowledge of the incident or
11 incidents at issue, that there are facts material to the resolution of the
12 case that cannot be reasonably ascertained from the medical records or
13 information reasonably available to the plaintiff or plaintiff's counsel and
14 that, despite the absence of this information, there is a good-faith basis
15 for maintaining the action as to each defendant consistent with the
16 requirements of Arkansas law.

17 (ii) Refusal of the defendant to release the medical
18 records in a timely fashion or when it is impossible for the plaintiff to
19 obtain the medical records shall waive the requirement that the expert review
20 the medical record prior to expert certification.

21 (c) Within thirty (30) days after a defendant has alleged in an answer
22 or amended answer that a nonparty is at fault for the injuries or death of
23 the plaintiff and expert testimony is required to prove fault as required by
24 Arkansas law, each defendant or defendant's counsel shall file a certificate
25 of good faith stating that:

26 (1) The defendant or defendant's counsel has consulted with one
27 (1) or more experts, which may include the defendant's filing the certificate
28 of good faith, who have provided a signed written statement confirming that
29 upon information and belief they:

30 (A) Are competent under Arkansas law to express an opinion
31 or opinions in the case; and

32 (B) Believe, based on the information reviewed concerning
33 the care and treatment of the plaintiff for the incident or incidents at
34 issue, that there is a good-faith basis to allege such a fault against
35 another consistent with the requirements of Arkansas law; or

36 (2) The defendant or defendant's counsel has consulted with one

1 (1) or more medical experts, which may include the defendant's filing the
2 certificate of good faith, who have provided a signed written statement
3 confirming that upon information and belief they:

4 (A) Are competent under Arkansas law to express an opinions
5 or opinions in the case; and

6 (B) Believe, based on the information reviewed concerning
7 the care and treatment of the plaintiff for the incident or incidents at
8 issue, that:

9 (i) There are facts material to the resolution of
10 the case that cannot be reasonably ascertained from the information
11 reasonably available to the defendant or defendant's counsel; and

12 (ii) Despite the absence of the material facts under
13 subdivision (c)(2)(B)(i) of this section, there is a good-faith basis for
14 alleging such a fault against another, whether already a party to the action
15 or not, consistent with the requirements of Arkansas law.

16 (d)(1) The failure of a plaintiff to file a certificate of good faith
17 in compliance with this section shall, upon motion, make the action subject
18 to dismissal with prejudice.

19 (2) The failure of a defendant to file a certificate of good
20 faith in compliance with this section alleging the fault of a nonparty shall,
21 upon motion, make such allegations subject to being stricken with prejudice
22 unless the plaintiff consents to waive compliance with this section.

23 (3) If the allegations are stricken, a defendant, except for a
24 defendant who complied with this section, cannot assert, and neither shall
25 the judge nor jury consider, the fault, if any, of those identified by the
26 allegations.

27 (4) The court may, upon motion, grant an extension within which
28 to file a certificate of good faith if the court determines that a health
29 care provider who has medical records relevant to the issues in the case has
30 failed to timely produce medical records upon timely request, or for other
31 good cause shown.

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33 § 56. Notice of claim for medical injury.

34 (a) An action for medical injury shall not be commenced until at least
35 sixty (60) days after service of a written notice of the alleged claim for
36 medical injury upon the person or persons alleged to be liable, by certified

1 or registered mail, to the last known address of the person or persons
2 allegedly liable.

3 (b) If the written notice under subsection (a) of this section is
4 served within sixty (60) days of the expiration of the period for bringing
5 suit, the time for commencement of the action shall be extended one hundred
6 and eighty (180) days from the service of the notice.

7 (c)(1) Except as provided in subdivision (c)(2) of this section,
8 during the one-hundred-eighty-day extension of the statute of limitations
9 under subsection (b) of this section a potential party to the alleged claim
10 or an attorney for a potential party to the alleged claim shall not have ex
11 parte communication with the claimant's treating medical care providers.

12 (2) A potential party to the alleged claim or an attorney for a
13 potential party to the alleged claim may request medical records from the
14 claimant's treating medical care providers upon proper authorization.

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1 State of Arkansas *As Engrossed: S1/24/13*
2 89th General Assembly
3 Regular Session, 2013

SJR 2

4
5 By: Senators J. Hutchinson, Files, J. Hendren, Holland, J. Woods, J. Dismang, Hester, G. Stubblefield, S.
6 Flowers, R. Thompson, D. Johnson, B. Pierce, D. Wyatt, Burnett, E. Cheatham, U. Lindsey, Elliott
7 By: Representatives Wright, Hammer, D. Altes, J. Burris, Neal, Kizzia, Leding, Vines, Davis, Steel,
8 McLean, Ballinger, *E. Armstrong, J. Edwards, Farrer, House, Wardlaw*

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SENATE JOINT RESOLUTION

11

AMENDING THE ARKANSAS CONSTITUTION CONCERNING THE
12 PROCEDURES FOR CIVIL CLAIMS; PROVIDING FOR THE AWARD
13 OF COSTS AND FEES WHEN A CLAIM IS DISMISSED FOR
14 FAILURE TO STATE FACTS UPON WHICH RELIEF CAN BE
15 GRANTED AND THE CLAIM IS FRIVOLOUS AND STATING
16 CERTAIN EXCEPTIONS TO THIS RULE; ESTABLISHING THE
17 BURDEN OF PROOF IN ACTIONS FOR MEDICAL INJURY WHEN
18 THE ASSERTED NEGLIGENCE DOES NOT LIE WITHIN THE
19 JURY'S COMPREHENSION AS A MATTER OF COMMON KNOWLEDGE;
20 PROVIDING FOR THE FILING OF A CERTIFICATE OF GOOD
21 FAITH IN CONJUNCTION WITH AN ACTION FOR MEDICAL
22 INJURY IN WHICH EXPERT TESTIMONY IS REQUIRED UNDER
23 ARKANSAS LAW; AND REQUIRING WRITTEN NOTICE OF A CLAIM
24 FOR MEDICAL INJURY TO PERSONS ALLEGEDLY LIABLE BEFORE
25 THE COMMENCEMENT OF A LEGAL CLAIM.

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27

28

Subtitle

29

THE TORT REFORM AMENDMENT OF 2013.

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32

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

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SECTION 1. This amendment shall be known and may be cited as the "Tort Reform Amendment of 2013".

SECTION 2. Article 7 of the Arkansas Constitution is amended to add additional sections to read as follows:

§ 53. Motions to dismiss.

(a) As used in this section, "frivolous" means a claim that is:

(1) Not well grounded in fact;

(2) Not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; or

(3) Interposed for an improper purpose, including without limitation to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(b)(1)(A) When a court grants a motion to dismiss for failure to state facts upon which relief can be granted and makes a finding that the claim is frivolous, the court shall award the party or parties against whom the dismissed claims were pending at the time the successful motion to dismiss was granted the costs and reasonable and necessary attorney's fees incurred in the proceedings.

(B) The awarded costs and fees shall be paid by the party or parties whose claim or claims were dismissed as a result of the granted motion to dismiss.

(2) Costs awarded shall include all reasonable and necessary litigation costs actually incurred due to the proceedings that resulted from the filing of the dismissed claims, including without limitation:

(A) Court costs;

(B) Attorney's fees;

(C) Court reporter fees;

(D) Interpreter fees; and

(E) Guardian ad litem fees.

(c)(1) An award of costs under this section shall be made only:

(A) After all appeals of the issue of the granting of the motion to dismiss have been exhausted; and

(B) If the final outcome is the granting of the motion to dismiss.

11

1 (2) The award of costs and attorney's fees under this section
2 shall be stayed until a final decision that is not subject to appeal is
3 rendered.

4 (d)(1) Notwithstanding any other provision of this section, the court
5 shall not require a party to pay costs under this section in excess of a
6 combined total of ten thousand dollars (\$10,000) in any single lawsuit.

7 (2) When multiple parties are entitled to recover their costs
8 from a single party under this section and those parties' combined actual
9 costs under this section exceed ten thousand dollars (\$10,000), then the
10 court shall apportion the awarded costs to the moving parties in proportion
11 to the amount of each moving party's incurred costs unless agreed otherwise
12 by the moving parties.

13 (3) This section does not limit the award of costs as otherwise
14 provided under Arkansas law, court rules, or at common law.

15 (e) This section does not apply to:

16 (1) Actions by or against the state, other governmental
17 entities, or public officials acting in their official capacity or under
18 color of law;

19 (2) Any claim that is dismissed by the granting of a motion to
20 dismiss that was filed more than sixty (60) days after the moving party
21 received service of the latest complaint, counter-complaint, or cross-
22 complaint in which that dismissed claim was made;

23 (3)(A) Any claim that the party against whom the motion to
24 dismiss was filed:

25 (i) Withdrew; or

26 (ii) In good faith amended to state a claim upon
27 which relief may be granted.

28 (4)(A) Except as provided in subdivision (e)(4)(B) of this
29 section, actions by pro se litigants.

30 (B) Subdivision (e)(4)(A) of this section does not apply
31 if the court also finds that the pro se litigant acted unreasonably in
32 bringing or refusing to voluntarily withdraw the dismissed claim;

33 (5)(A) Except as provided in subdivision (e)(5)(B) of this
34 section, any claim that is a good faith, nonfrivolous claim filed for the
35 express purpose of:

36 (i) Extending, modifying, or reversing existing

1 precedent, law, rule, or regulation; or
2 (ii) Establishing the meaning, lawfulness, or
3 constitutionality of a law, rule, regulation, or United States or Arkansas
4 constitutional right if the meaning, lawfulness, or constitutionality is a
5 matter of first impression that has not been established by precedent in a
6 published opinion by the Supreme Court, Court of Appeals, a United States
7 district court in Arkansas, or the United States Supreme Court.
8 (B) Subdivision (e)(5)(A) of this section does not apply
9 unless at the time the successful motion to dismiss was filed, the party that
10 made the dismissed claim had:
11 (i) Specially pleaded in its latest complaint,
12 counter-complaint, or cross-complaint that the dismissed claim was made for
13 one (1) of the express purposes under subdivision (e)(5)(A) of this section;
14 and
15 (ii) Cited the contrary precedent or interpretation
16 the party seeks to distinguish or overcome or stated that the issue to be
17 decided is a matter of first impression as described in subdivision (e)(5) of
18 this section; or
19 (6) Any claim for which relief could be granted under a law, a
20 court precedent published by a court described in subdivision (e)(5) of this
21 section, a rule, or a regulation that was in effect and applicable to the
22 claim at the time the motion to dismiss was filed when the:
23 (A) Law, precedent, rule, or regulation was cited in the
24 pleading in which the dismissed claim was made or in the response to the
25 motion to dismiss; and
26 (B) Motion to dismiss the claim was granted due to the
27 subsequent repeal, amendment, overruling, or distinguishing of that law,
28 rule, regulation, or published court precedent.
29 (f) This section does not limit the ability of a court to dismiss a
30 claim or assess costs against a party whose claim has been dismissed when
31 permitted or required by other law, court rule, or at common law.

32
33 § 54. Burden of proof.

34 (a)(1)(A) As used in this section, "same specialty as the defendant"
35 means a medical care provider who practices the treatment or procedure at
36 issue in the action for medical injury.

1 (B) "Same specialty as the defendant" does not mean a
2 medical care provider with the same specific credentials of the defendant
3 physician.

4 (2) A physician who by education, training, and experience is
5 familiar with the treatment or procedure at issue in an action for medical
6 injury shall be deemed to practice in the same specialty at issue.

7 (b) In an action for medical injury, when the asserted negligence does
8 not lie within the jury's comprehension as a matter of common knowledge, the
9 plaintiff shall have the burden of proving:

10 (1) By means of expert testimony provided only by a medical care
11 provider of the same specialty as the defendant, the degree of skill and
12 learning ordinarily possessed and used by members of the profession of the
13 medical care provider in good standing, engaged in the same type of practice
14 or specialty in the locality in which he or she practices or in a similar
15 locality;

16 (2) By means of expert testimony provided only by a medical care
17 provider of the same specialty as the defendant that the medical care
18 provider failed to act in accordance with that standard; and

19 (3) By means of expert testimony provided only by a qualified
20 medical expert that as a proximate result thereof the injured person suffered
21 injuries that would not otherwise have occurred.

22 (c)(1) Without limiting the applicability of subsection (b) of this
23 section, when the plaintiff claims that a medical care provider failed to
24 supply adequate information to obtain the informed consent of the injured
25 person, the plaintiff shall have the burden of proving that the:

26 (A) Treatment, procedure, or surgery was performed in
27 other than an emergency situation; and

28 (B) Medical care provider did not supply that type of
29 information regarding the treatment, procedure, or surgery as would
30 customarily have been given to a patient in the position of the injured
31 person or other persons authorized to give consent for such a patient by
32 other medical care providers with similar training and experience at the time
33 of the treatment, procedure, or surgery in the locality in which the medical
34 care provider practices or in a similar locality.

35 (2) In determining whether the plaintiff has satisfied the
36 requirements of subdivision (c)(1) of this section, the following matters

1 shall be considered as material issues:

2 (A) Whether a person of ordinary intelligence and
3 awareness in a position similar to that of the injured person or persons
4 giving consent on his or her behalf could reasonably be expected to know of
5 the risks or hazards inherent in such treatment, procedure, or surgery;

6 (B) Whether the injured party or the person giving consent
7 on his or her behalf knew of the risks or hazards inherent in such treatment,
8 procedure, or surgery;

9 (C) Whether the injured party would have undergone the
10 treatment, procedure, or surgery regardless of the risk involved or whether
11 he or she did not wish to be informed thereof; and

12 (D) Whether it was reasonable for the medical care
13 provider to limit disclosure of information because such disclosure could be
14 expected to adversely and substantially affect the injured person's
15 condition.

16

17 § 55. Certificate of good faith.

18 (a)(1) In an action for medical injury in which expert testimony is
19 required under Arkansas law, the plaintiff or plaintiff's counsel shall file
20 a certificate of good faith with the complaint.

21 (2) If the certificate is not filed with the complaint, the
22 complaint shall be dismissed as provided in subsection (d) of this section
23 absent a showing that the failure to file a certificate of good faith was due
24 to:

25 (A) The failure of the provider to timely provide copies
26 of the claimant's records requested under Arkansas law; or

27 (B) Demonstrated extraordinary cause.

28 (b) The certificate of good faith shall state that:

29 (1) The plaintiff or plaintiff's counsel has consulted with one
30 (1) or more experts who have provided a signed written statement confirming
31 that upon information and belief they:

32 (A) Are competent under Arkansas law to express an opinion
33 or opinions in the case; and

34 (B) Believe, based on the information available from the
35 medical records concerning the care and treatment of the plaintiff for the
36 incident or incidents at issue, that there is a good-faith basis to maintain

1 the action consistent with the requirements of Arkansas law; or
2 (2) The plaintiff or plaintiff's counsel has consulted with one
3 (1) or more experts who have provided a signed written statement confirming
4 that upon information and belief they:
5 (A) Are competent under Arkansas law to express an opinion
6 or opinions in the case; and
7 (B)(i) Believe, based on the information available from
8 the medical records reviewed concerning the care and treatment of the
9 plaintiff for the incident or incidents at issue and, as appropriate,
10 information from the plaintiff or others with knowledge of the incident or
11 incidents at issue, that there are facts material to the resolution of the
12 case that cannot be reasonably ascertained from the medical records or
13 information reasonably available to the plaintiff or plaintiff's counsel and
14 that, despite the absence of this information, there is a good-faith basis
15 for maintaining the action as to each defendant consistent with the
16 requirements of Arkansas law.
17 (ii) Refusal of the defendant to release the medical
18 records in a timely fashion or when it is impossible for the plaintiff to
19 obtain the medical records shall waive the requirement that the expert review
20 the medical record prior to expert certification.
21 (c) Within thirty (30) days after a defendant has alleged in an answer
22 or amended answer that a nonparty is at fault for the injuries or death of
23 the plaintiff and expert testimony is required to prove fault as required by
24 Arkansas law, each defendant or defendant's counsel shall file a certificate
25 of good faith stating that:
26 (1) The defendant or defendant's counsel has consulted with one
27 (1) or more experts, which may include the defendant's filing the certificate
28 of good faith, who have provided a signed written statement confirming that
29 upon information and belief they:
30 (A) Are competent under Arkansas law to express an opinion
31 or opinions in the case; and
32 (B) Believe, based on the information reviewed concerning
33 the care and treatment of the plaintiff for the incident or incidents at
34 issue, that there is a good-faith basis to allege such a fault against
35 another consistent with the requirements of Arkansas law; or
36 (2) The defendant or defendant's counsel has consulted with one

1 (1) or more medical experts, which may include the defendant's filing the
2 certificate of good faith, who have provided a signed written statement
3 confirming that upon information and belief they:

4 (A) Are competent under Arkansas law to express an opinions
5 or opinions in the case; and

6 (B) Believe, based on the information reviewed concerning
7 the care and treatment of the plaintiff for the incident or incidents at
8 issue, that:

9 (i) There are facts material to the resolution of
10 the case that cannot be reasonably ascertained from the information
11 reasonably available to the defendant or defendant's counsel; and

12 (ii) Despite the absence of the material facts under
13 subdivision (c)(2)(B)(i) of this section, there is a good-faith basis for
14 alleging such a fault against another, whether already a party to the action
15 or not, consistent with the requirements of Arkansas law.

16 (d)(1) The failure of a plaintiff to file a certificate of good faith
17 in compliance with this section shall, upon motion, make the action subject
18 to dismissal with prejudice.

19 (2) The failure of a defendant to file a certificate of good
20 faith in compliance with this section alleging the fault of a nonparty shall,
21 upon motion, make such allegations subject to being stricken with prejudice
22 unless the plaintiff consents to waive compliance with this section.

23 (3) If the allegations are stricken, a defendant, except for a
24 defendant who complied with this section, cannot assert, and neither shall
25 the judge nor jury consider, the fault, if any, of those identified by the
26 allegations.

27 (4) The court may, upon motion, grant an extension within which
28 to file a certificate of good faith if the court determines that a health
29 care provider who has medical records relevant to the issues in the case has
30 failed to timely produce medical records upon timely request, or for other
31 good cause shown.

32
33 § 56. Notice of claim for medical injury.

34 (a) An action for medical injury shall not be commenced until at least
35 sixty (60) days after service of a written notice of the alleged claim for
36 medical injury upon the person or persons alleged to be liable, by certified

1 or registered mail, to the last known address of the person or persons
2 allegedly liable.

3 (b) If the written notice under subsection (a) of this section is
4 served within sixty (60) days of the expiration of the period for bringing
5 suit, the time for commencement of the action shall be extended one hundred
6 and eighty (180) days from the service of the notice.

7 (c)(1) Except as provided in subdivision (c)(2) of this section,
8 during the one-hundred-eighty-day extension of the statute of limitations
9 under subsection (b) of this section a potential party to the alleged claim
10 or an attorney for a potential party to the alleged claim shall not have ex
11 parte communication with the claimant's treating medical care providers.

12 (2) A potential party to the alleged claim or an attorney for a
13 potential party to the alleged claim may request medical records from the
14 claimant's treating medical care providers upon proper authorization.

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16 */s/J. Hutchinson*
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Stricken language would be deleted from and underlined language would be added

1 State of Arkansas *As Engrossed: S1/24/13 S2/11/13*
 2 89th General Assembly
 3 Regular Session, 2013 SJR 2
 4
 5 By: Senators J. Hutchinson, Files, J. Hendren, Holland, J. Woods, J. Dismang, Hester, G. Stubblefield, S.
 6 Flowers, R. Thompson, D. Johnson, B. Pierce, D. Wyatt, Burnett, E. Cheatham, U. Lindsey, Elliott, K.
 7 *Ingram*
 8 By: Representatives Wright, Hammer, D. Altes, J. Burris, Neal, Kizzia, Leding, Vines, Davis, Steel,
 9 McLean, Ballinger, *E. Armstrong, J. Edwards, Farrer, House, Wardlaw, B. Wilkins*

SENATE JOINT RESOLUTION

*AMENDING THE ARKANSAS CONSTITUTION CONCERNING THE
 PROCEDURES FOR CIVIL CLAIMS; AN AMENDMENT TO THE
 ARANSAS CONSTITUTION CONCERNING THE AWARD OF COSTS
 AND FEES WHEN CERTAIN CLAIMS ARE DISMISSED, THE
 BURDEN OF PROOF IN CERTAIN ACTIONS FOR MEDICAL
 INJURY, THE FILING OF A CERTIFICATE OF GOOD FAITH IN
 CONJUNCTION WITH CERTAIN ACTIONS FOR MEDICAL INJURY,
 THE SUBMISSION OF WRITTEN NOTICE OF A CLAIM FOR
 MEDICAL INJURY TO PERSONS ALLEGEDLY LIABLE BEFORE THE
 COMMENCEMENT OF A LEGAL CLAIM, LIMITATIONS ON THE
 AMOUNT OF PUNITIVE DAMAGES WHICH MAY BE AWARDED IN A
 CIVIL ACTION, AND THE APPORTIONMENT OF TORT
 RESPONSIBILITY.*

Subtitle

THE TORT REFORM AMENDMENT OF 2013.

31 BE IT RESOLVED BY THE SENATE OF THE EIGHTY-NINTH GENERAL ASSEMBLY OF THE
 32 STATE OF ARKANSAS AND BY THE THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL
 33 MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:
 34
 35

36 SECTION 1. This amendment shall be known and may be cited as the "Tort



1 Reform Amendment of 2013".

2

3 SECTION 2. Article 7 of the Arkansas Constitution is amended to add
4 additional sections to read as follows:

5 § 53. Motions to dismiss.

6 (a) As used in this section, "frivolous" means a claim that is:

7 (1) Not well grounded in fact;

8 (2) Not warranted by existing law or a good faith argument for
9 the extension, modification, or reversal of existing law; or

10 (3) Interposed for an improper purpose, including without
11 limitation to harass or to cause unnecessary delay or needless increase in
12 the cost of litigation.

13 (b)(1)(A) When a court grants a motion to dismiss for failure to state
14 facts upon which relief can be granted and makes a finding that the claim is
15 frivolous, the court shall award the party or parties against whom the
16 dismissed claims were pending at the time the successful motion to dismiss
17 was granted the costs and reasonable and necessary attorney's fees incurred
18 in the proceedings.

19 (B) The awarded costs and fees shall be paid by the party
20 or parties whose claim or claims were dismissed as a result of the granted
21 motion to dismiss.

22 (2) Costs awarded shall include all reasonable and necessary
23 litigation costs actually incurred due to the proceedings that resulted from
24 the filing of the dismissed claims, including without limitation:

25 (A) Court costs;

26 (B) Attorney's fees;

27 (C) Court reporter fees;

28 (D) Interpreter fees; and

29 (E) Guardian ad litem fees.

30 (c)(1) An award of costs under this section shall be made only:

31 (A) After all appeals of the issue of the granting of the
32 motion to dismiss have been exhausted; and

33 (B) If the final outcome is the granting of the motion to
34 dismiss.

35 (2) The award of costs and attorney's fees under this section
36 shall be stayed until a final decision that is not subject to appeal is

1 rendered.

2 (d)(1) Notwithstanding any other provision of this section, the court
3 shall not require a party to pay costs under this section in excess of a
4 combined total of ten thousand dollars (\$10,000) in any single lawsuit.

5 (2) When multiple parties are entitled to recover their costs
6 from a single party under this section and those parties' combined actual
7 costs under this section exceed ten thousand dollars (\$10,000), then the
8 court shall apportion the awarded costs to the moving parties in proportion
9 to the amount of each moving party's incurred costs unless agreed otherwise
10 by the moving parties.

11 (3) This section does not limit the award of costs as otherwise
12 provided under Arkansas law, court rules, or at common law.

13 (e) This section does not apply to:

14 (1) Actions by or against the state, other governmental
15 entities, or public officials acting in their official capacity or under
16 color of law;

17 (2) Any claim that is dismissed by the granting of a motion to
18 dismiss that was filed more than sixty (60) days after the moving party
19 received service of the latest complaint, counter-complaint, or cross-
20 complaint in which that dismissed claim was made;

21 (3)(A) Any claim that the party against whom the motion to
22 dismiss was filed;

23 (i) Withdrew; or

24 (ii) In good faith amended to state a claim upon
25 which relief may be granted.

26 (4)(A) Except as provided in subdivision (e)(4)(B) of this
27 section, actions by pro se litigants.

28 (B) Subdivision (e)(4)(A) of this section does not apply
29 if the court also finds that the pro se litigant acted unreasonably in
30 bringing or refusing to voluntarily withdraw the dismissed claim;

31 (5)(A) Except as provided in subdivision (e)(5)(B) of this
32 section, any claim that is a good faith, nonfrivolous claim filed for the
33 express purpose of:

34 (i) Extending, modifying, or reversing existing
35 precedent, law, rule, or regulation; or

36 (ii) Establishing the meaning, lawfulness, or

1 constitutionality of a law, rule, regulation, or United States or Arkansas
2 constitutional right if the meaning, lawfulness, or constitutionality is a
3 matter of first impression that has not been established by precedent in a
4 published opinion by the Supreme Court, Court of Appeals, a United States
5 district court in Arkansas, or the United States Supreme Court.

6 (B) Subdivision (e)(5)(A) of this section does not apply
7 unless at the time the successful motion to dismiss was filed, the party that
8 made the dismissed claim had:

9 (i) Specially pleaded in its latest complaint,
10 counter-complaint, or cross-complaint that the dismissed claim was made for
11 one (1) of the express purposes under subdivision (e)(5)(A) of this section;
12 and

13 (ii) Cited the contrary precedent or interpretation
14 the party seeks to distinguish or overcome or stated that the issue to be
15 decided is a matter of first impression as described in subdivision (e)(5) of
16 this section; or

17 (6) Any claim for which relief could be granted under a law, a
18 court precedent published by a court described in subdivision (e)(5) of this
19 section, a rule, or a regulation that was in effect and applicable to the
20 claim at the time the motion to dismiss was filed when the:

21 (A) Law, precedent, rule, or regulation was cited in the
22 pleading in which the dismissed claim was made or in the response to the
23 motion to dismiss; and

24 (B) Motion to dismiss the claim was granted due to the
25 subsequent repeal, amendment, overruling, or distinguishing of that law,
26 rule, regulation, or published court precedent.

27 (f) This section does not limit the ability of a court to dismiss a
28 claim or assess costs against a party whose claim has been dismissed when
29 permitted or required by other law, court rule, or at common law.

30
31 § 54. Burden of proof.

32 (a)(1)(A) As used in this section, "same specialty as the defendant"
33 means a medical care provider who practices the treatment or procedure at
34 issue in the action for medical injury.

35 (B) "Same specialty as the defendant" does not mean a
36 medical care provider with the same specific credentials of the defendant

1 physician.

2 (2) A physician who by education, training, and experience is
3 familiar with the treatment or procedure at issue in an action for medical
4 injury shall be deemed to practice in the same specialty at issue.

5 (b) In an action for medical injury, when the asserted negligence does
6 not lie within the jury's comprehension as a matter of common knowledge, the
7 plaintiff shall have the burden of proving:

8 (1) By means of expert testimony provided only by a medical care
9 provider of the same specialty as the defendant, the degree of skill and
10 learning ordinarily possessed and used by members of the profession of the
11 medical care provider in good standing, engaged in the same type of practice
12 or specialty in the locality in which he or she practices or in a similar
13 locality;

14 (2) By means of expert testimony provided only by a medical care
15 provider of the same specialty as the defendant that the medical care
16 provider failed to act in accordance with that standard; and

17 (3) By means of expert testimony provided only by a qualified
18 medical expert that as a proximate result thereof the injured person suffered
19 injuries that would not otherwise have occurred.

20 (c)(1) Without limiting the applicability of subsection (b) of this
21 section, when the plaintiff claims that a medical care provider failed to
22 supply adequate information to obtain the informed consent of the injured
23 person, the plaintiff shall have the burden of proving that the:

24 (A) Treatment, procedure, or surgery was performed in
25 other than an emergency situation; and

26 (B) Medical care provider did not supply that type of
27 information regarding the treatment, procedure, or surgery as would
28 customarily have been given to a patient in the position of the injured
29 person or other persons authorized to give consent for such a patient by
30 other medical care providers with similar training and experience at the time
31 of the treatment, procedure, or surgery in the locality in which the medical
32 care provider practices or in a similar locality.

33 (2) In determining whether the plaintiff has satisfied the
34 requirements of subdivision (c)(1) of this section, the following matters
35 shall be considered as material issues:

36 (A) Whether a person of ordinary intelligence and

1 awareness in a position similar to that of the injured person or persons
2 giving consent on his or her behalf could reasonably be expected to know of
3 the risks or hazards inherent in such treatment, procedure, or surgery;

4 (B) Whether the injured party or the person giving consent
5 on his or her behalf knew of the risks or hazards inherent in such treatment,
6 procedure, or surgery;

7 (C) Whether the injured party would have undergone the
8 treatment, procedure, or surgery regardless of the risk involved or whether
9 he or she did not wish to be informed thereof; and

10 (D) Whether it was reasonable for the medical care
11 provider to limit disclosure of information because such disclosure could be
12 expected to adversely and substantially affect the injured person's
13 condition.

14
15 § 55. Certificate of good faith.

16 (a)(1) In an action for medical injury in which expert testimony is
17 required under Arkansas law, the plaintiff or plaintiff's counsel shall file
18 a certificate of good faith with the complaint.

19 (2) If the certificate is not filed with the complaint, the
20 complaint shall be dismissed as provided in subsection (d) of this section
21 absent a showing that the failure to file a certificate of good faith was due
22 to:

23 (A) The failure of the provider to timely provide copies
24 of the claimant's records requested under Arkansas law; or

25 (B) Demonstrated extraordinary cause.

26 (b) The certificate of good faith shall state that:

27 (1) The plaintiff or plaintiff's counsel has consulted with one
28 (1) or more experts who have provided a signed written statement confirming
29 that upon information and belief they:

30 (A) Are competent under Arkansas law to express an opinion
31 or opinions in the case; and

32 (B) Believe, based on the information available from the
33 medical records concerning the care and treatment of the plaintiff for the
34 incident or incidents at issue, that there is a good-faith basis to maintain
35 the action consistent with the requirements of Arkansas law; or

36 (2) The plaintiff or plaintiff's counsel has consulted with one

1 (1) or more experts who have provided a signed written statement confirming
2 that upon information and belief they:

3 (A) Are competent under Arkansas law to express an opinion
4 or opinions in the case; and

5 (B)(i) Believe, based on the information available from
6 the medical records reviewed concerning the care and treatment of the
7 plaintiff for the incident or incidents at issue and, as appropriate,
8 information from the plaintiff or others with knowledge of the incident or
9 incidents at issue, that there are facts material to the resolution of the
10 case that cannot be reasonably ascertained from the medical records or
11 information reasonably available to the plaintiff or plaintiff's counsel and
12 that, despite the absence of this information, there is a good-faith basis
13 for maintaining the action as to each defendant consistent with the
14 requirements of Arkansas law.

15 (ii) Refusal of the defendant to release the medical
16 records in a timely fashion or when it is impossible for the plaintiff to
17 obtain the medical records shall waive the requirement that the expert review
18 the medical record prior to expert certification.

19 (c) Within thirty (30) days after a defendant has alleged in an answer
20 or amended answer that a nonparty is at fault for the injuries or death of
21 the plaintiff and expert testimony is required to prove fault as required by
22 Arkansas law, each defendant or defendant's counsel shall file a certificate
23 of good faith stating that:

24 (1) The defendant or defendant's counsel has consulted with one
25 (1) or more experts, which may include the defendant's filing the certificate
26 of good faith, who have provided a signed written statement confirming that
27 upon information and belief they:

28 (A) Are competent under Arkansas law to express an opinion
29 or opinions in the case; and

30 (B) Believe, based on the information reviewed concerning
31 the care and treatment of the plaintiff for the incident or incidents at
32 issue, that there is a good-faith basis to allege such a fault against
33 another consistent with the requirements of Arkansas law; or

34 (2) The defendant or defendant's counsel has consulted with one
35 (1) or more medical experts, which may include the defendant's filing the
36 certificate of good faith, who have provided a signed written statement

1 confirming that upon information and belief they:

2 (A) Are competent under Arkansas law to express an opinions
3 or opinions in the case; and

4 (B) Believe, based on the information reviewed concerning
5 the care and treatment of the plaintiff for the incident or incidents at
6 issue, that:

7 (i) There are facts material to the resolution of
8 the case that cannot be reasonably ascertained from the information
9 reasonably available to the defendant or defendant's counsel; and

10 (ii) Despite the absence of the material facts under
11 subdivision (c)(2)(B)(i) of this section, there is a good-faith basis for
12 alleging such a fault against another, whether already a party to the action
13 or not, consistent with the requirements of Arkansas law.

14 (d)(1) The failure of a plaintiff to file a certificate of good faith
15 in compliance with this section shall, upon motion, make the action subject
16 to dismissal with prejudice.

17 (2) The failure of a defendant to file a certificate of good
18 faith in compliance with this section alleging the fault of a nonparty shall,
19 upon motion, make such allegations subject to being stricken with prejudice
20 unless the plaintiff consents to waive compliance with this section.

21 (3) If the allegations are stricken, a defendant, except for a
22 defendant who complied with this section, cannot assert, and neither shall
23 the judge nor jury consider, the fault, if any, of those identified by the
24 allegations.

25 (4) The court may, upon motion, grant an extension within which
26 to file a certificate of good faith if the court determines that a health
27 care provider who has medical records relevant to the issues in the case has
28 failed to timely produce medical records upon timely request, or for other
29 good cause shown.

30
31 § 56. Notice of claim for medical injury.

32 (a) An action for medical injury shall not be commenced until at least
33 sixty (60) days after service of a written notice of the alleged claim for
34 medical injury upon the person or persons alleged to be liable, by certified
35 or registered mail, to the last known address of the person or persons
36 allegedly liable.

1 (b) If the written notice under subsection (a) of this section is
2 served within sixty (60) days of the expiration of the period for bringing
3 suit, the time for commencement of the action shall be extended one hundred
4 and eighty (180) days from the service of the notice.

5 (c)(1) Except as provided in subdivision (c)(2) of this section,
6 during the one-hundred-eighty-day extension of the statute of limitations
7 under subsection (b) of this section a potential party to the alleged claim
8 or an attorney for a potential party to the alleged claim shall not have ex
9 parte communication with the claimant's treating medical care providers.

10 (2) A potential party to the alleged claim or an attorney for a
11 potential party to the alleged claim may request medical records from the
12 claimant's treating medical care providers upon proper authorization.

13
14 § 57. Limitations on the amount of punitive damages.

15 (a) Except as provided in subsection (b) of this section, a punitive
16 damages award for each plaintiff in a civil action shall not be more than
17 nine (9) times the amount of compensatory damages awarded in the civil
18 action.

19 (b) Subsection (a) of this section does not apply when the finder of
20 fact:

21 (1) Determines by clear and convincing evidence that, at the
22 time of the injury, the defendant intentionally pursued a course of conduct
23 that shocks the conscience for the purpose of causing serious bodily injury
24 or death; and

25 (2) Determines that the defendant's conduct did, in fact, result
26 in serious bodily injury or death.

27
28 § 58. Apportionment of tort responsibility.

29 (a) As used in this section:

30 (1) "Contributory fault" includes contributory negligence,
31 misuse of a product, unreasonable failure to avoid or mitigate harm, and
32 assumption of risk unless the risk is expressly assumed in a legally
33 enforceable release or similar agreement;

34 (2) "Person" means an individual, corporation, business trust,
35 estate, trust, partnership, limited liability company, association, joint
36 venture, public corporation, government, or governmental subdivision, agency,

1 or instrumentality, or any other legal or commercial entity;

2 (3) "Released person" means a person that would be liable for
3 damages to a claimant for personal injury or harm to property if the person
4 had not been discharged from liability under subsection (g) of this section;
5 and

6 (4) "Responsibility", with respect to a claim for damages for
7 personal injury or harm to property, means the legal consequences of an act
8 or omission that is the basis for liability or a defense in whole or in part.

9 (b)(1) Except as otherwise provided in subsection (b)(2) and (b)(3) of
10 this section, in an action seeking damages for personal injury or harm to
11 property based on negligence or on any other claim for which the claimant may
12 be subject to a defense in whole or part based on contributory fault, any
13 contributory fault chargeable to the claimant diminishes the amount that the
14 claimant otherwise would be entitled to recover as compensatory damages for
15 the injury or harm by the percentage of responsibility assigned to the
16 claimant pursuant to subsection (c) of this section.

17 (2) If the claimant's contributory fault is equal to or greater
18 than the combined responsibility of all other parties and released persons
19 whose responsibility is determined to have caused personal injury to or harm
20 to property of the claimant, the claimant may not recover any damages.

21 (3) A party is responsible for the fault of another person or
22 entity or for the payment of a proportionate share of another person or
23 entity if the other person or entity was acting as an agent or servant of the
24 party.

25 (3) In a jury trial, the court shall instruct the jury regarding
26 the legal effect of its answers to interrogatories, made under subsection (c)
27 of this section, on a claimant's right to recover damages under subsection
28 (b)(2) of this section.

29 (c)(1) In an action to recover damages for personal injury or harm to
30 property involving the responsibility of more than one party or a released
31 person, the court shall instruct the jury to answer special interrogatories
32 or, if there is no jury, make findings:

33 (A) Stating the amount of damages that a claimant would be
34 entitled to recover if any contributory fault were disregarded;

35 (B) Stating, as to each claim, the percentage of the total
36 responsibility of all the parties and released persons attributed to each

1 claimant, defendant, and released person that caused the injury or harm;

2 (C) Regarding whether any of the parties or released
3 persons acted in concert or with an intent to cause personal injury or harm
4 to property; and

5 (D) Regarding any other issue of fact fairly raised by the
6 evidence which is necessary to make a determination under subsection (d) of
7 this section or enter judgment under subsection (e) of this section.

8 (2) In determining percentages of responsibility, the trier of
9 fact shall consider:

10 (A) The nature of the conduct of each party and released
11 person determined to be responsible; and

12 (B) The extent of the causal relation between the conduct
13 and the damages claimed.

14 (3) The court shall determine the extent to which the
15 responsibility of one party, which is based on the act or omission of another
16 party, warrants that the parties be treated as a single party for the purpose
17 of submitting interrogatories to the jury or making findings under
18 subdivision (c)(1) of this section.

19 (d)(1) After the trier of fact has answered interrogatories or made
20 findings under subsection (c) of this section, the court shall determine, in
21 accordance with the percentages of responsibility found:

22 (A) The monetary amount of any award of damages to a
23 claimant;

24 (B) The amount of the several share for which each party
25 found liable is responsible; and

26 (C) Any amount attributable to a released person.

27 (2)(A) After the court has made its determinations pursuant to
28 subsection (d)(1) of this section, a claimant, no later than ninety (90) days
29 after the entry of judgment for the plaintiff, may move the court to
30 determine whether all or part of the amount of the several share for which a
31 party is liable will not be reasonably collectible and request reallocation.

32 (B) If the court based on a preponderance of the evidence
33 determines that the party's share will not be reasonably collectible, the
34 court shall make findings reallocating the uncollectible share severally to
35 the other parties, including the claimant, and any released person.

36 (C) Reallocation shall be made in the proportion that each

1 party's and released person's respective percentage of responsibility bears
2 to the total of the percentages of responsibility attributed to the parties,
3 including the claimant, and any released person but not including the
4 percentage being reallocated.

5 (3)(A) A party whose liability is reallocated remains liable to
6 a claimant for any additional share of responsibility allocated to the
7 claimant.

8 (B) A party that discharges an additional share of
9 responsibility allocated to it under subdivision (d)(2) of this section has a
10 right of reimbursement from the party from which the share was reallocated.

11 (C) Upon motion, the court in the judgment entered under
12 subsection (e) of this section shall declare the rights and obligations
13 resulting from the reallocation, including any rights and obligations with
14 regard to subrogation or a secured position.

15 (D) If any party to whom reallocation has been made holds
16 a secured position with regard to the share reallocated, each party to whom
17 reallocation has been made has a proportionate share in the secured position.

18 (E) Any amount recovered under this subsection from a
19 party whose liability has been reallocated shall be distributed to each of
20 the parties to whom the reallocation was made in the same proportion as the
21 original reallocation.

22 (4) Reallocation does not make a released person liable for any
23 reallocated share of responsibility unless the release or other agreement so
24 provides.

25 (5) If a motion for reallocation is made, any party may conduct
26 discovery regarding any issue relevant to the motion.

27 (e)(1) After determining an award of damages to a claimant and the
28 amount of the several share, including any reallocated share, for which each
29 party found liable is responsible, the court shall enter judgment severally
30 against each party adjudged liable, except in the following situations:

31 (A) If two or more parties adjudged liable acted in
32 concert or with an intent to cause personal injury to, or harm to property
33 of, the claimant, the court shall enter judgment jointly and severally
34 against the parties for their joint share;

35 (B) If a party is adjudged liable for failing to prevent
36 another party from intentionally causing personal injury to, or harm to

1 property of, the claimant, the court shall enter judgment jointly and
2 severally against the parties for their combined shares of responsibility;

3 (C) If a party is adjudged liable for the act or omission
4 of another party under subdivision (c)(3) of this section, the court shall
5 enter judgment jointly and severally against the parties for their joint
6 share; and

7 (D) If Arkansas law, other than this amendment, so
8 requires, the court shall enter judgment jointly and severally or otherwise
9 conform the judgment to the statute.

10 (2) If a court grants a motion for reallocation pursuant to
11 subsection (d) of this section after judgment is entered, the court shall
12 modify the judgment to declare the rights and obligations resulting from the
13 reallocation, including any rights and obligations with regard to subrogation
14 or a secured position.

15 (f)(1)(A) Except as otherwise provided in subdivision (f)(2) of this
16 section, a party that is jointly and severally liable with one or more other
17 parties under this amendment has a right of contribution from another party
18 jointly liable for any amount the party pays in excess of the several amount
19 for which the party is responsible.

20 (B) A party against which contribution is sought is not
21 liable for more than the monetary amount of the party's several share of
22 responsibility determined pursuant to subsection (d) of this amendment.

23 (2) A party that is adjudged liable for the act or omission of
24 another party under subdivision (e)(1)(C) of this section has a right of
25 indemnification from the other party.

26 (3) A party that is subject to liability for injury to, or harm
27 to property of, a claimant under this amendment has a right to:

28 (A) Join a person that is also subject to liability to the
29 claimant for all or part of the same injury or harm if the claimant has not
30 sued the person; and

31 (B) Seek contribution or indemnity, whichever is
32 appropriate, from another person whose liability is not determined in the
33 proceeding in which the party is adjudged liable if the other person is
34 responsible for all or part of the claimant's injury or harm.

35 (4) A claim for contribution or indemnity may be asserted in the
36 original action or in a separate action.

1 (g)(1)(A) A release, covenant not to sue, covenant not to execute a
2 judgment, or similar agreement by a claimant and person subject to liability
3 discharges the person from liability to the claimant to the extent provided
4 in the agreement and from liability for contribution to any other person
5 subject to liability to the claimant for the same injury or harm.

6 (B) The agreement does not discharge any other person
7 subject to liability upon the same claim unless the agreement so provides.

8 (2) The amount of the claim of the releasing person under
9 subdivision (g)(1) of this section against other persons jointly and
10 severally liable for the same injury or harm for which the released person
11 would have been liable is reduced by the percentage of responsibility
12 attributed to the released person pursuant to subsection (c) of this
13 amendment.

14 (3) A release, covenant not to sue, covenant not to execute a
15 judgment, or similar agreement extinguishes any claim for contribution or
16 indemnity that the released person would have had against another person that
17 would have been jointly and severally liable with the released person.

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19 /s/J. Hutchinson
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1 State of Arkansas *As Engrossed: S1/24/13 S2/11/13 S3/25/13*
2 89th General Assembly
3 Regular Session, 2013

SJR 2

4
5 By: Senators J. Hutchinson, Files, J. Hendren, Holland, J. Woods, J. Dismang, Hester, G. Stubblefield, S.
6 Flowers, R. Thompson, D. Johnson, B. Pierce, D. Wyatt, Burnett, E. Cheatham, U. Lindsey, Elliott, K.
7 *Ingram*
8 By: Representatives Wright, Hammer, D. Altes, J. Burris, Neal, Kizzia, Leding, Vines, Davis, Steel,
9 McLean, Ballinger, *E. Armstrong, J. Edwards, Farrer, House, Wardlaw, B. Wilkins*

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11 **SENATE JOINT RESOLUTION**

12 *AMENDING THE ARKANSAS CONSTITUTION CONCERNING THE*
13 *PROCEDURES FOR CIVIL CLAIMS; AN AMENDMENT TO THE*
14 *ARANSAS CONSTITUTION CONCERNING THE AWARD OF COSTS*
15 *AND FEES WHEN CERTAIN CLAIMS ARE DISMISSED, THE*
16 *BURDEN OF PROOF IN CERTAIN ACTIONS FOR MEDICAL*
17 *INJURY, THE FILING OF A CERTIFICATE OF GOOD FAITH IN*
18 *CONJUNCTION WITH CERTAIN ACTIONS FOR MEDICAL INJURY,*
19 *THE SUBMISSION OF WRITTEN NOTICE OF A CLAIM FOR*
20 *MEDICAL INJURY TO PERSONS ALLEGEDLY LIABLE BEFORE THE*
21 *COMMENCEMENT OF A LEGAL CLAIM, LIMITATIONS ON THE*
22 *AMOUNT OF PUNITIVE DAMAGES WHICH MAY BE AWARDED IN A*
23 *CIVIL ACTION, AND THE APPORTIONMENT OF TORT*
24 *RESPONSIBILITY.*

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26
27 **Subtitle**

28 THE TORT REFORM AMENDMENT OF 2013.
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31 BE IT RESOLVED BY THE SENATE OF THE EIGHTY-NINTH GENERAL ASSEMBLY OF THE
32 STATE OF ARKANSAS AND BY THE THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL
33 MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:
34
35

36 SECTION 1. This amendment shall be known and may be cited as the "Tort



1 Reform Amendment of 2013".

2

3 SECTION 2. Article 7 of the Arkansas Constitution is amended to add
4 additional sections to read as follows:

5 § 53. Motions to dismiss.

6 (a) As used in this section, "frivolous" means a claim that is:

7 (1) Not well grounded in fact;

8 (2) Not warranted by existing law or a good faith argument for
9 the extension, modification, or reversal of existing law; or

10 (3) Interposed for an improper purpose, including without
11 limitation to harass or to cause unnecessary delay or needless increase in
12 the cost of litigation.

13 (b)(1)(A) When a court grants a motion to dismiss for failure to state
14 facts upon which relief can be granted and makes a finding that the claim is
15 frivolous, the court shall award the party or parties against whom the
16 dismissed claims were pending at the time the successful motion to dismiss
17 was granted the costs and reasonable and necessary attorney's fees incurred
18 in the proceedings.

19 (B) The awarded costs and fees shall be paid by the party
20 or parties whose claim or claims were dismissed as a result of the granted
21 motion to dismiss.

22 (2) Costs awarded shall include all reasonable and necessary
23 litigation costs actually incurred due to the proceedings that resulted from
24 the filing of the dismissed claims, including without limitation:

25 (A) Court costs;

26 (B) Attorney's fees;

27 (C) Court reporter fees;

28 (D) Interpreter fees; and

29 (E) Guardian ad litem fees.

30 (c)(1) An award of costs under this section shall be made only:

31 (A) After all appeals of the issue of the granting of the
32 motion to dismiss have been exhausted; and

33 (B) If the final outcome is the granting of the motion to
34 dismiss.

35 (2) The award of costs and attorney's fees under this section
36 shall be stayed until a final decision that is not subject to appeal is

1 rendered.

2 (d)(1) Notwithstanding any other provision of this section, the court
3 shall not require a party to pay costs under this section in excess of a
4 combined total of ten thousand dollars (\$10,000) in any single lawsuit.

5 (2) When multiple parties are entitled to recover their costs
6 from a single party under this section and those parties' combined actual
7 costs under this section exceed ten thousand dollars (\$10,000), then the
8 court shall apportion the awarded costs to the moving parties in proportion
9 to the amount of each moving party's incurred costs unless agreed otherwise
10 by the moving parties.

11 (3) This section does not limit the award of costs as otherwise
12 provided under Arkansas law, court rules, or at common law.

13 (e) This section does not apply to:

14 (1) Actions by or against the state, other governmental
15 entities, or public officials acting in their official capacity or under
16 color of law;

17 (2) Any claim that is dismissed by the granting of a motion to
18 dismiss that was filed more than sixty (60) days after the moving party
19 received service of the latest complaint, counter-complaint, or cross-
20 complaint in which that dismissed claim was made;

21 (3)(A) Any claim that the party against whom the motion to
22 dismiss was filed:

23 (i) Withdrew; or

24 (ii) In good faith amended to state a claim upon
25 which relief may be granted.

26 (4)(A) Except as provided in subdivision (e)(4)(B) of this
27 section, actions by pro se litigants.

28 (B) Subdivision (e)(4)(A) of this section does not apply
29 if the court also finds that the pro se litigant acted unreasonably in
30 bringing or refusing to voluntarily withdraw the dismissed claim;

31 (5)(A) Except as provided in subdivision (e)(5)(B) of this
32 section, any claim that is a good faith, nonfrivolous claim filed for the
33 express purpose of:

34 (i) Extending, modifying, or reversing existing
35 precedent, law, rule, or regulation; or

36 (ii) Establishing the meaning, lawfulness, or

1 constitutionality of a law, rule, regulation, or United States or Arkansas
2 constitutional right if the meaning, lawfulness, or constitutionality is a
3 matter of first impression that has not been established by precedent in a
4 published opinion by the Supreme Court, Court of Appeals, a United States
5 district court in Arkansas, or the United States Supreme Court.

6 (B) Subdivision (e)(5)(A) of this section does not apply
7 unless at the time the successful motion to dismiss was filed, the party that
8 made the dismissed claim had:

9 (i) Specially pleaded in its latest complaint,
10 counter-complaint, or cross-complaint that the dismissed claim was made for
11 one (1) of the express purposes under subdivision (e)(5)(A) of this section;
12 and

13 (ii) Cited the contrary precedent or interpretation
14 the party seeks to distinguish or overcome or stated that the issue to be
15 decided is a matter of first impression as described in subdivision (e)(5) of
16 this section; or

17 (6) Any claim for which relief could be granted under a law, a
18 court precedent published by a court described in subdivision (e)(5) of this
19 section, a rule, or a regulation that was in effect and applicable to the
20 claim at the time the motion to dismiss was filed when the:

21 (A) Law, precedent, rule, or regulation was cited in the
22 pleading in which the dismissed claim was made or in the response to the
23 motion to dismiss; and

24 (B) Motion to dismiss the claim was granted due to the
25 subsequent repeal, amendment, overruling, or distinguishing of that law,
26 rule, regulation, or published court precedent.

27 (f) This section does not limit the ability of a court to dismiss a
28 claim or assess costs against a party whose claim has been dismissed when
29 permitted or required by other law, court rule, or at common law.

30
31 § 54. Burden of proof.

32 (a)(1)(A) As used in this section, "same specialty as the defendant"
33 means a medical care provider who practices the treatment or procedure at
34 issue in the action for medical injury.

35 (B) "Same specialty as the defendant" does not mean a
36 medical care provider with the same specific credentials of the defendant

1 physician.

2 (2) A physician who by education, training, and experience is
3 familiar with the treatment or procedure at issue in an action for medical
4 injury shall be deemed to practice in the same specialty at issue.

5 (b) In an action for medical injury, when the asserted negligence does
6 not lie within the jury's comprehension as a matter of common knowledge, the
7 plaintiff shall have the burden of proving:

8 (1) By means of expert testimony provided only by a medical care
9 provider of the same specialty as the defendant, the degree of skill and
10 learning ordinarily possessed and used by members of the profession of the
11 medical care provider in good standing, engaged in the same type of practice
12 or specialty in the locality in which he or she practices or in a similar
13 locality;

14 (2) By means of expert testimony provided only by a medical care
15 provider of the same specialty as the defendant that the medical care
16 provider failed to act in accordance with that standard; and

17 (3) By means of expert testimony provided only by a qualified
18 medical expert that as a proximate result thereof the injured person suffered
19 injuries that would not otherwise have occurred.

20 (c)(1) Without limiting the applicability of subsection (b) of this
21 section, when the plaintiff claims that a medical care provider failed to
22 supply adequate information to obtain the informed consent of the injured
23 person, the plaintiff shall have the burden of proving that the:

24 (A) Treatment, procedure, or surgery was performed in
25 other than an emergency situation; and

26 (B) Medical care provider did not supply that type of
27 information regarding the treatment, procedure, or surgery as would
28 customarily have been given to a patient in the position of the injured
29 person or other persons authorized to give consent for such a patient by
30 other medical care providers with similar training and experience at the time
31 of the treatment, procedure, or surgery in the locality in which the medical
32 care provider practices or in a similar locality.

33 (2) In determining whether the plaintiff has satisfied the
34 requirements of subdivision (c)(1) of this section, the following matters
35 shall be considered as material issues:

36 (A) Whether a person of ordinary intelligence and

1 awareness in a position similar to that of the injured person or persons
2 giving consent on his or her behalf could reasonably be expected to know of
3 the risks or hazards inherent in such treatment, procedure, or surgery;

4 (B) Whether the injured party or the person giving consent
5 on his or her behalf knew of the risks or hazards inherent in such treatment,
6 procedure, or surgery;

7 (C) Whether the injured party would have undergone the
8 treatment, procedure, or surgery regardless of the risk involved or whether
9 he or she did not wish to be informed thereof; and

10 (D) Whether it was reasonable for the medical care
11 provider to limit disclosure of information because such disclosure could be
12 expected to adversely and substantially affect the injured person's
13 condition.

14
15 § 55. Certificate of good faith.

16 (a)(1) In an action for medical injury in which expert testimony is
17 required under Arkansas law, the plaintiff or plaintiff's counsel shall file
18 a certificate of good faith with the complaint.

19 (2) If the certificate is not filed with the complaint, the
20 complaint shall be dismissed as provided in subsection (d) of this section
21 absent a showing that the failure to file a certificate of good faith was due
22 to:

23 (A) The failure of the provider to timely provide copies
24 of the claimant's records requested under Arkansas law; or

25 (B) Demonstrated extraordinary cause.

26 (b) The certificate of good faith shall state that:

27 (1) The plaintiff or plaintiff's counsel has consulted with one
28 (1) or more experts who have provided a signed written statement confirming
29 that upon information and belief they:

30 (A) Are competent under Arkansas law to express an opinion
31 or opinions in the case; and

32 (B) Believe, based on the information available from the
33 medical records concerning the care and treatment of the plaintiff for the
34 incident or incidents at issue, that there is a good-faith basis to maintain
35 the action consistent with the requirements of Arkansas law; or

36 (2) The plaintiff or plaintiff's counsel has consulted with one

1 (1) or more experts who have provided a signed written statement confirming
2 that upon information and belief they:

3 (A) Are competent under Arkansas law to express an opinion
4 or opinions in the case; and

5 (B)(i) Believe, based on the information available from
6 the medical records reviewed concerning the care and treatment of the
7 plaintiff for the incident or incidents at issue and, as appropriate,
8 information from the plaintiff or others with knowledge of the incident or
9 incidents at issue, that there are facts material to the resolution of the
10 case that cannot be reasonably ascertained from the medical records or
11 information reasonably available to the plaintiff or plaintiff's counsel and
12 that, despite the absence of this information, there is a good-faith basis
13 for maintaining the action as to each defendant consistent with the
14 requirements of Arkansas law.

15 (ii) Refusal of the defendant to release the medical
16 records in a timely fashion or when it is impossible for the plaintiff to
17 obtain the medical records shall waive the requirement that the expert review
18 the medical record prior to expert certification.

19 (c) Within thirty (30) days after a defendant has alleged in an answer
20 or amended answer that a nonparty is at fault for the injuries or death of
21 the plaintiff and expert testimony is required to prove fault as required by
22 Arkansas law, each defendant or defendant's counsel shall file a certificate
23 of good faith stating that:

24 (1) The defendant or defendant's counsel has consulted with one
25 (1) or more experts, which may include the defendant's filing the certificate
26 of good faith, who have provided a signed written statement confirming that
27 upon information and belief they:

28 (A) Are competent under Arkansas law to express an opinion
29 or opinions in the case; and

30 (B) Believe, based on the information reviewed concerning
31 the care and treatment of the plaintiff for the incident or incidents at
32 issue, that there is a good-faith basis to allege such a fault against
33 another consistent with the requirements of Arkansas law; or

34 (2) The defendant or defendant's counsel has consulted with one
35 (1) or more medical experts, which may include the defendant's filing the
36 certificate of good faith, who have provided a signed written statement

1 confirming that upon information and belief they:

2 (A) Are competent under Arkansas law to express an opinions
3 or opinions in the case; and

4 (B) Believe, based on the information reviewed concerning
5 the care and treatment of the plaintiff for the incident or incidents at
6 issue, that:

7 (i) There are facts material to the resolution of
8 the case that cannot be reasonably ascertained from the information
9 reasonably available to the defendant or defendant's counsel; and

10 (ii) Despite the absence of the material facts under
11 subdivision (c)(2)(B)(i) of this section, there is a good-faith basis for
12 alleging such a fault against another, whether already a party to the action
13 or not, consistent with the requirements of Arkansas law.

14 (d)(1) The failure of a plaintiff to file a certificate of good faith
15 in compliance with this section shall, upon motion, make the action subject
16 to dismissal with prejudice.

17 (2) The failure of a defendant to file a certificate of good
18 faith in compliance with this section alleging the fault of a nonparty shall,
19 upon motion, make such allegations subject to being stricken with prejudice
20 unless the plaintiff consents to waive compliance with this section.

21 (3) If the allegations are stricken, a defendant, except for a
22 defendant who complied with this section, cannot assert, and neither shall
23 the judge nor jury consider, the fault, if any, of those identified by the
24 allegations.

25 (4) The court may, upon motion, grant an extension within which
26 to file a certificate of good faith if the court determines that a health
27 care provider who has medical records relevant to the issues in the case has
28 failed to timely produce medical records upon timely request, or for other
29 good cause shown.

30

31 § 56. Notice of claim for medical injury.

32 (a) An action for medical injury shall not be commenced until at least
33 sixty (60) days after service of a written notice of the alleged claim for
34 medical injury upon the person or persons alleged to be liable, by certified
35 or registered mail, to the last known address of the person or persons
36 allegedly liable.

1 (b) If the written notice under subsection (a) of this section is
2 served within sixty (60) days of the expiration of the period for bringing
3 suit, the time for commencement of the action shall be extended one hundred
4 and eighty (180) days from the service of the notice.

5 (c)(1) Except as provided in subdivision (c)(2) of this section,
6 during the one-hundred-eighty-day extension of the statute of limitations
7 under subsection (b) of this section a potential party to the alleged claim
8 or an attorney for a potential party to the alleged claim shall not have ex
9 parte communication with the claimant's treating medical care providers.

10 (2) A potential party to the alleged claim or an attorney for a
11 potential party to the alleged claim may request medical records from the
12 claimant's treating medical care providers upon proper authorization.

13
14 § 57. Limitations on the amount of punitive damages.

15 (a) Except as provided in subsection (b) of this section, a punitive
16 damages award for each plaintiff in a civil action shall not be more than
17 five (5) times the amount of compensatory damages awarded in the civil
18 action.

19 (b) Subsection (a) of this section does not apply when the finder of
20 fact:

21 (1) Determines by clear and convincing evidence that, at the
22 time of the injury, the defendant intentionally pursued a course of conduct
23 that shocks the conscience for the purpose of causing serious bodily injury
24 or death; and

25 (2) Determines that the defendant's conduct did, in fact, result
26 in serious bodily injury or death.

27
28 § 58. Apportionment of tort responsibility.

29 (a) As used in this section:

30 (1) "Contributory fault" includes contributory negligence,
31 misuse of a product, unreasonable failure to avoid or mitigate harm, and
32 assumption of risk unless the risk is expressly assumed in a legally
33 enforceable release or similar agreement;

34 (2) "Person" means an individual, corporation, business trust,
35 estate, trust, partnership, limited liability company, association, joint
36 venture, public corporation, government, or governmental subdivision, agency,

1 or instrumentality, or any other legal or commercial entity;

2 (3) "Released person" means a person that would be liable for
3 damages to a claimant for personal injury or harm to property if the person
4 had not been discharged from liability under subsection (g) of this section;
5 and

6 (4) "Responsibility", with respect to a claim for damages for
7 personal injury or harm to property, means the legal consequences of an act
8 or omission that is the basis for liability or a defense in whole or in part.

9 (b)(1) Except as otherwise provided in subsection (b)(2) and (b)(3) of
10 this section, in an action seeking damages for personal injury or harm to
11 property based on negligence or on any other claim for which the claimant may
12 be subject to a defense in whole or part based on contributory fault, any
13 contributory fault chargeable to the claimant diminishes the amount that the
14 claimant otherwise would be entitled to recover as compensatory damages for
15 the injury or harm by the percentage of responsibility assigned to the
16 claimant pursuant to subsection (c) of this section.

17 (2) If the claimant's contributory fault is equal to or greater
18 than the combined responsibility of all other parties and released persons
19 whose responsibility is determined to have caused personal injury to or harm
20 to property of the claimant, the claimant may not recover any damages.

21 (3) A party is responsible for the fault of another person or
22 entity or for the payment of a proportionate share of another person or
23 entity if the other person or entity was acting as an agent or servant of the
24 party.

25 (3) In a jury trial, the court shall instruct the jury regarding
26 the legal effect of its answers to interrogatories, made under subsection (c)
27 of this section, on a claimant's right to recover damages under subsection
28 (b)(2) of this section.

29 (c)(1) In an action to recover damages for personal injury or harm to
30 property involving the responsibility of more than one party or a released
31 person, the court shall instruct the jury to answer special interrogatories
32 or, if there is no jury, make findings:

33 (A) Stating the amount of damages that a claimant would be
34 entitled to recover if any contributory fault were disregarded;

35 (B) Stating, as to each claim, the percentage of the total
36 responsibility of all the parties and released persons attributed to each

1 claimant, defendant, and released person that caused the injury or harm;

2 (C) Regarding whether any of the parties or released
3 persons acted in concert or with an intent to cause personal injury or harm
4 to property; and

5 (D) Regarding any other issue of fact fairly raised by the
6 evidence which is necessary to make a determination under subsection (d) of
7 this section or enter judgment under subsection (e) of this section.

8 (2) In determining percentages of responsibility, the trier of
9 fact shall consider:

10 (A) The nature of the conduct of each party and released
11 person determined to be responsible; and

12 (B) The extent of the causal relation between the conduct
13 and the damages claimed.

14 (3) The court shall determine the extent to which the
15 responsibility of one party, which is based on the act or omission of another
16 party, warrants that the parties be treated as a single party for the purpose
17 of submitting interrogatories to the jury or making findings under
18 subdivision (c)(1) of this section.

19 (d)(1) After the trier of fact has answered interrogatories or made
20 findings under subsection (c) of this section, the court shall determine, in
21 accordance with the percentages of responsibility found:

22 (A) The monetary amount of any award of damages to a
23 claimant;

24 (B) The amount of the several share for which each party
25 found liable is responsible; and

26 (C) Any amount attributable to a released person.

27 (2)(A) After the court has made its determinations pursuant to
28 subsection (d)(1) of this section, a claimant, no later than ninety (90) days
29 after the entry of judgment for the plaintiff, may move the court to
30 determine whether all or part of the amount of the several share for which a
31 party is liable will not be reasonably collectible and request reallocation.

32 (B) If the court based on a preponderance of the evidence
33 determines that the party's share will not be reasonably collectible, the
34 court shall make findings reallocating the uncollectible share severally to
35 the other parties, including the claimant, and any released person.

36 (C) Reallocation shall be made in the proportion that each

1 party's and released person's respective percentage of responsibility bears
2 to the total of the percentages of responsibility attributed to the parties,
3 including the claimant, and any released person but not including the
4 percentage being reallocated.

5 (3)(A) A party whose liability is reallocated remains liable to
6 a claimant for any additional share of responsibility allocated to the
7 claimant.

8 (B) A party that discharges an additional share of
9 responsibility allocated to it under subdivision (d)(2) of this section has a
10 right of reimbursement from the party from which the share was reallocated.

11 (C) Upon motion, the court in the judgment entered under
12 subsection (e) of this section shall declare the rights and obligations
13 resulting from the reallocation, including any rights and obligations with
14 regard to subrogation or a secured position.

15 (D) If any party to whom reallocation has been made holds
16 a secured position with regard to the share reallocated, each party to whom
17 reallocation has been made has a proportionate share in the secured position.

18 (E) Any amount recovered under this subsection from a
19 party whose liability has been reallocated shall be distributed to each of
20 the parties to whom the reallocation was made in the same proportion as the
21 original reallocation.

22 (4) Reallocation does not make a released person liable for any
23 reallocated share of responsibility unless the release or other agreement so
24 provides.

25 (5) If a motion for reallocation is made, any party may conduct
26 discovery regarding any issue relevant to the motion.

27 (e)(1) After determining an award of damages to a claimant and the
28 amount of the several share, including any reallocated share, for which each
29 party found liable is responsible, the court shall enter judgment severally
30 against each party adjudged liable, except in the following situations:

31 (A) If two or more parties adjudged liable acted in
32 concert or with an intent to cause personal injury to, or harm to property
33 of, the claimant, the court shall enter judgment jointly and severally
34 against the parties for their joint share;

35 (B) If a party is adjudged liable for failing to prevent
36 another party from intentionally causing personal injury to, or harm to

1 property of, the claimant, the court shall enter judgment jointly and
2 severally against the parties for their combined shares of responsibility;

3 (C) If a party is adjudged liable for the act or omission
4 of another party under subdivision (c)(3) of this section, the court shall
5 enter judgment jointly and severally against the parties for their joint
6 share; and

7 (D) If Arkansas law, other than this amendment, so
8 requires, the court shall enter judgment jointly and severally or otherwise
9 conform the judgment to the statute.

10 (2) If a court grants a motion for reallocation pursuant to
11 subsection (d) of this section after judgment is entered, the court shall
12 modify the judgment to declare the rights and obligations resulting from the
13 reallocation, including any rights and obligations with regard to subrogation
14 or a secured position.

15 (f)(1)(A) Except as otherwise provided in subdivision (f)(2) of this
16 section, a party that is jointly and severally liable with one or more other
17 parties under this amendment has a right of contribution from another party
18 jointly liable for any amount the party pays in excess of the several amount
19 for which the party is responsible.

20 (B) A party against which contribution is sought is not
21 liable for more than the monetary amount of the party's several share of
22 responsibility determined pursuant to subsection (d) of this amendment.

23 (2) A party that is adjudged liable for the act or omission of
24 another party under subdivision (e)(1)(C) of this section has a right of
25 indemnification from the other party.

26 (3) A party that is subject to liability for injury to, or harm
27 to property of, a claimant under this amendment has a right to:

28 (A) Join a person that is also subject to liability to the
29 claimant for all or part of the same injury or harm if the claimant has not
30 sued the person; and

31 (B) Seek contribution or indemnity, whichever is
32 appropriate, from another person whose liability is not determined in the
33 proceeding in which the party is adjudged liable if the other person is
34 responsible for all or part of the claimant's injury or harm.

35 (4) A claim for contribution or indemnity may be asserted in the
36 original action or in a separate action.

1 (g)(1)(A) A release, covenant not to sue, covenant not to execute a
2 judgment, or similar agreement by a claimant and person subject to liability
3 discharges the person from liability to the claimant to the extent provided
4 in the agreement and from liability for contribution to any other person
5 subject to liability to the claimant for the same injury or harm.

6 (B) The agreement does not discharge any other person
7 subject to liability upon the same claim unless the agreement so provides.

8 (2) The amount of the claim of the releasing person under
9 subdivision (g)(1) of this section against other persons jointly and
10 severally liable for the same injury or harm for which the released person
11 would have been liable is reduced by the percentage of responsibility
12 attributed to the released person pursuant to subsection (c) of this
13 amendment.

14 (3) A release, covenant not to sue, covenant not to execute a
15 judgment, or similar agreement extinguishes any claim for contribution or
16 indemnity that the released person would have had against another person that
17 would have been jointly and severally liable with the released person.

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19 /s/J. Hutchinson
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1 State of Arkansas *As Engrossed: S1/24/13 S2/11/13 S3/25/13 S4/4/13*
2 89th General Assembly
3 Regular Session, 2013

SJR 2

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5 By: Senators J. Hutchinson, Files, J. Hendren, Holland, J. Woods, J. Dismang, Hester, G. Stubblefield, S.
6 Flowers, R. Thompson, D. Johnson, B. Pierce, D. Wyatt, Burnett, E. Cheatham, U. Lindsey, Elliott, K.
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9 McLean, Ballinger, *E. Armstrong, J. Edwards, Farrer, House, Wardlaw, B. Wilkins*

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11 **SENATE JOINT RESOLUTION**

12 *AN AMENDMENT TO THE ARKANSAS CONSTITUTION CONCERNING*
13 *THE AWARDING OF DAMAGES IN CIVIL CASES.*

14
15
16 **Subtitle**

17 *THE TORT REFORM AMENDMENT OF 2014.*
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20 BE IT RESOLVED BY THE SENATE OF THE EIGHTY-NINTH GENERAL ASSEMBLY OF THE
21 STATE OF ARKANSAS AND BY THE THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL
22 MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:
23

24 SECTION 1. This amendment shall be known and may be cited as the "Tort
25 Reform Amendment of 2014".
26

27 SECTION 2. *Section 32 of Article 5 of the Arkansas Constitution is*
28 *amended to read as follows:*

29 § 32. *Workmen's Compensation Laws - Actions for personal injuries.*

30 (a) The General Assembly shall have power to enact laws prescribing
31 the amount of compensation to be paid by employers for injuries to or death
32 of employees, and to whom said payment shall be made. It shall have power to
33 provide the means, methods, and forum for adjudicating claims arising under
34 said laws, and for securing payment of same. Provided, that otherwise,
35 except as provided in subsections (b) and (c) of this section, no law shall
36 be enacted limiting the amount to be recovered for injuries resulting in



1 death or for injuries to persons or property; and in case of death from such
2 injuries the right of action shall survive, and the General Assembly shall
3 prescribe for whose benefit such action shall be prosecuted.

4 (b) In any civil case concerning death or injury to persons, the
5 General Assembly shall have the power to enact laws limiting the amount that
6 may be recovered for mental anguish, pain and suffering, loss of life, or
7 scars and disfigurement.

8 (c) In any civil case, the amount of punitive damages that may be
9 awarded against any separate defendant found culpable of punitive conduct
10 shall not exceed five (5) times the award of compensatory damages against
11 that particular defendant.

12
13 SECTION 3. This amendment shall not be construed to supersede or amend
14 the right of trial by jury under Article 2, § 7 of this Constitution.

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16 SECTION 4. EFFECTIVE DATE. This amendment is effective on January 1,
17 2015.

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19 /s/J. Hutchinson
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1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013

SJR 6

4
5 By: Senators E. Williams, Bledsoe, Caldwell, J. Dismang, J. English, Hester, Hickey, Irvin, J. Key, G.
6 Stubblefield, Rapert
7 By: Representatives Wardlaw, Wren

8
9 **SENATE JOINT RESOLUTION**

10 PROPOSING AN AMENDMENT TO THE ARKANSAS CONSTITUTION
11 TO AUTHORIZE THE GENERAL ASSEMBLY TO ADOPT RULES OF
12 PLEADING, PRACTICE, AND PROCEDURE FOR COURTS, TO SET
13 RIGHTS OF APPEAL, AND TO REGULATE BY GENERAL LAWS THE
14 COMPENSATION OR DAMAGES AWARDED BY COURTS AND
15 ADMINISTRATIVE AGENCIES.

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18 **Subtitle**

19 AN AMENDMENT TO CHANGE THE POWERS OF THE
20 GENERAL ASSEMBLY AND THE COURTS REGARDING
21 RULES OF PLEADING, PRACTICE, AND
22 PROCEDURE FOR COURTS, APPEAL RIGHTS, AND
23 COMPENSATION OR DAMAGES AWARDED BY COURTS
24 AND ADMINISTRATIVE AGENCIES.

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26
27 BE IT RESOLVED BY THE SENATE OF THE EIGHTY-NINTH GENERAL ASSEMBLY OF THE
28 STATE OF ARKANSAS AND BY THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL
29 MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

30
31 THAT the following is proposed as an amendment to the Constitution of
32 the State of Arkansas, and upon being submitted to the electors of the state
33 for approval or rejection at the next general election for Representatives
34 and Senators, if a majority of the electors voting thereon at the election
35 adopt the amendment, the amendment shall become a part of the Constitution of
36 the State of Arkansas, to wit:



1
2 SECTION 1. Section 32 of Article 5 of the Arkansas Constitution is
3 amended to read as follows:

4 § 32. ~~Workmen's Compensation Laws — Actions for personal injuries~~
5 Claims for compensation or damages — Workers' compensation laws.

6 (a) The General Assembly may enact general laws regulating the
7 compensation or damages that may be awarded by courts and administrative
8 agencies, including without limitation punitive damages.

9 (b) ~~The General Assembly shall have power to~~ may enact laws
10 prescribing the remedies to be provided and the amount of compensation to be
11 paid by employers for injuries to or death of employees, and to whom said
12 payment shall be made. It ~~shall have power to~~ may provide the means, methods,
13 and forum for adjudicating claims arising under said laws, and for securing
14 payment of same. Provided, that otherwise ~~no law shall be enacted limiting~~
15 ~~the amount to be recovered for injuries resulting in death or for injuries to~~
16 ~~persons or property,~~ and in case of death from such injuries the right of
17 action shall survive, and the General Assembly shall prescribe for whose
18 benefit such action shall be prosecuted. ~~{As amended by Const. Amend. 26.}~~

19
20 SECTION 2. Section 3 of Amendment 80 of the Arkansas Constitution is
21 amended to read as follows:

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

23 (a) ~~The Supreme Court~~ General Assembly shall prescribe the rules of
24 pleading, practice, and procedure for all courts; provided ~~these rules shall~~
25 ~~not abridge, enlarge or modify any substantive right and that the General~~
26 Assembly shall preserve the right of trial by jury as declared in this
27 Constitution.

28 (b)(1) The General Assembly may delegate authority to the Supreme
29 Court to adopt rules of pleading, practice, and procedure for courts to the
30 extent, and upon such terms, as provided by law.

31 (2) Except as expressly delegated by the General Assembly, the
32 Supreme Court has no authority to adopt rules of pleading, practice, and
33 procedure for courts.

34 (c) Rules of pleading, practice, and procedure in effect on January 1,
35 2015, shall continue in effect until amended, superseded, or repealed.

36

1 SECTION 3. Section 11 of Amendment 80 to the Arkansas Constitution is
2 amended to read as follows:

3 § 11. Right of appeal.

4 There shall be a right of appeal to an appellate court from the Circuit
5 Courts and other rights of appeal as may be provided by ~~Supreme Court rule or~~
6 ~~by law~~ the General Assembly.

7

8 SECTION 4. BALLOT TITLE. (a) The title of this Senate Joint
9 Resolution shall be the ballot title when the proposed amendment is submitted
10 to the electors of the state on the general election ballot.

11 (b) When presented on the general election ballot, the popular name
12 for this proposed amendment shall be "An Amendment Concerning Arkansas Courts
13 and Administrative Agencies".

14

15 SECTION 5. EFFECTIVE DATE. This amendment is effective on January 1,
16 2015.

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1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013

As Engrossed: S3/20/13

SJR 5

4
5 By: Senator E. Williams

6
7 **SENATE JOINT RESOLUTION**

8 *PROPOSING AN AMENDMENT TO THE ARKANSAS CONSTITUTION*
9 *TO PROVIDE THAT THE GENERAL ASSEMBLY SHALL DELEGATE*
10 *NONEXCLUSIVE AUTHORITY TO THE SUPREME COURT TO ADOPT*
11 *RULES OF PLEADING, PRACTICE, PROCEDURE, AND EVIDENCE*
12 *FOR COURTS; TO PROVIDE THAT THE GENERAL ASSEMBLY MAY*
13 *ENACT LAWS THAT SUPERSEDE SUCH RULES, NOTWITHSTANDING*
14 *THE DELEGATION OF RULEMAKING AUTHORITY TO THE SUPREME*
15 *COURT; AND TO AUTHORIZE THE GENERAL ASSEMBLY TO SET*
16 *RIGHTS OF APPEAL AND TO REGULATE BY GENERAL LAWS THE*
17 *COMPENSATION OR DAMAGES AWARDED BY COURTS AND*
18 *ADMINISTRATIVE AGENCIES.*

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21 **Subtitle**

22 *PROPOSING AN AMENDMENT TO THE ARKANSAS*
23 *CONSTITUTION CONCERNING CIVIL CLAIMS AND*
24 *COURT PROCEDURES.*

25
26
27 **BE IT RESOLVED BY THE SENATE OF THE EIGHTY-NINTH GENERAL ASSEMBLY OF THE**
28 **STATE OF ARKANSAS AND BY THE THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL**
29 **MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:**

30
31

32 **THAT** the following is proposed as an amendment to the Constitution of
33 the State of Arkansas, and upon being submitted to the electors of the state
34 for approval or rejection at the next general election for Representatives
35 and Senators, if a majority of the electors voting thereon at the election
36 adopt the amendment, the amendment shall become a part of the Constitution of



1 the State of Arkansas, to wit:

2

3 SECTION 1. Section 32 of Article 5 of the Arkansas Constitution is
4 amended to read as follows:

5 § 32. ~~Workmen's~~ Workers' Compensation Laws - Actions for personal
6 injuries Claims for compensation or damages.

7 (a) ~~The General Assembly shall have power to~~ enact laws prescribing
8 the remedies to be provided and the amount of compensation to be paid by
9 employers for injuries to or death of employees, and to whom said payment
10 shall be made. It shall have power to provide the means, methods, and forum
11 for adjudicating claims arising under said laws, and for securing payment of
12 same. Provided, that otherwise no law shall be enacted limiting the amount to
13 be recovered for injuries resulting in death or for injuries to persons or
14 property, and in case of death from such injuries to persons or property the
15 right of action shall survive, and the General Assembly shall prescribe for
16 whose benefit such action shall be prosecuted.

17 (b) The General Assembly may enact general laws regulating the
18 compensation or damages that may be awarded by courts and administrative
19 agencies, including without limitation noneconomic damages and punitive
20 damages.

21

22 SECTION 2. Section 3 of Amendment 80 to the Arkansas Constitution is
23 amended to read as follows:

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

25 (a)(1) The General Assembly shall delegate nonexclusive authority to
26 the Supreme Court shall to prescribe the rules of pleading, practice and
27 procedure and the rules of evidence for all courts; provided these rules
28 shall not abridge, enlarge or modify any substantive right and shall preserve
29 the right of trial by jury as declared in this Constitution.

30 (2) Except as expressly delegated by the General Assembly, the
31 Supreme Court has no authority to prescribe rules of pleading, practice, and
32 procedure and rules of evidence for courts.

33 (b) Notwithstanding the delegation of rulemaking authority, the
34 General Assembly may enact laws that supersede the rules of pleading,
35 practice, and procedure and the rules of evidence for courts.

36 (c) Rules of pleading, practice, and procedure and rules of evidence

1 in effect on January 1, 2015, continue in effect until amended, superseded,
2 or repealed.

3

4 SECTION 3. Section 11 of Amendment 80 to the Arkansas Constitution is
5 amended to read as follows:

6 § 11. Right of appeal.

7 There shall be a right of appeal to an appellate court from the Circuit
8 Courts and other rights of appeal as may be provided by ~~Supreme Court rule or~~
9 ~~by law.~~

10

11 SECTION 4. BALLOT TITLE. (a) The title of this Senate Joint
12 Resolution shall be the ballot title when the proposed amendment is submitted
13 to the electors of the state on the general election ballot.

14 (b) When presented on the general election ballot, the popular name
15 for this proposed amendment shall be "An Amendment to the Arkansas
16 Constitution Concerning Civil Claims and Court Procedures".

17

18 SECTION 5. EFFECTIVE DATE. This amendment is effective on January 1,
19 2015.

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21 /s/E. Williams

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1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4
5 By: Senator E. Williams
6

As Engrossed: S3/20/13 S3/25/13

SJR 5

7 **SENATE JOINT RESOLUTION**

8 PROPOSING AN AMENDMENT TO THE ARKANSAS CONSTITUTION
9 TO PROVIDE THAT THE GENERAL ASSEMBLY SHALL DELEGATE
10 NONEXCLUSIVE AUTHORITY TO THE SUPREME COURT TO ADOPT
11 RULES OF PLEADING, PRACTICE, PROCEDURE, AND EVIDENCE
12 FOR COURTS; TO PROVIDE THAT THE GENERAL ASSEMBLY MAY
13 ENACT LAWS THAT SUPERSEDE SUCH RULES, NOTWITHSTANDING
14 THE DELEGATION OF RULEMAKING AUTHORITY TO THE SUPREME
15 COURT; AND TO AUTHORIZE THE GENERAL ASSEMBLY TO SET
16 RIGHTS OF APPEAL AND TO REGULATE BY GENERAL LAWS THE
17 *AWARD OF NONECONOMIC AND PUNITIVE DAMAGES.*
18

19
20 **Subtitle**

21 PROPOSING AN AMENDMENT TO THE ARKANSAS
22 CONSTITUTION CONCERNING CIVIL CLAIMS AND
23 COURT PROCEDURES.
24

25
26 BE IT RESOLVED BY THE SENATE OF THE EIGHTY-NINTH GENERAL ASSEMBLY OF THE
27 STATE OF ARKANSAS AND BY THE THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL
28 MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:
29

30 THAT the following is proposed as an amendment to the Constitution of
31 the State of Arkansas, and upon being submitted to the electors of the state
32 for approval or rejection at the next general election for Representatives
33 and Senators, if a majority of the electors voting thereon at the election
34 adopt the amendment, the amendment shall become a part of the Constitution of
35 the State of Arkansas, to wit:
36



1 SECTION 1. Section 32 of Article 5 of the Arkansas Constitution is
2 amended to read as follows:

3 § 32. ~~Workmen's~~ Workers' Compensation Laws - Actions for personal
4 injuries.

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

16 (b) The General Assembly may enact general laws regulating the award
17 of noneconomic damages and punitive damages.

18
19 SECTION 2. Section 3 of Amendment 80 to the Arkansas Constitution is
20 amended to read as follows:

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

22 (a)(1) The General Assembly shall delegate nonexclusive authority to
23 the Supreme Court ~~shall to~~ prescribe the rules of pleading, practice and
24 procedure and the rules of evidence for all courts; provided these rules
25 shall not abridge, enlarge or modify any substantive right and shall preserve
26 the right of trial by jury as declared in this Constitution.

27 (2) Except as expressly delegated by the General Assembly, the
28 Supreme Court has no authority to prescribe rules of pleading, practice, and
29 procedure and rules of evidence for courts.

30 (b) Notwithstanding the delegation of rulemaking authority, the
31 General Assembly may enact laws that supersede the rules of pleading,
32 practice, and procedure and the rules of evidence for courts.

33 (c) Rules of pleading, practice, and procedure and rules of evidence
34 in effect on January 1, 2015, continue in effect until amended, superseded,
35 or repealed.

36

1 SECTION 3. Section 11 of Amendment 80 to the Arkansas Constitution is
2 amended to read as follows:

3 § 11. Right of appeal.

4 There shall be a right of appeal to an appellate court from the Circuit
5 Courts and other rights of appeal as may be provided by ~~Supreme Court rule or~~
6 ~~by law.~~

7

8 SECTION 4. BALLOT TITLE. (a) The title of this Senate Joint
9 Resolution shall be the ballot title when the proposed amendment is submitted
10 to the electors of the state on the general election ballot.

11 (b) When presented on the general election ballot, the popular name
12 for this proposed amendment shall be "An Amendment to the Arkansas
13 Constitution Concerning Civil Claims and Court Procedures".

14

15 SECTION 5. EFFECTIVE DATE. This amendment is effective on January 1,
16 2015.

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/s/E. Williams

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Stricken language would be deleted from and underlined language would be added to p

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State of Arkansas *As Engrossed: S3/20/13 S3/25/13 S4/3/13*
89th General Assembly
Regular Session, 2013

SJR 5

By: Senators E. Williams, Bledsoe, J. Dismang, Hickey, J. English, J. Key, Irvin, Hester
By: Representatives Westerman, E. Armstrong

SENATE JOINT RESOLUTION

PROPOSING AN AMENDMENT TO THE ARKANSAS CONSTITUTION
TO PROVIDE THAT THE SUPREME COURT SHALL PRESCRIBE
RULES OF EVIDENCE FOR COURTS, IN ADDITION TO RULES OF
PLEADING, PRACTICE, AND PROCEDURE; TO PROVIDE THAT
THE GENERAL ASSEMBLY MAY ENACT LAWS THAT SUPERSEDE
SUCH RULES; AND TO AUTHORIZE THE GENERAL ASSEMBLY TO
SET RIGHTS OF APPEAL AND TO REGULATE BY GENERAL LAWS
THE AWARD OF NONECONOMIC AND PUNITIVE DAMAGES.

Subtitle

PROPOSING AN AMENDMENT TO THE ARKANSAS
CONSTITUTION CONCERNING CIVIL CLAIMS AND
COURT PROCEDURES.

BE IT RESOLVED BY THE SENATE OF THE EIGHTY-NINTH GENERAL ASSEMBLY OF THE
STATE OF ARKANSAS AND BY THE THE HOUSE OF REPRESENTATIVES, 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. Section 32 of Article 5 of the Arkansas Constitution is



1 amended to read as follows:

2 § 32. ~~Workmen's~~ Workers' Compensation Laws - Actions for personal
3 injuries.

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

15 (b) The General Assembly may enact general laws regulating the award
16 of noneconomic damages and punitive damages.

17

18 SECTION 2. Section 3 of Amendment 80 to the Arkansas Constitution is
19 amended to read as follows:

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

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

25 (b) Notwithstanding subsection (a) of this section, the
26 General Assembly may enact laws that supersede the rules of pleading,
27 practice, and procedure and the rules of evidence for courts.

28 (c) Rules of pleading, practice, and procedure and rules of evidence
29 in effect on January 1, 2015, continue in effect until amended, superseded,
30 or repealed.

31

32 SECTION 3. Section 11 of Amendment 80 to the Arkansas Constitution is
33 amended to read as follows:

34 § 11. Right of appeal.

35 There shall be a right of appeal to an appellate court from the Circuit
36 Courts and other rights of appeal as may be provided by ~~Supreme Court rule or~~

1 ~~by law.~~

2

3 SECTION 4. This amendment shall not be construed to supersede or to
4 amend the right of trial by jury as declared in this Constitution.

5

6 SECTION 5. BALLOT TITLE. (a) The title of this Senate Joint
7 Resolution shall be the ballot title when the proposed amendment is submitted
8 to the electors of the state on the general election ballot.

9 (b) When presented on the general election ballot, the popular name
10 for this proposed amendment shall be "An Amendment to the Arkansas
11 Constitution Concerning Civil Claims and Court Procedures".

12

13 SECTION 6. EFFECTIVE DATE. This amendment is effective on January 1,
14 2015.

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16 /s/E. Williams

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Stricken language would be deleted from and underlined language would be added

1 State of Arkansas *As Engrossed: S3/20/13 S3/25/13 S4/3/13 S4/5/13*
2 89th General Assembly
3 Regular Session, 2013

SJR 5

4
5 By: Senators E. Williams, *Bledsoe, J. Dismang, Hickey, J. English, J. Key, Irvin, Hester*
6 *By: Representatives Westerman, E. Armstrong*

7
8 **SENATE JOINT RESOLUTION**

9 *TO PROVIDE THAT THE GENERAL ASSEMBLY SHALL DELEGATE*
10 *NONEXCLUSIVE AUTHORITY TO THE SUPREME COURT TO ADOPT*
11 *RULES OF PLEADING, PRACTICE, PROCEDURE, AND EVIDENCE*
12 *FOR COURTS; TO PROVIDE THAT THE GENERAL ASSEMBLY MAY*
13 *ENACT LAWS THAT ADOPT, AMEND, AFFECT, OR SUPERSEDE*
14 *SUCH RULES, NOTWITHSTANDING THE DELEGATION OF*
15 *RULEMAKING AUTHORITY TO THE SUPREME COURT; TO SET*
16 *LIMITS ON THE AWARD OF PUNITIVE DAMAGES; AND TO*
17 *AUTHORIZE THE GENERAL ASSEMBLY TO SET RIGHTS OF*
18 *APPEAL AND TO REGULATE THE AWARD OF NONECONOMIC*
19 *DAMAGES.*

20
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22 **Subtitle**

23 *PROPOSING AN AMENDMENT TO THE ARKANSAS*
24 *CONSTITUTION CONCERNING CLAIMS AND COURT*
25 *PROCEDURES.*

26
27
28 BE IT RESOLVED BY THE SENATE OF THE EIGHTY-NINTH GENERAL ASSEMBLY OF THE
29 STATE OF ARKANSAS AND BY THE THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL
30 MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

31
32 THAT the following is proposed as an amendment to the Constitution of
33 the State of Arkansas, and upon being submitted to the electors of the state
34 for approval or rejection at the next general election for Representatives
35 and Senators, if a majority of the electors voting thereon at the election
36 adopt the amendment, the amendment shall become a part of the Constitution of



1 the State of Arkansas, to wit:

2

3 SECTION 1. Section 32 of Article 5 of the Arkansas Constitution is
4 amended to read as follows:

5 § 32. ~~Workmen's~~ Workers' Compensation Laws - Actions for personal
6 injuries.

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

18 (b) The General Assembly may, by a three-fifths vote of each house,
19 enact laws regulating the award of noneconomic damages.

20 (c)(1) A punitive damages award against a defendant shall not exceed
21 five (5) times the amount of compensatory damages allocated against the
22 defendant.

23 (2) The General Assembly, by a two-thirds vote of each house,
24 may amend the limitation under subdivision (c)(1) of this section.

25

26 SECTION 2. Section 3 of Amendment 80 to the Arkansas Constitution is
27 amended to read as follows:

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

29 (a)(1) The General Assembly shall delegate nonexclusive authority to
30 the Supreme Court ~~shall to~~ prescribe the rules of pleading, practice, and
31 procedure and the rules of evidence for all courts; provided these rules
32 shall not abridge, enlarge or modify any substantive right and shall preserve
33 the right of trial by jury as declared in this Constitution.

34 (2) Except as expressly delegated by the General Assembly, the
35 Supreme Court has no authority to prescribe rules of pleading, practice, and
36 procedure and rules of evidence for courts.

1 (b)(1) Notwithstanding the delegation of rulemaking authority, the
2 General Assembly may enact laws that adopt, amend, affect, or supersede rules
3 of pleading, practice, and procedure and rules of evidence for courts.

4 (2) A law that expressly repeals a rule of pleading, practice,
5 or procedure or a rule of evidence in effect on January 1, 2015, requires a
6 three-fifths vote of each house of the General Assembly.

7 (c) Rules of pleading, practice, and procedure and rules of evidence
8 in effect on January 1, 2015, continue in effect until amended, superseded,
9 or repealed.

10

11 SECTION 3. Section 11 of Amendment 80 to the Arkansas Constitution is
12 amended to read as follows:

13 § 11. Right of appeal.

14 There shall be a right of appeal to an appellate court from the Circuit
15 Courts and other rights of appeal as may be provided by ~~Supreme Court rule or~~
16 by law.

17

18 SECTION 4. This amendment shall not be construed to supersede or to
19 amend the right of trial by jury as declared in this Constitution.

20

21 SECTION 5. BALLOT TITLE. (a) The title of this Senate Joint
22 Resolution shall be the ballot title when the proposed amendment is submitted
23 to the electors of the state on the general election ballot.

24 (b) When presented on the general election ballot, the popular name
25 for this proposed amendment shall be "An Amendment to the Arkansas
26 Constitution Concerning Claims and Court Procedures".

27

28 SECTION 6. EFFECTIVE DATE. This amendment is effective on January 1,
29 2015.

30

31 /s/E. Williams

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ARKANSAS SENATE

89th General Assembly - Regular Session, 2013
Amendment Form

Subtitle of Senate Joint Resolution No. 5

PROPOSING AN AMENDMENT TO THE ARKANSAS CONSTITUTION CONCERNING CLAIMS AND
COURT PROCEDURES.

Amendment No. ___ to Senate Joint Resolution No. 5

Amend Senate Joint Resolution No. 5 as engrossed, S4/5/13 (version: 04/05/2013 8:25:46 AM):

Page 1, delete lines 9 through 19 and substitute the following:
"AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO PROVIDE THAT THE GENERAL ASSEMBLY MAY ENACT LAWS THAT INCLUDE PROVISIONS RELATING TO PROCEDURAL OR EVIDENTIARY MATTERS IN CIVIL CASES, INCLUDING LAWS THAT EXPRESSLY AMEND, SUPERSEDE, OR REPEAL A SPECIFIC RULE OF PLEADING, PRACTICE, OR PROCEDURE OR A SPECIFIC RULE OF EVIDENCE ADOPTED BY THE SUPREME COURT, AND THE COURTS SHALL APPLY SUCH LAWS; TO SET LIMITS ON THE AWARD OF PUNITIVE DAMAGES; AND TO AUTHORIZE THE GENERAL ASSEMBLY TO REGULATE THE AWARD OF NONECONOMIC DAMAGES."

AND

Delete the subtitle in its entirety and substitute:
"PROPOSING AN AMENDMENT TO THE ARKANSAS CONSTITUTION CONCERNING CIVIL CLAIMS AND COURT PROCEDURES."

AND

Page 2, delete lines 3 through 36 and substitute the following:
"SECTION 1. Section 32 of Article 5 of the Arkansas Constitution is amended to read as follows:

§ 32. ~~Workmen's~~ Workers' Compensation Laws - Actions for personal injuries.

(a) The General Assembly shall ~~have power to~~ enact laws prescribing the remedies to be provided and 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 (b) and (c) 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



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survive, and the General Assembly shall prescribe for whose benefit such action shall be prosecuted.

(b) By a majority vote of each house, the General Assembly may enact laws regulating the award of noneconomic damages.

(c)(1) A punitive damages award against a defendant shall not exceed five (5) times the amount of compensatory damages allocated against the defendant.

(2) By a three-fifths vote of each house, the General Assembly may amend the limitation under subdivision (c)(1) of this section.

SECTION 2. Section 3 of Amendment 80 to the Arkansas Constitution is amended to read as follows:

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

(a) The Supreme Court shall prescribe the rules of pleading, practice, and procedure and the rules of evidence 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.

(b)(1) Except as provided in subdivision (b)(2) of this section, by a majority vote of each house, the General Assembly may enact laws that include provisions relating to procedural or evidentiary matters in civil cases and the courts shall apply such laws.

(2) Provided, however, that any law that expressly amends, supersedes, or repeals a specific rule of pleading, practice, or procedure or a specific rule of evidence adopted by the Supreme Court shall require a three-fifths vote of each house of the General Assembly.

SECTION 3. This amendment shall not be construed to supersede or to amend the right of trial by jury as declared in this Constitution.

SECTION 4. BALLOT TITLE. (a) The title of this Senate Joint Resolution shall be the ballot title when the proposed amendment is submitted to the electors of the state on the general election ballot.

(b) When presented on the general election ballot, the popular name for this proposed amendment shall be "An Amendment to the Arkansas Constitution Concerning Civil Claims and Court Procedures".

SECTION 5. EFFECTIVE DATE. This amendment is effective on January 1, 2015."

AND

Page 3, delete lines 1 through 29

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator E. Williams
MBM/CDS - 04-10-2013 17:10:18
MBM275

Secretary

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