

*Popular name*

The Lawsuit Reform Amendment of 2016: An Amendment to Limit Attorney Contingency Fees and Non-Economic Damages in Medical Lawsuits

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*Ballot title*

An amendment to the Arkansas constitution providing that the practice of contracting for or charging excessive contingency fees in the course of legal representation of any person seeking damages in an action for medical injury against a health-care provider is hereby prohibited; providing that an excessive medical-injury contingency fee is greater than thirty-three and one-third percent (33 1/3%) of the amount recovered; providing that, for the purposes of calculating the amount recovered, the figure that shall be used is the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the medical-injury claim; providing that this limitation shall apply whether the recovery is by settlement, arbitration, or judgment; providing that this limitation shall apply regardless of the age or mental capacity of the plaintiff; providing that the prohibition of excessive medical-injury fees does not apply to workers' compensation cases; providing that the General Assembly may enact legislation which enforces this prohibition, and that it may also enact legislation that determines the relative values of time payments or periodic payments and governs the consequences and penalties for attorneys who contract for or charge excessive medical-injury contingency fees; providing that the General Assembly shall enact a measure which specifies a maximum dollar amount for a non-economic damage award in any action for medical injury against a health-care provider, but that such a measure may never be smaller than two hundred and fifty thousand dollars (\$250,000); providing that the General Assembly may, after such enactment, amend it by a vote of two-thirds of each house, but that no such amendment may reduce the maximum dollar amount for a non-economic damage award in any action for medical injury against any health-care provider to less than two hundred and fifty thousand dollars (\$250,000); providing that the Supreme Court shall adjust this figure for inflation or deflation on a

biennial basis; and providing that this amendment does not supersede or amend the right to trial by jury.

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*Text of proposed amendment*

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

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

(A) The Except as provided in subsection (B) of this section, the Supreme Court shall prescribe the rules of pleading, practice, and procedure 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) The practice of contracting for or charging excessive contingency fees in the course of legal representation of any person or entity seeking damages in an action for medical injury against a health-care provider is hereby prohibited.

(a) An excessive contingency fee is in excess of thirty-three and one-third percent (33 1/3%) recovered.

(b) The above limitation shall apply regardless of whether the recovery is by settlement, arbitration, or judgment; the above limitation shall also apply regardless of the age or mental capacity of the person or entity for whom the recovery is made.

(c) For purposes of subsection (B) (1) (a), "recovered" refers to the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and the attorney's office-overhead costs or charges are not deductible disbursements or costs for such purpose.

(d) The terms “action for medical injury,” “health-care provider,” and “medical injury” are defined in this Amendment’s addition to Article 5, Section 32 of the state Constitution.

(e) The prohibition of excessive medical-injury attorney fees described in this subsection does not extend to workers’ compensation cases.

(B) (2) The General Assembly’s power to enact laws that prohibit excessive contingency fees includes the subsidiary power to enact laws which govern (a) how the total value or present value of a set of periodic payments should be calculated, (b) how or whether life expectancy or other relevant factors shall be taken into account with respect to those calculations, (c) to what extent the use of total value or present value calculations for such periodic payments shall be required when determining excessive contingency fees, and (d) the consequences and penalties for attorneys who contract for or charge excessive medical-injury contingency fees.

(B) (3) The General Assembly shall have power to enforce, by appropriate legislation, the provisions of this section.

(B) (4) A rule of pleading, practice, and procedure enacted by law under subdivision (B) (1), (B) (2), or (B) (3) of this section shall supersede a conflicting rule of pleading, practice, and procedure prescribed by the Supreme Court.

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

32. Workmen’s Compensation Laws — Actions for personal injuries.

(a) The General Assembly shall have power to enact laws prescribing the amount of compensation to be paid by employers for injuries to or death of employees, and to whom said payment shall be made. It shall have power to provide the means, methods, and forum for adjudicating claims arising under said laws, and for securing payment of same.

Provided, that otherwise, except as provided in subsection (b) of this section, no law shall be enacted limiting the amount to be recovered for injuries resulting in death or for injuries to persons or property; and in

case of death from such injuries the right of action shall survive, and the General Assembly shall prescribe for whose benefit such action shall be prosecuted.

(b) (1) (A) The General Assembly shall enact laws that specify the maximum dollar amount of non-economic damage awards in a civil action for medical injury brought against a health-care provider.

(b) (1) (B) The maximum dollar amount award of non-economic damages specified under subdivision (b) (1) (A) of this section shall be at least two hundred fifty thousand dollars (\$250,000) per health-care provider against whom a judgment is rendered, regardless of whether the health-care provider is a health-care professional or a health-care business.

(b) (2) (A) "Action for medical injury" means all actions, including actions for wrongful death, whether based in tort, contract, or otherwise, to recover damages on account of medical injury.

(b) (2) (B) "Health-care provider" means either a "health-care professional" or a "health-care business."

(b) (2) (C) "Health-care professional" means an individual providing and billing for health-care services (including a physician, certified registered nurse anesthetist, physician's assistant, nurse, optometrist, chiropractor, physical therapist, dentist, podiatrist, pharmacist, psychologist, or veterinarian) that is licensed by the state or otherwise lawfully providing professional health-care services.

(b) (2) (D) "Health-care business" means an entity providing and billing for health-care services (including a hospital, nursing home, community mental health center, ambulatory surgical treatment center, birthing center, intellectual disability institutional habilitation center, nonresidential substitution-based treatment center for opiate addiction, outpatient diagnostic center, recuperation center, rehabilitation facility, hospice, clinic, or home health-care agency) that is licensed by the state or otherwise lawfully providing health-care services; and including an owner, officer, employee, or agent of such a health-care business acting in the course and scope of employment in the providing of health care services.

(b) (2) (E) "Medical injury" means any adverse consequence or any set of adverse consequences arising out of or sustained in the course of the professional services being rendered by a health-care provider to a

patient or resident, whether resulting from negligence, error, or omission in the performance of such services; or from rendition of such services without informed consent or in breach of warranty or in violation of contract; or from failure to diagnose; or from premature abandonment of a patient or of a course of treatment; or from failure to properly maintain equipment or appliances necessary to the rendition of such services; or otherwise arising out of or sustained in the course of such services.

(b) (3) (A) The General Assembly may, for the purposes of this section, further define "health-care professional" in law, so long as that definition includes the categories listed in section (b) (2) (C).

(b) (3) (B) The General Assembly may, for the purposes of this section, further define "health-care business" in law, so long as that definition includes the categories listed in section (b) (2) (D).

(b) (3) (C) The General Assembly may, for the purposes of this section, further define "medical injury" in law, so long as that definition includes the categories listed in section (b) (2) (E).

(b) (4) (A) By a majority vote of each house, the General Assembly shall enact laws in the 2017 Regular Session implementing subdivision (b) (1) of this section.

(b) (4) (B) After enacting the laws as required by subdivision (b) (4) (A) of this section, the General Assembly may amend a law required by subdivision (b)(1) of this section by a two-thirds vote of each house.

(b) (4) (C) In no event shall a law implementing subdivision (b) (4) (A) or (b) (4) (B) of this section violate subdivision (b) (1) (B) of this section.

SECTION 3. This amendment does not supersede or amend the right of trial by jury as declared by the Arkansas Constitution.

SECTION 4. In January of 2018 and every two years after January of 2018, the Supreme Court of Arkansas shall issue a rule which adjusts the maximum dollar amount of non-economic damage awards for inflation or deflation to the nearest multiple of one thousand dollars (\$1,000). The biennial adjustment shall be based upon the Consumer Price Index or a comparable index chosen by the Court; when reasonably possible, the particular index the Court chooses shall remain



the same over time. The sole intent and effect of the biennial adjustment shall be to compensate for the effects of inflation or deflation with reasonable precision.

SECTION 5. In the event that any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this amendment is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this amendment, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this amendment.

SECTION 6. This amendment shall be effective on January 1, 2017.