

ARKANSAS LAWSUIT REFORM CAMPAIGN – ISSUE 1 INFORMATION

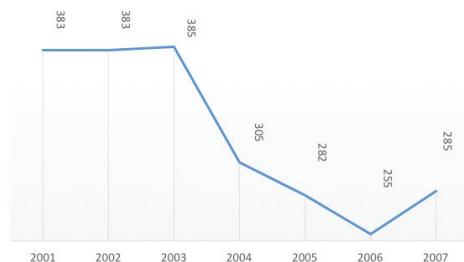


Has tort reform worked before in Arkansas? Yes.

- ◆ In 2003, Arkansas had reached a crisis and the General Assembly adopted the Civil Justice Reform Act (CJRA)
- ◆ It included caps on punitive damages and provisions such as an "affidavit of merit" in a medical malpractice lawsuit so that a plaintiff must submit the affidavit of a qualifying expert when filing the complaint
- ◆ The CJRA showed signs of success following its implementation and the Arkansas Insurance Commissioner reported that "new insurance companies were coming in because they found a friendlier and more stable climate since passage of the CJRA"²
- ◆ Plaintiffs challenged various aspects of the CJRA and, over the course of several rulings, the Arkansas Supreme Court invalidated much of it
- ◆ Unfortunately, it takes a constitutional amendment to be able to implement these critical reforms

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Medical Malpractice Filings - AR 2000-2007¹



Has tort reform worked in other states?

- ◆ 15 years ago, Texas enacted reforms similar to the ones that Arkansas will vote on in November
 - Before those reforms were passed:
 - 1 in 4 doctors were subject to at least one malpractice suit a year
 - Even though 85% of those suits failed, they cost about \$50,000 on average to litigate, driving up the cost of malpractice insurance
 - Like in Arkansas, malpractice insurers left the state forcing doctors to choose between extremely high rates or not practicing
 - Fearing they might go bankrupt just buying insurance, and facing meritless lawsuits, medical providers started leaving the state
 - In the first 10 years after those reforms were passed:
 - 34,320 physicians were added to practice in Texas
 - 188 counties saw a net gain in the number of ER doctors and 53 counties that did not previously have an ER doctor do now
 - Texas saw a 300% increase in the number of pediatric subspecialists
 - Number of geriatricians increased four-fold
 - Rural communities have added needed specialists
 - 31 rural counties added Obstetricians
 - 24 added Cardiologists and 40 added Emergency Medicine physicians
 - Medical professionals moved to Texas from states like Arkansas that hadn't yet passed liability reform
 - And it's not just about doctors
 - Texas tort reform is credit with creation of 499,000 jobs and generating billions in economic growth
 - The Dallas Federal Reserve President cited tort reform in Texas as the #1 reason that Texas created 38% of all jobs in the US during the recession and why companies chose to relocate there
- ◆ Other states have enacted medical liability reforms
 - Ohio saw a 41% decrease in litigation after reforms passed
 - Mississippi saw a 70% decrease since reforms were passed

¹ Arkansas Administrative Office of the Courts records – 2000-2007

² "Civil Justice Reform, Twists and Turns in Arkansas", Mark Behrens & Christopher Casolaro (2015) (citing Doug Smith, Fewer Medical Malpractice Suits, Ark. Times, Nov. 6, 2008

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The Facts about Issue 1:

- ◆ **Preserve the right of trial by jury protecting 7th Amendment rights**
- ◆ **Does not cap economic compensatory damages so that victims are able to be fully compensated for 100% of economic losses past, present and future**
- ◆ **Cap contingency fees for attorneys in civil actions at no more than 33.3% of the net recovery**
 - Authorize the General Assembly to adopt legislation establishing the process for calculating the fee and setting penalties for violation
 - Authorize the General Assembly to adjust the fee cap with 2/3 vote of each chamber
- ◆ **Cap punitive damage awards in actions for wrongful death or injury to person or property at the greater of \$500,000 or 3 times the compensatory damage award for each claimant**
 - Authorize the General Assembly to increase - but not decrease - the cap with 2/3 vote of each house
- ◆ **Create an exception to the cap for intentional misconduct**
- ◆ **Cap non-economic damage awards in actions for wrongful death or injury to person or property at \$500,000 for each claimant, not to exceed \$500,000 to be shared among the beneficiaries of a decedent in a wrongful death action**
 - Authorize the General Assembly to increase - but not decrease - the cap with 2/3 vote of each house
 - Authorize the General Assembly to adopt legislation establishing the process for adjusting the damage caps based on inflation/deflation
- ◆ **The Arkansas Supreme Court will continue to adopt and implement rules of pleading, practice and procedure**
- ◆ **Authorize the General Assembly, by 3/5 vote of each chamber, to**
 - Adopt rules of pleading, practice and procedure for the courts such as The Courthouse Dogs Child Witness Support Act; and,
 - Amend or repeal rules of pleading, practice and procedure prescribed by the Arkansas Supreme Court
- ◆ **None of the items in Issue 1 are novel:**
 - 19 states have some form of limits on contingency fees for attorneys
 - 33 states have some form of damage caps
 - In the federal court system, and in 16 states, the legislature has authority to approve and/or adopt court rules
- ◆ **Arkansans for Jobs and Justice is the committee that is working to pass Issue 1**
 - Led by the Arkansas State Chamber and the Arkansas Medical Society
 - Committee membership includes: Arkansas Hospital Association, Arkansas Trucking Association, Arkansas Health Care Association, The Poultry Federation, Arkansas Farm Bureau Federation
 - Committee website is: www.ARJobsandJustice.com
 - Committee can be found on Facebook or Twitter via links on the website
 - Contributions may be made online



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◆ **Issue 1 is a consumer protection measure**

- Issue 1 protects the right to a fair trial by jury
- Contingency fees in Arkansas can go as high as 50%+ of the gross settlement
- Issue 1 protects Arkansas victims and families in duress from signing contracts like those
- On a hypothetical \$15,000 personal injury suit, the difference between a 33.3% contract and a 40% or 50% contract is significant for the victim with \$4,000 in medical bills and \$500 in attorney costs
 - 50% contingency fee – Lawyer paid \$7,250 and Victim paid \$3,250
 - 40% contingency fee – Lawyer paid \$5,800 and Victim paid \$4,700
 - 33.3% contingency fee – Lawyer paid \$4,833 and Victim paid \$5,667
- Issue 1 makes sure that at least 2/3 of the money awarded goes to victim and not trial lawyer

◆ **Issue 1 helps Arkansas communities compete with surrounding states to recruit and retain doctors to care for our loved ones**

- More doctors = more access to healthcare = healthier communities
- Expecting mothers in Arkansas often face long drives due to shortages of obstetric care
- Arkansas ranks 48th in nation for infant deaths and 44th for maternal deaths
- Arkansas is ranked as one of the worst states for lawsuits
- Arkansas is ranked as 50th in terms of environment for Emergency Care
- American College of Emergency Physicians has said "to help combat its workforce shortages and improve overall access to emergency care, Arkansas should enact medical liability reforms such as a medical liability cap on non-economic damages

◆ **Issue 1 helps Arkansas compete with surrounding states to grow jobs**

- Studies have shown that Arkansas can have direct economic benefit of over \$316 million and more than 23,000 new jobs as result of tort reform
- Tort reform in Texas has been credited with the economic success of that state
 - Billions of dollars in economic growth and over 499,000 jobs
 - President of the Dallas Federal Reserve Bank cited Tort Reform as even more important than a zero income tax rate as the reason for Texas economic growth
- The Mississippi governor cited a letter from Toyota that specifically said the lack of tort reform in that state was the reason Toyota wouldn't locate its plant in Mississippi. After tort reform, Mississippi beat Arkansas for a Toyota plant and its ancillary economic growth
- In surveys, executives have cited the civil justice environment of a state as a key factor in decisions of where to invest or relocate jobs
- All states surrounding Arkansas have some type of tort reform and that puts Arkansas at a disadvantage when competing with them

◆ **Issue 1 gives Arkansas the ability to update our civil justice system to make sure it protects Arkansans and helps our state compete to recruit doctors and grow jobs**

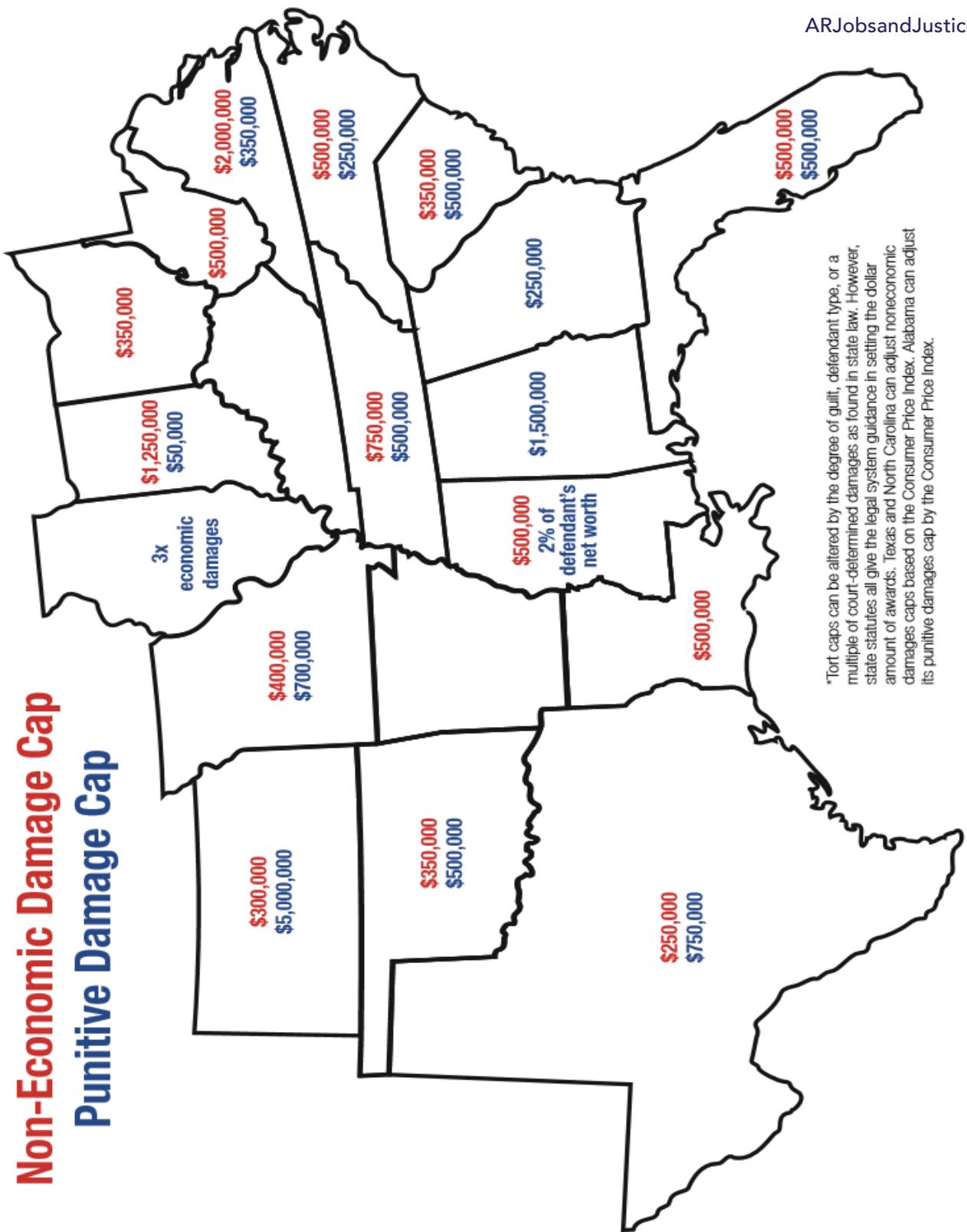
- Clarifies authority to pass laws such as The Courthouse Dogs Child Witness Support Act to support victims in court
- Three-quarters of small business owners surveyed have said they are worried about frivolous lawsuits
- Frivolous lawsuits are costly: Nationally, it costs about \$140,239 to defend a claim in which the person being sued won. Even claims that are dropped cost about \$28,000
- Reform leads to fewer frivolous lawsuits and Issue 1 gives the general assembly the ability to update Arkansas civil justice laws to address frivolous lawsuits and other abuses of our civil justice system

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Non-Economic Damage Cap Punitive Damage Cap



*Tort caps can be altered by the degree of guilt, defendant type, or a multiple of court-determined damages as found in state law. However, state statutes all give the legal system guidance in setting the dollar amount of awards. Texas and North Carolina can adjust noneconomic damages caps based on the Consumer Price Index. Alabama can adjust its punitive damages cap by the Consumer Price Index.