

1 ENGROSSED SENATE  
JOINT  
2 RESOLUTION NO. 40

By: Daniels of the Senate

3 and

4 Sanders of the House  
5  
6

7 A Joint Resolution directing the Secretary of State  
8 to refer to the people for their approval or  
9 rejection a proposed amendment to the Oklahoma  
10 Constitution by adding a new Section 13 to Article  
11 XXIII; prohibiting limitation for certain economic  
12 loss; modifying recovery limitation on certain  
13 noneconomic damages; establishing exceptions to  
14 limitation on certain recovery; requiring certain  
15 findings of fact or general verdict; establishing  
16 procedures for entering of certain judgment;  
17 prohibiting certain jury instruction; defining terms;  
18 providing for applicability to certain actions;  
19 providing ballot title; and directing filing.

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BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE  
2ND SESSION OF THE 57TH OKLAHOMA LEGISLATURE:

SECTION 1. The Secretary of State shall refer to the people for  
their approval or rejection, as and in the manner provided by law,  
the following proposed amendments to the Oklahoma Constitution by  
adding a new Section 13 to Article XXIII to read as follows:

Section 13. A. In any civil action arising from a claimed  
bodily injury, the amount of compensation which the trier of fact

1 may award a plaintiff for economic loss shall not be subject to any  
2 limitation.

3 B. Except as provided in subsection C of this section, in any  
4 civil action arising from a claimed bodily injury, the amount of  
5 compensation which a trier of fact may award a plaintiff for  
6 noneconomic loss shall not exceed Three Hundred Fifty Thousand  
7 Dollars (\$350,000.00), regardless of the number of parties against  
8 whom the action is brought or the number of actions brought. The  
9 Legislature is hereby authorized to increase, but not decrease, the  
10 maximum amount that may be awarded for noneconomic loss as  
11 established pursuant to this subsection.

12 C. Notwithstanding subsection B of this section, there shall be  
13 no limit on the amount of noneconomic damages which the trier of  
14 fact may award the plaintiff in a civil action arising from a  
15 claimed bodily injury resulting from negligence if the judge and  
16 jury finds, by clear and convincing evidence, that the defendant's  
17 acts or failures to act were:

- 18 1. In reckless disregard for the rights of others;
- 19 2. Grossly negligent;
- 20 3. Fraudulent; or
- 21 4. Intentional or with malice.

22 D. In the trial of a civil action arising from claimed bodily  
23 injury, if the verdict is for the plaintiff, the court, in a nonjury  
24 trial, shall make findings of fact, and the jury, in a trial by

1 jury, shall return a general verdict accompanied by answers to  
2 interrogatories, which shall specify all of the following:

3 1. The total compensatory damages recoverable by the plaintiff;

4 2. That portion of the total compensatory damages representing  
5 the plaintiff's economic loss;

6 3. That portion of the total compensatory damages representing  
7 the plaintiff's noneconomic loss; and

8 4. If alleged, whether the conduct of the defendant was or  
9 amounted to:

10 a. reckless disregard for the rights of others,

11 b. gross negligence,

12 c. fraud, or

13 d. intentional or malicious conduct.

14 E. In any civil action to recover damages arising from claimed  
15 bodily injury, after the trier of fact makes the findings required  
16 by subsection D of this section, the court shall enter judgment in  
17 favor of the plaintiff for economic damages in the amount determined  
18 pursuant to paragraph 2 of subsection D of this section, and subject  
19 to paragraph 4 of subsection D of this section, the court shall  
20 enter a judgment in favor of the plaintiff for noneconomic damages.  
21 Except as provided in subsection C of this section, in no event  
22 shall a judgment for noneconomic damages exceed the maximum  
23 recoverable amounts set forth in subsection B of this section.  
24 Subsection B of this section shall be applied in a jury trial only

1 after the trier of fact has made its factual findings and  
2 determinations as to the amount of the plaintiff's damages.

3 F. In any civil action arising from claimed bodily injury which  
4 is tried to a jury, the jury shall not be instructed with respect to  
5 the limit on noneconomic damages set forth in subsection B of this  
6 section, nor shall counsel for any party nor any witness inform the  
7 jury or potential jurors of such limitations.

8 G. This section shall not apply to actions brought under The  
9 Governmental Tort Claims Act or actions for wrongful death.

10 H. As used in this section:

11 1. "Bodily injury" means actual physical injury to the body of  
12 a person and sickness or disease resulting therefrom;

13 2. "Economic damages" means any type of pecuniary harm  
14 including, but not limited to:

15 a. all wages, salaries or other compensation lost as a  
16 result of a bodily injury that is the subject of a  
17 civil action,

18 b. all costs incurred for medical care or treatment,  
19 rehabilitation services, or other care, treatment,  
20 services, products or accommodations as a result of a  
21 bodily injury that is the subject of a civil action,  
22 or

23 c. any other costs incurred as a result of a bodily  
24 injury that is the subject of a civil action;

1           3. "Fraudulent" or "fraud" means "actual fraud" as defined  
2 pursuant to Section 58 of Title 15 of the Oklahoma Statutes;

3           4. "Gross negligence" means the want of slight care and  
4 diligence;

5           5. "Malice" involves hatred, spite or ill will, or the doing of  
6 a wrongful act intentionally without just cause or excuse;

7           6. "Noneconomic damages" means nonpecuniary harm that arises  
8 from a bodily injury that is the subject of a civil action,  
9 including damages for pain and suffering, loss of society,  
10 consortium, companionship, care, assistance, attention, protection,  
11 advice, guidance, counsel, instruction, training, education,  
12 disfigurement, mental anguish and any other intangible loss; and

13           7. "Reckless disregard of another's rights" shall have the same  
14 meaning as willful and wanton conduct and shall mean that the  
15 defendant was either aware, or did not care, that there was a  
16 substantial and unnecessary risk that his, her or its conduct would  
17 cause serious injury to others. In order for the conduct to be in  
18 reckless disregard of another's rights, it must have been  
19 unreasonable under the circumstances and there must have been a high  
20 probability that the conduct would cause serious harm to another  
21 person.

22           I. This section shall apply to civil actions filed on or after  
23 the date the amendment goes into effect.

1 SECTION 2. The Ballot Title for the proposed Constitutional  
2 amendment as set forth in SECTION 1 of this resolution shall be in  
3 the following form:

4 BALLOT TITLE

5 Legislative Referendum No. \_\_\_\_\_ State Question No. \_\_\_\_\_

6 THE GIST OF THE PROPOSITION IS AS FOLLOWS:

7 This measure would amend the Oklahoma Constitution by adding a  
8 new Section 13 to Article 23. It prohibits a limit on economic  
9 damages in a civil action. It creates a limit on noneconomic  
10 damages in a civil action. It creates court procedures for  
11 awarding damages.

12 SHALL THE PROPOSAL BE APPROVED?

13 FOR THE PROPOSAL - YES \_\_\_\_\_

14 AGAINST THE PROPOSAL - NO \_\_\_\_\_

15 SECTION 3. The President Pro Tempore of the Senate shall,  
16 immediately after the passage of this resolution, prepare and file  
17 one copy thereof, including the Ballot Title set forth in SECTION 2  
18 hereof, with the Secretary of State and one copy with the Attorney  
19 General.

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