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SENATE JOINT  
RESOLUTION NO. 40

By: Daniels

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

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.

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

- 15 1. In reckless disregard for the rights of others;
- 16 2. Grossly negligent;
- 17 3. Fraudulent; or
- 18 4. Intentional or with malice.

19 D. In the trial of a civil action arising from claimed bodily  
20 injury, if the verdict is for the plaintiff, the court, in a nonjury  
21 trial, shall make findings of fact, and the jury, in a trial by  
22 jury, shall return a general verdict accompanied by answers to  
23 interrogatories, which shall specify all of the following:

- 24 1. The total compensatory damages recoverable by the plaintiff;

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

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

5        4. If alleged, whether the conduct of the defendant was or  
6 amounted to:

7            a. reckless disregard for the rights of others,

8            b. gross negligence,

9            c. fraud, or

10           d. intentional or malicious conduct.

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

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

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

8 H. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

BALLOT TITLE

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

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

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

SHALL THE PROPOSAL BE APPROVED?

FOR THE PROPOSAL — YES \_\_\_\_\_

AGAINST THE PROPOSAL — NO \_\_\_\_\_

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

COMMITTEE REPORT BY: COMMITTEE ON RULES  
February 26, 2020 - DO PASS