

*As Engrossed: 4/8/93*

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Senator Gordon**

# A Bill

**ACT 1225 OF 1993**  
**SENATE BILL 386**

## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE 20-77-301 CONCERNING  
9 ACTIONS IN TORT BY THE DEPARTMENT OF HUMAN SERVICES; AND  
10 FOR OTHER PURPOSES."

## Subtitle

13 "AN ACT CONCERNING ACTIONS IN TORT BY THE DEPARTMENT OF  
14 HUMAN SERVICES."

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18 SECTION 1. Arkansas Code 20-77-301 is amended to read as follows:

19 "20-77-301. Action by Department of Human Services.

20 (a) When medical assistance benefits are provided or will be provided  
21 to a medical assistance recipient because of injury, disease, or disability  
22 for which another person is liable, the appropriate division of the Department  
23 of Human Services shall have a right to recover from the person the cost of  
24 benefits so provided. The department may, to enforce the right, institute and  
25 prosecute legal proceedings against the third person who may be liable.

26 (b) No action taken on behalf of the division pursuant to this section  
27 or any judgment rendered in the action shall be a bar to any action upon the  
28 claim or cause of action of the recipient, his guardian, personal  
29 representative, estate, or survivors against the third person who may be  
30 liable for the injury. Nor shall any action operate to deny to the recipient  
31 the recovery for that portion of any damages not covered hereunder.

32 (c) The Department of Human Services shall likewise have the authority  
33 to recover the cost of benefits for medical care provided to indigent persons  
34 from such third persons, whether or not the care was provided pursuant to the  
35 Arkansas Health Care Access Program, another program administered by the  
36 Department of Human Services, or a program administered through another

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1 department or agency of state government. The Department of Human Services  
2 shall remit to other departments or agencies of state government any amounts  
3 recovered, less its pro rata share and costs of collection, for care provided  
4 by them.

5 (d) In actions in tort hereunder, no contributory or comparative fault  
6 of a recipient shall be attributed to the state, nor shall any restitution  
7 awarded to the state be denied or reduced by any amount or percentage of fault  
8 attributed to a recipient. *Notwithstanding the foregoing sentence, if the*  
9 *recipient used a device, machine or product after being warned, either*  
10 *verbally or in writing, that the use, misuse or improper operation of the*  
11 *device, machine or product was dangerous, risky, or could result in injury or*  
12 *harm to the recipient, then the statutory or common law defenses of*  
13 *contributory or comparative fault or negligence that could be asserted by the*  
14 *defendant against the recipient may also be asserted by the defendant in any*  
15 *action by the Department of Human Services or other agency of state*  
16 *government, and if such defenses are supported by the evidence then recovery*  
17 *may be denied or reduced in the same manner as if the recipient were the*  
18 *plaintiff."*

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20 SECTION 2. All provisions of this act of a general and permanent nature  
21 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
22 Revision Commission shall incorporate the same in the Code.

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24 SECTION 3. If any provision of this act or the application thereof to  
25 any person or circumstance is held invalid, such invalidity shall not affect  
26 other provisions or applications of the act which can be given effect without  
27 the invalid provision or application, and to this end the provisions of this  
28 act are declared to be severable.

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30 SECTION 4. All laws and parts of laws in conflict with this act are  
31 hereby repealed.

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*/s/ Senator Gordon*

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APPROVED: 4/20/93

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